

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.

ANNOTATED AGENDA

PREPARED BY THE SECRETARIAT, FOR DISCUSSION
OF ARTICLES 15 - 23 AND 37 (PART OF CHAPTER V)
OF THE DRAFT CHARTER.

Article 15 - National Treatment on Internal Taxation and
Regulation.

General notes.

1. It is understood that, owing to the importance of this Article, one delegation would prefer if it were not discussed at the meeting on May 8, but dealt with on a later date.
2. The two reservations mentioned in the D.C. Report* (page 10) under "General Comments" were made by the delegate for Brazil and Cuba respectively.

Paragraph 1.

1. The D.C. Report does not contain any reservation on this paragraph.
2. The United States Delegation proposes the deletion of this paragraph (see E/PC/T/W/23).

Paragraph 2.

1. The reservations mentioned in the D.C. Report (page 10) were made by the delegates for India and Norway respectively.
2. The United States Delegation proposes the following amendments to this paragraph (cf. E/PC/T/W/23) : **

*The words "D.C. Report" are used in this document as an abbreviation of Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment (E/PC/T/34).

** In this and similar quotations, square brackets indicate deletions, and underlining additions.

"[2] 1. The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin. Moreover, in cases in which there is no substantial domestic production of like products of national origin, no Member shall impose new or higher internal taxes on the products of other Member countries for the purpose of affording protection to the production of competitive products.

Paragraph 3.

1. The four reservations as to the requirements concerning mixing, processing etc. mentioned in the D.C. Report (cf. page 11, under a) were made by the delegates for Brazil, the Netherlands, New Zealand and South Africa.

2. The country suggesting the addition of a second proviso and reserving its position on the last sentence of this paragraph (same page, under b) is New Zealand.

3. It seems likely that certain countries which are not members of the Preparatory Committee but prospective members of the ITO will attribute considerable importance to their mixing regulations, particularly when used for the purpose of agricultural production.

4. The United States Delegation proposes the following amendments to this paragraph (cf. E/FC/T/W/23, page 2) :

" [3] 2. The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, purchase, transportation, distribution, exhibition or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of /an/ any imported product permitted to be mixed, processed, exhibited, or used, Provided that any such requirement in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, or, in the case of laws, regulations or requirements relating to cinematograph films, until the expiration of three years from the day on which this Charter enters into force. /Which period may be extended/ Such requirements may be continued for additional periods in respect of any product if the Organization /concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter/, after consultation with the other Members whose trade is substantially affected by the requirement, determines that in the special circumstances alternative measures permissible under this Charter would not be practicable. Requirements permitted to be maintained

Art. 15, par. 3 (continued)

under the foregoing proviso this paragraph shall be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24.

5. The Czechoslovak Delegation proposes the following amendments to the second sentence of this paragraph (cf. E/PC/T/W/26):

"The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount /or proportion/ of an imported product permitted to be mixed, processed or used in a proportion less favourable than that as imposed upon like products of national origin, Provided that /any such/ requirements restricting the amount of an imported product in a proportion less favourable than that as imposed upon like products of national origin which are in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, which period may be extended in respect of any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter, or Provided that a reasonable new such requirement may be established in respect of any product if the Organization concurs that the requirement is less restrictive of international trade than other measures permissible under this Charter."

6. The Indian Delegation proposes the substitution of the following new paragraph for the passage beginning with "The provisions of this paragraph" and ending with "under Article 24 (cf. E/PC/T/W/25) :

"4(a). Notwithstanding the provisions of paragraph 3, any Member shall be free to institute or maintain internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used; Provided that no such requirements shall be applied to any product in respect of which the importing Member has assumed an obligation through negotiations with any other Member or Members pursuant to any of the provisions of this Charter;

Art. 15, par.3 (continued)

Provided further that in the case of any such requirement in force on the day of the signature of this Charter, Members shall give effect to the preceding proviso at the earliest practicable date but in any event not later than one year from the day on which this Charter comes into force.

(b). Requirements permitted to be maintained under sub-paragraph (a) shall be subject to negotiation in the manner provided for in respect of tariffs and preferences under Article 24."

Paragraph 4.

1. The reservations and statements referred to in the D.C. Report (page 11) were made by delegates for the following countries:

reservation as to the second sentence:
Czechoslovakia;

statement concerning film hire tax:
New Zealand;

reservation as to the whole paragraph:
United States.

2. The United States Delegation now proposes deletion of paragraph 4 (cf. E/PC/T/W/23, page 3 and proposed change in paragraph 3).

3. The Czechoslovak Delegation proposes deletion of the second sentence (cf. E/PC/T/W.26).

Paragraph 5.

1. The following new version of this paragraph is proposed by the United States Delegation (cf. E/PC/T/W/23, page 3) :

"5 3. The provisions of this Article shall not apply to the procurement by governmental agencies of supplies/ products purchased for governmental use/ purposes and not for commercial purposes such as resale /nor for/ or use in the production of goods for sale."

2. The following version is proposed by the Indian Delegation (E/PC/T/W/25) :

"5. The provisions of/ restrictions imposed by this Article shall not apply to the procurement by governmental agencies of supplies/ products purchased for governmental use/ purposes /and not for resale nor/ or for use in the production of goods for sale."

Art. 15 (continued)

New Article proposed for insertion after Article 15.

The United States Delegation suggests insertion of the following new article (cf. E/PC/T/W23, page 3):

"Article 15A

The products of any Member country exported to any other Member country shall not be subject to any measure imposed by either the exporting or the importing country requiring such exports to be financed, shipped or insured by enterprises of any prescribed nationality."

Article 16 - Freedom of Transit.

General Note.

1. The delegates referred to under "General Comment" in the D.C. Report (page 12) represented:-

India (objection to the deletion of the word "persons");

Chile (would prefer confining the provision to goods only).

Paragraph 1.

1. The delegates of the opinion that no exemption should be made for aircraft in transit (cf. D.C. Report page 12) were those for Australia and Belgium.

Paragraph 2.

The change referred to in the lower right corner of page 12 of the D.C. Report was suggested by India.

Paragraph 3.

No observation.

Paragraph 4.

No observation.

Paragraph 5.

The word "rules" might be changed to "regulations" to conform with paragraph 4.

Paragraph 6.

1. The United States Delegation proposes the deletion of the second sentence (cf. E/PC/T/W23 page 3).

Art. 16 (continued)

2. The following formal changes may be considered in the second sentence:

- a) lines 3-4 from end: deletion of "of the goods";
- b) line 2 from end: changing "country's" to "Member's".

Article 17 - Anti-dumping and Countervailing Duties

General Note. Paragraphs 1, 2 and 5 use the verb "impose" (with reference to anti-dumping and countervailing duties) in the sense of "levy" or "apply". In certain other articles (for instance, No. 27) the verb "apply" has been substituted for "impose" (used in the original version) in order to render it clear that the provisions are not confined to measures introduced after the acceptance of the Charter. It may prove useful in Article 17 to substitute "levy" for "impose".

Paragraph 1.

1. The countries represented by the delegates reserving their position on this paragraph as indicated under letters b - e of the comment on page 13 of the Drafting Committee Report are identified below:

- b) United Kingdom;
- c) Australia, Czechoslovakia, the Netherlands, and the Union of South Africa;
- d) Belgium-Luxembourg, Czechoslovakia, France, the Netherlands and New Zealand.
- e) Brazil.

2. The United States Delegation proposes the following amendments to this paragraph (cf. E/PC/T/W23, page 4):

"1. No anti-dumping duty or charge shall be imposed on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of the product exported from one country to another is less than 1.7 (a) the comparable price for the like product to buyers for consumption in the domestic market of the exporting country,

Art. 17 (continued)

or, in the absence of such domestic price, is less than either (b) the highest comparable price /at which / for the like product /is sold / for export to any third country /in the ordinary course of commerce /, or (c) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit; with due allowance in each case for differences in taxation, and for other differences affecting price comparability in the ordinary course of commerce."

Paragraph 2.

1. The addition to this paragraph referred to in the D.C. Report (page 13) was suggested by the Delegate for China.
2. The suggestion concerning use of quantitative restrictions and other punitive measures was made by the Delegate for Brazil.
3. The United States Delegation proposes the following revision of this paragraph (cf. E/PC/T/W23, page 4):

"The term 'countervailing duty' shall be understood to mean an additional or separate duty imposed for the purpose of offsetting any bounty or subsidy..." etc.

Paragraph 4.

No observation.

Paragraph 5.

The suggestion concerning the deletion of this paragraph (D.C. Report, page 13) was made by the Delegate for Brazil.

Paragraph 6.

The United States Delegation proposes deletion of this paragraph (cf. E/PC/T/W23, page 4)

Suggested paragraph 7 (cf. D.C. Report, page 13):

1. The suggestion was made by the delegates for Australia, New Zealand and the Union of South Africa.
2. Should this paragraph not prove acceptable, it would appear that adding the word "transportation" after "production" (twice) in paragraph 2 would meet the suggestion made to a certain extent.

Article 18 - Tariff Valuation

Paragraph 1.

The word "shall" should be substituted for "undertake" (in the first line) to conform with other articles.

Paragraph 2.

1. The delegates referred to under (a) - (c) of the comments to this paragraph in the D.C. Report (page 14) represented the following countries:

- (a) Belgium-Luxembourg, Czechoslovakia and the Netherlands;
- (b) China;
- (c) Netherlands.

2. The suggestion under (c), made at the First Meeting of the Preparatory Committee, is summarized below:

- (i) The importer should submit to customs authorities all his private documents relating to each importation.
- (ii) Customs officers shall have the right to examine private records of importers.
- (iii) In case of litigation as to value, imports shall not be impounded but shall be released to the importer, subject to adequate provisions for securing the revenue (Article 8 of the Geneva Convention of 1923).
- (iv) Value litigation shall be tried specially before an independent tribunal of competent experts where the importer will be heard.
- (v) Fines may be imposed upon importers for undervaluation.

3. The word "shall" should be substituted for "undertake" in line 8 of the preamble.

4. The following new alternative text of paragraph 2 (a) is suggested by the Canadian Delegation (cf. E/PC/T/W24):

The value for duty purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

"Actual value" shall be based on the price at which at a time and place determined by the

Art. 18 (continued)

legislation of the country of importation, and in the ordinary course of trade between independent buyer and seller, such or like imported merchandise in comparable quantities and under similar conditions of sale is sold or offered for sale with price as the sole consideration.

If such actual value be not ascertainable on the basis of the preceding paragraph, then the value for duty purposes should be based on the nearest ascertainable equivalent of such value.

5. The United States Delegation suggests deletion of sub-paragraph 2 (c) (cf. E/PC/T/W23, page 4).

6. The delegates reserving their position with reference to sub-paragraph 2 (c) (cf. Drafting Committee Report, page 14) represented the United States and China respectively.

Article 19 - Customs Formalities

Paragraph 1.

1. The United States Delegation suggests the addition of the following sentence at the end of this paragraph (cf. E/PC/T/W/23, page 5) :

"The Organization is authorized to investigate and recommend to Members specific measures for the simplification and standardization of customs formalities and techniques and for the elimination of unnecessary customs requirements."

2. The words "the principle" in the first line of this paragraph may be deleted.

Paragraph 2.

The word "shall" should be substituted for "undertake" in the first line.

Paragraph 3.

No observation.

Paragraph 4.

The United States Delegation proposes (cf. E/PC/T/W/23, page 5) that in item (d) the word "transitions" be substituted for "regulations", and the following new item be added :

" (i) Port facilities".

This would necessitate transferring the word "and"

Art. 19 (continued)

from sub-paragraph (g) to the end of (h) and changing the period to a comma.

Article 20 - Marks of Origin.

Paragraphs 1 and 2.

No observation.

Paragraph 3.

1. The countries represented by the delegates who would have preferred to maintain the word "shall" are Canada, Czechoslovakia, Norway and the United States.

2. The delegate reserving his position on this paragraph (cf. D.C. Report, page 15) represented the United Kingdom.

Paragraphs 4 and 5.

No observation.

Paragraph 6.

The delegate reserving his position on this paragraph (D.C. Report, page 16), represented the United Kingdom.

Paragraph 7.

The delegates referred to under (a) - (c) in the comments to this paragraph (D.C. Report, page 16) represented the following countries:

- (a) Belgium-Luxemburg, Czechoslovakia, France, the Netherlands;
- (b) Chile;
- (c) Cuba.

Article 21 - Publication and Administration of Trade Regulations - Advance Notice of Restrictive Regulations

Paragraph 1.

No observation.

Paragraph 2.

1. The two reservations referred to in the D.C. Report (page 16) were made by the delegates for New Zealand and the Union of South Africa.

Art. 21 (continued)

2. The word "shall" to be substituted for "undertake to" in the fifth line.
3. The Canadian Delegation proposes the following addition at the end of this paragraph (cf. E/PC/T/W/24) :

"and their decision shall be implemented by and shall govern the practice of such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers."

Paragraph 3.

1. The United States Delegation proposes insertion of the words "retroactively or" after "applied" in line 8 (cf. E/PC/T/W/23, page 5).
2. The six delegates reserving their positions provisionally (D.C. Report, page 17) represented Brazil, Czechoslovakia, France, Norway, the Union of South Africa and the United Kingdom.

Article 22 - Information, Statistics and Trade Terminology.

Paragraph 1.

1. The delegates suggesting the addition referred to in the D.C. Report (page 17) represented Canada and the Netherlands.
2. Sub-paragraph (a) provides for the communication by Members of the Organization of statistics relating to "imports, exports, transit and transshipment and, where applicable, goods in warehouse or in bond". It will be observed that certain countries do not compile statistics on transit and transshipment and that statistics on re-export are usually of importance only in the case of countries applying the so-called Anglo-saxon method of trade statistics. It may prove advantageous, therefore, to change the words quoted as follows: "imports, exports and, where applicable, re-exports and goods in warehouse or bond".

Paragraphs 2 - 6.

No observation.

Article 23 - Boycotts.

1. The delegates referred to under letters (b) and (c) in the comments of the D.C. Report (page 18) represented:
 - (b) India,
 - (c) Lebanon.

Article 37.

"General Comments".

The delegates referred to under this heading in the D.C. Report (page 31) represented the following countries:

- (a) (cf. lines 11-12) : the Netherlands.
- (b) Canada,
- (c) Canada, Chile,
- (d) China,
- (e) India.

"Specific Comments".

1. The delegates referred to under this heading in the D.C. Report represented the following countries:

- sub-par. (a) and (b): Norway;
- sub-par. (b): Chile, Czechoslovakia, France, New Zealand, United Kingdom, United States;
- sub-par. (c): Australia;
- sub-par. (f): India;
- sub-par. (j)(a): India; Brazil, New Zealand;
(j)(b): New Zealand.

2. The United States Delegation (cf. E/PC/T/W/23, page 5) suggests that items (c), (d), (e), (j) and (k) be removed from article 37, which relates only to Chapter V; that a new Article be inserted at an appropriate place toward the end of the Charter which would make these items general exceptions to the entire Charter; and that the new Article contain the following introductory language:

"Nothing in this Charter will be construed to prevent the adoption or enforcement by any Member of measures"
(the foregoing would be followed by a list of the items transferred from Article 37).

3. It may be questioned whether the words "or restoration" should not be omitted from item (k). These words do not occur in the Charter of the United Nations.