

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
OF TRADE AND EMPLOYMENT

COMMITTEE II

SUMMARY RECORD OF TECHNICAL SUB-COMMITTEE

Seventh Meeting
held on Friday 8 November 1946
at 10.30 a.m.

Chairman: Mr. VIDELA (Chile)

Discussion of Anti-dumping and Countervailing Duties

The CHAIRMAN summarized the questions before the Sub-Committee. There was the question of whether Article 11 should cover both goods and services or only the former. The United Kingdom felt that the Charter should not cover services. Shipping questions would be dealt with by another conference.

There was the question of whether the price at the time of exportation or at the time of importation should be used in calculating the margin of dumping. Dumping by means of devaluation and dumping based on a low standard of living in the producing country were also problems which had to be considered. The problem of devaluation as a means of dumping might be dealt with by the International Monetary Fund. Another Committee was considering matters relating to low standards of living.

Mr. JOHNSON (United States) said that the discussion had shown that there were four types of dumping: price, service, exchange and social. Article 11 permitted measures to counteract the first type. It would obligate members not to impose anti-dumping duties with respect to the other three types.

It seemed to be generally agreed that exchange dumping was a question for the Fund to consider. Social dumping was a matter for consideration by the Committee studying industrialization. Service dumping was not under consideration by other committees or organizations; and views of

Delegations on this matter should be submitted to the Rapporteurs for inclusion in their Report.

There seemed to be general agreement (except on the part of the United Kingdom) that price should be defined in terms of the circumstances in the exporting country rather than the importing country. There was a possible exception in the case of branch houses. The question of injury, on the other hand, should be determined on the basis of circumstances in the importing country.

The CHAIRMAN remarked that the statement of the United States Delegate that price should be defined in terms of circumstances in the exporting country clarified the intention of a definition which the United States had submitted to the World Conference in 1933.

He thought that the question of subsidies should be left to the Sub-Committee appointed to consider the subsidy provisions of the Charter.

Mr. JOHNSON (United States) presumed that the Sub-Committee referred to by the Chairman would discuss what subsidies might be allowed rather than the question of what subsidies might be counteracted. The Technical Sub-Committee was free to consider, in connection with Article 11, the application of duties to counteract the effect of subsidies.

The CHAIRMAN called attention to two resolutions of the Congress of Empire Chambers of Commerce:

"The Federation is of the opinion that the Governments of the various parts of the Empire should take powers, where these do not already exist, to protect national industries against imports of goods or services from other countries which, by reason of depreciated exchanges, bounties, subsidies, or other artificial circumstances, may be sold at prices detrimental to the industries of the country or other parts of the Empire."

"The Congress is aware that the conditions of labour and wages in some foreign countries do not give a fair competitive opportunity to Empire producers, and consequently that, when this is the case, duties should be adjusted to counteract the effect of these conditions."

He also referred to a statement by Sir Stafford Cripps with respect to the damaging effects of low priced Japanese goods. Japanese prices had been low because of low labour standards, exchange manipulation, and the use of subsidies. Sir Stafford Cripps had said that it was the policy of the United Kingdom to eliminate unfair competition of that kind wherever it existed by all possible means.

Mr. LE BON (Belgium) said that there was a tendency to describe any unfair practice as dumping. It would be better to limit the use of the term dumping to the practice of selling abroad at lower prices than in the home market. He thought that the heading of the Article should refer to "anti-dumping measures" instead of "anti-dumping duties".

Mr. ROUX (France) asked the United States Delegate whether an importing country could be permitted to impose countervailing duties, when the exporting country had granted subsidies in a manner not inconsistent with the Charter.

Mr. JOHNSON (United States) agreed with the Delegate for Belgium that the word "dumping" should not be used to include all unfair competitive practices. Not all unfair practices should be dealt with in Article 11. Since paragraph 1 of the Article dealt with price dumping, and paragraph 2 with duties imposed to counteract subsidies, it would not be wise, he thought, to limit the heading of the Article to "anti-dumping measures".

In response to the question of the French Delegate, he said that Article 11 would permit countervailing duties to prevent injury, even though the subsidy granted by the exporting country was justified under provisions of the Charter. The Sub-Committee considering the use of subsidies might not agree with that provision.

Mr. LOPES RODRIGUES (Brazil) wished to supplement the views already submitted by the Brazilian Delegation. He felt that anti-dumping duties could not be used successfully to defend a member against intermittent dumping, as distinguished from permanent dumping. In the case of intermittent dumping, a member should be permitted to use quantitative restrictions to restrict the imports of a commodity subject to dumping to the quantity which would be imported if the commodity were not subject to dumping. The provisions of Article 29 were not adequate to meet that situation.

Because of the seriousness of permanent dumping, a member should be permitted to take punitive measures, as well as protective measures, against it.

The Brazilian Delegation felt that the definition of the margin of dumping in paragraph 1 was open to criticism. It reserved its position with respect to that definition.

With respect to paragraph 2, he felt that the same punitive and protective measures as had been suggested concerning dumping should be applicable in the case of export subsidies.

Brazil agreed with paragraphs 3 and 4, but thought that paragraph 5 should be deleted as likely to lead to useless controversies.

He had no objection to the Belgian proposal to extend the expression "anti-dumping duties" to anti-dumping measures". But he was dubious as to the possibility of defining what was meant by "measures" within the meaning of this Article.

Mr. MORTON (Australia) thought that, where a subsidy was involved, freight dumping should be covered by Article 11. Otherwise dumping practices in shipping would be dealt with by another agency.

He was not sure that all problems with respect to exchange dumping could be handled by the Fund. Not all ITO members would necessarily be members of the Fund. If Australia did not join the Fund, she ought to be free to take necessary measures to counteract dumping by exchange depreciation.

He was glad to note that the United States Charter did not permit anti-dumping or countervailing measures, unless a domestic industry was injured. But it would be dangerous to permit anti-dumping or countervailing measures in cases where dumping or subsidization was "such as to prevent the establishment of a domestic industry", since countries might resort to such measures, when actually there was little likelihood that a domestic industry would ever be established.

He agreed with France that the actions permitted in the Article should be optional, not mandatory.

He suggested that part (b) of the definition in paragraph 1 should be amended to read:

"(b) in the absence of such domestic price, the highest comparable price at which a like or similar product is sold for export to any or every producer in the ordinary course of commerce".

He thought that the term "cost of production", as used in part (c) of the definition in paragraph 1, should cover a normal percentage or profit.

Mr. JOHNSON (United States) noted that on the one hand Brazil did not think that proof of injury should be required (paragraph 5), while on the other hand Australia thought that injury should be proven. The Article as drafted required proof of injury. Such proof was desirable, in his opinion; otherwise countries might abuse their right to impose anti-dumping or countervailing duties. The amendment proposed by Brazil, which would permit the use of quantitative restrictions as an anti-dumping measure, should be considered by the Sub-Committee which had been appointed to study the provisions of the Charter concerning quantitative restrictions.

He doubted whether advantage could be taken of the provision that anti-dumping and countervailing measures could be used to counteract dumping and subsidies that prevented the establishment of a domestic industry. Abuse of that provision would be the subject of complaints to the ITO. He recalled the measures which had been employed by Germany to prevent the establishment of chemical industries in other countries.

The question of a percentage of dumping that would not be injurious would be taken care of by the requirement that injury must be proven. It would be a matter of national policy to determine what amount of dumping constituted an injury.

Generally he had no objection to the Australian amendments to parts (b) and (c) of the definition in paragraph 1, though the specific wording of the amendment to (b) might cause trouble so far as the United States was concerned. In this connection he reminded the Subcommittee of the problems which had arisen in the United States with respect to interpretation of the expression "freely offered for sale".

He would go even farther than the Australian Delegate had gone in amending (b) so as to include not only profit but also all other elements entering into a normal selling price.

The CHAIRMAN at this point introduced Mr. Walter GARDNER, Chief of the Balance of Payments Division of the International Monetary Fund, who took his seat at the table.

Mr. GARDNER was prepared to answer any questions the Subcommittee might wish to put to him.

Mr. JOHNSON (United States) said that on the general issue as to whether Article 11 related only to price dumping, and not to other forms of dumping such as exchange dumping, the attitude of the United States and of the authors of the Draft Charter was that questions of dumping other than price dumping came within the competence of organizations other than the Sub-Committee.

MR. GARDNER, International Monetary Fund, agreed. Clearly, he said, a country which was not a member of the International Monetary Fund could not be expected to conform to its statutes. Members of the Fund on the other hand were bound to conform to its statutes; and the statutes prohibited all forms of monopolist practices in connection with currency and multiple monopolist practices in particular.

An alternative possibility, which had been suggested, was to have a single exchange fluctuation rate. But the question of exchange fluctuations was dealt with in a different manner by the statutes of the Fund. Under the statutes of the Fund, each country was left a certain freedom of action in the matter of its exchange rates, subject always to observance of the limits set by the statutes of the Fund. Manipulation of the exchange rate up to ten per cent was free. But any change of more than ten per cent required the assent of the Fund; and there was provision for penalties against any member of the Fund acting in defiance of the Fund in such a case.

Mr. JOHNSON (United States) said that it did not so much matter whether an importing country was a member of the Fund. The point was, whether the exporting country was. An exporting country might play a conspicuous part in international trade without being a member of the Fund.

Mr. GARDNER, International Monetary Fund: "Quite!"

Mr. CHERRY (Union of South Africa) said it was clear from Mr. Gardner's remarks that there were loopholes for dumping on the part of countries which were not members of the Fund. Again, a country which was a member of the Fund might receive the approval of the Fund to a depreciation of its exchange by more than ten per cent. Such a depreciation of its exchange might well constitute a menace to the industry of another country, and justify anti-dumping measures on the part of the latter.

Mr. GARDNER, International Monetary Fund, replied that there were loopholes, and two only.

The first was, as Mr. Cherry had pointed out, the fact that there were countries not belonging to the Fund. The existence of a loophole in that connection could not be denied.

The second loophole envisaged by Mr. Cherry was equally real: but its scope was limited. It was possible, but very unlikely, that the Fund would ever authorize the depreciation of the exchange of a country to an extent involving a menace to the industry of another country. The aim of the Fund was the maintenance of equilibrium in the trade balances and in the balances of payments of all countries: and it would be wholly inconsistent with that aim if it were ever to lend itself to facilitating the dumping of any particular trade product.

The CHAIRMAN thanked Mr. Gardner for his explanations.

Mr. GARDNER thereupon withdrew.

Mr. JOHNSON (United States), in reply to the Belgian Delegate's proposal to substitute the words "Anti-dumping measures" for "anti-dumping duties" in the heading of Article 11, did not think the change would have any practical effects, unless more far-reaching

changes were made in the rest of the Article. Paragraph 1, for example, prohibited anti-dumping duties on products imported above a certain margin. To substitute the word "measures" for "duties" in that passage would be meaningless, unless the Article went on to specify what measures were, and what measures were not, allowable: and he hoped the Sub-Committee was not proposing to recast the whole of the Article in that sense there and then.

Mr. LE BON (Belgium) answered that it was the heading of the Article to which the Belgian Delegation took exception. The heading as it stood suggested that the only way of coping with dumping was by imposing duties. That was not the case. Export duties could always be met by countervailing duties: but dumping could not always be met by the mere imposition of duties. But his proposal related only to the problem of dumping. He did not propose to change the word "duties" in the expression "countervailing duties". He wanted the heading to read: "Anti-dumping measures and Countervailing duties".

Perhaps Mr. JOHNSON would leave the wording of the heading until the Sub-Committee had completed its consideration of the text of the Article. It would then be easier to come to an agreement as to the wording of the heading.

Mr. JOHNSON (New Zealand) said that Document W.27 appeared to ignore entirely Document W.15, in which the views of the New Zealand Delegation were expressed. The contents of W.15 might be summarized as follows:

Anti-dumping duties could be imposed in New Zealand in the case of transport concessions, certain specific subsidies and the like, where there was a danger of such concessions proving injurious to New Zealand industry. But he would describe such duties as "countervailing" rather than "anti-dumping" duties.

New Zealand accepted paragraph 1 of Article 11 except insofar as the provision with regard to the effect on the domestic market of "like or similar products" was concerned. In that connection, New Zealand had her own point of view, as outlined in document W.15, and had indicated that in case (b), she proposed to maintain it.

Should a third party adopt the same attitude, New Zealand (like Australia) might raise objections.

As regards the cost of production, New Zealand agreed with the other delegations that the element of profit should be included in the text of the Article.

Mr. van den BERG (Netherlands) said that the Netherlands Delegation was in general agreement with the text of Article 11, but was not against certain alterations or additions.

He was at one with the Belgian and Brazilian Delegates in thinking that there should be some mention in the Article of anti-dumping "measures" other than anti-dumping duties. But he agreed with the United States Delegate that it was difficult to see how to embody the addition in the text of the Article. In paragraph 1 for example, the "margin of dumping" could not be the same for anti-dumping measures as it was for anti-dumping duties.

The very important provisions of paragraphs 3 and 5 were equally applicable to anti-dumping measures and to anti-dumping duties, whereas paragraphs 1, 2 and perhaps also 4, were applicable only to duties.

In paragraph 5, he would like to add the word "seriously" before the word "injure" in the two places where the latter occurred. But he confessed that "injure" and "seriously injure" were somewhat vague expressions; and he would welcome any more precise wording.

He would omit the words "as a general rule" in paragraph 5 as watering down the contents of the paragraph.

He had certain questions to put to the United States Delegate.

Where an importing country imposed anti-dumping measures or duties, did it rest with the importing country to justify such measures or duties? Or did it rest with the exporting country to impugn them? Was it to the Organization, or to an international tribunal, that the defence or attack should be submitted? Those questions were left unanswered in the Article as it stood. But they called for an answer.

He did not propose to go into the question of subsidies. But he thought it right to make some reference to the system of agricultural monopolies prevailing in the Netherlands. He did not admit that there was any conflict between the operation of those monopolies and paragraph 2. But he was ready to explain how they operated, if Mr. Johnson would like him to do so.

Mr. JOHNSON (United States) did not think it necessary or helpful to discuss the Netherlands system of subsidies. He had some information in regard to certain of those subsidies: and he might say that the United States had imposed countervailing duties against some of them. Those duties had been imposed under the existing law of the United States. But Article 11 would affect the existing law: and the United States would have to reconsider the question of the extent of the "injury" caused in the case in question.

It might be possible to meet the wishes of the Belgian Delegate, though perhaps not those of the Brazilian Delegate, by changes in paragraphs 3 and 5 on the lines suggested by the Netherlands Delegate. That would entail further changes in paragraph 4.

As regards Document W.15, he was concerned to explain, in justification both of the French Delegation and of himself, that there had been no neglect on their part. It was true that Document W.15 was dated one day earlier than W.27: but it had not reached the Rapporteur's hands before he drew up his Report.

Mr. CHERRY (Union of South Africa) said he had intended to raise the question of exchange dumping: but he had already been answered by the representative of the International Monetary Fund.

Mr. NEHRU (India) agreed in general with Article 11: but there were two or three points on which he was doubtful.

As regards countervailing duties the law of India was more or less in accord with the provisions of the Article.

As regards anti-dumping duties there was no Indian legislation. India had suffered from price dumping in the past, e.g. at the hands of Germany: but in the absence of legislation it had been difficult to do anything to counteract it. India herself, so far as he was aware, had never practised dumping in any form.

He wondered if it was really necessary to define the "margin of dumping" in the Article. The principle of no anti-dumping duties beyond the margin of dumping was sufficiently clearly established. As however there were obviously doubts as to the meaning of "dumping", would it not be possible to draft the Article in such a form that the International Chamber of Commerce could subsequently intervene, and help the different countries to arrive at a definition of "dumping" which met their requirements?

Sub-paragraph (c) of paragraph 1 stipulated that "in the absence of (a) and (b) cost of production in the country of origin" should be the determining factor.

It was not difficult to imagine circumstances in which (a) and (b) would not operate.

A country might seek to prevent the production of a particular product in all other countries. To that end it would exploit the consumers at home as well as abroad. How in such a case determine the cost of production?

Take again the case of a country dumping its products in another country. Suppose that those dumped products prevented the establishment of an industry in the other country; and suppose also that it was impossible to prove that the prices charged to consumers in the other country were not less than those charged in the home country. How then was the cost of production of the product in question to be determined?

Cost of production was a highly complex conception, very difficult either to determine or to define. He would welcome any light on the subject on the part of States interested.

He accepted the principle of paragraph 5: but he would like to ask the United States Delegate whether the expression "domestic industry" was applicable to all industries - i.e. to agricultural, as well as manufacturing industries. The cotton industry, for example, might be menaced by cotton subsidies in the exporting countries.

Mr. JOHNSON (United States) felt that there was general recognition on the part of delegates of the pressing need for a definition of the expression "margin of dumping". There had been so many different interpretations of the expression in the past; and some of them were inconsistent with the aims and objects of the Charter.

The case of what might be called all round dumping had been put by the Indian Delegate: and he had very properly argued that its solution depended on the definition of the cost of production. The cost of production, as hitherto considered by the Sub-Committee, represented the cost of material and labour, plus the profit and other elements entering into the normal price of the product.

The element of profit was dealt with by the Draft Charter in the following way.

In the first place, the Charter took the general profit realized by all manufacturers of a given product. There was no question of like or similar products, but of the general type of products.

In the second place, the Charter took the minimum profit of eight per cent in cases where there was no other means of calculating the profit.

The United Nations did not admit that parties producing for sale at prices below the cost of production could in any case be actuated by altruistic motives.

The Indian Delegate had asked whether manufacturing industries were liable to injury, and (if so) whether they had any protection, under paragraph 5. He answered that agricultural production was injured where there was agricultural dumping; but he could not see that cotton-growers were injured by dumped lace. He was afraid the Sub-Committee was going rather too far into detail in the matter of establishing the meaning of "injury".

Mr. NEHRU (India), interposing, asked whether, if one considered that products were being dumped in a country, one was entitled to enquire in the dumping country as to the cost of production: and, if so, how would the cost of production be established?

Mr. JOHNSON (United States) answered that the point was one that had escaped him. Who indeed was to establish the cost of production?

The United States had its own agents in certain countries, whether customs officers or other reporting agents. There had been no particular difficulty up to the present in determining the "cost of production" through those agents. He might add that the United States had never asked a foreign government for information, which might be injurious to traders. In certain countries, where industry was less developed, United States importers were invited to require information from the suppliers. But the United States government in such cases was always at pains to check the accuracy and bona fides of the importers.

Mr. LE BON (Belgium) asked if the United States Delegate agreed that the burden of proof rested with the countries imposing anti-dumping duties.

Mr. JOHNSON (United States) agreed with the Netherlands Delegate that the normal procedure would be to place the burden of proof on the party complaining. But he could not say what the Organization would lay down in that connection. The point was one of policy, not of procedure.

As to the proposal to omit the words "as a general rule", he had no objection to their omission, if delegates preferred an unqualified statement.

Mr. ROUX (France) summarized the attitude of the French Delegation, as set out in Document W.27 (English text page 5, French text page 6).

1. Anti-dumping and countervailing duties were not justified except in cases of serious injury to the national industry of the country imposing them. He would prefer to read "domestic production" for "domestic industry" in that connection.
2. The burden of proof (justification) should rest with the country imposing the anti-dumping or countervailing duties.
3. The complaint should be made by the party suffering because of the said duties.

France accordingly was for the maintenance of paragraph 5, as amended under the French proposal. He noted that the Belgo-Luxembourg Delegate, the Netherlands Delegate, and the Delegate of Australia shared his view.

As regards the cost of production, the Australian Delegate had proposed to include the element of profit in the definition of the expression in paragraph 1: and Mr. Johnson had suggested an even wider formula. He entirely agreed with Mr. Johnson.

The "margin of dumping" should, he thought, be defined, and defined as accurately as possible. The Australian proposal for a margin of five per cent had unfortunately not met with the approval of the United States. He himself had been in favour of the Australian proposal, and would even have suggested a margin of ten per cent.

Mr. JOHNSON (United States) was not prepared to decide whether a margin of five per cent or ten per cent implied "injury". He might have his own opinion on the subject: but he could not speak for the United States.

Mr. HOW BEN (China) thought that the subsidies to which paragraph 2 related should not be treated as a form of countervailing duties, but rather as a form of preferential rates.

Mr. JOHNSON (United States) said that the Chinese proposal amounted to this, that, where an exporting country had no preferential advantages, it should be entitled to subsidize its means of transport, in order to give its products in the importing countries the same benefit as the latter accorded under a preferential system to the products of another exporting country.

He doubted whether there was any justification for including any reference in the Charter to that particular case. It was a case for consideration in connection with the general subject of subsidies.

Mr. HOW BEN (China) took no exception to Mr. JOHNSON's attitude; but he wished the Chinese Delegation's remarks to be recorded in the minutes of the meeting.

Mr. JOHNSON (United States) gave notice of a United States amendment to Document E/PC/T/W.28.

The meeting rose at 12.30 p.m.

COMMITTEE II

SUMMARY RECORD OF TECHNICAL SUB-COMMITTEE

Seventh Meeting
(Continued)
held on Friday 8 November 1946
at 8 p.m.

Chairman: Mr. MORTON (Australia)

1. Consideration of the first instalment of the Rapporteurs' Preliminary Report

Mr. JOHNSON (United States) stated that the Rapporteurs had received suggestions for three amendments to their draft Report.

The first of these was to enable the Rapporteurs to take into consideration the fact that Committee II had agreed on the question of treatment of Governmental purchases in article 8 and 9.

The second was to make good the regrettable omission of the Indian Delegation's remarks on discriminatory internal taxes.

The third was to include the United Kingdom Delegation's suggestions on the proposed change of wording.

He asked whether the Sub-Committee approved the substance of the Report, subject to the three amendments being made.

Mr. DRONKERS (Netherlands) asked whether the amendment submitted by his delegation had been included in the Report.

Mr. JOHNSON (United States) pointed out that the Technical Sub-Committee was only concerned with general provisions, and not with specific points. Was the Netherlands Delegate prepared to leave the consideration of the question raised in his proposed amendment to the appropriate Committee?

Mr. DRONKERS (Netherlands) agreed to do so.

Mr. LAURENCE (New Zealand) asked whether the Indian amendment regarding internal taxation would cover the point raised earlier by the New Zealand Delegation on New Zealand's internal tax on the rental of imported films.

Mr. JOHNSON (United States) replied that the tax in question would not be covered by the Indian amendment.

Mr. SIM (Canada) wanted delegations to have an opportunity of studying the Report before approving it. They could then submit their observations in writing.

The CHAIRMAN agreed with the suggestion. The purpose of the present discussion was to ascertain whether the method of reporting adopted by the Rapporteurs was acceptable to the Sub-Committee.

The Technical Sub-Committee approved the method adopted in the drafting of the report, and agreed to submit their written observations to the Rapporteurs.

2. Discussion of paragraph 2 (c) of Article 12.

Mr. JOHNSON (United States) stated that the discussion on paragraph 2 (c) of Article 12 on multilateral exchanges had not been concluded. In order to avoid a long discussion on the subject, he asked whether any delegation would object to, or consider redundant, the addition of a provision that no country should be permitted to apply a rate of exchange other than the official rate permitted by its laws.

Mr. ROUX (France) pointed out that some importing countries, whose foreign exchange was controlled, would in certain cases resort to the unofficial rate of exchange.

He thought it would be advisable to delete the latter part of paragraph 2 (c) of Article 12 from the words "and until the elimination of dual or multiple rates" to the end of the paragraph. It was not within the province of the Technical Sub-Committee to deal with that question, which should be referred to the financial experts.

Mr. MORTON (Australia) supported the French Delegate's suggestion to delete the latter part of paragraph 2 (c).

Mr. JOHNSON (United States) pointed out that without the last clause of paragraph 2 (c), or at least without freedom of action as indicated therein, it would be impossible for countries with multiple rates of exchange to conform to fixed actual values for duty.

The CHAIRMAN thought that an average rate of exchange could be struck in conformity with paragraph 2 (c).

Mr. LE BON (Belgium) thought that the present text could be retained, if the word "official" was inserted before the words "dual or multiple".

Mr. JOHNSON (United States) said that more than one official rate of exchange existed in his country.

Mr. RODRIGUES (Brazil) considered that the question of more than one rate of exchange would not arise, as the Monetary Fund would not permit it.

Mr. JOHNSON (United States) reminded the Sub-Committee that the Monetary Fund had expressly provided for a period during which multiple rates of exchange would be permitted.

Mr. ROUX (France) said that, if he had correctly understood the Belgian Delegate, the only rate of exchange would be the official one, which would apply not only to customs for the purpose of assessing duty, but to all transactions.

He suggested that the views of the Sub-Committee on the matter should be recorded, and that the Drafting Committee, assisted by the financial experts, should be asked to find a suitable formula acceptable to all delegations.

Mr. JOHNSON (United States) proposed the following addition to paragraph 2 (c) of Article 12:

"The rate of exchange to be used for customs purposes in transactions between one member country and another country may be fixed, or regulated, by bilateral agreement between them."

That addition would not change the sense of the paragraph.

The feeling of the Sub-Committee was that the reference to multiple rates of exchange in paragraph 2 (c) of Article 12 was not satisfactory.

3. Discussion of Article 14 - Marks of Origin

Mr. LE BON (Belgium) stated that he had no objections to Article 14 in principle, but he had some detailed amendments to suggest. There must be no obligation to accept for importation goods with a false mark of origin. Therefore it must be laid down that mark of origin meant every mark other than a false national mark, whether applied in the country of importation or elsewhere.

Mr. JOHNSON (United States) felt that the proposal of the Belgian Delegate was in no way in conflict with the provisions of Article 14. It had not been incorporated in that Article, as the legislation in the United States against false marks of origin was a part of criminal law and not part of the United States Customs regulations.

Mr. SIM (Canada) pointed out that the Belgian Delegate's proposal was adequately covered in paragraph (g) of Article 32 - general exceptions - in which "deceptive practices" were specifically mentioned.

He drew the Sub-Committee's attention to E/PC/T/C.II/W.30, in which the Rapporteurs had assembled the views submitted by the various delegations and their detailed amendments. He felt that the Sub-Committee had given its general support to Article 14. Some members might wish to ask for clarification of some points, but detailed technical items should be considered by experts in the light of the needs of each country.

He pointed out that Article 14 followed almost in entirety the United States Act on marks of origin.

Mr. JOHNSON (United States of America) stated that Article 14 conflicted with the United States regulations on marking insofar as the latter (a) did not exempt samples from marking and (b) did require marking before importation of products such as cutlery, which meant hardship to the importer.

The United States had introduced laws on marking more than fifty years ago. In 1930, after much actual experience, Congress had agreed to certain exceptions to these regulations in order to ease difficulties of administration and international exchange. Consequently, the United States regulations on marking were very comprehensive.

Mr. LEES (United Kingdom) thought the technical questions included in Article 14 should be left for the consideration of the appropriate body of the ITC and the Sub-Committee should recommend accordingly. Further, a recommendation should be included in the Report to the effect that governments should enter into bilateral negotiations with a view to the simplification of marking regulations. There was not sufficient time for delegations to reconcile their views on highly technical matters of that nature. He was prepared to submit a draft on the lines of his suggestion for consideration at the next meeting. That was the line adopted in Article 12 on tariff valuation. In Article 12, the first paragraph laid down that members should undertake to work towards standardization, whereas paragraph 2 laid down general principles.

In reply to the United States Delegate, he stated that his proposal was limited to paragraph 5, which dealt with technical items.

Mr. LE BON thought that as the Sub-Committee represented a body of customs officials, many useful points would result from immediate discussion of paragraph 5.

Mr. NEHRU (India) was in complete agreement with the principles of Article 14, but felt that technical consideration ought to be referred to the technical body which would be set up by the ITC.

If the meeting proceeded to discuss paragraph 5 in detail, he would be forced to make a reservation in regard to sub-paragraphs (c), (d), (g) and (i) of paragraph 5, as in his opinion they were not practicable under the existing conditions of world trade.

Mr. JOHNSON (United States) thought the adoption of the United Kingdom Delegate's proposal was appropriate. He anticipated that many delegations would be compelled to make more extensive reservations than those made by the Indian Delegate.

The CHAIRMAN asked if any delegation objected to the United Kingdom Delegate's proposal.

Mr. JOHNSON (New Zealand) requested the deletion of the New Zealand statement in E/PC/T/C.II/W.30, which had been attributed to his Delegation in error.

Mr. SIM (Canada) deprecated the suggestion that the report should merely refer Article 14 to the appropriate body of the ITO. He recommended members to enter into bilateral negotiations in regard to marks of origin regulations. He felt that useful amendments, such as that of the Czechoslovakian Delegation in regard to protection of geographical or regional marks, should be retained in the Report. It was wrong to put an untimely end to paragraph 5. Paragraph 5 should be left open for later discussion.

The CHAIRMAN remarked that all useful observations obviously ought to be brought to the notice of the body that would deal with technical consideration of marks of origin.

Mr. JOHNSON (United States) stated that the proposal was not to put an untimely end to paragraph 5, but to substitute a paragraph on the lines of Article 12, paragraph 1.

Mr. ROUX (France) drew the attention of the Committee to his suggestion in E/PC/T/C.II/W.30 that "the Draft Charter be completed by a provision, which would protect marks of geographical or regional origin, particularly as regards wine, cognac and cheese " The Czechoslovakian and Cuban Delegates (E/PC/T/C.II/W.33) had made similar proposals. It was essential for France that her products of high quality should be protected from fraud by the international safeguarding of national and regional marks. There was particularly severe legislation in France against fraud in that connection. He believed that the question had recently been discussed in Copenhagen. He wished to associate himself with the remarks of the Belgian Delegate in regard to false marks of origin.

Mr. LE BON (Belgium) stated that all the exemptions anticipated in paragraph 5 had already been applied in Belgium. He asked for clarification of sub-paragraph (h).

Mr. JOHNSON (United States) replied that paragraph (h) had been inserted in accordance with the regulations on marking in force in the United States. His experience had been that second-hand goods were often not marked, as they had not originally been intended for export. "Twenty years old" had been arbitrarily selected as a fair and reasonable standard of determining what goods could be treated as second-hand.

Mr. BAYER (Czechoslovakia) pointed out that Article 14 only dealt with marks of origin that were obligatory for the benefit of the importing country. Czechoslovakia was fortunate in having no regulation insisting on marks of origin on goods for importation. He agreed that the appropriate body of the ITO should be entrusted with the enlargement of the technical details of Article 5.

The more regulation on marks of origin on goods for importation were simplified, the better. But he was of the firm opinion that Article 14 should also lay down that regional marks of origin should be accorded appropriate protection. He referred to his proposals contained in E/PC/T/C.II/W.24. At the very least a recommendation should be added to the Charter to the effect that the ITO should consider the question of fair treatment of regional marks of origin.

Mr. CEBERIO (Cuba) stated that the inclusion of provisions for the protection of regional marks of origin was of paramount importance to his country, which had been blessed by nature in that it produced some products not produced elsewhere. Paragraph 5 might well be referred to a competent technical international body.

Mr. JOHNSON (United States) pointed out that the French, Czechoslovak and Cuban proposals were for the expansion of Article 14 by the introduction of a new subject. Article 14 was laid down to regulate requirements, and contained nothing about prohibitions. Insofar as the internal administration of the United States was concerned the proposals in question related to trademark registration regulations rather than to customs regulations, except insofar as the latter regulated the protection of trademarks. Was Article 14 the proper place to introduce such proposals? It appeared that some countries were asking other members to adopt their domestic rules. The proposals were not improper: but it would be very difficult to obtain agreement to their inclusion in the Draft Charter.

Mr. CHERRY (South Africa) wished to associate himself with the Australian reservation in E/PC/T/C.II/W.30, insisting "that goods must be properly marked before shipment when proper notice has been given of requirements." He suggested that the word "possible" should be replaced by the word "advisable", or by "desirable".

The phrase "whenever administratively possible" might mean that customs officials would be compelled to mark articles to a degree of inconvenience that would not be practicable. He agreed with the Belgium-Luxembourg and Netherlands Delegations that "penalties may justly be imposed for carelessness as well as intention to defraud".

He agreed with the Canadian Delegate that the pertinent remarks on paragraph 5 should be retained in the Report.

Mr. JOHNSON (New Zealand) also supported the Australian Delegation in insisting "that goods must be properly marked before shipment when proper notice has been given of requirements." He proposed accordingly the omission of paragraph 5. That would not nullify the effect of Article 14.

He agreed with the United States Delegate that the protection of registered trade marks was a question quite distinct from the question of marks of origin, and ought to be dealt with elsewhere.

Mr. ROUX (France) reiterated his insistence on the importance of safeguarding geographical and national marks of origin. It was not only a question which affected customs; and it should be considered independently of customs. National sovereignty had not been put forward as a reason against reducing trade barriers. Why should it be put forward as a reason against protecting regional marks of origin? He felt so strongly on this subject that he could not assent to Article 14, unless provision was made for the protection of regional and national marks of origin.

Mr. JOHNSON (United States) replied that the French Delegate had not put the right complexion on his reasons for not including provision for the protection of regional marks of origin in Article 14.

He drew the attention of the three delegates, who had objected to paragraph 3; to paragraph 6 of Article 14 and paragraph (g) of Article 32, which provided safeguards against all the dangers they had anticipated in the interpretation of paragraph 3. He further pointed out that since 1938, when the United States had altered the uniform penalty for products not properly marked and had introduced a system whereby individual consideration was given to the marking of products at the time of importation into the United States, there had been no increase in the failure to mark goods or attempts at fraudulent practice. There were firms in the port of New York which contracted to mark imported products.

The CHAIRMAN, speaking in his capacity as Australian Delegate, remarked that effect could be given to the New Zealand Delegate's proposals on prior marking before importation by substituting the word "should" in place of the word "shall" in paragraph 3.

He added that, although some delegations were of the opinion that protection of regional markings should not be dealt with in Article 14, the Rapporteurs would no doubt include in their Report the observations made on this subject.

4. Date of Next Meeting

The date of the next meeting was fixed for Monday 11 November 1946, at 10.30 a.m. The agenda to be:

- (a) Consideration of the Report of the Rapporteur on the discussion of the previous meeting.
- (b) Discussion of Article 15 - Publication and Administration of Trade Regulations.
- (c) Discussion of Articles 15 and 16 jointly.

On behalf of the Sub-Committee, Mr. SHI (Canada) and Mr. ROUX (France) thanked Mr. Johnson for his valuable contribution to the work of the Sub-Committee, and wished him a pleasant journey home on 11 November 1946.

The meeting rose at 11.5 p.m.
