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WORKING PARTY 2 ON ARTICLE XVIII
PROCEDURES BETWEEN SESSION FOR EXISTING AND NEW MEASURES
A summary based upon comments at the meeting on 14th June, 1949
to provide a basis for further discussion

Problem

The Working Party considered that a problem arose in connection with the administration of the provisions of Article XVIII by the CONTRACTING PARTIES between the sessions of the CONTRACTING PARTIES. The problem received preliminary attention at the second session and the CONTRACTING PARTIES at that time had provided some guidance in the form of a questionnaire and a suggested time-table in connection with statements in support of existing measures and had also suggested a series of steps to be taken in the event of any application being made for the adoption of new measures.

The further delay in the entry into force of the Charter accentuates the problem since it means that in the absence of the permanent organisation of the ITO, which would administer the corresponding article in the Havana Charter, the Contracting Parties are obliged to improvise ways and means of administering Article XVIII for a further period.

For these reasons, the Working Party considered the procedures that should be followed both in the case of the existing measures that are being notified by acceding governments and in relation to any new measures application for which may be made by Contracting Parties.

Existing Measures

The Working Party has been greatly concerned with the difficulties which have occurred at the third session in reaching decisions on the existing measures notified by the present Contracting Parties. Despite preliminary consideration of these measures at the first and second sessions and the laying down of a procedure to be followed after the close of the second session it has been found that in almost every case much additional information has been sought by the Working Party before considered recommendations were presented to the Contracting Parties.

The absence of data for the formulation of a considered opinion and recommendation and the time taken to obtain the information requested has resulted in many difficulties.

On the basis of its experiences the Working Party considers it most desirable for the Contracting Parties to adopt a procedure for the consideration of any measures notified by acceding governments in order that decisions may be taken on those measures with the least possible delay after the acceding governments become Contracting Parties.
There are two stages to be considered in connection with these measures:-

(a) Preparation for Decision. In order that the Contracting Parties may make decisions on the measures it is necessary for a statement in support of them to be supplied by the Contracting Party notifying the measures. It is also necessary for this information to be submitted in such a form that it provides a clear indication of the extent to which the criteria and conditions of Article XVIII are met.

On the basis of the information that has been sought at this session and the experience gained during the examination of existing measures of present Contracting Parties, the Working Party considers that guidance should be available to acceding governments which request it in the preparation of the statements which they must submit in support of these measures. This guidance could take two forms.

(i) The preparation of a questionnaire seeking specific information relevant to the provisions of the article; and

(ii) A more positive form of guidance than that provided by the questionnaire agreed upon by the Contracting Parties at the last session which might avoid much of the fact-finding and investigation work which has occupied so much of the time of the Working Party at this session.

Where an acceding government requires the latter type of advice and assistance it could be provided during regular sessions by consultations with the Working Party set up to consider measures relating to Article XVIII. However, if there is no committee in existence which could afford a similar type of advice and assistance between sessions of the Contracting Parties, provision could be made for affording an acceding government an opportunity to consult and to receive advice. The Secretariat could be authorised to consult and discuss with acceding governments concerning the preparation of the statements in support of the measures notified by them. The Secretariat might also be authorised to compare these statements with relevant provisions of the General Agreement and seek any further necessary information.

(b) Decision. It was considered by the Working Party that the interval of time provided for in Article XVIII was sufficient to enable decisions on existing measures to be taken at a regular session of the Contracting Parties. It was thought that in most cases a decision could be taken without delay at an early regular session if there had been consultation with the Secretariat on the preparation of the statements and the investigation and research work had been concluded prior to the meeting of the Contracting Parties. If that work is carried out satisfactorily between sessions, it should be possible to avoid the greater part of the detailed fact-finding and investigational work which has involved the Working Party in so many meetings at this session.
New Measures

Applications may be submitted before the next session for the application of new measures that would be otherwise contrary to the terms of the Agreement. The requirements of paragraph 10 of Article XVIII which relate to the time-table within which a decision on such an application must be given are rigid. Consequently careful attention must be given to the means by which the decision on any such application made between sessions can be given with a minimum of delay.

Consideration of the new measures can be considered, as in the case of existing measures, in stages and in the Working Party there was a discussion of the following possibilities:

(a) **Preparation for Decision.** Just as in the case of existing measures, a considerable part of the work of the Working Party in dealing with new measures has been taken up with the obtaining of precise or additional information and facts in order to determine the extent to which the criteria and conditions of Article XVIII are met.

If there were available to applicants facilities for consultation and guidance in the preparation of an application and in the submission of material relevant to the provisions of the Article, it would be possible to minimise this work.

If provisions was made for these facilities, Contracting Parties wishing to apply would probably seek to avail themselves of the opportunity before submitting a formal application. In this event, the period of 15 days within which advice of the date by which a decision will be made will be given, would run from the date on which the formal application was submitted. Within this period the Chairman of the Contracting Parties could notify the applicant of the period in which a decision could be given and in so doing take into consideration the likely time required in the light of the comments below.

After the formal application has been made, it was thought that the Secretariat could, as in other cases, request any further information in relation to the provisions of the Article, for consideration by the Contracting Parties.

(b) **Decision.** In order to facilitate the giving of a decision by the Contracting Parties it might be necessary to appoint a committee which would be a representative sample of the Contracting Parties. This committee would be similar to a Working Party established at a regular session and to which, in the ordinary course, the Contracting Parties would refer such an application for detailed examination. However, in order to expedite the proceedings the committee would consider the case immediately it received the application and other material from the Secretariat.
The committee would be responsible for making recommendations on the application to the Contracting Parties. In the case of an application under paragraph 7, its tasks would be limited to determining the extent to which the criteria of that paragraph had been fulfilled and recommending a period of release. In an application under paragraph 8 the Committee would be required also to consider objections raised by other Contracting Parties and to determine the extent to which they were materially affected by the proposed measure.

The committee would also be able to recommend to the Chairman the means by which a formal decision should be taken by the Contracting Parties.

In order to carry out the requirements of paragraph 10 it might be necessary for applications for new measures to be considered by a special session of the Contracting Parties and consideration at the succeeding regular session might be impracticable. Accordingly, the Chairman might be authorised to summon a special session on the recommendation of the committee.

Conclusion

It was suggested that if it is possible adequately to develop the functions of consultation and guidance by the Secretariat, the tasks of the inter-sessional committee or Working Party established during regular sessions would be considerably lightened. Eventually it might be possible for the Contracting Parties, without reference to a Working Party to give a decision on the basis of an application and information submitted by the Secretariat. It was thought that this would be in accordance with the procedure that might eventually be adopted by the ITO when that is functioning as a permanent organisation.

It is suggested that the Working Party should consider this problem and should make recommendations solely on the basis of technical experience and requirements. It is thought that the matter should be considered at this stage solely on this basis and that the problem of providing the facilities should be considered by the Executive Secretary in relation to other related problems arising during the course of this session.