THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE THIRTY-FOURTH MEETING

Held at the Capitol, Havana, Cuba, 9 February 1948 at 10.30 a.m.

Acting Chairman: Mr. Walter NASH (New Zealand)

At the proposal of Mr. Caplan (United Kingdom) supported by the representatives of Australia, Chile, Sweden and Brazil, Mr. NASH (New Zealand) was elected Acting-Chairman of the Third Committee.

1. SECTION D. ADDITION PROPOSED BY THE DELEGATION OF ARGENTINA (E/CONF.2/C.3/47)

Mr. BRIGNOLI (Argentina) referred to point 1 of his amendment. His country had, since 1945, signed a number of treaties with foreign countries which provided for the exchange of goods during the years 1947 to 1951 inclusive. Transactions would, on the part of the purchasing country, be effected according to the legislation of that country, and on the part of Argentina by the Argentine Institute for the Promotion of Trade, or institutions or firms selected by this organization. If the purchasing country should find other sources of the same products at lower prices than quoted by the AIPT, then it would send notification, and if AIPT decided the lower quotation would be impossible to meet, the purchasing country was free to buy the prearranged three-month supply from the new source after thirty days. Likewise Argentina would be free to dispose of the three-monthly shipments to another purchaser. Similar provisions applied to deliveries to Argentina. The AIPT only took part in the preliminary negotiations and the conclusion of the transactions, but did not control the actual imports or exports. Section D of Chapter IV would create insuperable obstacles to the development of the AIPT, and that was why Argentina had proposed the amendment or interpretative note.

Point 2 of the Argentine amendment should allow the AIPT or any other organization to import commodities for the prevention of damage to agriculture, or the promotion or improvement of agricultural production, not primarily for profit.
Point 3 was related to Article 31 and was intended to permit a government making available to domestic consumers a domestic product at a price lower than that paid to domestic producers. For this purpose the state would acquire the entire domestic output of that product and from the profit made on its exports, would cover the loss incurred on the domestic sales. Would Article 31 impede or hamper this operation?

Mr. CAPLAN (United Kingdom) believed the Argentine amendment to be unnecessary. The basic ideas to which Argentina attached importance had occurred to other countries, and provisions existed within Section D and other parts of Chapter IV to ensure that governments would be able to fill obligations to their people. The main point of the amendment was to deal with shortages of commodities when it was necessary to have external trade arrangements to deal with them. No country was unfamiliar with these problems which were caused largely by war, but would eventually be overcome, and in the meantime were provided for in Article 43 paragraph 1 sub-paragraph (b) (i). There was no need for any specific exemptions in Section D. The one difficulty was the existence in the Geneva text of a specific date by which arrangements should be concluded. This had been amended in the new text. The first part of the Argentina amendment was therefore adequately covered.

There was nothing in Article 30 which would prevent a government from doing what Argentina provided for in point 2 of the amendment. Paragraph 1 (b) of Article 30 stressed commercial considerations and these would obviously include paying the lowest price available.

Point 3 did not seem to give rise to difficulty regarding Articles 30 or 31 because the whole Chapter implied that the government would ensure low prices. This was specifically provided for under Article 31 (4). The Argentine proposal to delete Section D had the same aim as the present amendment, and if it were suggested that state agencies should be discriminatory, the whole principle of Chapter IV would be undermined.

Mr. BRIGNOLI (Argentina) said that in spite of the clear explanations of the representative of the United Kingdom, to avoid ambiguity he would like Section D to embody specific provisions either in the form of a new article or as an interpretative note. This would be better than having the provisions spread throughout the text of the Charter.

Mr. EVANS (United States) in reply to the question by the representative of Argentina under point 3 of the amendment stated that if he had asked if there were anything to prevent a government from subsidizing domestic consumers by selling at a lower price than that paid by a state monopoly,
his answer would be that there was nothing under Article 31 to prevent this action. If, however, it was a question of impediment it was true that where consumers abroad were charged a substantially higher price than otherwise and if the selling country held a world monopoly in that product, then Article 31 would require that the country maintaining the monopoly would, upon request, be willing to enter into negotiations with respect to the extent to which the price abroad was being increased. These negotiations would be subject to the provisions regarding negotiation of import and export duties.

Mr. CAÑAT (Venezuela) suggested, and Mr. BRENNOLI (Argentina) agreed, that the clarifications concerning the Argentinian amendment should figure in the Report of the Committee.

Mr. CAPLAN (United Kingdom) in reply to a question by the representative of Argentina, said that Article 43 (1) (b) covered the past, present and future.

Mr. CHOUHY TERRA (Uruguay) wanted it expressly understood that the Charter contemplated the case and supported measures in social welfare which might be undertaken by governments through such institutions as the AIPT in Argentina. The representative of the United Kingdom claimed that a country should negotiate the prices at which a product would be placed on the market.

Mr. EVANS (United States) agreed with the representative of Uruguay that his remarks and those of the representative of the United Kingdom could not be taken as accomplishing exactly the same thing as the Argentine amendment which provided for no flexibility whatever in Section D and the first paragraph of which would cancel out Article 30. The problems raised by the representative of Argentina were already covered in the Charter.

Mr. BRENNOLI (Argentina) provisionally maintained his reservation regarding Section D of Chapter IV.

It was agreed that the Argentine proposals do not require amendment of Section D, but that the points brought out in discussion should be recorded in the minutes.

2. ARTICLE 31 A. CONTINUATION OF THE DISCUSSION ON THE NEW ARTICLE ON "LIQUIDATION OF STOCKS" (E/CONF.2/0.3/43)

It was agreed to postpone the discussion until the next meeting of Committee III to give the representative of CUBA time to consider the Subcommittee text and to consult with the representative of the United Kingdom and the United States of America.
3. TITLE OF SECTION D. AMENDMENT OF TITLE TO READ: "STATE TRADING AND RELATED MATTERS" (RECOMMENDATION OF SUB-COMMITTEE J; (E/CONF.2/C.3/43)).

The Committee approved the new title of Section D to read: "State Trading and Related Matters".

SECTION E

4. ARTICLE 32. PROPOSAL OF THE BELGIAN DELEGATION TO DELETE PARAGRAPH 8 AND TO ADD AN INTERPRETATIVE NOTE TO PARAGRAPHS 3, 4 AND 5 .


Mr. MULLER (Belgium) stated that the inclusion of paragraph 8 of Article 32 was made necessary solely because the English term "charges" in paragraph 5 might have given rise to ambiguity, while "droits" in French could not in any case cover the concept of transportation charges. It was therefore not necessary to include paragraph 8 to cover only what appeared in the English version.

Mr. LEQUIER (France) and Mr. MORTON (Australia) endorsed the proposals and statement made by the representative of Belgium.

Mr. BAYER (Czechoslovakia) agreed with the Belgian proposal to delete paragraph 8 and that the Interpretative Note should be appended to Article 32. If, however, interpretative notes should be removed at a later stage, he reserved his right to reopen the question.

Mr. BEYLEVELD (Union of South Africa) and Mr. SPEEKENBRINK (Netherlands) reserved their rights to reopen the question should the interpretative note be removed at a later date, or should the text of Article 18 be substantially changed.

The Committee approved the Belgian proposal to delete paragraph 8 of Article 32, and to append the following interpretative note to that Article:

"Paragraphs 3, 4 and 5.

The word 'charges' as used in the English text of paragraphs 3, 4 and 5, shall not be deemed to include transportation charges."

5. ARTICLE 35: REPORT OF WORKING PARTY NO. 2 ON THE NOTE (ii) TO PARAGRAPH 3 (b) (E/CONF.2/C.3/43), AND AMENDMENT PROPOSED BY THE FRENCH DELEGATION (E/CONF.2/C.3/38/Add.3).

Mr. MORTON (Australia), as its Chairman, submitted the report of Working Party No. 2 of Committee III, suggesting that the text proposed by the French delegation, with the correction of two typographical errors, be considered in lieu of that submitted by the Working Party.

Mr. MULLER (Chile) agreed and suggested a drafting amendment to sub-paragraph (1) of Note (ii).

/Mr. SPEEKENBRINK
Mr. SPEEKERINK (Netherlands) agreed but suggested that the phrase "date of signature" should conform to the similar phrase used in other Articles.

Mr. BANERJI (India) agreed and suggested a drafting amendment to the last sentence of sub-paragraph (2).

The proposed text would then read:

Interpretative Note (ii) to sub-paragraph 3 (b) of Article 3k

"(ii) If on the date of signature of this Charter a Member has in force a system whereby ad valorem duties are levied on the basis of fixed values, the provisions of paragraph 3 of Article 3k shall not apply:

1. in the case of values not subject to periodical revision in regard to a particular product, as long as the value established for that product remains unchanged;

2. in the case of values subject to periodical revision, on condition that the revision is based on the mean "actual value" established by reference to an immediately preceding period of not more than twelve months and that such revision may be made at any time at the request of the parties concerned or of Members. The revision shall apply to the import or imports in respect of which the specific request for revision was made, and the revised value so established shall remain in force pending further revision."

Mr. MARTIN (United States of America) stated that his delegation reserved its position to Article 3k; he opposed sub-paragraph 2 of the Interpretative Note because, although it recognized the validity of the principle of "actual value", it was an unwarranted departure from it solely for the purpose of administrative convenience. The report of Sub-Committee C adequately took into account the cases of those countries which had a system of fixed values. Paragraph 2 of Article 3k spoke of the "earliest practicable date"; therefore, the principle of "actual value" need not be immediately adopted. Paragraph 3 (c) was added in Geneva to take care of the system in practice in India; sub-paragraph 1 of the Interpretative Note (ii) (E/CONF.2/C.3/38 page 2b) was added at the request of the delegation of Uruguay to permit the continuation of established fixed values not subject to periodical revision. But the continuation of a system which permitted values to be changed at will should not be agreed to.

/Mr. MORTON
Mr. MORTON (Australia) accepted the change in the French-proposal as suggested by the representative of India.

Mr. RICHARDS (Canada) said that every country might submit amendments to different parts of the Charter to perpetuate its own administrative system. Would it not be better to amend the laws to bring them into conformity with the principle of Article 34, as Canada and others were doing? The importance of the principle of actual value could not be too strongly stressed, since it was on that basis that all ad valorem duties were levied. Sub-paragraphs 3 (b) and (c) covered the cases which for the time being departed from the principle. If the Interpretative Note applied only to a limited number of products, it was unnecessary; if it applied to a large number, it was undesirable.

The Note had an adverse effect in that it condoned average values; it was solely for administrative convenience; it was to be doubted whether the retention of existing systems of average value would actually result in any great administrative convenience, especially if prices declined. The Charter-required ratification and public opinion would not be favourably impressed by exceptions.

The CHAIRMAN obtained the consent of Working Party No. 2 that the text proposed by the delegation of France, as amended, should be accepted for discussion.

Mr. BANERJI (India) stated that his Government had been practicing for seventy years the principle of valuation for customs purposes as set forth in paragraph 3 of Article 34. The Indian system, similar to that of Chile, did not fix values at will but attempted to arrive at an average value which would approximate the actual value. Concerning Note (ii) to paragraph 3 (b), it was of more benefit to the importer for a Government to be in a position to lower duties than to perpetuate high duties.

Paragraph 3 (c), while of some assistance, was in some way a contradiction to Article 34. The Indian system took into account the values over a period of a year and changes could be made when necessary. This encouraged a greater flow of goods, free from irritating customs formalities. Mr. MÜLLER (Chile) said that his amendment did not deviate from the principle of Article 34 but had the advantage of not causing unnecessary administrative difficulties. If a fixed value did not agree with the actual value, it should be changed whenever a complaint was made. Since the amendment was in keeping with the spirit of the Charter, it should be accepted.

Mr. LECUYER (France) agreed to the amendments to the draft proposal submitted by his delegation and supported the representative of Chile. The
provisions of the Note were practical and did not go against the principle of actual value, but provided for the continuation of legislative and administrative measures which would not endanger international trade; on the contrary, it would authorize a desirable and advantageous situation.

Mr. BAYER (Czechoslovakia) said that the addition to the Interpretative Note would preserve a method of valuation for customs purposes, which method, in the absence of the Note, would have to be eliminated. As set forth in paragraph 2 of Article 3(b), and as the representative of the United States had appropriately said, such methods should be eliminated at the "earliest practicable date".

If the Note, with its wide exceptions from Article 3(b), were adopted, the meaning of the phrase "earliest practicable date" in paragraph 2 would become more important. In the light of the Note if accepted the words "earliest practicable date" should not continue to stand as a further loophole but should be replaced by a wording which would define more closely and the same time would limit the period of time afforded for complying with the principle of "actual value".

The CHAIRMAN summarizing, said that Sub-Committee C had reported to Committee III on Article 3(b), defining "actual value" in paragraph 3. There was discussion concerning the Chilean practice of fixing values for a period of time. Working Party 2 had been established to consider this problem, and it was now agreed that the text submitted by the French delegation, as amended, should be considered. It was agreed that the Central Drafting Committee should consider the specific wording of the first line, as noted by the representative of the Netherlands.

The delegations of Belgium, Chile and India maintained their reservations pending instructions from their Governments. The delegation of Czechoslovakia reserved provisionally its position to Article 3(b). The delegation of the United States reserved its position to Article 3(b). The amended text of Note (ii) was approved by Committee III.

SECTION F


The Interpretative Note to Article 40 was approved without comment.


Mr. MARTIN (United States of America) was in agreement with the first part of the proposed sub-paragraph regarding the obligation to supply /information
information concerning quarantines but thought that the establishment of a technical commission should be dealt with by Committee VI.

Mr. MULLER (Belgium) also felt that this part of the amendment should be given careful consideration in Committee VI.

Mr. SHACKLE (United Kingdom) said that the apprehensions giving rise to the amendment were taken care of in the preamble of Article 43, and its purpose was also covered by Articles 89 and 90 and by paragraph 1 of Article 37. There was no doubt but that governments would be willing to provide the necessary information upon request but a continuing obligation would prove unduly burdensome and unproductive.

Mr. TERRA (Uruguay) stated that the lack of adequate measures to defend their exports was of great concern to mono-producing agricultural countries. The subject matter of the amendment had been considered in a number of international conferences but no concrete solution had been produced. He referred to Chapters 11 and 40 of the Report of the Fifth Pan-American Conference of 1923 where certain recommendations for the establishment of such an Institute were made. The present measures for the protection of plants and animals were restricting international commerce; a commission such as was envisaged in the amendment would be a central organ receiving all information and capable of advising in the event some measures were not just.

There should be at least an Interpretative Note in Chapter IV to point out that when a country took such restrictive measures as outlined in paragraph 1 (a) (iii), it should explain the purpose to an international commission.

The CHAIRMAN summarized the discussion and said that Sections D, E and F of Chapter IV had been approved in second reading with the exception of Liquidation of Stocks, the report of the Working Party considering Articles 40 (1) (a), and the proposal by four Latin-American countries to Article 43, all of which would be considered at the next meeting.

The meeting rose at 1:05 p.m.