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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

Fifth Meeting
Held on Wednesday 6 November 1946 at 10.30 a.m.

Chairman: Mr. VIDELA (Chile)

1. Discussion of Article 12 on Tariff Valuation

Mr. JOHNSON (United States) said that it was not the intention of paragraph 1 to achieve immediately a uniform system of valuation. Its intention was rather that members should agree to work in that direction.

The CHAIRMAN observed that the understanding that there would be a transitional period would make a solution of problems concerning valuation less difficult.

Mr. JOHNSON (United States) explained that there would be a transition period between the time when the Charter was formulated and the time when the member countries accepted the Charter in accordance with their various constitutional processes. It might be a year before members would have ratified the Charter. But it would take longer than a year to work out a uniform valuation system.

The CHAIRMAN agreed that it would take more than a year to deal with the highly technical matters involved in changing valuation procedures.

Mr. NEHRU (India) understood the purpose of paragraph 1, sentence 1, to be that members should agree to a general principle, and then proceed to work out the application of that principle under the guidance of the ITO (second sentence).

Mr. LAWRENCE (New Zealand) presumed that the transition would not actually begin, until the organization put forth recommendations at a date subsequent to the signing of the Charter.

Mr. KEMP (Canada) pointed out that a reduction of customs duties, negotiated next Spring, might be affected by the establishment of new bases for valuation. How was that problem to be dealt with?

Mr. JOHNSON (United States) thought that the views expressed by the Delegates of India and New Zealand, with which he entirely agreed, were the best answer to the Canadian Delegate's question. Problems of the type raised by the Canadian Delegate would no doubt have to be solved at a later time by the ITO.

The CHAIRMAN asked if the one-year transition referred to by the United States Delegate was contemplated in the Charter.

Mr. JOHNSON (United States) replied that no Article of the Charter specified how long the transition would last. It was his own opinion that one year might pass between the formulation of the Charter and the time when it would go into effect. That was a consequence of the existence of national laws governing the acceptance of an instrument such as the Charter.

The CHAIRMAN said that his question with respect to the transitional period related to all technical matters under consideration by the Sub-Committee. The point was one which required study. He had understood that members would be given one year within which to denounce conventions in conflict with the Charter.

Mr. van den BERG (Netherlands) agreed with the views of the Indian Delegate with respect to the first sentence of paragraph 1. The Netherlands and Belgium had submitted suggestions with respect to procedures, which he wished to see covered by the Sub-Committee's Report.

Mr. RHYDDERCH (United Kingdom) was glad there was no intention to establish a uniform system of valuation immediately. What was needed was a code of behaviour or ethics which would be applicable to the different systems. The United Kingdom would support its own system of valuation.

United Kingdom exporters had complained about practices of other countries with respect to :

(a) determination of "usual wholesale quantities",

(b) reclassification of items so as to raise duties,

(c) requirements to reveal secret information about their products.

The CHAIRMAN thought the Sub-Committee should give sufficient time to the discussion of differences between the provisions of Article 12 and the present practices of the different countries in the matter of valuation.

Mr. JOHNSON (United States) thought there should be discussion of the general principles to be embodied in the code of ethics applicable to valuation.

Mr. KEMP (Canada) imagined it would not be easy to separate the discussion of general principles for a code of ethics from the discussion of particular situations. A compilation of valuation methods of various countries would be helpful in connection with preparations for the tariff negotiations in the spring.

The provisions of the Charter with respect to tariff valuation were not precise. The Charter provided that actual value should be the basis of valuation, and such a provision might merely be used to justify existing systems. But it was more likely that the Charter did not intend to leave the question of methods of valuation entirely to the countries concerned.

The examples which he would give of valuation problems were drawn from Canada's experiences in trade with the United States. He did not wish to give the impression that the United States was more open to criticism than any other country. Very often the difficulties arose in consequence of legislation rather than administration.

The United States had three or four alternative methods of valuation, two of which required the use of values in the United States as part of the basis of valuation. Would adoption of the Charter require elimination of those two methods?

If there were many transactions in the product to be valued, the smaller transactions were often used as a basis for determining value rather than the larger ones. The advantages from large transactions were thus eliminated.

In some cases the valuation was based on the price of goods "freely offered for sale". Sometimes goods were not "freely offered for sale" but were sold through limited distribution channels. Sometimes the effect was that the price at which goods were "freely offered for sale" was interpreted to mean the price at which the retailer sold the goods to the consumer - not the price at which the goods were offered by the manufacturer or the wholesaler. That was a practice which operated to increase the protection of domestic products.

Value was sometimes determined on the basis of the value in foreign markets. But there was variation in foreign markets; and the value determined might as a result be high in some cases.

Under the United States regulations a penalty was incurred, if the declared valuation was lower than the appraised valuation. But if the declared valuation was higher than the appraised valuation, the customs duty had to be paid on the basis of the declared valuation.

There had been cases of changes of classification with respect to a product, after a treaty or trade agreement had been entered into, which affected that product. In order to avoid frustration of the provisions of treaties or trade agreements, there might be acceptance of the view that there should be no changes of classification after an agreement or treaty had been entered into.

There had been long administrative delays in connection with questions of valuation. There were cases where goods destined for a seasonal market had been held up, pending administrative action with respect to valuation, until the season was over. How could there be assurance against such delays?

Arrangements to permit immediate entry of goods upon payment of bond, in cases where there were administrative delays, were not helpful, since traders could not calculate their prices for future shipments. Sometimes the importer or the exporter was not willing to accept the risks involved in agreeing to accept a future valuation. Sometimes the administrative authorities informed port authorities that a court ruling with respect to valuation should be applied only to the shipment involved in the court case and not to future shipments, since the government wished to raise a new court case.

Sometimes customs authorities required confidential information with respect to formulas, costs, etc. without agreeing not to divulge that information. For example customs officials had asked for the chemical formula of a pharmaceutical product. Rather than give the information, the exporter decided to abandon the market.

He thought there should be some assurance that tariff concessions would not be frustrated by valuation practices of the types he had described.

The CHAIRMAN observed that requirements to give formulas of pharmaceuticals might be necessary to the enforcement of health regulations.

M. le BON (Belgium) requested an explanation of paragraph 2, sub-paragraph (c), of Article 12. It was his view that the conversion rate should be the official rate as defined by the exchange office in the importing country.

Mr. JOHNSON (United States) remarked that the difficulties mentioned by the Canadian Delegate should be avoided, if possible. If they could be avoided, customs administrative staffs could eventually be reduced to a minimum. The primary purpose of administrators of customs laws in the United States was to achieve uniformity and certainty. Hardships would inevitably occur in specific cases which did not fit a pattern.

In answer to the enquiry of the Canadian Delegate as to whether the adoption of Article 12 would require the United States to abandon any practices relating to present bases of valuation, he said that the Draft Article had been prepared in the light of United States experience. It would require the United States to abandon one basis, and to modify another basis, of valuation.

"Actual value" was not "arbitrary or fictitious value".

United States law required that valuation should be determined on the basis of usual wholesale quantity in the country of export. That was in practice determined by judicial decision, and not by administrative practice. No certain uniform result could be prescribed by statute. As an example he cited imports into the United States of ball-bearings from Sweden. The Swedish market was relatively small, and usual wholesale quantities were therefore very small. Quantities sold to the United States were much larger. Nevertheless the smaller wholesale quantity of the country of origin would govern the valuation.

Mr. KEMP (Canada) pointed out that judicial decisions might have combined to bring about certain conditions, which other countries would regard as being in conflict with the Charter. Could anything be done in such circumstances?

Mr. JOHNSON (United States) replied that the Charter provided for consultation between members, and for adjustment of inconsistencies through an International Trade Organization. He referred particularly to Article 30.

Mr. KEMP (Canada) asked whether the situation brought about by United States laws and decisions was in conformity with the proposed Charter.

Mr. JOHNSON (United States) replied that the United States did not expect the Charter to eliminate every complaint of every exporter or importer against the customs administration of member countries. It was hoped that the objectives would be substantially met by the statement of ethical principles embodied in paragraph 2 of Article 12.

Mr. KEMP (Canada) reverted to the example cited previously by Mr. JOHNSON of ball-bearing exports from Sweden. If it happened that ball-bearings were sold in Sweden in lots of 1, would that be acceptable as a basis for duty valuation? Swedish exporters would be at a serious disadvantage in competing with a United States manufacturer of ball-bearings who could sell in large quantities. Would the Charter clarify that cause for dispute?

Mr. JOHNSON (United States) replied that it was thought the Charter would eliminate that point, although it would not remove all other causes of complaint.

Mr. MORTON (Australia) asked whether, in the example of the ball-bearings, an importation by the Ford Motor Company would be valued on the basis of the "usual wholesale quantity" in the country of origin.

Mr. JOHNSON (United States) replied that that was the position at the moment, but it would cease to be so under legislation now contemplated.

The United States requirement for duty valuation based on goods being "freely offered for sale" was the subject of many judicial decisions. In his opinion, the decision had carried the law far beyond its original purposes. The United States proposed that values should be based on the usual course of trade, including customs restrictions on values now eliminated by the courts.

Mr. RHYDDERCH (United Kingdom) referred to the re-classification of items which served to raise import duties even after those duties had been bound by agreement. The United Kingdom tariff guarded against such a situation. He felt there should be no question of difficult cases which required submission to Customs Courts in the United States.

He asked if the statement of the United States Delegate regarding "actual value" meant "actual price charged under any conditions". If that was the meaning, it would be contrary to the United Kingdom legal definition of value, and he could not accept it.

He suggested a formula to meet the difficulty, namely the deletion of sub-paragraphs (a) and (d) of paragraph 2 and the substitution of the following as sub-paragraph (a):

> "Where an actual price of imported products is not accepted as the basis for determining their value for duty purposes, their assessed value should not be based on arbitrary or spurious (or fictitious) valuations but should satisfy clearly defined and stable conditions which conform with commercial usage".

Mr. JOHNSON (United States) defended United States practice in imposing penalties for under-valuation and for giving no allowance for over-valuation. Those were administrative devices which ensured importers' co-operation with customs officials. Where no gross negligence or intention to defraud was evident, penalties for under-valuation were remitted. Ample opportunity was afforded importers to avoid over-valuation.

There were two aspects of the question of change in classification after the giving of a concession under a trade agreement. The first was a real change in classification. He cited as an example the concession on fresh endive in the trade agreement between the United States and the Belgo-Luxembourg Customs Union, which was accorded on the basis of an understanding that the proper classification was "fresh vegetables not specially provided for". An importer brought an action to show that the product of Belgium was crude chicory dutiable under a different classification at a lower rate. The importer's action was sustained, and the product re-classified.

A change in classification also resulted from a difference of opinion between customs administrative officers and importers. That difference of opinion would always exist, and the right to exercise it could not easily be withheld.

Administrative delays in determining tariff valuations were evils to recognize. They existed because customs officials did not have all the necessary facts immediately on hand. He had proposed legislation whereby an importer could choose between having goods valued immediately or awaiting a correct and proper valuation. The legislation included a provision for an undertaking by the importers not to contest the value established. That legislation was not favoured by traders and he knew of no other proposal to make.

Mr. KEMP (Canada) referred to a Treasury Decision that had been rendered after six years. Could nothing be done to prevent such undue delays?

Mr. JOHNSON suggested that the Canadian Delegate should examine the cases in which delays had occurred. He would find that the importer and his attorneys were really responsible for such delays.

2. Next Meeting of Sub-Committee

Thursday 7 November at 3 p.m.

The Chairman indicated that the United States Delegate would continue his replies to questions asked during the meeting.

The meeting rose at 1 p.m.
