

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE C - GENERAL COMMERCIAL PROVISIONS

(Articles 32 - 39)

NOTES ON NINETEENTH MEETING

Held 28 January 1948, at 6.00 p.m. in Conference Room A.

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

DRAFT REPORT OF THE SUB-COMMITTEE TO COMMITTEE III (E/CONF.2/C.3/C/W.18)

The CHAIRMAN introduced the Draft Report consisting of Part I General Observations; Part II - conclusions reached by the Sub-Committee in respect of each of the Articles 32 - 39 inclusive of the Geneva Charter; Part III - the amended text of the Articles together with the Interpretative Notes.

The Sub-Committee discussed the Draft Report page by page and made certain minor drafting changes. It was agreed that all reservations to the proposed text of the Articles should be stated in Part II and not as Notes to the text of the Articles in Part III.

The representative of France, while wishing to retain in the Report the reference to his proposal (item 7) with regard to the requirements of "direct consignment" in paragraph 6 of Article 32 (page 5 - 6 of the Draft Report), withdrew his reservation.

The Sub-Committee with no dissentients approved the Draft Report and the Secretariat was instructed to prepare the Report for Committee III, as an unrestricted document, taking into consideration the decisions and changes made during the discussion.

The CHAIRMAN informed the Sub-Committee that the Spanish translation of the Report was being prepared by the Secretariat.

The representative of Argentina wished that his position as regards the Report should be considered as being in abeyance until he is in possession of the Spanish translation. He will then advise the Secretariat as to his agreement or otherwise with the substance of the Report.

The CHAIRMAN congratulated the members of the Sub-Committee on the

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successful termination of their work and on the co-operative spirit which they had at all times displayed.

The Sub-Committee thanked the CHAIRMAN for the efficient and impartial manner in which he had conducted the discussions.

The CHAIRMAN declared the last meeting of the Sub-Committee closed.

SUB-COMMITTEE C OF COMMITTEE III

Article 32

In the meeting of Sub-Committee C on 21 January 1948, the representative of the United States (Mr. H. M. Catudal) made a statement concerning some aspects of Article 32 - Freedom of Transit. The Sub-Committee decided to make the full text of the statement available to its members.

STATEMENT OF THE REPRESENTATIVE OF THE UNITED STATES

The United States fully supports the recommendations of the Working Party (contained in document 3648 - G.C.P./W.P./14 of 20 January 1948) to include a new paragraph in Article 32 and to include a statement in the Committee Report on this matter, in order to meet the points raised by the proposal of Afghanistan (item 46 of the Annotated Agenda, document E/CONF.2/C.3/10).

The original amendment proposed by Afghanistan, and the remarks made by the delegate of that country and by other delegations, both in this Sub-Committee and in the Working Party, have been carefully considered by my delegation. We feel that the recommendations of the Working Party will be acceptable to all the members of the Conference.

The proposed new paragraph would specifically authorize the ITO to make studies and recommendations and promote international agreement concerning measures designed to promote the broad objectives of the freedom of transit provisions of the Charter and provides that Members agree to co-operate directly and through the Organization to this end.

This matter is of importance to the United States delegation because the Charter is a World Charter and hence must cover, in an equitable way, the trade problems of all countries, the large countries and the small countries, those fortunately situated geographically and those which are at a disadvantage because of their geographic situation.

If countries which are at a disadvantage because they have no direct access to the sea - and there are a number of such countries in the world - are to participate fully in the expansion of world trade, the Charter must recognize their situation and provide what reasonably can be provided by a Charter for an International Trade Organization in order to enable them to do so.

In the foregoing general remarks, I have attempted merely to recognize, as the proposed Statement for the Committee Report recognizes, that the Freedom of Transit provisions of the Charter are of outstanding importance to a number of countries which we all want to participate in the ITO.

May I now turn to several specific points regarding the proposed new paragraph to Article 32 and the suggested Statement for the Committee Report.

I. First of all, the proposals recognize, with respect to transit matters, the necessity of direct negotiation between the countries concerned. The new paragraph contains a specific obligation by Members to co-operate directly in furthering the objectives of the Article. The Organization may make studies and recommendations and promote international agreement, but the ITO cannot itself conduct the negotiations.

II. Secondly, the new paragraph employs the phrase "equitable use of facilities required for such transit." What does "equitable use" mean?

This is a flexible term, which means different things in different circumstances. If there is any single word which expresses the underlying principles of all of Chapter IV, it is this word "equitable". We find it underlying the most-favoured-nation provisions of Article 16, the national treatment provisions of Article 18, the provisions requiring the allocation of quotas on the basis of a previous representative period, and in many other provisions of the Charter.

It has always been the understanding of my delegation - and, I believe, the understanding of the other members of the Preparatory Committee - that, while the Freedom of Transit provisions of the Charter do not require a country to build a new railroad, construct a new port; buy new locomotives or otherwise provide new construction or equipment for transit purposes, it does obligate Members to permit the equitable use of facilities which the transit country already possesses.

In my opinion, therefore, the term "equitable use" in the new paragraph in Article 32 means, broadly speaking, fair and reasonable in the particular circumstances - that is, equitable to the country which needs the transit facilities, equitable to the country through which the transit passes, and equitable to third countries.

III. The suggested Statement for the Committee Report speaks of studies, recommendations, and co-operation concerning "special arrangements" for transit to and from countries which do not have direct access to the sea. What is meant by "special arrangements"?

As in the case of "equitable", the term "special arrangements" is a flexible term designed to cover many different situations, but it must be read in the light of Article 32 as a whole, including the text of the new paragraph. It is clear that this term "special arrangements" in no way conflicts with or overrides any provision of Article 32. For example, it certainly does not mean that a country may discriminate against a third country in violation of paragraph 5 of Article 32.

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What this term does do, in my opinion, is to recognize the fact that countries which do not have access to the sea are in a "special" position - they have a special disadvantage - and hence may need particular facilities to enable them to fully participate in international trade. These "special arrangements" will be obtained by direct co-operation between Members, in the framework of the equitable principles of the ITO.

HMCatudal:PJ

31 January 1948

COMMITTEE III

WORKING PARTY NO.1 ON ARTICLE 32

Proposal of the delegation of Chile to append the following Interpretative Note to paragraph 9:

"If as a result of negotiations for special arrangements carried out, in accordance with paragraph 9 of Article 32, with a country which has no direct access to the sea, a Member State grants more ample facilities than those already provided for in other paragraphs of said Article, such special facilities could be asked for only by countries which are in the same geographic situation."

Terms of Reference:

To consider the advisability of adding an Interpretative Note to Article 32, or altering the text of the Article, to take account of the proposal of the delegation of Chile and to consider this proposal in relation to any other Article of the Charter as may be considered necessary.

Members:

Afghanistan	China
Australia	Netherlands
Bolivia	United Kingdom
Chile	United States

SUB-COMMITTEE C OF COMMITTEE III

REPORT OF WORKING PARTY IV

ARTICLE 32

Working Party IV, composed of the representatives of Afghanistan, France, Lebanon, Pakistan, United Kingdom and the United States, with the representative of Australia as Chairman, had the following terms of reference: to consider whether there was any need to include in the Charter the content of the Afghanistan proposal, Item 46 in the Annotated Agenda (document E/CONF.2/C.3/10) and if so, whether its proper place was in Article 69 or Article 32.

During the discussion in the Working Party the representatives of Bolivia and Netherlands made statements to the Working Party.

After very careful consideration the Working Party unanimously recommends:
(a) the addition of a new paragraph to Article 32 in the following terms, viz.:

"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."

(b) the inclusion in the report of Sub-Committee C of a statement in the following terms:

The new paragraph recommended for inclusion in Article 32 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 Members agree to co-operate with each other directly and through the Organizations to this end.

While 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, 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 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, as well as concerning 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.

7 January 1948

SUB-COMMITTEE C OF COMMITTEE III

REPORT OF WORKING PARTY ON ARTICLE 33

1. The following points were referred to the Working Party, which was composed of representatives of Cuba, Lebanon, the United Kingdom and United States:

- (i) To consider a form of words which should be placed as a preamble to Article 33 and which would, in effect, constitute a general condemnation of the practice of dumping;
- (ii) to consider the question of a definition of dumping, particularly as to whether the present definition of the 'margin of dumping' could not be so amended by mere drafting of changes as to be, in effect, a definition of 'price dumping';
- (iii) to consider whether this Article should, as it does at present, be restricted to relate solely to so-called 'price dumping';
- (iv) to consider whether paragraph 6 should be deleted or amended in the event that it could be interpreted so as to limit action permitted under Articles 13 and 14.
- (v) to consider footnote to paragraph 6;
- (vi) to consider whether 'hidden dumping' as described in the footnote to paragraph 1 is covered by the text of paragraph 1 and in the event that it is not so covered to consider whether the note or the text should be amended;

2. Items (i) and (ii).

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

3. Item (iii)

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

4. Item (iv)

The Working Party was evenly divided as to whether the terms of paragraph (6) could be construed as limiting the rights of Members under

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

5. Item (v)

If the foregoing suggestion is adopted, the Geneva footnote will no longer be necessary.

6. Item (vi)

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

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

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

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

7. In their proceedings the Working Party have taken into full consideration the amendments tabled by Argentina, China, Cuba, India, Pakistan, Mexico, Syria and Lebanon, insofar as they lay within their terms of reference.

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

9. The text of paragraphs 1 and 2 is given in Annex A.

ANNEX A

ARTICLE 33

ANTI-DUMPING AND COUNTERVAILING DUTIES

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

(a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(b) in the absence of such domestic price, is less than either

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

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

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

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

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

SUB-COMMITTEE C OF COMMITTEE III

REPORT OF WORKING PARTY I

ARTICLE 33

1. The Working Party I consisted of the original/^{members}appointed on 2 January namely Cuba, Lebanon, United Kingdom and United States of America, with the addition of the representatives of the Netherlands and Brazil and with the representative of Australia as Chairman. It had the following terms of reference:

"to consider all proposals submitted during the discussion of the Sub-Committee on 9 and 12 January of the report of the Working Party dated 7 January 1948."

2. With the exception of the delegate for the Netherlands the members of the Working Party recommend the adoption of the text of paragraph 1 contained in the Working Party's report of 7 January, with the following alterations:

(a) the word "fair" is to be changed to "normal" in two places. The word "normal" is considered to express more accurately the type of value concerned

(b) The wording of the phrase relating to material injury to a domestic industry which appears in this paragraph and in paragraph 5 should be brought into line. The following wording is recommended for paragraph 1:

"causes or threatens material injury to an established industry in a Member country or materially retards the establishment of a domestic industry"

It is considered that in paragraph 5 the words "prevent or" appearing before "materially retard" are redundant and therefore should be deleted.

The delegate of the Netherlands maintains his objection to the inclusion of the word "condemned" in this paragraph.

3. With the exception of the delegate for the Netherlands the members of the Working Party agree to adopt the previous working party's text of paragraph 2 with the addition of the word "price" inserted before the word "difference" in the second last line. This is purely a drafting amendment. The delegate for the Netherlands objects to the words "or prevent" appearing in this paragraph.

4. After considering the new paragraph proposed by the representative of Brazil at the Sub-Committee meeting on 9 January, together with a modification of this proposal suggested by the representative of Pakistan at the Sub-Committee meeting on 12 January, the Working Party recommends unanimously the inclusion of a Note to paragraph 2 of Article 33 in the following terms:

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

The representative of Brazil stated that a footnote in these terms would meet the position of his delegation.

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

- (a) provide facilities for consultation between members in cases of suspected dumping before anti-dumping duties are actually brought into operation
- (b) to provide facilities for consultation between two countries, where one of them is considered by the other to be dumping in a third country, before recourse is made to the Organization in accordance with the second sentence of paragraph 5.
- (c) to bring Article 33 into line with Article 25 where provision is made for consultation with regard to subsidies

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

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

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

/As it affected

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

7. When each of the issues referred to above was before the Working Party consideration was given to the remarks to the Sub-Committee by the representative of Czechoslovakia. His references to "social" dumping were discussed separately but the Working Party unanimously recommends the maintenance of its previous recommendation (contained in item (iii) of the report of 7 January) that Article 33 should be restricted to price dumping.

8. The Working Party desires to point out that this report is a supplementary one to that dated 7 January 1948. None of the recommendations made by the Working Party in its present report varies the terms of the previous report except for the alterations in the text previously proposed (shown as Annex A to the report of 7 January 1948) to replace paragraph 1 of Geneva draft of Article 33.

The amended text now proposed by the Working Party is set out as an Annex to this report.

/ANNEX

ANNEX

ARTICLE 33

ANTI-DUMPING AND COUNTERVAILING DUTIES

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

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

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

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

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

9 January 1948

G.C.I./M.P.2

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 33

The Delegation of Brazil presented the following amendment to paragraph 6 at the Meeting of the Sub-Committee on 9 January 1948:

"6. - Whenever any product is imported into any Member country under such conditions as to justify the belief that it is being imported at less than its fair value, although the exact margin of dumping or subsidization cannot be promptly ascertained, the Member concerned may demand that the importer shall deposit an amount which appears sufficient to cover the anti-dumping or countervailing duty which may become due. The excess of the deposit over the duty, as finally determined, shall be immediately returned.

9 January 1948
G.C.F./W.P./1.

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 33

NETHERLANDS: AMENDMENT

The Delegation of Netherlands presented, at the meeting of the Sub-Committee, January 9, the following amendment to the text of this Article as agreed upon by the Working Party I, (White Paper 2836, 7 January, Annex A).

1. The Members recognize that dumping by a country may cause serious prejudice to the interests of Member countries.

For the purpose of this Article dumping is to be considered as introducing to the commerce of an importing country a product at a price which (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. A Member may offset dumping by levying an anti-dumping duty on any dumped product provided that the amount of such duty shall not exceed the margin of dumping. For the purpose of this Article the margin of dumping is to be determined in accordance with the provisions of paragraph 1 of this Article.

7. In any case in which the interests of another Member or other Members may be seriously prejudiced either by dumping or by the application of anti-dumping duties, Members shall, upon request, discuss with the Member or Members concerned or with the Organization, the possibilities of a satisfactory solution.

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE C

(Article 34, paragraph 3)

Report of Working Party II

The Working Party, consisting of the representatives of Australia, France, the United Kingdom, the United States of America and Uruguay, was set up to investigate the possibility of systems providing for the temporary binding or periodical establishment of the value of merchandise, as proposed by the delegations of Uruguay (Item 28 of the Annotated Agenda, E/CONF.2/C.3/10) and Chile (Item 29) being regarded as compatible with the provisions of Article 34, paragraph 3, regarding valuation for customs purposes.

After discussion, it was recognized that neither the letter nor the spirit of the present Article 34 is compatible with the establishment, on a more or less long-term basis, of schedules of valuation of merchandise and that in the light of the discussions which have taken place in the full Committee and in Sub-Committee C, it is not possible to contemplate any alteration of the principles established by that Article.

However, the members of the committee were of the unanimous opinion that temporary stabilization of the value of particular merchandise subject to ad valorem duties in effect gives the latter all the characteristics of specific duties, and that such stabilization, while conforming to the principles of the Charter, would thus allow certain countries to maintain their present regulations provisionally and take the necessary legislative steps to comply with Article 34 at a later date.

The Working Party considered that the following text would answer this purpose. It would be submitted as a note to Article 34, paragraph 3:

"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."

The delegate for Chile, who attended the meeting as an observer, recognized that the above text granted certain new facilities, but considered that it did not meet the request made by his delegation and reserved his position.

SUB-COMMITTEE C OF COMMITTEE III

PARAGRAPH 5 OF ARTICLE 34

SECOND REPORT OF THE UNITED STATES DELEGATION

The United States Delegation now proposes that:

- (a) Paragraph 5 (d) be redesignated as paragraph 6 and old paragraph 6 be renumbered paragraph 7.
- (b) In line 1 of the new paragraph 6 the word "paragraph" be replaced by "Article".
- (c) The following interpretative note be appended to paragraph 5:

"If compliance with paragraph 5 would result in substantial 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".

10 January 1948

G.C.P/W.P/3

SUB-COMMITTEE C OF COMMITTEE III

Paragraph 5 of Article 34

Report of the United States Delegate

The CHAIRMAN asked the United States Delegate prepare for consideration by the Sub-Committee a redraft of sub-paragraph (d) in paragraph 5 of Article 34, which would:

(1) protect a Member from any requirement that, in making a necessary change in its method of converting currencies for customs purposes, it decrease generally the amounts of duty payable and

(d) eliminate any possible construction of the sub-paragraph as authorizing any indefinite postponement of compliance with sub-paragraph (a) or (b).

The discussion of this matter in the Sub-Committee indicated a consensus of opinion that the cases contemplated by sub-paragraph (d) and the desired redraft are those in which the only reasonable solution of the problem is to change ad valorem rates of duty to compensate for the change in the method of converting currencies. However, changes in rates of duty are subject in many cases to limitations because of bindings in existing commercial agreements.

The point as to indefinite postponement is amply covered by paragraph 2 of Article 34, if no exception to the provisions of that paragraph is indicated.

On the basis of the foregoing it is suggested that sub-paragraph (d) of paragraph 5 be deleted and that the following interpretative note be appended to paragraph 2 of Article 34.

Note to paragraph 2 of Article 34:

The term "at the earliest practicable date" means that the Members must adjust their laws and practices to conform with the stated principles as soon as is reasonably possible. Where the application of the principles would involve substantial increases or decreases in amount of duty payable, Members are allowed a reasonable period to make compensatory adjustments in rates of duty. Where the application of the principles would cause a substantial reduction in amounts of duty payable on products with respect to which the rates of duty have been bound by an international agreement, a reasonable period is allowed for the Members to obtain adjustment of the international obligation.

31 January 1948

COMMITTEE III

WORKING PARTY NO. 2 ON ARTICLE 34

Terms of Reference:

To consider the proposal of the delegation of Chile to add the following sentence to the Interpretative Note (ii) of paragraph 3 (b) of Article 34:

"In future, the continuance of the system referred to in this Note shall be permitted, provided that, on the request of interested parties or Members, periodically established values for a specified product will be adjusted according to actual value."

Members:

Afghanistan	India
Belgium	United Kingdom
Chile	United States

22 December 1947

SUB-COMMITTEE C OF COMMITTEE III

Article 35

The Chairman of Sub-Committee C of Committee III has received the following communication from the delegation of Brazil with regard to its observations on paragraph 5 of Article 35 (E/CONF.2/C.3/10, item 47):

"The delegation of Brazil has the honour to inform the Chairman of Sub-Committee C of Committee III that it wishes to submit its views on paragraph 5 of Article 35, as expressed in the following statement made by the delegation at the meeting held on 19 December:

The delegation of Brazil does not maintain the reservation mentioned under item 47 of the annotated Agenda, in connection with Article 35, paragraph 5, sub-paragraph (d). The problem which the Brazilian delegation had in mind was that of charges imposed on the transfer of funds for a particular class of international payments, in order to reduce a disequilibrium in the balance of payments. After a closer study of the problem, the Brazilian delegation considers that the case provided for in Brazilian legislation is already dealt with in the explanatory note to Article 35, and hopes that this note will either be retained in its present form or inserted in the text. The problem raised by charges on the transfer of funds has been submitted by the Brazilian authorities to the International Monetary Fund, in view of the transitional provisions of the Bretton Woods Agreement, and the Brazilian Government will abide by the decision of the Monetary Fund on this matter. The Brazilian delegation withdraws its reservation regarding Article 35, it being understood that the Brazilian delegation interprets this Article as meaning that charges connected with exchange control may be maintained under the terms and conditions approved by the International Monetary Fund."

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 35

REPORT OF DRAFTING GROUP I

Sub-Committee C in its twelfth meeting instructed the Drafting Group I composed of the representatives of the United Kingdom, the United States and Uruguay, to consider the proposal of Uruguay (Item 42), and to endeavour to find a form of words to be written into paragraph 3 of Article 35 to cover its content. Agreement was reached on the wording of the following addition at the end of paragraph 3 of Article 35 to replace the amendment contained in Document E/CONF.2/C.3/10, Item 42:

" , including those relating to advertising matter and samples for use only in taking orders for merchandise".

SOUS-COMMISSION C DE LA TROISIEME COMMISSION

ARTICLE 35

RAPPORT DU GROUPE DE TRAVAIL n° 1

A sa douzième séance, la Sous-Commission C a invité le groupe de travail n° 1 composé des représentants des Etats-Unis, du Royaume-Uni et de l'Uruguay à examiner la proposition de l'Uruguay (point 42) et à s'efforcer de rédiger un texte qui serait inséré au paragraphe 3 de l'article 35 pour répondre à l'objet de cet amendement. Le groupe de travail s'est mis d'accord sur le texte suivant destiné à être ajouté au paragraphe 3 de l'article 35 et qui remplace l'amendement qui figure au point 42 du document E/CONF.2/C.3/10 :

" , y compris celles qui ont trait à la publicité et aux échantillons utilisés uniquement pour prendre des commandes de marchandises".

SUB-COMMITTEE C OF COMMITTEE III

Report of Working Party III on Paragraph One of Article 35

1. Working Party III, composed of the representative of Lebanon, United Kingdom and the United States with the representative of Australia acting as Chairman and the delegates of Haiti, Turkey and Peru as observers, had the following terms of reference:

"consider paragraph 1 of Article 35 in relation to the amendments proposed by the delegations of Haiti, Peru and Turkey, particularly with a view to clarifying whether Article 35 should, and in fact does, refer only to fees and charges imposed by Governments in payment for services rendered, and to redraft this paragraph to distinguish such fees and charges from Tariffs and other imposts, such as internal taxes".

2. The working party recommends unanimously that the following amendments to Article 35, paragraph 1 be adopted, viz.:

In the first sentence, delete "fees and charges, other than duties", and substitute:

"all fees and charges of whatever character (other than import and export# duties and other than taxes within the purview of Article 18)"

The amendment recommended is not one of substance but is a drafting amendment to make it clear that Article 35 covers all charges and fees imposed by governmental authorities on or in connection with importation or exportation other than import and export duties and other than taxes within the purview of Article 18.

3. The delegate of Turkey considers that this amendment meets the point raised by the Turkish proposal contained in Item 39 of the annotated agenda (Paper E/CONF.2/C.3/10) and his delegation will withdraw its proposal.

4. The delegate of Haiti informed the Working Party that the purpose of Haitian proposal (contained in document E/CONF.2.3/10/Add.1) is to provide that:

Where fees and charges of the type covered by Article 35 are at present used as a taxation for fiscal purposes by any member that member can continue to use such fees and charges for such a purpose and it would not be under any obligation to take action at any time to limit the amount of the fees and charges to the approximate cost of the services rendered.

5. There was no support in the working party for the proposal of Haiti and

the Working party therefore recommends against any change in the text to give effect to that proposal. The delegate of Haiti wishes to maintain his position in relation to the amendment submitted by his delegation.

6. In view of the fact that the delegate for Haiti, during the discussion of the Haitian proposal, stressed the importance to his country of taxation on imports and exports as a source of revenue, the working party desires clearly to express its opinion that, although Article 35 establishes the principles that the fees and charges of the type covered by the article should not represent a taxation of imports or exports for fiscal purposes, adequate provision is made in other parts of the Charter for the raising of revenue by duties on exports and imports or by non-discriminatory internal taxes collected on imports at the time of importation.

After discussion the delegate of Peru is satisfied that the problem the amendment suggested by his delegation (contained in paper E/CONF.2/C.3/L0/Add.2) intended to meet is already covered by the footnote to paragraph 5 of Article 35 and his delegation is therefore prepared to withdraw the suggested amendment.

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 35

1. In the fifteenth meeting of the Sub-Committee (E/CONF.2/C.3/C/W.15, paragraph 5) the representative of Peru was prepared to withdraw his amendment (E/CONF.2/C.3/10.Add.2) on the grounds that his proposal was covered by the Note to paragraph 5 of the Geneva Draft.
2. He suggested, however, a change in the wording of the Note. He was requested by the Sub-Committee to consult with the representative of the International Monetary Fund and to report to the Sub-Committee.
3. The representatives of Peru and the International Monetary Fund have agreed upon the following change in the Note:
replece the words in the sixth line ".... with the approval of the International Monetary Fund" by the words "not inconsistently with the Articles of Agreement of the International Monetary Fund."

SUB-COMMITTEE C OF COMMITTEE III

REPORT OF WORKING PARTY V

ARTICLE 35

1. The Working Party V composed of the representatives of Cuba, France, United Kingdom and United States, with the representative of Australia as Chairman had the following terms of reference:

To consider what action should be taken with regard to the proposal of the delegation of Cuba contained in Item 3 in the document E/CONF.2/C.3/6.

2. The proposal of the delegation of Cuba was referred to Sub-Committee C at the direction of the Chairman of Committee III.

3. The delegate of Cuba stated, during the discussion of the matter in Sub-Committee C, that the Cuban amendment contained in document E/CONF.2/C.3/6 was intended to be added to the first paragraph of Article 16 and it was necessary to adjust the wording of the amendment to facilitate its inclusion in Section E of the Chapter IV. The Cuban delegate then proposed the following wording:

"The Members undertake not to include in their tariff classifications based on types named after distinctive regional or geographical names of products of a Member country. When classifications of the kind referred to in the previous sentence are in existence, Members undertake to take action at the earliest practicable date with a view to eliminating from their tariff such classifications".

4. The Working Party after careful consideration of the matter unanimously agreed upon a provision in the following terms:

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.

5. It was agreed to recommend the inclusion of this provision as a new paragraph to Article 35. As they consider the matter is closely related to the principle of general most-favoured-nation treatment set out in Article 16, both the representative of France and the representative of the United Kingdom have some doubts as to whether Article 35 is the appropriate place for this provision. The representatives of France and the United Kingdom stated that they will, if their delegations consider it advisable, take up the question
/of the position

of the position in the Charter of this provision when the report is before Committee III. To avoid any delay in drawing the attention of the Sub-Committee A, which is dealing with Articles 16 to 19, to the matter, the Working Party requested the Chairman to forward a copy of this report to the Chairman of Sub-Committee A.

6. The Working Party recognizes that discrimination against the products of member countries by tariff descriptions can take forms other than through the use of distinctive regional or geographical names. It is not considered practicable at this time either to list all these discriminatory practices or to formulate a general provision covering them. The matter is undoubtedly one which the Organization will study, in relation to the whole question of Tariff descriptions, under the authority to undertake studies which is already included in the Charter. The Working Party desires, however, to make it clear that in recommending the inclusion in the Charter of a provision directed against the use of distinctive regional or geographical names to discriminate against products of member countries, it is not intended to imply that other discriminatory practices in tariff descriptions are thereby sanctioned.

7. In its examination of Article 35 with the object of finding the most appropriate place for the new provision the Working Party agreed that a rearrangement of the existing paragraphs of Article 35 would improve the whole article. It therefore recommends:

- (a) that the existing paragraphs be rearranged in the following order:
Paragraphs 1, 2, 5, 3, and 4.
- (b) that in paragraph 5 the words "of paragraphs 1 and 2" be inserted after the word "provisions", appearing as the second word in the paragraph.
- (c) that the provision set out in paragraph 4 of this report be inserted as a new paragraph 6.

9 January 1948

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 38 - INFORMATION, STATISTICS AND TRADE TERMINOLOGY

The delegation of Norway proposed a redraft of this Article (E/CONF.2/C.3/10 - Item 53).

After consultation with the Statistical Office of the United Nations, the delegation of Norway now wishes to present a revised draft of its previous proposal, for discussion in the Sub-Committee.

The text of the new version is given below. The language deleted from the original Norwegian proposal is in square brackets and the language added is underlined.

Article 38

1. The Members shall communicate [the statistics of their external trade as] promptly [and inasmuch detail as is reasonably practicable] to the Organization or to such agency as may be agreed upon by the Organization in consultation with the [appropriate organs of the] United Nations, the statistics relating to their external trade (imports, exports, re-exports, governmental revenue from duties and other taxes levied on imports and exports, and payments of subsidies directly affecting such trade). Such statistics shall be as detailed as is reasonably practicable and shall reveal the operation of restrictions on trade under each tariff item.
2. The Members shall publish regularly and as promptly as possible the statistics [of their external trade.] referred to in paragraph 1 of this Article.
3. The Members shall give careful consideration to any recommendations which the Organization and other appropriate organs of the United Nations may make with a view to improving the statistical information furnished regarding their external trade.
4. The Organization shall arrange to obtain such other statistical information as it may require for its operations through the statistical services of the United Nations and the Specialized Agencies in accordance with the agreements negotiated with the United Nations under Article 84 of this Charter.
- [5.] The Organization, taking into account the needs of all international agencies and in order to avoid all unnecessary duplication shall arrange in consultation with the appropriate organs of the United Nations, for the collection, exchange and publication of such statistics of external trade as are appropriate to the needs of international agencies.]
- [6.] 5. The Organization, in co-operation with the organs of the United Nations /may study

may 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, on the basis of agreements reached with the appropriate organs of the United Nations may recommend the general acceptance by Members of such standards, nomenclatures, terms and forms.

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 38

BACKGROUND PAPER PREPARED BY THE STATISTICAL OFFICE OF THE UNITED NATIONS
CONCERNING THE REDRAFT OF ARTICLE 38 AS PROPOSED BY THE DELEGATION OF
NORWAY (E/CONF.2/C.3/10) AND AMENDED BY THE STATISTICAL OFFICE OF THE
UNITED NATIONS (G.C.P/W.P/7)

SCOPE AND ACTIVITIES OF THE STATISTICAL COMMISSION
AND THE STATISTICAL OFFICE OF THE UNITED NATIONS IN
THE FIELDS RELATED TO INTERNATIONAL STATISTICS AND
TRADE TERMINOLOGY

General Responsibilities

1. The Statistical Commission, having the general responsibility for advising the Economic and Social Council on statistical matters, has been given broad terms of reference including,
 - (a) promoting the development of national statistics and the improvement of their comparability;
 - (b) the co-ordination of the statistical work of the Specialized Agencies;
 - (c) the development of the central statistical services of the Secretariat;
 - (d) advising the organs of the United Nations on general questions relating to the collection, interpretation and dissemination of statistical information;
 - (e) promoting the improvement of statistics and statistical methods generally. (E/30, 22 February 1946 and E/76 Rev.1, 1 July 1946)
2. The responsibility of the Statistical Office of the United Nations, organized by the Secretary-General as a part of the Department of Economic Affairs, is derived from several general recommendations of the Economic and Social Council, and of the General Assembly. These recommendations relate to
 - (a) the organization of a central statistical unit in the Secretariat of the United Nations;
 - (b) the collection, analysis and evaluation of statistics from Member Governments, Specialized Agencies and other sources;
 - (c) the publication of statistics;
 - (d) the co-ordination of statistical activities of the Specialized Agencies;

/(e) the promotion

(e) the promotion of development and improvement of statistics in general;

(f) the maintenance of an international center for statistics;

(g) the maintenance of close contact and close co-ordination with national governments on programmes of statistical research, submission of statistical data, analysis and publication.

(E/76 Rev.1, 1 July 1946)

3. A central statistical unit having been authorized within the United Nations Secretariat, the Economic and Social Council recommended to the General Assembly that the responsibility for the statistical activities of the League of Nations be transferred to the United Nations. (E/76 Rev.1).

4. The General Assembly authorized the Secretary-General "to assume and continue the non-political functions and activities of the League of Nations previously performed by the League of Nations Secretariat". (A/64 Add.1/50/(1), 14 December 1946). Under this authority the statistical activities previously performed by the League of Nations Committee of Statistical Experts, as well as those of the Economic, Financial and Transit Department of the League of Nations Secretariat, and the statistical work of the Economic and Financial Committees, were assumed by the Statistical Commission of the Economic and Social Council and the Statistical Office in the Secretariat, respectively.

Specific Responsibilities Relating to International Trade and Trade Terminology

5. In continuing the collection and publication programme of the League of Nations, the Statistical Office has collected and published current international trade statistics in the Monthly Bulletin of Statistics. In the statistical yearbook now in preparation the Statistical Office will continue the statistical series on international trade previously published in the Statistical Yearbook of the League of Nations. The preparation of statistics for the continuation of such publications of the League of Nations as the Network of World Trade, Europe's Trade, and the World Economic Survey are now under way.

6. The Economic and Social Council has approved the programme of work for the development of an international standard industrial classification for the statistics relating to branches of economic activity. (E/437/40 (iv), 29 March 1947). Similarly, a programme of work directed toward the standardization of the classification of commodities entering into external trade, a classification by personal status, and the classification of
/occupations

occupations has been undertaken by the Statistical Commission and the Statistical Office. (E/577, 23 September 1947). A Committee of the Statistical Commission, assisted by the staff of the Statistical Office is at work on a draft proposal for the standardization of the classification of commodities entering into external trade. A group of expert consultants in this field is being organized to supplement the staff of the Statistical Office.

7. The general responsibility for studies leading toward the promotion of international comparability of statistics of external trade, along with other branches of statistics, has been assumed by the Committee on Statistical Classification of the Statistical Commission of the Economic and Social Council.

ARTICLE 38, INFORMATION, STATISTIC AND TRADE TERMINOLOGY

The revised draft of the proposal of the delegation of Norway after consultation with the Statistical Office of the United Nations (E/CONF.2/C.3/10/Add.3) as compared with the wording of Article 38 of the Geneva Draft. The language deleted from the revised Norwegian proposal is shown in square brackets, the language added is underlined.

Article 38

1. The Members shall communicate ~~to~~ to the Organization, or to such agency as may be designated for the purpose by the Organization, as ~~and~~ promptly ~~and~~ inasmuch detail as is reasonably practicable; to the Organization or to such agency as may be agreed upon by the Organization in consultation with the United Nations, the statistics relating to their external trade (imports, exports, re-exports, governmental revenue from duties and other taxes levied on imports and exports, and payments of subsidies directly affecting such trade). Such statistics shall be as detailed as is reasonably practicable and shall reveal the operation of restrictions on trade under each tariff item.

(a) Statistics of their external trade in goods (imports, exports, and, where applicable, re-exports, transit and transshipment 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. 2. The Members shall publish regularly and as promptly as possible the statistics referred to in paragraph 1 of this Article.

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

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

required information.

6. The Organization shall act as assessor for 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, analysing and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications.]

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

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

22 January 1948

SUB-COMMITTEE C OF COMMITTEE III

ARTICLE 38

REPORT OF WORKING PARTY VI

1. The representative of the Statistical Office of the United Nations informed the Working Party of the scope and activities of the Statistical Commission and the Statistical Office of the United Nations in connection with international statistics and also pointed out some instances which have occurred of duplications of requests by Specialized Agencies of the United Nations for statistics from various countries.
2. The Working Party recognized the need for an international centre for statistics and for the co-ordination of statistical activities of Specialized Agencies and were impressed with the work which the Statistical Office is doing in these fields.
3. The representative of the Statistical Office made it clear that his office expects the Organization to have a primary responsibility for collection of statistics relating to external trade of Members and that it would look to the Organization for statistical data related to that field.
4. The Members of the Sub-Committee who were members of the Working Party considered that the proposed Norwegian redraft of Article 38 touches upon one aspect only of detailed particulars which would have to be included in any agreement made between the Organization and the Statistical Office. The proposed redraft makes it mandatory for the Organization to obtain statistical information, other than that relating to external trade, through the statistical services of the United Nations and the Specialized Agencies.
5. Article 84 of the Geneva Draft provides that the Organization shall make arrangements with other inter-governmental organizations which have related responsibilities, to provide for effective co-operation and avoidance of unnecessary duplication in the activities of the organizations. This provision clearly is intended to deal with such matters as an agreement between the Organization and the United Nations regarding statistics. It is obviously undesirable to write into the Charter any details of the agreement which should be entered into. These will have to be worked out between the Organization and the Statistical Office when the full scope of each other's requirements and working machinery are known, and will presumably be altered from time to time as conditions alter.
6. With regard to the point raised by both the representatives of Norway and the Statistical Office that instances have occurred of a duplication of requests for statistics from countries, the Members of the Sub-Committee

on the Working Party consider that the following:

- (a) The reference to unnecessary duplication in the activities of the organizations set out in Article 84;
- (b) The specific provision in 38:5 that Members shall make available to the Organization at its request statistical information other than that related to external trade, provided such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information;
- (c) The reference in 38:6 to collaboration by the Organization with the Economic and Social Council and other organizations in studies with a view to improving the methods of collecting, etc. economic statistics;

are definite and sufficient provisions on this aspect of the matter.

7. The Working Party considered the difference of substance between paragraph 1 of the Geneva Draft of Article 38 and paragraph 1 of the Norwegian redraft. Paragraph 1 of the Geneva Draft places an obligation on Members to furnish to the Organization statistics of their external trade in goods, but the redraft prepared by Norway would broaden this obligation to include statistics of external trade relating to "services". The Working Party did not consider such a broadening to be desirable. If the Organization requires such statistical information it can request the information from Members under the power given to it by the provisions of paragraph 5. Other Specialized Agencies may be set up to deal with these services and their Charters may require that statistical information relating to the services may be communicated to them; it is therefore very desirable to avoid Members having obligations to two Specialized Agencies in relation to the same statistical information.

8. As some members of the Working Party did not consider that the position was clear in paragraph 5, the Working Party desires to express its opinion that the Organization has an obligation to satisfy itself that the statistical information it requires cannot be obtained from other inter-governmental organizations before requesting such information from Members.

9. The Working Party considered the inter-relation of paragraphs 4 and 7 of the Geneva draft. In its opinion 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.

10. It is suggested that the Sub-Committee include in its report

- (a) a statement on the following lines:

/ "During

"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, made by various Specialized Agencies of the United Nations to countries for statistical information, ^{They were also impressed by} and ~~considered~~ the need for the Organization to collaborate with the United Nations and other inter-governmental agencies in ensuring 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."

(b) the interpretations of paragraphs 4, 5 and 7 which are given above in paragraphs 8 and 9 of this report.

SUB-COMMITTEE C OF COMMITTEE III

REPORT OF DRAFTING GROUP II

ARTICLE 37

The Drafting Group, composed of representatives of France, United Kingdom and the United States with the representative of Australia as chairman, was instructed to consider the proposal of Uruguay contained in item 37 of the annotated agenda (document E/CONF.2/C.3/10) and draft a form of words to cover it.

The Drafting Group unanimously recommends the inclusion in sub-paragraph (a) of paragraph 3 of Article 37 of an additional sentence in the following terms:

"Suitable facilities shall be afforded for traders directly affected by any of these matters to consult with the appropriate Governmental authorities."

SOUS-COMMISSION C DE LA TROISIEME COMMISSION

RAPPORT DU COMITE DE REDACTION N° II

ARTICLE 37

Le Comité de rédaction, composé du représentant de l'Australie, président, et des représentants des Etats-Unis, de la France et du Royaume-Uni, a été chargé d'étudier la proposition de l'Uruguay, figurant au point 37 de l'ordre du jour annoté (Document E/CONF.2/C.3/10) et d'établir à ce sujet un projet de rédaction.

Le Comité de rédaction à l'unanimité recommande d'inclure à l'alinéa (a) du paragraphe 3, une phrase additionnelle ainsi libellée :

"Il accordera aux commerçants directement intéressés en ces matières les facilités voulues pour consulter les autorités gouvernementales compétentes."

ANNEX I

CONVENTION AND STATUTE ON FREEDOM OF TRANSIT signed at BARCELONA,
20 APRIL 1921 (in force since 31 OCTOBER 1922), by the following countries:

Albania, Austria, Belgium, Bulgaria, Chile, Czechoslovakia,
Danzig, Denmark, Estonia, Finland, France (and Syria and Lebanon),
Germany, Great Britain (and Federated Malay States, Non-Federated
Malay States, Newfoundland), Greece, Hungary, India, Iran, Iraq,
Italy, Japan, Latvia, Luxembourg, the Netherlands (and the
Netherlands Indies, Surinam, Curacao), New Zealand, Norway, Poland,
Roumania, Spain, Sweden, Switzerland, Thailand, Turkey, Yugoslavia.

STATUTE ON FREEDOM OF TRANSIT

Article 1

Persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the Contracting States, when the passage across such territory, with or without transshipment, 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 State across whose territory the transit takes place.

Traffic of this nature is termed in this Statute "traffic in transit."

Article 2

Subject to the other provisions of this Statute, the measures taken by Contracting States for regulating and forwarding traffic across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to ensure the application of the provisions of this Article, Contracting States will allow transit in accordance with the customary conditions and reserves across their territorial waters.

Article 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes such dues may be reduced or even abolished on account of differences in
/the cost

the cost of supervision.

Article 4

The Contracting States undertake to apply to traffic in transit on routes operated or administered by the State or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

Article 5

No Contracting State shall be bound by this Statute to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants.

Each Contracting State shall be entitled to take reasonable precautions to ensure that persons, baggage and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and goods stock and other means of transport, are really in transit, as well as to ensure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in this Statute shall affect the measures which one of the Contracting States may feel called upon to take in pursuance of general international Conventions to which it is a party, or which may be concluded hereafter, particularly Conventions concluded under the auspices of the League of Nations, relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs, arms or the produce of fisheries, or in pursuance of general Conventions intended to prevent any infringement of industrial, literary or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organised as not to hinder the transit of vessels.

Article 6

This Statute does not of itself impose on any of the Contracting States a fresh obligation to grant freedom of transit to the nationals and their

/baggage

baggage, or to the flag of a non-Contracting State, nor to the goods, nor to coaching and goods stock or other means of transport coming or entering from, or leaving by, or destined for a non-Contracting State, except when a valid reason is shown for such transit by one of the other Contracting States concerned. It is understood that for the purposes of this Article, goods in transit under the flag of a Contracting State shall, if no transshipment takes place, benefit by the advantages granted to that flag.

Article 7

The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency affecting the safety of the State or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above Articles; it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Article 8

This Statute does not prescribe the rights and duties of belligerents and neutrals in time of war. The Statute shall, however, continue in force in time of war so far as such rights and duties permit.

Article 9

This Statute does not impose upon a Contracting State any obligations conflicting with its rights and duties as a Member of the League of Nations.

Article 10

The coming into force of this Statute will not abrogate treaties, conventions and agreements on questions of transit concluded by Contracting States before May 1st, 1921.

In consideration of such agreements being kept in force, Contracting States undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this Statute the modifications required to bring them into harmony with such provisions, so far as the geographical, economic or technical circumstances of the countries or areas concerned allow.

Contracting States also undertake not to conclude in future treaties, conventions or agreements which are inconsistent with the provisions of this Statute, except when geographical, economic or technical considerations justify exceptional deviations therefrom.

Furthermore, Contracting States may, in matters of transit, enter into regional understandings consistent with the principles of this Statute.

Article 11

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and have been

/granted

granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of a Contracting State. The Statute also entails no prohibitions of such grant of greater facilities in the future.

Article 12

In conformity with Article 23 (e) of the Covenant of the League of Nations, any Contracting State which can establish a good case against the application of any provision of this Statute in some or all of its territory, on the ground of the grave economic situation arising out of the acts of devastation perpetrated on its soil during the war 1914-1918, shall be deemed to be relieved temporarily of the obligations arising from the application of such provision, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Article 13

Any dispute which may arise as to the interpretation or application of this Statute which is not settled directly between the parties themselves shall be brought before the Permanent Court of International Justice, unless, under a special agreement or a general arbitration provision, steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake, before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly, to submit such disputes for an opinion to any body established by the League of Nations, as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases, a preliminary opinion may recommend temporary measures intended, in particular, to restore the facilities for freedom of transit which existed before the act or occurrence which gave rise to the dispute.

Article 14

In view of the fact that within or immediately adjacent to the territory of some of the Contracting States there are areas or enclaves, small in extent and population in comparison with such territories, and that these areas or enclaves form detached portions of settlements of other parent States, and that it is impracticable for reasons of an administrative order to apply to them the provisions of this Statute, it is agreed that these provisions shall not apply to them.

/The same

The same stipulation applies where a colony or dependency has a very long frontier in comparison with its surface and where in consequence it is practically impossible to afford the necessary Customs and police supervision.

The States concerned, however, will apply in the cases referred to above a regime which will respect the principles of the present Statute and facilitate transit and communications as far as practicable.

Article 15

It is understood that this Statute must not be interpreted as regulating in any way rights and obligations inter se of territories forming part or placed under the protection of the same sovereign State, whether or not these territories are individually Members of the League of Nations.

ANNEX II

CONVENTION AND STATUTE ON THE REGIME OF NAVIGABLE WATERWAYS ON INTERNATIONAL CONCERN, Signed at BARCELONA, 20 APRIL 1921 (in force since 31 OCTOBER 1922),
by the following countries:

Albania, Austria, Bulgaria, Chile, Czechoslovakia, Denmark, Finland, France, Great Britain (and Federated Malay States, Non-Federated Malay States, Palestine, Newfoundland), Greece, Hungary, India, Italy, Luxemburg, New Zealand, Norway, Roumania, Sweden, Thailand and Turkey.

Article 1

In the application of the Statute, the following are declared to be navigable waterways of international concern:

1. All parts which are naturally navigable to and from the sea of a waterway which in its course, naturally navigable to and from the sea, separates or traverses different States, and also any part of any other waterway naturally navigable to and from the sea, which connects with the sea a waterway naturally navigable which separates or traverses different States.

It is understood that:

- (a) Transshipment from one vessel to another is not excluded by the words "navigable to and from the sea";
- (b) Any natural waterway or part of a natural waterway is termed "naturally navigable" if now used for ordinary commercial navigation, or capable by reason of its natural conditions of being so used; by "ordinary commercial navigation" is to be understood navigation which, in view of the economic condition of the riparian countries, is commercial and normally practicable;
- (c) Tributaries are to be considered as separate waterways;
- (d) Lateral canals constructed in order to remedy the defects of a waterway included in the above definition are assimilated thereto.
- (e) The different States separated or traversed by a navigable waterway of international concern, including its tributaries of international concern, are deemed to be "riparian States".

2. Waterways, or parts of waterways, whether natural or artificial, expressly declared to be placed under the regime of the General Convention regarding navigable waterways of international concern either in unilateral Acts of the States under whose sovereignty or authority these waterways or parts of waterways are situated, or in agreements made with the consent, in particular, of such States.

Article 2

Article 2

For the purpose of Articles 5, 10, 12 and 14 of this Statute, the following shall form a special category of navigable waterways of international concern:

- (a) Navigable waterways for which there are international Commissions upon which non-riparian States are represented;
- (b) Navigable waterways which may hereafter be placed in this category, either in pursuance of unilateral Acts of the States under whose sovereignty or authority they are situated, or in pursuance of agreements made with the consent, in particular, of such States.

Article 5

As an exception to the two preceding Articles, and in the absence of any Convention or obligation to the contrary:

1. A riparian State has the right of reserving for its own flag the transport of passengers and goods loaded at one port situated under its sovereignty or authority and unloaded at another port also situated under its sovereignty or authority. A State which does not reserve the above-mentioned transport to its own flag may, nevertheless, refuse the benefit of equality of treatment with regard to such transport to a co-riparian which does reserve it.

On the navigable waterways referred to in Article 2, the Act of Navigation shall only allow to riparian States the right of reserving the local transport of passengers or of goods which are of national origin or are nationalised. In every case, however, in which greater freedom of navigation may have been already established, in a previous Act of Navigation, this freedom shall not be reduced.

2. When a natural system of navigable waterways of international concern which does not include waterways of the kind referred to in Article 2 separates or traverses two States only, the latter have the right to reserve to their flags by mutual agreement the transport of passengers and goods loaded at one port of this system and unloaded at another port of the same system, unless this transport takes place between two ports which are not situated under the sovereignty or authority of the same State in the course of a voyage, effected without transshipment on the territory of either of the said States, involving a sea-passage or passage over a navigable waterway of international concern which does not belong to the said system.

Article 8

The transit of vessels and of passengers and goods, on navigable waterways of international concern shall, so far as customs formalities are /concerned,

concerned, be governed by the conditions laid down in the Statute of Barcelona on Freedom of Transit. Whenever transit takes place without transshipment the following additional provisions shall be applicable:

(a) When both banks of a waterway of international concern are, within one and the same State, the customs formalities imposed on goods in transit after they have been declared and subjected to a summary inspection shall be limited to placing them under seal or padlock or in the custody of customs officers;

(b) When a navigable waterway of international concern forms the frontier between two States, vessels, passengers and goods in transit shall while "en route" be exempt from any customs formality, except in cases in which there are valid reasons of a practical character for carrying out customs formalities at a place on the part of the river which forms the frontier, and this can be done without interfering with navigation facilities.

The transit of vessels and passengers, as well as the transit of goods without transshipment, on navigable waterways of international concern, must not give rise to the levying of any duties whatsoever, whether prohibited by the Statute of Barcelona on Freedom of Transit or authorised by Article 3 of that Statute. It is nevertheless understood that vessels in transit may be made responsible for the board and lodging of any customs officers who are strictly required for supervision.

Article 22

Without prejudice to the provisions of paragraph 5 of Article 10, any dispute between States as to the interpretation or application of this Statute which is not settled directly between them shall be brought before the Permanent Court of International Justice, unless under a special agreement or a general arbitration provision steps are taken for the settlement of the dispute by arbitration or some other means.

Proceedings are opened in the manner laid down in Article 40 of the Statute of the Permanent Court of International Justice.

In order to settle such disputes, however, in a friendly way as far as possible, the Contracting States undertake before resorting to any judicial proceedings and without prejudice to the powers and right of action of the Council and of the Assembly to submit such disputes for an opinion to any body established by the League of Nations as the advisory and technical organisation of the Members of the League in matters of communications and transit. In urgent cases a preliminary opinion may recommend temporary measures intended in particular to restore the facilities for free navigation which existed before the act or occurrence which gave rise to the dispute.

ANNEX III

CONVENTION AND STATUTE ON THE INTERNATIONAL REGIME OF RAILWAYS,
signed at GENEVA, 9 DECEMBER 1923 (in force since 23 MARCH 1926),
by the following countries:

Austria, Belgium, Danzig, Denmark, Estonia, Ethiopia, Finland,
France, Germany, Great Britain (for colonies, protectorates, mandates,
etc.), Greece, Hungary, India, Italy, Japan, Latvia, the Netherlands,
New Zealand, Norway, Poland, Roumania, Spain, Sweden, Switzerland,
Thailand, Yugoslavia.

EXCERPT FROM THE PREAMBLE

Recognising that international agreement in respect of railway transport has already been the subject of many special conventions between States and between railway administrations, and that it is precisely by means of such special conventions that international co-operation in this domain can make the most effective progress in the practical application of principles established by a general convention;

Considering, however, that, so far from limiting the effect and scope of such special conventions or interfering with direct relations and negotiations between railway administrations, or in any way affecting the rights of sovereignty or authority of States, it is, on the contrary, by a concise and systematic codification of recognised international obligations in respect of international railway traffic that the principles already established between certain States or certain administrations can be given the widest possible extension, and that in the future the conclusion of new special conventions, to suit the requirements and developments of international traffic, can be facilitated in the greatest possible measure;

STATUTE.

Article 4

Recognising the necessity of granting sufficient elasticity in the operation of railways to allow the complex needs of traffic to be met, it is the intention of the Contracting States to maintain unimpaired full freedom of operation while ensuring that such freedom is exercised without detriment to international traffic.

They undertake to give reasonable facilities to international traffic and to refrain from all discrimination of an unfair nature directed against the other Contracting States, their nationals or their vessels.

The benefit of the provisions of the present article is not confined to traffic governed by a single contract; it extends also to the traffic dealt with in Articles 21 and 22 of the present Statute subject to the conditions specified in the said articles.

Article 19

As regards international traffic, the railways may not levy, over and above the charges fixed in the tariffs applicable to any particular traffic, any charges other than those which constitute an equitable remuneration for services which are not covered by the charges fixed in the tariffs.

Article 20

The Contracting States, recognising the necessity in general of leaving tariffs sufficient flexibility to permit of their being adapted as closely as possible to the complex needs of trade and commercial competition, retain full freedom to frame their tariffs in accordance with the principles accepted by their own legislation, provided that this freedom is exercised without detriment to international traffic.

They undertake to apply to international traffic tariffs which are reasonable both as regards their amounts and the conditions of their application, and undertake to refrain from all discrimination of an unfair nature directed against the other Contracting States, their nationals or their vessels.

These provisions shall not prevent the establishment of combined rail and sea tariffs which comply with the principles laid down in the previous paragraphs.

Article 35

Should a dispute arise between two or more Contracting States as to the interpretation or the application of the present Statute, and should it prove impossible to settle such dispute either directly between the Parties or by any other method of amicable settlement, the Parties to the dispute may, before resorting to any procedure of arbitration or to a judicial settlement, submit the dispute for an advisory opinion to the body established by the League of Nations as the advisory and technical organisation of Members of the League for matters of communications and transit. In urgent cases, a preliminary opinion may be given recommending temporary measures, including measures to restore the facilities for international traffic which existed before the act or occurrence which gave rise to the dispute.

Should it prove impossible to settle the dispute by any of the methods of procedure enumerated in the preceding paragraph, the Contracting State shall submit their dispute to arbitration unless they have decided, or shall decide, under an agreement between them, to bring it before the Permanent Court of International Justice.

/Article 36

Article 36

If the case is submitted to the Permanent Court of International Justice, it shall be heard and determined under the conditions laid down in Article 27 of the Statute of the Court.

If arbitration is resorted to, and unless the Parties decide otherwise, each Party shall appoint an arbitrator, and a third member of the arbitral tribunal shall be elected by the arbitrators, or, in case the latter are unable to agree, shall be selected by the Council of the League of Nations from the list of assessors for communications and transit cases mentioned in Article 27 of the Statute of the Permanent Court of International Justice; in such latter case the third arbitrator shall be selected in accordance with the provisions of the penultimate paragraph of Article 4 and the first paragraph of Article 5 of the Covenant of the League.

The arbitral tribunal shall judge the case on the basis of the terms of reference mutually agreed upon between the Parties. If the Parties have failed to reach an agreement, the arbitral tribunal acting unanimously shall itself draw up terms of reference after considering the claims formulated by the Parties; if unanimity cannot be obtained, the Council of the League of Nations shall decide the terms of reference under the conditions laid down in the preceding paragraph. If the procedure is not determined by the terms of reference, it shall be settled by the arbitral tribunal.

During the course of the arbitration the Parties, in the absence of any contrary provision in the terms of reference, are bound to submit to the Permanent Court of International Justice any question of international law or question as to the legal meaning of this Statute the solution of which the arbitral tribunal, at the request of one of the Parties, pronounces to be a necessary preliminary to the settlement of the dispute.

ANNEX IV

CONVENTION AND STATUTE ON THE INTERNATIONAL REGIME OF MARITIME PORTS,
signed at GENEVA, 9 DECEMBER 1923 (in force since 26 JULY 1926), by the
following countries:

Australia, Austria, Belgium, Czechoslovakia, Denmark, Estonia,
France, Germany, Great Britain (for colonies, protectorates,
mandates, etc.), Greece, Hungary, India, Iraq, Italy, Japan, Mexico,
the Netherlands, (and the Netherlands Indies, Surinam, Curacao),
New Zealand (and Western Samoa), Norway, Sweden, Switzerland,
Thailand, Yugoslavia).

Article 5

In assessing and applying Customs and other analogous duties, local
octroi or consumption duties, or incidental charges, levied on the
importation or exportation of goods through the maritime ports situated
under the sovereignty or authority of the Contracting States, the flag
of the vessel must not be taken into account, and accordingly no
distinction may be made to the detriment of the flag of any Contracting
State whatsoever as between that flag and the flag of the State under
whose sovereignty or authority the port is situated, or the flag of any
other State whatsoever.

Article 6

In order that the principle of equal treatment in maritime ports
laid down in Article 2 may not be rendered ineffective in practice by the
adoption of other methods of discrimination against the vessels of a
Contracting State using such ports, each Contracting State undertakes to
apply the provisions of Articles 4, 20, 21 and 22 of the Statute annexed
to the Convention on the international Régime of Railways, signed at
Geneva on December 9, 1923, so far as they are applicable to traffic to
or from a maritime port, whether or not such Contracting State is a party
to the said Convention on the International Régime of Railways. The
aforesaid Articles are to be interpreted in conformity with the provisions
of the protocol of Signature of the said Convention.

Article 7

Unless there are special reasons justifying an exception, such as
those based upon special geographical, economic, or technical conditions,
the Customs duties levied in any maritime port situated under the
sovereignty or authority of a Contracting State may not exceed the duties
levied on the other Customs frontiers of the said State on goods of the same
kind, source or destination.

If, for special reasons as set out above, a Contracting State grants
2688 /special

special Customs facilities on other routes for the importation or exportation of goods, it shall not use these facilities as a means of discriminating unfairly against importation or exportation through the maritime ports situated under its sovereignty or authority.

Article 17

No Contracting State shall be bound by this Statute to permit the transit of passengers whose admission to its territories is forbidden, or of goods of a kind of which the importation is prohibited, either on grounds of public health or security, or as a precaution against diseases of animals or plants. As regards traffic other than traffic in transit, no Contracting State shall be bound by this Statute to permit the transport of passengers whose admission to its territories is forbidden, or of goods of which the import or export is prohibited, by its national laws.

Article 20

This Statute does not entail in any way the withdrawal of facilities which are greater than those provided for in the Statute and which have been granted in respect of the use of maritime ports under conditions consistent with its principles. This Statute also entails no prohibition of such grant of greater facilities in the future.

Article 21

Without prejudice to the provisions of the second paragraph of Article 8, disputes which may arise between Contracting States as to the interpretation or the application of the present Statute shall be settled in the following manner:

Should it prove impossible to settle such dispute either directly between the Parties or by any other method of amicable settlement, the Parties to the dispute may, before resorting to any procedure of arbitration or to a judicial settlement, submit the dispute for an advisory opinion to the body established by the League of Nations as the advisory and technical organisation of Members of the League for matters of communications and transit. In urgent cases a preliminary opinion may be given recommending temporary measures, including measures to restore the facilities for international traffic which existed before the act or occurrence which gave rise to the dispute.

Should it prove impossible to settle the dispute by any of the methods of procedure enumerated in the preceding paragraph, the Contracting States shall submit their dispute to arbitration, unless they have decided or shall decide, under an agreement between them, to bring it before the Permanent Court of International Justice.

/Article 22

Article 22

If the case is submitted to the Permanent Court of International Justice, it shall be heard and determined under the conditions laid down in Article 27 of the Statute of the Court.

If arbitration is resorted to, and unless the Parties decide otherwise, each Party shall appoint an arbitrator, and a third member of the arbitral tribunal shall be elected by the arbitrators, or, in case the latter are unable to agree, shall be selected by the Council of the League of Nations from the list of assessors for Communications and Transit cases mentioned in Article 27 of the Statute of the Permanent Court of International Justice; in such latter case, the third arbitrator shall be selected in accordance with the provisions of the penultimate paragraph of Article 4 and the first paragraph of Article 5 of the Covenant of the League.

The arbitral tribunal shall judge the case on the basis of the terms of reference mutually agreed upon between the Parties. If the Parties have failed to reach an agreement, the arbitral tribunal, acting unanimously, shall itself draw up terms of reference after considering the claims formulated by the Parties; if unanimity cannot be obtained, the Council of the League of Nations shall decide the terms of reference under the conditions laid down in the preceding paragraph. If the procedure is not determined by the terms of reference, it shall be settled by the arbitral tribunal.

During the course of the arbitration the Parties, in the absence of any contrary provision in the terms of reference, are bound to submit to the Permanent Court of International Justice any question of international law or question as to the legal meaning of this Statute the solution of which the arbitral tribunal, at the request of one of the Parties, pronounces to be a necessary preliminary to the settlement of the dispute.

ANNEX V

INTERNATIONAL CONVENTION CONCERNING THE TRANSPORT OF GOODS BY RAIL

(commonly known as the BERNE CONVENTION, abbreviation - C.I.M.) signed at ROME, 23 November 1933 (in force since 1 October 1938) by the following countries:

Austria, Belgium, Bulgaria, Czechoslovakia, Danzig, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, the Netherlands, Norway, Poland, Portugal, Roumania, Spain, Sweden, Switzerland, Turkey, Yugoslavia.

Article 1

Railways and Traffic to be Governed by the Convention

1. The present Convention shall apply to all consignments of goods despatched under a through way-bill for transport over the territory of at least two of the contracting States, when such transport is entirely confined to lines included in the list drawn up in accordance with Article 58 of the present Convention.
2. The present Convention shall not, however, apply to:
 - (1) Cases in which the stations of departure and arrival are both in the territory of the same State, the territory of another State only being crossed in transit:
 - (a) When the lines over which transit is effected are operated by a railway of the State of departure;
 - (b) When the railways concerned have concluded special agreements in virtue of which such transport is not to be regarded as international even if the lines over which transit is effected are not operated by a railway of the State of departure.
 - (2) Transport between stations of two adjacent States, if entirely effected over the railways of one of those States, provided always that the consignor, by his choice of way-bill form, claims the application of the internal regulations governing such railways, and that neither of the States concerned objects thereto.

Article 2

Provisions Concerning Combined Transport

1. On the list referred to in Article 1 may be entered, in addition to railways, regular motor transport or boat services which are complementary to railway services, and carry international traffic under the responsibility of the contracting State or of a railway included in the list.
2. Such undertakings shall be subject to all the obligations, and shall
/be entitled

be entitled to all the rights, imposed or conferred on railways by the present Convention, subject to any modification necessitated by differences in methods of transport. Such modifications shall not, however, in any way affect the rules as to liability laid down in the present Convention.

3. Any State desiring to have one of the services referred to in Paragraph 1 included in the list shall take the necessary steps to have the modifications contemplated in Paragraph 2 published in the same manner as the tariffs.

4. For international traffic utilising both railways and transport services other than those defined in Paragraph 1 above, the railways may, in conjunction with the transport undertakings concerned, lay down tariff conditions differing, in their legal bearings, from those of the present Convention, so as to allow for the peculiarities of each mode of transport. They may, in that event, provide for the use of a transport document other than that prescribed by the present Convention.

Article 9

Tariffs - Prohibition of Private Agreements

1. Transport charges and subsidiary charges shall be calculated according to the tariffs legally in force and duly published in each State.

Nevertheless, the publication of international tariffs shall only be compulsory in the States whose railways are concerned in such tariffs as lines of departure or arrival.

Increases in international tariffs and other measures calculated to render the conditions of transport therein laid down more onerous shall not become effective until fifteen days at the earliest after their publication.

The tariffs shall contain all necessary information for the calculation of transport charges and subsidiary charges and specify to what, if any, extent allowance is to be made for rates of exchange.

2. The tariffs shall indicate all the special conditions attaching to the transport of various classes of goods and more particularly the freight speed to which they refer. If for all or certain classes of good, or over certain routes, a railway applies a tariff providing for only one freight speed, such tariff may be applied to goods transported under either the white way-bill or the way-bill with red bands, subject to the conditions in the matter of time of delivery resulting for each category of way-bill from the provisions of Article 6, Paragraph 4, and Article 11.

The tariffs shall be uniformly applied to all persons concerned. The conditions laid down therein shall be valid unless contrary to the present /Convention, in

Convention, in which case they shall be regarded as null and void.

3. Any private agreement purporting to grant a reduction in the tariff rates to one or more consignors is strictly forbidden and shall be null and void.

Nevertheless, reductions in rates shall be permissible if duly published and equally open to all; reductions may likewise be made for the benefit of the railway service, public services or charitable organisations.

4. No sums shall be collected on behalf of the railways, over and above the transport charges and various subsidiary charges provided for in the tariffs, other than sums disbursed by them, such as Customs duties, octroi and police charges, cost of cartage from one station to another not included in the tariff, cost of repairs to the outer or inner packing of goods necessary for their preservation, and other similar disbursements. Such disbursements shall be duly certified and separately detailed on the way-bill to which the vouchers shall be attached. If the sums disbursed are to be charged to the consignor, the vouchers shall not be handed over to the consignee with the way-bill, but shall be sent to the consignor with an account of the sums paid out, as provided in Article 17.

The amount of any surcharges, together with the grounds for their collection, shall be mentioned in the way-bill.

Article 10.

Calculation of Transport Charges - Routes

The following rules shall be observed in the calculation of charges and the choice of routes:

(a) If the consignor has indicated on the way-bill that a certain route is to be followed, the transport charge shall be calculated for that route.

Designation of the stations at which formalities required by the Customs, octroi, fiscal, police or other administrative authorities are to be completed shall be equivalent in an indication of the route.

(b) If, in the way-bill, the consignor has only stated which tariffs are to be applied, the railway shall apply such tariffs in so far as the instructions are sufficient for determining the stations between which the tariffs claimed are to be applied. The railway shall choose from among the various routes on which such tariffs are in force on the day of the conclusion of the transport contract that route which appears to it to be most advantageous for the consignor.

(c) Should the consignor state on the way-bill, in the manner prescribed in Article 17, Paragraph 2, that transport charges shall

/be paid in

be paid in advance as far as an intermediate station, the railway shall choose from among the routes passing through the said intermediate station that which appears to it to be most advantageous for the consignor. Transport charges shall be calculated as for the route chosen by the railway.

(d) If, in the circumstances provided for in (a) and (c) above, there is a through international tariff between the station of despatch and the station of destination over the route requested as under (a) or between the station of despatch and that referred to under (c), such tariff shall be applied, provided that at the time of despatch its application is not subject to conditions which are not fulfilled in the case concerned.

(e) Should the particulars given by the consignor be insufficient to determine the route or tariffs or should they be contradictory, the railway shall choose the route or tariffs which appear to it to be most advantageous for the consignor. The railway shall, in every case, comply with the indications given on the way-bill in respect of the stations referred to in the second paragraph of (a), and as far as possible with the consignor's other instructions.

Nevertheless, should there be a through international tariff between the station of despatch and the station of destination, such tariff shall be applied, provided that the route which it involves complies with the instructions, if any, on the way-bill with regard to the stations referred to in the second paragraph of (a), and that its application is not subject to other conditions which are not fulfilled in the case concerned.

(f) In all the cases referred to above, the delivery period shall be reckoned in accordance with the route indicated by the consignor or chosen by the railway.

(g) The railway shall not transport goods by a route other than that indicated by the consignor, save in the cases referred to in Article 5, Paragraph 5, and Article 23, Paragraph 1, unless:

- (1) The transport charges and the time required for delivery do not exceed those for the route indicated by the consignor;
- (2) The formalities required by the Customs, octroi, fiscal, police and other administrative authorities, as well as the feeding of live animals, are invariably carried out at the stations mentioned by the consignor.

The consignor shall be notified that transport is taking place by a route other than that which he indicated.

/(h) In the cases

(h) In the cases referred to in (b), (c) and (e), the railway shall not be liable for any prejudice caused by its choice of route or tariffs, except in the case of wilful misconduct or gross negligence.

(i) Should the railway, in applying the provisions of (d) and the second paragraph of (e) above, apply a through international tariff providing for a higher charge than that which would result, on the same route, from the combination of other tariffs, when the conditions for the application of such tariffs are fulfilled, the railway shall at the request of the person entitled thereto, refund the balance.
