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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

Sixth Meeting
held on Thursday, 7 November 1946
at 3 p.m.

Chairman: Mr. VIDELA (Chile)

1. Adoption of Agenda

The following Agenda was adopted:

(a) Report of rapporteur of Sub-Committee on Procedures regarding Article 9 of Draft Charter.

(b) Continuation of Discussion of Article 12 of Draft Charter.

(c) Discussion of Article 11 of Draft Charter.

(d) Discussion of Article 15 of Draft Charter.

2. Report of Rapporteur of Sub-Committee on Procedures regarding Article 9 of Draft Charter

Mr. LEDDY, rapporteur, submitted the Report of the Sub-Committee on Procedures regarding Article 9 of the Draft Charter.

He said that the Sub-Committee on Procedures, at the request of the Technical Sub-Committee, had considered the national and most-favoured-nation provisions of Article 9 and 8, respectively, relating to governmental purchases for public use, and had agreed that Article 9 should be modified to exclude such purchases. For the portion of the first sentence of the Article reading:

"...including laws and regulations governing the procurement by governmental agencies of supplies for public use other than by, or for, the military establishment."

the Sub-Committee on Procedures proposed to substitute:

"....except laws and regulations governing the procurement by governmental agencies of supplies for governmental use and not for re-sale."

The change of "for public use" to "for governmental use" was intended for clarification.

The feeling of the Procedures Sub-Committee on the subject of the proposed amendment was that the mere omission of the clause would leave doubt as to the intention of the Article, and that more specific reference to the matter was indicated and essential.

3. Continuation of Discussion of Article 12 of the Draft Charter

Mr. JOHNSON (United States) continued his replies to Delegates' queries.

The Canadian Delegate, he said, had fairly stated the United States practice of applying only to the particular case in litigation a decision of a Customs Court, which did not seem to interpret customs legislation in a manner allowing of the adoption of the decision as a principle. But the understanding of the Canadian Delegate that the United States Government delayed the application of a court decision was not correct. The only purpose of the practice was to permit stability of the law, not to attain any particular result. A customs administrator did not say that a decision was inconsistent with legislation. He merely said that it was doubtful whether the decision was in accord with facts which could be established, or with other controlling and pertinent precedents. The right of appeal envisaged in the practice was a fundamental and desirable principle of United States law. To destroy it would cause irreparable injury. Importers in the United States availed themselves of the opportunity twenty times to the Government's one.

There were further factors which had to be taken into consideration in connection with the requirement for disclosure in customs documents covering shipments into the United States of information regarded as confidential. United States laws, wisely or unwisely, applied varying rates of duty in relation to the proportions of certain materials included in the product, e.g. to the amount of copper in Swiss watches, or of tungsten in high grade steel tools from the United Kingdom and Sweden. To prevent the necessity for destructive analysis of imported products, sworn statements were required from importers.

The disclosure of sources of supply was no doubt open to objection and he appreciated the dissatisfaction of exporters with such requirements. But these requirements were not designed to stifle trade. They could be attributed, at least in part, to the desire of the United States to achieve accuracy, uniformity and certainty in its valuation of imported merchandise.

He could not answer the query of the Canadian Delegate as to how far reciprocal agreements would be frustrated by reclassification of tariff items. He personally did not believe that any such agreements had been frustrated up to the present.

The proposed Charter would no doubt require changes in United States statutory law. It was not the intention of the drafters of the Suggested Charter to impose on other countries a finalized document drawn to United States requirements, although it was of course true that the Charter had been prepared on the basis of United States experience.

The important consideration was whether the comments of Delegates indicated dissatisfaction with Article 12, and whether they had any amendments to suggest.

Mr. KEMP (Canada) said that his purpose in raising the points he had mentioned was to indicate major difficulties in order to enable the United States to decide how they might be met.

The delays in customs administrative procedure to which he had drawn attention, were not merely judicial delays. They were delays of everyday practice. As an example, he mentioned a shipment of summer dresses from Canada to the United States; which was delayed at the frontier because of administrative considerations until the summer season had passed, with the result that the exporter sustained a loss. The exporter believed that the customs administrative delays had been intentional, the motive being the protection of United States manufacturers. He himself did not necessarily endorse that view: but it was a view held by Canadian exporters.

Mr. JOHNSON (United States) replied that, as every customs administrative officer present would recognize, the case cited was a case of an obstinate importer who refused to comply with regulations. The importer could have posted a bond upon the payment of a nominal fee to a private company - not a government agency - which would have permitted him to import his merchandise.

Turning to the request of the Belgian Delegate for an explanation of sub-paragraph (c) of paragraph 2 of Article 12, he explained that under official United States procedure the actual market rates of foreign currencies were publicly proclaimed. Several countries had two or more rates in general commercial use: and it was only right that recognition should be given to all rates utilized in order to conform to any undertaking to fix duties on actual values. An official or arbitrary rate might not reflect a transaction accurately. The United States proposes to seek authority to use an average rate, which would continue to permit the "accuracy, uniformity and certainty" so greatly desired by the United States in its Customs administration.

Another United Nations Organization had undertaken to eliminate multiple rates of currency as soon as possible. Sub-paragraph (c) would apply only until multiple rates were eliminated.

Mr. RHYDDERCH (United Kingdom) reverted to the question of the reclassification of tariff items subject to reciprocal agreements. There was, he said, no agency in the United States mid-way between customs appraisers and the customs courts, to which an appeal could be made from a decision of the appraisers.

Mr. JOHNSON (United States) replied that there was no formal administrative body for that purpose; but importers had an opportunity for administrative consideration through the Collectors of Customs, the Commissioner of Customs, and the Secretary of the Treasury, an opportunity to which they frequently had recourse.

Mr. RHYDDERCH (United Kingdom) stated, with respect to the requirement for revealing confidential information in customs documents, that such information was given in confidence in the United Kingdom, and was not revealed to competitors.

Mr. JOHNSON (United States) thought he had dealt with that matter earlier; but he would return to the subject again, if the United Kingdom Delegate was not satisfied after perusal of the Minutes of the meeting.

The United Kingdom Delegate had asked whether the reference to value in Article 12 meant the price paid. It did not. Price was not value.

Mr. CHERRY (South Africa) stated that South African tariff valuation was based on the current domestic value, defined as either (1) the market price at which such, or similar, goods were freely offered for sale in the country of export in the usual wholesale quantities, or

2. the free on board cost, whichever was the higher.

In the conversion of currencies for the purpose of assessing duty, South Africa used the telegraphic transfer rate. The problem of multiple currencies was not a problem of buying rate versus selling rate. The selling rate was used to arrive at the free-on-board cost, and the buying rate to arrive at the current domestic value.

Imports into South Africa sometimes required analysis: but the law prohibited the divulging of confidential information. Results of such analyses were published for customs authorities only. The last sentence of paragraph 1 of Article 15 of the Draft Charter,

> "This paragraph shall not require any member to publish administrative rulings which would disclose confidential information, impede law enforcement, or otherwise be inimical to the public interest"

seemed to cover that point.

Mr. JOHNSON (United States) remarked that in the United States currency conversion rates were proclaimed every three months. If the rate varied more than five per cent from the proclaimed rate, cable transfer rates were used.

Mr. RHYDERCH (United Kingdom) pointed out that the last sentence of paragraph 1 of Article 15 referred only to the disclosure of confidential information by a government.

Mr. NEHRU (India) said that India had three alternative methods of arriving at duty valuation :

1. Values based on invoice values, supported by documents presented by importers.

2. Values based on the market price. That was not the market price of national goods, but of like goods in the country of origin.

3. Values based on tariff valuation. That was an arbitrary method, but was found convenient for certain types of goods. The actual value of imports over a six-month period was averaged to arrive at the "nearest ascertainable value".

In his opinion, the foregoing methods fell within the terms of sub-paragraph (a) of paragraph 2, which required "actual value" or "nearest ascertainable value". If that opinion was confirmed, he was prepared to accept the sub-paragraph.

The last part of the sub-paragraph, reading "and should not be based on the value of products of national origin or on arbitrary or fictitious valuations", seemed unnecessary.

Mr. JOHNSON (United States) agreed that there was some redundancy in sub-paragraph (a) of paragraph 2, but felt it was merely a matter of drafting.

He was not prepared, without much study and analysis, to pass judgment on the three alternative methods of valuation referred to by the Delegate of India in relation to the Draft Article. Two questions might be asked:

1. Were the values arbitarily arrived at? There appeared to be a wide possibility for this. The United States had four methods; but the order of their basic use was clearly specified.

2. Would not "fair value" rather than "actual value" more accurately describe the third method described by the Delegate of India?

The most he (Mr. JOHNSON) was prepared to say was that the three methods might not be, but probably were, in accord with the Charter.

Mr. LAWRENCE (New Zealand) referred to Document E/PC/T/C.II/W.15, in which his Delegation's position was set forth. He directed the attention of the Rapporteur to the request for interpretation of the words "of the kind" in sub-paragraph (a) of paragraph 2.

Mr. van den BERG (Netherlands) stated that the practice of determining dutiable value in the Netherlands Indies was contrary to Article 12. Because of special circumstances relating to certain merchandise, customs authorities could not evaluate it. The Director of Finance established a valuation in accordance with information received over a past period; and all merchandise was imported at that valuation for a period of three months.

Every Delegation had accepted the principle embodied in paragraph 1 of Article 12. Would it not be useful to complete it by adding a reference to taxes and charges other than customs duties?

Mr. JOHNSON (United States) said that the basis for determining value used in the Netherlands East Indies seemed identical for practical purposes with that described by the Delegate of India. His own comment on it was therefore the same. He doubted whether serious complaint would arise because of it. It seemed to be a fairly fixed and stable system.

Regarding the suggestion that taxes other than customs duties should be referred to in paragraph 1, he said that the United States considered all taxes levied on imported merchandise in customs custody to be customs duties no matter what they might be called. Every tax would have to be considered either an internal tax or a customs tax or duty.

Mr. van den BERG (Netherlands) said that in such a case a more exact term should be used. All taxes imposed on imports by the Netherlands were not necessarily customs duties.

Mr. ROUX (France), replying to the remark of the Netherlands Delegate, observed that the valuation upon which customs duties were assessed did not include the amount of the duties, whereas the valuation for import taxes and internal taxes referred to in Article 9 did include the amount of the duties

He was in agreement with the Belgian Delegate's views on sub-paragraph (c) of paragraph 2 of Article 12, which in his view required redrafting.

He pointed out that Article 12 contained no exact definition of customs value either in paragraph 1 or paragraph 2, where reference was made only to actual value. But there were two points upon which he gathered the United States was willing to amend its legislation, namely, the exclusion of the taxable value of domestic taxes repaid when goods were re-exported, and the abandonment of the idea of assessing values on the basis of prices prevailing on the home market of the country of destination.

If the United States withdrew the second provision and that which prohibited the fixing of arbitrary values, Article 12 would for all practical purposes disappear. That was of importance to France, which was in the process of converting its tariff system to an ad valorem basis, and had adopted an effective and flexible system of customs valuation. The application of that definition would differ in accordance with the undertakings given by other members and the date and method of their being put into effect.

The same question arose in relation to enquiries made abroad with a view to curtailing valuations.

Mr. JOHNSON (United States) remarked that the United States was at the present time strongly of the opinion that the Charter should indicate in every necessary and reasonable way that tariff valuation should not be based on the values of products of national origin or on an arbitrary or fictitious values

Mr. MORTON (Australia) pointed out that the whole purpose of Article 12 was to suggest that members should undertake to work towards an understanding. It proposed to leave to an international organization the working out of the method best suited to the requirements of commerce.

With reference to sub-paragraph (a) of paragraph 2, he thought that any value not in accord with domestic value must be arbitrary. It would be difficult to ascertain the exact value of foreign merchandise unless supported by documents. He suggested the omission of the word "arbitrary".

Mr. JOHNSON (United States) imagined that Delegates had a general knowledge of the meaning of "arbitrary value".

Mr. MORTON (Australia) referred to the question of royalties. The assessment would have to be arbitrary in that case.

Mr. JOHNSON (United States) thought the Sub-Committee might reasonably include in its report a suggestion that "other taxes and charges" should be added to paragraph 1.

Mr. LOPES RODRIGUES (Brazil) stated that except in a few cases no ad valorem duties were charged by Brazil. Nevertheless, the Brazilian Delegation recognized the importance of the tariff valuation suggestion made by the United States. He thought the principle should also be applied to consumption taxes, which Brazil imposed on imported merchandise. Brazil would try to impose ad valorem duties in accordance with the provisions of the Charter.

Mr. MA (China) said that China must reserve its position with respect to sub-paragraphs (a) and (c) of paragraph 2 of Article 12, until it had achieved monetary stability. He pointed out that the reference to

sub-paragraph (b) in the Report of the Rapporteurs on A-5 of the Provisional Agenda (E/PC/T/C.II/W.16 - page 4) was incorrect. His Delegation was quite in agreement with the principles of Article 12; but his country required time for adjustment.

Mr. JOHNSON (United States) pointed out that one point upon which the Rapporteurs required guidance was still before the Sub-Committee for consideration - namely, the suggestion by the Canadian Delegate that Article 12 should include a stipulation that members should review their customs laws. He felt that the undertaking in paragraph 2 to give effect to the general principles of tariff valuation would necessitate the review of laws. In fact, every Article of the Charter would entail review by members of their customs laws.

Mr. SIM (Canada) suggested the inclusion of a stipulation in Article 12 similar to that in Article 13, paragraph 2, to the effect that members should undertake to give effect to the principles of tariff valuation at the earliest practicable date.

Mr. JOHNSON (United States) pointed out that similar wording was included in paragraph 2 of Article 12.

Mr. BAYER (Czechoslovakia) suggested that a specific time-limit should be included in Article 12, as it was in other Articles, for the completion of the obligation undertaken.

Mr. van den BERG (Netherlands) agreed with the Delegate of Czechoslovakia that a definite date would be helpful.

Mr. JOHNSON (United States) saw no objection to the Sub-Committee recommending the inclusion of a definite date to the drafting committee next spring: but he did not think it advisable to recommend a specific date, which could not be fixed without exhaustive study.

4. Discussion of Article 11

In general comment on the Report of the Rapporteurs (E/PC/T/C.II/W.27) summarising the written views of various Delegations regarding Article 11

of the Draft Charter, Mr. JOHNSON (United States) said that the only observation submitted regarding countervailing duties was to the effect that dumping duties were imposed to offset foreign subsidies.

In the United States draft of Article 11 the term "anti-dumping duties" was used to refer to duties imposed to offset dumping practices, by which goods were sold to the importing country at less than their fair or reasonable value.

"countervailing duties" were used to offset subsidies granted by governments or private organizations in exporting countries.

Mr. le BON (Belgium) suggested the necessity of defining the word "dumping".

Mr. JOHNSON (United States) said that the definition of "dumping", as understood by the United States was indicated in the definition of "margin of dumping" including in paragraph 1 or Article 11. If the price actually paid in a transaction was less than that indicated under (a), (b) or (c) of paragraph 1, it was a case of dumping.

Mr. MORTON (Australia) thought other forms of dumping, such as those brought about by cheap prices, cheap freight or depreciated currencies, should be included in the term.

Mr. JOHNSON (United States) said that cheap freight was regarded as a "subsidy".

Mr. MORTON (Australia) replied that iron ore shipped as ballast, freight free, from Australia to England was not regarded as subsidized freight by Australia.

Mr. JOHNSON (United States) said that exchange or depreciated currency dumping was a subject for consideration by another organization of the United Nations. It had been omitted from the United States draft for that reason.

"Social dumping" in the form of prison or sweated labour, or different standards of living might also be included in the term "dumping" but social dumping was very difficult to define. It might be well, for practical purposes, to limit consideration to the general concept, and leave the more nebulous problems for later development. In practice in the United States, special problems of that kind between countries were frequently dealt with by means of bilateral agreements. The prohibition by the United States of imports made by convict labour was one slight recognition of the problem of "social dumping".

Mr. MORTON (Australia) said that Australia had not imposed dumping duties for fifteen years: but he felt that a country should be at liberty to do so in cases not covered by Article 11.

Mr. RHYDDERCH (United Kingdom) said that the United Kingdom did not impose dumping duties; and he had no definition available.

The CHAIRMAN remarked that he recalled having seen a definition of dumping of British origin. Perhaps it had been prepared by the International Chamber of Commerce or the Federation of British Industries. He suggested reference to some definition in addition to that given by the United States. Possibly there was a definition by the League of Nations.

Mr. le BON (Belgium) suggested that a definition should embody the concept of systematic dumping, and should not relate to a specific sale. Dumping, to be "dumping", should involve noticeable harm to the importing country.

Mr. BAYER (Czechoslovakia) asked whether the Charter would cover a case in which a country shipped goods to another at a much lower price than that charged by a country which had originally supplied the market. Could the country originally supplying the market take steps to regain its market under the anti-dumping provisions of the Charter?

Mr. JOHNSON (United States) said it could not. The essential element of injury set forth in Article 11 would not exist.

Answering the Delegate of Belgium, he suggested that sporadic dumping was apt to be more injurious in particular cases than systematic dumping. The latter type would eventually establish a new price level, and therefore would cease to be dumping. However, the suggestion indicated a difference of opinion, which might receive the Sub-Committee's consideration.

Mr. CHERRY (South Africa) thought that anti-dumping duties should be controlled by a competent national body, and should be reviewed before imposition. The national body should not be required to submit to supervision by an International Trade Organization.

He observed that the South African definition of dumping was based upon the price at which goods were sold. A sales dumping duty was imposed when goods were apparently sold at a loss. The present Draft Charter did not provide for such a situation.

While the International Monetary Fund would deal with the question of depreciated currencies, some elasticity seemed to be required in the Charter.

South Africa permitted a margin of five per cent in the selling price. If the difference in cost of imported and domestic goods was less than five per cent, no dumping duties were charged. South Africa had practically eliminated dumping duties.

He was apprehensive lest the lack of a time-limit in the concluding clause of paragraph 5 should prevent the International Trade Organization from forcing a country to remove an anti-dumping duty.

Mr. LAWRENCE (New Zealand) submitted information with regard to the basis for the imposition of anti-dumping duties found in New Zealand customs laws:

1. If the actual selling price of the goods to an importer in New Zealand was less than the current domestic value of such goods determined in accordance with the provisions of the Act.

2. If the actual selling price of the goods to an importer in New Zealand was, in the opinion of the Minister of Customs, less than the cost of production (including a reasonable profit) of similar goods in the country of origin or in the country of exportation to New Zealand as at the time of such exportation.

3. If at any time it appeared to the Minister that the payment of any dumping duty was being evaded or avoided by the importer of any goods, otherwise than on the sale, or in any other manner, he might determine the actual selling price of the goods, the cost of production, or the current domestic value thereof.

New Zealand reserved the right to impose anti-dumping duties at any time, but would normally give notice of intention to impose them.

Mr. JOHNSON (United States) pointed out that the definition of dumping in paragraph 1 of Article 11 differed in one important respect from the practices of various countries as revealed by the discussion. The last clause of the paragraph specified that due allowance should be made in each case "for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability". Such differences were not ordinarily recognized in establishing valuation for duty purposes.

Mr. OFTEDAL (Norway) asked how the cost of production, specified in clause (c) of paragraph 1, could be ascertained if dumping was suspected.

Mr. JOHNSON (United States) explained that "cost of production" was a statutory term in United States tariff laws. It was determined by the United States customs authorities by the same procedure as that by which all values in a country of exportation were determined, namely, by reference to data submitted in a consular invoice. If those data were not sufficient, further information would be sought either by correspondence or by a personal visit to the manufacturer by an investigator.

The concept of "cost of production" envisaged in United States customs law was not that envisaged in the field of accountancy. In United States customs law it meant what the value would be, if a normal value was constructed by determining costs of material, labour, overheads and profit.

He agreed with the CHAIRMAN that a proper definition of the term was essential.

Mr. RHYDDERCH (United Kingdom) reiterated the views of the United Kingdom Delegation set forth in the Report of the Rapporteurs on A-4 of the Provisional Agenda (E/PC/T/C.II/W.27) that anti-dumping duties should be prohibited. If they were permitted, they should be calculated on a c.i.f. basis.

5. Next Meeting of Sub-Committee

Friday, 8 November, at 10.30 a.m.

The agenda to include a continuation of the discussion of Article 11, and the initiation of discussion of Articles 15, 14 and 13 of the Draft Charter.

The meeting rose at 6 p.m.
