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

SECRETARIAT NOTE ON ARTICLE 17.

(Anti-dumping and Countervailing Duties).

The present note has been prepared for the convenience of the Sub-Committee established on May 19, 1947, to deal with Article 17, composed of the delegates for Australia, Belgium, Cuba, France, India, the Netherlands, the United Kingdom, the United States and Syria.

The note, which should be read in conjunction with the Report of the Drafting Committee (E/PC/T/34), referred to as "D.C. Report", includes the amendments incorporated in the Annotated Agenda (W.28), arranged by the Secretariat, as well as those proposed after the preparation of that Agenda (W.29, W.34, W.35, W.35 Corr. 1, W.53, W.66, W.68, W.91).

In quotation of the proposed texts, square brackets indicate deletions and underlining additions.

General.

1. The Cuban delegation suggests (cf. W.29, page 2) :
 - (a) insertion of the following paragraph which would become paragraph 1:

"The Member countries recognize that dumping, whether practiced through the mechanism of price, freight rates, currency depreciation, sweated labour, or by any other means, is a commercial practice to be condemned and is contrary to the spirit and purpose of the International Trade Organization. With the object of indicating the nature of the legitimate defense which anti-dumping measures represent for a Member country, the following precepts are established":...
 - (b) The appointment of a small Ad-hoc Committee to redraft in a positive sense the provisions of article 17 relative to nations which take action to protect themselves against dumping.

2. The delegations of Syria and Lebanon propose that the title of the Article be changed to "Anti-dumping Measures".
3. 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 [(a) the comparable price for the like product /to buyers/ for consumption in the domestic market of the exporting country, 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 1 (Contd)

3. The Benelux delegations (W.68) propose deletion of the

"Either (b) the highest comparable price at which the like product is sold for export to any third country in the ordinary course of commerce, or..."

For the letter "(c)" substitute "(b)"

4. The delegations of Syria and Lebanon (cf.W.66), considering

"that dumping in any form whatever, is a reprehensible practice and inconsistent with the general purposes of this Charter",

and that the restrictions provided for in Article 17 are inadequate, suggests the following wording of Paragraph 1:

"An anti-dumping duty equal to the whole of the margin of dumping may be imposed on any product of any Member country imported into any other Member country. For the purposes of this Article the margin of dumping shall be understood"...etc.

Paragraph 2

1. The addition to this paragraph referred to in the D.C. Report (page 13) was suggested by the Delegate of 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.

4. The French and Benelux delegations (W.34) suggest substitution of "a special" for "an additional" in line 9. (Reason: The expression "special duty" is preferred to "additional duty" because countervailing duties may be imposed on goods exempt from customs duty.)

Paragraph 3

1. The Benelux delegations (W.66) propose that this paragraph be worded as follows:

"No product of any Member country imported into any other member country shall be subject to anti-dumping duties or charges, countervailing duties or other anti-dumping measures, by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund, directly or indirectly, of the duties or taxes levied on such products."

2. The United Kingdom delegation (W.91) suggests the following changes:

lines 5 and 6: delete "imposed in the country of origin or exportation upon";
substitute: "borne by"

Paragraph 4

1. The delegations of Lebanon and Syria propose deletion of this paragraph (W.66)
2. The Benelux delegations (W.68) proposed that the words "to both anti-dumping and countervailing duties" be replaced by "to anti-dumping duties or charges, countervailing duties or other anti-dumping measures."

Paragraph 5.

1. The suggestion concerning the deletion of this paragraph (D.C. Report, page 13) was made by the delegate for Brazil.
2. The delegations of Lebanon and Syria propose deletion of this paragraph (W.66).
3. The Benelux delegations suggest (in W.68) that the words "anti-dumping or countervailing duty or charge" be replaced by "anti-dumping duties or charges, countervailing duties or other anti-dumping measures."

Paragraph 5 (contd.).

4. The French and Benelux delegations propose the following rewording of this paragraph (cf.W.35):

"No Member shall impose any anti-dumping or countervailing duty or charge on the importation of any product of other Member countries unless it is in a position to prove:

- (a) that it really is a case of dumping or subsidization within the meaning of the present article;

and

- (b) that the effect of the dumping or subsidization, as the case may be, is such as materially to injure an existing domestic industry. In practice, this condition cannot be deemed to be fulfilled when the exporting country's export prices are at least equal to the importing country's prices after deduction of customs duties, or at least equal to world prices."

The reasons for this suggestion are indicated in W.35.

5. The United Kingdom delegation (W.91) proposes the following change: At the beginning, before "no Member shall impose" insert "save with the concurrence of the Organization"

6. The Indian delegation (W.53) proposes the following changes:

line 6, delete "materially"

line 8, after the word "prevent" insert the words "or retard".

7. The Australian delegation (W.84) proposes the following wording of this paragraph:

"No Member shall impose any anti-dumping or countervailing duty or charge on the importation of any product of any other Member unless -

- (a) it determines that the effect of the dumping or subsidization, as the case may be, is such as materially to injure or threaten to injure an established domestic industry or is such as to prevent the establishment of a domestic industry",

and

- (b) "in the case of a primary product for which a recognized world price exists, the product concerned has been sold at a price less than the ruling world parity price."

Paragraph 6.

1. The United States delegation proposes deletion of this paragraph (cf. W.23, page 4).
2. The Benelux delegations propose that the words "or charges" be inserted after "duties" in line 5 (W.68).

Suggested new paragraph.

1. The suggestion in the D.C. Report, page 13, 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.
3. The delegations for Lebanon and Syria (W.66) suggest the following new paragraph:

"If a Member exporting the like product considers that its interests are adversely affected by the dumping practised by another Member, it may bring the matter before the Organization. The latter shall proceed to an investigation and make appropriate recommendations to the Member concerned.

If the Organization finds that the Member is not carrying out its recommendations, it shall recognise the right of the complaining Member to refuse the tariff concessions agreed on in respect of the trade of the defaulting Member."