

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

REPORT OF THE TECHNICAL SUB-COMMITTEE

PART I

General Narrative Statement

1. The Technical Sub-Committee met nine times under the chairmanship of Senor VIDELA (Chile). The meetings were the occasion for a thorough examination and exchange of views upon the provisions of the United States Suggested Charter relating to the items listed below:

General Commercial Provisions:

National Treatment on Internal Taxation and Regulation
Freedom of Transit
Anti-dumping and Countervailing Duties
Tariff Valuation
Customs Formalities
Marks of Origin
Publication and Administration of Trade Regulations-
Advance Notice to Restrictive Regulations
Information, Statistics and Trade Terminology
Boycotts

General Exceptions (to the Chapter on General Commercial Policy)

2. The Sub-Committee included delegates from all the countries represented on the Preparatory Committee.
3. In order to accelerate the proceedings, two Rapporteurs - one from the French and one from the United States Delegation - were appointed at an early meeting of the Sub-Committee. Later on, a second team of Rapporteurs - one from the Canadian and the other from the Netherlands Delegation - was appointed. In the course of the work, the Netherlands and the United States Delegates in question departed and were replaced by Rapporteurs from the Delegations for Belgium-Luxembourg and the United Kingdom.

4. The questions referred to the Sub-Committee were discussed in full at its meetings. Delegations were invited to send in their views in writing through the Secretariat to facilitate the work of the Rapporteurs.

5. The reports of the Rapporteurs were considered by the Sub-Committee, which made amendments and comments. The final report of the Sub-Committee was submitted to the main Committee and approved as a working document.

COMMITTEE II - GENERAL COMMERCIAL POLICY
TECHNICAL SUB-COMMITTEE'S CONFIDENTIAL REPORT TO THE
DRAFTING COMMITTEE

The meeting of the Technical Sub-Committee were the occasion for a thorough examination and exchange of views upon the provisions of the United States Suggested Charter for an International Trade Organization of the United Nations in regard to the General Commercial Provisions, namely Articles 9 - 17 inclusive, and the General Exceptions, Article 32.

A substantial degree of agreement among all members participating on the Preparatory Committee was reached on questions of the principles underlying these provisions. However, as was to be expected, there were numerous differences of opinion, and a number of reservations were made on account of national variations in the practice of detailed administration. For the benefit of the Drafting Committee, the detailed views of the various delegations and points of agreement have been embodied (in the form, so far as possible, of textual amendments) in this report.

This report was prepared by the Rapporteurs of the Sub-Committee with the assistance of the Secretariat.

Special note: All parenthetical statements noted by an asterisk (+) were received after the first draft of this report was circulated and were not discussed or considered by the committee.

COMMITTEE II

TECHNICAL SUB-COMMITTEE

Article 9: National Treatment on Internal Taxation and Regulation

This article was generally agreed to in principle by the Sub-Committee in that internal taxes and charges should not be used to afford protection to domestic products. However, some countries called attention to practices which might be contrary to this principle and suggested reservation for further discussion thereof bilaterally or ample time for their elimination. Several countries emphasized that central governments could not in many cases control subsidiary governments in this regard, but agreed that all should take such measures as might be open to them to ensure the objective.

It was felt that national treatment could not be applied to the procurement by governmental agencies of supplies for governmental use and not for resale. This problem was left to be dealt with by the Sub-Committee on Procedures when it discussed Article 8 on General Most-Favoured-Nation Treatment.

After considerable discussion in committee, and from written statements concerning this subject from Australia, Belgium-Luxembourg, Brazil, France, India, Netherlands, New Zealand, Norway, Union of South Africa and the United Kingdom, the Rapporteurs redrafted the Article as follows. (Comments, reservations etc., are given after each paragraph of the new text.)

Paragraph 1. "The products of any member country imported into any other member country shall be exempt from internal taxes and other internal charges (of any character whatsoever) higher than those imposed (directly or indirectly) on identical or similar products (of national origin.)"

(a) United Kingdom: After the word "taxes" delete "and" and insert "whether imposed directly or indirectly and from". After the word "imposed" delete "directly or indirectly".

(b) India: There should be no objection to a discriminatory internal tax if it is levied only for the purpose of raising revenue.

(c) Norway: Reserves its position as to measures necessary for maintaining a common price level in the home market.

(d) Cuba: Reserves its position as to measures necessary for the protection of infant industries in countries at an early stage of industrial development.

Paragraph 2 "The products of any member country imported into any other member country shall be accorded treatment no less favourable than that accorded identical or similar products of national origin in respect of all internal laws, regulations or requirements affecting their sale, offering for sale, transportation, distribution or use of any kind whatsoever. /The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed, exhibited or used." /

(a) Australia, Brazil, Belgium-Luxembourg, Czechoslovakia, Netherlands, New Zealand and South Africa: Reserve their position as to discriminatory restrictions on mixing, exhibition or other use operated in lieu of allowable practices which would interfere more seriously with international trade.

(b) South Africa: Reserves its position as to preferential rates for internal transportation granted to certain domestic products which do not compete with imported products. Also desires to be associated with New Zealand (above in (a)) in the reservation on the assembly of motor vehicles, and with respect to groundnuts.

(c) Australia: (Amend by addition of the following words at the end of the paragraph:-

"Unless it is demonstrable that such requirements are less restrictive or less onerous in operation than other permissible practices, such as tariffs and subsidies, of all of which matters the Organization shall be the judge".)

(d) New Zealand: (Suggested that the matter should be considered in the light of any provision which might be made respecting industrial development and that in the meantime consideration might be given to the making of provision whereby any member which employs the procedure referred to should notify ITO and agree to discuss the matter with it or with interested members.)

Paragraph 3 "The members agree that neither internal taxes nor other internal charges nor internal laws, regulations or requirements should be used to afford protection directly or indirectly for any national product."

(a) United Kingdom: Add at the end "against an identical or similar product of foreign origin",

(b) South Africa: considers that the use of the words "internal laws, regulations or requirements" may be misconstrued as rendering e.g. Customs legislation and regulations undesirable, and suggests that, instead of the above mentioned words, the words "laws, regulations or requirements regarding internal taxation" be used.

(c) New Zealand: Makes some suggestion for this paragraph as in 2 (d) above.

Paragraph 4. "Each member agrees that it will take all measures open to it to assure that the objectives of this Article are not impaired in any way by taxes, charges, laws, regulations or requirements of subsidiary governments within the territory of the member government."

(a) United Kingdom, Czechoslovakia and Norway: Insert a new paragraph 4 as follows:

"Nothing in paragraphs 2 and 3 of this article, insofar as those paragraphs relate to internal regulations or requirements, shall apply to cinematograph films."

(b) New Zealand: Also makes a reservation as to its film hire tax.

(Note: Under (a) above, if No. 4 were inserted, 4 would become 5 and 5, 6.)

Paragraph 5. "The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale."

(a) Australia, Belgium-Luxembourg, Brazil, Netherlands and Norway:
Add a new paragraph providing for date of entry into force of this Article, or the period of notice before it becomes effective.

Article 10. Freedom of Transit.

In the discussion dealing with the Freedom of Traffic in Transit, it was generally felt that air traffic should be exempted as a matter which is being dealt with by the Provisional International Civil Air Organization. A number of countries also felt that in the examination of this subject the provisions of the Barcelona Convention of the 20 April 1921 ought to be taken into consideration, and that the terms of any agreement reached on the subject should be carefully defined so as to leave no doubt as to the meaning of traffic in transit and its full implications.

It was decided that paragraph 6 of the United States Suggested Article which gives the definition of "traffic in transit" should become the first paragraph. The suggested re-arrangement of the United States Article by paragraphs is given below, with comments and reservations after each paragraph.

Paragraph 1. "Baggage and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the transit takes place. Traffic of this nature is termed in this Article 'traffic in transit'. The provisions of this Article shall not apply to air traffic in transit."

(a) It was decided that the word "Persons" should be deleted from this paragraph and Article, as the Charter is dealing with goods and services. Furthermore, the traffic of persons was subject to immigration laws and it was suggested that another organ of the United Nations might deal with the question, but not the ITO.

(b) India: Would like to consider further the proposal to delete the word "Persons" from the paragraph.

(c) United States, Netherlands and Belgium-Luxembourg obtained some, but not unanimous support for the suggestion that there be added at the end of this paragraph:

"In the application of paragraphs 2, 3, 4 and 5 of this Article, goods which are imported into any Member country shall be considered to be in transit if they are exported without having been released from customs supervision within that country even though the ultimate destination is not disclosed at the time of importation."

Paragraph 2. "There shall be freedom of transit through the Member countries via the routes most convenient for international transit for traffic in transit to or from other Member countries."

(a) Belgium-Luxembourg, France and the Netherlands: Prefer the text of Article 2 of the Barcelona Statute, annexed to the

Barcelona Convention of 20 April 1921, which ends as follows:

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 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.

(b) India: paragraph 1 should be amended to read:

"There shall be freedom of transit through member countries for the products of other members via such routes as may be open to traffic in products of like kind and quality of national origin."

Paragraph 3. "Any member may require that traffic in transit through its territory be entered at the proper custom house, but except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to other member countries shall be exempt from the payment of any transit duty, customs duty, or similar charge, and shall not be subject to any unnecessary delays or restrictions."

(a) India: Reserved its position as to whether Article 32 (b) and (c) provide ample provision for the diversion of traffic in transit from the most convenient routes in emergency conditions, such as famine in a section of the country.

It is understood that the words "or similar charge" mean a charge imposed by the Government of the country which is similar to a transit duty or a customs duty, and not to a charge for transportation.

(b) Australia: The words "or similar charge" should not be held to imply that traffic in transit shall be exempted from the charges imposed alike on domestic and in transit traffic.

(c) France: Believes that the use of the language of Article 3 of the Barcelona Statute would clarify this point.

(d) India: Suggests an inconsistency between paragraphs 3 and 4 in that the former forbids charges while the latter provides that charges shall be reasonable.

(e) South Africa: Recommends that this paragraph be amended specifically to exclude charges for transportation, leaving this question to be treated solely in paragraph 5.

Paragraph 4. "All charges and regulations imposed by Members on traffic in transit to or from other member countries shall be reasonable, having regard to the conditions of the traffic."

(a) It is understood that the word "charges" in this paragraph includes charges for transportation by Government-owned railroads or Government-owned modes of transportation. Since this paragraph only provides that such charges shall be "reasonable", it is believed that the question of preferential rail rates comes under paragraph 5.

Paragraph 5. "With respect to all charges, rules, and formalities in connection with transit, each member shall accord to traffic in transit to or from any other member country treatment no less favourable than the treatment accorded to traffic in transit to or from any country."

(a) Belgium-Luxembourg and the Netherlands: Call attention to the simplified treatment of traffic in transit along certain water routes as provided for by such international agreements as the Rhine traffic agreements and the Schelde Treaty.

(b) South Africa: Reserves its position because it grants preferential freight rates to the products of certain contiguous territories.

Paragraph 6. "Each member shall accord to products which have been in transit through any other member country treatment no less favourable than that which would have been accorded to such products had they been transported from their origin to their destination without going through such other member country."

(a) It is understood that paragraphs 2 - 5 of this Article cover the treatment to be given by a member country to products in transit through its territory between any other member country and any third country, and paragraph 6 covers the treatment to be given by a member country to products cleared from customs within its territory after transit through any other member country. On the basis of this understanding, several delegates believed that paragraph 6 should be excluded from article 10 and set forth elsewhere in the Charter because it does not deal with products in transit. Several reservations were made in the sense that countries should be allowed to maintain a requirement of direct consignment ("expedition directe") in the case of goods admitted free, at reduced rates of duty or exempt from higher duties than the normal tariffs.

(b) United Kingdom: Notes that it will be difficult, under this text, to maintain a differentiation between members and non-members.

(c) China: Add the following:

"Provided that the products which have been in transit can be identified at their destination to the satisfaction of local customs authorities as to their origin of country or export."

(d) France, The Netherlands, Czechoslovakia and Belgium-

Luxembourg: Raise the question as to what will be the position under the Charter of countries which have adhered to the Convention of Barcelona, as Article 10 of that Convention engages signatories not to conclude other agreements on the subject of transit which would be inconsistent with the provisions of that Convention.

(e) Australia: (Amend by the addition at the end of the paragraph of the following sentence:

"Any member country shall, however, be free to maintain its existing requirements of direct consignment (expedition directe) in respect of any goods in regard to which such direct consignment is a requisite condition for entry of the goods at concessional rates of duty, or has relation to the country's prescribed method of valuation for duty purposes.")

Article 11. Anti-dumping and Countervailing Duties

There was general consent among the majority of the countries in the discussions on Anti-dumping and Countervailing Duties that circumstances might arise in which such duties may properly be applied. Some countries felt that the proposal should not be limited to duties as such but should permit the adoption of other counter measures and that there was also need of clarification of definition in view of the variety of circumstances in which dumping may occur, such as social dumping.

Comments and reservations after each paragraph are given below.

Paragraph 1. "No anti-dumping duty shall be imposed on any product of any member country imported into any other member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of a product exported from one country to another is less than (a) the comparable price charged for the like or similar product to buyers in the domestic market of the exporting country, or, (b) in the absence of such domestic price, the highest comparable price at which the like or similar product is sold for export to any third country, or, (c) in the absence of (a) and (b), the cost of production of the product in the country of origin; with due allowance in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."

(a) Belgium-Luxembourg and Netherlands: A number of countries favour the use of other measures than anti-dumping duties to offset price dumping. Belgium-Luxembourg and the Netherlands suggest the addition of the words "and measures" in the **title** of Article 11 and after the words "anti-dumping duty" wherever they appear in that Article.

(b) It was understood that paragraph 1 refers only to price dumping and that the term "anti-dumping duty" as used therein, refers only to an additional duty imposed for the purpose of offsetting such dumping, and that "cost of production" should include not only profit but all other elements entering into a normal selling price.

(c) Netherlands and Belgium-Luxembourg: Some such words as "or tax or other charge upon imports" should be added after the words "no anti-dumping duty".

(d) Brazil: Heavier than counter-balancing duties or quantitative restrictions should be allowed in case of aggravated or sporadic dumping; it reserves its position as to paragraph 1.

(e) Cuba: The first sentence should read "anti-dumping duties shall be imposed on any products of any member country at least at the rate of", etc., and at the end, after "price comparability" there should be added "including the regime of salaries and conditions of labour".

(f) India: The definition of "margin of dumping" might be left to the ITO to help the different countries in arriving at a definition.

(g) South Africa: The margin of dumping should exceed a certain percentage, say five per cent, before anti-dumping duties may be imposed. France thinks the allowance should be ten per cent (c.f., the IMF position).

(h) Australia: Paragraph 1 (b) should be amended as follows: "(b) in the absence of such domestic price, the highest comparable price at which the like product is sold for export to any and every purchaser in any third country in the ordinary course of commerce".

(i) United Kingdom: The definition of "margin of dumping" should allow for the addition of all pre-importation charges to the purchase price.

(j) Australia: (Wherever the words "like or similar product" occur, the words "or similar" be indicated in square brackets, leaving consideration to be given to the price at which the like product is sold.

Paragraph 1 (b) of Article 11 to be amended to read:-

"(b) In the absence of such domestic price, the highest comparable price at which the like product is sold for export to any and every purchaser in any third country in the ordinary course of commerce."

It is recommended to the Drafting Committee to include provisions to enable member countries to protect themselves against other forms of dumping, such as freight dumping and dumping by depreciation of currency).

(k) New Zealand: (Heading (b) would not be acceptable to New Zealand. In the absence of a domestic price power of assessment rests with the Minister of Customs- vide E/FC/T/C.II/1.15 - insert new sub-paragraph - also under (i). New Zealand provides that dumping (or countervailing) duties may be applied in respect of special concessions (railway or shipping freight, subsidy, special bounty, rebate, or otherwise) allowed taken or granted giving a prejudicial or injurious effect).

Paragraph 2. "No countervailing duties shall be imposed on any product of any member country imported into any other member country in excess of an amount equal to the estimated bounty or subsidy ascertained to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation."

(a) The term "countervailing duty" was understood to mean an additional duty imposed for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise.

(b) Czechoslovakia: This paragraph should cover all hidden subsidies or refunds.

(c) China: Add at the end:

"In the event of preferential treatment being accorded by a country to certain countries to the exclusion of other member countries, no countervailing duty shall be imposed upon the products imported from such other member countries against subsidies which are granted by the latter to such products as compensation for covering the preferential margin."

(d) Australia: Members should not make, by law, the assessment of countervailing duties mandatory whenever a subsidy is granted, since some subsidies are permitted by Article 25 and it may not be desirable to countervail such subsidies.

(e) Brazil: Quantitative restrictions or other punitive measures should be permitted.

Paragraph 3. "No product of any member country imported into any other member country shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund of such duties or taxes."

- (a) Agreed as amended (by addition at the end of the words "or by reason of the refund of such duties or taxes".)

Paragraph 4. "No product of any member country imported into any other member country shall be subject to both anti-dumping and countervailing duty to compensate for the same situation of dumping or export subsidization."

No comment.

Paragraph 5. "Each member undertakes that as a general rule it will not impose any anti-dumping duty or countervailing duty on the importation of any product of other member countries unless it determines that the dumping or subsidization, as the case may be, under which such product is imported, is such as to injure or threaten to injure a domestic industry, or is such as to prevent the establishment of a domestic industry."

- (a) Brazil: Paragraph 5 should be deleted.
- (b) Netherlands and Belgium-Luxembourg: Delete the words "as a general rule" in the first line; the additional duties should be assessed only if the dumping or subsidization is systematic, not merely occasional. (Several countries do not agree with this point of view).
- (c) Czechoslovakia: Some guarantee against arbitrary action should be added to the paragraph.
- (d) Australia and South Africa: Delete the last clause, "or is such as to prevent the establishment of a domestic industry".
- (e) France: Substitute for this paragraph:

"Each member country undertakes not to impose any anti-dumping duty or countervailing duty on the importation of any product of other member countries unless they are in a position to prove:

- (a) that there exists a dumping, bounty or subsidy, as defined in paragraphs 1 and 2 of this Article,
- (b) that its domestic production has sustained grave injury from the dumping, subsidy or bounty.

"The member country against whom the measures laid down in this Article have been taken shall be able to lodge a complaint with the Organization which will have to decide, after hearing the two states concerned, whether the measures complained of are justified or not."

- (f) Netherlands and Belgium-Luxembourg: Agree in principle with this amendment.

General

- (a) United Kingdom: Makes a reservation in that in its opinion all anti-dumping and countervailing duties should be prohibited.
- (b) South Africa and Australia: This Article should be expanded to permit the assessment of anti-dumping duties to offset "service dumping", e.g. use of preferential or subsidized freight rates, and in the opinion of the former, exchange dumping also.
- (c) Australia: The criteria for the imposition of anti-dumping and countervailing duties should be established under the Charter after it becomes effective rather than in the Charter itself. The criteria should include:

- (i) A determination of actual or potential injury by an independent administrative authority.

- (ii) Optional and not mandatory application of these duties.
- (iii) Appeal to the ITO by any member aggrieved by any action of another member under this Article.
- (d) South Africa: Does not favour any requirement that anti-dumping duties cannot be imposed until a central Organization accepts their justification; an appeal to a central authority against their imposition should be allowed.
- (e) New Zealand: Makes a reservation as to the immediate imposition of anti-dumping duties, although normally notice would be given.

Article 12, Tariff Valuation

On the subject of Tariff Valuation, all countries concerned agreed that it was necessary to work towards standardization, so far as practicable, of definitions of value and procedures in determining the values of products subject to Customs Duties or other restrictions based or regulated in any way by value. They further agreed that this matter should be investigated by the International Trade Organization and they undertook to co-operate in that investigation. It was felt that it was necessary in the meantime for each country to consider its own system to prevent the object in view being defeated by over-valuation and other administrative practices.

Comments and reservations by paragraphs are given below:

Paragraph 1. "Members undertake to work toward the standardization, insofar as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other restrictions based upon or regulated in any manner by value. With a view to furthering such co-operation, the Organization

is authorized to investigate and recommend to members such bases and methods for determining the value of products as would appear to be best suited to the needs of commerce and most capable of widespread adoption."

(a) It was understood that paragraph 1 relates to matters to be undertaken by the member countries under the International Organization at some future date, whereas paragraph 2 relates to practices to be applied immediately after the Charter becomes effective and that both paragraphs should cover values for all ad valorem taxes and charges applicable to imported articles and should not be limited to values for duty, the addition of customs duty being permitted as appropriate in determining domestic values.

(b) Canada: Substitute "shall" for "undertake to" in the first line of paragraph 1.

Paragraph 2. "The members recognize the validity of the following general principles of tariff valuation, and they undertake to give effect to such principles, in respect of all products subject to duty based upon or regulated by value, at the earliest practicable date:"

(a) Canada: The preamble to the paragraph should read: "The members recognize the validity of the following general principles of tariff valuation and they undertake to review their customs laws and regulation with a view to giving effect to such principles at the earliest practicable date, and shall report to the Organization from time to time on the progress made. The Organization is authorized to request such reports of members and to assist and co-operate with them in carrying out the provisions of this paragraph".

(b) Australia and South Africa: Members should not be required to review their laws for the purpose of giving effect to the principles set forth in sub-paragraphs (a), (b), (c) and (d), until a specific request for the review of a particular law or laws is made by another member.

- (c) Belgium-Luxembourg, Czechoslovakia and Netherlands: A definite date should be fixed for the coming into effect of this paragraph.
- (d) China and Canada proposed a transitional period.
- (e) France: No country should use a basis of tariff valuation which involves inquiries or investigations which are
- (i) inconsiderate of commercial interests involved
 - (ii) likely to prejudice economic relations between exporting and importing countries, or which
 - (iii) involve inquisitorial procedures or arbitrary methods.
- (f) Belgium-Luxembourg and Netherlands: The Charter should specify more exactly a uniform basis for determining values for duty which may be summarized as follows:
- (i) The importer must submit to customs authorities all his private documents relating to each importation.
 - (ii) Customs officers shall have the right to examine private records of importers.
 - (iii) In case of litigation as to value, imports shall not be impounded but shall be released to the importer, subject to adequate provisions for securing the revenue (Article 8 of the Geneva Convention of 1923).
 - (iv) Value litigation shall be tried specially before an independent tribunal of competent experts where the importer will be heard.
 - (v) Fines may be imposed upon importers for under-valuation.

Paragraph 2 (a). "The value for duty purposes of imported products should be based on the actual value of the kind of imported merchandise on which duty is assessed, or the nearest ascertainable equivalent of such value and should not be based on the value of products of national origin or on arbitrary or fictitious valuations".

(a) United Kingdom: Substitute the following for sub-paragraphs (a) and (d): "Where an actual price of imported products is not accepted as the basis for determining their value for duty purposes, their assessed value should not be based on arbitrary or spurious valuations but should satisfy clearly defined and stable conditions which conform with commercial usage."

(b) France prefers the United States draft and asks especially for the maintenance of the words: "should not be based on the value of products of national origin".

Paragraph 2 (b). "The value for duty purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been made exempt."

(a) There was no objection to the general purpose of this paragraph.

(b) United Kingdom: After the word "export" add "to products of that class"; delete the words "made exempt" and substitute "relieved or made exempt".

(c) Australia: (This paragraph to be amended to read:-

2. "Members undertake, on receipt of a request from another interested member country, to review any Customs Laws and/or Regulations the subject of the specific request, with a view to giving effect etc. balance of paragraph 2 as per original draft).

Paragraph 2 (c). "In converting the value of any imported product from one currency to another, for the purpose of assessing duty, the rate of exchange to be used should be fixed in accordance with prescribed standards to reflect effectively the current value of each currency in commercial transactions, and until the elimination of dual or multiple rates of exchange either one or more than one rate for each dual- or multiple - rate currency may be so fixed."

(a) There were questions as to whether the reference to "dual or multiple rates" contemplates the different rates commonly existing at any one time for purchases and for sales of currency. It was agreed that this term applies only to cases in which two or more rates for one currency are legally in general use, as where there is an "official" and a "free" rate for the same currency at the same time.

(b) It was agreed that drafting of this paragraph ("and until...") is not satisfactory (United States and United Kingdom dissenting).

(c) Belgium: It should be made clear that the rate of exchange to be used in each case should be in accordance with official regulations of the importing country. Only one rate for one country at one time should be used.

(d) France and Australia: All reference to dual or multiple rates should be eliminated.

(e) France. The rate must be the one fixed by payments agreements.

(f) China reserves its position on this sub-paragraph.

Paragraph 2 (d) "The bases and methods for determining the value of products subject to duties regulated by value should be stable and should be published in full detail, in order that traders may be enabled to estimate, with a reasonable degree of certainty, the amount of duty likely to be imposed".

(a) United Kingdom: Deletion and amendment of paragraph 2 (a), as above.

(b) Belgium-Luxembourg and Netherlands: Delete the end of this paragraph from the words: "and should be published..."

Article 13. Customs Formalities

In connection with Customs Formalities, some countries felt that the Geneva Convention of 1923 effectively covered the subject. There was general agreement that subsidiary fees, charges and penalties should not be used as indirect protection to domestic products. On the general question of simplification, it was felt that the International Trade

Organization should continue the studies previously instituted by other bodies with a view to the elimination of unnecessary requirements.

France observed that this Article would be unnecessary if all members adhered to the Geneva Convention of 5 November 1923, and would agree with the recommendations of the Economic Conference of 1927 (Report, paragraph 2 Customs Tariffs, No.5). Belgium-Luxembourg, Czechoslovakia, Netherlands and the United Kingdom agreed.

Comments and reservations by paragraph are given below:

Paragraph 1. "The members recognize the principle that subsidiary fees and charges imposed on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. They also recognize the need for reducing the number and diversity of such subsidiary fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements."

(a) Netherlands and Belgium-Luxembourg: A definite period of notice should be stated for implementing the measures referred to in the first sentence.

Paragraph 2. "Members undertake to review their customs laws and regulations with a view to giving effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date and shall report to the Organization from time to time on the progress made. The Organization is authorized to request such reports of members and to assist and co-operate with them in carrying out the provisions of this paragraph."

(a) Australia and South Africa: The obligation to review customs law and regulations should arise only on specific request of another member for review of a particular law or laws.

Paragraph 3. "Greater than nominal penalties should not be imposed by any member in connection with the importation of any product of any other member country because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established. Moreover, members shall remit any penalty imposed on or in connection with the importation of any product of any other member country if it is officially found that the penalty has been imposed because of actions which resulted from errors or advice of responsible customs officials."

(a) France, Netherlands and Belgium-Luxembourg: It is undesirable to appear to interfere with the independence of courts by specifying that only nominal penalties may be imposed. Therefore, Netherlands and Belgium-Luxembourg propose that paragraph 3 be revised and included only as a recommendation for the customs administrations in the protocol.

(b) Netherlands and Belgium-Luxembourg: Nominal penalties would be appropriate only for obvious and accidental errors but not for serious cases of negligence, even although there is no evidence of bad faith.

(c) Australia, New Zealand and United Kingdom: Delete the second sentence.

(d) France suggests that paragraph 3 be replaced by the following draft, taken from the Geneva Convention of 1923 (Annex to Article 14, - A6) and the Report of the Economic Conference 1927 (paragraph 2, No.5).

"It is desirable that States should refrain, so far as possible, from inflicting severe penalties for trifling infractions of Customs procedure or regulations. In particular, if an act of omission or an error has been committed which is obviously devoid of any fraudulent intent and which can easily be put right, in respect of cases in

which the production of documents is required for the clearing of goods through the Customs, any fine which may be imposed should be as small as possible so as to be as little burdensome as possible and to have no character other than that of a formal penalty, i.e. of a simple warning". It is recommended that importers or exporters may obtain a review of Customs penalties, in particular those applied in cases of obvious errors.

(e) South Africa considers paragraph 3 should be couched in more general terms.

Paragraph 4. "The provisions of this Article shall extend to subsidiary fees, charges, formalities and requirements relating to all customs matters, including:

- (a) Consular transactions such as consular invoices and certificates;
- (b) Quantitative restrictions;
- (c) Licensing;
- (d) Exchange regulations;
- (e) Statistical services;
- (f) Documents, documentation and certification;
- (g) Analysis and inspection; and
- (h) Quarantine sanitation and fumigation (plant, animal and human)".

The addition ("such as consular invoices and certificates") to sub-paragraph (a) was generally agreed.

Article 14. Marks of Origin

There was a consensus of opinion among countries that excessive requirements in connection with Marks of Origin should be avoided as far as practicable.[†]

It was felt generally that the complicated subject of exemptions from the requirements should be recommended for study by the ITC and that the particular interest of certain countries in protecting the regional or geographical marking of their distinctive products should also be considered by the Organization.

[†](Czechoslovakia suggested for consideration whether the obligatory marks of origin should not be gradually abolished).

Comments and reservations after each paragraph are given below:

Paragraph 1. "The members agree that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum."

No objection was made to this paragraph.

Paragraph 2. "Each member shall accord to the products of each other member country treatment with regard to marking requirements no less favourable than the treatment accorded like products of any third country."

No objection was made to this paragraph.

Paragraph 3. "Whenever administratively possible, members shall permit required marks of origin to be imposed at the time of importation."

(a) Australia, New Zealand and South Africa and others: The customs authorities ought not to be required to submit to what might be serious inconvenience in order to make up for the failure of exporters to comply with regulations already well known to them.

Paragraph 4. "The laws and regulations of the members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products or materially reducing their value, or unreasonably increasing their cost."

No objection was made to this paragraph.

Paragraph 5. "The members undertake to work toward the uniform adoption of a schedule of general categories of products which shall not in any case be required to be marked to indicate their origin. With a view to furthering this work, the Organization is authorized to investigate and recommend to members descriptions of categories of

products in respect of which marking requirements operate to restrict trade in a degree disproportionate to any proper purpose to be served."

Above paragraph substituted by Committee in lieu of paragraph 5 of United States Charter.

Paragraph 6. "No special duty or penalty shall be imposed by any member for failure to comply with the marking requirements prior to importation unless corrective marking has been unreasonably delayed or false marks have been intentionally affixed or the required marking has been intentionally omitted."

(a) Belgium-Luxembourg, Netherlands and New Zealand: Reserved their position on this paragraph. Belgium-Luxembourg and Netherlands suggest difficulty will arise in taking "intention" into account.

New Zealand: (Several delegates expressed the view that failure to affix required marks of origin before importation, being either wilful or negligent disregard of existing laws, might well continue to be subject to some penalty).

(b) Australia:

(c) France: Delete paragraph 5 (covered by Article 13, paragraph 3)

(d) Additional Remarks: Belgium-Luxembourg, Netherlands and France specified that a country must be able to prohibit the import, export and transit of foreign goods bearing markings which indicate that these products were originally made in that country. The Committee was of the opinion that the examination of this question must be taken up in connection with Article 32, paragraph (g).

There was a considerable amount of discussion about a possible extension of Article 14 to include a commitment by members to protect in their country geographical, national or regional marks of origin (appellation d'origine). Czechoslovakia, Cuba and Belgium-Luxembourg raised similar proposals while other countries expressed the view that

adequate safeguards against deceptive practices were provided under Article 32, paragraph (g), and that no provision need be made for the matter in the present Article. United States: False marks are prohibited in the United States by criminal law, and it is not necessary for customs regulations to deal with them.

France, recognizing that Article 32, paragraph (g), gives authority to States to forbid importation of goods with false marks of origin, asked members to commit themselves to prohibit importation, transportation, and sale of such products. France would not be able to accept Article 14 if this Article were not completed in such a way or at least if a precise explanation were not contained in the Charter. The following addition to the Article is suggested:-

"Members shall afford, pursuant to their own laws, adequate protection to trade names and marks of origin and quality recognized and protected by domestic legislation in the countries of origin of the goods.

"They shall, for this purpose, transmit to the Organization a list of such marks and trade names as are protected by their domestic legislation and for which they wish to secure protection in importing countries.

"They undertake further to take part in any Conference called by the Organization to secure effective international protection for marks of origin".

Article 15. Publication and Administration of Trade Regulations - Advance Notice of Restrictive Regulations.

It was agreed that, as far as possible, prompt and adequate publicity should be given to change in laws and regulations affecting foreign trade.

As to the suggestion that national tribunals of an independent

character should be maintained or established to review or correct administrative customs actions; most countries felt that there was no need to take any special measures for this purpose, as their existing systems seemed to be full and adequate compliance with the requirement.

Belgium-Luxembourg and the Netherlands: Add to heading of Article "Maintenance or Establishment of Independent Tribunals".

Comments and reservations are given after each of the paragraphs of this Article of the United States Suggested Charter below:

Paragraph 1: "Laws, regulations, decisions of judicial authorities and administrative rulings of general application made effective by any member, pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale or distribution, or affecting their warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable traders and Governments to become acquainted with them. Agreements in force between the Government or a Governmental agency of any member country and the Government or a Governmental agency of any other country affecting international trade policy shall also be published. Copies of such laws, regulations, decisions, rulings and agreements shall be communicated promptly to the Organization. This paragraph shall not require any member to publish administrative rulings which would disclose confidential information, impede law enforcement, or otherwise be inimical to the public interest."

(a) Cuba: Insert "transportation and insurance" after the word "distribution".

(b) France: This paragraph may replace Articles 4 and 6 of the Convention of 3 November 1923 for the simplification of customs formalities, but it should be supplemented by

- (i) inserting the provisions of Article 5 of that Convention;
- (ii) inserting the provisions of the Brussels Convention of 5 July 1890 as to publication of tariffs;
- (iii) providing for the setting up in each member State of an Organization specially responsible for publicizing, within the country and abroad, the laws and regulations relating to foreign trade; and
- (iv) providing for the setting up within the ITO of an office responsible for collecting, analyzing and publishing as quickly as possible in the usual languages laws, regulations and decisions concerning foreign trade and for collecting together periodically, in detailed studies, information concerning the comparative regulations of member states on any given point.

With regard to the last point (iv), it is suggested that ITO take over the international organization now existing at Brussels and enlarge its functions as indicated above.

Paragraph 2: "Members shall administer in a uniform, impartial and reasonable manner all laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Moreover, they undertake to maintain, or to establish as soon as practicable, for the review and correction of administrative action relating to customs matters, judicial or administrative tribunals which are in fact independent of the agencies entrusted with administrative enforcement. Finally, each Member will enforce all measures necessary to suppress and prevent the exaction of charges and the prescription of requirements in respect of international trade which are not provided for in its published laws or regulations."

It is understood that the "judicial or administrative tribunals" referred to in this paragraph need not be especially established to deal exclusively with customs matters.

(a) France: Delete the third sentence of the second paragraph and the following words of the second sentence: "for the review and correction of administrative action relating to customs matters". Add at the end of this sentence "and which will have as their function to decide upon the legality and regularity of the measures taken by the administration and of the taxes or formalities imposed by the customs service."

(b) Belgium-Luxembourg and Netherlands: It should be required that the tribunals be established within a specified time.

(c) New Zealand: Appeals against administrative decisions can be made to the Minister of Customs and it is not considered necessary to set up a special tribunal.

(d) United Kingdom: The second sentence should read:
"Moreover, they undertake to continue, or to institute as soon as practicable, measures to ensure redress by administrative, judicial or arbitral procedure for those who may have been prejudiced by any breach of this provision."

Paragraph 3: "No law, regulation, decision or ruling of any Member effecting an advance in a rate of import or export duty or other charge under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition"

on imports or exports or on the transfer of payments therefor, shall, as a general rule, be applied to products of any other Member already en route at the time of publication thereof in accordance with paragraph 1 of this Article:

Provided, that if any Member customarily exempts from such new or increased obligations products entered or withdrawn from warehouse for consumption, or cleared for export, during a period of thirty days after the date of such publication, such practice shall be considered full compliance with this paragraph. The provisions of this paragraph shall not apply to anti-dumping or countervailing duties."

Australia, France, Belgium-Luxembourg, Netherlands, Canada, India, New Zealand, Norway, South Africa, Czechoslovakia and United Kingdom:

are unable to accept this paragraph, Canada gives notice in case of an administrative ruling.

General

Belgium-Luxembourg, and Netherlands: It should be stipulated that Members will not use in their tariffs and trade agreements any specifications aiming at indirect protection.

Article 16 Information, Statistics and Trade Terminology

There was general acquiescence in the proposal that the International Trade Organization should be supplied with full statistical information as promptly as possible; but many countries felt that unless the demands were limited to reasonable proportions an intolerable burden might be imposed

on them. This applied particularly to the smaller countries in which present statistical services are less fully developed than in others. A few countries also felt that certain aspects of the matter, with all its implications, were proper for study by the International Trade Organization, bearing in mind the work previously undertaken by the League of Nations in this field.

This Article was generally agreed to in principle by the Committee which limited its consideration to customs statistics. Several countries called attention to the fact that similar ground is covered by:

- (a) the Brussels Convention of 29 December 1913
(establishment of international commercial statistics),
- (b) the Geneva Convention of 14 December 1928
(economic statistics),

and that the aims pursued in the Charter as regards the standardization of international commercial statistics (paragraph 1a), the international comparability of these statistics (paragraph 4), the adoption of standard definitions (paragraph 6) and of standards (paragraph 7), can only usefully be realized, insofar as the work undertaken by the League of Nations for the unification of tariff nomenclatures is resumed and successfully completed, since customs statistics can only be established from import particulars based on the terms of tariff nomenclature in each country.

There was also a feeling that ample time should be allowed for the fulfilment of commitments to be undertaken

in this Article and that those commitments should be studied by the Organization with a view to the reduction to a minimum of the statistics to be furnished regularly by members. It was felt, however, that a member wishing to contract out of the requirements of this Article should be required to give to the Organization a detailed statement of its particular difficulties.

Article 17. Boycotts

"No member shall encourage, support or participate in boycotts or other campaigns which are designed to discourage, directly or indirectly, the consumption within its territory of products of other member countries on grounds of origin, or the sale of products for consumption within other member countries on grounds of destination. Moreover, each member shall discourage, by such means as may be available to it, such campaigns by subordinate jurisdictions within its jurisdiction."

In principle it was agreed that governmentally financed or organized boycotts designed to discourage importation should be banned. The majority of the countries, however, were of the opinion that this ban should not apply to campaigns sponsored by any Government in support of products of its own national origin and not directed against the products of any specific country.

For the words "political entities" in the last sentence of this Article the Committee agreed to substitute the words "subordinate jurisdictions".

Comments and reservations are given below:

(a) United Kingdom: Delete "other member countries" in both places where it occurs in the Article and substitute "another member country".

Delete the words "directly or indirectly". The object of this amendment is to ensure that the ban on boycotts should not apply to campaigns sponsored by any government in support of products of its own national origin and not directed against the products of any specific country. The United States and Cuba dissented from this view.

(b) Cuba and United States: Dissent from the above amendments.

(c) India: Can only accept this principle as affecting boycotts specifically directed against a member country with which India has trade treaty relations.

(d) China: Feels that weaker countries should be allowed to resort to boycotts in self-defence.

(e) Lebanon: Thinks boycotting may be justified for either political or moral reasons.

(f) Australia: Amend by addition of an additional sentence reading:-

"Provided that a campaign in support of the use or consumption of products of national origin or manufacture, and not directed against the products of any specific country, shall not be deemed to be a breach of this undertaking."

Article 32. General Exceptions to Chapter IV

It was generally recognized that there must be general exceptions such as those usually included in commercial treaties, to protect

public health, morals, etc. Certain countries, however, felt that the exceptions proposed should be reduced or extended, as the case may be, to meet the particular conditions existing in their countries.

"Nothing in Chapter IV of this Charter shall be construed to prevent the adoption or enforcement by any member of measures"

(a) United Kingdom: The following words should be inserted in place of the preamble to the Article:

The undertaking in Chapter IV of this Charter relating to import and export restrictions shall not be construed to prevent the adoption or enforcement by any member of measures for the following purposes, provided that they are not applied in such a manner as to constitute a means of arbitrary discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.

This amendment was generally accepted, subject to later review of its precise wording, particularly as to whether the scope of Article 32 should be limited to "import and export restrictions".

Paragraph (a) necessary to protect public morals:

Paragraph (b) necessary to protect human, animal or plant life or health:

Paragraph (c) relating to fissionable materials:

Paragraph (d) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment:

Paragraph (e) in time of war or other emergency in international relations, relating to the protection of the essential security interests of a member:

These paragraphs were generally accepted.

Paragraph (f) relating to the importation or exportation of gold or silver:

(a) India: Accepts this paragraph in relation to gold, but considers that silver should be excluded as it is an ordinary commodity in world commerce.

Paragraph (g) necessary to induce compliance with laws or regulations which are not inconsistent with the provisions of Chapter IV, such as those relating to customs enforcement, deceptive practices, and the protection of patents, trade-marks and copyrights:

(a) It was understood that the examples in this paragraph are illustrative and do not exclude any others which are "not inconsistent with the provisions of Chapter IV", such as state monopolies.

(b) France, Belgium-Luxembourg, Netherlands: This paragraph should be amplified in the sense that a country must be able to prohibit the import, export, transportation and transit of foreign goods bearing marking which falsely indicates that those goods were produced in that country. (The Committee thought that paragraph (g) already covered this point).

Paragraph (h) relating to prison-made goods:

Paragraph (i) imposed for the protection of national treasures of artistic, historic or archaeological value:

These paragraphs were generally accepted.

Paragraph (j) relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restrictions on domestic production or consumption:

(a) India: Suggests deletion from "if such measures" to the end of the paragraph.

(b) New Zealand and Brazil: Support this view and the former also proposes to include the words "or other" before "resources" since it considers the provision should not be limited to natural resources.

Additional

Canada suggests a new paragraph:

(k) relating to the importation of goods, the manufacture of which is prohibited in the country of importation.

This suggestion is supported by France.

China: Suggests a new paragraph:

Measures temporarily imposed to prevent, arrest or relieve conditions of social disturbance, natural calamity, or other national emergencies; provided that such measures are withdrawn as soon as the said conditions cease to exist.

General

India: Wishes to be allowed, for reasons of high policy, to discriminate against a member; it wishes to be allowed to do so either on a recommendation of the ITO or on its own initiative, provided due notice has been given to the Organization and to every member concerned. India accordingly reserves its position on this point.

Concluding Remarks

A point which arose on several Articles in this Section was the definition of terms used therein as e.g. "like products", "similar products", "products of any member country", "country of origin". The Drafting Committee might consider the desirability of including in this Section of the Charter an Article to contain definitions of these and other terms presenting any ambiguity or obscurity.
