

FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

SUMMARY RECORD OF THE THIRTEENTH MEETING

Held at the Capitol, Havana, Cuba on Thursday, 5 February 1948 at 10.30 a.m.

Chairman: Mr. BANERJI (India)

CONSIDERATION OF THE PROPOSED REDRAFT OF THE FINAL TEXT OF CHAPTER V
(Document E/CONF.2/C.4/SR.13)

Article 44 - General Policy towards Restrictive Business Practices

Mr. DE BARROS (Brazil) proposed the substitution of the words "give rise" for the words "be subject" in paragraph 2. As there was no general support for his proposal, he withdrew it.

Article 44 was approved by the Committee.

Article 45 - Consultation Procedure

This article was approved without comment.

Article 45 A - Investigation Procedure

This article was approved without comment.

Article 46 - Studies Relating to Restrictive Business Practices

At the suggestion of Mr. FORTHOMME (Belgium), the word "et" in paragraph 2 (b) of the French text was deleted. Article 46 was approved by the Committee.

Article 47 - Obligations of Members

At the suggestion of Mr. HOLMES (United Kingdom), the word "for" in paragraph 2 was deleted.

Mr. COFFOLA D'ANNA (Italy) proposed the deletion of the word "conclusions" in paragraph 4 of the French text. The Committee approved the deletion.

At the suggestion of Mr. HOLMES (United Kingdom), the comma after the word "constatations" was deleted in the French text of paragraph 4.

Article 47 was approved by the Committee.

Article 48 - Co-operative Remedial Arrangements

This article was approved without comment.

Article 49 - Domestic Measures Against Restrictive Business Practices

This article was approved without comment.

Article 50 - Special Procedures with Respect to Services

This article was approved without comment.

/Article 51

Article 51 - Interpretation and Definition

At the suggestion of Mr. FORTHOMME (Belgium), a colon was inserted after the word "Charte" in line six of the French text of paragraph 1.

Mr. COPPOLA D'ANNA (Italy) drew attention to the difference in meaning between "that such contract is not used to restrain competition" and the French phrase "a condition que ces contrats n'aboutissent pas à entraver la concurrence".

Mr. ABELLO (Philippines) wished to have it reported that the Belgian representative did not consider that there was any difference in substance between the two expressions.

Mr. FER (Turkey) proposed the insertion of the word "restrictive" before "business practice" in the first line of paragraph 2 (a).

Mr. MacLIAM (Ireland) proposed that it read "business practice" or "practice".

After a short discussion, the Chairman took the sense of the meeting with respect to the Turkish and Irish proposals which were rejected by the Committee.

Article 51 was approved by the Committee.

At the suggestion of Mr. COUILLARD (Canada), the CHAIRMAN said that he would thank the Central Drafting Committee for the excellent work which they had done with respect to Chapter V.

CONSIDERATION OF THE NOTIFICATION OF THE SIXTH COMMITTEE TO THE OTHER COMMITTEES OF THE CONFERENCE (Document E/CONF.2/C.6/63)

Mr. COUILLARD (Canada) explained that the Sixth Committee had taken two hours to reach agreement on the notification and that, in his opinion, the agreement had not been altogether conclusive. His delegation considered that the words "should precede" in the seventh line, should be interpreted to mean "should normally precede", it being understood that access to the procedure laid down in Chapter VIII would be available to Members at all times.

Should the tariff benefit of a Member be nullified or impaired, it should not be compelled to go through the procedure outlined in Chapter V before applying the procedure contained in Chapter VIII.

In reply to the representative of the United States, Mr. Couillard (Canada) as Chairman of the Sub-Committee on Chapter VIII confirmed the fact that the final sentence of the notification only applied to the immediately preceding sentence.

Mr. HOLMES (United Kingdom) expressed the view that the Committee should only take note of the notification and that any reformulation of it should be left to the Sixth Committee.

In the light of the discussion which had taken place previously in the Fourth Committee, the CHAIRMAN felt that it was necessary to decide whether, in view of the notification, the text of Chapter V should be reconsidered.

/Mr. ABELLO (Philippines)

Mr. ABELLO (Philippines) said that notwithstanding the notification, he did not consider that any change should be made in Chapter V. The matter should be left to the discretion of the Organization.

Mr. HOLLOWAY (Union of South Africa) felt that the words "unless it is so specified" meant that the Committee could preclude a Member from having access to the provisions of Chapter VIII, or determine the stage at which such access would be allowed, if it thought appropriate for certain categories of cases.

Mr. POLITIS (Greece) felt that the subject under discussion should be left to the Sixth Committee to decide, for under the terms of Article 89 it would be able to lay down the general and specific procedures which should be followed.

Mr. FORTHOMME (Belgium) explained that while the Charter generally was concerned with national states, Chapter V dealt with the activities of private commercial enterprises. Should action be needed with respect to such activities it could be taken through the Member in which the enterprise was located, under the terms of Article 45A. If the Member in question did not take action, the failure to act if it nullified or impaired a benefit would constitute a breach of obligation and the procedure in Article 89 could be applied.

Mr. TERRILL (United States) supported the remarks of the Belgian representative which served to emphasize the ambiguity of the notification. To make for greater clarity he suggested the insertion of the words "with respect to other Members" after the word "Organization" in the sixth line.

The CHAIRMAN was of the opinion that the Committee was not competent to make changes in the notification.

Mr. LECUYER (France) agreed with the Chairman. The purpose of the notification was to permit the Committee to come to some decision with respect to Chapter V. It should not concern itself with the substance of Article 89 which, in his opinion, would not involve any necessary change in Chapter V.

Mr. HOLLOWAY (Union of South Africa) recalled that the present Article 50 had been inserted at Geneva to cover the question of services. In connection with the possibility of restrictive business practices arising with respect to services, it had been decided that such cases would be referred to the Organization which, in turn, would refer them to an appropriate inter-governmental organization. In such instances, the procedure in Articles 89 and 90 would not have been applicable.

The present text suggested, however, that if there was a nullification of a benefit, Articles 89 and 90 could be utilized even if the above-mentioned circumstances applied.

Mr. MADJID (Afghanistan) pointed out that the report of the Fourth Committee would have to be changed if the notification were to be accepted.

/Mr. TERRILL (United States)

Mr. TERRILL (United States) felt that the point to be decided was whether action under Chapter V would be necessary in a case in which a benefit had been nullified and at the same time harmful restrictive business practices could be proved.

The CHAIRMAN said that the Committee either could modify the notification, draft one of its own for inclusion in its report or amend Chapter V.

Mr. TERRILL (United States) suggested that a note be drafted for the record of this Committee, to which the attention of the Sixth Committee could be drawn.

In reply to the representative of South Africa, the CHAIRMAN expressed the view that there was no question of the Committee recommending that the procedure under Chapter V should be exclusive preventing a Member from applying the provisions of Articles 89 and 90 subsequently or concurrently. The whole question of procedure hinged on the form in which a Member presented its charge; i.e. whether in terms of a harmful business practice or in terms of nullification or impairment. The notification did not make clear at what stage a Member would have the right to apply the procedure in Chapter VIII.

Mr. MacLIAM (Ireland) drew attention to the fact that certain representatives had assumed that Chapter VIII would not cover the case of private commercial enterprises. He wished to hear the opinion of the Sixth Committee on the question.

Mr. HOLMES (United Kingdom) felt that all cases of private commercial enterprises would have to be referred to Chapter V and that when that procedure was set in motion, no other reference could be made until the procedure had been completed, except where a Member could be proved to have acted in bad faith or to have used delaying tactics.

The meeting rose at 1.10 p.m.