THIRD COMMITTEE: COMMERCIAL POLICY

SUMMARY RECORD OF FORTY-SEVENTH MEETING

Held in the Capitol, Havana, Cuba, Wednesday, 17 March 1948, at 10.30 a.m.

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


Mr. PHILLIPS (Australia), Acting Chairman of the Sub-Committee, regretted the absence from the meeting of the Chairman of the Sub-Committee, Mr. Melander (Norway), who had unfortunately already left Havana. In presenting the Report, he indicated the main changes of structure and substance in the text which the Sub-Committee had recommended.

Article 23 - Exceptions to the Rule of Non-Discrimination

Sub-paragraphs 1 (a) and 1 (b) were approved.

Mr. PHILLIPS (Australia), in reply to a question of Mr. Coriat (Venezuela), said that under sub-paragraph 1 (c) a country might continue to apply restrictions in force on 1 March 1948 in a manner which deviated from the rules of Article 22, subject to the qualification contained in the words "to the extent that such deviation would not have been covered on that date by sub-paragraph (b)" or paragraph 1.

Sub-paragraphs 1 (c), 1 (d), 1 (e), 1 (f), 1 (g) and 1 (h) were approved.

Paragraphs 2 and 3 were approved.

Mr. BURGESS (United Kingdom) proposed that the words contained in square brackets in the text of paragraph 4 be deleted. A country might only be able to attain equilibrium in its balance of payments by increasing its exports to hard currency countries. If such a country were allowed to continue to direct its exports, it might very well be able to cease practising import discrimination under paragraph 1 at an earlier date than would otherwise be possible.

Paragraph 4 was approved with the deletion of the words in square brackets.

Paragraph 5 was approved.

The Interpretative Notes to paragraphs 1 (g) and 2 were approved.

/Annex to Article 23
Annex to Article 23

Paragraphs 1 (a), 1 (b), 2 and 3 and the Interpretative Note to the Annex were approved.

Reservations to Article 23

Mr. ZOLOTAS (Greece) withdrew the reservation of his delegation as recorded in paragraph 23 of the Sub-Committee Report.

Mr. BBIGNOLI (Argentina) said that he could not withdraw the reservation of his delegation as recorded in paragraph 23 of the Sub-Committee Report, since Article 23 obliged Members either to adhere to the International Monetary Fund or to conclude a special exchange agreement and since the functions of the Organization laid down in Article 23 were of an executive character.

Mr. KAFKA (Brazil), in reference to paragraph 23 of the Sub-Committee Report, stated that he was now able to give an affirmative opinion on the Article.

Article 24 - Relationship with the International Monetary Fund and Exchange Arrangements

The new title of the Article was approved.

Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 and the Interpretative Note to paragraph 8 were approved.

Reservations

Mr. SAENZ (Mexico) withdrew the reservation of his delegation as recorded in paragraph 31 of the Sub-Committee Report.

Mr. KAFKA (Brazil) withdrew the reservation of his delegation as recorded in paragraph 16 of the Sub-Committee Report.

Mr. BRIGNOLI (Argentina) said that his delegation maintained its position on Article 24.

Mr. CHARLONE (Uruguay) said that he withdrew the reservation of his delegation on Article 21 and also the amendments which it had submitted to paragraphs 1 and 4 of Article 23. The latter amendment was covered by the Interpretative Note to paragraph 2.

New Title of Section B of Chapter IV

The proposal of the Sub-Committee to amend the title of Section B of Chapter IV to read: "Quantitative Restrictions and Related Exchange Matters" was approved.

Parts I, II and III of the Sub-Committee Report

Mr. NASH (New Zealand) said that his delegation had moved an amendment to delete the last sentence of paragraph 2 of Article 24 in the Geneva text. The Sub-Committee Report contained no record of a reservation on this point but in a spirit of co-operation he now wished to withdraw that reservation.

/Parts I, II and III
Parts I, II and III of the Sub-Committee Report were approved.

General Observations

Mr. Burgess (United Kingdom) said that Article 23 was of critical importance to the United Kingdom and it had presented great difficulties to the United Kingdom during the discussions in the Conference. His delegation believed that the present text represented the only basis on which agreement could have been reached. Subject only to the right of all delegations to view the Charter as a whole his delegation associated itself with the Committee’s adoption of the Report and of the draft of Articles 23 and 24.

Mr. Stucki (Switzerland) said that his delegation maintained its reservation on Section B of Chapter IV. The present text of the Articles under discussion gave to a country like Switzerland no protection either for its imports or for its exports.

2. REPORT OF JOINT SUB-COMMITTEES II AND III ON ARTICLES 16 AND 42
(document E/CONF.2/0.3/18)

(a) REPORT OF WORKING PARTY 8 ON PARAGRAPH 2 OF ARTICLE 42
(document E/CONF.2/0.3/87)

Mr. Shackle (United Kingdom) presented the following redraft of paragraph 1 of Article 42:

"1. The provisions of Chapter IV shall apply to the metropolitan customs territories of the Members and to any other customs territories in respect of which this Charter has been accepted pursuant to Article 99. Each such customs territory shall be treated as though it were a Member exclusively for the purposes of the territorial application of Chapter IV; provided that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Charter has been accepted by a single Member."

In submitting the redraft, Mr. Shackle said that the first sentence of the text proposed by Working Party 8 might imply that customs territories of British Colonies were part of the customs territory of the United Kingdom, and also the word "jurisdiction" was not legally accurate.

Mr. Roys (France) supported the United Kingdom proposal. He asked that it be clearly understood that the use of the word "Member" in this paragraph could not be construed as according the rights of a Member in connection with the application of Chapter IV. A customs territory meeting the definition was a separate customs territory and its commercial policy was also a separate entity, but, as regards the Organization, the use of the word "Member" did not give the territory any rights within the Organization.

It was agreed
It was agreed that the suggestion of Mr. COOMBS (Australia) that the phrase "exclusively for the purposes..." should immediately follow "Each such customs territory shall", should be called to the attention of the Central Drafting Committee.

Paragraph 1, as amended by the United Kingdom, and subject to consideration by the Central Drafting Committee was approved.

Paragraph 2 as submitted by Working Party 8 was approved.

Article 42 as amended was approved.

(b) REPORT OF WORKING PARTY 9 ON PARAGRAPH 5 OF ARTICLE 42B

Mr. COOMBS (Australia) stated that he has not yet received instructions to withdraw the two amendments to paragraph 5, and would like to have the formal decision of the Committee.

Replying to the question of Mr. NASH (New Zealand) as to why the phrase "mutually advantageous" was unacceptable in paragraph 5, Mr. LEDDY (United States) said the Sub-Committee had felt that its inclusion might imply that unless negotiations were satisfactory to both sides, an exception might be made to the requirements for the conclusion of customs unions. The phrase had been suggested by the delegation of Australia and had not previously appeared in the draft.

Mr. ROYER (France) stressed that Article 42B created a privileged situation for countries with a preference system as compared with those which abandoned the most-favoured-nation clause in favour of a customs union.

It could not be conceded that the establishment of a customs union between two countries created any obligation of compensation to a third country. Therefore, introduction of the words "mutually advantageous", with the connotation given by the Charter, would be unacceptable.

Mr. NASH (New Zealand) replied that whilst partially accepting the explanation of the representative of France, he felt New Zealand would lose many of the concessions it had gained. He felt that inclusion of the phrase "mutually advantageous" would be an improvement and he requested a vote on the insertion of the phrase.

The insertion was defeated by 19 to 7.

Paragraph 5 of Article 42B, as submitted by the Sub-Committee, was approved.

(c) FORMAL APPROVAL OF JOINT SUB-COMMITTEE REPORT

Mr. COOMBS (Australia) reserved the position of his delegation to paragraphs 4 and 5 of Article 42B.

Mr. NASH (New Zealand) stated that while his delegation agreed in principle with the establishment of a customs union and free-trade areas, it was necessary to reserve their position in regard to Article 42B.

/Mr. KUNTER
Mr. KUFTER (Turkey) suggested that it was not necessary to insert a list of countries in Annex K to Article 16.

It was agreed to maintain Annex K and as a consequential change to substitute "referred to" in place of "named" in paragraph 3 of Article 16.

Mr. AUGENTHALER (Czechoslovakia) withdrew the reservation of his delegation to Article 42B.

The Report of the Joint Sub-Committee was approved.

3. ARTÍCLE 17: REPORT OF CENTRAL DRAFTING COMMITTEE (document E/CONF.2/C.8/16

Mr. PERRERO (Peru) asked that the Committee confirm his interpretation that although paragraph 4 of Article 17 gave the Organization power to take decision in disputes, the final decision would be taken by the Conference and that even though the Conference delegated authority to the Executive Board, appeal against decisions of the Board could be made to the Conference.

Mr. LEEDY (United States) said that the understanding was correct: the Conference could delegate powers to the Executive Board, but, even so, any decision of the Board would be subject to appeal to the Conference; this interpretation had not been made in Article 17 since the Chapter on Organization provided that final decisions would rest with the Conference.

The suggestion by the Central Drafting Committee to add the phrase "as amended at the First Session of the CONTRACTING PARTIES" to paragraph 4 was accepted, subject to any change which might be necessary as a result of decisions of the Contracting Parties.

The Central Drafting Committee text of Article 17 was approved.

Mr. CASTRO (Guatemala) withdrew the reservation of his delegation to Article 17.

Mr. STUCKI (Switzerland) asked whether under Article 17 the term "mutually advantageous" was meant to cover negotiations on various matters in addition to tariff reduction and whether a country could be compelled to negotiate on reduction of tariffs if it maintained freedom of payments while on the part of the other country no freedom of payments was guaranteed.

Mr. LEEDY (United States) could not agree to that interpretation since it would mean that some countries could refuse to negotiate for many years to come.

Mr. ROYER (France) said that the elimination of quantitative restrictions and exchange control as protective measures was considered an important part of the negotiations at Geneva. The Charter provided for transitional measures, but the interpretation of the representative of Switzerland appeared to be too sweeping; the elimination of quantitative restrictions was included in the Agreement, but difficulties during future negotiations would be encountered if a country could refuse to negotiate for as long as it had an adverse balance of payments.
Mr. STUCKI (Switzerland) maintained his reservation to Article 17.
Mr. SAENZ (Mexico) maintained his reservation to Article 17 pending decision of the Contracting Parties to GATT on the question on supersession.

The delegations of Denmark and the United Kingdom withdrew their reservations to the Interpretative Note to Article 17.

The meeting rose at 12.20 p.m.