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Review Working Party II on
Tariffs, Schedules and
Customs Administration

ARTICLES V, VII, VIII AND IX

Report by the Technical Group on Customs Administration to Review Working Party II

The sub-group has examined all the proposals referred to it by the Working Party affecting Articles V, VII, VIII and IX and also a new proposal, and submits the following report:

Article V

Freedom of Transit

1. Proposed amendment to paragraph 6

> "The CONTRACTING PARTIES might consider whether the last phrase in this paragraph 'or has relation to the contracting party's prescribed method of valuation for duty purposes' need be retained." (Secretariat proposal, L/189, page 5)

The full sentence reads:

> "Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes."

The amendment is concerned only with the provision that contracting parties shall be free to maintain the right to apply a different method of valuation in the case of goods which are not imported by direct consignment. The Technical Group was of the opinion that the proposal of the secretariat to omit this sentence would have been useful if no country still had in force any regulation which provided for different systems of valuation depending on whether or not the goods were directly imported. Some delegates, however, declared that their valuation systems make such a distinction, particularly Canada, which bases the

valuation on the value of the goods at the time and in the place of direct shipment, and South Africa. Although some other delegations were of the opinion that the application of such systems did not necessitate the maintenance of the words in question, it was decided, on balance, to maintain the wording of the paragraph, and the proposed amendment was not agreed to.

2. Proposed addition

> "The Organization may undertake studies, make recommendations and promote international agreement relating to the simplification of customs regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article. Members shall co-operate with each other directly and through the Organization to this end." (Denmark, Norway and Sweden, L/273, page 2; L/275, page 2; L/276, page 3)

This amendment was primarily for Review Working Party IV to consider, but the Technical Group was invited to say whether, from the technical point of view, the subject was suitable for such studies. The general opinion was that there is no reason why the studies which the new Organization will take up should not embrace this subject. On the contrary, it was considered that the importance of transit questions to many countries made the subject a very suitable one for study.

The Technical Group considered it desirable, however, to draw attention to the fact that as regards means of transport, the Inland Transport Committee of the Economic Commission for Europe is undertaking similar studies, and that the work in both bodies should be co-ordinated.

Article VII

Valuation for Customs Purposes

1. Proposed amendment to paragraph 1

> "As indicated in the Interpretative Note, it was expected that a majority of the contracting parties would give effect to the principles of paragraph 1 within a few years. Since the Agreement has been in force for six years, it should not be necessary to retain the words 'at the earliest practicable date'. The Interpretative Note could also be deleted." (Secretariat proposal, L/189, page 7)

A minority of delegations considered the changes to Article VII proposed by the Technical Group to be such that the provision "at the earliest practicable date" would have to be retained to give countries not in conformity, especially with newly modified rules, an opportunity to revise their legislation. The majority, however, considered that the new Agreement would contain a general provision which will take account of the necessities of those countries which have to bring their legislation into conformity with the rules and that such a general provision would, in the view of those representatives, make any special provision in Article VII unnecessary or even unjustifiable.

The amendment was then accepted by the majority. A consequential amendment would be the deletion of the Interpretative Note to paragraph 1 of Article VII.

2. Proposed amendment to paragraph 1

"The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to adapt their respective national laws to such principles and to apply them in the light of the interpretative notes to this Article as set out in Annex I, in respect of all products subject to ad valorem duties or other charges or restrictions on importation and exportation based upon or regulated in any manner by value, at the earliest practicable date. Moreover, they shall upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article." (Italy, W.9/61, page 2). The proposed text also involves the deletion of the Interpretative Note to paragraph 1 of Article VII (W.9/61, pages 2 and 3).

Only two delegations supported this amendment. It was considered by the majority that this addition was not necessary in the light of what the discussion on the previous amendment had revealed regarding the general obligation which might be provided in the General Agreement, requiring contracting parties to bring their national legislation into conformity with the rules of the Agreement itself.

3. Proposed interpretative note to paragraph 1

"The term 'or other charges' shall not be regarded as including such internal taxes or their equivalents as are imposed on or in connection with importation." (Germany, L/261/Add.1, page 9)

"The expression 'or other charges' should be interpreted to exclude internal taxes or equivalent charges imposed on imports or because of importation." (Italy, W.9/61, page 3)

The intention of these proposals was to make it clearly understood that the wording of paragraph 1 of Article VII does not require internal taxes (or their equivalents) which are charged on imported goods to be assessed on the same basis as that established for the purpose of charging customs duties. While some countries assess internal taxes on imported goods on the customs value or the customs value inclusive of duty, certain countries establish the value on which such internal taxes are charged on a different basis, being the same basis as is adopted for the charge of such internal taxes on domestically produced goods.

The Technical Group recognized that Article VII could not be held to impose any commitment in relation to internal taxes, over and above those contained in Articles I and III, and the proposals were accepted, the wording of the German proposal being adopted with a modification of the English text to read as follows:

"The expression 'or other charges' is not to be regarded as including internal taxes or equivalent charges imposed on or in connection with imported products."

4. Proposed addition to the interpretative note to paragraph 1

"It is recommended that the determination of valuation for customs purposes should be extended to all merchandise subject to customs declaration, including duty-free merchandise and merchandise liable to specific duties." (Italy, W.9/61, page 3)

This proposal was not supported by the Technical Group, which considered that such a recommendation was not necessary. In addition some delegates thought it might cause confusion in conjunction with the interpretative note adopted in the previous paragraph.

5. Proposed amendment to the interpretative note to paragraph 2

"For the purpose of avoiding possible misinterpretations and doubts, it would be advisable to incorporate into Article VII of the Agreement, either as an integral part of the text or in the form of an interpretative note, note 2 to paragraph 3 of Article 35 of the Havana Charter, which reads as follows:

'If on the date of this Charter a Member has in force a system under which ad valorem duties are levied on the basis of fixed values, the provisions of paragraph 3 of Article 35 shall not apply:

'1. In the case of values not subject to periodical revision in regard to a particular product, as long as the value established for that product remains unchanged;

'2. In the case of values subject to periodical revision, on condition that the revision is based on the average 'actual value' established by reference to an immediately preceding period of not more than twelve months and that such revision is made at any time at the request of the parties concerned or of Members. The revision shall apply to the importation or importations in respect of which the specific request for revision was made, and the revised value so established shall remain in force pending further revision.' " (Chile, L/272, page 2).

This proposal gave rise to considerable discussion. It was suggested that it would be preferable not to introduce such an interpretative note which would be limited to safeguarding the position of contracting parties using the fixed values system at the date of the Havana Charter, and that it would be more appropriate to draft a provision which would be of general application. It was, however, held that a note of which any contracting party could avail itself would have to be framed in such a way that it stated, in a comprehensive manner, the conditions which a system of fixed values should fulfil in order to be considered acceptable. When an attempt was made to set down these conditions it became apparent that it was difficult to foresee all the various forms that a system of fixed values could take and to prescribe conditions which would meet all eventualities. Attention was also drawn to the fact that the contracting parties currently operating fixed values had not suffered any disability from the absence of an interpretative note to GATT similar to Interpretative Note 2 relating to Article 35 of the Havana Charter. In the circumstances, the Technical Group considered that it was, for the present, not necessary to attempt the difficult task of framing a suitable text. The Technical Group notes, however, that the systems practised in Chile, India and Pakistan have been closely examined on a number of occasions and that it is recognized that they are not inconsistent with the General Agreement. The Technical Group does not therefore recommend the adoption of this amendment.

6. Proposed amendments to paragraph 2(a)

> "The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise. Each contracting party shall undertake to apply only one method of valuation and thereafter shall refrain from choosing between two or more methods depending on which method results in a higher value for customs purposes." (Germany, L/261/Add.1, page 7)

> "The value for customs purposes should be determined by a uniform system which would preclude resort to various alternative methods of valuation permitting the adoption of a method likely to lead to higher dutiable values." (Italy, W.9/61, page 2)

It was made clear that the object of these proposals was to preclude the use of methods of valuation which take as the value for duty purposes the higher of two figures arrived at by the application of different criteria (for example, the current domestic value of the goods in the country of exportation or the f.o.b. price actually paid, whichever is the greater). The intention was not to preclude a contracting party from adopting valuation provisions under which the value is to be assessed on a principal basis, or, if that basis is inapplicable, on one or more successive alternative bases.

The sponsoring delegations claimed that a basis of valuation which required the adoption of the higher of two alternative figures was unfair and that it led to uncertainty to traders regarding the value on which duty would be assessed.

Other delegations were of the opinion that if both the alternative criteria, taken separately, were compatible with the principles of Article VII, there could be no question of outlawing a system of valuation which prescribed the adoption of the higher of the values yielded by the application of those criteria; some felt that a distinction should be drawn between cases where the traders concerned were aware of the figures from which the higher would be chosen and cases in which one or more of the elements applicable were unknown to the traders. In the former case it could not be held that the trader suffered any uncertainty. Nor did it appear that there was any unfairness in the principle of a system of valuation which prescribed the adoption of the higher of two alternatives. It was also argued that the existence of the alternative system of the valuation was a fact of which due cognizance was taken at the time of tariff negotiations and that there could hardly be any force in a plea that tariff concessions negotiated had subsequently been impaired by that system.

During the discussion, although valid arguments were produced on both sides, it became clear that the proposed amendments were unacceptable to a number of countries concerned, and the Technical Group therefore reached the conclusion that it could not put forward the amendments with any confidence that they would be acceptable to a majority of the contracting parties. It was, however, generally agreed that there were valid grounds of objection to a system of valuation which prescribed the adoption of the higher of figures arrived at by alternative criteria where these criteria were of such a nature that the traders concerned could not, in advance, calculate the figures from which the higher would be chosen, since this could constitute a serious impediment to trade.

7. Proposed amendment to paragraph 2(a)

> "The value for customs purposes should not be based on the domestic price in the country of exportation, on the value of merchandise of national origin or on arbitrary or fictitious values." (Germany, L/261/Add.1, page 7)

The basic intention of the amendment was to preclude contracting parties from basing the value for duty purposes of goods on the current domestic value of like goods in the country of exportation. The representatives in favour of the proposal considered that exporters were bound, in the nature of commerce, to adjust their export prices to the general level of prices ruling in the intended market and that a valuation system which took no account of this, but instead prescribed the adoption of the prices ruling in the domestic markets of the country of export, was such as to hinder the full development of international trade.

Discussion showed that the proposal was, however, unacceptable to a considerable number of delegations in the Technical Group, and to other contracting parties. It was emphasized that there were two main systems of valuation in force among contracting parties, namely, those based on the concept of the current domestic value in the country of exportation and those based on the price charged to the purchaser in the importing country, and that each system of valuation had its advantages and disadvantages: there was no convincing evidence that either of those systems was markedly inferior to the other. It was pointed out that Article VII was essentially a statement of the principles which should guide

contracting parties in the matter of national valuation provisions and that it had been very carefully drafted in order to cover equally the various systems of valuation in force in countries and that the proposal that one system of valuation should be proscribed was such as to destroy the balance of a carefully poised compromise. The amendment was finally rejected by eight votes to four.

The representative of Czechoslovakia, who is not a member of the Technical Group, spoke in favour of the amendment, basing himself on the ground that its adoption would surmount the special difficulties experienced by his country as a result of the fact that the domestic selling prices of goods bulking large in the export trade were fixed by the State at levels which were not related to free competitive prices. In view of the rejection of the amendment, the Czechoslovak representative expressed the hope that contracting parties employing the current domestic valuation system would have sympathetic regard to the difficulties caused by this system to his country.

8. Proposed amendment to paragraph 2(b)

Instead of the present wording, which reads:

> " 'Actual value' should be the price at which, at a time and place determined by the legislation of the country of importation and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions"

the following wording should be inserted:

> " 'Actual value' should be the price at which, at a time and place determined by the legislation of the country of importation <u>such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions</u>." (Italy, W.9/61, page 2)

The Italian delegate explained that this proposal was intended solely as an improvement of the wording and was not intended to make any change in substance.

The members of the Technical Group were only partially in favour of the Italian amendment. The representatives who were against it pointed out that a text which had until now proved to be satisfactory should not be changed solely for drafting reasons, as it might give rise to the belief that the change had been made for other reasons. However, the majority of the members of the Technical Group were in favour of adopting the Italian proposal, as well as the corresponding proposal to modify the wording of the interpretative note to paragraph 2, which should read as follows:

> "It would be in conformity with Article VII, paragraph 2(b), for a contracting party to construe the phrase <u>in the ordinary course of trade under fully competitive conditions</u> as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration." (Italy, W.9/61, page 4)

9. Proposed amendment to paragraph 2(b)

"To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to quantities comparable to the quantities submitted to the customs authority for valuation purposes." (Italy, W.9/61, page 2)

This proposal sought to suppress the second choice left to contracting parties to base the valuation on the quantity not less favourable to importers than that in which the greater volume of the merchandise is sold in trade between the countries of exportation and importation.

The Italian delegate explained that the object of this proposal was to standardize a criterion of valuation in the case when prices depend on quantities because it was noted that in practice most countries have reference to quantities corresponding to that actually imported.

After a declaration by the South African representative that South Africa would have to insist on the retention of the provisions of the present text, the Italian representative withdrew the proposal because the other representatives thought it more restrictive than the present text.

10. Proposed amendment to paragraph 2(b)

"To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either:

(i) comparable quantities, quantity rebates usual in trade being allowed,

or

(ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold at the first phase of distribution usual in the particular line of business in the trade between the countries of exportation and importation." (Germany, L/261/Add.1, page 8)

This proposal includes two separate changes. The first refers to the acceptance of usual allowances for quantity and in this connection the Technical Group felt the proposed amendment might lead to misunderstanding, without offering any appreciable improvement of the text, which was clear in itself. This suggestion was, therefore, not adopted.

The intention of the second suggestion was to define the method by which "the greater volume of merchandise" is to be determined. The Technical Group did not consider that it would be practicable to lay down detailed provisions in this regard and this part of the amendment was therefore also not adopted.

During the discussion of the draft amendment it was recognized that while the influence of the quantity factor in commercial transactions is important, the level of the transaction which was also referred to in the amendment in question has, in certain cases, a notable influence on price and, in consequence, on dutiable value. The general discussion of Article VII showed the importance of this problem; some delegates felt that it would be desirable to take it up again at a later session.

11. Proposed addition to the interpretative note to paragraph 2

> "Where the merchandise to be valued is not imported as the result of a purchase and where the purchase price is not known or cannot be ascertained, the sum of production costs plus selling costs plus a normal profit may be regarded as constituting the 'actual value' of the imported merchandise." (Germany, L/261/Add.1, page 9)

The Technical Group recognized the interest raised by the amendment submitted by the German delegation, but certain members pointed out that the problem in question was of too special a nature to form the subject of an amendment to Article VII itself or of an interpretative note. The Technical Group did not, therefore, accept his proposal.

12. Proposed amendment to the interpretative notes to paragraph 2

> "The prescribed standard of 'fully competitive conditions' permits contracting parties to exclude from consideration special prices to sole concessionnaires, exclusive agents, distributors, etc., which generally involve special discount on normal competitive prices." (Italy, W.9/61, page 4)

The Italian proposal was intended to clarify the term "distributor".

The discussion revealed that in addition to the unsatisfactory nature of the term (which may have different meanings in different countries) there were disparities between the French text of this interpretative note in the General Agreement and in the Havana Charter and between those texts and the English version of the interpretative note.

In the light of the discussion, the Technical Group recommends the adoption of the following text, which, in its French version, corresponds with the wording used in the Havana Charter interpretative note, and in its English version is a better translation of that text:

> "... The standard of 'fully competitive conditions' permits contracting parties to exclude from consideration prices involving special discounts limited to exclusive agents."

No change of substance is involved but the text has much greater clarity than the present GATT text and was therefore considered satisfactory by the Italian representative.

13. Proposed amendment to the interpretative notes to paragraph 2

"The wording of sub-paragraphs (a) a d (b) permits contracting parties to determine valuation for customs purposes uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the b sis of the general price level of like merchandise." (Italy, W.9/61, page 4)

This proposal seeks merely to improve the drafting.

It was unanimously adopted, subject to the alteration of "valuation" to read "the value" in the English text.

14. Proposed amendment to paragraph 3

"The value for customs purposes of any imported products should not include the amount of customs duties or any indirect taxes actually borne by the finished product or actually borne by the material going into the manufacturing of such product, applicable within the country of origin or export from which the imported product has been exempted or has been or will be relieved by means of refund." (Denmark, Norway, Sweden, L/273, page 3; L/275, page 3; L/276, page 4)

This amendment contains two points of substance, which were discussed separately.

The first proposal seeks to provide that customs duties remitted or refunded in the country of origin should be excluded from the value for duty purposes in the country of importation in the same way as internal taxes.

A majority of members of the Technical Group were in favour of this proposal, which was considered to be logically concomitant with the principle of excluding the amount of refunded internal taxes. The principal case which arises is the refund or remission of import duties paid on raw materials and intermediate products when the finished product is exported. In the case of those countries which establish the value for duty purposes on the landed price the actual price paid for the goods does of course reflect the refund of such customs duties and if the amount of the refund did not fall to be excluded from the dutiable value, it would be necessary to add it back to the invoice price. This would run counter to the widely expressed desire that the commercial price should whenever possible be accepted as the basis upon which duty should be paid.

Attention was also drawn to the fact that in some cases there is no basic difference between customs duties and internal taxes. In certain countries some commodities are subject to customs duties when imported and to equivalent internal taxes when domestically produced. Certain delegates, therefore, found it illogical to base the inclusion or non-inclusion of a governmental charge on the mere ground that in some cases the charge is called a customs duty and in other cases an internal tax.

On the other hand some of the countries which base their value for duty on the current domestic value in the country of exportation were unable to accept the proposal, on the grounds that it would be a substantial departure from their present method of valuation. Legislative changes have been necessary to provide for the exclusion of exempted or refunded internal taxes, and it was not possible to contemplate a further change. It was pointed out that the few occasions on which the amounts of any drawback customs duty are not allowed to be deducted from the value for duty by some countries was more than offset by the inclusion by many other countries of transportation charges, etc., in their value for duty.

In view of the importance of the proposal, the Technical Group can only report the nature of the problem to Working Party II for further consideration.

Discussion of this amendment drew attention to the fact that the French text uses the term "impôt ou taxe intérieurs" whereas the English text refers only to "internal tax". Elsewhere in the Agreement the French equivalent of the English term "internal tax" is "taxe interieure" and the divergence between the texts is liable to give rise to doubts. Subject to the decision of Working Party II on this amendment it is therefore suggested that the Drafting Group should review the texts with a view to bringing them into line, it being understood that in the view of the Technical Group (apart from the French, Italian and the Netherlands representatives) the text in its present form is not intended to cover customs duties.

The second proposal seeks to limit the term "internal taxes" so as to cover only taxes levied on the product itself, or on the material going into the product, to the exclusion of taxes such as income tax, social taxes, etc.

The intention behind this proposal is to exclude from the provisions of this Article those taxes of a kind which are considered by some countries to constitute unfair subventions to exports, and a number of members of the Technical Group supported the proposal for this reason.

It was, however, generally agreed that the words "internal tax" read in conjunction with the words "from which the imported product has been exempted or has been or will be relieved by means of refund" appearing in paragraph 3 of Article VII mean only (i) internal taxes of the kind which are levied directly on the goods exported (or directly on the materials going into the manufacture of such goods), as distinct from (ii) other taxes (income tax, etc.). It follows that the obligation contained in Article VII, paragraph 3, is limited to internal taxes of the kind mentioned in (i) above; so far as concerns taxes of the kind falling within (ii) above, there is no obligation upon contracting parties and, equally, there is nothing to prevent them from giving imported goods the benefit of more liberal provisions. However, the Technical Group considered it was not prudent to modify the text of the Article itself, particularly in view of the opinion of several members that it was inappropriate to seek to deal with the problems of subsidization in Article VII.

In view of the division of opinion on the basic point of principle, it was not necessary to discuss separately the following proposals, which seek to deal with the same matter by means of interpretative notes.

> "The term 'internal tax' within the meaning of paragraph 3 shall only apply to such taxes as are directly borne by the merchandise itself, to the exclusion of taxes applicable to the producer or trader personally and of contributions to the social insurance system." (Germany, L/261/Add.1, page 9)

> "The term 'internal tax' should be taken to include taxes directly applicable to the imported merchandise itself and to exclude all fiscal or social charges borne by the producer or trader. The expressions 'has normally been exempted' and 'a normal refund' preclude any form of exemption or refund not usually granted in connection with the export of the merchandise in question." (Italy, W.9/61, page 4)

15. Proposed amendment to paragraph 3

> "The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has normally been exempted, or has been or will be relieved by means of normal refund." (Italy, W.9/61, page 3)

The Italian representative explained that the insertion of the word "normal" is intended to lead to the exclusion of refunds of taxes other than those of the kind which most countries have in common, such as sales taxes and turnover taxes.

The Technical Group, however, considered that the word "normal" is in itself not a clear definition and would therefore only lead to difficulties of interpretation; it therefore did not accept this proposal.

16. Proposed amendment to paragraph 5

> "The system and methods for determining the value of products subject to ad valorem duties or other charges or restrictions based upon or regulated in any manner by value should not constitute an obstacle to the rapid clearance of imported merchandise, should protect honest importers from unfair competition in the field concerned, should as far as possible be based on trade documents and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes." (Italy, W.9/61, page 3)

The Italian representative stated that this proposed insertion was not aiming to insert new ideas into the Agreement, but to repeat well-known and already accepted principles in an appropriate place; these principles were merely implicit in Article VII and it would therefore seem desirable that they should be made explicit in the Article itself. He also drew attention to the

fact that the Italian proposal is based on similar recommendations in Article 36, paragraph 1 of the Havana Charter (Article VIII, paragraph 1, GATT), Article 38, paragraph 3(a), Havana Charter (Article X, paragraph 3(a), GATT) and the first interpretative note to paragraph 2 of Article VII, GATT. Furthermore, it should be noted that the proposal is not worded in mandatory terms, but in terms of a recommendation.

The countries opposing the amendment pointed out that the reason given by the Italian delegation, his recommendation being only a consolidation of existing recommendations, speaks against the necessity of adopting such a change.

The Technical Group was almost evenly divided on this proposal, but six delegations to five were in favour of it.

17. Proposed addition

> "The Members shall work towards the standardization, as far as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering co-operation to this end, the Organization may study and recommend to Members such bases and methods for determining value for customs purposes as would appear best suited to the needs of commerce and most capable of general adoption." (Denmark, Norway, Sweden, L/273, page 3; L/275, page 3, L/276, page 4)

As in the case of the other proposals of the Scandinavian delegations to provide for studies on certain subjects which have been dealt with by the Technical Group, the Group also considered that customs valuation would be a suitable subject for further studies. The Technical Group agreed that this conclusion should be transmitted to Review Working Party IV (to whom the proposal has been referred), who should have a free hand in the matter.

Article VIII

Formalities connected with Importation and Exportation

1. Proposed amendment of the title

Attention was drawn to the proposed amendment of the title of this Article to read:

> "Fees and Formalities Connected with Importation and Exportation." (United Kingdom, W.9/69)

which had been referred to the Legal Working Party.

2. Proposed amendment to paragraph 1

"The first sentence speaks of 'fees and charges' thus apparently dealing with problems extending beyond the question of 'formalities'. It may be desirable to separate the two distinct problems which are covered by this and subsequent paragraphs, namely (i) the limitation of levies on imports and exports to customs duties on the one hand, and to charges to cover the cost of services rendered on the other, and (ii) the formalities connected with imports and exports in the form of documentary requirements, etc. The separation might be effected by establishing a new article." (Secretariat proposal, L/189, page 7)

This proposal was rejected by the majority, as it was considered that it was convenient to deal with both questions in the same article, but under the text which is put forward in paragraph 6, the subjects are dealt with in two separate sub-paragraphs.

3. Proposed amendment to paragraph 1

"On the other hand, it has sometimes been difficult to see clearly the relationship between the provisions of Article VIII and those of Article II regarding 'other' duties and charges. It might be useful to clarify this point by indicating that the provisions of Article VIII relate to the customs tariff as a whole and not only to the duties bound under the GATT, and that they are therefore additional to, and consistent with, the specific commitments contained in paragraphs 1(b) and (c) and 2(c) of Article II." (Secretariat proposal, L/189, page 7)

This proposal also found no support, as the existing wording is obviously not limited to items bound under a schedule and the proposed change could even lead to confusion.

4. Proposed amendments to paragraph 1

"The contracting parties recognize that fees and similar charges imposed by governmental authorities on or in connection with importation or exportation, shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." (Germany, L/261, Add.1, page 10)

"The contracting parties recognize that all fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by governmental authorities on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." (United Kingdom, W.9/69)

The sentence reads at present:

"The contracting parties recognize that fees and charges, other than duties, imposed by governmental authorities on or in connection with importation or exportation, should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes."

The object of both proposals is to clarify the term "fees and charges, other than duties". After discussion the adoption of the United Kingdom proposal (which uses the wording of Article 36 of the Havana Charter) was agreed, the German delegation having withdrawn their proposal.

The Brazilian representative reserved his position generally on this Article.

5. Proposed amendment to paragraph 1

"It is suggested that the last part of the first sentence be amended to read as follows:

... any such fees and similar charges shall be levied at a flat rate only and not as a percentage of the value of the goods involved, except in cases where the percentage rate does not exceed one per mille of the value of the consignment." (Germany L/261/Add.1, page 10)

This proposal was withdrawn by the German representative.

6. Proposed amendments to paragraphs 1 and 2

In the first sentence of paragraph 1 of this Article, alter "should" to "shall", thus:

"The contracting parties recognize that fees and similar charges imposed by governmental authorities on or in connection with importation or exportation, shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." (Germany L/261/Add.1, page 10)

The German delegate explained that the intention of this proposal was to strengthen the force of this paragraph, which at present is worded only as a recognition of principles, whereas his delegation considered that the provision should have binding force, subject to the terms of any interim regulation, such as that afforded by the present Protocol of Provisional Application. After discussion in which this view received support, the

delegates of Germany and the United Kingdom were requested to draft a revised text of paragraphs 1 and 2 of Article VIII to give effect to this view. A text was duly drafted, but when it was discussed, the delegate of Brazil expressed the view that if this provision were given binding force, it might constitute a bar to countries accepting the revised Agreement under the procedure which was being discussed by the CONTRACTING PARTIES, in view of the fiscal importance of these fees and charges to certain countries. The delegate of Chile drew the attention of the Technical Group to the fact that the adoption of the draft amendment to paragraphs 1 and 2 of Article VIII would involve deletion of the Interpretative Note at present in the Agreement which might raise serious difficulties for countries which apply multiple currency exchange fees for balance-of-payments reasons with the approval of the International Monetary Fund. The delegates of France and Italy also opposed this revision of the Article (but for different reasons), but on the other hand the representatives of Canada, Germany, the Netherlands, New Zealand, Sweden and the United Kingdom were in favour of the proposal.

The Technical Group therefore puts forward the proposed text for consideration by Review Working Party IV in the light of the further consideration which may be given to the general form of the revised Agreement. The following text incorporates the amendment accepted under paragraph 4 above:

"1(a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. The contracting parties recognize the need for reducing the number and diversity of such fees and charges.

(b) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

2. Any contracting party shall, upon request by another contracting party, review the operation of its laws and regulations in the light of the provisions of this Agreement."

The United States representative reserved his position.

7. <u>Proposed amendment to paragraph 2</u>

"Since the Agreement has been in force for six years, it should not be necessary to retain the words 'at the earliest practicable date'." (Secretariat proposal, L/189, page 7)

This point is covered by the revised text of paragraph 2 given under Section 6 above.

8. Proposed amendment to paragraph 2

"The words 'or by the CONTRACTING PARTIES' might be inserted in the second sentence so as to provide that they also may request a review of the operation of laws and regulations (as they have in fact done for documentary requirements and consular formalities)." (Secretariat proposal, L/189, page 7)

The Technical Group expressed itself, with a large majority, in favour of the proposed insertion. The sentence under review will therefore read:

"Moreover, they shall, upon request by the CONTRACTING PARTIES or by any contracting party, review the operation of any of their laws and regulations in the light of these principles."

Of the two countries which did not support this text, Brazil considered that such a request should not be left to bilateral settlement, but should be subject exclusively to a decision by the CONTRACTING PARTIES (which means an attenuation of the present text).

9. Proposed addition

"On the importation of products from the territory of any contracting party into the territory of any other contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable. Where, on importation, the treatment of any product depends on the fulfilment of particular conditions as to its constitution, purity, quality, sanitary condition, district of production, or other similar matters, the frontier control formalities resulting therefrom should wherever possible be simplified by certificates issued by the appropriate authorities of the country of exportation." (Germany, L/261/Add.1, page 10)

After the Italian delegate had suggested replacing the last part of this proposal from the words "Where, on importation, the treatment of any product..." by a slightly modified text of the first sentence of Article 13 of the Geneva Convention on Simplification of Customs Formalities of 3 November 1923, the German delegation withdrew this part of its proposal in favour of the Italian suggestion. It was agreed to deal with these two sentences separately.

As regards the first sentence, only five delegates of the Technical Group were in favour of inserting such a provision in the Agreement, while six were against such an insertion. The objections were that the matter was already sufficiently covered by paragraph 1 of Article VIII, and that the insertion of this point of detail would weaken the effect of the general recommendation. On the other hand, there was support (five votes in favour, four against) for an alternative proposal to provide for an interpretative note expressing the same idea as the proposed amendment, as follows:

"It would be consistent with paragraph 1 of Article VIII that on the importation of products from the territory of any contracting party into the territory of any other contracting party the production of certificates of origin should only be required to the extent that is strictly indispensable."

As mentioned above, the Italian delegate proposed the addition of a new paragraph on the lines of the first sentence of Article 13 of the Geneva Convention of 3 November 1923, as follows:

"Where the régime applicable to any class of imported goods depends on the fulfilment of particular technical conditions as to their constitution, purity, quality, sanitary condition, district of production, or other similar matters, the Contracting States will endeavour to conclude agreements under which certificates, [stamps or marks] given [or affixed] in the exporting country to guarantee the satisfaction of the said conditions will be accepted without the goods being subjected to a second analysis or other test in the country of importation, subject to special guarantees to be taken where there is a presumption that the required conditions are not fulfilled."

A majority of eight to five was against this proposal.

10. Proposed addition

"The contracting parties should agree on the form of the certificates referred to in sub-paragraph 3(a) above. They should, in particular, take steps with a view to standardizing the models of certificates of origin, compiling a common list of goods for which proof of origin should not be required, determining and making known the authorities competent to issue certificates of the type referred to under sub-paragraph 3(a) above, circulating sample signatures of the persons authorized to sign such certificates, and establishing common rules for the verification of such certificates." (Germany, L/261/Add.1, page 11)

During the course of the discussion the German delegate requested that his proposal should be limited to the following wording:

"The contracting parties should also take steps with a view to standardizing the models of certificates of origin."

A number of delegates pointed out, however, that the national provisions necessitating proof of origin were so diverse that the problem of standardizing the form of certificates of origin offered no prospect of solution whatever. Further, it was pointed out that the contracting parties could continue to study the question of origin as an ordinary sessional item. The Technical Group therefore decided against the adoption of this proposal.

Article IX

Marks of Origin

1. Proposed addition

"The contracting parties recognize that, in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum." (Germany, L/261/Add.1, page 14)

"It might be desirable to add a sentence to the effect that laws and regulations relating to marking should be implemented in such a manner as to reduce to a minimum the difficulties and inconveniences caused to the commerce and industry of exporting countries." (Secretariat proposal, L/189, page 8)

Some delegates considered that the German proposal needed qualification, since while the interests of the exporting country are recognized, it is equally important to maintain measures designed to restrict the fraudulent or misleading use of marks. The United Kingdom delegate suggested the addition at the end of the German proposal of the words:

"... due regard being had to the necessity of protecting consumers against fraudulent or misleading indications."

The Technical Group accepted the German proposal as amended.

2. Proposed addition

"The Members agree to co-operate through the Organization towards the early elimination of unnecessary marking requirements. The Organization may study and recommend to Members measures directed to this end including the adoption of schedules of general categories of products, in respect of which marking requirements operate to restrict trade to an extent disproportionate to any proper purpose to be served." (Denmark, Norway, Sweden, L/273, p.4, L/275, p.4, and L/276, p.5)

"The contracting parties shall take steps to eliminate unnecessary marking requirements. They shall, in particular, study the possibility of establishing and adopting common schedules of those categories of products in respect of which marking requirements operate to restrict trade to an extent disproportionate to any purpose to be served, and which shall not in any case be required to be marked to indicate their origin." (Germany, L/261/Add.1, page 14)

These two proposals found no support in the Technical Group. The main reason given for not supporting this provision was that the principle of minimizing marking requirements is already covered by the new paragraph 1 and by paragraph 3 and that, secondly, the attempts to draw up common schedules could not lead to practical results.

3. Proposed addition

"The contracting parties shall come to an understanding on the steps to be taken to standardize the provisions governing the form, wording and placing of marks of origin." (Germany, L/261/Add.1, page 15)

The Technical Group was unable to recommend the insertion of the provisions into the Agreement, although it was agreed, on a suggestion by the Netherlands delegate, that the subject was one which might suitably be made the subject of a study by the Organization at some future date.

4. Proposed amendment of paragraph 5

"The contracting parties shall take measures with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation.

"Each contracting party shall, in particular, undertake to introduce the necessary measures to prohibit in its territory the improper use of distinctive geographical names of products of any other party, provided that such distinctive names are duly protected by such party and have been duly notified by the latter. Such notification shall list the documents issued by the competent authority of the country of origin as proof of the right to such names.

"The import and export, warehousing, manufacture, circulation, sale or offer for sale of the aforesaid products shall be prohibited and forbidden if commercial marks, names, notices or other indications involving false or improper distinctive names appear either on the product itself or on casks, bottles, packing cases or crates containing them, or in invoices, way-bills, bills of lading or other commercial documents pertaining thereto, or in the advertisement thereof.

"The prohibition to use a distinctive name to describe a product other than those really entitled to such name shall apply even when the real origin of the product is mentioned or when a false or improper name is qualified by such words as 'kind', 'type', 'make', 'rival', or by any other specific or regional descriptive term." (France, W.9/87)

The delegate of Italy, who strongly supported the French proposal, requested the extension of this proposal not only to the protection of geographical names of products, but also to "other type names", i.e. names of some products which by themselves indicate just as well that the product comes from a given country. He underlined the importance of such a proposal which he considered to have the same object as the Madrid Convention of 14 April 1891 on the Repression of False Marks of Origin as revised in London on 2 June 1934.

The other members of the Technical Group were, however, unable to agree to these proposals. The main reasons were that the existing text providing for bilateral agreement had worked satisfactorily, that such bilateral agreement could much more easily take care of the individual needs of the countries involved than any multilateral obligation could do, and finally that the adoption of the French proposal would impose unacceptably great administrative burdens.

The Italian delegate expressed the hope that although the Technical Group did not consider it advisable to modify the Agreement, the Organisation might arrange at some future date for studies to be made on this question. The majority of the Technical Group did not agree, however, that the Group should actually recommend studies on these questions.

Proposed New Article

Information on Customs Matters

"Binding Information on Customs Matters. Each contracting party shall designate authorities whose function it shall be to give, upon request, binding information on customs tariff rates and on the classification in customs tariff of specified goods, as well as on the rates of other taxes, duties and charges levied on or in connection with the importation of goods." (Germany, L/261/Add.1, page 36)

The German proposal of obliging countries to give binding information on customs rates was considered by most of the members of the Technical Group (with the exception of the representatives of Sweden and the United States) impossible to realize, due to practical and legal difficulties.

The delegate of the United States pointed out that a system for the giving of binding information on the classification of imported merchandise is working satisfactorily in his country and he could support this phase of the German proposal.

The Technical Group recognized the importance of exporters and importers being able to obtain, on request, official information from the government of the country concerned regarding the classification and duty liability of the goods in which they are interested. In most countries, it is in fact possible to obtain such official information.

The German proposal to introduce an intended obligation to this effect was, however, considered to be impractical.