1. Proposed amendment to paragraph 2 of revised text of Article 18 (Ecuador) (E/CONF.2/C.3/6/Add.6)

The delegate of Ecuador explained that there were a number of state monopolies in Ecuador which both produced and were the sole importers of certain products. The imported products were subject both to an import duty and a differential sales tax. The latter, however, was imposed not for protective purposes but for fiscal reasons. Paragraph 2 of Article 18, which would require the elimination of the differential between the tax on the domestic and on the imported product, would have seriously prejudicial effects on Ecuador's fiscal economy.

The delegate of Turkey stated that if state monopolies which imported products for commercial resale were subject to the provisions of Article 18, and not excepted under paragraph 8, he wished to support Ecuador's amendment.

It was the sense of the Sub-Committee that state monopolies importing products for commercial resale were not excepted from the provisions of Article 18.

The delegates of Australia, Cuba, France, the Netherlands, the United Kingdom and the United States were of the opinion that the differential internal tax described by the Ecuadorian delegate could be converted to a monopoly margin so that Article 31 rather than Article 18 would be relevant. The total state trading margin was the difference between the landed price of the product and the internal sale price. Ecuador could meet the conditions of Article 31 by combining the existing internal tax and import duty to constitute a protective or monopoly margin which Members were permitted to levy under paragraph 3 of Article 31. The total import duty or monopoly margin, as published or negotiated, would come under paragraph 4 of Article 31.

/The delegate
The delegate of Ecuador indicated that his misgivings had not been entirely dispelled but that he believed it might be possible to adapt their existing tax structure as suggested so that Article 31 and not Article 18 would apply. He would notify the Sub-Committee whether or not his delegation was prepared to withdraw its proposed amendment to Article 18, in view of this suggestion.

The delegate of New Zealand suggested that the term "maximum import duty" as used in paragraph 2 of Article 31 should be clarified. Several members of the Sub-Committee considered that the term "maximum import duty" included both the import duty proper as contemplated in Article 17 and the monopoly margin of profit, and that it would therefore be preferable to use the term "protective margin" rather than the term "maximum import duty". It was felt, however, that this suggestion could more appropriately be discussed in connection with Article 31 and it was agreed to include it in the Sub-Committee's Report to Committee III.


B. RECOMMENDED CONSEQUENTIAL CHANGES

Article 16, Paragraph 1 - agreed
Article 22, Paragraph 2 - agreed
Article 30, Paragraph 2

In response to a question by the Netherlands delegate, the United States delegate, supported by the delegates of Cuba, France, and the United Kingdom, explained the reasons for the Working Party's recommendation as follows: Paragraph 8 (a) of Article 18 (corresponding to the first part of paragraph 5 of the Geneva text) has the effect of excepting procurement by Government agencies or Government departments of supplies for governmental use (other than supplies purchased with a view to commercial resale or to use in the production of goods for commercial sale) from the rule of national treatment in Article 18 and most-favoured-nation treatment in Article 16. Paragraph 2 of Article 30 similarly exempts purchases of such supplies, when carried out on behalf of Governments by State trading enterprises, from the rules laid down in paragraph 1 of that Article, but provides that in making such purchases fair and equitable treatment should be accorded to foreign suppliers. The Working Party had recommended the proposed change in paragraph 2 of Article 30 so that the fair and equitable treatment rule would apply to any laws, regulations or requirements relating to procurement of supplies for governmental use by Government agencies or departments as well as to purchases of such supplies by State trading enterprises.

/The Sub-Committee
The Sub-Committee approved the change in paragraph 2 of Article 30 recommended by the Working Party.

C. INTERPRETATIVE NOTES

Article 17
The Danish delegate stated that his delegation could not support the inclusion in the Charter of this note.

The Australian delegate, while making no formal reservation on this note, indicated he might have to revert to it later.

The Norwegian and United Kingdom delegates maintained their temporary reservations pending instructions from their respective Governments.

Article 18 - agreed

On the suggestion of the Cuban delegate, it was agreed to request the Central Drafting Committee to consider whether this note, which explains the provisions of Article 99, should relate to Article 18 or to Article 99. The United Kingdom and United States delegates considered that it should be retained as a note to Article 18 since the taxes referred to were a technical violation of Article 18, not Article 99.

Article 18, Paragraph 2 - agreed
Article 18, Paragraph 5 - agreed

D. EXPLANATORY PARAGRAPHS TO BE INCLUDED IN THE SUB-COMMITTEE'S REPORT TO COMMITTEE III

On the suggestion of the delegate of the Netherlands it was agreed to include in the Sub-Committee's Report the following explanatory paragraph which had been included in the Geneva Sub-Committee's Report and had been noted in Committee III by the Netherlands delegate:

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

The Brazilian delegate proposed the following addition to the first explanatory paragraph:

"The above, however, are neither exclusive nor necessary criteria to distinguish an additional import duty from an internal tax under Article 18."

While unable to accept the Brazilian proposal, the Sub-Committee agreed to re-write as follows the second sentence of the first explanatory paragraph in order to meet the Brazilian point:

"The Sub-Committee, while not attempting to give a general definition of internal taxes, considers that the particular charges
referred to are import duties and not internal taxes because, according to the information supplied by the countries concerned, (a). . . . . "

The second and third explanatory paragraphs were agreed as drafted.

On the suggestion of the United Kingdom delegate, it was agreed to insert in the next to last line of the fourth explanatory paragraph after the word "oleomargarine" the words "of which there was a substantial domestic production".