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DRAFT REPORT OF THE TECHNICAL GROUP ON CUSTOMS ADMINISTRATION
ON REVIEW AMENDMENTS PROPOSED TO ARTICLES V, VII, VIII, IX,
AND A NEW PROPOSAL

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 Techni­
cal 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 in the country where the last commercial
transaction took place and not on the country of origin, and South Africa.
Although some other delegations were of the opinion that this 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 pro­
posed amendment was not adopted.

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 cooperate
with each other directly and through the Organization to this end."
(Denmark, Norway and Sweden, L/273, page 2)

Spec/40/55
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 overlapping of the work should be avoided.

**Article VII**

*Valuation for Customs Purposes*

1. **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)

Only two delegations supported this amendment. It was considered by the majority that this addition is unnecessary.

2. **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 so important 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 conform their legislation. The majority, however, expressed their conviction that the new Agreement must contain a general rule 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 regulation would, in the view of those representatives, make any special provision in Article VII unnecessary or even unjustifiable.

The amendment was then accepted as proposed.

3. Proposed addition to the 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 value 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 German proposal was 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."

The French text remains as given in L/261/Add.1.

4. Proposed addition to 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 it was not only unnecessary, but might cause confusion in conjunction with the interpretative note adopted in the previous paragraph.
Proposed amendment to 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)

Whilst the delegate of India considered that the system of fixed values operated in his country was sufficiently clearly in conformity with the Agreement not to need any interpretative note, the majority of delegations considered that it was desirable that the Agreement should incorporate such a note and that unlike the note which appears in the Havana Charter, it should be made general in its application and not limited to countries which had such a system in force at some earlier date. It was also considered essential that the note should provide that the system should be limited in the range of products to which it applies and that suitable provision for revision of the values should exist. In the light of this general discussion, the following revised text of the Chilean proposal was drafted:
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; others 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 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 the 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 it became clear that the proposed amendments were unacceptable to a number of countries' interests and that 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 those 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 prescribed was such as to destroy the balance of a carefully poised compromise. The amendment was finally rejected by eight votes to five.

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, he held, were not necessarily related to open market prices. In view of 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 of his country.
8. **Proposed amendment to paragraph 2(b)**

Instead of the actual 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 such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions" (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 in the ordinary course of trade under fully competitive conditions as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration" (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, etc.

After a declaration by the South African representative that South Africa would have to insist on the retention of this provision, the Italian representative withdrew the proposal, which he explained was only put forward for the reason of simplification and under the impression that no country could have any interest in that regulation.
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 last, which was clear in itself. The proposal was, therefore, not adopted. The second change relates to the problem of level of distribution and the Technical Group considered this not the appropriate place to deal with the problem although it might be possible to examine it separately. This part of the amendment was, therefore, also rejected.

11. Paragraph 2(b), amendment suggested

"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).

Attention was drawn to the fact that the problem of finding the value of goods temporarily imported, such as rented machines, and so on, is such a particular case that it was not appropriate to deal with it in Article VII. The Technical Group did not, therefore, accept this proposal.
12. Proposed amendment to the Interpretative Notes to paragraph 2(b)

"The prescribed standard of 'fully competitive conditions' permits contracting parties to exclude from consideration special prices to sole concessionaires, 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 explanatory 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 text is a better translation of that text.

"...The standard of 'full 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.

13. Proposed amendment to the Interpretative Notes to paragraph 2(b)

"The wording of sub-paragraphs (a) and (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 basis 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 (internal) 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).
This amendment contains two points of substance, which were discussed separately:

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

...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 tax. The principle case which arises in 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, which would run counter to the widely expressed desire that the commercial price should be accepted as the basis upon which duty should be paid.

On the other hand some of the countries which based 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.

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.

B. 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 "direct" taxes such as income tax, social taxes etc.

The intention behind this proposal is to exclude from the provisions of this proposal 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 purpose for this reason, or because it was in line with the current domestic value method of establishing the value for duty purposes.

It was, however, pointed out that the present paragraph can be read as applying only to internal taxes of the kind which are levied directly on goods of the kind exported, but in that case there was nothing to prevent countries from giving imported goods the benefit of more liberal provisions. In the case of countries which take landed value as the basis of value, that value would reflect the remission of direct taxes, where such remission enabled the exporter to reduce his prices. In such cases it would be contrary to the principles of the valuation system to require something to be added back to the landed value, even apart from the impracticability of relating the amount of the remission of direct taxes to the value of a particular quantity of goods.
It was also borne in mind that the problems of dumping and export subsidies are dealt with elsewhere in the agreement, and that it was not appropriate to seek solutions in Article VII.

The majority of members of the Technical Group were therefore opposed to this amendment.

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 lead, therefore, only to difficulties of interpretation, and therefore rejected this proposal.
16. Proposed addendum 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 to 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. He especially 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. Further, the countries using the foreign domestic value as the basis of their valuation system were of the opinion that such a recommendation would create a certain difficulty for them as they have to base their information in some cases on other than commercial documents.

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)

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).
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 as 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 unanimously agreed, the German delegation having withdrawn their proposal.

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 centum of the value of the consignment." (Germany, L/261/Add.1, page 10)

This proposal was withdrawn by the German representative without discussion.
6. Proposed amendments to paragraphs 1 and 2

In the first sentence of paragraph 1 of this article, alter "should" to "shall" to read:

"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 delegates of Chile, France and Italy also opposed this revision of the Article, but on the other hand the representatives of Canada, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the United States were in favour of the proposal.

The Technical Group therefore put 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.

1(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."
7. Proposed amendment to paragraph 2

"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)

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 single 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.

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 fulfillment 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 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."

This proposal was rejected by a majority (eight to five).

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 certificate" (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. "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, page 4.)

"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 provision 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 Italian delegate, 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". He underlined the importance of the French proposal, which he considered to be in the same direction as the Madrid Convention and the Industrial Property Convention.

The other members of 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 Organization might arrange at some future date for studies to be made on this question. Other members of the Technical Group did not agree, however, that the Group shall 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 the other members of the Technical Group impossible to realize, due to practical and legal difficulties.

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, since all countries were obliged to protect themselves against the possibility that the goods may be incompletely or inaccurately described in such requests for information.