

ECONOMIC
AND
SOCIAL COUNCILCONSEIL
ECONOMIQUE
ET SOCIALRESTRICTED
E/PC/T/WPL/AC1/SR/1
19 May 1947SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

WORKING GROUP ON "TECHNICAL" ARTICLES

Summary Record of Meeting of the
AD HOC SUB-COMMITTEE
APPOINTED FOR THE DISCUSSION OF ARTICLE 16, - PARAGRAPHS 5 and 6
(19 May 1947, 3.00 p.m.)

Chairman: Mr. SHACKLE

Present for Article 16, paragraph 5: the delegates for Belgium, Czechoslovakia, United Kingdom, United States, Canada, New Zealand, South Africa also attending;

for Article 16, paragraph 6: the former with the addition of Australia and France.

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After an exchange of views on paragraph 5 of Article 16, the Czechoslovak delegate provisionally approved the version as it appeared in the Report of the Drafting Committee. It was decided that the following note should be included in the Report to the Working Party on "Technical" Articles:

"With regard to transport charges it would be understood that the principle of paragraph 5 refers to like products being transported on the same route under like conditions."

In the debate on paragraph 6, the delegate for France stressed the necessity of changing the present text in view of the fact that the French ports will not be fully usable for some years to come. Several amendments suggested during the meeting to solve the difficulty did not meet with unanimous approval. Mr. LEDDY (United States) urged the Committee either to include paragraph 6 in its present form or to delete it from Article 16, and discuss this point in connection with Article 14. No agreement could be reached but it appeared that the majority favoured the retention of paragraph 6 in its present form. The delegate for FRANCE declared his reservation against the inclusion of the second sentence of the paragraph.

It was decided to submit the following Report of the Ad hoc Sub-Committee to the Working Group on "Technical" Articles with regard to Article 16, paragraph 6:

"The Sub-Committee were in favour of the retention of this paragraph in the New York text, subject to a reservation by the French delegate who will raise this matter when Article 14 will be discussed."

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Paragraph 3, re-word first sentence as follows:

"In the debate on paragraph 6, the delegate for France stressed the necessity of changing the present text in view of the fact that the requirement of direct consignment had to be maintained by his country pending the reconstruction of the French ports, which had been severely damaged during the war".

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UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.WORKING GROUP ON "TECHNICAL ARTICLES".

Summary Record
of the Meeting of the ad hoc Sub-Committee appointed
for the discussion of
Article 21, paragraph 3.

(20th May 1947, 12 noon).

Chairman: Mr. Shackle.

Members of the Sub-Committee: The delegates of Czechoslovakia, France, the Netherlands, the Union of South Africa, the United Kingdom and the United States.

The Chairman, referring to the "Comments by the Legal Officer upon Article 21 and the amendment thereto by the Delegation of Czechoslovakia", stated that in his view the fundamental object of this paragraph was to enable the importer to know at the time of importation to what rates of duties the imported merchandise is subject; regardless of the question whether the applicable laws and regulations are provisional or definitive, the importer should be in a position objectively to determine the amount of duty.

The Delegate of the United States proposed an amendment to alternative No. 2 in the "Comments by the Legal Officer upon Article 21" (the clause on page 2 of these "Comments"), substituting the word "measures" for "laws, regulations, judicial decisions or administrative rulings".

In the ensuing discussion, the Committee debated the various meanings of the term "publication of laws". The Delegate of The Union of South Africa suggested the deletion of paragraph 3, but subsequently withdrew this suggestion.

The Committee reached the following decisions:

1. The following new paragraph should be inserted as Paragraph 2: "No measure of general application taken by any member effecting an advance in a rate of import duty or other charge under an established and uniform practice or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of the payments therefor, shall be enforced before such measure has been legally published".

2. Paragraph 2 in the New York version, as amended by the Working Group in its 4th meeting, should be re-numbered paragraph 3, and paragraph 3 of the New York version should be deleted.

The Sub-Committee wished it to be understood that the adoption of the new paragraph 2 is of a provisional nature and does not prevent the Members of the Sub-Committee from proposing changes at the time Article 21 will be debated for final adoption by the Preparatory Committee.

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.

WORKING GROUP ON "TECHNICAL ARTICLES".

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Summary Record

of the Meeting of the ad hoc Sub-Committee appointed
for the discussion of

Article 21, paragraph 2 .

(22 May 1947, 9.30 a.m.)

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Chairman: Mr. Shackle.

Members of the Sub-Committee: The Delegates for Canada, the Netherlands, the United Kingdom and the United States. Also present the Delegates of France and New Zealand.

At the invitation of the Chairman, the delegate of the United States explained the purpose of the United States amendment (cf. E/PC/T/W/24 add. 1). In the United States, he pointed out, it is extremely difficult and rare to introduce legislation to correct a judicial decision in customs matters, which is not in line with intended policy, and therefore the central authority must have the right to test such a decision in new cases, a right which equally applies to importers. The implementation of any final decision in the specific case to which it refers remains, however, unaffected.

In the ensuing discussion several delegates made it clear that the practice in their respective countries was similar. The United Kingdom delegate stated that in his country customs authorities are bound by court decisions for all like cases, and corrections could be achieved only by new legislation which was not always easy.

Several delegates raised doubts regarding the meaning of the word "agency" in the American proposal, contending that remedial action should only lie with a superior authority. The delegate of the United States then proposed the following changes in his amendment:

To add the words "the central administration of" before "such agency";

P.T.O.

To delete the words "any" and "necessary" in the first line; and

To substitute in line 3 "if" for "in cases in which".

The Sub-Committee adopted the Canadian amendment (cf. E/PC/T/W 24) and the United States amendment (cf. E/PC/T/W 24 add. 1) with the proposed changes and accordingly recommends to the Executive Committee in its Report the following addition to Article 21, paragraph 2:

"And their decision shall be implemented by and shall govern the practice of such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers, provided, that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts".