

THIRD COMMITTEE: COMMERCIAL POLICY

REVISED ANNOTATED AGENDA FOR CHAPTER IV

Prepared by the Secretariat

SECTION E - GENERAL COMMERCIAL PROVISIONS

This revised Agenda for Chapter IV includes all the items which appeared in the preliminary Agenda (E/CONF.2/C.3/1) and all proposals received from delegations up to Monday, 8 December. For the convenience of delegates this Agenda is issued in six parts (numbered C.3/6 to C.3/11), one for each of the six sections of the Chapter. All the documents to which reference is made are addenda to E/CONF.2/11 and E/CONF.2/C.3/1.

Article 32 - Freedom of Transit

Paragraph 1

1. At Geneva the delegation of Chile maintained, for the time being, the view that Article 32 should be confined to goods only, in which case the word "and also vessels and other means of transport" in paragraph 1 should be deleted, and in consequence reserved its position.
2. The delegation of Argentina proposes (document 11/Add.3) the deletion of the phrase "and also vessels and other means of transport," which appear in the first lines of this paragraph.
3. The delegation of Afghanistan proposes (document C.3/1/Add.11) to insert after "breaking bulk" the words "disassembling, and reassembling."

Paragraph 2

4. The delegation of Argentina proposes (document 11/Add.3) the deletion of this paragraph.
5. The delegation of Chile proposes (document C.3/1/Add.6) that the following words be inserted at the beginning of this paragraph:

"Without prejudice to such arrangements as Members may agree upon among themselves and in regard to their own trade, there shall be..."

Paragraph 5

6. The following note was appended to the Geneva Draft:

With regard to transport charges, the principle of paragraph 5 refers to like products being transported on the same route under like conditions.

/Paragraph 6

Paragraph 6

7. The delegation of France has proposed (document 11/Add.24) that all the words after the word "Charter" in line eleven should be deleted.

The following statement is given in support of this proposal:

As the delegation of France pointed out during the discussions at Geneva, the French Government is not, in present circumstances and having regard to the state of French ports, in a position to amend its legislation to bring it into conformity with the provisions of paragraph 6. It therefore requests that the exception granted in respect of certain special regulations be made general.

New Paragraph 8

8. The delegation of Costa Rica proposes (document 11/Add.16) the addition of the following new paragraph:

"8. Livestock which has to ~~graze~~ for more than ____ days in the territory of a State before proceeding to its final destination shall not be considered as being in transit."

9. The delegation of Afghanistan proposes (document C.3/1/Add.45) the addition of the following sentence at the end of the new paragraph proposed by the delegation of Costa Rica:

"This does not apply to livestock of nationals of a Member who during certain seasons migrate with their principle belongings through the territory of another Member and return to their home territory (seasonal nomads)."

Article 33 - Anti-dumping and Countervailing Duties

General

10. The delegations of Cuba and Lebanon maintain their view, recorded in the Geneva Report, that they would prefer to introduce this Article by an express statement of condemnation of dumping. To this end the delegation of Cuba proposes (document C.3/1/Add.52) the following amendments to this Article:

Article 33 - Anti-dumping and Countervailing ~~[Duties]~~ Measures

1. No anti-dumping duty shall be levied 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 another⁷

/1. It is agreed

1. It is agreed by the Member countries, and so it is declared, that the practice of "dumping", be condemned, in whatever form it may manifest itself, and that all Members shall do the utmost within their powers to prevent and penalize such practices, pursuant to a fair international commercial policy. Consequently, it is also agreed that all Members shall counteract any and all forms of dumping with appropriate measures and also shall penalize such practices with the view to the protection of their domestic interests, provided that the Organization shall be immediately informed of the reasons and the extent of the action taken.

2. For the purpose of this Charter the term "dumping" shall be understood to mean any difference in price, other than that originating from the normal costs of marketing the product in international trade, that may exist as between comparable simultaneous sales of such product in the domestic market of the country of exportation and the importing country, or as between sales to two or more importing countries."

3. The margin of dumping shall be understood to mean:

(a) the difference between the price of a product exported from one country to another, and [is less than] the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or

(b) in the absence of such domestic price, [is less than] either the difference between the price at which the product is being imported and,

(i) the [highest] comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

[2] 4. [No countervailing duty shall be levied on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy] To the effect of offsetting the estimated bounty or subsidy under which any product of any Member country is being imported into another Member country, the Members may impose countervailing duties in the amount appropriate to offset the subsidy determined to... of any merchandise.

/5. (Text of

5. (Text of paragraph 3 of the Geneva Draft)
6. (Text of paragraph 4 of the Geneva Draft)
7. (Text of paragraph 5 of the Geneva Draft, except the last sentence, which shall be deleted.)

Paragraph 6 of the Geneva Draft Charter to be deleted.

New Paragraph 1

11. The delegations of Syria and Lebanon propose (document C.3/1/Add.20) that the following new paragraph should be inserted as the first paragraph of this Article:

"1. The Members recognize that the practice of dumping in any form is to be condemned and is inconsistent with the general purposes of this Charter."

12. The delegation of Argentina proposes (document 11/Add.3) that this Article and its title be replaced by the following:

"PREVENTION OF DUMPING. The Members condemn the practice of dumping and recognize the need to resort to every means possible for combating it. They undertake to spare no effort to that end. The Organization shall undertake studies and inquiries to provide information on dumping and shall communicate the results of such inquiries to Members, so that the latter may adopt such counter-measures as they think fit."

13. The delegation of China proposes (document 11/Add.9) that the following be adopted as the first paragraph of this Article:

"No dumping of any product of any Member country into any other Member country shall be made. Each Member country shall undertake by effective measures appropriate to its governmental system to prevent the dumping of any of its products into the territories of any other Member country. If, in spite of the obligation undertaken under this provision, dumping still takes place, the Member country into the territories of which the products of any other Member country are being dumped shall be free to impose anti-dumping duties on such products or to take other appropriate measures to deal with the situation."

14. The delegation of Mexico proposes (document C.3/1/Add.43) that paragraph 1 be replaced by the following:

"1. Members condemn the practice of dumping in all its possible forms and aspects, and authorize affected countries to adopt the necessary measures to combat it, and also to enact appropriate domestic legislation against this practice. No Member shall encourage, support or participate in campaigns designed to initiate or develop the practice of dumping."

/Paragraph 1

Paragraph 1

15. The delegations of Syria and Lebanon propose (document C.3/1/Add.20) that the first sentence of this paragraph should be amended as follows:

"[No] An anti-dumping duty [shall] may be [levied] imposed on any product of any Member country imported into any other Member country, [in excess of an amount] equal to the total margin of dumping [under which such] on that product [is being imported]."

16. The following note is appended to the Geneva Draft:

Hidden dumping by associated houses (that is, the sale by the importers at a price below that corresponding to the price invoiced by the exporter with which the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping.

Paragraph 2

17. The following note is appended to the Geneva Draft:

Multiple currency practices may in certain circumstances constitute a subsidy to exports which can be met by countervailing duties under paragraph 2 or may constitute a form of dumping by means of a partial depreciation of a country's currency which can be met by action under paragraph 1 of this Article. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Paragraph 5

The delegation of Denmark proposes (document C.3/1/Add.38) that the following sentences be inserted after the first sentence of this paragraph:

18. "If a Member imposes an anti-dumping or countervailing duty, that Member shall undertake to enter into negotiations with the allegedly offending Member. If agreement is not reached, the matter may be referred to the Organization and treated in conformity with the rules of Article 90.";

19. That the second sentence in the existing draft, that is, from "the Organization may..." to "... the importing Member country." be deleted.

20. The following note was appended to the Geneva Draft:

The delegations of Belgium-Luxembourg, Czechoslovakia, France and the Netherlands expressed the fear that abuses might be committed under cover of the provisions of paragraph 5 regarding the threat of injury of which a State might take advantage on the pretext that it intended to establish some new domestic industry in the more or less distant future. It is considered, however, that, if such abuses were committed, the general provisions of the Charter would be adequate to deal with them.

Paragraph 6

21. At Geneva paragraph 6 was added to the previous draft of this Article. The delegations of China, India and Pakistan maintain their opposition, recorded in the Geneva Report, to the addition of this paragraph.

22. The delegation of Mexico proposes (document C.3/1/Add.43) that this paragraph be deleted.

23. The delegations of Syria and Lebanon propose (document C.3/1/Add.20) the deletion of this paragraph and the insertion of the following:

"If a Member country exporting a like product considers it is being injured by dumping practiced by another Member, it may refer the matter to the Organization. The Organization shall conduct an investigation and make appropriate recommendations to the Member concerned. If the Organization finds that the latter fails to put its recommendations into effect, it shall recognize the right of the complaining Member to refuse to apply agreed tariff advantages to the trade of the defaulting Member."

24. The following note was appended to the Geneva Draft:

The obligations set forth in paragraph 6 are, as in the case of all other obligations under Chapter IV, subject to the provisions of Article 40.

25. The delegation of the Philippines suggests (document C.3/1/Add.34) that the following rearrangement of the paragraphs of this Article would be proper and convenient:

Paragraphs 5, 3, 4, 6, 1, 2.

Article 34 - Valuation for Customs Purposes

Paragraph 2

26. The following note was appended to the Geneva Draft:

The Preparatory Committee considered the desirability of replacing the words "at the earliest practicable date" by a definite date or, alternatively, by a provision for a specified limited period to be fixed later. The Committee appreciated that it would not be possible for all Members to give effect to these principles by a fixed time, but it was nevertheless understood that a majority of the Members would give effect to them at the time the Charter enters into force.

/27. The delegation

27. The delegation of Argentina proposes (document 11/Add.3) the deletion of the words "upon a request by another Member" from the second sentence.

Paragraph 3

Sub-paragraph 3 (a)

28. It is proposed by the delegation of Uruguay (document C.3/1/Add.7) that the following be added to sub-paragraph (a):

"The temporary binding of the actual value of the merchandise may nevertheless be permitted, provided that it is revised to be brought into line with the actual value within a period not exceeding three years."

Sub-paragraph 3 (b)

29. At Geneva, the delegation of Chile reserved its position on paragraph 3 for the time being. Now, this delegation proposes (document C.3/1/Add.6) the following addition at the end of this sub-paragraph:

"It is understood that those countries which at present maintain a system of periodically establishing the 'actual value' of merchandise, on the basis of an average value ascertained, provided that an adjustment of such 'actual value' is made whenever a considerable price fluctuation in the price of a product occurs, will also comply with the requirements laid down in this sub-paragraph."

30. The delegation of Uruguay proposes (document C.3/1/Add.7) to insert the following sentence between the first and second sentence of this sub-paragraph:

"In the case of Government contracts in respect of primary products, the contract price shall be regarded as the actual value."

General

31. The following notes were appended to paragraph 3 of the Geneva Draft:

(a) It would be in conformity with Article 34 to presume that "actual value" may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount or other reduction from the ordinary competitive price.

32. (b) It would be in conformity with Article 34, 3 (b), for a Member to construe the phrase "in the ordinary course of trade", read in conjunction with "under fully competitive conditions", as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

/33. (c) The

33. (c) The prescribed standard of "fully competitive conditions" permits Members to exclude from consideration distributors' prices which involve special discounts limited to exclusive agents.
34. (d) The wording of (a) and (b) permits a Member to assess duty uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

Paragraph 5

35. The delegation of Argentina proposes (document 11/Add.3) the deletion of this paragraph.

36. The delegation of Uruguay proposes (document C.3/1/Add.53) to change the last part of sub-paragraph 5 (d) to read:

"..... if such alteration would have the effect of increasing or decreasing generally the amounts of duty payable".

New Paragraph 7

37. The delegation of Uruguay proposes (document C.3/1/Add.7) that the following new paragraph be added to this Article:

"7. Traders, before despatching merchandise, shall be able to consult the appropriate customs authorities with regard to the classification, tariff and value applicable to the merchandise."

Article 35 - Formalities connected with Importation and Exportation

Paragraph 1

38. The delegation of Argentina proposes (document 11/Add.3) that the first lines be amended as follows:

"The Members recognize that [fees and charges, other than duties,] dues imposed by governmental authorities....."

The delegation of Argentina proposes (document 11/Add.3) that the words "...fees and charges..." in the second sentence be replaced by the word "dues".

39. The delegation of Turkey proposes (document 11/Add.26) the following amendment in the first sentence:

"The Members recognize that fees and charges, other than duties, imposed in payment for services rendered by governmental authorities [on or] in connection with importation or exportation should be limited in amount to the approximate cost of those services..."

Paragraph 4

The delegation of Uruguay proposes (document C.3/1/Add.7) the following amendments:

/40. that the words

40. That the words "penalties" be replaced by "sanctions"; and
41. That the words "made without fraudulent intent or gross negligence" be replaced by "not of a serious nature".

Paragraph 5

42. The delegation of Uruguay proposes (document C.3/1/Add.7) that the following be added to this paragraph:

"The Organization should study and specially recommend to Members the granting of every facility as regards duties and quantitative control for the import and export of articles of any kind intended for commercial and tourist advertising purposes and not for sale. The same privileges shall be granted to commercial travellers and to collections of samples accompanying them."

43. The delegation of Argentina proposes (document 11/Add.3) that the words "fees, charges" be replaced by the word "dues".

44. The following note was appended to paragraph 5 of the Geneva Draft:

While Article 35 does not cover the use of multiple rates of exchange as such, paragraphs 1 and 5 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a Member is using multiple currency exchange fees for balance of payments reasons with the approval of the International Monetary Fund, the provisions of paragraph 2 fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date.

New Paragraph

45. The delegation of Uruguay proposes (document C.3/1/Add.7) that the following new paragraph be inserted after paragraph 5:

"6. In the case of any customs offence, for which only a monetary penalty is imposed, the matter shall be considered closed if the offender recognizes the offence and pays the appropriate duties and surcharges."

46. The delegation of Afghanistan proposes (document C.3/1/Add.11) the addition of the following paragraph at the end of this Article:

"6. The Organization shall study, make recommendations for and promote with or without request by a Member, international agreements on measures designed to improve the conditions of traffic in transit, including the use of means of transport and the establishment of free zones at ports of entry and/or rail and road terminals on the territory of the Member through which the traffic in transit passes. Such agreements shall have reasonable regard to the conditions of traffic on the routes and facilities of decking and warehousing most

/convenient for

convenient for international transit."

General

47. The delegation of Brazil states (document C.3/1/Add.26) that its acceptance of the provision of Article 35 as regards the imposition of charges on the international transfer of payments is conditional upon the recognition of the validity of the regulation in force in Brazil. For that reason it will have occasion to submit, if necessary, an amendment in this connection at the time of the matters being discussed.

Article 36 - Marks of Origin

48. The delegation of Argentina proposes (document 11/Add.3) that this Article be deleted.

Paragraph 7

49. At Geneva the delegation of Chile reserved its position. Now, this delegation proposes (document C.3/1/Add.6) that the second and third sentences of this paragraph be deleted and replaced by the following:

"The above-mentioned purpose shall be considered as having been fulfilled if the name of the producer country using the geographical or regional name in question appears in a legible manner on the label of the product."

Article 37 - Publication and Administration of Trade Regulations

Paragraph 3 (c)

50. The delegation of Argentina proposes (document 11/Add.3) that the last part of the last sentence beginning with the words "in order that..." be deleted.

51. The delegation of New Zealand proposes (document 11/Add.6) that the last words of this sub-paragraph, namely, "and those of sub-paragraph (b)" should be deleted, and presents the following explanatory note:

The above amendment is to bring the provision in the Charter into line with the corresponding provision included in Article X of the General Agreement on Tariffs and Trade. The reference in question to sub-paragraph (b) was made inadvertently, the original intention having been to refer to sub-paragraph (a) in conformity with the decision of the sub-committee which dealt with the matter at the Second Session of the Preparatory Committee. Attention to the position was called by the Legal Drafting Committee of the Trade Agreements Committee when considering the corresponding provision to be included in the General Agreement on Tariffs and Trade. Upon consideration by the Trade Agreements Committee it was decided that since sub-paragraph (a) sets out a general principle to which all members must subscribe there is no purpose in making reference to it in sub-paragraph (c) and the words

/"and those of

"and those of sub-paragraph (b)" were accordingly deleted from the provision included in the General Agreement on Tariffs and Trade.

52. This proposal is supported by the delegation of the United Kingdom (document 11/Add.8).

Article 38 - Information, Statistics and Trade Terminology

53. The delegation of Norway proposes (document C.3/1/Add.39) that this Article be rewritten as follows:

"1. The Members shall communicate the statistics of their external trade as promptly and inasmuch detail as is reasonably practicable to the Organization, or to such agency as may be designated for the purpose agreed upon by the Organization in consultation with the appropriate organs of the United Nations.

[(a) statistics of their external trade in goods (imports, exports and, where applicable, re-exports, transit and trans-shipment and 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, insofar as readily ascertainable, of subsidy payments affecting such trade.

2. So far as possible, the statistics referred to in paragraph 1 of this Article shall be related to tariff classification and shall be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value or amounts of exchange made available.]

[3] 2. Members shall publish regularly and as promptly as possible the statistics [referred to in paragraph 1 of this Article] of their external trade.

[4] 3. Members shall give careful consideration to any recommendation which the Organization and other appropriate organs of the United Nations may make [to them] with a view to improving the statistical information furnished [under paragraph 1 of this Article] regarding their external trade.

[5] The Members shall make available to the Organization, at its request and insofar as is reasonably practicable, such other statistical information as the Organization may deem necessary to enable it to fulfil its functions, provided that such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information.]

/4. The Organization

4. The Organization shall obtain such other statistical information as it may require for its operation through the statistical services of the United Nations and the Specialized Agencies in accordance with the agreements negotiated with the United Nations under Article 84 of this Charter.

6. The Organization shall act as a centre for the collection, exchange and publication of statistical information of the kind referred to in paragraph 1 of this Article. The Organization, in collaboration with the Economic and Social Council of the United Nations, and with any other organization deemed appropriate, may engage in studies with a view to improving 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.⁷

5. The Organization, taking into account the needs of all international agencies and in order to avoid all unnecessary duplication shall arrange in consultation with the appropriate organs of the United Nations, for the collection, exchange and publication of such statistics of external trade as are appropriate to the needs of international agencies.

6. The Organization, in co-operation with the other organizations referred to in paragraph 6 of this Article organs of the United Nations may also study the question of adopting standards, nomenclatures, terms and forms to be used in international trade and in the official documents and statistics of Members relating thereto, and on the basis of agreements reached with the appropriate organs of the United Nations may recommend the general acceptance by Members of such standards, nomenclature, terms and forms."

Article 39 - Boycotts

54. At Geneva the delegation of Lebanon reserved its position. Now, the delegations of Lebanon and Syria propose (document 11/Add.14) the following amendments to this Article:

"1. No member shall encourage, support or participate in boycotts for other, whether by governmental measures or by popular campaigns, which are designed to discourage, directly or indirectly, the import into or consumption within its territory of products of any specific Member country or countries on grounds of origin, or the export or sale of products for consumption within other Member countries on grounds of destination, or the transit of products on grounds of origin or destination.

/2. Nothing in paragraph 1

2. Nothing in paragraph 1 of this Article or in the other provisions of this Charter shall prevent a Member from engaging in boycotts designed to protect its national security or to safeguard its essential national interests."

55. The delegation of Iraq (document C.3/1/Add.46) proposes that this Article should be amended as follows:

"1. No Member shall institute, encourage, support or participate in boycotts or other campaigns or measures which are designed to prohibit or discourage, directly or indirectly, the import into, or consumption within its territory of products of any specific Member country or countries on grounds of origin, or the export to or sale of products for consumption within, other Member countries on grounds of destination, or the transit through its territories of products on grounds of origin or destination.

2. Notwithstanding other provisions of this Charter, the provisions of paragraph (1) of this Article shall not apply to practices maintained by a Member before the entry into force of this Charter, and designed to protect its national security or to safeguard its essential national interests."

The following statement is given in support of this proposal:

"Certain restrictions in force have been accepted in many parts of the Charter on grounds that special hardship or injury to the interests of the countries involved would result from their removal. This is especially so when such restrictions are maintained to protect the vital interests of the countries concerned."

56. The delegation of Mexico proposes (document C.3/1/Add.43) that the following sentence be added to this Article:

"Campaigns designed to increase domestic consumption of the articles produced in any country shall not be considered as indirect action to discourage consumption of the products of any other Member."
