

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

TECHNICAL SUB-COMMITTEE

COMMENTS OF THE FRENCH DELEGATION ON ARTICLES 9 TO 16
AND 32 OF THE PROPOSED CHARTER OF INTERNATIONAL TRADE
OF THE UNITED NATIONS

A2 - Article 9 of the Charter - Internal Taxes

1. National treatment should be interpreted as not precluding, should the case arise, the levying on imported goods of internal taxes, calculated with the aid of forfeits or non-discriminatory adjustments arising out of the necessities of customs or fiscal technique.
2. This Article embraces, besides internal taxes, measures which do not come under the heading Customs (sale and operations taking place after release of goods from Customs). However most bilateral treaties contain a clause, by which no distinction is made between national and imported goods, in the sale, the offering for sale and the circulation of these goods as far as the regulation of free trade is concerned.
3. In particular, the question of the acquisition of imported goods by governmental organizations (other than the army) for public needs, lies outside the scope of discussions on customs; it should apparently be referred to the second Sub-Committee or to the Committee responsible for drawing up Article 8.
4. Paragraph 2 in its present form seems to permit foreign States to exercise an unjustifiable control on the internal fiscal legislation of a member-country. The meaning of this paragraph should be more clearly defined.

PROPOSALS

Articles 9 - 1

1. Internal taxes on consumption, circulation, manufacture, handling, excise, tolls or other measures which apply to goods imported from a member-country of the Organization cannot, under any pretext, be applied to them in a higher degree or on more onerous terms than to identical or similar national products, subject to forfeits or non-discriminatory adjustments arising out of the necessities of customs or fiscal technique.
2. The members undertake not to institute or maintain internal taxes on the products of other member-countries the object of which might be a disguised form of protection for national production.
3. In the regulation of trade not subject to State monopoly or to an institution of the same nature, and especially in sale, offering for sale, circulation and consumption, no distinction should be made between national products and products imported from member-states.*

A3 - Article 10 of the Charter - Freedom of Transit

1. The question arises of whether it might not be better to refer purely and simply to the Barcelona Convention of the 20 April 1921 on freedom of transit, and the Geneva Convention of the 3 November 1923 for the simplification of customs formalities (article 2).
2. If the American text is preferred as a basis of discussion, it seems:
 - (a) that the definition of transit in paragraph 6 should be transferred to the head of Article 10.
 - (b) that paragraph 5 should be set apart for special study;

*Numbers 1 and 2 correspond to the text of the report of the Economic Conference of 1927, Part 2 (Trade), paragraph III (trade policy), No.2.

the question of the measures taken by certain states for facilitating direct relations with countries of origin, and for allowing their ports to hold adequate stocks does not, in fact, appear in the original programme of the Technical Committee (questions of origin and source).

PROPOSALS

1. Separate paragraph 5.
2. Put paragraph 6 at the beginning of the Article.

44 - Article 11 of the Charter - Anti-dumping and Countervailing Duties.

1. Paragraph 5 prescribes that these duties should not be applied unless the industry of the importing country sustains or is threatened with injury. Furthermore it should be a question of a serious injury sustained by the importing country, and the existence of this injury should be proved by the latter.
2. When an anti-dumping tax or a countervailing duty is applied to a member country, the latter should be able to appeal to a court dependent on the International Trade Organization and before which the importing country should be obliged to prove the existence of the dumping or of a subsidy, as well as the gravity of the injury sustained by it.

PROPOSALS

Draft paragraph 5 as follows :

5. Each member country undertakes not to impose any anti-dumping duty or countervailing duty on the importation of any product of other member countries unless they are in a position to prove:
 - (a) that there exists a dumping, bounty or subsidy as defined in paragraphs 1 and 2 of this Article
 - (b) that its domestic industry has sustained grave injury from the dumping, subsidy or bounty.

The member country against whom the measures laid down in this article have been taken shall be able to lodge a complaint with the Organization which will have to decide, after hearing the two states concerned, whether the measures complained of are justified or not.

A5 - Article 12 of the Charter - Tariff Valuation (Customs Value)

The French Delegation has no objection to formulate against this text; it takes note of the fact that the member countries abandon the notion of value on the internal market of the importing country. The French Government is ready, for its part, not to make use of the power that the law gives it to take into account the value thus defined.

It may be remembered that the report of the Economic Conference of 1927, part 2 (trade), paragraph II (customs tariffs), number 4, recommends: . . . "that all systems of enquiry or investigation into the application of duties "ad valorem" should be established and organized with all the consideration due to the commercial interests in question and to the maintenance of cordial economic relations between the nations, all enquiry or research involving inquisitorial procedures or arbitrary methods being duly dismissed."

A6 - Article 13 of the Charter - Customs Formalities

The French Delegation records that these questions were the object of a special agreement signed at Geneva on the 3 November 1923. It appears right that this text should be accepted by all **the** member countries.

The Economic Conference of 1927 contains, in part 2 (trade), in paragraph II, (customs tariffs), number 5, several complementary recommendations. In particular, the provisions of these two documents of 1923 and 1927 should be substituted for paragraph 3 of Article 13 of the proposed Charter. French legislation does not allow the tribunals to take into account any intention or good faith in a matter of fiscal or customs offences, but it gives the

administration power, which in practice it frequently exercises, to reduce the penalties to nominal fines or even to suppress the fine altogether in the case of a mistake made by the declarer or infringements committed as a result of mistaken instructions given by the department.

A7 - Article 14 of the Charter - Marks of Origin

1. Concerning the marks required on imported products, the French Delegation asks for the suppression of paragraph 6 the provisions of which are covered by paragraph 5 of article 13.

It concerns, in fact, a particular infringement of customs legislation.

2. On the other hand, the French Delegation considers that Article 14 as it is drafted, does not apply to those provisions appearing in French legislation forbidding the application on foreign products of marks or signs of such a nature as to make it appear that they are of French origin or from any other country than the real country of origin.

It is a question here, in fact, of a form of unfair competition and fraud as to the character of the merchandise for sale. The import, the transit, the warehousing, and even the simple traffic of products with false markings is forbidden by French law; these provisions should be regarded as sacro sanct.

3. These provisions should be compared with those which are the subject of the Madrid arrangement of the 14 April 1891, revised at Washington on the 2 June 1911, and at the Hague on the 6 November 1925, and of the Union agreement of Paris, revised at Brussels the 14 December 1900, at Washington and the Hague at the dates given above. It would be desirable for all the member countries in the Organization to undertake to protect in their territory the marks of origin of other member countries.

4. Prompted by this same desire to raise the moral standard of International Trade by forbidding dishonest practices, the French Delegation considers it essential to protect marks of geographical or regional origin, particularly as regards wine, cognacs, Roquefort cheese etc... It reserves the right to propose a text in this connection.

A8 - Article 15 of the Charter - Publication and Administration of Trade Regulations

1. Publicity: The provisions of this paragraph may usefully replace those of Articles 4 and 6 of the Convention of 5 November 1925 for the simplification of customs formalities. But it seems that it would be necessary to supplement them:

(a) by recalling the provisions of Article 5 of the same document (Codification of customs duties and taxes).

(b) by recalling the measures provided for by the Brussels Convention of 5 July 1890 on the publication of customs tariffs of all countries.

(c) by the setting up in each member state of an organization specially responsible for publicizing, within the country and abroad, the laws and regulations relating to foreign trade.

(d) by the setting up within the ITC of an office responsible for collecting, analysing and publishing as quickly as possible in the usual languages laws, regulations and decisions concerning foreign trade and for collecting together periodically, in detailed studies, information concerning the comparative regulations of member states on any given point.

2. Independent Tribunals: It seems that the second sentence of this paragraph should be deleted, for the tribunals provided for in the preceding sentence evidently have assigned to them the repression of the abuses referred to. The end of the second sentence might be worded thus from the words "for the review of" :

"and which will be responsible for deciding upon the legality and regularity of the measures taken by the administration and of the taxes or formalities imposed by the customs service."

5. The French Delegation considers that the provision proposed is too absolute in character and goes into useless detail on the measures which it is the duty of each state to take in this matter.

Generally speaking, it can be admitted that goods which are on route at the moment when an increase of tariff or any other restrictive measure occurs escape the new provisions, subject to the production of convincing justifications by those concerned. However cases exist where the public authorities are obliged to apply without delay certain measures essential for the safeguarding of the country: raising of duties on certain essential agricultural products, threat of war or famine, or also - and this case has been noted by the authors of the Charter - dumping and similar measures.

As to the conditions of application, they are not to be defined in the Charter.

A9 - Article 16 of the Charter - Information, Statistics and Trade Terminology.

1. The French Delegation recalls that this question was the subject of:

- (a) the Brussels Convention of 23 December 1943 (establishment of an international commercial statistics).
- (b) the Geneva Convention of 14 December 1925 (economic statistics).

2. Moreover it points out that the aims pursued by the authors of the Charter as regards the standardization of international commercial statistics (paragraph 1 a) the international comparability of these statistics (paragraph 4), the adoption of standard definitions (paragraph 6) and of standards (paragraph 7), can only usefully be realized, insofar as the works undertaken by the League

of Nations for the unification of tariff nomenclatures is resumed and successfully completed, for customs statistics can only be established from the checked declarations of those liable, which are based on the terms of tariff nomenclature in each country.

5. Finally, the technical sub-committee will doubtless consider that it has not to make any decision on those provisions of Article 16 which are not related to customs statistics: subsidies (paragraph 1 b), balance of payments and prices (paragraph 3), control of exchange (paragraph 2 end).

Section 1. Article 32 of the Charter - General Exceptions.

The French Delegation has no particular objection to make. As regards paragraph h, it points out that French legislation makes no provision for any prohibition with regard to prison-made goods, since it has no penalties for social dumping.

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