

THIRD COMMITTEE: COMMERCIAL POLICY.

DRAFT REPORT OF SUB-COMMITTEE A (ARTICLES 16, 17, 18, 19)

PART I

1. Sub-Committee A was appointed at the ninth meeting of the Third Committee, 12 December, to examine the proposals and amendments relating to Articles 16 and 17 (other than those relating to paragraphs 2 and 3 of Article 16 which were referred to the Joint Sub-Committee of the Second and Third Committees) with a view to reaching agreement on a text to be recommended to the Third Committee. At the thirteenth meeting of the Third Committee, 17 December, it was agreed to refer the amendments to Articles 18 and 19 to Sub-Committee A.
2. The Sub-Committee consisted of representatives of the following delegations: Australia, Brazil, China, Colombia, Cuba, Denmark, France, Mexico, Netherlands, New Zealand, Peru, Turkey, United Kingdom, United States and Uruguay. The delegate of Norway replaced the delegate of Denmark when Articles 18 and 19 were under discussion. The Sub-Committee had the benefit of consultation with the representatives of the following delegations, not members of the Sub-Committee: Argentina, Ceylon, Chile, Czechoslovakia, Ireland, the Philippines, Sweden, Syria and Venezuela, and with a representative of the International Monetary Fund. A considerable number of observers attended regularly the Sub-Committee meetings.
3. Dr. G. A. Lamsvelt (Netherlands) was elected Chairman.
4. The Sub-Committee has held 26 meetings.
5. Four Working Parties were established which drafted revised texts of the note to Annex A of Article 16, and of Articles 17, 18 and 19, respectively, and a drafting group named which produced the new paragraph 4 of Article 16.
6. Part II of this Report comments briefly on the main changes in the text and on the manner in which the Sub-Committee dealt with the proposed amendments.
7. The recommended text of Articles 16, 17, 18 and 19 (except paragraphs 2 and 3 of Article 16 which were not within its terms of reference) appears in Part III of this Report.

/PART II

PART II

(References are to the Revised Annotated Agenda, E/CONF.2/C.3/6,
except as otherwise specified)

Article 16

Annexes A and D and Paragraph 4

The note to Annex A has been redrafted with respect to the imposition of a margin of tariff preference to replace the preferential quantitative arrangements described therein, and the reference to the imposition of a margin of tariff preference to replace a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories listed has been deleted, as well as the entire note to Annex D. In lieu of the provisions deleted, a new paragraph 4 has been added to Article 16 which provides that any such margin of tariff preference shall be subject to the provisions of Article 17.

The Danish proposal (Item 5) to amend the note to Annex A with respect to the imposition of a margin of tariff preference to replace the existing quantitative arrangements, and the Cuban proposal (Item 6) to amend the notes to Annexes A and D with respect to a margin of tariff preference to replace a margin of preference in an internal tax, have been met by these changes. The Cuban delegation accordingly withdrew its reservation recorded in the Geneva draft.

It is the Sub-Committee's understanding that if the negotiations provided for in the new text of the note to Annex A for the elimination of the preferential arrangements described therein or their conversion to tariff preferences were not to result in agreement, there would nevertheless be a commitment to convert immediately the quota preferences involved into tariff preferences. The Sub-Committee understands further that a new tariff preference created or an existing tariff preference increased as a result of the negotiations provided for would come within the scope of paragraph 3 of Article 16 and would, therefore, be subject to negotiations in the manner provided for in Article 17.

As a consequential change, the Sub-Committee recommends amending paragraph 5 (b) of Article 23 as indicated in Part III.

The Brazilian delegation maintained provisionally its reservation to paragraph 5 (b) of Article 23 which appears in the Geneva draft both in connection with Article 23 and with Annex A.

Annex D and Sub-Paragraph 2 (c) bis

On the suggestion of the delegate of the Philippines, it was agreed to delete from Annex D the reference to the Republic of the Philippines and to insert in paragraph 2 a new sub-paragraph referring to the preferential

/arrangements

arrangements in force between the United States of America and the Republic of the Philippines.

Paragraph 5

The Cuban proposal (Item 3) to add to paragraph 1 of Article 16 a provision to the effect 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 was referred to Sub-Committee C by the Third Committee. Sub-Committee C recommended the inclusion in Article 35 of a new paragraph along these lines unless its substance was added to Article 16. Sub-Committee A considered both Sub-Committee C's recommendation and the suggestion of the Chairman of the Third Committee, i.e., that an even broader provision be included in Article 16, but decided not to recommend any such addition on the grounds that it might have the effect of limiting the scope of the most-favoured-nation clause. The Third Committee subsequently requested Sub-Committee A to incorporate such a provision in Article 16, and paragraph 5 has accordingly been added.

Interpretative Note

The Sub-Committee recommends as an Interpretative Note to Article 16 the note to paragraph 3 of Article I of the General Agreement on Tariffs and Trade, which includes the interpretative note to Article 16 appearing in the Geneva draft.

Article 17

Paragraph 1

Most of the amendments proposed to paragraph 1 of the Geneva draft, whether relating to the principles laid down in the first sentence or to the rules for negotiations, were either met or withdrawn in view of the revised text which specifies in greater detail the rules for negotiations, without altering the principles. In addition to the amendments referred to the Sub-Committee, suggestions submitted by Australia, Colombia, France, Mexico, the United Kingdom and the United States were taken into consideration in revising the text.

The Argentinian (Item 25), Mexican (Item 27) and Uruguayan (Item 26, C.3/6/Corr.5) proposals relating to the initiation of and the participants in negotiations were substantially covered by redrafting the first part of paragraph 1. The Haitian proposal (Item 28) received no support.

The Argentinian amendment (Item 25) to the effect that negotiations should be directed to the "progressive" rather than "substantial" reduction of tariffs received no support, and the Mexican amendment (Item 27) also relating to the purpose of negotiations, was withdrawn in view of the incorporation of more detailed rules for negotiations.

/The proposal

The proposal by the delegation of the Philippines (Item 29) to modify the phrase "elimination of preferences" by the words "gradual" was withdrawn in view of the provisions of new paragraph 2 (a).

Paragraph 2

The Mexican proposals to insert additional rules for negotiations (Item 31 and C.3/A/W.13) were met to a considerable extent by the revised text, particularly new paragraphs 1 (a) and (b). The Mexican delegate accepted the revised text and did not press those amendments which were not specifically adopted.

The Peruvian (Item 33) and Colombian (Item 32) amendments relating to the effects of currency devaluation on tariffs were withdrawn because of the Sub-Committee's interpretation that:

- (a) prior to negotiations, a Member would be free to increase the specific duty on any unbound item since Article 17 does not provide for a general binding of all items;
- (b) subsequent to negotiations, should a Member's currency be devalued consistently with the Articles of Agreement of the International Monetary Fund by more than twenty percent, the General Agreement (Article II, 6 (a)) permits the readjustment of specific duties to take account of such devaluation, subject to certain safeguards; and because of
- (c) the inclusion of an interpretative note to sub-paragraph 2 (d) stating that the effects of currency devaluation would be a matter for consideration during negotiations.

The Sub-Committee considered and the Turkish delegate agreed that this interpretation would also cover the Turkish delegation's proposed amendment to Article 14 (C.2/9, page 63).

Sub-Paragraph 2 (a)

It was the Sub-Committee's understanding that the words "undertake not to raise it (i.e., a tariff duty) above a specified higher level" did not imply that a Member might be entitled to increase its tariffs generally, but merely that in certain cases it might be advantageous to any Member to obtain a tariff binding, even though at a higher level, and that the provisions of sub-paragraph 2 (a) are therefore not inconsistent with the aims of paragraph 1, i.e., the substantial reduction of tariffs and elimination of preferences.

It was considered necessary to describe the "basis" for negotiations by the word "selective" as well as by the term "product-by-product", in order to make it clear that negotiations would not proceed on a product-by-product basis with respect to all products, but rather on the basis of lists of requests and offers of concessions on products in which there was mutual interest.

/The Sub-Committee

The Sub-Committee did not understand this to mean that a Member could refuse to negotiate on a particular item without offering any explanation. If the reasons given were not regarded as satisfactory by an interested Member, it was the Sub-Committee's view that the procedure of paragraph 4 of Article 17 and of Articles 89 and 90 would apply.

Sub-Paragraph 2 (b)

With respect to the second sentence, it was the Sub-Committee's view that when a Member negotiates with other Members who are signatories of the General Agreement on Tariffs and Trade, account should be taken of the indirect concessions which the Member is already granting to such signatories through the most-favoured-nation clause, and of the similar concessions which signatories of the General Agreement on Tariffs and Trade may be already extending to the Member. The transformation of indirect concessions under the most-favoured-nation clause into direct concessions granted to Members in their own right should be considered a negotiable concession.

Sub-Paragraph 2 (e)

The substance of a Cuban amendment (Item 30) and of the interpretative note to paragraph 1 of the Geneva draft relating to prior international commitments as subsequently amended by the United Kingdom delegation (C.3/A/W.40) has been incorporated in the text as new sub-paragraph 2 (e). In connection with this sub-paragraph, the Sub-Committee considers that in view of the condition that all agreements under this Article are to be on a reciprocal and mutually advantageous basis, the phrase 'carry out negotiations' appearing in paragraph 1 of this Article does not mean that agreements must invariably result from negotiations which have been initiated.

Paragraphs 2 and 4

The Ceylon (Item 34), Chilean (Item 40), Colombian (Item 35), Mexican (Item 31) and Peruvian (Item 33) amendments, proposing that account be taken by Members during negotiations and by the Organization in making determinations under paragraph 4 of the needs of countries in special categories, particularly devastated and underdeveloped countries, and of the revenue aspect of Members' tariffs, were met by the addition of sub-paragraphs 2 (a) and (b) and by the addition of language in paragraph 4 with respect to the criteria which should be taken into account by the Organization in determining whether a Member had failed to fulfil its obligations under Article 17. The Sub-Committee concluded that it would be impracticable and unwise to attempt to set out in the Charter itself detailed descriptions of all the specific criteria necessary to cover all possible future situations. Accordingly, it was agreed that the Organization should be instructed, broadly, to have regard to 'all relevant circumstances'.

The specific language recommended by the Sub-Committee is 'all relevant
/circumstances'

circumstances, including the developmental and other needs and the fiscal structures of the Member countries concerned and the provisions of the Charter as a whole.' It was not felt necessary to refer specifically to the balance of reciprocal concessions offered by the countries concerned, and the probable effect or value of these concessions, since it was obvious that these elements would comprise the very foundation of any case before the Organization, which would inevitably take them into account. With regard to the suggestion that language should be included recognizing the need of countries to maintain reasonable tariff protection, it was felt that (a) in general it is implicit in Article 17 that reasonable tariff protection is consistent with the principles of the Charter, and (b) the needs of underdeveloped countries in this respect are recognized in paragraph 1 of Article 13 and would be given further specific recognition by the inclusion of the reference to 'developmental needs' in Article 17. This means that the Organization, in assessing the total value of the concessions which a Member may be willing to grant to another Member, shall take into account the needs resulting from the different general conditions prevailing in different Member countries with respect to their ability to maintain or develop their industries.

It was understood that the term 'developmental and other needs' would cover, inter alia, a Member's need for reconstruction.

The Chilean delegate withdrew his proposal (Item 40) to add "balance of payments" and "monetary reserves" as criteria to be taken into account by the Organization on the grounds that these subjects were more relevant to Articles 21, 23 and 24.

The amendments proposed by Haiti (Item 28) and El Salvador (Item 41) to the effect that Members should be released from the obligation to negotiate because of their economic development and revenue needs received no support.

Paragraph 3

The substance of the United States amendment (Item 44) was adopted as the first and second sentences of this paragraph. The third sentence of the paragraph was added to cover the substance of the Norwegian amendment (Item 45) and the interpretative note to Article 17 of the Geneva text relating to existing bilateral agreements. The Interpretative Note shown in the Geneva text has accordingly been deleted, and the Cuban delegation has withdrawn its reservation.

As regards any difficulties which might arise from a possible conflict between the provisions of the Charter and the general provisions of the General Agreement on Tariffs and Trade, the Sub-Committee is of the opinion that the best method of eliminating such difficulties would be for the Governments signing the Final Act adopted at the conclusion of the Second Session of the

/Preparatory

Preparatory Committee of the United Nations Conference on Trade and Employment to hold a meeting before the signing of the Final Act of the Havana Conference in order to agree with respect to the supersession of the general provisions of the General Agreement by the corresponding provisions of the Charter. Members of the Conference would then be in a position to know the provisions of the final text of the General Agreement on Tariffs and Trade, referred to in paragraph 3, prior to signing the Final Act in Havana. The desirability of amending the unanimity requirement with respect to agreement on the terms of accession to the General Agreement might also be considered at such a meeting.

The Mexican delegate did not press his amendment (Item 36) relating to the revision of negotiated agreements in view of the revised text of paragraph 3 and the Sub-Committee's opinion expressed above.

Paragraph 4

There was no substantial support in the Sub-Committee for the Peruvian proposal (Item 39) that the Tariff Committee should be only an investigatory and recommendatory body and that the Executive Board rather than the Tariff Committee should have the power to make determinations under paragraph 4. No agreement was reached as to whether the decisions of the Tariff Committee should be final or whether an appeal from its decisions should be provided for, although there was considerable support for providing some appeal procedure. The Uruguayan proposal to delete paragraph 2 of the Geneva text (Item 38) is still pending. The Sub-Committee has made no change in paragraph 3 of the Geneva text and the Uruguayan and Peruvian proposals (Item 43) to delete this paragraph are being held in abeyance. The Sub-Committee may wish to make further recommendations to the Third Committee when the Report of the Tripartite Working Party of Sub-Committee A of the Third Committee, Sub-Committee D of the Sixth Committee and the Joint Sub-Committee of the Second and Third Committees, which is considering matters relating both to the Tariff Committee and the proposed Economic Development Committee, is available.

General

The Sub-Committee considered in principle, at the request of Sub-Committee E of the Third Committee, paragraph 1 of new Article 27 proposed by Brazil (C.3/H/W.6), as follows:

"1. No Member shall grant, directly or indirectly, any subsidy on the domestic production of any commodity, in respect of which the tariff has been reduced or bound by negotiation pursuant to Article 17."

A majority of the Sub-Committee considered that it was not necessary to write into the Charter the proposed Brazilian amendment, either in its original form or as revised during the Sub-Committee's discussion, whereas a minority of the Sub-Committee supported the Brazilian amendment at least in principle.

/Sub-Committee H

Sub-Committee H was advised accordingly.

The Brazilian delegation has reserved its position on Article 17 in any case pending the report of the Joint Sub-Committee of the Second and Third Committees.

The delegate of Venezuela withdrew his amendment (Item 42, C.3/6/Corr.2) which would have permitted the adjustment of customs duties to compensate for the elimination of an internal tax, in view of the addition to Article 18 of new paragraph 3 which provides for a transitional period before an existing internal tax on a bound item must be eliminated in accordance with paragraph 2 of Article 18.

The Danish, Norwegian and the United States delegations each reserved provisionally its position with respect to ~~the~~ first interpretative note relating to the whole of Article 17.

Article 18

General

The recommended text differs considerably in form from the Geneva text but has been changed substantially in only one respect. The second sentence of paragraph 1 of the Geneva draft provided that existing internal taxes which afforded protection to directly competitive or substitutable products in cases in which there was no substantial domestic production of the like product could be maintained, subject to negotiation for their elimination or reduction in the manner provided for in Article 17. The Sub-Committee recommends their outright elimination. Members would, of course, be free to convert the protective element of such taxes into customs duties in the case of unbound items. In the case of bound items, the Sub-Committee recommends in paragraph 3 a transitional period during which a Member can postpone the application of the provisions of paragraph 2 pending a release from its trade agreement obligations in order to permit the increase of the tariff to the extent necessary to compensate for the elimination of the protective element of the tax. The new form of the Article emphasizes more than did the Geneva text the intention that internal taxes should not be used as a means of protection. The details have been relegated to interpretative notes so that it would be easier for Members to ascertain the precise scope of their obligations under the Article.

The Norwegian delegation withdrew its reservation on the whole of Article 18 recorded in the Geneva draft, but maintained provisionally a reservation on paragraphs 7 and 9.

Paragraphs 1, 2 and 3

The Sub-Committee considered the Colombian (Items 49 and 54) and Irish and Uruguayan (Item 54) amendments to paragraph 1 of the Geneva text to have been covered

been covered insofar as feasible by the revised text and by the interpretative note to paragraph 1 relating to paragraphs 3 of Article 99.

The Sub-Committee considered that charges imposed in connection with the international transfer of payments for imports or exports, particularly the charges imposed by countries employing multiple currency practices, where such charges are imposed not inconsistently with the Articles of Agreement of the International Monetary Fund, would not be covered by Article 18. On the other hand, in the unlikely case of a multiple currency practice which takes the form of an internal tax or charge, such as an excise tax on an imported product not applied on the like domestic product, that practice would be precluded by Article 18. It may be pointed out that the possible existence of charges on the transfer of payments insofar as these are permitted by the International Monetary Fund is clearly recognized by Article 16.

It was agreed that a tax applying at a uniform rate to a considerable number of products was to be regarded as a tax of the kind referred to in the parenthesis in the interpretative note to Article 17, notwithstanding the fact that the legislation under which the tax was imposed also provided for other rates of tax applying to other products.

The delegations of Chile, Lebanon, and Syria inquired whether certain charges imposed by their countries on imported products would be considered as internal taxes under Article 18. The Sub-Committee, while not attempting to give a general definition of internal taxes, considered that the particular charges referred to are import duties and not internal taxes because according to the information supplied by the countries concerned (a) they are collected at the time of, and as a condition to, the entry of the goods into the importing country, and (b) they apply exclusively to imported products without being related in any way to similar charges collected internally on like domestic products. The fact that these charges are described as internal taxes in the laws of the importing country would not in itself have the effect of giving them the status of internal taxes under the Charter.

The delegation of Chile, not a member of the Sub-Committee, maintained provisionally its reservation recorded in the Geneva text. The Sub-Committee considered that the Lebanese and Syrian amendments (Item 50, C.3/6/Corr.6) were covered in view of the revised text and of the Sub-Committee's understanding set forth above. The Chinese delegation withdrew its amendment (Item 51) and its reservation recorded in the Geneva draft in view of the revised text.

The Peruvian delegate withdrew his amendment (Item 56, C.3/6/Add.2) in view of the Sub-Committee's interpretation that neither income taxes nor import duties fall within the scope of Article 18 which is concerned solely with internal taxes on goods.

/The Costa Rican

The Costa Rican proposal (Item 55) was not accepted on the grounds that it was not necessary.

The Norwegian proposal (C.3/6/Add.5), which would have exempted from the provisions of Article 18 domestic price stabilization arrangements involving subsidies and internal taxes on imported products for the purpose of preventing or modifying inflationary or deflationary pressures, received no substantial support.

The Brazilian delegation reserved its position on paragraphs 1, 2 and 3 for the time being.

The Cuban delegation withdrew its reservation recorded in the Geneva text.
Paragraph 4

The Norwegian delegation had proposed to insert a new paragraph in Article 18 (Item 70) to make sure that the provisions of this Article would not apply to laws, regulations and requirements which have the purpose of standardizing domestic products in order to improve the quality or to reduce costs of production, or have the purpose of facilitating an improved organization of internal industry, provided that they have no harmful effect on the expansion of international trade. The Sub-Committee was of the opinion that this amendment would not be necessary because the Article as drafted would permit the use of internal regulations required to enforce standards. In accordance with this opinion the Norwegian delegation withdrew its amendment.

The Sub-Committee inserted the word "internal" to make it clear that differential transportation charges did not refer to international shipping.

Since paragraph 4 relates solely to the question of differential treatment between imported and domestic goods, the inclusion of the last sentence in the paragraph should not be understood to give sanction to the use of artificial measures in the form of differential transport charges designed to divert traffic from one port to another.

The Cuban proposal (Item 54, C.3/6/Corr.3) to delete the word "transportation" in the first sentence of this paragraph and to delete the second sentence received no support.

The Mexican delegate withdrew his amendment (Item 58), which he regarded as adequately covered elsewhere in the Charter.

Paragraph 5

The Sub-Committee was in agreement that under the provisions of Article 18 regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter), are directed as much against the domestic production of another product (say, domestic oleomargarine) of which there was a substantial domestic production as they are against imports (say, imported oleomargarine).

/The Mexican

The Mexican proposal to delete paragraph 3 of the Geneva draft (Item 60) was withdrawn in view of the revised text.

The proposal (Item 61) made by the delegation of Ceylon, not a member of the Sub-Committee, was considered to have been covered by the revised draft of this paragraph and its further proposal (Item 63) was withdrawn.

The Chilean delegation, not a member of the Sub-Committee, maintains provisionally its reservation to paragraph 3 of the Geneva draft.

Paragraph 6

The exception permitting the continuance of existing mixing regulations has been redrafted as suggested by the delegation of Sweden (Item 67) so as to bring out more clearly that a Member would be free to alter the details of an existing regulation provided that such alterations do not result in changing the overall effect of the regulation to the detriment of imports.

The delegate for Ireland inquired whether the phrase 'shall not be modified to the detriment of imports' would permit the maintenance of an existing regulation in Ireland providing for changes in the amounts or proportions of a product required to be mixed which are the result of changes in crops from year to year. The Sub-Committee considered that since the regulation in question specifically provided for such changes, the changes would not be precluded by paragraph 6 and the Irish delegate withdrew his amendment (Item 62).

The Mexican amendment (Item 64) and the Argentinian amendment (Item 65 (b)) were met by the addition of the date of the signing of the Final Act of the United Nations Conference on Trade and Employment.

The Argentinian proposal (Item 65 (a)) and the Brazilian proposal (Item 69) received no support.

The amendment submitted by the delegation of Ceylon (Item 66) received no substantial support and the Ceylon delegation reserved its position on this paragraph.

The New Zealand delegation has withdrawn its reservation to paragraph 4 (b) of the Geneva draft.

The Brazilian delegation reserves provisionally its position on this paragraph.

Paragraph 7

The Mexican and Norwegian delegations have reserved their position on this paragraph pending availability of the final text of Articles 20 and 22.

Paragraph 8

Sub-Paragraph (a)

The Chinese delegation has withdrawn its amendment (Item 72) and its reservation recorded in the Geneva draft in view of the revised text of this sub-paragraph.

/Ceylon and

Ceylon and Mexico have accepted the new text and withdrawn their proposal (Item 71) to delete paragraph 5 of the Geneva draft.

Sub-Paragraph (b)

This sub-paragraph was redrafted in order to make it clear that nothing in Article 18 could be construed to sanction the exemption of domestic products from internal taxes imposed on like imported products or the remission of such taxes.

The Mexican delegation has reserved its position on this sub-paragraph pending availability of the text of Section C of Chapter IV relating to Subsidies.

Paragraph 9

The Sub-Committee was in agreement that the addition to this paragraph proposed by Australia was unnecessary because the words "to the fullest practicable extent" in the recommended text have the same intent as the words "having due regard for the legitimate purposes of a particular price control measure and the legitimate interests of the prejudicially affected Member or Members" which Australia proposed adding at the end of the paragraph. The Australian delegate accepted this view.

The Norwegian and United Kingdom delegations have reserved provisionally their position on this paragraph.

Recommended Consequential Changes

1. If the proposed new paragraph 7 of Article 18 is adopted, paragraph 5 of Article 22 would have to be amended as suggested in Part III.
2. It is recommended that paragraph 2 of Article 30 be amended: (a) to bring it in line with the wording of paragraph 8 (a) of Article 18 so as to avoid difficulties of interpretation, and (b) to extend the "fair and equitable treatment" rule established in paragraph 2 of Article 30 with respect to imports for governmental purposes excepted from the provisions of paragraph 1 of Article 30 to the laws, regulations and requirements relating to procurement for governmental purposes referred to in paragraph 8 (a) of Article 18.
3. The Sub-Committee considers that the term "maximum import duty" in paragraph 2 of Article 31 includes both the import duty proper as contemplated in Article 17 and the monopoly margin of profit and that it would be preferable to substitute the term "protective margin" for the term "maximum import duty". However, the Sub-Committee believes that this suggestion should appropriately be discussed in connection with Article 31, which is outside its terms of reference, and is therefore bringing it to the attention of the Third Committee.

Article 19

The Sub-Committee recommends the deletion of sub-paragraph 6 (a) of Article 18, which specifically excepted any internal quantitative regulation
/relating

relating to cinematograph films and meeting the requirements of Article 19 from the provisions of paragraph 5 of Article 18, and the introduction at the beginning of Article 19 of the words "The provisions of Article 18 shall not prevent any Member from establishing or maintaining internal quantitative regulations....." so that all special provisions relating to cinematograph films will be contained in Article 19. No other substantive change has been made in this Article.

The delegate for Czechoslovakia reaffirmed the views expressed by the head of his delegation in Committee III (C.3/SR.13) to the effect that cinematograph films should be explicitly excluded from the competence of the ITO on the grounds that films, being works of art, are not just simple commercial commodities or industrial products. However, if the majority of the Conference favoured the retention of Article 19 his delegation would no longer press its objections.

The delegate of Norway fundamentally agreed in the view expressed by the Czechoslovakian delegation. However, as this view had not been sufficiently supported, he did not reserve his position.

The Argentinian delegate withdrew his amendment (Item 80) in view of the Sub-Committee's interpretation that the date fixed in sub-paragraph (c) clearly relates only to discriminatory measures as between foreign films, not as between domestic and foreign films.

PART III
RECOMMENDED TEXT
CHAPTER IV
COMMERCIAL POLICY

SECTION A - TARIFFS, PREFERENCES, AND INTERNAL TAXATION AND REGULATION

ARTICLE 16*

General Most-favoured-nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters [referred to in] within the scope of paragraphs [1 and 2] 2 and 4 of Article 18, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries respectively.

2.

(c) bis. preferences in force exclusively between the Republic of the Philippines and the United States of America, including its dependent territories.

3.

4. The imposition of a margin of tariff preference not in excess of the amount necessary to compensate for the elimination of a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories in respect of which preferential import duties or charges are permitted under paragraph 2 of this Article shall not be deemed to be contrary to the provisions of this Article, it being understood that any such margin of tariff preference shall be subject to the provisions of Article 17.

5. 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 principles.

Interpretative Note

The term "margin of preference" means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates. As

* Paragraphs 2 and 3 were not within sub-Committee A's terms of reference.

/examples:

examples:

1. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were 24 per cent ad valorem, the margin of preference would be 12 per cent ad valorem, and not one-third of the most-favoured-nation rate;
2. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent ad valorem;
3. If the most-favoured-nation rate were 2 francs per kilogram and the preferential rate were 1.50 francs per kilogram, the margin of preference would be 0.50 francs per kilogram.

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

- (i) the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on 10 April 1947; and
- (ii) the [application to] classification of a particular [commodity] product [of] under a tariff item other than that [which was] actually applied to [under which] importations of that [commodity] product were classified on 10 April 1947, in cases in which the tariff law clearly contemplates that such [commodity] product may be classified under more than one tariff item.

ANNEXES PERTAINING TO PARAGRAPH 2 OF ARTICLE 16

ANNEX A

List of Territories Referred to in Paragraph 2 (a) of Article 16

United Kingdom of Great Britain and Northern Ireland.

Dependent territories of the United Kingdom of Great Britain and Northern Ireland.

Canada.

Commonwealth of Australia.

Dependent territories of the Commonwealth of Australia.

New Zealand.

Dependent territories of New Zealand.

Union of South Africa including South West Africa.

Ireland.

India (as at 10 April 1947).

Newfoundland.

Southern Rhodesia.

/Burma

Burma.

Ceylon.

Certain of the territories listed above have two or more preferential rates in force for certain products. Any such territory may, by agreement with the other Members which are principal suppliers of such products at the most-favoured-nation rate, substitute for such preferential rates a single preferential rate which shall not on the whole be less favourable to suppliers at the most-favoured-nation rate than the preferences in force prior to such substitution.

[The imposition of a margin of tariff preference to replace a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories listed in this Annex or to replace the preferential quantitative arrangements described in the following paragraph shall not be deemed to constitute an increase in a margin of tariff preference.]

The preferential arrangements referred to in paragraph 5 (b) of Article 23 are those existing in the United Kingdom on 10 April 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork, and bacon [and hams]. It is the intention, without prejudice to any action taken under sub-paragraph (h) of Part 1 of Article 43, that these arrangements shall be eliminated or replaced by tariff preferences, and that negotiations to this end shall take place as soon as practicable among the countries substantially concerned or involved. Without prejudice to any action taken under sub-paragraph (h) of Part 1 of Article 43, negotiations shall be entered into when practicable among the countries substantially concerned or involved, in the manner provided for in Article 17, for the elimination of these arrangements or their replacement by tariff preferences. If after such negotiations have taken place a tariff preference is created or an existing tariff preference is increased to replace these arrangements such action shall not be considered to contravene Article 16 or Article 17.

The film hire tax in force in New Zealand on 10 April 1947 shall, for the purpose of this Charter, be treated as a customs duty falling within Articles 16 and 17. The renters' film quota in force in New Zealand on 10 April 1947, shall for the purposes of this Charter be treated as a screen quota falling within Article 19.

ANNEX D

List of Territories of the United States of America

Referred to in Paragraph 2 (b) of Article 16

United States of America (customs territory).

Dependent territories of the United States of America.

[Republic of the Philippines.]

[The imposition of

7The imposition of a margin of tariff preference to replace a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories listed in this Annex, shall not be deemed to constitute an increase in a margin of tariff preference.7

Recommended Consequential Change in Paragraph 5 (b) of Article 23

5. The provisions of this Section shall not preclude:

(b) restrictions under the preferential arrangements provided for in Annex A of this Charter, 7subject to the conditions set forth therein,7 pending the outcome of the negotiations referred to therein.

Article 17

Reduction of Tariffs and Elimination of Preferences

1. Each Member shall, upon the request of 7the Organization,7 any other Member or Members, and subject to procedural arrangements established by the Organization, enter into and carry out with such other Member or Members 7as the Organization may specify,7 negotiations directed to the substantial reduction of the general levels of tariffs and other charges on imports and exports, and to the elimination of the preferences referred to in paragraph 2 of Article 16, on a reciprocal and mutually advantageous basis. 7These negotiations shall proceed in accordance with the following rules:7

2. The negotiations provided for in paragraph 1 shall proceed in accordance with the following rules:

(a) Such negotiations shall be conducted on a selective product-by-product basis which will afford an adequate opportunity to take into account the needs of individual countries and individual industries. Members shall be free not to grant concessions on particular products and, in the granting of a concession, they may either reduce the duty, bind it at its then existing level, or undertake not to raise it above a specified higher level.

(b) No Member shall be required to grant unilateral concessions, or to grant concessions to other Members without receiving adequate concessions in return. Account shall be taken of the value to any Member of obtaining in its own right and by direct obligation the indirect concessions which it would otherwise enjoy only by virtue of Article 16.

7(c) In the negotiations relating to any specific product

(i) when a reduction is negotiated only in the most-favoured-nation rate, such reduction shall operate automatically to reduce or eliminate the margin of preference applicable to that product;

/(ii) when a

- (ii) when a reduction is negotiated only in the preferential rate, the most-favoured-nation rate shall automatically be reduced to the extent of such reduction;
- (iii) when it is agreed that reductions will be negotiated in both the most-favoured-nation rate and the preferential rate, the reduction in each shall be that agreed by the parties to the negotiations;
- (iv) no margin of preference shall be increased.

b (a) The binding against increase of low tariffs duties or of tariff duty-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs duties or the elimination of tariff preferences.

c Account shall be taken of any concession which either Member is already extending to the other Member by virtue of previous negotiations regarding tariffs and preferences pursuant to this Article.

(e) Prior international obligations shall not be invoked to frustrate the requirement under paragraph 1 of this Article to negotiate with respect to preferences, it being understood that agreements which result from such negotiations and which conflict with such obligations shall not require the modification or termination of such obligations except (i) with the consent of the parties to such obligations, or, in the absence of such consent, (ii) by modification or termination of such obligations in accordance with their terms.

d The results of such negotiations shall be incorporated in the General Agreement on Tariffs and Trade, signed at on1948 by agreement with the parties to that Agreement, and thereupon the parties to such negotiations shall become contracting parties to the General Agreement on Tariffs and Trade, if they are not so already.

3. The negotiations leading to the General Agreement on Tariffs and Trade, concluded at Geneva on 30 October 1947, shall be deemed to be negotiations pursuant to this Article. The concessions agreed upon as a result of all other negotiations completed by a Member pursuant to this Article shall be incorporated in the General Agreement on terms to be agreed with the parties thereto. If any Member enters into any agreement relating to tariffs or preferences which is not concluded pursuant to this Article, the negotiations leading to such agreement shall nevertheless conform to the requirements of paragraph 2 (c) of this Article.

2 4. If any

2/ 4. If any Member considers that any other Member has failed to fulfil its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization, which, after investigation, shall make appropriate recommendations to the Members concerned. If the Organization finds that a Member has failed without sufficient justification, having regard to its economic position and the provisions of the Charter as a whole, having regard to all relevant circumstances, including the developmental and other needs and the general fiscal structures of the Member countries concerned, and to the provisions of the Charter as a whole, to carry out negotiations within a reasonable period of time in accordance with the requirements provisions of paragraphs 1 and 2 of this Article, the Organization may determine that any waive the requirements of Article 16 to the general extent necessary to permit the complaining Member or Members shall, notwithstanding the provisions of Article 16, be entitled to withhold from the trade of the other Member any of the tariff benefits which may have been negotiated pursuant to paragraph 1 of this Article, and embodied in Part I of the General Agreement on Tariffs and Trade. If such benefits are in fact withheld, so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw becomes effective, to give written notice of withdrawal from the Organization. The withdrawal shall take effect upon the expiration of sixty days from the date day on which written such notice of such withdrawal is received by the Organization.

3/ 5. The provisions of this Article shall operate in accordance with the provisions of Article 81.

Interpretative Notes

Article 17

The provisions of this Article do not prevent Members from concluding new, or maintaining existing, bilateral tariff agreements which are not incorporated in the General Agreement on Tariffs and Trade, provided that such agreements are consistent with the relevant principles of Article 17 and that the concessions made by a Member under such agreements are generalized to all members in accordance with Article 16.

It is understood that an internal tax (other than a general tax uniformly applicable to a considerable number of products) which is applied to a product not produced domestically in substantial quantities would be treated as a customs duty under this Article in any case in which a tariff

/concession on the

concession on the product would not be of substantial value unless it is accompanied by a binding or a reduction of the tax.

Paragraph 1

The undertaking to negotiate regarding preferences necessarily implies that prior international commitments to grant particular preferences will not be permitted to frustrate the undertaking to negotiate. For this reason the provisions of sub-paragraph 1. (a) of the New York draft have been omitted from the Charter as being implicit.

Obviously any agreement reached affecting preferences provided for in any prior commitment would require, in order to be implemented, such change in the latter as might be necessary to give effect to the agreement. This change would either have to be agreed between the parties to the prior commitment or, if they could not agree, the party wishing to make the change, in order to proceed, would have to terminate the prior commitment in accordance with its terms.]

Sub-paragraph 2 (d)

In the event of the devaluation of a Member's currency, or of a rise in prices, the effects of such devaluation or rise in prices would be a matter for consideration during negotiations in order to determine, first, the change in the protective incidence of the specific duties, if any, of the Member concerned and, secondly, whether the binding of such specific duties represents in fact a concession equivalent in value to the substantial reduction of high duties or the elimination of tariff preferences.

Article 18

National Treatment on Internal Taxation and Regulation

1. The Members recognize that internal taxes and charges, and laws, regulations or requirements affecting the internal sale, offering for sale, purchase, transportation, distribution, or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

[1] 2. The products of any Member country, imported into any other Member country shall [be exempt from] not be subject, directly or indirectly, to internal taxes [and] or other internal charges of any kind, in excess of those applied, directly or indirectly, to like domestic products, [of national origin. Moreover, in cases in which there is no substantial domestic production of like products of national origin, no Member shall apply new or increased internal taxes on the products of other Member countries for the purpose of affording

/protection to the

protection to the production of directly competitive or substitutable products. Moreover, no Member shall otherwise apply internal taxes or charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2 but which is specifically authorized under a trade agreement, in force on 10 April 1947, in which the import tariff on the taxed product is bound against increase, the Member imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from its trade agreement obligations in order to permit the increase of such tariff to the extent necessary to compensate for the elimination of the protective element of the tax.

2 4. The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, or use. This paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

3 5. No Member shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Member shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

4 6. The provisions of paragraph 3 5 shall not apply to [:
(a) any internal quantitative regulation relating to cinematograph films and meeting the requirements of Article 19;
(b) any [other measures of] internal quantitative [control] regulation in force in any Member country on 1 July 1939 [or], 10 April 1947 or on the day on which the Final Act of the United Nations Conference on Trade

/and Employment is

and Employment is signed,* at the option of that Member; Provided that any such ~~measure~~ regulation which would be in conflict with the provisions of paragraph ~~3~~ 5 shall not be modified to the detriment of imports and shall be subject to negotiation/s for its limitation, liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 17 and accordingly shall be treated as a customs duty for the purposes of Article 17.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

5 8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not ~~for~~ with a view to commercial resale or with a view to use in the production of goods for commercial sale ~~/~~;

(b) ~~nor~~ The provisions of this Article shall ~~they~~ not prevent the payment of subsidies not inconsistent with the provisions of Section C of this Chapter exclusively to domestic producers, ~~only~~ of subsidies provided for under Article 25, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The Members recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of Member countries supplying imported products. Accordingly, Members applying such measures shall take account of the interests of exporting Member countries with a view to avoiding to the fullest practicable extent such prejudicial effects.

Interpretative Notes

Article 18

If any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1, applying to an imported

* If the Conference agrees to delete from Article 100 the words "DONE at.... this....day of.....One Thousand Nine Hundred and Forty...." and to substitute the words "the date of this Charter shall be the date upon which the Final Act of the United Nations Conference on Trade and Employment is signed", the words "or on the date of this Charter" should be substituted for the words "or on the day on which the Final Act of the United Nations Conference on Trade and Employment is signed".

/product and to the

product and to the like domestic product, is collected or enforced in the case of the imported product at the time or point of importation, it is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article 18.

Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments within the territory of a Member is subject to the provisions of paragraph 3 of Article 99. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article 18, are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments concerned. With regard to taxation by local governments which is inconsistent with both the letter and spirit of Article 18, the term "reasonable measures" would permit a Member to eliminate the inconsistent taxation gradually over a transition period if abrupt action would create serious administrative and financial difficulties.

Paragraph 2

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the second sentence only in cases where competition was involved between, on the one hand, the taxed product, and on the other hand, a directly competitive or substitutable product which was not similarly taxed.

Paragraph 5

Regulations consistent with the first sentence of paragraph 5 shall not be considered to be contrary to the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.

Recommended Consequential Changes

Article 22, Paragraph 5

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any Member and, insofar as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or requirements under paragraph 2 of Article 18.

/Article 30, Paragraph 2

Article 30, Paragraph 2

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or for purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale. With respect to such imports, and with respect to the laws, regulations and requirements referred to in paragraph 8 (a) of Article 18, the Members shall accord to the trade of the other Members fair and equitable treatment.

Article 19

Special Provisions Relating to Cinematograph Films

If any Member establishes or maintains The provisions of Article 18 shall not prevent any Member from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films Any such regulations shall take the form of screen quotas which shall conform to the following conditions and requirements:

(a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized over a specified period of not less than one year in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof.

(b) With the exception of screen time reserved for films of national origin under a screen quota, no screen time, including screen time released by administrative action from minimum time reserved for films of national origin, shall formally or in effect be allocated not be allocated formally or in effect among sources of supply.

(c) Notwithstanding the provisions of sub-paragraph (b) above, Members any Member may maintain screen quotas conforming to the conditions requirements of sub-paragraph (a) which reserve a minimum proportion of screen time for films of a national specified origin other than that of the Member imposing such screen quotas; Provided that no such minimum proportion of screen time shall be increased above the level in effect on 10 April 1947.

(d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination in the manner provided for in respect of tariffs and preferences under and shall accordingly be treated as custom duties for the purposes of Article 17.