THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE THIRTEENTH MEETING (IIIa)

Held at the Capitol, Havana, Cuba, Wednesday, 17 December 1947, at 4.00 p.m.

Chairman: Mr. L. D. WILGESS (Canada)

The CHAIRMAN read a communication from the Vice-Chairman announcing his re-call to Ecuador, and suggested that election of a Vice-Chairman should take place at the next meeting.

Replying to a procedural point raised by Mr. GUTIERREZ (Bolivia), the CHAIRMAN suggested that since the matter concerned Committee III(b), it might be raised at the next meeting.

1. ARTICLE 18 (COMPLETION OF FIRST READING)

Paragraph 1:

Mr. FERRERO (Peru) asked that a corrigendum be issued to the Summary Record of the eleventh meeting: the Chairman actually stated that..."conflict would not arise...." He suggested to add a new provision to paragraph 1 (see document E/CONF.2/C.3/6/Add.2).

Mr. SAENZ (Mexico) asked whether exemption from taxes for economic development was excluded from Article 18. If they were prohibited under paragraph 1, his delegation would offer amendments; if not, the paragraph was acceptable.

Mr. LEDDY (United States of America) stated that exemptions from taxes such as income, profits, etc., designed to facilitate development, were outside the scope of Article 18. To tax imports, directly or indirectly, and not to tax a like domestic product, in order to protect development, was not permissible under Article 18. It would be possible, however, under the Chapter on Economic Development, according to its provisions, just as other actions could be taken under Chapter III which were contrary to Chapter IV.

Mr. SAENZ (Mexico) stated that if the Committee shared the interpretation that exemptions from taxes not on goods, were allowed under Article 18, but exemptions from imports duties on raw materials were not allowed, his delegation would reserve its position and submit amendments; the previous records would, accordingly, need to be revised.

/Mr. LEDDY
Mr. EDDY (United States of America) said there was nothing in Article 18 to prevent a country from exempting from duties raw materials which would enter into a domestic product: Article 18 dealt with internal taxes.

On a further question by Mr. SAENZ (Mexico) as to whether exemptions from import duties were allowable under Article 18 for raw materials which competed directly with domestic products, Mr. LEDDY (United States of America) replied in the affirmative.

The CHAIRMAN noted that with that explanation, it would not be necessary to alter the record of the previous meeting.

There were no comments on paragraphs 2 and 3.

Paragraph 4

Replying to a question by Mr. COREA (Ceylon), Mr. LEDDY (United States of America) said that the dates mentioned in paragraph 4 (b) were alternative dates, chosen as more normal than the war-years, and were prior to negotiations.

Mr. COREA (Ceylon) felt that 4 (b) discriminated against countries which had no mixing or processing regulations on either of the dates mentioned, but which might in the future desire to introduce them; his amendment proposed the deletion of that sub-paragraph for that reason.

Mr. CHANG (China) supported the statement of the representative of Ceylon. Paragraph 4 (b) seemed to provide for an indefinite prolongation of regulations in force on those dates.

Mr. MacCARTHY (Ireland) believed that paragraph 3 (a) referred to mixing of identical commodities and 3 (b) of substitutable commodities; if a regulation in force in Ireland requiring the mixing of imported maize with a proportion of domestic wheat was compatible with paragraph 3 (b), he would oppose its deletion.

There were no comments on paragraph 5.

2. ARTICLE 19

Mr. AUGENTHALER (Czechoslovakia) proposed the deletion of Article 19 because of the special character of films: the subject could best be dealt with by UNESCO and the United Nations. If, however, the Article remained, the Geneva drafting was acceptable.

Mr. LECUYER (France) said that some provision was needed regarding the practical aspects of film regulations and Article 19 was acceptable, although he agreed in principle with the representative of Czechoslovakia.

Mr. MEILANDER (Norway) agreed that films should be considered on a different basis from goods. Article 19 did not cover the whole problem; further measures should be included to safeguard the cultural importance of a domestic film industry.

/Mr. PELLIZA
Mr. PELLIZA (Argentina) stated that the deletion of sub-paragraph (c) was proposed to avoid the freezing, at 10 April 1947 levels, of screen quotas reserved for domestic films.

Mr. LEDDY (United States of America) said that the date mentioned related to discriminatory allocation of time to foreign films of different origin. Sub-paragraph (c) would not apply to Argentina since it had no preferential arrangements of this kind.

Mr. PELLIZA (Argentina) replied that the right to institute or modify screen quotas should be maintained.

Mr. SHACKLE (United Kingdom) stated that the amendments submitted by his delegation were drafting changes in the English text, corresponding to the text of the General Agreement on Tariffs and Trade.

Mr. NASH (New Zealand) thought it was desirable to separate the commercial from the artistic aspects of films.

It was agreed to refer the amendments to Articles 18 and 19, with the exception of the proposed Article 18 (a), to sub-committee A, with no change in the composition of that sub-committee.

The CHAIRMAN read out the recommendations of the General Committee concerning expediting the work of the Conference (E/CONF.2/l6) and announced that the Committee would now take up discussion of Section E on the basis of document E/CONF.2/C.3/10.

It was agreed to postpone discussion of Article 32 pending clarification of some points ensuing from existing conventions.

3. ARTICLE 33 (E/CONF.2/C.3/10)

Paragraph 1

Mr. FRESQUET (Cuba) stated that the Cuban amendment to Article 33 (item 10) proposed a total revision of the present concept, which appeared to countenance dumping: the first paragraph would condemn dumping; the second would define dumping—without definition it would be difficult to establish countering measures, and might lead to loose interpretation. Any discrimination of prices between markets of different countries should be defined as dumping, including high-price as well as low-price dumping. There should be freedom to take counter measures; ITO should be notified, but action should not be deferred. Paragraph 4 of the amendment would replace the present paragraph 2; the present paragraphs 3, 4 and 5 would become 5, 6 and 7 in the amendment and the present paragraph 6 would be deleted.

The Charter should not protect one of the worst forms of trade aggression, the most destructive to under-developed countries.

Mr. FERRERO (Peru) endorsed the statement of the representative of Cuba.

/Mr. DJEBBARA
Mr. DJABBARA (Syria) supported the Cuban amendment in preference to Syria's.

Mr. PELLIZA (Argentina) agreed with the statements of the representatives of Cuba, Peru and Syria. Paragraph 1 appeared to tolerate dumping. Dumping should not only be neutralized, but condemned and punished because it disorganized international commerce. Argentina had adopted very real anti-dumping legislation in 1945, particularly in regard to imports priced lower than in the country of origin; cheap goods based on subsidies, premiums, low freight rates, currency depreciation, forced labour, lack of social legislation and other measures advantageous to the producer; more recently import duties had been imposed on all unfavourable competition; and in a crisis imports of some articles might be prohibited. A country affected by dumping should be allowed every measure to protect itself.

Mr. SAENZ (Mexico) stated that his delegation was withdrawing its amendment (item 14) in favour of the proposal of Cuba.

Mr. HAKIM (Lebanon) thought the Cuban amendment corresponded better to its purpose than that of Lebanon and Syria. The sub-committee should be guided by three considerations, namely (1) formal condemnation of dumping, (2) effective protection for importing countries, (3) protective measures for exporting countries against dumping practiced by third countries in their markets.

Mr. CHANG (China) would associate himself with the Cuban amendment, if it embraced the purpose of the Chinese amendment (item 13), namely to give any member the possibility to take appropriate measures against dumping.

Mr. PEREZ (Colombia) in supporting the Cuban proposal, felt that it would be sufficient to lay down two fundamental principles (1) that dumping was harmful to international trade; (2) that all nations were free to defend their own interests as they saw fit. The Charter could not provide formulae covering each specific case or attempt to provide a universal remedy for dumping.

Mr. GOMES (Brazil) felt that more latitude in the selection of anti-dumping measures should be allowed to countries which had suffered from dumping practices. Brazil would be ready to agree to certain safeguards such as ex-post notification to the Organization and an opportunity for consultation with Member States provided that, in the interim period, countries were free to adopt such defensive measures as they deemed fit to meet the situation.

The Brazilian delegation was in agreement with the Cuban amendment and the proposal to eliminate paragraph 6.

Mr. MULLER (Chile) was in favour of an absolute condemnation of dumping. He had always understood dumping to mean the placing of surplus production.
production in foreign markets at lower prices than those of production in the
country of origin. However, he had never heard of high-price dumping before.
The sub-committee's attention should be drawn to the great difference in
profit which was made on different goods. If the Cuban definition were
adopted, freight and other charges would constitute dumping. The same would
apply to sales at world market prices of goods whose domestic price was
controlled in order to keep the cost of living low.

Mr. BLuszTajn (Poland) stressed the necessity for a precise definition
dumping, the condemnation of which should be absolute. Dumping should
not, however, be confused with legitimate competition, and action should be
directed against those suppliers who determined the level of prices, not
those who followed them.

Mr. LAMSVELT (Netherlands) pointed out that a definition of dumping
was extremely difficult. The article should not permit countries to take
measures against any sales at low prices on the pretext that they were
dumping.

Mr. LEDDY (United States of America) agreed that predatory dumping was
reprehensible and should be condemned. However, all sales effected at prices
lower than the domestic price were not necessarily motivated by evil intent,
or uneconomic, or damaging. He thought that Article 33 provided an adequate
and accurate definition of dumping. The Article provided a suitable
mechanism to combat dumping and recognized the legitimacy of counter-measures.
Whilst willing to consider a new draft providing a more positive approach to
the problem, he thought it essential to retain safeguards against the use of
anti-dumping measures in unjustifiable circumstances.

Mr. LECUYER (France), supported by Mr. LA ROSA (Italy), agreed that
the present text should be strengthened. Any definition of dumping should
exclude normal commercial practices. Anti-dumping measures should be limited
to simple compensation.

Mr. BAaGUAT (Egypt) pointed out the disastrous effects, in spite of
additional duties, of Japanese imports on the cotton industry of Egypt
before the var

Mr. MULLER (Belgium) stated that Belgium was ready to accept
provisions which would condemn unfair practices, but attached equal
importance to the prevention of unjustified counter-measures. He understood
dumping to mean the sale of products under conditions and with the intent to
damage international trade and normal production.

Mr. BROWN (Canada) considered that injury to the production of the
importing country was an essential criterion of dumping, and it was therefore
undesirable to make an unconditional condemnation of dumping. The Charter
provided sufficient scope for each country to counteract dumping which
/threatened
threatened its domestic industries. Determination of the existence of
dumping should be made by the adversely affected country and not by the
exporting nation. Moreover, ITO should not be charged with the responsibility
of pre-determining particular instances of dumping.

Mr. AUGENTHALER (Czechoslovakia) agreed in regard to the need for
precise definition, although out of 147 complaints examined by the
United States Tariff Committee in 1919 only 21 had been found to be dumping
in the technical sense. Certain practices, apparently considered as dumping,
actually came under Article 40.

Mr. LA ROSA (Italy) supported the remarks of the delegate of France.

Mr. MORTON (Australia) pointed out that definition of dumping had so far
proved impossible. Australia had an elaborate anti-dumping legislation, but
since 1931 it had not once been found necessary to impose anti-dumping
duties. Article 33 fully covered the case.

Paragraph 5

Mr. SEIDENFADEN (Denmark) thought that the Organization should be
 guardian of the legitimate interests of smaller countries. Article 33 should
be replaced by a strong simple provision condemning dumping. Instead of
permitting the use of anti-dumping duties, all cases of dumping should be
brought before the Organization.

It was agreed to refer Article 33, including the footnotes to the
sub-committee.

5. ARTICLE 34 - VALUATION FOR CUSTOMS PURPOSES (First Reading)

Mr. PELLIZA (Argentina) stated that his delegation was not opposed to
the principle of Article 34, but in Argentina they had an official list of
tariff values which was more advantageous to importers than either specific
or ad-valorem tariffs. The proposed system would require a specialized
staff within the consular service which it would take time to organize.
Argentina might accept the principles of valuation of paragraph 3 insofar
as they were consistent with the system in force in Argentina. Paragraph 4
was also acceptable and so was paragraph 6, which was in conformity with
the actual practice in Argentina.

Paragraph 3

Mr. MULLER (Chile) explained that his amendment was designed to
include the adjustment of "actual value" to price fluctuations.

Mr. GONZALEZ (Uruguay) stressed the need for a consolidation of
values, which would facilitate the calculation of customs duties. The
second proposal was a drafting amendment.

Replying to a question by Mr. HOLLOWAY (Union of South Africa) the
Chairman stated that the General Committee had ruled that, where possible,
interpretative footnotes should be dropped, or else their substance embodied
/in the relevant
in the relevant Articles. The sub-committee would take the views of the General Committee into consideration.

Mr. SHACKLE (United Kingdom) thought that the footnotes were often necessary for the interpretation of the text, and would be difficult to embody in all cases. He was convinced that the second note to paragraph 3 should be retained in some way or another.

Replying to a question by Mr. BAHGAT (Egypt) as to whether an increase of freight, insurance and other charges over and above the export price would conflict with Article 34, Mr. MORTON (Australia) replied in the negative.

New Paragraph 6

Mr. GONZALEZ (Uruguay) called attention to an error in the French text of his amendment (document C.3/1/Add.7).

He felt that traders had the right to consult appropriate customs authorities in regard to the tariffs applicable to merchandise.

It was agreed to refer Article 34 to the sub-committee.

The meeting rose at 7.20 p.m.