

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE C - CHAPTER IV, SECTION E - GENERAL COMMERCIAL PROVISIONS

REPORT OF SUB-COMMITTEE C TO COMMITTEE III

Chairman: Mr. C. E. MORTON ((Australia))

PART I

1. Appointment

In its fifteenth meeting, held at the Capitolio, Havana, on 19 December 1947, Committee III appointed Sub-Committee C (E/CONF.2/C.3/SR.15) to deal with Section E of Chapter IV as contained in the Report of the Second (Geneva) Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (document E/PC/T/186).

2. Terms of Reference

The following terms of reference were given to the Sub-Committee by Committee III:

- (a) to consider all proposed amendments to Section E of Chapter IV as contained in document E/CONF.2/C.3/10 together with suggestions made during the discussions of Committee III and any other amendments that may be presented during the work of the Sub-Committee; and
- (b) to recommend texts of Articles 32 - 39 which would reconcile the various points of view expressed.

3. Composition

The representatives of the following countries were elected members of the Sub-Committee: Afghanistan, Argentina, Australia, Canada, Cuba, France, Lebanon, Mexico, Netherlands, Norway, Pakistan, Portugal, United Kingdom, United States and Uruguay.

After the first two meetings the representative of Norway renounced his membership of the Sub-Committee and the representative of the Union of South Africa was elected to membership of the Sub-Committee.

The Sub-Committee unanimously elected at its first meeting Mr. C. E. Morton (Australia) as its Chairman.

4. Attendance

A number of representatives of delegations who were not members of the Sub-Committee attended as observers and in many cases took part in the

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discussions on particular amendments for which they were primarily responsible or in which they had special interest. A representative of the International Monetary Fund and of the Statistical Office of the United Nations also participated in the work of the Sub-Committee.

5. Working Parties

The Sub-Committee appointed the following Working Parties to deal with special points which emerged during the discussions:

Working Party I - composed of the representatives of Australia, Brazil, Cuba, Lebanon, Netherlands, United Kingdom and United States, to consider Article 33.

Working Party II - composed of the representatives of France, United Kingdom, United States and Uruguay, to consider paragraph 3 of Article 34.

Working Party III - composed of the representatives of Australia, Haiti, Lebanon, Peru, United Kingdom and the United States, to consider paragraph 1 of Article 35.

Working Party IV - composed of the representatives of Afghanistan, Australia, France, Lebanon, Pakistan, United Kingdom and the United States to consider an amendment calling for study directed towards improvement of transport facilities for traffic in transit.

Working Party V - composed of the representatives of Australia, Cuba, France, United Kingdom and the United States to consider an amendment concerning the usage of regional and geographical names for purposes of tariff classification.

Working Party VI - composed of the representatives of Australia, Norway, United Kingdom, United States and of the Statistical Office of the United Nations, to consider a redraft of Article 38.

These Working Parties, together with several Drafting Groups which were concerned with the improvement of the text of several Articles, greatly facilitated the work of the Sub-Committee; their comprehensive reports proved an excellent help towards speeding up the progress of the discussions.

6. Meetings

The Sub-Committee held nineteen meetings. Thanks to the spirit of co-operation among its members, the Sub-Committee reached unanimous agreement on the great majority of matters discussed. This co-operation also enabled the Sub-Committee to complete its work within a relatively short space of time.

7. Secretariat

The Sub-Committee in general, and the Chairman in particular, wish to place on record their appreciation of the courteous, diligent and efficient manner in which the Secretariat has at all times performed its duties and

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which has been in no small measure responsible for the early conclusion of this Sub-Committee's tasks.

8. Interpretative Notes to the Charter

The Sub-Committee was aware of the decision of the General Committee of the Conference to eliminate wherever possible the Interpretative Notes appended to the Geneva Draft. The Sub-Committee could not fail to recognize however, the special character of the Articles of Section E of Chapter IV in regard to which many specific provisions of an administrative and/or procedural nature, rather than principles of commercial policy, required recognition.

It was therefore considered desirable to retain certain Interpretative Notes as such in a number of cases where the content of the Note could not readily be incorporated in the text of the Article without rendering the text unduly cumbersome. As a result of discussions and recommendations of Working Parties certain additional Notes are presented for acceptance of Committee III, although certain Notes appearing to the Geneva text have been deleted.

The Sub-Committee did not consider the question of the manner in which the Interpretative Notes should be appended to the Charter.

9. Report

On behalf of the Sub-Committee the Chairman has the honour to present the Report of Sub-Committee C to Committee III as contained in this document with the recommendation:

that Committee III approve the revised texts of the Articles of Section E of Chapter IV as set forth in Part III as well as the Interpretative Notes thereof.

PART II

Part II of this Report contains the conclusions reached by the Sub-Committee in respect of each of the Articles 32 - 39 inclusive of the Geneva Charter. Amendments and suggestions proposed in connection with these Articles are contained in documents E/CONF.2/C.3/10; E/CONF.2/C.3/10/Add.1 and 2; E/CONF.2/C.3/10/Corr.1; E/CONF.2/C.3/10/Add.3 and 4; and E/CONF.2/C.3/10/Add.3/Rev.1.

Thorough consideration was given to all amendments and suggestions submitted and reference to them will be found in this Report. No mention has been made of proposals which were withdrawn before consideration by the Sub-Committee.

A revised draft of Articles 32 to 39 of the Geneva Report, as the Sub-Committee recommends them for this approval, is given in Part III, with proposed deletions in square brackets and proposed additions underlined.

ARTICLE 32

Freedom of Transit

The proposals and suggestions submitted in connection with this Article are contained in Items 1 to 9 of document E/CONF.2/C.3/10. All were thoroughly discussed by the Sub-Committee.

The representative of Chile withdrew his reservation (Item 1)

The proposal of Argentina (Item 2) that the phrase "and also vessels and other means of transport" be deleted from lines 1 and 2 of paragraph 1 found no support in the Sub-Committee.

To meet the proposal of Afghanistan (Item 3) a note to paragraph 1 was appended in order to clarify the in-transit status of goods which were assembled, or disassembled, or reassembled in the transit country solely for convenience of transport.

At the suggestion of the representative of Chile (not Member of the Sub-Committee) the Sub-Committee agreed to state in its report that a movement between two points in the same country passing through another country was clearly "in-transit" through the other country within the meaning of paragraph 1.

The proposal of the representative of Argentina (Item 4) to delete paragraph 2 received no support in the Sub-Committee.

The proposal of the representative of Chile (Item 5 as modified orally) that a note be appended to paragraph 2 to the effect that this Article does not preclude agreements between neighbouring countries for the regulation of transit in respect of their own trade was not approved because such agreements are clearly permissible under the terms of the Article if they do not prejudice the interests of other Members in violation of the m-f-n provisions of the Charter, and if they do not limit freedom of transit for other Members. The representative of Chile reserved his position.

At the suggestion of the representative of the Netherlands and on the recommendation of a Working Party, the Sub-Committee approved the deletion of the Note appended to paragraph 5 of the Geneva Draft (Item 6). It was agreed that a new paragraph should be added to the Article to state that transportation charges on traffic in transit did not come within the purview of Article 32, but were subject to the provisions of paragraph 2 of Article 18 of the Geneva Draft. This would require the deletion of the words "for transportation or those" from the third line from the end of paragraph 3 of Article 32. Any subsequent amendment of substance in Article 18 may necessitate a revision of the text of this paragraph.

The proposal of the representative of France (Item 7) to delete the provision in paragraph 6 that requirements of "direct consignment" should be

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limited to those existing on the day of signature of the Charter and requisite to eligibility for entry at preferential rates of duty, or related to the Member's system of valuation for duty purposes did not receive any support in the Sub-Committee. A further proposal of the representative of France for the continuance of a Member's requirement of "direct consignment" for exemption from surtaxes likewise received no support.

The proposal of Afghanistan (Item 46, originally made with reference to Article 35) was regarded as appropriate for adoption with some modification, but was considered to be more pertinent to Article 32. On the recommendation of a Working Party the Sub-Committee approved the inclusion in Article 32 of a new paragraph which specifically authorizes the Organization to make studies and recommendations and promote international agreement concerning measures designed to further the broad objectives of the freedom-of-transit provisions of the Charter, and under which Members agree to co-operate with each other directly and through the Organization to this end.

There is no doubt that the general functions of the Organization as set forth in Article 69 are sufficiently broad to authorize the action contemplated by the new paragraph but the Sub-Committee felt, in view of the great importance of this matter to many countries, particularly to those countries which have no access to the sea, that it was desirable to make specific provision for the matter, as has been done with regard to other matters of outstanding importance in other Articles of the Charter.

While the implementation of the provisions of this paragraph must be left to the Organization and to the Members directly concerned, it is the Sub-Committee's understanding that these provisions would afford a specific basis for studies and recommendations by the Organization, and for one Member to seek the co-operation of another, concerning measures to facilitate "traffic in transit" generally, and with regard to special arrangements for transit to and from countries which do not have access to the sea. The Sub-Committee believes that, in the case of such countries, special arrangements regarding transport, loading and unloading, storage and warehousing et cetera may be necessary to enable such countries fully to participate in and promote the expansion of international trade envisaged by the Charter.

The representative of Chile (not Member of the Sub-Committee) reserved his position with regard to the text of paragraph 9.

ARTICLE 33

Anti-dumping and Countervailing Duties

This Article and the proposals to amend its content (E/CONF.2/C.3/10, Items 10 and 25) developed considerable discussion in the Sub-Committee as a result of a wide divergency of views amongst Members as to the means requisite to afford protection against dumping.

At one end of the range of views certain countries believed that the primary object of the Article should be to restrict abuses and evasion of commitments by Members under the guise of measures against dumping or subsidization. At the opposite end, other countries (Items 10-15) proposed that the Article should be expanded to include a condemnation of dumping and to cover forms of dumping other than the injurious sale of merchandise for export at less than its normal value; it was sought in the Charter to include an express authorization for any Member to combat all forms of dumping and subsidization by any measures the Member should see fit to adopt.

The various proposals were thoroughly discussed and statements by representatives of countries not Members of the Sub-Committee were taken into account. All proposals and suggestions were referred to a Working Party whose first report led to further discussion in the Sub-Committee with the view to arriving at a compromise. The matter was then referred to an enlarged Working Party for further consideration.

The Working Party finally produced a compromise text which was approved by all Members of the Sub-Committee except the representative of Argentina, who reserved his position. The text of the two reports issued by the Working Party has been circulated as document E/CONF.2/C.3/C/18. The representative of Czechoslovakia, whose delegation was not represented on the Sub-Committee, indicated that he was not fully satisfied with the compromise achieved.

It was however the general view of the Sub-Committee that the point of chief concern to Czechoslovakia and some other countries (i.e. adequate means for dealing with abuses by a Member unnecessarily levying anti-dumping or countervailing duties) was adequately covered by the general provisions of the Charter, particularly by Articles 41 and 89 of the Geneva Draft.

The Article as agreed to by the Sub-Committee condemns injurious "price dumping" as defined therein and does not relate to other types of dumping.

The Sub-Committee desires it to be understood that, where the word "industry" is used in the Article, it includes such activities as agriculture, forestry, mining, etc., as well as manufacturing.

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The Sub-Committee agreed to the deletion of paragraph 6 of the Geneva Draft which expressly prohibited the use of measures other than anti-dumping or countervailing duties against dumping or subsidization. It did so with the definite understanding that measures other than compensatory anti-dumping or countervailing duties may not be applied to counteract dumping or subsidization except in so far as such other measures are permitted under other provisions of the Charter.

The Interpretative Note to paragraph 1 was revised to clarify the basis for calculating the "margin of dumping" in cases within its purview and to conform in certain other respects to the corresponding Note in the General Agreement on Tariffs and Trade.

It was agreed that a new Interpretative Note should be appended to paragraph 2 to answer any doubt that a Member could require security for the "payment of anti-dumping or countervailing duty pending final determination of the facts in cases of suspected dumping or subsidization".

The final sentence of paragraph 5 of the Geneva text (paragraph 6 of the proposed text) which contains a reference to "conditions prescribed in Article 27", will require review should a substantial change be made at this Conference in the "conditions" laid down in paragraph 1 of Article 27 of the Geneva text in relation to systems for the stabilization of primary products.

ARTICLE 34

Valuation for Customs Purposes

The Sub-Committee found very little to change in this Article. It agreed that it would not be feasible now or in the reasonably near future to fix a specific time limit for compliance with paragraph 2, and that the expression "at the earliest practicable date" sufficiently and correctly expresses the time for compliance. It was of the opinion further that the Note to paragraph 2 of the Geneva Draft (Item 26) was unnecessary and should be omitted.

To meet the purpose of an amendment proposed by Argentina (Item 27) it was agreed that words should be inserted in paragraph 2 to make it clear that a Member need respond to a request for a review of its customs valuation procedures only if such request is made by another Member directly affected by such procedures.

During the discussions of the proposals of Uruguay and Chile (Items 28 and 29) it was revealed that in certain countries it has been the practice to apply ad valorem tariffs to established values of goods which remain fixed for various periods of time. It was agreed that, in such cases, the ad valorem rates are, in practical result, the equivalent of specific duties so long as the established values of goods are not changed. It was agreed that a Note recognizing this fact should be appended to paragraph 3.

However, it was agreed (the representative of Chile, non-member of the Sub-Committee reserving his position) that it would not, and should not be compatible with the letter or spirit of Article 34 to accept the principle of variable schedules of "fixed values" for products subject to ad valorem rates of duty.

The Sub-Committee adopted the substance of a proposal of Uruguay (Item 30) and it was agreed that the first paragraph of the Note to paragraph 3 of the Geneva Draft should be amended as to provide expressly for the presumption that contract prices may represent the basis for establishing 'actual value' in the case of government contracts in respect of primary products.

The proposal of the delegation of Argentina (Item 35) that paragraph 5 be deleted found no support in the Sub-Committee. The Sub-Committee agreed to accept the substance of the proposal of Uruguay (Item 36), and an Interpretative Note was appended to paragraph 5 stating that if compliance with that paragraph would result in decreases in amounts of duty payable, the Member concerned was allowed a reasonable time to obtain adjustment of any international agreement which bound the rates of duty.

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In order to obviate any misunderstanding of the concept of paragraph 5, sub-paragraph (d) of that paragraph was set up as a special paragraph.

ARTICLE 35

Formalities Connected with Importation and Exportation

The amendments and suggestions to Article 35 are contained in Items 38 to 47 of document E/CONF.2/C.3/10 and document E/CONF.2/C.3/10/Add.1 and 2. They were all thoroughly discussed and partly referred to Working Parties which reported on them to the Sub-Committee.

The discussion of amendments proposed by Argentina, Turkey and Peru (Items 38, 39, 43 and E/CONF.2/C.3/10/Add.2) revealed that the intended scope of this Article was not clearly indicated in the Geneva Draft. Particular difficulty was occasioned by a distinction observed in the Spanish translation of certain types of governmental charges. It was accordingly agreed that paragraph 1 should be revised and care should be taken in the translation to show definitely that this Article relates to all payments of any character required by a Member on or in connection with importation or exportation, other than import and export duties, and other than taxes within the purview of Article 18 of the Geneva Draft.

The representative of Haiti, (not member of the Sub-Committee), who appeared as an observer, stated that the resultant change in the Article did not meet the purpose of his proposal (E/CONF.2/C.3/10/Add.1) and he therefore reserved his position.

The representative of Chile, (not member of the Sub-Committee), likewise present as an observer, also reserved his position.

In this connection the Sub-Committee was of the unanimous opinion that, although Article 35 established the principle that fees and charges of the types therein covered should not represent any taxation on imports or exports for fiscal or protective purposes, adequate provision was made in other parts of the Charter for the raising of revenue by means of duties on imports and exports or by non-discriminatory internal taxes collected on imports at the time of importation.

At the suggestion of the representative of Argentina it was agreed that sub-paragraph 2 should be amended to show clearly that a Member need respond to a request to undertake the review of its laws and regulations only if such request is made by another Member directly affected.

The Sub-Committee adopted the substance of the proposal of the delegation of Uruguay (Item 42) by agreement that an express authorization should be included in paragraph 3 of the Geneva Draft for studies and recommendations by the Organization in relation to Customs requirements in respect of advertising matter and samples for use only in taking orders for merchandise.

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At the joint instance of the representatives of Peru (not member of the Sub-Committee) and the International Monetary Fund it was agreed that the Interpretative Note to Article 35 (Item 44) should be amended by replacing the words "with the approval of the International Monetary Fund" by the words "not inconsistently with the Articles of Agreement of the International Monetary Fund", since the express approval of the Fund was not required in all cases covered by the Note.

In view of the retention of this Note the representative of Brazil (not member of the Sub-Committee) withdrew his reservation (Item 47) concerning certain charges imposed on the international transfer of payments.

The proposal of Cuba to add to paragraph 1 of Article 16 of the Geneva Draft a reference to tariff discriminations resulting from the use of distinctive regional or geographical names in tariff descriptions was referred by Committee III to Sub-Committee C.

Although some Members of the Sub-Committee felt that this matter was appropriate for Article 16, there was a general agreement that the principle of the Cuban proposal should be expressed in some Article of Chapter IV of the Charter.

It was agreed that the principle should be stated provisionally in a new paragraph at the end of Article 35.

At the request of the Chairman of Committee III the matter is accordingly referred to Committee III to be considered by that Committee in the light of any views which may be obtained later from Sub-Committee A of Committee III on the inclusion of some similar provision in Article 16.

Although the new paragraph is limited to discrimination affected through the use of distinctive regional or geographical names, the Sub-Committee recognizes that discrimination against the products of Member countries by tariff descriptions can occur other than by the use of distinctive regional or geographical names. It was not considered practical at this time either to list all the discriminatory practices or to formulate a general provision covering them. The matter is undoubtedly one which the Organization will study under the authority provided for elsewhere in the Charter. The Sub-Committee desires however, to make it clear that the presence in the Charter of a provision directed against the use of distinctive regional or geographical names in such a manner as to result in discrimination against the products of Member countries, is in no sense to be understood as implying that other discriminatory practices in tariff descriptions are thereby authorized.

The Sub-Committee agreed that the order of the paragraphs of Article 35 would be more systematic if paragraph 5 of the Geneva Draft were made paragraph 3 of the Article since it relates only to the matters covered by paragraphs 1 and 2.

ARTICLE 36

Marks of Origin

There were only two suggested amendments to this Article. The delegation of Argentina proposed (Item 48, and modified orally) that paragraph 7 be deleted, and the delegation of Chile (not member of the Sub-Committee)(Item 49) proposed that paragraph 7 be amended to include an express statement of the effect that consumers would not be misled as to the true origin of products bearing certain types of names if the name of the country of actual origin were to appear legibly on the label affixed to the product.

Neither of these proposals received any support in the Sub-Committee.

The Sub-Committee accordingly recommends that the Geneva Draft of Article 36 be adopted without change.

The representative of Argentina reserved the position of his government.

As a result of the discussions on paragraph 7 which have taken place in the Sub-Committee and at the request of the representative of Chile, it was agreed that the text of paragraph 7 should not have the effect of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the governments concerned to proceed to a joint examination of particular cases, which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used.

The representative of Chile (not member of the Sub-Committee) maintains his reservation on this Article pending consideration by his Government as to whether the statement by the Sub-Committee appearing immediately above satisfies the Chilean position on this matter.

/ARTICLE 37

ARTICLE 37

Publication and Administration of Trade Regulations

The Sub-Committee considered amendments to this Article as contained in Items 50 - 52 of Document E/CONF.2/C.3/10.

The proposal of Argentina (E/CONF.2/C.3/10, Item 50) to delete from paragraph 3 (c) the provision for the right of determination by the Organization as to whether or not a Member's procedures for review of Administrative action comply with Charter requirements, was not supported by any other Member of the Sub-Committee.

The proposal of New Zealand and the United Kingdom (Items 51 and 52) to the effect that the reference to sub-paragraph (b) at the end of paragraph 3 (c) was erroneous and should be deleted, was adopted by the Sub-Committee. The substance of a proposal of Uruguay (Item 37) originally proposed to Article 34, was adopted by the Sub-Committee with some expansion of its scope and a sentence was added to paragraph 3 (a) to require that suitable facilities to consult with the proper Governmental Authorities should be afforded to traders directly affected by any law, regulation, decision or ruling of a kind described in paragraph 1.

At the suggestion of the representative of the United States it was agreed that the word "published" at the end of paragraph 2 should be replaced by the expression "made public". In the opinion of the Sub-Committee this would make clearer the intention that the term "published" appearing in the Geneva Draft did not require the prior public issue of an official document, but that the effect could also be accomplished by an official announcement made in the legislature of the country concerned.

/ARTICLE 38

ARTICLE 38

Information, Statistics and Trade Terminology

The Delegation of Norway proposed a redraft of this Article (E/CONF.2/C.3/10/Add.3) and the Delegations of Australia (E/CONF.2/C.3/10/Add.4) and Czechoslovakia (E/CONF.2/C.3/10/Add.3/Rev.1) proposed some changes of this redraft.

During the course of its discussions of Article 38 the Sub-Committee had the opportunity of hearing from a representative of the Statistical Office of the United Nations particulars of the types of activities which are being carried out by that Office in the fields of international statistics. Members of the Sub-Committee were impressed by the work being undertaken by the Statistical Office with the object of providing an international centre for statistics and avoiding duplication of demands for statistical information made on countries by various Specialized Agencies of the United Nations. They were also impressed with the need for the Organization to collaborate with the United Nations and other Intergovernmental Agencies, as provided in Article 84, to ensure that the statistics of external trade of Members are available in a form that will enable the statistical information to fit into the general pattern of international statistics. They accordingly considered it important that contact be established as early as possible between the Organization and the United Nations (Economic and Social Council) with a view to suitable arrangements being made for co-operation in the fields related to international statistics.

The Sub-Committee agreed that the Organization has an obligation to satisfy itself that the statistical information it requires (other than that referred to in paragraph 1 of the Article) cannot be obtained from other inter-governmental organizations before requesting such information from Members.

The Sub-Committee considered the inter-relation of paragraphs 4 and 7 of the Geneva Draft and agreed that paragraph 4 relates to the obligation of Members to give careful consideration to recommendations made to them by the Organization, while paragraph 7, on the other hand provides for the Organization to co-operate in studies and make consequent recommendations to Members.

In view of the opinions expressed by the Sub-Committee the representative of Norway withdrew his amendment.

/ARTICLE 39

ARTICLE 39

Boycotts

The representative of the United States stated during the discussions that the original draft of this Article (Article 17 of the suggested Draft Charter) was designed to preclude "Buy National Goods" measures and campaigns by Members on the ground that they were detrimental to the expansion of international trade. He further stated that, since there was no agreement at London or later for any such prohibition in the Charter, and since Article 39 of the Geneva Draft related only to the trade of individual countries and not to any matter likely to affect the total of external trade, this Article should be deleted in its entirety and the subject matter should be omitted from the Charter.

There was unanimous agreement in the Sub-Committee that the matters covered by Article 39 were not appropriate for inclusion in the Charter and that this Article should be deleted.

PART III

ARTICLE 32

Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a Member, when the passage across such territory with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit".
2. There shall be freedom of transit through each Member country via the routes most convenient for international transit for traffic in transit to or from other Member countries. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.
3. Any Member may require that traffic in transit through its territory be entered at the proper customs house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges [for transportation or those] commensurate with administrative expenses entailed by transit or with the cost of services rendered.
4. All charges and regulations imposed by Members on traffic in transit to or from other Member countries shall be reasonable, having regard to the conditions of the traffic.
5. With respect to all charges, regulations and formalities in connection with transit, each Member shall accord to traffic in transit to or from any other Member country treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
6. Each Member shall accord to products which have been in transit through any other Member country treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through such other Member country. Any Member shall, however, be free to maintain its requirements of direct consignment existing on the day of the signature of this Charter, in respect of  
/any goods in

any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the Member's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage),

8. Transportation charges on traffic in transit shall not be considered as falling within the purview of this Article but shall be subject to the provisions of paragraph 2 of Article 18.

9. The Organization may undertake studies, make recommendations and promote international agreement relating to the simplification of customs regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article. Members shall co-operate with each other directly and through the Organization to this end.

NOTE

Paragraph 1

The assembly of vehicles and mobile machinery arriving in a knocked-down condition or the disassembly (or disassembly and subsequent reassembly) of bulky articles shall not be held to render the passage of such goods outside the scope of "traffic in transit", it being understood that any such operation is undertaken solely for convenience of transport.

ARTICLE 33

Anti-dumping and Countervailing Duties

1. No anti-dumping duty shall be levied on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. 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, the margin of dumping shall be understood to mean the amount by which 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 one country to another

- (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.

2.7 3. No countervailing duty shall be levied on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty"

/shall be

shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise.

3.7 4. No product of any Member country imported into any other Member country shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

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

5.7 6. No Member shall levy any anti-dumping or countervailing duty on the importation of any product of another Member country unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to prevent or materially retard materially the establishment of a domestic industry. The Organization may waive the requirements of this paragraph so as to permit a Member to levy an anti-dumping duty or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in another Member country exporting the product concerned to the importing Member country. It is recognized that the importation of products exported under a stabilization system determined to have conformed to the conditions prescribed in Article 27 would not result in material injury under the terms of this paragraph.

6. No measure other than anti-dumping or countervailing duties shall be applied by any Member in respect of any product of any other Member country for the purpose of offsetting dumping or subsidization.

#### NOTES

##### Paragraph 1

Hidden dumping by associated houses (that is, the sale by the importers an importer at a price below that corresponding to the price invoiced by the an exporter with which 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.

/Paragraph 2

Paragraph 2

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.

Paragraph 2 3.

Multiple currency practices may in certain circumstances constitute a subsidy to exports which can be met by countervailing duties under paragraph 2 3 or may constitute a form of dumping by means of a partial depreciation of a country's currency which can be met by action under paragraph 1 2 of this Article. By "multiple currency practices" is meant practices by governments or sanctioned by governments:

ARTICLE 34

Valuation for Customs Purposes

1. The Members shall work toward the standardization, as far as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering such co-operation, the Organization may study and recommend to Members such bases and methods for determining value for customs purposes as would appear best suited to the needs of commerce and most capable of general adoption.

2. The Members recognize the validity of the general principles of valuation set forth in paragraphs 3, 4 and 5 of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value, at the earliest practicable date. Moreover, they shall, upon a request by another Member directly affected, review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The Organization may request from Members reports on steps taken by them in pursuance of the provisions of this Article.

3. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

(b) "Actual value" should be the price at which at a time and place determined by the legislation of the country of importation and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.

4. The value for customs purposes of any imported product should not include the amount of any internal tax applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund.

/5. (a) Except as

5. (a) Except as otherwise provided in this paragraph, where it is necessary for the purpose of paragraph 3 for a Member to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based on the par values of the currencies involved as established pursuant to the Articles of Agreement of the International Monetary Fund or by special exchange agreements entered into pursuant to Articles 24 of this Charter.

(b) Where no such par value has been established, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

(c) The Organization, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by Members of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any Member may apply such rules in respect of such foreign currencies for the purposes of paragraph 3 of this Article as an alternative to the use of par values. Until such rules are adopted by the Organization, any Member may employ in respect of any such foreign currency rules of conversion for the purposes of paragraph 3 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

[6.] 6. Nothing in this [paragraph] Article shall be construed to require any Member to alter the method of converting currencies for customs purposes, which is applicable in its territory on the day of the signature of this Charter, if such alteration would have the effect of increasing generally the amounts of duty payable.

[6.] 7. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

/NOTES

NOTES

Paragraph 3 (b).

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

(ii) If on the date of signature of this Charter a Member has in force a system of applying ad valorem rates of duty to established values which remain fixed for a period of time, the provisions of this Article requiring the determination of actual value shall not apply so long as the value established for a particular product remains unchanged.

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

(iv) The prescribed standard of "fully competitive conditions" permits Members to exclude from consideration distributors' prices which involve special discounts limited to exclusive agents.

(v) The wording of sub-paragraphs (a) and (b) of paragraph 3 permits a Member to assess duty uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

Paragraph 5.

If compliance with paragraph 5 would result in decreases in amounts of duty payable on products with respect to which the rates of duty have been bound by an international agreement, the term "at the earliest practicable date" in paragraph 2 allows the Member concerned a reasonable time to obtain adjustment of the agreement.

ARTICLE 35

Formalities connected with Importation and Exportation

1. The Members recognize that all fees and charges [other than duties] of whatever character (other than import and export duties and other than taxes within the purview of Article 18) imposed by governmental authorities on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. The Members also recognize the need for reducing the number and diversity of such fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements.

2. The Members shall take action in accordance with the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they shall, upon request by another Member directly affected, review the operation of any of their laws and regulations in the light of these principles. The Organization may request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

[5.] 3. The provisions of paragraphs 1 and 2 of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- (a) consular transactions, such as consular invoices and certificates;
- (b) quantitative restrictions;
- (c) licensing;
- (d) exchange control;
- (e) statistical services;
- (f) documents, documentation and certification;
- (g) analysis and inspection; and
- (h) quarantine, sanitation and fumigation.

[3.] 4. The Organization may study and recommend to Members specific measures for the simplification and standardization of customs formalities and techniques and for the elimination of unnecessary customs requirements, including those relating to advertising matter and samples for use only in taking orders for merchandise.

[4.] 5. No Member shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty /in respect of any

in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

6. The Members recognize that tariff descriptions based on distinctive regional or geographical names should not be used in such a manner as to discriminate against products of member countries. Accordingly, the Members shall co-operate with each other and through the Organization with a view to eliminating at the earliest practicable date practices which are inconsistent with this principle.

(Paragraph 6 as appearing above will not be included in Article 35 if the substance of the paragraph is later incorporated in Article 16).

NOTE

Paragraph [5.] 3.

While Article 35 does not cover the use of multiple rates of exchange as such, paragraphs 1 and [5.] 3 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a Member is using multiple currency exchange fees for balance of payment reasons [with the approval] not inconsistently with the Articles of Agreement of the International Monetary Fund, the provisions of paragraph 2 fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date.

ARTICLE 36

Marks of Origin

1. The Members recognize that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum.
2. Each Member shall accord to the products of each other Member country treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.
3. Whenever administratively practicable Members should permit required marks of origin to be affixed at the time of importation.
4. The laws and regulations of Members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.
5. The Members agree to work in co-operation through the Organization towards the early elimination of unnecessary marking requirements. The Organization may study and recommend to Members measures directed to this end, including the adoption of schedules of general categories of products, in respect of which marking requirements operate to restrict trade to an extent disproportionate to any proper purpose to be served, and which shall not in any case be required to be marked to indicate their origin.
6. As a general rule no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.
7. The Members shall co-operate with each other and through the Organization with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of the distinctive regional or geographical names of products of a Member country which are protected by the legislation of such country. Each Member shall accord full and sympathetic consideration to such requests or representations as may be made by any other Member regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other Member. The Organization may recommend a conference of interested Members on this subject.

/ARTICLE 37

ARTICLE 37

Publication and Administration of Trade Regulations

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

2. No measure of general application taken by any Member affecting an advance in a rate of duty or other charge on imports under an established and uniform practice or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published made public.

3. (a) Each Member shall administer in a uniform, impartial, and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Suitable facilities shall be afforded for traders directly affected by any of those matters to consult with the appropriate governmental authorities.

(b) Each Member shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by and shall govern the practice of such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the  
/central administration,

central administration of such agency may take steps to obtain a review of the matter in other proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in a Member country on the day of the signature of this Charter which in fact provide for an objective impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any Member employing such procedures shall, upon request, furnish the Organization with full information thereon in order that the Organization may determine whether such procedures conform to the requirements of this sub-paragraph [and those of sub-paragraph (b)].

ARTICLE 38

Information, Statistics and Trade Terminology

1. The Members shall communicate to the Organization, or to such agency as may be designated for the purpose by the Organization, as promptly and in as much detail as is reasonably practicable:
  - (a) statistics of their external trade in goods (imports, exports and, where applicable, re-exports, transit and trans-shipment and goods in warehouse or in bond);
  - (b) statistics of governmental revenue from import and export duties and other taxes on goods moving in international trade and, insofar as readily ascertainable, of subsidy payments affecting such trade.
2. So far as possible, the statistics referred to in paragraph 1 of this Article shall be related to tariff classifications and shall be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value or amounts of exchange made available.
3. The Members shall publish regularly and as promptly as possible the statistics referred to in paragraph 1 of this Article.
4. The Members shall give careful consideration to any recommendations which the Organization may make to them with a view to improving the statistical information furnished under paragraph 1 of this Article.
5. The Members shall make available to the Organization, at its request and insofar as is reasonably practicable, such other statistical information as the Organization may deem necessary to enable it to fulfil its functions, provided that such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information.
6. The Organization shall act as a centre for the collection, exchange and publication of statistical information of the kind referred to in paragraph 1 of this Article. The Organization, in collaboration with the Economic and Social Council of the United Nations, and with any other organization deemed appropriate, may engage in studies with a view to improving the methods of collecting, analyzing and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications.
7. The Organization, in co-operation with the other organizations referred to in paragraph 6 of this Article, may also study the question of adopting standards, nomenclatures, terms and forms to be used in international trade and in the official documents and statistics of Members relating thereto, and may recommend the general acceptance by Members of such standards, nomenclatures, terms and forms.

//ARTICLE 39

ARTICLE 39

Boycotts

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

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