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DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

DRAFT REPORT OF THE TECHNICAL SUB-COMMITTEE

(Covering Articles 15-23 and 37)

The Technical Sub-Committee consisted originally of Delegates for Australia, Belgium-Luxemburg, Czechoslovakia, the Netherlands, France, United Kingdom and the United States. Arrangements had been made, however, for the participation of delegates for other countries wishing to take part in the Sub-Committee's work. The Delegates for Brazil, Canada, Cuba, New Zealand and the Union of South Africa, who regularly utilized this opportunity, were admitted as regular members of the Sub-Committee in the course of its existence.

The Sub-Committee met twelve times under the Chairmanship of Mr. R. J. Shackleton.

The new texts of Articles 15-23 and 37, as adopted by the Sub-Committee, are given below. The text of each paragraph is followed by comments explaining the changes introduced and recording the reservations made, including such reservations or comments as were made at the London Session and maintained in New York, or which were neither withdrawn nor maintained in New York in view of the fact that the countries concerned were not represented on the Sub-Committee.

In addition, the comments account briefly for the nature of changes introduced at the London Session in the respective articles of the United States Draft Charter, in view of the fact that the report of the sub-committee dealing with these Articles at that Session

(E/PC/T/C.II/54/Rev.1) has not been printed.

/A French

ARTICLE 15 - NATIONAL TREATMENT ON
INTERNAL TAXATION AND REGULATION

General comment

The text of Article 15, as suggested in the United States Draft Charter, underwent a number of modifications at the London session. Thus, the number of paragraphs was increased from two to five, and words were added to clarify or render more inclusive the provisions contained in the present paragraphs 1, 2 and 3. As was mentioned in Part II of the Report of the First Session (E/PC/T/33, page 9, Section A, 1 (iv), the original provision for "national treatment" in respect of governmental purchases of supplies for governmental use was removed at that session, and a special paragraph (No. 4 in the text now supplied) was added expressly exempting procurements of this kind.

Text, 15:1

"The Members agree that neither internal taxes nor other internal charges nor internal laws, regulations or requirements should be used to afford protection directly or indirectly for any national product."

Comment

In the report of the First Session of the Preparatory Committee, this provision was given as the third paragraph of the Article dealing with National Treatment. The Drafting Committee suggests that it be given as

/par graph 1

paragraph 1 in view of its general nature.

At the First Session, the Delegate for the Union of South Africa thought that the words "internal laws, regulations and requirements" might be misconstrued as referring for instance to Customs legislation, and suggested that the words "laws, regulations and requirements" be used. The question was deferred by the Sub-Committee for possible further comment by the Delegate for that country in the Drafting Committee.

Text, 15:2

"The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin."

Comment

The words "identical or similar products" were changed to "like products", in accordance with a preliminary decision taken by the Drafting Committee, and a few other modifications of a formal nature were made.

It was left to the Delegates for Cuba, Norway and India to consider whether they would wish to maintain the objections against this paragraph raised by them at the first session. (The Delegate for Cuba had reserved his position concerning measures necessary for protection of infant industries in countries at an early stage of economic development; the Delegate for

/India

India had required that there should be no objection against discriminatory internal taxes levied only for the purpose of raising revenue; and the Delegate for Norway had reserved its right to vary charges levied for fiscal purposes on an imported product when the variations were required for the maintenance of a uniform price of the product in the domestic market).

Text, 15:3

"The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, transportation, distribution or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used, provided that any such requirement in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, which period may be extended in respect of any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter. Requirements permitted to be maintained under the foregoing proviso shall be subject to negotiations in the manner provided for in respect of tariffs under Article 24."

/Comment

Comment

...an attempt to meet the views expressed by several delegates at the First Session of the Preparatory Committee, the Sub-Committee decided to add to this paragraph a proviso enabling countries to make restricted use of mixing and processing requirements for imported products that are in force at the day of the signature of the Charter. The requirements might be continued during one year from the entry into force of the Charter and longer "if the Organization concurs that the requirement concerned is less restrictive of international trade than of other measures permissible under this Charter". In addition, words were added to the effect that such requirements are being made subject to negotiations in the manner provided for in respect of tariffs under Article 24.

In view of the insertion of a new paragraph (see below) dealing with regulations and requirements relating to the exhibition of cinematograph films, the reference to requirements restricting the exhibition of imported products was deleted.

Previous Article 13:4 (now omitted)

The London Session had adopted the following paragraph:

"Each Member agrees that it will take all measures open to it to assure that the objectives of

/this Article

this Article are not impaired in any way by
the laws, taxes, charges, laws, regulations or requirements
of subsidiary Governments within the territory
of the Member Government."

It was felt that the problem of federal
Governments obtaining observance of their subsidiary
Governments of the provisions of the Charter arose
also in the case of other Articles. Accordingly,
the above paragraph was deleted from Article 15 on
the understanding that the following new paragraph
would be inserted under Article 88 (as No. 5), thus
referring to the entire Charter:

"Each accepting Government shall take
such reasonable measures as may be available
to it to assure observance of the provisions
of this Charter by subsidiary Governments within
its territory."

The expression "subsidiary Governments" was not
deemed entirely satisfactory and it was thought that
the Legal Drafting Sub-Committee might wish to
clarify it.

Text, 15:4

"The provisions of paragraphs 1 and 3 of this Article shall not be construed to prevent the application of internal regulations or requirements relating to the exhibition of cinematograph films. Such regulations and requirements shall, however, be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24."

Comment

At the London session, the Delegates for Czechoslovakia, Norway and the United Kingdom had suggested that the provisions contained in the paragraphs corresponding to Numbers 1 and 3 of the present text should not apply to cinematograph films. The paragraph now added complies with this suggestion, at the same time as it would render the regulations and requirements relating to the exhibition of such films subject to negotiations in the same manner as those under paragraph 3.

The Delegate for New Zealand made a statement for inclusion in the Report of the Drafting Committee, to the effect that the New Zealand film hire tax which is in reality, a delayed customs duty levied at the point where the real value of the film has become apparent, should neither be regarded as being covered by the terms "internal laws" or "regulations" or "requirements" whenever such words appear in Article 15, nor as an internal tax. The film hire tax, he pointed out, which is not associated with any form of film quota, but which contains a preference element, could thus be the subject of negotiations of the kind provided

/for in

for in Article 24 with respect to tariffs.

New Zealand, he declared, did not produce cinematographic films other than educational and newsreels, and such films were exempt from tax. British films of all types were subject to tax at a rate lower than that applied to foreign films.

Text, 15:5

"The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale."

Comment

This Article was adopted without change by the Sub-Committee.

ARTICLE 16 - FREEDOM OF TRANSIT

Text, 16:1

Alternative A (Refers to goods only)

"Baggage and goods shall be deemed to be in transit across the territory of a Member when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the goods pass."

Alternative B (Refers to goods and means of transport)

"Baggage and goods, and also vessels and other means of transport shall be deemed to be in transit across the territory of a Member when the passage across such

/territory, with

territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit". The provisions of this Article shall not apply to the operation of aircraft in transit."

Comment

Article 16, as worded in the United States Draft Charter, refers in general, to "persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport". At the London Session, the word "persons" was deleted since the Charter was dealing in general with goods and services. Moreover, it was pointed out that traffic of persons was subject to immigration laws and might properly be the concern of an international agency other than the Trade Organization. The Delegate for one country (India) objected, however, to this change in the text.

The Sub-Committee considered the question if not also means of transport should be excluded. It was recognized that trade in goods was the principal object of the Charter and that means of transport might become the concern of other international agencies. On the other hand, certain Delegates felt that if means of transport were not covered, the purpose of the article might be impaired. It was, therefore, agreed to submit two alternative texts of Article 16, one, (A) referring to goods only, and the other, (B) to goods and means of transport.

/The last

The last sentence of this paragraph was not included in the text of the United States Draft Charter. At the London Session the Sub-Committee, dealing with this article proposed to add the provision that the article "shall not apply to air traffic in transit". Since this wording, however, would exempt more than was intended, the words "the operation of aircraft" (in Alternative B) were substituted for "air traffic".

It was noted that there is no apparent inconsistency between this article and the Barcelona Convention of 20 April 1921 (Convention and Statute of Freedom of Transit). Should the question of a new transit convention be raised, the Sub-Committee felt that the International Trade Organization might wish to co-operate.

Attention was also paid to the existence of other treaties and conventions, of which members of the Preparatory Committee are parties, that relate to matters covered by the Charter. It was felt that the Members would have to consider, before signing the Charter, if and to what extent, their obligations under such treaties or conventions were in conflict with the new obligations, they would have to assume.

The Delegate for Chile pointed out that he wished to reserve his position on paragraph 1 in view of the transit agreement which Chile had concluded with neighbouring countries. He anticipated being able to confirm or withdraw his reservation before the end of the session.

Text, 16:2

Alternative A (Refers to goods only)

"There shall be freedom of transit through the Member countries, via the routes most convenient for international transit, for goods in transit to or from other Member countries. No distinction shall be made with respect to goods in transit that is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels or other means of transport."

Alternative B (Refers to goods and means of transport)

"There shall be freedom of transit through the Member countries, via the routes most convenient for international transit, for traffic in transit to or from other Member countries. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or of vessels or other means of transport."

Comment

The last sentence (in both the alternatives) is based on the text of Article 2 of the Barcelona Statute (annexed to the Barcelona Convention of 20 April 1921). It was added in order to meet a point raised by the Delegates for Belgium-Luxemburg, France and the Netherlands at the London Session.

/The Delegate

The Delegate for India suggested that the first sentence should read as follows:

"There shall be freedom of transit through Member countries for the products of other Member countries via such routes as may be open to traffic in products of like kind and quality of national origin."

Text. 16:3

Alternative A (Refers to goods only)

"Any Member may require that goods in transit through its territory be entered at the proper customhouse, but except in cases of failure to comply with applicable customs laws and regulations, such goods coming from, or going to, other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered."

Alternative B (Refers to goods and means of transport)

"Any Member may require that traffic in transit through its territory be entered at the proper customhouse, but except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from,

/or going to

or going to, other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered."

Comment

In order to render it clear that the duties and charges mentioned in this paragraph do not include compensation for services rendered, the concluding words from "except charges for transportation" were added in both versions of this paragraph.

Text, 16:4

Alternative A (Refers to goods only)

"All charges and regulations imposed by Members on goods in transit to or from other Member countries shall be reasonable, having regard to the conditions of the traffic."

Alternative B (Refers to goods and means of transport)

"All charges and regulations imposed by

/Members on

Members on traffic in transit to or from other Member countries shall be reasonable, having regard to the conditions of the traffic."

Text, 16:5

Alternative A (Refers to goods only)

"With respect to all charges, rules, and formalities in connection with transit, each Member shall accord to goods in transit to or from any other Member country treatment no less favourable than the treatment accorded to goods in transit to or from any country."

Alternative B (Refers to goods and means of transport)

"With respect to all charges, rules, and formalities in connection with transit, each Member shall accord to traffic in transit to or from any other Member country treatment no less favourable than the treatment accorded to traffic in transit to or from any country."

Text, 16:6. (This text is applicable to both alternatives A and B.)

"Each Member shall accord to products which have been in transit through any Member country treatment no less favourable than that which would have been accorded to such products had they been transported from their origin to their destination without going through such other Member country. Any Member country shall, however, be free to maintain its existing requirements of direct consignment (expédition directe) in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of goods at preferential rates of duty, or has relation to the country's prescribed method of valuation for duty purposes."

Comment.

The last sentence of this paragraph was added in order to meet a suggestion made by Australia at the London Session.

The Delegate for Canada stated his position with reference to this paragraph as follows:

"With reference to the minutes of the meeting of 23 January 1947, Canada wishes the record to show that the Canadian Delegate mentioned in connection with discussions of the amendment to paragraph 6 of Article 16 (Freedom of Transit) that there were certain requirements for preferential treatment in addition to the "direct shipment" requirement. An obvious example is content requirements. Canada

/would

would consider itself free to adjust such requirements if necessary - e.g., the various British Commonwealth countries might some day attempt to arrive at a common 'content' requirement, to replace the present 'content' requirement which differ among each Commonwealth country."

ARTICLE 17 - ANTI-DUMPING AND COUNTERVAILING DUTIES

Text 17:1.

"No anti-dumping duty or charge shall be imposed on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of the product exported from one country to another is less than (a) the comparable price charged for the like product to buyers in the domestic market of the exporting country, or, in the absence of such domestic price, either (b) the highest comparable price at which the like product is sold for export to any third country in the ordinary course of commerce, or (c) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and margin of profit; with due allowance in each case for differences of conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."

/Comment.

Comment.

The words "or charge" were inserted after "No anti-dumping duty" in the first line in order to render it clear that this article is intended to cover even charges not technically regarded as duties. Similarly, the words "in the ordinary course of trade" were added for greater clarity in the alternative described under (b), and under alternative (c) words were added to the effect of allowing for selling cost and margin of profit. Finally, in order to meet an objection raised by the Delegate for New Zealand, the text was modified so as to permit of using the amount described under (c) with equal right as that under (b) in determining the margin of dumping. (According to the original text, (c) could be used only in the absence of both (a) and (b).)

The Delegate for the United Kingdom suggested that the word "landed" be inserted before "price of the product exported" in the definition of the margin of dumping (second sentence).

The Delegate for Australia suggested that the words "by more than five per cent" be inserted in the same definition after "another is less".

The delegates for certain countries (Belgium-Luxemburg and the Netherlands) favoured the authorization of measures other than anti-dumping duties to offset price-dumping. The Delegates for Czechoslovakia, France and New Zealand supported this view but did not insist on a change in the text pending final consideration of the suggestion (by the

/Delegate

Delegate for Australia) that measures should be authorized to curb dumping other than price-dumping (see below) and of the question of allowing the use of quantitative restrictions as defence against dumping. (See under paragraph 2 below)

At the London Session the Delegate for Brazil reserved his position on this paragraph, being of the opinion that heavier than counter-balancing duties or quantitative restrictions should be allowed in cases of aggravated or sporadic dumping.

Similarly, at the London Session, the Delegate for India suggested that the definition of "margin of dumping" be left to the International Trade Organization. (This point may have been met in part by the addition now suggested of the second sentence in paragraph 5.)

Text, 17:2.

"No countervailing duty shall be imposed on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation."

Comment.

The following definition of countervailing duty was agreed upon, but the Sub-Committee thought that it might be left to the decision of the Legal Drafting

Sub-Committee whether to include it as an amendment to

/this paragraph

this paragraph or under a list of definitions elsewhere:

"The term 'countervailing duty' shall be understood to mean an additional duty imposed for the purpose of off-setting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise."

At the London Session, the Delegate for China suggested the following addition to this paragraph:

"In the event of preferential treatment being accorded by a country to certain countries to the exclusion of other Member countries, no countervailing duty shall be imposed upon the products imported from such other Member countries against subsidies which are granted by the latter to such products as compensation for covering the preferential margin."

Similarly, at the London meeting the Delegate for Brazil suggested that quantitative restrictions or other punitive measures should be permissible in order to cope with the import of subsidized products.

Text, 17:3.

"No product of any Member country imported into any other Member country shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund of such duties or taxes."

/Comment.

Comment.

The concluding words "or by reason of the refund of such duties or taxes" were added at the London Session to the original text. The paragraph was approved without change by the Sub-Committee.

Text, 17:4.

"No product of any Member country imported into any other Member country shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization."

Comment.

This paragraph was approved without change by the Sub-Committee.

Text, 17:5.

"No Member shall impose any anti-dumping or countervailing duty or charge on the importation of any product of other Member countries unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to materially injure or threaten to injure an established domestic industry, or is such as to prevent the establishment of a domestic industry. The Organization shall consider the advisability of including among the criteria under which anti-dumping or countervailing duties may be imposed the requirement of a determination by an independent administrative authority in the country imposing the duty as to the actuality or potentiality of injury to a domestic industry."

/Comment.

Comment.

The original text of the first sentence of this paragraph was modified so as to restrict the use of permissible anti-dumping and countervailing duties. The words "as a general rule" in that text were deleted and the word "materially" was added before "injure or threaten to injure". Other changes introduced are largely formal or explanatory.

At the London Session, the Delegate for Brazil suggested the deletion of the provision contained in this sentence.

The second sentence of paragraph 5 represents an addition suggested by the Sub-Committee with a view to the possible establishment in the future of legal procedures involving additional guarantee against unwarranted use of the duties under consideration. The Delegate for Canada reserved his position on this sentence.

Text, 17:6.

"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."

Comment.

This is a new paragraph, adopted by the Sub-Committee at the suggestion of the Delegate for Cuba. It was pointed out by some delegates that the paragraph did not involve any change in the obligations of Members under the Charter.

ARTICLE 17. SUGGESTED NEW PARAGRAPH

The Delegate for Australia suggested inclusion in Article 17 of the following paragraph:

7. "Any Member country maintaining restrictions of forms of dumping other than 'price dumping', e.g., freight dumping or dumping by means of depreciation of currency, shall only impose such dumping duties where it has determined after enquiry that the method and extent of dumping against which action is taken is such as to injure or threaten to injure an established domestic industry."

The Delegate for the United States was of the opinion that this paragraph should not be accepted. While not adopting the proposed text, the Sub-Committee decided to forward it for consideration by the Drafting Committee and the Second Session of the Preparatory Committee. It also decided to draw the attention of the Sub-Committee on Tariff Procedures to the paragraph in question.

ARTICLE 18. TARIFF VALUATION

Text, 18:1

"Members undertake to work toward the standardization, insofar as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges, or restrictions based upon or regulated in any manner by value. With a view to furthering such co-operation, the Organization is authorized to investigate and recommend to Members such bases and methods for determining the value of products

/as would

as would appear best suited to the needs of commerce and most capable of widespread adoption."

Comment

The words "or other restrictions" in the first sentence of this paragraph were changed to "or other charges or restrictions" to render it clear that charges other than customs duties are covered.

Text, 18:2

"The Members recognize the validity of the following general principles of tariff valuation, and they undertake to give effect to such principles, in respect of all products subject to duties, charges or regulations based upon value, at the earliest practicable date. Moreover, they undertake upon a request by another Member to review the operation of any of their laws or regulations relating to value for duty purposes in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph."

Comment

The last two sentences of the introductory part of this paragraph were added to the original text in order to take into account and reconcile diverging views expressed at the London Session with reference to a suggested obligation of Members to review their customs laws and regulations relating to tariff valuation. It will be observed that the text adopted refers to the operation of these laws and regulations rather than to
/the laws

the laws and regulations as such, and that the review would have to take place only upon a request by another Member. The last sentence gives the Organization authority to request reports from Members on action taken with a view to carrying out the provisions of this paragraph.

The Delegates for certain countries (Belgium, Luxembourg, Czechoslovakia, China and the Netherlands) wished to provide for a transitional period to precede the entry into force of the provisions of paragraph 2.

The Delegates for certain countries (Belgium, Luxembourg and the Netherlands) suggested that the procedures applied in determining value for duty purposes should be more exactly indicated. The Sub-Committee considered, however, that the suggestions made by these delegates were too detailed for inclusion in this paragraph. One of these suggestion (concerning the trial of value litigation) was considered in connection with Article 21, paragraph 2.

Text, 18:2 (a)

Alternative A (United States Original Draft)

"(a) The value for duty purposes of imported products should be based on the actual value of the kind of imported merchandise on which duty is assessed, or the nearest ascertainable equivalent of such value, and should not be based on the value of products of national origin or on arbitrary or fictitious valuations."

Alternative B (Draft by Canada, after modification).

"(a) The value for duty purposes of imported products

/should be

should be based on the actual value at which, in the ordinary course of trade, imported merchandise identically similar to that on which duty is assessed is at the material time sold or offered for sale in comparable quantities and under similar conditions of sale, or the nearest ascertainable equivalent of such value. The value for duty purposes should not be based on the value of products of national origin or on arbitrary or fictitious valuations."

Comment

Two alternatives of sub-paragraph (a), which stipulates certain criteria for the valuation of imported products, are presented for consideration by the Drafting Committee. The former of these (A), representing the unchanged text in the United States Draft Charter, was supported by the majority of the Sub-Committee; the latter text (B), setting out the basis for valuation in greater detail, was drawn up on the basis of suggestions made by Delegates for Australia and Canada and received some support also by certain other delegates. The Delegate for the United States, while stating that Alternative B was not acceptable to him, declared himself willing to consider modifications in Alternative A, for instance, inclusion of the words "in the ordinary course of trade" after "actual value".

Text, 18:2 (b)

"(b) The value for duty purposes of any imported product should not include the amount of any internal

/tax

tax, applicable within the country of origin or export from which the imported product has been relieved or made exempt."

Comment

Sub-paragraph (b) was approved by the Sub-Committee in its initial version with the addition of the words "relieved or" before "made exempt" intended to render this provision analogous with that with reference to anti-dumping and countervailing duties in paragraph 3 of Article 17.

The question of inserting the words "customs duty or" before "internal" was considered but deferred for later decision.

Text, 18:2 (c)

"(c) In converting the value of any imported product from one currency to another for the purpose of assessing duty, the rate of exchange to be used should be fixed in accordance with prescribed standards to reflect effectively the current value of each currency in commercial transactions, and until the elimination of dual or multiple rates of exchange authorized under the terms of the Articles of Agreement of the International Monetary Fund or in accordance with the special exchange agreements specified in Article 29 of this Charter, either one or more than one legal rate for each dual - or multiple - rate currency may be so fixed."

Comment

The original text of sub-paragraph (c) was amended
/to indicate

to indicate that only legal rates were to be considered in conversion of dual - or multiple - rate currencies. Words were also included to render it clear that the dual or multiple rates applying in trade among Members would be those authorized under the terms of the Articles of Agreement of the International Monetary Fund or in accordance with the special exchange agreements referred to in Article 29. From a statement made in the Sub-Committee by the Representative of the Fund it was evident that the use of dual or multiple rates - which do not include rates varying within one percent above or below parity in the case of spot exchange transactions - permissible for Members of the Fund, would be confined to cases falling under Article XIV, Section 2 of the Articles of Agreement. Five years after the date on which the Fund began operations, its members still retaining multiple currency practices under the transitional arrangements of that Section shall consult with the Fund concerning their possible further retention.

The Delegate for Australia was of the opinion that the reference to dual or multiple rates of exchange should be deleted. At the London Session, the Delegate for China had reserved its position on this paragraph (which at the time did not include the words beginning with "authorized under" and ending with "this Charter").

Text, 18:2 (d)

"The bases and methods for determining the value
/of products

of products subject to duties regulated by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the amount of duty likely to be imposed."

Comment

The words "be given sufficient publicity to enable traders" in this sub-paragraph replace the phrase "be published in full detail, in order that traders may be enabled" in the original text. The change aims at meeting the objections against that text raised at the London session.

ARTICLE 19. CUSTOMS FORMALITIES

Text, 19:1

"The Members recognize the principle that subsidiary fees and charges imposed on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. They also recognize the need for reducing the number and diversity of such subsidiary fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements."

Comment

This paragraph was adopted without change by the Sub-Committee.

/Text, 19:2

Text, 19:2

"Members undertake to give effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they undertake upon a request by another Member to review the operation of any of their customs laws and regulations in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph."

Comments

The original text of this paragraph included an undertaking by Members to review their customs laws and regulations with a view to giving effect to the principles and objectives etc. In view of objections made at the London session against this provision, the paragraph was redrafted so as to provide for the undertaking by Members to (i) give effect to the principles etc. and (ii) review the operation of their customs laws and regulations in the light of these principles. The new text, it will be observed, is similar to that proposed by the Sub-Committee with reference to tariff valuation (paragraph 2 of Article 18).

Text, 19:3

"Except in cases of serious negligence, greater than nominal penalties over and above the duty properly payable should not be imposed by any Member in connection with the importation of any product of any other Member country because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established."

/Comment

Comment

In order to meet objections raised by several delegations at the London Session, a provision in the original text for the remittance of penalties "imposed because of actions which resulted from errors and advice of responsible customs officials" was deleted and the initial few words were added dispensing with the remaining provision in cases of serious negligence. For greater clarity, the words "over and above the duty properly payable" were added after "nominal penalties".

Text, 19:4

"The provisions of this Article shall extend to subsidiary fees, charges, formalities and requirements relating to all customs matters, including:

- (a) Consular transactions, such as consular invoices and certificates;
- (b) Quantitative restrictions;
- (c) Licensing;
- (d) Exchange regulations;
- (e) Statistical services;
- (f) Documents, documentation and certification;
- (g) Analysis and inspection; and
- (h) Quarantine, sanitation and fumigation."

Comment

The text adopted by the Sub-Committee differs only slightly from that in the United States Draft Charter: the words "such as consular invoices and certificates" under (a) were added at the London session;

/and the words

and the words "(plant, animal and human)" given after "fumigation" (under (h)) in the original text were deleted.

ARTICLE 20 - MARKS OF ORIGIN

Text, 20:1

"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".

Comment

This paragraph was adopted without change.

Text, 20:2

"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."

Comment

This paragraph was adopted without any change in substance.

Text, 20:3

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

Comment

At the London Session, certain delegates had objected to the text of the corresponding paragraph in the United States Draft Charter which started:

/"When

"When administratively possible, Members shall ...".
The present text in which the words "practicable" and "should" are substituted for "possible" and "shall", represents a compromise acceptable to the majority of members of the Sub-Committee. The Delegates for Canada, Czechoslovakia and the United States stated that they would have preferred to leave in the word "shall".

The Delegate for the United Kingdom reserved his position on this paragraph which in his view should be deleted.

Text, 20:4

"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 unreasonable increasing their cost."

Comment

The Sub-Committee did not suggest any change in the text of this paragraph.

Text, 20:5

Alternative A.

"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

operate to restrict trade in a degree disproportionate to any proper purpose to be served."

Alternative B

"Members agree to work in co-operation through the Organization toward the gradual elimination, as far as practicable, of obligatory marks of origin. With a view to (etc., same as Alternative A).

Comment

As given in the United States Draft Charter, paragraph 5 enumerated categories of products which were to be exempt from marking requirements. At the London Session, however, agreement could not be reached on the original text, and the draft now submitted as Alternative A was adopted.

The text shown under B represents an alternative wording of the first sentence, going farther than the previous alternative in that it suggests that Members "agree to work in co-operation through the Organization toward gradual elimination, as far as possible, of obligatory marks of origin". This text, supported by delegates for Australia, Canada, Chile, Cuba, Czechoslovakia and France, was tentatively retained with a view to consideration at the second session of the Preparatory Committee. The Delegates for Belgium-Luxemburg, the United Kingdom and the United States opposed this text because they considered that it would be going too far to make the elimination of marking requirements an obligation. The Delegate for Belgium-Luxemburg drew attention to the fact that marks of origin are frequently

are frequently beneficial to the consumer and not of a discriminatory character. It was pointed out, however, that the elimination of marking requirements by importing countries did not preclude the use of marks of origin by exporting countries.

According to the second sentence, the Organization would be authorized to make recommendations concerning products not suitable for marking requirements. While the majority of delegates represented at the Sub-Committee thought this the most useful procedure, the Delegate for Canada indicated that he would prefer recommendations as to products which may be made subject for marking requirements.

Consideration was given to the requirement of marking imported goods with the word "Foreign". It was decided that the problem involved in such a requirement would be more adequately dealt with under Article 23, Boycotts (see below).

Text, 20:6

"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."

Comment

In order to meet objections against the original text raised by certain delegates, the obligation that would be incurred by Members was rendered less exacting by addition of the words "As a general rule" at the

/beginning of

beginning of the Article, and by substituting the words "deceptive marks have been affixed" for "false marks have been intentionally affixed".

The question raised by certain delegates concerning the right of each country to prohibit the import, export and transit of foreign goods falsely marked as being produced in the country in question was considered to be covered primarily by the words "deceptive practices" in Article 37, sub-paragraph (g). Additional protection would be afforded by the suggested new paragraph 7 under Article 20.

Text, 20:7

Alternative A

"The interest of Members in protecting the regional and geographical marks of origin of their distinctive products is recognized and shall be given consideration by the Organization which is authorized to recommend a Conference of interested Members on the subject."

Alternative B

"Members agree to grant to trade names and marks of origin and quality that are recognized and protected by other Members, the same protection as is afforded by their domestic legislation to their own marks and trade names of origin and quality, provided that these marks and trade names relate to lace products. They shall, for this purpose, transmit to the Organization a list of such marks and trade names as are protected by their domestic legislation and for which they wish to secure protection in importing countries.

"They undertake further to take part in any Conference called by the Organization to secure effective international protection for marks of origin.

Comment

The question raised at the London Session concerning the possible extension of Article 20 to include a commitment by Members to protect in their respective countries the trade names and marks of origin and quality of other Members was taken up for new consideration.

The Sub-Committee decided to recommend the text

/shown under

shown under Alternative A, involving recognition of the interest of Members in such protection, and an authorization for the Organization to recommend a conference on the subject. This alternative was passed by the Sub-Committee without dissent, though at a roll taken the Delegates for Cuba and the United Kingdom did not vote and the Delegate for Chile declared that, though in principle supporting this alternative, he wished to reserve his position with regard to both Alternatives A and B. He considered that further time was required to study the matter which ought to be taken up at a later date.

The Delegates for Belgium-Luxemburg, Czechoslovakia and France, while accepting Alternative A, did not consider it going far enough and were in favour of the text of Alternative B involving, among other things, the acceptance of an obligation by Members to grant the same protection for trade names and marks or origin and quality as is afforded by their domestic legislation to their own marks and trade names.

In the course of the discussion, the Delegate for France, who had sponsored Alternative B, pointed out that in the case his suggestion were adopted, Members would extend to each other the same benefits concerning trade names or marks of origin as signatories of the Madrid Convention of 1891 now grant each other. The nature of the national legislation by which such protection is given would not have to be changed; in fact, if a country had no law protecting its domestic trade names and marks, it would not have to grant any protection to the trade
/names and

names and marks of imported products.

It was pointed out by one delegate in favour of Alternative A that two or three other Articles in the Charter might provide for the calling of such a Conference.

ARTICLE 21 - PUBLICATION AND ADMINISTRATION OF TRADE
REGULATIONS - ADVANCE NOTICE OF RESTRICTIVE REGULATIONS

Text, 21:1

"Laws, regulations, decisions of judicial authorities and administrative rulings of general application made effective by any Member, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale or distribution, transportation and insurance, or affecting their warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in a manner as to enable traders and Governments to become acquainted with them. Agreements in force, between the Government or a Governmental agency of any Member country, and the Government or Governmental agency of any other country affecting international trade policy shall also be published. Copies of such laws, regulations, decisions, rulings and agreements shall be communicated promptly to the Organization. This paragraph shall not require any Member to publish administrative rulings which would disclose confidential information, impede law enforcement, or otherwise be contrary to the public interest."

/Comment.

Comment

At the suggestion of the Delegate for Cuba, words were included rendering the provisions of this paragraph applicable also to laws, regulations etc., affecting the transportation and insurance of imports and exports.

The Delegate for France, while pointing out that this paragraph might replace Articles 4 and 6 of the Convention of 3 November 1923 for Simplification of Customs Formalities, suggested that it ought to be supplemented: (i) by insertion of the provisions of Article 5 of that Convention and (ii) of the Brussels Convention of 5 July 1890 on the publication of tariffs; (iii) by providing for the setting up in each Member State of an organization specially responsible for publishing, within the country and abroad, the laws and regulations relating to foreign trade; and finally (iv) by providing for the establishment within the International Trade Organization of an office responsible for collecting, analyzing and publishing as quickly as possible in the usual language laws, regulations and decisions concerning foreign trade and for the periodical collection, in detailed studies, of information concerning the comparative regulations of Member States on any given point.

The Sub-Committee felt that it might be useful if the Preparatory Committee were to suggest the absorption by the Organization of certain existing international agencies such as the Brussels Tariff Bureau, and arrangements for collecting, analyzing and publishing the information considered in point (iv) of the suggestion just referred to.

Text, 21:2

"Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Moreover, Members undertake to maintain or institute as soon as practicable, judicial arbitral or administrative tribunals or procedures for the purpose of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement."

Comment

Certain formal changes were made in the preceding sentences. In addition, the words "judicial or administrative tribunals" in the original text were changed to "judicial arbitral or administrative tribunals or procedures", and the word "prompt" was added before "review" in the second sentence.

After these changes, the only reservation maintained on this paragraph was that by the Delegate for New Zealand who was of the opinion that appeals against administrative decisions might be made to the Minister of Customs and that it should not be necessary to institute a special tribunal.

Text, 21:3

"No administrative ruling of any Member effecting an advance in a rate of import duty, or other charge under an established and uniform practice, or imposing

/a new or more

a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall, as a general rule, and within the limits of administrative practicability, be applied to products of any other Member already en route at the time of publication thereof in accordance with paragraph 1 of this Article: provided, that if any Member customarily exempts from such new or increased obligation products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the date of such publication, such practice shall be considered in full compliance with this paragraph. The provisions of this paragraph shall not apply to anti-dumping or countervailing duties."

Comment

In view of the difficulty of reaching agreement on this paragraph at the London Session, the Sub-Committee introduced two important changes in the substance of the original text. First, the initial words were changed so as to render the paragraph applicable to administrative rulings only (previously laws, regulations and decisions were also covered). Secondly, the undertaking involved was mitigated by entering the phrase "and within the limits of administrative practicability" after "as a general rule".

Further, it was thought advisable to limit the undertaking to imports, and references to export were accordingly deleted.

/The Delegates

The Delegates for Czechoslovakia, France, Norway, the Union of South Africa and the United Kingdom reserved themselves provisionally on this paragraph. The Delegate for the United States regretted these reservations and expressed the hope that they would be eventually withdrawn.

In connection with this paragraph, the Sub-Committee discussed the words concerning goods en route entered in square brackets in sub-paragraph 2 (f) of Article 25 (in the version adopted at the London Session) with the indication that these words should be retained only if the matter was not fully covered in Article 21. Certain of the delegates were of the opinion that, according to that article, a consignment en route at the time when public notice of the restriction was given should be admitted to enter the importing country and counted against the quota applied for the period in question; if the quantity exceeded the quota, the excess would have to be counted against the quota for the next period. Other delegates considered that the consignment should be admitted if the quota had not been used and that shipments from the most distant point should be given priority; quantities in excess of the quota, however, would have to be entered into warehouse. The Chairman undertook to prepare texts in accordance with each of these opinions, intended to replace the words now entered in square brackets in Article 25.

Note by the Secretariat. The final report of the Sub-Committee will record the decision to be taken at the twelfth meeting on this question.

ARTICLE 22 - INFORMATION, STATISTICS AND TRADE TERMINOLOGY

General Comment

The discussion at the London Session revealed that certain countries would experience difficulties in accepting the undertaking specified in Article 22 as worded in the United States Draft Charter. The Subcommittee found it useful, therefore, to suggest a text according to which the demands put on Members would be less exacting; hence expressions such as "so far as possible", "as is reasonably practicable" or "as reasonably ascertainable" were inserted in certain paragraphs. A number of other changes in substance were also introduced, however, and the text was shortened and simplified. Paragraph 6 in the text of the United States Draft Charter, referring to the promotion of international adoption of standard definitions of terms used in commercial practice and in developing standards to which goods may be manufactured or graded, has no equivalent in the text now suggested.

Text, 22:1

"Members undertake to communicate to the Organization as promptly and in as much detail as is reasonably practicable:

- (a) Statistics of their external trade in goods (including, for example, imports, exports, re-exports, transit and trans-shipment or, where applicable, goods in warehouse or in bond);
- (b) Statistics of Governmental revenue from import and export duties and other taxes on goods moving in international trade and, as readily ascertainable, of
/subsidy

subsidy payments affecting such trade.

"So far as possible, the statistics referred to in (a) and (b) shall be related to tariff classifications and be in such form as to reveal the operation of any restriction or importation or exportation which are based on or regulated in any manner by quantity or value, or by amounts of exchange made available."

Comment

The last sentence corresponds to paragraph 2 in the text of the United States Draft Charter.

Text, 22:2

"Members agree to publish regularly and as promptly as possible the statistics referred to in paragraph 1."

Comment

This is a simplified version of paragraph 5 in the United States Draft Charter. Attention should be paid to the omission of the word "promptly" in that text.

Text, 22:3

"Members undertake to give careful consideration to any recommendations which the Organization may make to them with a view to improvement of the statistical information furnished under Paragraph 1."

Comment

This paragraph has no equivalent in the text of the United States Draft Charter.

Text, 22:4

"So far as reasonably practicable, Members agree to make

/available

available to the Organization on request such other statistical information as may be deemed necessary to enable it to fulfill its functions, provided that the statistics are not being furnished to other international organizations from which the Organization can obtain the required information."

Comment

This paragraph corresponds to paragraph 3 in the text of the United States Draft Charter.

Text, 22:5

"The Organization shall act as a centre for the collection, exchange and publication of statistical information relating to international trade of the kind referred to in paragraph 1. The Organization may, in collaboration with the Economic and Social Council and its Commissions, and with any other interested inter-governmental specialized agencies, engage in studies with a view to bringing about improvements in the methods of collecting, analyzing and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications."

Comment

This is a simplified version of paragraph 5 in the text of the United States Draft Charter.

Text, 22:6

"The Organization may also, in co-operation with other organizations referred to in paragraph 4, study the question
/of adopting

of adopting standards, nomenclature, terms and forms to be used in international trade and in the official documents and statistics of Members relevant thereto, and may promote the general acceptance by Members of such standards, nomenclature, terms and forms as may be recommended."

Comment

This paragraph corresponds to paragraph 7 in the text of the United States Draft Charter. It will be observed, however, that unlike the last-mentioned paragraph, the text now recommended does not refer to the adoption of standards, nomenclature, terms and forms or to a procedure according to which adopted standards, etc, would become automatically effective upon notice given by the Organization. In view of this fact, the Sub-Committee suggests deletion of paragraph 8 of Article 66, containing rules for the adoption by the Conference of standards, etc.

ARTICLE 23 - BOYCOTTS

Text

"No Member shall encourage, support or participate in boycotts or other campaigns which are designed to discourage, directly or indirectly, the consumption within its territory of products of other Member countries on grounds of origin, or sale of products for consumption within other Member countries on grounds of destination:

/Provided

Provided that a campaign in support of the use or consumption of products of national origin or manufacture, and not directed against the products of any specific country, shall not be deemed to be a breach of this undertaking."

Comment

The last sentence of the text of this article as given in the United States Draft Charter, providing for the discouragement by each Member of boycott campaigns by subordinate entities within its jurisdiction, was deleted since this matter would be covered by the addition of a new paragraph to Article 88 suggested above under Article 15.

On the other hand, in order to meet views expressed by several delegates at the London Session, a proviso was added to the effect that the ban on boycotts should not apply to campaigns in support of the use of national goods and not directed against the products of any specific country.

The Delegate for the United States, while not reserving his position on this article, stated that he would have preferred the original text.

The Delegate for India reserved his position on this Article; the Delegate for China retained his comment at the London Session that weaker countries

/should

should be allowed to resort to boycotts in self-defence, and the Delegate for Lebanon reiterated his view that boycotts may be justified on political or moral grounds.

ARTICLE 37 - GENERAL EXCEPTIONS TO CHAPTER V

General Comment

At the London Session, the Delegate for China suggested inclusion of a new paragraph covering measures "temporarily imposed to prevent, arrest or relieve conditions of social disturbance, natural calamity, or other national emergencies, provided that such measures are withdrawn as soon as the said conditions cease to exist." The suggestion was passed over by the Sub-Committee; but it was pointed out that paragraph (b) covers this suggestion to a large extent.

Similarly, at the London meeting, the Delegate for India had suggested that his country should be allowed, for reasons of high policy, to discriminate against a member, either on a recommendation of the ITO or on its own initiative, provided due notice had been given to the Organization and to every Member concerned. It was left to the Delegate for India (who is not a member of the Sub-Committee) to maintain his suggestion in the full Drafting Committee, should he so desire.

/Text

TEXT, ARTICLE 37

"Subject to the requirement that measures are not applied in such a manner as to constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of the measures listed below:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to fissionable materials;
- (d) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying the military establishment;
- (e) in time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member:
 - (1) relating to the importation or exportation of gold or silver;
 - (g) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as, e.g. those relating to customs enforcement, state monopolies, deceptive practices, and the protection of patents, trade marks and copyrights;
 - (h) relating to the products of prison labour;
 - (i) imposed for the protection of national treasures of artistic, historic or archaeological value;
 - /(j) relating

(j) relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restrictions on domestic production or consumption."

COMMENT

37. Introductory part:

The initial words of this Article, ending with "disguised restriction on international trade"; were added in accordance with a preliminary decision reached at the London Session.

37 (a): NO COMMENT

37 (b):

A second alternative, implying addition of the words "where corresponding measures of protection are taken in the importing country", was supported by the Delegates for Australia, Belgium-Luxemburg, Brazil, Canada, Cuba, Norway and the Union of South Africa. The Delegates for Chile, Czechoslovakia, France, New Zealand and the United States advised against this addition.

37 (c) (d) (e): NO COMMENT

37 (f):

At the London Session, the Delegate for India suggested that this paragraph should not refer to silver which is an ordinary commodity in world trade. The Sub-Committee was not in favour of the suggested change.

37 (g):

37 (g):

The words "state monopolies" were inserted.

37 (h):

The words "the products of prison labour" were substituted for "prison-made goods".

37 (i): NO COMMENT

37 (j):

At the London Session, the Delegate for India suggested deletion from "if such measures" to the end of the paragraph.

The Delegates for New Zealand and Brazil retained their support given at that Session to the suggestion by the Delegate for India.

The Delegate for New Zealand reiterated his proposal that the words "or other" be added before "resources".
