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DRIFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE  
INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

TECHNICAL SUB-COMMITTEE

Eighth Meeting, 30 January 1947, at 2:30 p.m.

Chairman: Mr. R. J. Shackle (United Kingdom)

The first subject for consideration at this meeting of the Sub-Committee was a new paragraph under Article 17, Anti-dumping and Countervailing Duties, suggested by the Delegate for Cuba. With some modification it was adopted as follows:

"Nothing in this Article shall preclude Members from incorporating in a regulatory commodity agreement under Chapter VII provisions prohibiting, as between Members party to such a commodity agreement, the use of anti-dumping duties in cases in which dumping, within the meaning of paragraph 1 of this Article, may be permitted under the terms of such an agreement."

The Sub-Committee then considered Article 20, Marks of Origin. The text provisionally adopted is shown below with amendments underscored. The notes indicated by letters under each paragraph refer to the corresponding items in document E/PC/T/C.11/54/Rev.1.

Article 20. Marks of Origin.

Paragraph 1. "The Members agree that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum."

The paragraph was tentatively adopted after an amendment by the Delegate for Czechoslovakia had been deferred for consideration in connection with paragraph 5 (see below).

/Paragraph 2.

Paragraph 2. "Each Member shall accord to the products of each other Member country treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country."

This paragraph was agreed to with the one minor drafting change above.

Paragraph 3. "When administratively practicable, Members should permit required marks of origin to be imposed at the time of importation."

(a) The majority of the delegates were prepared to agree to this compromise text, in which the words "practicable" and "should" replace "possible" and "shall" respectively. The Delegates for Canada, Czechoslovakia and the United States, however, stated that they would have preferred the word "shall", and the Delegate for the United Kingdom wished to reserve his position in favour of the deletion of this paragraph.

Paragraph 4. "The laws and regulations of the Members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost."

This paragraph was agreed to with no change or comments.

Paragraph 5. "The Members undertake to work toward the uniform adoption of a schedule of general categories of products which shall not in any case be required to be marked to indicate their origin. With a view to furthering this work, the Organization is authorized to investigate and recommend to Members descriptions of categories of products in respect of which marking requirements operate to restrict trade in a degree disproportionate to any proper purpose to be served."

The Delegation of Canada had submitted a redraft of this paragraph. This suggested that the schedule to be considered should include only the goods on which requirements of marks of origin should be permitted, thus, a "positive list" while the London text had suggested a "negative list".

/The Sub-Committee

The Sub-Committee on this point decided in favour of the London text. The following amendment, suggested earlier in the meeting by the Delegate for Czechoslovakia and intended by him to form the opening sentence of paragraph 1, was discussed with the view of its possible inclusion in paragraph 5:

"Members agree to work in co-operation through the Organization toward the gradual elimination, as far as practicable, of obligatory marks of origin, etc."

The amendment received support from the Delegates for Australia, Canada, Chile, Cuba, Czechoslovakia and France. The Delegates for Belgium-Luxemburg, the United Kingdom and the United States opposed this text, those for Belgium-Luxemburg and the United States because it went too far in making it an obligation to eliminate marks of origin. The Delegate for Belgium expressed the views of the minority in drawing attention to the fact that marks of origin are frequently beneficial to the consumer and not of a discriminatory character.

The Delegate for Cuba wished to have it put on record that the elimination of requirements by the importing countries did not preclude the use of marks of origin by the exporting countries.

The Czechoslovak proposal was tentatively adopted for further consideration at the second meeting.

The question of requirements concerning marking imported goods with the word "Foreign" was to be dealt with in connection with boycotts (Article 23).

Paragraph 6. "As a general rule, no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking has been unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted."

(a) and (c): All points raised in these comments were dealt with by

/the above

the above amendments introduced in this text.

(b) was a misprint.

(d) The Delegation of France renewed its proposal to add a new paragraph which would protect regional and geographical marks of origin. It was supported by the Delegations of Belgium-Luxemburg, Czechoslovakia, Netherlands and Cuba (either at the meeting or in London).

The Delegate for France, Mr. Lecuyer, mentioned that if members of the ITO were to adopt the French proposal to protect by domestic legislation the trade name or mark of origin of an imported product in the same manner as they protected a domestic product, France would be willing to extend the same benefits to ITO members as she now extends to signatories of the Madrid Convention of 1891. Mr. Lecuyer pointed out, in response to questions asked as to the precise interpretation of the first sentence of his suggested paragraph, that a member having a domestic law protecting the trade name or mark of origin of a domestic product would, under the suggested provision, apply this legislation to protect in the same manner the trade name or mark of origin of a like imported product. In France the domestic legislation protected certain types of French wine, as well as types typical to Spain and Portugal (in accordance with the Madrid Convention). Spain and Portugal reciprocate on French wines. In other words, "Madeira" wine cannot be made in France, nor can "Bordeaux" wine be made in Spain, etc.

If a country has no laws protecting any of its domestic products (as is true in the case of Australia), this country would not have to protect an imported product of any kind. In order to clarify the situation further, the Delegate for France suggested the addition of the word "existing" before the word "laws" in the first line of the first sentence of the suggested French text.

The Delegates for Cuba and Czechoslovakia supported the French amendment.

/The Delegate

The Delegate for the United States said that he personally appreciated the position of France, Cuba and others, but expressed some doubt as to whether this was the time and the place to deal with the very complex problem of protecting regional or geographical marks of origin, and suggested the following amendment to Article 20:

"The interest of Members in protecting the regional and geographical marks of origin of their distinctive products shall be given consideration by the Organization which is authorized to make appropriate recommendations on this subject."

The question was raised concerning the last paragraph of the French amendment regarding the calling of a conference by the ITO for this purpose. The Delegate for the United States pointed out that there were two or three Articles in the Charter which might provide for this.

The Sub-Committee decided at this point to adjourn until the next day.

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