THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF THE FORTY-FIRST MEETING

Held at the Capitol, Havana, Cuba, 20 February 1948, at 3.30 p.m.

Chairman: L. Dana WILGRASS (Canada)

CONTINUATION OF THE DISCUSSION ON ARTICLE 18 - REPORT OF SUB-COMMITTEE A
(DOCUMENT E/CONF.2/C.3/59)

Paragraph 6

Mr. MAHADEV (Ceylon) remarked that the question he had asked at the previous meeting had not been answered. He cited the example of quantitative restrictions imposed by Ceylon on cement imported from the United States, and of internal quantitative restrictions imposed by the United States with respect to rubber imported from Ceylon. Under Article 18 Ceylon would have to negotiate and compensate the United States for relaxing its regulations, but Article 1\(^{\text{a}}\) would require no reciprocal action on the part of the United States should Ceylon modify or eliminate her quantitative restrictions. A way should be found to remove the discrepancy between the procedure in the two Articles, and to avoid the apparent discrimination between developed and underdeveloped countries. He suggested that Committee III record a decision that both internal quantitative regulations and quantitative restrictions should be eliminated either by negotiations or by decision of the ITO.

Mr. LEDDY (United States), supported by the representative of the United Kingdom, said that the United States originally had proposed that all internal mixing regulations should be abolished without exception, but other countries had not been prepared to accept this. He believed it was agreed, however, that internal quantitative restrictions were not as restrictive as import quotas. So far as underdeveloped countries were concerned, Article 1\(^{\text{a}}\) would permit them to use any protective device over the whole range of their trade without having to "pay" for so doing. He supported the Chairman's previous suggestion that this point should be raised in the Sub-Committee considering Article 1\(^{\text{a}}\).

/Paragraph 6 was
Paragraph 6 was approved subject to the reservations of Argentina, Brazil and Ceylon.

Paragraph 7

Mr. MELANDER (Norway) objected to new paragraph 7 on the grounds that Members, although entitled to use quantitative restrictions in accordance with Articles 20 and 22 to allocate among foreign sources of supply, would be precluded by paragraph 7 from implementing quantitative restrictions by internal quantitative regulations and would be limited to using an import licensing system. He proposed deleting paragraph 7 and referring in Article 22 to Article 18 as a whole so that Members could choose between these two technical methods.

Mr. LEDDY (United States), supported by the delegate of the Netherlands, said that the objectives of the Geneva draft and paragraph 7 were the same, i.e., to secure non-discrimination as between foreign suppliers with respect to products subject to internal mixing regulations. The Sub-Committee had thought that the best way to assure non-discrimination was to permit free competition. In the case of import quotas this was not always possible, so Article 22 permitted allocation in accordance with certain rules. The same reasons of practicality did not apply, however, in the case of internal quantitative regulations, and therefore paragraph 7 had been inserted as the best method of securing most-favoured-nation treatment.

Mr. GUERRA (Cuba) pointed out that paragraph 5 of Article 18 precludes allocation as between domestic and foreign sources of supply. If a Member were permitted to allocate among foreign sources of supply, all the proportions taken together would in effect constitute an allocation as between foreign and domestic sources. If the principle established in paragraph 5 was accepted, that set forth in paragraph 7 should be accepted as well.

Mr. MELANDER (Norway) said that it was clear that if an internal quantitative regulation were used so as to conflict with Article 18 (5), that regulation would not be permitted.

Paragraph 7 was approved.

Consequential Change in Paragraph 5 of Article 22

In view of the fact that paragraph 7 of Article 18 had been approved, it was agreed that the words "...and to any internal regulation or requirements under paragraph 2 of Article 18" should be deleted from paragraph 5 of Article 22.

/Paragraph 8
Paragraph 8

Mr. GUTIÉRREZ (Bolivia) cited the case in which the Bolivian government had contracted certain loans in foreign countries in order to carry out industrial development projects. These loans had been made on the understanding that all machinery, equipment, etc., necessary for these projects would be purchased in the country granting the loans. Would the provisions of paragraph 8 (a) prevent Bolivia from carrying out its contractual commitments? Both the equipment so purchased and the industrial plants developed by the government might be resold later to private enterprises. Would this be contrary to the provisions of paragraph 8?

Mr. GUERRA (Cuba) said that on the basis of the Bolivian delegate's statement, he believed Bolivia's case was covered by paragraph 8. The paragraph had been redrafted by the Sub-Committee specifically to cover purchases made originally for governmental purposes and not with a view to commercial resale, which might nevertheless later be sold; nor did he believe Article 18 could be construed as applying to contracts for purchases in foreign countries, since paragraph 8 refers only to laws, regulations or requirements relating to mixture, processing or use, which might grant protection or give more favourable treatment to domestic as opposed to foreign products.

Mr. SCARPATTI (Argentina) pointed out that sometimes resale of products purchased for governmental purposes might result in a profit for the governmental agency concerned, and suggested that the addition of the words "not primarily for gain" would help clarify the paragraph.

Mr. LEDDY (United States) said the Sub-Committee had considered that the language of paragraph 8 would except from the scope of Article 18 and hence from Article 16, laws, regulations and requirements governing purchases effected for governmental purposes where resale was only incidental. He believed that the case cited by Bolivia would be adequately covered by the present wording of the paragraph.

The CHAIRMAN said that, as requested by the representative of Bolivia, a summary of the preceding discussion of paragraph 8 (a) of Article 18 would be recorded.

Mr. MacLIAM (Ireland) asked whether it would contravene paragraph 8 (a) if a governmental agency bought goods for processing by the inhabitants of a distressed area, purely with the object of supplying them with additional sources of income, and then sold the goods at a loss.

Mr. NASH (New Zealand) believed the point raised by the Irish delegate was covered by Article 30. All that was necessary under Article 30 was that...
purchases should be made in accordance with commercial considerations and in a non-discriminatory manner. There was nothing to prevent the resale of goods for social considerations.

Mr. LEDDY (United States) in reply to a question by Mr. MADJID (Afghanistan) said that the Sub-Committee, in redrafting paragraph 8 (a) and recommending the consequential change in paragraph 2 of Article 30, had put laws, regulations and requirements governing government procurement, on the same basis as the actual purchases for governmental purposes with respect to the "fair and equitable treatment" rule. Neither Article 18 nor 16 would be violated, in his view, in the case mentioned by the representative of Afghanistan which was the same type of case as that cited by the representative of Bolivia.

Paragraph 8 was approved.

Consequential Change in Article 30, Paragraph 2

The CHAIRMAN said that although Article 30, paragraph 2 had already been approved, it was open to the Third Committee to make the proposed change in order to bring the wording of paragraph 8 of Article 18 and paragraph 2 of Article 30 into conformity and to extend the "fair and equitable treatment" rule established in paragraph 2 of Article 30 with respect to imports for governmental purposes excepted from the provisions of paragraph 1 of Article 30, to the laws, regulations and requirements relating to procurement for governmental purposes referred to in paragraph 8 (a) of Article 18.

It was agreed to note, on the request of the representatives of Afghanistan and Bolivia, that the same considerations applied to paragraph 2 of Article 30 as had been brought out in the Committee's discussion of paragraph 8 (a) of Article 18.

The change in paragraph 2 of Article 30, as proposed by Sub-Committee A, was approved.

Paragraph 9

The Norwegian delegation withdrew its reservation on this paragraph.

The United Kingdom delegation maintained its reservation provisionally.

Paragraph 9 was approved.

Interpretative Note to Article 31

Mr. GUTIERREZ (Bolivia) and Mr. MADJID (Afghanistan) supported the proposed Interpretative Note, particularly on the grounds that it would help to solve the Ecuadorian problem.

Mr. BAYER (Czechoslovakia) supported by Mr. CHIRIBOGA (Ecuador) proposed the addition of the words "wholly or in part" after "whether or not collected", to cover cases in which only a part of the "maximum import duty" was collected at
collected at the customs and the rest was collected elsewhere.

Mr. LECUÏER (France), supported by the delegate of Cuba, while accepting the proposed Interpretative Note, suggested that the term "monopoly margin" be substituted for the term "maximum import duty" in Article 31, and that this matter be dealt with by the Central Drafting Committee.

Mr. NASH (New Zealand) agreed that a note along the lines of the proposed interpretative note to Article 31 should be adopted, provided it met the intention of the Sub-Committee dealing with Article 18.

Mr. BURGESS (United Kingdom), supported by the representatives of the United States and Ecuador, agreed with the addition of the interpretative note suggested by the Czechoslovakian representative, and pointed out that the Central Drafting Committee was already considering clarification of the term "maximum import duty" in Article 31. He suggested that the Central Drafting Committee might also consider the terms of the proposed Interpretative Note to bring it into line with any drafting changes made in Article 31.

The Interpretative Note was agreed with the addition of the words "wholly or in part" after the word "collected" as proposed by the representative of Czechoslovakia, and it was agreed further that the Central Drafting Committee should be asked to consider the French suggestion, as well as the Interpretative Note to Article 31, so that it could be brought into conformity with any changes made in Article 31.

The delegation of Ecuador maintained its reservation pending the final draft of Article 31, and of the Interpretative Note.

Paragraph 3, Continued

The CHAIRMAN asked whether the Chairman of Sub-Committee A could give his view on the Brazilian proposal made at the previous meeting of Committee III that a Working Party be established to study the difficulties referred to by the representative of Argentina in transferring the protective element of existing differential internal taxes on items not subject to prior commitments to customs tariffs.

Mr. LAMSVELT (Netherlands) reiterated his previous day's statement that the subject had been studied by a number of delegations for two years and by all delegations for the past three months. The principle of Article 18 was that discriminatory internal taxes should be eliminated; Brazil had already agreed to that principle in the General Agreement. Ample time would be available in which to accomplish the transfer to customs tariffs in the case of unbound items before the Charter came into force, and a transitional period in the case of bound items was provided for in paragraph 3.

In reply to a question by the representative of Brazil, Mr. Lamsevelt said that Article III of the General Agreement was subject to supersession by the relevant
by the relevant provisions of the Charter. Mr. LEDDY (United States) added that the General Agreement provided for a meeting of Contracting Parties which had already been called with a view to agreeing on supersession. The delegate for Brazil reserved his delegation's position pending agreement on the supersession of Article III of the G.A.T.T.

Mr. SCARPATI (Argentina) said that his proposal had been made only to cover the case of existing differential internal taxes on unbound items where there were technical difficulties involved in conversion to a customs tariff, subject to negotiation under Article 17.

By a vote of 18 to 1 Working Party No. 7 was established, composed of the representatives of Argentina, Brazil, Ecuador, France, Norway, Philippines, United Kingdom, United States, with Mr. Lamsvelt (Chairman of Sub-Committee A) as Chairman, with the following terms of reference:

"To give consideration to the provisions of Article 18, requiring the elimination of existing internal taxes which afford protection to domestic production, in the light of the remarks of the delegates of Argentina and Brazil particularly with respect to the difficulties of transferring the protective element of such existing taxes to the customs tariff."

At the suggestion of the representative of Cuba, it was agreed that the Working Party should submit its report by Monday, 23 February 1948.

Paragraph 3 was approved, subject to any changes which might be proposed by Working Party No. 7.

The CHAIRMAN stated that Article 18 was approved in second reading, subject to the reservations noted.

2. ARTICLE 19 - (REPORT OF SUB-COMMITTEE A) (DOCUMENT E/CONF.2/C.3/59) Approved without comment.

3. ADOPTION OF THE REPORT

The CHAIRMAN asked whether the Committee was prepared to adopt the Report of Sub-Committee A (E/CONF.2/C.3/59) subject to the reservations already noted.

Mr. ALMEIDA (Brazil) proposed the deletion of the third paragraph on page 9 of the Report under the heading paragraphs 1, 2 and 3 of Article 18, because in his opinion it might lead to a misinterpretation of the second sentence of paragraph 2 of Article 18, and consequentially the deletion of the words "in the preceding paragraph" in the fourth paragraph under this heading.

/Mr. BURGESS (United Kingdom)
Mr. BURGESS (United Kingdom) said that the third paragraph had been suggested by his delegation as an addition to the interpretative note to paragraph 2 of Article 18. He had explained that in the working of a general tax the tax arrangements might, to some extent, unintentionally protect the production of one product against another. There was some doubt whether such an incidental protective effect could not be held to involve a breach of the last sentence of paragraph 2 of Article 18, and with a view to making sure that this was not the intention of the Article he had suggested the interpretative note. The Sub-Committee, with the sole exception of the delegate of Brazil, had been in full agreement that where the object of such a general tax was purely revenue it could not be held to be contrary to the last sentence of paragraph 2 of Article 18, and that this was so clearly the case that there was no need to insert an additional interpretative note. Since the validity of the Sub-Committee's interpretation had been questioned he now wished to revert to his original proposal.

Mr. LEDDY (United States) supported by the representatives of Cuba and the Netherlands, pointed out that the effect of this explanatory note was to make it clear that the general nature of the tax was presumptive evidence of its revenue character and that any protective incidence was only incidental, and suggested that it be retained in the Sub-Committee's Report.

Mr. ALMEIDA (Brazil) said that in view of the explanations given he would be willing to agree to the retention of this paragraph in the Sub-Committee's Report if the phrase "where there is no considerable protective effect under Article 18" was inserted after "revenue purposes".

Mr. BURGESS (United Kingdom) could not agree to this insertion but said he would not insist on his proposal to add this paragraph to the Interpretative Note, if the Committee, including the representative of Brazil, would express its unanimous agreement with the paragraph in question.

Mr. LEDDY (United States) suggested that the wishes of both delegations might be met by adding the word "exclusively" after the word "imposed" in the first line of the third paragraph (E/CONF.2/C.3/59, page 9, line 22 would then read: "The Sub-Committee agreed that a general tax, imposed exclusively for revenue purposes......"). This would mean that if any parts of the tax regulation were aimed at protection, the paragraph would not apply.

The paragraph in question, with the amendment proposed by the United States, was approved without comment.

The Report of Sub-Committee A, as amended, was adopted.

The Norwegian delegation withdrew its reservation to the Interpretative Note to Article 17 and to paragraph 7 of Article 18.
4. ARTICLE 33A - (REPORT OF WORKING PARTY NO. 5) (DOCUMENT E/CONF.2/C.3/64)

Mr. NASH (New Zealand) as its Chairman, presented the Report of Working Party No. 5, drawing attention to the changes made in the text of Article 33A as originally presented by the Sub-Committee.

Mr. GUTIERREZ (Bolivia) stated that although he himself had been a member of the Working Party and had agreed to the Report, he wished to repeat a question of concern to his country which had not been answered satisfactorily. He feared that a country possessing a stockpile accumulated over a period of time at steadily increasing purchasing prices might liquidate that stockpile at a mean price averaging the purchasing costs, but considerably lower than the ruling market price; this would be a kind of dumping. The selling price ought to be equitable by the country liquidating the stock, but should also be reasonable from the point of view of the producing country.

Mr. CAPLAN (United Kingdom) said that the Sub-Committee draft had not been ideal but the Cuban proposal did not seem nearer to an ideal solution. The new text now submitted by the Working Party was an important improvement, but he would suggest, if acceptable to the Committee, that the exception provided for in paragraph k should only be from the provisions of paragraphs 2 and 3 and not also from paragraph 1.

Mr. EVANS (United States) regretted that the discussions in the Working Party had not satisfactorily resolved the point raised by the delegate of Bolivia. Managers of strategic stockpiles would be severely criticized if they sold below the current market price, even though the average purchase price might be much lower, and if they were thus to cause a rapid break in prices. They would be expected to act like any other sensible business man. The United States delegation was able to withdraw its reservations on Article 33A and also to accept the United Kingdom proposal to delete, in paragraph 4, the reference to paragraph 1.

Article 33A was approved with paragraph 4 amended to refer to paragraphs 2 and 3 only, and subject to the provisional reservation of Chile.


Mr. MADJID (Afghanistan) asked that the phrase "and (c) the production of which does not readily respond to normal market forces" be added to the interpretative paragraph recommended by the Working Party, but withdrew the proposal when assured that that criterion had been considered and was covered in the text as proposed.

The following paragraph was approved by the Committee and its insertion in the Summary Record as proposed by the Working Party was accepted:

"The term 'agricultural product' in sub-paragraph 2 (c) of Article 20 may include inter alia sericultural products and /certain plant
certain plant products (a) which are derived from the plant in the natural process of growth, such as gums, resins and syrups and (b) a major part of the total output of which is produced by small producers.

The meeting rose at 6.35 p.m.