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**MEMORANDUM**

**ON THE LEGISLATION OF DIFFERENT STATES  
FOR THE PREVENTION OF DUMPING, WITH  
SPECIAL REFERENCE TO EXCHANGE DUMPING**

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[*Translation.*]

A. — INTRODUCTORY REMARKS ON THE DIFFERENT KINDS OF DUMPING;  
IN PARTICULAR, DUMPING OF EXCHANGE.

The meaning of dumping in international trade varies. In current legislative and economic phraseology, dumping means selling a commodity abroad at a price lower than its selling price for internal consumption in the exporting country. Some laws — for instance, the British Anti-Dumping Act — restrict this conception still further and combat dumping only when it takes the form of selling goods abroad at prices below the exporting country's own cost of production, that is, below cost price.

A particularly widespread form of dumping is that based on open or secret export premiums from the Government or from private sources. The system of State bounties on exportation, which dates back to the age of the mercantile system, still survives in the laws of some foreign countries, e.g., the Royal Spanish Decree for the Encouragement of National Industries of April 30th, 1924.

“Freight” dumping is a special kind of dumping. Here the foreign price is cheapened by Government or private subsidies which make it possible to reduce railway or sea freight rates so that goods for export can be carried at rates below the ordinary rates.

The importation of goods has also often been regarded as dumping when their exceptionally low price is due to the following circumstances in the country of exportation: lower wages than in the importing country, longer working hours, lower taxes, lighter social legislation charges, reduced food prices as a result of State subsidies, rents kept compulsorily at a low figure (the last two factors often enable saving to be effected in wages), lower freight rates (apart from actual “freight” dumping) and many others. But all these factors, as a rule, equally affect internal prices. The characteristic condition of “real dumping”, viz., that the export price should be below the international consumption price in the exporting country, is therefore not created by the operation of these factors. Hence this case is sometimes spoken of as “false” dumping.

Still less can what is called “exchange” dumping be counted as dumping in the above sense. True, here the export prices are always below world prices, but they are, as a rule, above the internal purchasing price, which has not followed the exchange fluctuations. In “exchange” dumping, the profit on export lies in the exploitation of the margin between inland and world prices. The result is generally three sets of prices: the internal price; above it, the export price; and above that again, the world price. The cause of “exchange” dumping is, as everyone knows, that the rise in the internal prices of a country with a falling currency does not generally keep pace with the depreciation of the currency. Consequently, the same industrial production in a country with a falling currency requires less expenditure for material wages and general

costs than in a country with a stable currency. Prices in a country with a falling currency do not, however, develop parallel with the course of exchange. If, for example, the currency remains for a time at a given level, internal prices gradually adjust themselves to that level, and the difference between the internal and external purchasing power of money shrinks little by little until, after a time, it disappears altogether. Then the possibility of exchange dumping ceases. This is the unavoidable consequence of any currency stabilisation, no matter at what level.

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## B. — SUMMARY OF THE LEGISLATION OF DIFFERENT STATES AGAINST DUMPING.

### I. — MEASURES TO PREVENT ORDINARY DUMPING.

If we examine the various anti-dumping laws described in detail in the Annex, the situation appears as follows:

In Switzerland, Spain, France, Portugal, Poland, Belgium, Austria and Czechoslovakia, legislation is directed only against dumping based on export bounties. The two last-named States have also provisions against "social" dumping, the object of which is to prevent undercutting resulting from less favourable social conditions, even if no real dumping takes place.

New Zealand, South Africa, Japan and the United States of America have provisions against "bounty" dumping, in addition to a general dumping clause. The importance of the special provisions against "bounty" dumping, which naturally comes within the general conception of dumping, is that the dumping duty is not assessed on the amount by which the internal price of consumption in the exporting country exceeds the import price, but simply according to the amount of the bounty, irrespective of price difference.

Australia and Great Britain have no special provision against bounty dumping; but only general anti-dumping clauses. Great Britain limits the meaning of dumping to sales below the cost of production.

Australia, New Zealand and South Africa have provisions against the special kind of dumping known as "freight" dumping. These provisions are probably primarily directed against the reduction of sea freights. The anti-dumping law recently passed in Czechoslovakia also includes "freight" dumping, even though it is not expressly mentioned.

Numerically, then, the provisions against "bounty" dumping come first, and chronologically, too, they precede the more general anti-dumping laws.

The practical importance in international trade of the anti-dumping laws which we have mentioned can only be measured by the number of concrete cases in which these laws have actually been applied to imports. The information available on this point is given in the Annex under the headings of the different countries. It may be summed up as follows:

The *Canadian* law, according to its language, should have been applied, without special administrative orders, to each and every import transaction, provided that it amounted to dumping under the Act. But, as has been shown, the Canadian Ministry of Customs has several times published lists of goods on the entry of which the Customs officers were to collect dumping duty, subject to the provisions of the Act. The inference is that the Canadian Customs officials verify the existence of the statutory conditions only for imports of the kind scheduled and collect dumping duty accordingly. In *Australia*, the Department of Customs has notified, in about seventy Orders, certain goods which, if they come from certain countries and are below the internal price charged in those countries, shall be subject to dumping duty. Similarly, in *South Africa* after the war, the Governor-General notified, in ten Proclamations, certain goods coming from certain particular countries. But we do not know, in the absence of any official information, how often a dumping duty had actually been collected in these countries on individual import transactions under the aforesaid order.

No country other than those mentioned has imposed any dumping duties. For in all cases the anti-dumping laws are Acts conferring powers the exercise of which is contingent on certain goods being notified by the central authorities. No such notifications have been made.

On the whole, then, it may be said that in Europe, including Great Britain, and also in the United States of America and New Zealand, the anti-dumping laws are not enforced in actual practice. Therefore only the anti-dumping legislation of Canada, Australia and South Africa can be said — if at all — to constitute any effective charge on the import trade. All other countries of any importance in international trade have not up to the present taken any practical steps against dumping.

## II. — MEASURES TO PREVENT EXCHANGE DUMPING.

To sum up, if we consider which of the more important countries in international trade have taken legislative measures to prevent exchange dumping, the position appears to be as follows:

In Europe, only Spain and Belgium have levied import surtaxes. Switzerland has protected herself against Germany by means of import prohibitions. Great Britain has imposed additional exchange duty on only a few German products, and has otherwise not enforced exchange dumping legislation. Similarly, Italy, France, the Netherlands, Sweden, Norway, Denmark, Austria, Poland, Roumania, the Kingdom of the Serbs, Croats and Slovenes, Turkey and Greece have not hitherto introduced any import restrictions to prevent exchange dumping.

Of the overseas countries, effective measures against "exchange" dumping have been taken only by Canada, Australia and New Zealand. It is impossible, however, to judge to what extent German imports have been hit, during the period of inflation, by Canadian legislation, since, as was previously explained, the additional duty is fixed by the administrative Customs officers in each individual case, and no public data appear to be available. How far Australia and New Zealand (the latter practically a negligible quantity in the European, and particularly the German, export trade) have made use of their statutory powers has already been shown. Besides the three cases mentioned — Belgian, French and Italian asbestos cement — South Africa has not exercised its statutory powers. No more has the United States of America. Argentine, Brazil, Chile, Mexico, Germany, British India, China and Japan have not even created any sort of legal machinery for preventing exchange dumping.

It seems, therefore, that legislative measures against exchange dumping are not widely enforced. The extent to which exportation from countries with a low rate of exchange has actually been affected by anti-dumping legislation may be gathered from the following:

Of Germany's total exports in 1923 and 1913, the proportions of each of the countries which took effective measures to stop German dumping in the period of inflation were as follows:

	1923	1913
	Percentage of German Total Exports	
Switzerland . . . . .	5.7	5.3
Belgium . . . . .	1.7	5.4
Spain . . . . .	1.4	1.5
Canada . . . . .	0.3	0.6
Australia . . . . .	0.2	0.9
New Zealand . . . . about	0.07	0.1
	9.37	13.8

The only relatively marked decline in the percentage of exports is in the case of Belgium. The above table shows, moreover, that the countries which took the most stringent measures against German currency dumping were the ones that only absorbed a small proportion of her total exports. All the other countries, not named above, whose proportion of the total exports amounted in the aggregate to 86.2 per cent in 1913, and to 91.6 per cent in 1923, did nothing to hinder the entry of German goods even in 1923. These countries include Germany's principal outlets, namely — in the order of the proportion of exports taken in 1924 — the Netherlands, Great Britain (apart from the few articles already mentioned), the United States, Czechoslovakia, Austria, Poland, Denmark, Sweden and Italy.

Similarly in the case of the other countries:

*Austria*, whose currency fluctuations stimulated exportation, more especially in 1922 and in the first half of 1923, before the schilling currency was introduced,

exports mainly to the following countries: Germany, Czechoslovakia, the Kingdom of the Serbs, Croats and Slovenes, Italy, Poland, Hungary, Roumania and Switzerland. Apart from Switzerland, which only takes 7 per cent of the total Austrian exports, none of the above countries, which account for 77.4 per cent of Austrian exportation, has taken measures against Austrian exchange dumping.

*Italy*, whose currency is at present pretty well stable, though it was at various times favourable to exchange dumping, sends her goods chiefly to the following countries: France, Switzerland, Germany, Great Britain, United States, Argentine, Austria, the Kingdom of the Serbs, Croats and Slovenes and Czechoslovakia. None of these countries, which account for 68 per cent of the Italian exports — if we except a few import prohibitions applied against Italy by Switzerland — placed any obstacles in the way of Italian exports at the time of the "exchange" dumping.

It is the same with *Belgium*. The Belgian currency fell from 38.05 per cent of its par value in 1920 to a point sometimes as low as 19.8 per cent during the second half of 1923 and the first months of 1924. The ensuing increase in exports went chiefly to the following markets: Great Britain, France, Netherlands, Germany, United States, Argentine, Switzerland and Italy. Of these countries, which together took 76.6 per cent of the Belgian exports in 1924, not one adopted any measures to oppose Belgian "exchange" dumping.

*Poland*, in addition to her currency troubles during the year 1926, also went through an earlier period of inflation which especially favoured exchange dumping. In the period from 1922 to April 1924, the Polish mark fell from 0.3 per cent of its par value to under 1/1000 per cent. In May 1924, Poland stabilised her currency for almost a year by establishing the zloty. Since then, however, a fresh and very heavy depreciation has set in, and Polish exchange dumping has again assumed considerable proportions. Poland's chief markets, in the order of the proportions they absorb, are: Germany, Austria, Great Britain, Czechoslovakia, Roumania, France, the Netherlands. Of these countries, Germany, it is true, has imposed higher duties on Polish exportation. But the German special duties and import prohibitions in respect of Poland were not intended to prevent Polish "exchange" dumping but as reprisals for the Customs war that Poland has been waging against Germany. With this exception, the above countries, which in the aggregate take 85.3 per cent of the Polish exports, have not handicapped imports from Poland by special duties or increased tariffs.

*France*, whose currency fluctuations, especially in the first half of 1926, have greatly stimulated French "exchange" dumping, exports chiefly to the following countries: Great Britain, Belgium and Luxemburg, Germany, the United States, Switzerland, Italy, Spain and the Netherlands. Spain indeed applied tariff increases against France until the conclusion of the commercial treaty between France and Spain of July 8th, 1922; so far, it has taken no measures against the fall in the French franc. Besides Spain, we may mention a few import prohibitions on the part of Switzerland, whose share of the French total exports has nevertheless risen from 5.9 per cent in 1913 to 6.3 per cent in 1924. Apart from this, the above-mentioned markets, which, including the French colonies, take 88.4 per cent of the French exports, have not as yet done anything to prevent the "exchange" dumping resulting from French



inflation. Nevertheless, the competition of French industry, particularly the iron industry, is having a very adverse effect not only on the German markets but also those of Italy, Luxemburg, Belgium and, most of all, Great Britain. According to information in the Press, the Italian industry has now demanded the establishment of exchange surtaxes in French iron.

To conclude our review of foreign legislation, the following points emerge:

I. Only Belgium, Switzerland, Canada, Australia and New Zealand have attempted in any effective way to protect their home markets against "exchange" dumping.

II. The total exports of those countries whose industry has practised "exchange" dumping to any great extent have been only very slightly affected by the "exchange" dumping provisions of foreign countries.

III. The very countries that are the most important in international trade, that is, the great European countries and North America and Japan, have either done nothing whatever to stop "exchange" dumping, or — as in the case of England — have contented themselves with temporary measures applied to a few articles. So far, therefore, the policy of using the Customs tariff as a weapon against "exchange" dumping has not become the general practice in international trade.

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## Annex.

### LEGISLATION OF DIFFERENT STATES AGAINST DUMPING.

#### I. THE PREVENTION OF ORDINARY DUMPING.

The earliest form of dumping to be combated was that which consists in the granting of export bounties by the exporting country. As long ago as the middle of the nineteenth century, Governments began to protect themselves against this form of dumping by inserting bounty clauses in their commercial treaties. The contracting States undertook by such clauses to grant no export bounties whatever to their export industries, either directly or indirectly. The best-known case of such treaty regulation is the Brussels Sugar Convention of 1902.

#### *The United States of America.*

The United States of America was first to take measures against bounty dumping. In 1894, the so-called Wilson Bill provided for an additional duty on imported sugar which had benefited directly or indirectly by a premium in the country of origin. In 1897, this countervailing duty was extended to all goods the exportation of which

was subsidised directly or indirectly in the country of origin. This provision was embodied in the Payne-Aldrich Tariff in 1909 and next in 1913 in the Underwood Tariff. It applied, however, only in the case of Government premiums on exportation. Section 303 of the Customs Tariff Act of 1922, which prescribes that, in cases where export premiums have been granted, an additional duty shall be collected equal to the net amount of the premiums, is directed against all kinds of export bounties — in particular, those of the cartels. We are not aware of any case in which this provision has been enforced.

The first American anti-dumping provision, to deal not only with bounty dumping but also with other forms of “ real ” dumping, is a section of the Revenue Bill of 1916. This provision declared it to be unlawful to import goods into the United States at a price substantially lower than the market value or wholesale price of similar goods in the exporting country at the time of export or than the selling price in other importing countries, provided this was done with *intent* thereby to destroy or injure an industry in the United States, or handicap its development, or restrain or monopolise any branch of trade in such goods. Importation in these conditions is subject not to a dumping duty but to a regular fine.

It may be mentioned here that, in 1916, a law which came into effect on September 8th, 1916, instituted a special commission, known as the Tariff Commission, to investigate, among other things, the causes and effects of the competition of foreign industries with those of the United States, including dumping.

The first special duty intended to deal with all kinds of real dumping was imposed under the Emergency Tariff Act of 1921, and was primarily caused by the fear that, with the resumption of German exports, German dumping would begin again. This law provides for the imposition of a dumping duty under the following conditions:

(1) That the goods are imported into the United States at an f.o.b. price below the price at which goods of the same class or kind are sold in the principal market of the exporting country for internal consumption, plus f.o.b. costs. When this price cannot be determined, it should be computed on that basis of the cost of production, for the assessment of which the law contains detailed provisions.

(2) That importation at the price indicated under (1) injures or is likely to injure any branch of industry in the United States or to prevent its establishment or development.

Accordingly the mere intention to injure is not enough, as in the Revenue Bill. On the other hand, it does not matter whether an article of the same kind is produced in the United States or not. In this way, the law extends its protection to those American industries which manufacture similar goods or goods used for the same purposes.

Under the above conditions, a dumping tax is collected to the amount of the difference in price mentioned under (1). The only exception is where an article is sold to America in larger wholesale quantities than in the country of origin, and a price reduction is granted on that account.

The law contains detailed provisions on procedure, which is entirely in the hands of the American Treasury officials. In the first place, the Treasury can itself examine whether the above-mentioned conditions for the levy of dumping duty exist in the case of certain goods and can then designate by means of an order the goods and countries of origin on which a dumping duty is to be imposed. In addition, every appraising officer of the American Customs authorities who has any reason whatever to suspect that an article is being imported at dumping prices can notify the Treasury and hold up the clearing of the goods until the Treasury has taken a decision on his report.

It is said that interested parties have often applied for the imposition of dumping duties, but no case is known in which the United States has actually imposed such duties under the Emergency Tariff Act.

In this connection, we may mention Sections 315 and 316 of the American Customs Tariff Act of September 21st, 1922, the so-called "flexible tariff provisions", which are often wrongly spoken of as anti-dumping provisions; Section 315 provides that if, for any goods whatever imported into the United States, the difference between the cost of production in America and in the foreign country is not compensated by the duty, the President shall increase the duty by the amount of the difference not already compensated. Such increase in duty shall not, however, exceed 50 per cent of the standard Customs rate provided for in the tariff. The reason why this provision is not adapted to prevent dumping is that it only authorises a general increase in duty without differentiating against any country that practises dumping. The only way in which dumping could be stopped under Section 315 would be if such an increase of duty, nominally directed against all countries, should in fact only operate against a dumping country, as, for example, if the commodity on which the increased duty is imposed was produced principally in that country only. No case is known, however, of Section 315 being applied in this way. Whenever the President has exercised his powers under Section 315, it has been, so far as can be ascertained, only to introduce an increase in duty for the purpose of levelling up American and foreign costs of production.

Similarly, Section 316 of the American Customs Tariff is not intended to stop foreign dumping—the aforesaid Emergency Tariff Act has already been passed for that purpose—but to stop the numerous forms of unfair competition. This section empowers the President to levy an additional duty of not less than 10 per cent and not more than 50 per cent of the dutiable value of the goods, provided that:

- (1) The existence of unfair methods of competition and unfair acts in the importation of the goods in question into the United States is proved;
- (2) The effect or tendency of such methods is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolise trade and commerce in the United States.

In exceptionally gross cases of unfairness, the President may, if the public interest is prejudiced, even forbid the firm in question to import such goods into the United States.

What is actually to be construed as unfair within the meaning of Section 316 is not clear; and therefore up to the present no case is known of the United States combating dumping under this provision.

In addition to the United States, the British Dominions were among the first countries to take measures against dumping.

#### *Canada.*

Canada began to take steps against dumping as early as 1903. To protect the Canadian industry against the dumping of the American iron and steel trusts, the Canadian Parliament, by an Act of April 17th, 1903, authorised the Governor to impose, by means of an order, a special duty of \$7 per ton on rails and other bar-iron used for railway construction. The collection of this duty was subject to one condition only, viz., that the same qualities of iron material were produced in Canada itself. The Act did not make the imposition of this duty conditional on the existence of any of the facts that especially characterise "real" dumping, probably for the reason that the dumping of the American Iron and Steel Trusts was already matter of common knowledge.

By § 19 of the Act to amend the Customs Tariff, of August 10th, 1904, an anti-dumping provision applicable to all goods was introduced, in which, for the first time, the imposition of dumping duty was made conditional on indications of the existence of "real" dumping. This provision, which was embodied in a slightly modified form in the Canadian Customs Tariff of 1907 as § 6, and is still in force to-day, lays down as conditions of liability to dumping duty:

- (1) That the article is being sold to Canada at a f.o.b. price which is less than the current market price of the same article when sold for home consumption in the exporting country at the time when it was exported to Canada;
- (2) That goods of the same class or kind are produced in Canada.

If the conditions under (1) and (2) exist, then a dumping duty must be charged to the amount of the difference mentioned under (1), but not exceeding 15 per cent of the value.

Certain goods are exempted from this special duty, in particular those which pay an *ad valorem* duty of at least 50 per cent, and goods which are also subject to excise duty in Canada. Besides these statutory exceptions, the Minister of Customs is also empowered to grant exemptions from the dumping duty if:

- (a) The dumped goods are produced in Canada only in small quantities; or
- (b) The difference in price mentioned under (1) amounts to only a negligible proportion of the actual market value.

The procedure for establishing dumping and fixing the duties is left entirely to the Minister of Customs.

A special provision deals with attempts to evade dumping duty by the shipment of goods on consignment, *i.e.*, sale through a commission agent. In such transactions, the principal always gives the agent a minimum price limit but does not prescribe any fixed price. In the absence of a fixed price, the Customs officers cannot calculate the difference in price under (1), and therefore have no means of establishing, in the manner laid down by the law, whether there is dumping or not. To remedy this, the law provides that, in the case of shipment of goods on consignment, the Governor shall himself authorise such action as is necessary to collect on such goods the same special duty as if the goods had been sold to an importer prior to their shipment to Canada.

In application of this Act lists were published, in November 1904 and February 1905, of the goods on which, subject to the above conditions, a dumping duty was to be chargeable. Notices of this kind were issued later for a few goods only, as in 1908 for wire and certain wire products of iron steel, in 1909 for galvanised iron plates, sheet iron, and tin sheeting of certain dimensions, and in 1911 for iron and steel pipes of certain dimensions. It is not known, however, to what extent duties are collected on the importation of such goods, for no information is available as to individual cases in which these orders have been enforced.

#### *Australia.*

In 1905, Australia, whose anti-dumping legislation dates chiefly from after the war, followed suit. The Australian Preservation Act of 1905 provides for no dumping duties proper, but merely gives a general power to the Minister of Justice, in case of dumping, either to issue an import prohibition in respect of the goods in question or to make their importation subject to certain conditions. Such action is subject to the following provisions:

- (1) That goods are being sold to Australia at a price which leaves no margin of profit over the market value in the exporting country or in other countries;
- (2) That the goods are being imported with the object of competing with Australian goods in a way that may be considered as unfair;
- (3) That such business is calculated to injure an Australian industry;
- (4) That the Australian industry in question seems an advantageous industry for Australia, that is, more especially, that it is well managed and serves at once the interests of producers, workers and consumers.

The existence of these conditions is established by a kind of penal proceedings against the importer, who, during these proceedings, may import the goods in question only against bond. The Court before which the importer is accused of dumping decides independently and upon the evidence; its decision is final. If the judgment establishes dumping, the Minister of Justice is *obliged* to take action in one of the ways above mentioned. His decrees, however, must be ratified by Parliament.

There is no information to show whether and to what extent this Act has been practically enforced.

Australia first introduced special taxes for the prevention of dumping by the Industries Preservation Act of December 16th, 1921, after having entirely eliminated imports from the enemy countries by means of import prohibitions which were maintained all through the war and up to August 1st, 1922. According to the Industries Preservation Act of 1921, as amended by the Industries Preservation Act, 1922, which is still in force, dumping duty is subject to the following conditions:

- (1) That goods are being sold to Australia at an f.o.b. price below the current market price for internal consumption in the exporting country at the time of shipment, together with the f.o.b. costs;
- (2) That goods of the same kind and category are produced or manufactured in Australia;
- (3) That the sale of the imported goods is likely to injure an Australian industry.

In these conditions, the Minister of Customs may levy a dumping duty to the extent of the difference in price mentioned in (1). If the actual f.o.b. price is not only below the price of the exporting country mentioned under (1) but even below a price composed of cost of production of the goods, plus such addition, not exceeding 20 per cent, as is determined by the Minister after enquiry and report by the Tariff Board, plus f.o.b. charges — in other words, when it is sold below cost price, the amount of the dumping duty may then be calculated according to the difference between cost price so determined and the actual f.o.b. price.

In this kind of dumping the Act does not require the goods in question to be produced in Australia also. The duty is levied if the Minister is satisfied that detriment may result to an Australian industry if such goods are sold to an importer in Australia.

Like Canadian legislation, the Australian law also seeks to prevent evasion of the dumping duty by means of sales on consignment. In contrast to the Canadian regulations, the law here itself regulates the duty chargeable on such transactions as follows: first, a reasonable sale price for the goods is fixed, composed of the internal market price in the exporting country, the f.o.b. costs, all charges incidental to carriage to Australia, the usual Customs rate together with such addition, not exceeding 15 per cent on the aggregate of all the items mentioned, as is determined by the Minister after enquiry and report by the Tariff Board. If it still appears possible that the goods sold on consignment can be sold in Australia below this reasonable price and that detriment may result to an Australian industry, the amount by which it seems possible to undercut the said reasonable price may be made up by a corresponding surtax.

A special provision is directed against "freight" dumping. If:

- (1) Any Government or other subsidy or bounty is paid to the shipowners, captain, agents or charterer;

- (2) The freight is thereby brought below the ordinary rates current at the date when the goods were shipped;
- (3) Goods of the same kind are produced in Australia; and
- (4) An Australian industry may be injured by their cheap sale,

a "freight" dumping duty may be levied. As it is difficult, however, to ascertain the extent of the reduction, the amount of the dumping duty is generally fixed at 5 per cent of the value.

In all cases the procedure is the same: The various dumping duties can only be imposed if the Minister is satisfied, after enquiry and report by the Tariff Board, that the conditions specified in the Act for the levying of such duties are fulfilled. The amount of this duty is then fixed in each case by the administrative Customs officials in conformity with the provisions of the Act.

The Australian Government has made use of its powers to impose Customs duties in about seventy cases, in seven of which German goods were involved. The Minister of Customs notified the goods and the countries of origin, and the administrative Customs officials were responsible for the rest.

#### *New Zealand.*

Like Australia, New Zealand passed its first Act against foreign dumping in 1905. Its chief object was to check the competition of American trusts with the New Zealand agricultural-machinery industry. This Act of October 31st, 1905, did not, it is true, expressly mention dumping; the condition was the import of agricultural appliances into New Zealand at substantially reduced prices, thereby causing unfair competition. Subject to this condition, the Act empowered the Commissioner for Commerce and Customs, after hearing a committee of New Zealand manufacturers of such machinery, to grant a bounty of not more than 33 per cent to enable them to compete with foreign importers.

This is the only known instance of combating foreign dumping not by means of higher duties but by bounties to home industry.

New Zealand did not introduce any general measure against dumping, that is to say, any measure embracing all goods, until the Customs Amendment Law of 1921.

Under this law, the conditions for the imposition of a dumping duty are:

- (1) That goods are being sold to an importer in New Zealand at a price below the price which is charged for similar goods for home consumption in the exporting country at the same date;
- (2) That goods of the same kind are also manufactured in New Zealand.

In this case, the dumping duty is an amount determined by the Minister not exceeding the difference in price mentioned in (1).

If the actual selling price is below even the cost of production in the importing country plus a *fair* profit, such difference shall constitute the maximum dumping duty, irrespective of whether or not the commodity is produced in New Zealand also.

There is a special provision against "freight" dumping and "bounty" dumping. A countervailing duty is prescribed on condition that:

(a) Railway or shipping rates have been reduced by a subvention, or any other concession is granted or to be granted; and

(b) Such concession is exercising or is likely to exercise a harmful or prejudicial effect on an industry of New Zealand or of any other British Dominion.

If so, a dumping duty fixed by the Minister must be charged, which may be equal to the value of the special concession. This duty shall not be collected if the goods are imported from any other part of the British Dominions.

As in the Canadian and Australian laws, there is also a clause intended to prevent the evasion of the dumping duty by means of sales on consignment. In the case of goods imported on consignment, the Minister shall determine a selling price on the basis of the cost of production and other price factors, and on this the Customs officials will assess the dumping duty.

The regulation of the procedure is left to the Governor-General. It is prescribed in a Decree of July 6th, 1922, that every case of dumping shall be submitted to the Ministry of Customs for decision. Unlike Canada, therefore, the decision in each case rests with the central authorities. The Governor-General is empowered to exempt goods from dumping duty if they are produced in New Zealand or any other British Dominion only in negligible quantities or if the imposition of a dumping duty "is not considered necessary in the general interest".

There is no information to show whether and to what extent the law has been enforced.

#### *South African Union.*

The South African Union was the last of the British Dominions to take up the campaign against dumping. The Customs Act of 1914 contains a provision against ordinary dumping, together with a special clause against "bounty" dumping. The provision on ordinary dumping has been amended more than once, viz., by the Customs Amendments Acts of 1922 and 1923. In the Act of 1923, the first special duty on "freight" dumping was introduced. Ultimately the aforesaid provisions on ordinary dumping were revised and extended in the Customs Amendment Act of 1925. It is unnecessary to go in detail into the legislation which preceded the Act of 1925, as the latter differs only from the previous Acts, so far as ordinary dumping and "freight" dumping are concerned, in that it defines these forms of dumping more precisely than hitherto<sup>1</sup>, in all other respects, however, the earlier provisions are maintained.

Under the Law of 1925, the conditions for the imposition of ordinary dumping duty are:

- (1) That the goods in question are being sold to South Africa at an f.o.b. price which is below the ordinary market price for similar articles sold for internal consumption in the exporting country, plus the f.o.b. cost;

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<sup>1</sup> The bounty duty is leviable whether granted by a Government or other authority or person.



- (2) That the difference in price under (1) amounts to more than 5 per cent of the actual f.o.b. price;
- (3) That detriment may result to an industry within the Union;
- (4) That the imposition of a dumping duty is in the public interest.

If the goods were not yet sold at the time when they were shipped to the Union, but only after reaching a port of the Union, dumping duty is assessed according to the difference between the actual price paid and the ordinary sale price within the exporting country plus f.o.b. costs, sea freight, insurance and all other charges to that port, including Customs duty.

“Freight” dumping exists under the law if the goods were carried at a lower rate than that ordinarily charged for those classes of goods for shipping purposes on the same basis. The law does not therefore cover reduced railway freights.

The “freight” dumping duty—which, moreover, is subject to conditions (3) and (4) above—consists in the difference between the actual and the ordinary freight rates. This duty will be charged even if the price of the article has not been reduced by anything like the full amount of the freight subsidy.

“Bounty” dumping duty exists under the law if a bounty in the form of a bonus, rebate, subsidy or otherwise has been or will be granted by a Government department or other authority or person of the country of production, manufacture or export. “Bounty” dumping duty, which is also subject to conditions (3) and (4) of ordinary dumping duty, is always fixed at the amount of the bounty, irrespective of whether the price of the goods has actually been reduced by the full amount of the bounty.

In all the above cases, the Minister is not obliged, but only entitled, to impose these duties. Dumping duty or, where there is more than one form of dumping, the total of such duties shall not exceed one-half of the value of the goods for Customs duty purposes. Special regulations have been instituted for wheat imports, owing to the fluctuating wheat prices, but to go into these here would take us too far afield.

The procedure for the imposition of dumping duties is as follows: The Board of Trade and Industries has to ascertain whether dumping is being carried on and, if so, in what goods, and then submit a report to the Minister. The latter has then, on his side, to examine whether the various statutory conditions of dumping really exist; if so, the Governor-General issues a proclamation in the Official Gazette notifying the categories of goods, with their countries of origin, upon which one or more dumping duties are to be imposed. The Customs officers must then in each case verify whether, in conformity with the law and the proclamation of the Governor-General, the goods are liable to dumping duty, and, if so, themselves fix the amount.

It cannot be ascertained to what extent the South African Government made use of its power to impose dumping duties during the war. Since the war, in all, ten Proclamations of the Governor-General have been published ordering the imposition of dumping duties. The goods in question were india-rubber tubing from the United States, Canadian, German, Swedish and Mozambique cement, Australian butter, British bicarbonate of soda, Canadian and Swedish packing paper and German asbestos-cement squares.

*Switzerland.*

In Europe, Switzerland opened the campaign against dumping in 1902, with a provision directed against "bounty" dumping. Article 4, paragraph 2, of the Swiss Customs Tariff Law of 1904 authorised the Federal Council:

"To make the orders which seem to it proper in cases in which the effect of the Swiss duties is being counteracted by means of export bounties or similar concessions."

Taken literally, the provision might apply equally to "freight" dumping and "bounty" dumping. So far as is known, however, the Federal Council has never made use of its powers in either direction. It is true that, in 1907, the Swiss millers tried to induce the Federal Council to introduce a "bounty" dumping duty on imported German flour, the exportation of which was being indirectly subsidised through the import licences granted to German millers under § 11 (3) of the German Customs Tariff Law of 1902. The Federal Council, however, could not make up its mind to impose a dumping duty, because it was doubtful, in the first place, whether the German import-licence system really amounted to a bounty on the exportation of flour, and, in the second place, whether Switzerland was legally entitled to levy a special tax on German flour in view of the fact that the Swiss flour duty was fixed by an existing convention with Germany.

Switzerland has no other anti-dumping provisions.

*Serbia.*

In 1904, Serbia inserted provisions in her Customs Tariff Law authorising the Government:

"To collect on foreign goods which enjoy a bounty on exportation or any other advantages additional duty at least equal to the amount of such advantage."

So far as we are aware, this provision has never been applied.

*Spain.*

Spain followed in 1906. Apart from the "exchange" dumping regulations, which will be discussed later, Spain has only a single measure against "bounty" dumping. The Royal Order of 1906 regarding the Customs tariff empowers the Spanish Government to:

"Charge surtaxes on goods which enjoy an export premium in their country of origin."

The amount of the surtax is therefore left to the discretion of the Spanish Government. So far as is known, this Order has never been enforced.

*France.*

In 1910, France joined the campaign against "bounty" dumping. In the Customs Tariff Law of March 29th, 1910, which is still in force, the Government is authorised in Article 3:

"To impose on goods for which, directly or indirectly, export premiums are granted in their country of origin or provenance, a countervailing duty equivalent to such premium."

Any Order for this purpose must be submitted to the Chambers for ratification. Up to the present, no such Order has been made.

France has no other anti-dumping regulations.

*Japan.*

The Japanese Customs Tariff Law, which likewise dates from 1910, also empowers the Government in Article V to levy, in the case of premiums on export, surtaxes equal to the amount of such premiums, in addition to the ordinary tariff duties.

A Law of 1921 supplementary to the Japanese Customs Tariff Law supplied the Government with a weapon to combat other forms of "real" dumping, although, indeed, the supplementary law does not precisely define the meaning of dumping. It runs:

"If, by the importation of unreasonably cheap goods, or by the sale of imported goods at unreasonably low prices, it appears that detriment may be caused to an important national industry, the Government may schedule such articles after investigation by the Anti-Dumping Commission, and may impose upon them for a certain period, in addition to the duties laid down in the annexed tariff, a surtax within the measure of the fair price."

So far as is known, these Japanese provisions have never been applied.

*Belgium.*

On June 10th, 1920, Belgium passed a law empowering the Government:

"To prescribe the temporary application of new Customs rates if, for urgent economic reasons, immediate modifications in the Customs tariff appear necessary."

The Belgian Government has enforced this law only, as will be seen later, against "exchange" dumping and not against "real" dumping, as it could equally well have done by the terms of the law.

A provision of the Belgian Customs Tariff Law of May 8th, 1924, is directed against "bounty" dumping. Article 5 of this law empowers the Government:

"In the case of imported goods which, in their countries of origin or manufacture, enjoy directly or indirectly a premium on exportation, to introduce a countervailing duty equal to such premiums."

So far as is known, this provision on "premium" dumping has not up to the present been put into effect. Belgium has no other provisions against foreign dumping.

*Great Britain.*

In 1921 followed Great Britain, whose attitude to dumping is very different from that of the Dominions. In the first place, the Dominions began to take steps against dumping long before the war, but Great Britain did not resort to such measures till after the war. In the second place, while the Dominions oppose as dumping all sales at prices below the internal selling prices in the exporting country, and have in addition special and detailed provisions on "freight" dumping and "bounty" dumping, British legislation is directed solely against *sale at prices below the cost of production*. And lastly, while the Dominions leave it entirely to the competent authority to decide whether the conditions for the imposition of a dumping duty do in fact exist, and also as a rule leave the administrative authority free to impose the special duty or not at its discretion, in Great Britain a special committee is appointed to enquire into the facts, and the making and withdrawal of every anti-dumping order is largely dependent on Parliament.

Dumping duty is chargeable in Great Britain subject to the following conditions:

- (a) That goods are being imported at a price below the cost of production. Cost of production within the meaning of the Act is 95 per cent of the wholesale price at the works charged for consumption in the country of manufacture, subject to the deduction of any excise or similar taxes;
- (b) That similar goods can be profitably manufactured in the United Kingdom (not merely in Great Britain);
- (c) That by importation under (a) employment in any industry in the United Kingdom is being or is likely to be seriously affected;
- (d) That the affected home industry is being carried on with reasonable efficiency and economy;
- (e) That the finishing industry which uses the goods in question as material is not too hard hit by a dumping duty (according to the text, the Act provides that a committee shall make a special report on the subject, to be referred for "consideration" by the Board of Trade);
- (f) That no dumping duty shall be levied which is at variance with any treaty with a foreign State.

If all these conditions exist, a dumping duty may be levied the amount of which is fixed in all cases at one-third of the value of the goods. The c.i.f. price is considered as the dutiable value. The import of foodstuffs and beverages is exempt from dumping duty.

The procedure is regulated in detail. It is initiated by the Board of Trade, which however, only takes action on complaints by the interested parties. If, after examining a complaint, the Board of Trade finds that the aforesaid conditions exist, it refers the

complaint for further consideration to a committee composed of five persons, selected by the President of the Board of Trade, of commercial or industrial experience who are not affected. This committee makes all the necessary enquiries as to the existence of the statutory conditions and reports thereon to the Board of Trade. If this report concludes that the said conditions do in fact exist, the Board of Trade can recommend the issue of an anti-dumping order. If Parliament is not sitting, the Board of Trade has power to make the order itself. The order, however, does not continue in force longer than a month after Parliament has met unless Parliament decides otherwise. If Parliament is sitting, an anti-dumping order cannot be made without its consent. Such an order lays down that certain goods of a certain country, subject to the existence of the difference in price referred to in (a), are chargeable with the statutory dumping duty. If the administrative Customs official verifies this difference of price, he must collect a special duty of one-third of the value, irrespective of the amount of such difference.

The order shall continue in force for three years at most unless the provisions are previously revised and renewed. On the other hand, the Board of Trade may not revoke an order once made without referring the matter to the aforesaid committee.

In spite of the care with which this law is framed, no case is yet known in which the Board of Trade has made use of its power to levy a dumping duty.

#### *Portugal.*

Portugal has in its Customs Tariff Law of 1923 a clause, which is far from clear, directed against export privileges, by which the Government is empowered to levy an additional duty on such goods equal to the amount of the " bounties ". So far as is known, the law has never been applied.

#### *Poland.*

Poland, again, confines itself to measures against " bounty " dumping. A Polish Order, which has been in force since November 12th, 1924, empowers the Government to apply the maximum tariff against countries which have not concluded commercial treaties with Poland if and in so far as the exportation of goods to the Polish Customs area is supported by open or concealed bounties. The countries and goods involved are notified by special administrative orders for the Customs officials. Up to the present, no order of the kind has been made.

#### *Austria.*

The first country to combat undercutting as a result of longer working hours was Austria. Section 4 of the Customs Tariff Law of September 5th, 1924, besides introducing a countervailing duty to deal with the case of export bounties, also empowers the Government:

" To apply to the industrial products of those States which have not ratified the Washington Convention of 1919 regarding hours of work, and whose current

regulations on the subject fall substantially short of the requirements of that agreement, increased Customs duty not exceeding one-third of the regular rates ”.

No use has yet been made of this power. As has already been explained in the Introductory Remarks, the cheapening of goods through longer working hours, lower wages, etc., cannot, as a rule, be considered as “ real ” dumping, as the internal prices are equally affected thereby.

*Czechoslovakia.*

Czechoslovakia followed Austria’s example by a Law of October 12th, 1925, empowering the Government to introduce a special duty, additional duties or other appropriate measures of protection:

“ If a foreign industry is bringing undue competition to bear on home production, owing to the introduction of longer hours of labour or other less favourable social conditions of labour ”.

The Czechoslovak Government is not restricted, therefore, either as to the amount of the additional duty or, generally, as to the nature of the measures to be taken against so-called “ social ” dumping. Moreover, the law gives the same power if undue competition is being brought to bear on home production by the grant of export bounties or other concessions by a foreign country. This power is given not only in the case of Government but also of private bounties; it therefore covers every form of “ bounty ” dumping and “ freight ” dumping. By the expression “ undue ” competition, it is apparently intended to safeguard the interests of the consumer by preventing any attempt to eliminate normal competition of foreign industries under the pretext of dumping.

No anti-dumping measures have been taken under this law.

## II. THE PREVENTION OF EXCHANGE DUMPING.

Up to the present, “ exchange ” dumping has been opposed either by import prohibitions or by additional duties.

*Switzerland.*

Import prohibitions have been applied in Switzerland to a considerable extent. On February 18th, 1921, a Federal resolution was passed, having regard to the decline of the German currency, empowering the Federal Council:

“ To restrict temporarily, by way of exception, the importation of certain goods to be named by it, or to make their import subject to a licence, with a view to the prevention of unemployment and the protection of national production. ”

This power, which was given only up to December 31st, 1921, has been repeatedly prolonged, in the last instance by the Federal decision of December 9th, 1924, which is operative up to March 21st, 1926.

On this legal basis, a great number of import prohibitions were issued in all branches of agricultural and industrial production. These were directed, if not specifically, at any rate in effect almost exclusively against German competition. This is evident from the fact that at one time offers of imports from Germany were rejected, while imports via the Italian and French frontiers were accepted. Later, the Federal Council simplified administrative practice by issuing so-called "general import licences" in respect of certain categories of goods entering via the French-Italian frontier.

The import prohibitions originally conceived to prevent dumping of German goods produced under conditions of a falling exchange were maintained, however, even after the stabilisation of the mark. By the Conventions of November 17th, 1924; May 11th, 1925; and September 8th, 1925, concluded between Switzerland and Germany, the Swiss import prohibitions were gradually withdrawn. Under the last of these Conventions, Switzerland undertook to remove all import restrictions in respect of German goods on December 31st, 1925.

It may be observed here that the Federal decision of February 18th, 1921, empowered the Federal Council not only to impose import prohibitions but also to levy additional duties. But this authorisation, which has been used on various occasions, was neither designed nor adapted to stop "currency" dumping, since no distinction was made between countries with a depreciated currency and other countries.

Other countries besides Switzerland also imposed import prohibitions, but, as far as is known, these were for the most part not directed against the exchange dumping but were intended to serve other purposes. In this connection, the Norwegian and Danish import prohibitions on luxury articles, dictated by reasons of currency policy, may be cited. On May 5th, 1923, the Netherlands issued a provision which remained in operation until July 1st, 1925, whereby the importation of footwear was allowed only to a limited extent and subject to the production of evidence that certain quantities of Dutch manufactured shoes were also taken. This bar to importation was no doubt primarily intended to protect the Dutch market from depreciated currency dumping on the part of the German shoe industry. Later, however, this ceased to be true, for the provision was maintained long after the stabilisation of the German currency.

#### *Great Britain.*

Great Britain, by the Safeguarding of Industries Act of August 19th, 1921, Part II, forged herself a weapon which was chiefly intended to prevent German "exchange" dumping. As, under Section 9 of the Act, the powers given for the levying of anti-dumping duties expired after three years, it is true that the British Government has now no longer any legal basis for combating "exchange" dumping.

Under the Act, depreciated exchange duty was to be levied subject to the following conditions:

- (1) That the currency of the country of production was depreciated by  $33\frac{1}{3}$  per cent or more in relation to the par value of exchange;

(2) That the purchase price of the goods imported from the country with depreciated currency was below the price at which such goods could be profitably manufactured in the United Kingdom;

(3) That by such imports employment in any industry in the United Kingdom was being or likely to be seriously affected.

Subject to these conditions, the goods in question, in addition to any other Customs duties chargeable thereon, were to pay a fixed special duty equal to one-third of their value. The value of the goods was considered to be the price which the importer would have to pay if the goods were delivered to him c.i.f. in the port of entry.

A special rule was made for goods manufactured partly in a country with depreciated currency and partly in another country. Such goods were to be liable to the additional duties fixed for the country with depreciated currency, unless it was proved that 25 per cent or more of the value of the goods at the time of exportation to Great Britain was attributable to processes of manufacture undergone since the goods last left the country with a depreciated currency.

The procedure for the application of these additional duties was the same as that already described for ordinary dumping duty.

The Board of Trade has used the powers given it only against Germany and also only in two Orders, made on August 8th, 1922, and operative up to August 19th, 1924. By these Orders, fabric gloves, glove fabrics, domestic glassware, illuminating glassware, certain kinds of kitchen-ware and incandescent mantles were made liable to depreciated-currency duty. Great Britain has made no other Orders for the suppression of "exchange" dumping, either as against Germany or as against Belgium or Italy, nor has the recent depreciation of the French franc induced her to take any protective measures.

The British Dominions have shown themselves stricter than the mother-country in the establishment and execution of measures against "exchange" dumping.

#### *South African Union.*

South Africa first introduced depreciated-currency duties by a Law of July 22nd, 1922, which was afterwards superseded by the Customs Tariff and Excise Duties Amendment Act of July 30th, 1925. Under this Act, exchange duties were to be ordered subject to the following conditions:

(1) That the Minister is satisfied, after investigation and report by the Board of Trade and Industries, that, owing to the currency depreciation in the country in which the goods were produced, manufactured, or from which they were exported, certain goods (which must be of a class or kind produced or manufactured in the Union) are being imported into South Africa at a lower price than goods of the same class or kind coming from countries the exchange value of whose currency in relation to Union currency is not depreciated by more than 5 per cent;



(2) That detriment to an industry within the Union may result and that it is to the public interest to levy a dumping duty on such goods.

If these conditions are found to exist, the goods and countries in question are notified by the Governor-General, and an order is made imposing on the article concerned an "exchange" dumping duty which shall be the difference between the actual price of the goods in question and the export price of goods of the same class and kind imported into the Union from countries the exchange value of whose currency is not depreciated by more than 5 per cent. The exchange duty shall not, however, exceed 50 per cent of the dutiable value of the goods.

In all, four Orders have been made in which South Africa has imposed currency duties of this kind. German goods were not involved. These four Orders, made under the Act of 1922, were maintained by the Act of July 30th, 1925.

#### *Canada.*

Canada first introduced exchange surtaxes by the Act of June 27th, 1922, to amend the Customs tariffs.

Under this Act, the sole condition necessary for the imposition of additional exchange duty is a substantial depreciation in the exchange of the exporting country. Subject to this condition for *all* goods from the country of export — not only those that are also produced in Canada — the value for duty is not determined according to the invoice but according to the price that would be placed on similar goods manufactured or produced in the United Kingdom, or, if similar goods are not manufactured or produced in the United Kingdom, according to the price which would be paid in any European country with normal currency.

But this measure does not entirely make up for the difference in favour of the country with a low exchange. The difference between that country's export price and the export price of a country with normal exchange is not chargeable in full in the shape of a surtax, as in South Africa, but is only added to the invoice value of the goods in question. Such value will then be regarded as the value for duty and charged only with the *ad valorem* duty fixed in the Canadian Customs tariff. Accordingly, notwithstanding higher duty, a country with a low exchange can always export to Canada in more favourable conditions than a country with normal exchange.

The procedure for the imposition of additional exchange duty is as follows:

1. A notification from the Department for Customs and Excise indicates to the administrative officials the countries whose currencies are to be considered as substantially depreciated.

2. The value for duty is computed by the appraising officials in each case *independently*. This means that the appraisers know the normal prices prevailing in the United Kingdom or other countries of production.

3. In addition, the Minister of Customs is empowered to value for duty goods of the countries mentioned under 1. This has only happened once, however. By an

order of February 27th, 1923, the Minister of Customs imposed the following additions to German export prices:

	Per cent
For clocks and watches . . . . .	100
For razors . . . . .	40
For pocket knives. . . . .	140
For scissors. . . . .	200

In the Circular dated June 28th, 1922<sup>1</sup>, the Department of Customs notified the following countries only as countries whose currencies were to be regarded as substantially depreciated: Germany, Austria, Hungary, the Kingdom of the Serbs, Croats and Slovenes, and Russia. By a later Circular of September 8th, 1922<sup>2</sup>, Czechoslovakia was added. Since November 10th, 1924, German exports to Canada have been released from duty by a special Proclamation. A Customs Circular dated February 15th, 1926, states that, until further orders, the section of the Canadian Customs Act of June 27th, 1922, providing for the valuation of goods for Customs duty coming from countries with depreciated currencies, will apply to goods the manufacture or produce of any country where the currency *is depreciated more than 50 per cent*. Imports from Belgium, France, Italy and other countries were stated to be subject to such valuation. An *Appraisers' Bulletin*, No. 3158, dated March 25th, 1926, states that such goods are to be appraised for Customs duty purposes at *an advance of 20 per cent* on the invoice values. Further *Appraisers' Bulletins* have been issued, however, exempting many classes of goods from the increased valuations, stating that entry into Canada for such goods may be accepted on the value, as invoiced, without restricting the Minister's right to appraisalment.

Other British Dominions have tried to combat exchange dumping by a schedule imposing duties on a sliding scale.

#### *New Zealand.*

New Zealand, by its Customs Amendment Act of 1921, has provided that "there shall be charged on all goods imported from countries having a depreciated currency a special duty", as set forth in a sliding scale, if the importation of such goods is deemed by the Ministry to prejudicially or injuriously affect an industry established in New Zealand or any part of the British Dominions. The special duty is to be rated on the basis of a schedule following the Act:

Where the depreciation of the currency of the country of export:

Exceeds 10 per cent but does not exceed 20 per cent, at 2 ½ per cent of the value;

Exceeds 20 per cent but does not exceed 30 per cent, at 5 per cent of the value;

and so on.

<sup>1</sup> This Circular was cancelled by a Circular dated February 15th, 1926.  
<sup>2</sup> This Circular was cancelled by a Circular dated September 1st, 1925.

Where the depreciation is 90 per cent or more, such rate of duty is collected as the Governor-General may from time to time, by Order in Council, determine (Act of 1922). The value for duty here is based on the prices of the exporting country in the ordinary course of trade.

These currency duties are also collected if the goods are not imported direct from the country with depreciated currency but by way of an intermediate country, but not if such intermediate country is subject to an equal or higher duty.

The procedure is as follows:

1. By special administrative orders the administrative Customs officials notify those countries whose currencies are considered as depreciated within the meaning of the Act. Germany, German-Austria and Hungary were among such countries.

2. From time to time, the New Zealand Department of Customs publishes a list of goods which are subject to currency duty if imported from the countries enumerated under 1.

3. In general, the Department of Customs takes action *ex officio* against currency dumping. In addition, any person who considers himself prejudiced by the importation of cheaper goods from countries with a low rate of exchange is entitled, as in Great Britain, to request the Minister to impose a currency duty.

On April 9th, 1925, New Zealand abolished all exchange duties.

#### *Australia.*

By the Industries Preservation Act of December 16th, 1921, as amended by the Industries Preservation Act, 1922, which is still in force to-day, Australia introduced four kinds of exchange surtaxes:

I. The ordinary "exchange" dumping duty is, as in New Zealand, assessed according to a sliding scale. This scale is applied subject to the following conditions:

(1) That the currency of the country of origin or exporting country is depreciated; no special measure of depreciation is laid down;

(2) That, owing to the depreciation of its exchange, goods are being imported from the country in question at prices which are likely to injure an Australian industry.

Subject to these conditions, the Act permits the application to such goods of a sliding scale of duty which is given in a schedule appended to the Act. In the schedule such scales are fixed only for the French, Belgian, Italian and German currencies. But in the event of other currencies depreciating, the Governor-General is authorised to impose additional duties as nearly as possible corresponding to those charged in respect of the other currencies.

The duty scales contained in the schedule range from 8 ½ per cent to 75 per cent of the value of the goods; the increases are therefore much higher than in South Africa. In addition, if the currency of the exporting country has fallen below one-twelfth of its par value, a *fixed* "exchange" dumping duty is collected, the amount of which is determined according to the difference between the import price of the goods in Australia, including duty and a reasonable margin of profit, and the Australian wholesale price.

The three other kinds of exchange duties are fixed surtaxes additional to the regular rates.

II. If, owing to the depreciation of currency in the country of export, such goods which are also manufactured in the United Kingdom are being sold to traders exporting to Australia at a price which is below the proper price for goods of the same kind and quality in the United Kingdom, additional duty may be collected equal to the difference between the market price in the United Kingdom and the price of delivery (the dumping preference duty).

III. If the material from which the goods imported to Australia are manufactured came from a country with depreciated currency and hence is abnormally cheap, with the result that the goods can be sold in Australia at prices below the proper market price which they would have fetched in the country of production if the goods had been manufactured from materials provided in the country of production, the Act also permits the collection of a dumping surtax equal to the said difference in price (the dumping materials duty).

IV. Lastly, the Act prescribes yet another special duty to be applied if the special duties under II and III are being evaded by sales on consignment. In such transactions, the possibility of evasion lies, as already mentioned, in the fact that a fixed price, which the conditions under II and III presuppose, is not stipulated. The "consignment" dumping duty is to be fixed at a high enough figure to ensure that the goods in question shall not be sold in Australia at a price below the domestic price of the country of export plus f.o.b., freight, insurance, landing, Customs duty and other charges, as well as "such addition, not exceeding 15 per cent on the aggregate on all the items mentioned, as is determined by the Minister after enquiry and report by the Tariff Board".

Under the Act, the several kinds of exchange duties are to be collected separately: Section 12 of the Act as amended provides:

"The various duties imposed by this Act shall be separately charged, notwithstanding that more duties than one may apply to any particular goods; provided that, where duty has been imposed, under Section 8 (dumping exchange duty) or Section 9 (dumping preference duty) of this Act, upon any particular goods, duty shall not be imposed upon those goods under the other of those sections."

It is noteworthy that, even if all the conditions provided in the Act for the imposition of a currency duty apply, the Australian Government is not bound but only entitled to take measures.

The procedure is the same in all four cases:

1. The Tariff Office investigates and reports to the Minister as to whether the requisite statutory conditions for the imposition of currency duties apply to any particular country or any particular article.

2. Only on such a report can the Minister notify, by means of a proclamation, that certain exports of a particular country are to be charged with currency surtaxes.

If the Minister acts on a proposal of the Tariff Office for the introduction of a depreciated-currency duty, the execution of his decision — in particular, the determination of the differences in price upon which, in cases II and III, the amount of the duty has to be based — is left entirely in the hands of the administrative Customs officials.

The Australian Government has frequently exercised its powers under the Industries Preservation Act. The Australian Department of Customs has published statements from time to time of the anti-dumping duties in operation.

The Act is still in force to-day. As regards Germany, the conditions for its application no longer hold good, yet even since the stabilisation of the mark, exchange duties have been paid upon German goods. For instance, until June 4th, 1925, the import of padlocks, razors and cartridges from Germany was subject to preference dumping duty. The reason for the sliding currency duty, in so far as German goods are concerned, disappeared with the stabilisation of the German exchange. The other exchange taxes, in accordance with an assurance which the Australian Customs Minister gave to the German Consul-General in Australia, will also no longer be chargeable on German goods as from December 14th, 1925.

#### *United States of America.*

The United States, as we have said, has considerably developed its legislation against ordinary dumping. There are no clauses, however, directed against "exchange" dumping: Even the "flexible tariff" provisions already discussed are not intended to prevent "exchange" dumping. Section 315 of these provisions only allows, as was pointed out, a general increase in duties, without differentiating against countries with depreciated exchange. A general increase of duty would not operate to stop "exchange" dumping unless the article hit by the increase was principally manufactured *only* in the country with depreciated exchange. No case is known, however, of Section 315 being applied in this way. Section 316 of the American Customs Tariff — already reproduced on page 11 — is of even less effect against "exchange" dumping. Its operation is conditional on the existence of "unfair methods of competition and unfair acts in the importation of the goods in question to the United States". As, however, in "exchange" dumping the exporter of the country with depreciated currency only exploits the cheapening of production caused by inflation, his conduct cannot be regarded as in any way "unfair", and has in fact, so far as we know, never been so regarded by America.

#### *Belgium.*

Belgium introduced special tariffs against countries with depreciated currency in order to prevent "exchange" dumping. The rates of these special tariffs were, partly,

substantial increases in the ordinary rates, and, partly, new duties on goods that had hitherto been duty-free. The special tariffs provided for fixed increases on the regular rates. For goods subject to *ad valorem* duties under the Belgian tariff, it was provided that the value for duty should be the Belgian wholesale price less the normal rate of duty. The majority of Belgian duties, however, are chargeable on weight, not on value.

The legal basis for the establishment of such special tariffs was, in the first place, the Belgian Law of June 10th, 1920, summarised in the first part of the Annex. By virtue of the power given to prescribe the temporary application of new Customs rates for urgent economic reasons, a special tariff for German goods was established by Royal Order of November 6th, 1921, in which high duties were imposed on almost all the more important articles that Germany exports to Belgium. The preamble to this Order, embodied in the text of the Order, runs as follows:

“ Whereas, in consequence of the sudden heavy fall in the German exchange, the factors influencing the prices of goods manufactured in Germany—in particular, the purchase-price of raw materials of German origin and the rates of wages — are such that normal conditions of competition are completely upset, with the result that Belgian industry, and this at a most critical period, is at a manifest disadvantage, affecting the work of many factories and threatening to throw most of their hands out of employment; and whereas this exceptional state of affairs necessitates immediate action, the Government therefore exercises its powers under the above-named law, with the proviso that the measures so taken are of a purely temporary nature. ”

The Order was then ratified by a Belgian Law of April 8th, 1922, empowering the Government:

- (1) To alter the exceptional duties as against Germany and to include other goods in the special tariff;
- (2) To establish special tariffs applicable to other countries with depreciated exchange.

By an Order of May 29th, 1923, a special tariff was also introduced for certain Czechoslovak goods, having regard to the decline of the Czechoslovak exchange. Both special tariffs, which were originally to have effect for one year, were repeatedly prolonged and supplemented by special tariffs on Austrian goods (Order of October 24th, 1924) and Spanish goods (Order of December 23rd, 1924). Both the last-named special tariffs were imposed on a new legal basis, namely, the Belgian Customs Tariff Law, which came into force on November 10th, 1924. This law empowered the Government, in Article 4:

“ Wholly or partially to apply the maximum rate, or duties between the maximum and minimum rates, for the time being to goods which, as a result of the far-reaching economic effects produced in the countries of production or origin

by the considerable fall in the value of the exchange, are able to enter Belgium at such an advantage as to dislocate the normal conditions of competition to such an extent that Belgian industries are severely handicapped.”

Orders made by virtue of this authorisation must be submitted to the Chambers for ratification. The difference between this law and the previous law conferring powers is that the conditions for imposing special tariffs are more precisely defined, and that the amounts chargeable are limited to the maximum tariff rates. In all cases where special tariffs were instituted, certificates of origin were required for the goods subject to special tariff rates imported from other countries in order to prevent any evasion of the special duties by making the goods pass through a third country enjoying more favourable treatment.

The Belgian special tariff was maintained against Germany even after its economic cause, German inflation, had long disappeared. It remained in force until the ratification of the Commercial Treaty between Germany and Belgium on September 17th, 1925. The special tariff against Spain has also been withdrawn by the Convention concluded between the two countries on April 24th, 1925, which became operative on May 1st, 1925. Austria was only released from the special tariff by a Royal Order of December 28th, 1925, with effect as from January 1st, 1926. On December 28th, 1925, the special tariff against Czechoslovakia was also withdrawn by means of a provisional commercial agreement between the two countries which came into force on January 1st, 1926.

The coefficients applicable to the Belgian tariff, which the Government was first empowered to fix at 3 and later up to 6, and which were also introduced by virtue of the previously mentioned Law of June 10th, 1925, were not actually intended to prevent “ exchange ” dumping. These coefficients, by which the rates of the tariff were multiplied, were intended rather to offset the devalorisation of the Belgian duties due to the decline of the Belgian exchange. The Government was first empowered to apply different coefficients according to the origin of an article by a Law of June 26th, 1924, and only then would it have been able to prevent “ exchange ” dumping in this way. The Belgian Government, however, has not exercised this power. Lastly, it may be mentioned that a Belgian Law of January 25th, 1923, empowered the Government “ to regulate by an Order decided in the Cabinet the importation of all goods and securities ”. This unlimited authority to impose import prohibitions might also have been used to prevent “ exchange ” dumping. But the few import prohibitions which were issued under this law were directed to other purposes.

### *Spain.*

Spain also has introduced additional duties against countries with depreciated exchange. The amount of the surtax was altered monthly according to the exchange fluctuations in the country with depreciated exchange.

The legal basis for such increases is an Order of June 3rd, 1924, and another Order of May 29th, 1922, partially amending the first Order. According to these provisions,

the condition for levying exchange surtaxes is that the currency in the country of export is depreciated by at least 70 per cent in relation to its par value of exchange. The additional duty is then calculated according to the following system.

First, the Spanish Government fixes a monthly average rate for the country in question on the basis of the Madrid rates of exchange. The difference between this and the par rate is then multiplied by a fixed coefficient of 0.8 (according to the Order of 1921, different coefficients were fixed for the different tariff classes and groups). The figure so calculated represents the percentage by which the regular duty is to be increased.

The procedure for imposing the aforesaid surtax is as follows: The Spanish Government notifies monthly the countries whose exports to Spain are charged with exchange surtaxes and fixes for these countries the monthly average rates mentioned above. Everything else is left to the administrative Customs officials.

By this procedure, surtaxes were first imposed on exports from Germany, France, Belgium, Italy and Portugal. Czechoslovakia and Argentine were also temporarily added to the list. In December 1925, after various changes, the list included Portugal, Roumania, Turkey, Bulgaria, the Kingdom of the Serbs, Croats and Slovenes and Greece.

Here also the exchange surtax was still collected on German goods long after the German exchange had been stabilised. Germany was at last released from all the additional duties by the Commercial Treaty of July 25th, 1924, between Germany and Spain, which came into effect on August 1st, 1924, by an exchange of notes in the form of a *modus vivendi*.

The gold surtax payable in addition to the Spanish Customs rates, which are also fixed monthly by the Spanish Government, must not be regarded as a measure against "exchange" dumping; they are intended to keep the Customs duties at gold value and make up for the devalorisation of the Spanish duty consequent on the depreciation of the national currency.

#### *Czechoslovakia.*

Lastly, Czechoslovakia, by the Law of October 12th, 1925, also empowered the Government to impose special duties or Customs surtaxes on the importation of foreign goods which were competing "unduly" with Czechoslovak production as a result of the depreciation of the exporting country's exchange. The amount of such special duty or Customs surtax is not limited by the law. So far as is known, the law has never been practically applied.

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