THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE C - GENERAL COMMERCIAL PROVISIONS
(Articles 32 - 39)

ARTICLE 39 - ANTI-DUMPING AND COUNTERVAILING DUTIES

REPORT OF THE WORKING PARTY TO SUB-COMMITTEE C

1. As members of the Sub-Committee considered the matter to be of importance to all members of the conference the Chairman of Sub-Committee C of Committee III was requested to arrange for circulation as an official document of the reports of a Working Party set up by the Sub-Committee to consider the various issues raised in relation to Article 33.

The report set out hereunder is a consolidation of two reports made by the Working Party. Both reports were adopted by the Sub-Committee at its meeting held on 16 January 1948.

The original members of the Working Party were the representatives of Cuba, Lebanon, the United Kingdom and the United States. Later the representative of the Netherlands was added and the representative of Australia was appointed as Chairman. The representative of Brazil, although not a member of Sub-Committee C, participated in the discussion in the Working Party.

2. When presenting the second report the Chairman of the Working Party included in his remarks the following statement:

"I would like to point out that the recommendations of the Working Party do not in many cases represent the original view of each individual member of the Working Party in his capacity as a representative of a particular country. They represent a compromise which the individual members are prepared to recommend because they consider that these recommendations represent a formula which reflects as nearly as possible the view of the majority of the members of the Sub-Committee and of the other members of this conference who have been sufficiently interested in the question of anti-dumping and countervailing duties to state their views before this Sub-Committee".

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CONSORTIATION OF THE REPORTS OF THE WORKING PARTY ON ARTICLE 33

3. The Working Party, under its terms of reference, was instructed to consider the following matters, viz.:

(i) A form of words which should be placed as a preamble to Article 33 and which would, in effect, constitute a general condemnation of the practice of dumping;

(ii) The question of a definition of dumping, particularly as to whether the present definition of the 'margin of dumping' could not be so amended by mere drafting of changes as to be, in effect, a definition of 'price dumping';

(iii) Whether this Article should, as it does at present, be restricted to relate solely to so-called 'price dumping';

(iv) Whether paragraph 6 should be deleted or amended in the event that it could be interpreted so as to limit action permitted under Articles 13 and 14;

(v) The footnote to paragraph 6;

(vi) Whether 'hidden dumping' as described in the footnote to paragraph 1 is covered by the text of paragraph 1 and in the event that it is not so covered to consider whether the note or the text should be amended;

(vii) A new paragraph proposed by the representative of Brazil relating to procedures for insuring collection of anti-dumping duties; in cases of suspected or apparent dumping;

(viii) A new paragraph proposed by the representative of the Netherlands to provide facilities for consultation between members on questions related to 'dumping';

(ix) A new paragraph, to replace paragraph 6, proposed by the representative of Argentina to allow members in exceptional circumstances, to use measures other than anti-dumping duties against dumping.

4. Items (i) and (ii)

After examining the first two points in the light of the discussions in Sub-Committee C and a written proposal submitted by the delegate of the Netherlands, the Working Party was able to reach agreement on a form of words which would provide a general condemnation of the practice of dumping, together with a definition of 'price dumping'. The text proposed by the Working Party,
Working Party, which would replace paragraph 1 of the present Article, is shown as the Annex to this report. With reference to the word 'industry' in paragraph 1 of the text, the Working Party wish to make it clear that in their intention the word 'industry' includes such forms of economic activity as agriculture, forestry, mining, etc., as well as manufacturing.

5. **Item (iii)**

It was the unanimous opinion of the Working Party, after full consideration of the discussions in the Sub-Committee, that Article 33 should be restricted to 'price dumping'.

6. **Item (iv)**

The Working Party was evenly divided as to whether the terms of paragraph (6) could be construed as limiting the rights of Members under Articles 13 and 14. It was in agreement, however, that paragraph (6) was unnecessary and that its deletion would not effect any change in substance. The Working Party therefore recommends that Sub-Committee C suggest the deletion of paragraph (6) with a clear statement in its report to Committee III that the deletion is not to be understood as meaning that measures other than anti-dumping or countervailing duties may be applied in cases of dumping or subsidization except as such other measures are permitted under various provisions of the Charter.

7. **Item (v)**

If the foregoing suggestion is adopted, the Note of the Geneva Draft will no longer be necessary.

8. **Item (vi)**

After careful consideration the Working Party concluded that the case of 'hidden dumping' as described in the terms of reference, is covered by the text of paragraph 1, but that the Note requires clarification as to the basis for calculating the margin of dumping. It is therefore suggested that the following addition should be made to the Note:

"in which the margin of dumping may be calculated on the basis of the price at which the goods are re-sold by the importer."

Further the Working Party suggested that the slight verbal changes in this Note as it appears in the General Agreement on Tariffs and Trade might be adopted by the Sub-Committee, so that the Note would appear as follows:

"Hidden dumping by associated houses (that is, a sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping in which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer."

9. **Item (vii)**
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After considering the new paragraph proposed by the representative of Brazil at the Sub-Committee meeting on 9 January, together with a modification of this proposal suggested by the representative of Pakistan at the Sub-Committee meeting on 12 January, the Working Party recommended unanimously the inclusion of a Note to Article 33 in the following terms:

"As in many other cases in Customs administration, a Member may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization."

10. **Item (viii)**

In connection with the new paragraph proposed by him in the paper submitted to the Sub-Committee on 9 January the representative of the Netherlands pointed out that the proposal was intended to:

(a) provide facilities for consultation between Members in cases of suspected dumping before anti-dumping duties are actually brought into operation

(b) to provide facilities for consultation between two countries, where one of them is considered by the other to be dumping in a third country, before recourse is made to the Organization in accordance with the second sentence of paragraph 5.

(c) to bring Article 33 into line with Article 25 where provision is made for consultation with regard to subsidies.

The other members of the Working Party considered, however, that the position with regard to consultation was adequately dealt with in Article 41 and Article 89 and they felt that their opinion reflected the opinion of the majority of the members of Sub-Committee C in view of the decision of the Sub-Committee when dealing with the proposal of the Danish delegation (contained in Item 18 of the E/CONF.2/C.3/10).

11. **Item (ix)**

The representative of Argentina proposed to replace the text of Paragraph 6 with the following paragraph:

"In exceptional circumstances in which the anti-dumping measures envisaged in this article prove inadequate the country affected may adopt any other defensive measures provided for in its legislation and shall inform the Organization thereof."

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As it affected several of them, this proposal was considered in relation to the various issues raised. None of the members of the Working Party favoured the inclusion of a provision on the lines of the Argentine amendment and therefore the Working Party recommended against the adoption of the Argentine proposal.

12. The Working Party considered that in paragraph 5 the words "prevent or" appearing before "materially retard" are redundant and therefore should be deleted.

13. In their proceedings the Working Party took into full consideration, insofar as they lay within their terms of reference, the amendments tabled by Argentina, China, Cuba, India, Pakistan, Mexico, Syria and Lebanon and the proposals made and the views expressed by members of the Sub-Committee and by other delegates who presented their views during the discussions in the Sub-Committee.

14. The Working Party feels that if its proposals are adopted Article 33 will appropriately cover the case of dumping.

15. The text of paragraphs 1 and 2 is given in the Annex to this report.
ANNEX

Article 33

Anti-Dumping and Countervailing Duties

1. The Members recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in a Member country or materially retards the establishment of a domestic industry. For the purposes of this Article a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from the one country to the other:

(a) 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

(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. In order to offset or prevent dumping, a Member may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1 of this Article.

[Paragraphs 2, 3, 4, 5 and 6 of Geneva text would follow, renumbered]