The Technical Sub-Committee consisted originally of Delegates for Australia, Belgium-Luxemburg, Czechoslovakia, the Netherlands, France, United Kingdom and the United States. Arrangements had been made, however, for the participation of delegates for other countries wishing to take part in the Sub-Committee's work. The Delegates for Brazil, Canada, Cuba, New Zealand and the Union of South Africa, who regularly utilized this opportunity, were admitted as regular members of the Sub-Committee in the course of its existence.

The Sub-Committee met thirteen times under the Chairmanship of Mr. R. J. Shackle.

The new texts of Articles 15-23 and 37, as adopted by the Sub-Committee, are given below. The text of each paragraph is followed by comments explaining the changes introduced and recording the reservations made, including such reservations or comments as were made at the London Session and maintained in New York, or which were neither withdrawn nor maintained in New York in view of the fact that the countries concerned were not represented on the Sub-Committee.

In addition, the comments account briefly for the nature of the changes introduced at the London Session in the respective articles of the United States Draft Charter, in view of the fact that the report of the Sub-Committee dealing with these Articles at that Session (E/PC/T/C.II/54/Rev.1) has not been printed.

/The present
The present report does not cover paragraph 2 (a) of Article 18 since the Sub-Committee thought it preferable to have the decision on this paragraph taken in the full Committee.

ARTICLE 15 - NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

General comment

The text of Article 15, corresponding to Article 9 in the United States Draft Charter, underwent a number of modifications at the London session. Thus, the number of paragraphs was increased from two to five, and words were added to clarify or render more inclusive the provisions contained in the present paragraphs 1, 2 and 3. As was mentioned in Part II of the Report of the First Session (E/PC/T/33, page 9, Section A, 1 (iv)), the original provision for "national treatment" in respect of governmental purchases of supplies for governmental use was removed at that session, and a special paragraph (No. 4 in the text now supplied) was added expressly exempting procurements of this kind.

Text, 15:1

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

Comment

In the report of the First Session of the Preparatory Committee, this provision was given as the third paragraph of the Article dealing with National Treatment. The Drafting Committee suggests that it be given as
paragraph 1 in view of its general nature.

At the First Session, the Delegate for the Union of South Africa thought that the words "internal laws, regulations and requirements" might be misconstrued as referring for instance to Customs legislation, and suggested that the words "laws, regulations and requirements" be used. However, the present Sub-Committee felt that in its context the text of paragraph 1 clearly does not cover customs legislation.

Text, 15:2

"The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin."

Comment

The words "identical or similar products" were changed to "like products", in accordance with a preliminary decision taken by the Drafting Committee, and a few other modifications of a formal nature were made.

It was left to the Delegates for Cuba, Norway and India to consider whether they would wish to maintain the objections against this paragraph raised by them at the first session. (The Delegate for Cuba had reserved his position concerning measures necessary for protection of infant industries in countries at an early stage of economic development; the Delegate for India...
India had commented that there should be no objection against discriminatory internal taxes levied only for the purpose of raising revenue; and the Delegate for Norway had reserved his country's right to vary charges levied on an imported product when the variations were required for the maintenance of a uniform price of the product in the domestic market).

Text, 15:3

"The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, transportation, distribution or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used, provided that any such requirement in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, which period may be extended in respect of any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter. Requirements permitted to be maintained under the foregoing proviso shall be subject to negotiation in the manner provided for in respect of tariffs under Article 24."
Comment

In an attempt to meet the views expressed by several delegates at the First Session of the Preparatory Committee, the Sub-Committee decided to add to this paragraph a proviso enabling countries to make restricted use of mining and processing requirements for imported products that are in force at the day of the signature of the Charter. The requirements might be continued during one year from the entry into force of the Charter and longer "if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter". In addition, words were added to the effect that such requirements are being made to be subject to negotiation in the manner provided for in respect of tariffs under Article 24.

In view of the insertion of a new paragraph (see below) dealing with regulations and requirements relating to the exhibition of cinematograph films, the reference to requirements restricting the exhibition of imported products was deleted.

Previous Article 15:4 (now omitted)

The London Session had adopted the following paragraph:

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

/It was felt
It was felt that the problem of federal Governments procuring observance by their subsidiary Governments of the provisions of the Charter arose also in the case of other articles. Accordingly, the above paragraph was deleted from Article 15 provided that the following new paragraph would be recommended to the full Drafting Committee for insertion under Article 88 (as paragraph 5), thus referring to the entire Charter:

"Each accepting Government shall take such reasonable measures as may be available to it to assure observance of the provisions of this Charter by subsidiary Governments within its territory."

The expression "subsidiary Governments" was not deemed entirely satisfactory and it was thought that the Legal Drafting Sub-Committee might wish to clarify it.

Text, 15:4

"The provisions of paragraphs 1 and 3 of this Article shall not be construed to prevent the application of internal laws, regulations or requirements, other than taxes, relating to the distribution or exhibition of cinematograph films. Any laws, regulations or requirements so applied shall, however, be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24."

/Comment
Comment

At the London Session, certain delegates had suggested that the provisions contained in the paragraphs corresponding to Nos. 1 and 3 of the present text should not apply to cinematograph films. The first sentence of the paragraph now added meets this suggestion.

The second sentence provides that laws, regulations and requirements relating to the distribution and exhibition of such films will be subject to negotiation in the same manner as those considered under paragraph 3. It was the understanding of the Sub-Committee that the provisions contained in this sentence would only imply that there should be willingness to negotiate for liberalization or elimination of the laws, regulations and requirements in question but that there would not have to be a standstill in the adoption of legislative or other measures affecting the distributions or exhibition of cinematograph films as long as these measures were not bound by the trade agreements.

The Delegate for Czechoslovakia reserved his position for the time being on the second sentence of this paragraph.

The Delegate for New Zealand made a statement for inclusion in the Report of the Drafting Committee, to the effect that the New Zealand film hire tax which is in reality a delayed customs duty levied at the point where the real value of the film has become apparent, should neither be regarded as being covered by the terms "internal laws" or "regulations" or "requirements" whenever such words appear in Article 15, nor as an internal tax. The film hire tax, he pointed out, which is not associated with any form of film quota, but which contains a preference element, could thus be the subject of negotiations of the kind provided for.
provided for in Article 24 with respect to tariffs.

New Zealand, he declared, did not produce cinematographic films other than educational and newsreels, and such films were exempt from tax. British films of all types were subject to tax at a rate lower than that applied to foreign films.

Text, 15:5

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

Comment
This paragraph was adopted without change by the Subcommittee.

ARTICLE 16 - FREEDOM OF TRANSIT

Text, 16:1

Alternative A (Refers to goods only)

"Goods, including baggage, shall be deemed to be in transit across the territory of a Member when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the goods pass."

Alternative B (Refers to goods and means of transport)

"Goods, including baggage, and also vessels and other means of transport shall be deemed to be in transit across the territory of a Member when the passage across such
territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit". The provisions of this Article shall not apply to the operation of aircraft in transit."

Comment

Article 16, as worded in the United States Draft Charter, refers in general, to "persons, baggage and goods, and also vessels, coaching and goods stock, and other means of transport." At the London Session, the word "persons" was deleted since it was decided not to be within the scope of the Charter. Moreover, it was pointed out that traffic of persons was subject to immigration laws and might properly be the concern of an international agency other than the Trade Organization. The Delegate for one country (India) objected, however, to this change in the text.

The Sub-Committee considered whether means of transport should not also be excluded. It was recognized that trade in goods was the principal object of the Charter and that means of transport might become the concern of other international agencies. On the other hand, certain Delegates felt that if means of transport were not covered, the purpose of the article might be impaired. It was therefore agreed to submit two alternative texts of Article 16, one, (A) referring to goods only, and the other, (B) to goods and means of transport.
The last sentence of this paragraph was not included in the text of the United States Draft Charter. At the London Session the Sub-Committee, dealing with this article proposed to add the provision that the article "shall not apply to air traffic in transit". Since this wording, however, would exempt more than was intended, the words "the operation of aircraft" (in Alternative B) were substituted for "air traffic".

It was noted that there is no apparent inconsistency between this Article and the Barcelona Convention of 20 April 1921 (Convention and Statute on Freedom of Transit). Should the question of a new transit convention be raised, the Sub-Committee felt that the International Trade Organization might wish to co-operate.

Attention was also paid to the existence of other treaties and conventions to which members of the Preparatory Committee are parties, that relate to matters covered by the Charter. It was felt that the Members would have to consider, before signing the Charter, if and to what extent their obligations under such treaties or conventions were in conflict with the new obligations which they would have to assume.

Text, 16:2

Alternative A (Refers to goods only)

"There shall be freedom of transit through the Member countries via the routes most convenient for international transit for goods in transit to or from other Member Countries. No distinction shall be made with respect to goods in transit that is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, /exit or
exit or destination, or on any circumstances relating to the ownership of goods, vessels or other means of transport."

**Alternative B** (Refers to goods and means of transport)

"There shall be freedom of transit through the Member countries via the routes most convenient for international transit for traffic in transit to or from other Member countries. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, vessels or other means of transport."

**Comment**

The last sentence (in both the alternatives) is based on the text of Article 2 of the Barcelona Statute (annexed to the Barcelona Convention of 20 April 1921). It was added in order to meet a point raised by the Delegates for Belgium-Luxembourg, France and the Netherlands at the London Session.

The Delegate for India suggested that the first sentence should read as follows:

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

/Text, 16:3/
Alternative A (Refers to goods only)

"Any Member may require that goods in transit through its territory be entered at the proper customs house, but, except in cases of failure to comply with applicable customs laws and regulations, such goods coming from or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered."

Alternative B (Refers to goods and means of transport)

"Any Member may require that traffic in transit through its territory be entered at the proper customs house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from /or going to
or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered."

**Comment**

In order to render it clear that the duties and charges mentioned in this paragraph do not include compensation for services rendered, the concluding words from "except charges for transportation" were added in both the versions of the paragraph.

**Text, 16:4**

**Alternative A (Refers to goods only)**

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

**Alternative B (Refers to goods and means of transport)**

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

**Text, 16:5**

**Alternative A (Refers to goods only)**

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

**Alternative B** (Refers to goods and means of transport)

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

Text, 16:6. *(This text is applicable to both
alternatives A and B.)*

"Each Member shall accord to products which have
been in transit through any Member country treatment no
less favourable than that which would have been accorded
to such products had they been transported from their
origin to their destination without going through such
other Member country. Any Member shall, however, be
free to maintain its requirements of direct consignment
(expedition directe) existing on the date of signing
this Charter, 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 country's prescribed
method of valuation for duty purposes."

**Comment**

The last sentence of this paragraph was added
in order to meet a suggestion made by Australia at the
London Session.
Comment referring to the whole of Article 16:

The Delegate for Chile pointed out that he wished to reserve his position on Article 16 in view of the transit agreement which Chile had concluded with neighbouring countries. He anticipated being able to confirm or withdraw his reservation before the end of the session.

ARTICLE 17 - ANTI-DUMPING AND COUNTERVAILING DUTIES

Text 17.1.

"No anti-dumping duty or charge shall be imposed on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of the product exported from one country to another is less than (a) the comparable price charged for the like product to buyers in the domestic market of the exporting country, or, in the absence of such domestic price, either (b) the highest comparable price at which the like product is sold for export to any third country in the ordinary course of commerce, or (c) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit; with due allowance in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability."
It was understood that paragraph 1 refers only to price dumping and that the term "anti-dumping duty", as used therein, refers only to an additional duty imposed for the purpose of offsetting such dumping.

The words "or charge" were inserted after "No anti-dumping duty" in the first line in order to render it clear that this article is intended to cover even charges not technically regarded as duties. Similarly, the words "in the ordinary course of commerce" were added for greater clarity in the alternative described under (b), and under alternative (c) it was made clear that the cost of production should include a reasonable addition for selling cost and profit. Finally, in order to meet an objection raised by the Delegate for New Zealand, the text was modified so as to permit of using the cost of production as defined under (c) as an alternative to the price defined under (b) in determining the margin of dumping. (According to the original text, (c) could be used only in the event of both (a) and (b) being inapplicable.)

The Delegate for the United Kingdom suggested that the word "landed" be inserted before "price of the product exported" in the definition of the margin of dumping (second sentence).

The Delegate for Australia, The Netherlands and the Union of South Africa suggested that the word: "by more than five per cent" be inserted in the same definition after "another in lieu".
The delegates for certain countries (Belgium-Luxemburg and the Netherlands) favoured the authorization of measures other than anti-dumping duties to offset price-dumping. The Delegates for Czechoslovakia, France and New Zealand supported this view.

The Delegate for Brazil reserved his position on this paragraph, being of the opinion that heavier than counter-balancing duties or quantitative restrictions should be allowed in cases of aggravated or sporadic dumping.

At the London Session, the Delegate for India suggested that the definition of "margin of dumping" be left to the International Trade Organization. (This point may have been met in part by the addition now suggested of the second sentence in paragraph 5.)

Text. 17:2.

"No countervailing duty shall be imposed on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation."

Comment

The following definition of countervailing duty was agreed upon, but the Sub-Committee thought that it might be left to the decision of the Legal Drafting Sub-Committee whether to include it as an amendment to this paragraph or under a list of definitions elsewhere or as an explanation in the Report:

/"The term
“The term 'countervailing duty' shall be understood to mean an additional duty imposed for the purpose of off-setting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise.”

At the London Session, the Delegate for China suggested the following addition to this paragraph:

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

The Delegate for Brazil suggested that quantitative restrictions or other punitive measures should be permissible in order to cope with the import of subsidized products.

Text, 17:3:

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

/Comment.
Comment.

The concluding words "or by reason of the refund of such duties or taxes" were added at the London Session to the original text. The paragraph was approved without change by the Sub-Committee.

Text, 17:4.

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

Comment.

This paragraph was approved without change by the Sub-Committee.

Text, 17:5.

"No Member shall impose any anti-dumping or countervailing duty or charge on the importation of any product of other Member countries unless it determines that the effect of the dumping or subsidization, as the case may be, is such as materially to injure or threaten to injure an established domestic industry, or is such as to prevent the establishment of a domestic industry."
The original text of the first sentence of this paragraph was modified so as to restrict the use of permissible anti-dumping and countervailing duties. The words "as a general rule" in that text were deleted and the word "materially" was added before "injure or threaten to injure". Other changes introduced are largely formal or explanatory.

The Delegate for Brazil suggested the deletion of the provision contained in this sentence.

Text, 17:6

"Nothing in this Article shall preclude Members from incorporating in a regulatory commodity agreement under Chapter VII provisions prohibiting, as between Members party to such a commodity agreement, the use of anti-dumping duties in cases in which dumping, within the meaning of paragraph 1 of this Article, may be permitted under the terms of such an agreement."

Comment

This is a new paragraph, adopted by the Sub-Committee at the suggestion of the Delegate for Cuba. It was pointed out by some delegates that the paragraph did not involve any change in the obligations of Members under the Charter.

ARTICLE 17. SUGGESTED NEW PARAGRAPH

The Delegate for Australia suggested inclusion in Article 17 of the following paragraph:

7. "Any Member maintaining restrictions on forms of dumping other than 'price dumping', e.g., freight dumping..."
dumping or dumping by means of depreciation of currency, shall only impose such dumping duties where it has determined after enquiry that the method and extent of dumping against which action is taken is such as to injure or threaten to injure an established domestic industry."

The Delegate for the United States was of the opinion that this paragraph should not be accepted. While not adopting the proposed text, the Sub-Committee decided to forward it for consideration by the Drafting Committee and the Second Session of the Preparatory Committee. It also decided to draw the attention of the Sub-Committee on Tariff Procedures to the paragraph in question.

ARTICLE 18. TARIFF VALUATION

Text. 18:1

"Members undertake to work toward the standardization, insofar as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering such co-operation, the Organization is authorized to investigate and recommend to Members such bases and methods for determining the value of products as would appear best suited to the needs of commerce and most capable of widespread adoption."

Comment:

The words "or other restrictions" in the first sentence of this paragraph were changed to "or other charges or restrictions" to render it clear that
charges other than customs duties are covered.

Text, 16:2

"The Members recognize the validity of the general principles of tariff valuation set forth in the following sub-paragraphs, and they undertake to give effect to such principles, in respect of all products subject to duties, charges or regulations based upon value, at the earliest practicable date. Moreover, they undertake upon a request by another Member to review the operation of any of their laws or regulations relating to value for duty purposes in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph."

Comment

The last two sentences of the introductory part of this paragraph were added to the original text in order to take into account and reconcile diverging views expressed at the London Session with reference to a suggested obligation of Members to review their customs laws and regulations relating to tariff valuation.

The Delegates for certain countries (Belgium, Luxembourg, Czechoslovakia and the Netherlands) wished to provide for a definite early date for the entry into force of the provisions of paragraph 2. At the London Session, the Delegate for China suggested that the entry into force should be preceded by a transitional period.

The Delegates for certain countries (Belgium, Luxembourg and the Netherlands) suggested that the
procedures applied in determining value for duty purposes should be more exactly indicated. The Sub-Committee considered, however, that the suggestions made by these delegates were too detailed for inclusion in this paragraph. One of these suggestions (concerning the trial of value litigation) was considered in connection with Article 21, paragraph 2.

Text. 18:2 (a)

(To be considered in the full Committee. Alternative texts will be distributed.)

Text. 18:2 (b)

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

Comment

Sub-paragraph (b) was approved by the Sub-Committee in its initial version with the addition of the words "relieved or" before "made exempt" intended to render this provision analogous with that relating to anti-dumping and countervailing duties in paragraph 3 of Article 17.

The question of inserting the words "customs duty or" before "internal" was considered but deferred for later decision.
Text, 16:2 (c)

"(c) In converting the value of any imported product from one currency to another for the purpose of assessing duty, the rate of exchange to be used should be fixed in accordance with prescribed standards to reflect effectively the current value of each currency in commercial transactions.

Comment

The Delegate for the United States reserved the right to recommend insertion of the words "or rates" after "rate", or otherwise to provide for the conversion of currencies in the cases of dual or multiple rates.

At the London Session, the Delegate for China reserved his position on this paragraph.

Text, 16:2 (a)

"The bases and methods for determining the value of products subject to duties regulated by value should be stable, and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the amount of duty likely to be imposed."

/Comment
Comment

The words "be given sufficient publicity to enable traders" in this sub-paragraph replace the phrase "be published in full detail, in order that traders may be enabled" in the original text. The change aims at meeting the objections against that text raised at the London session.

ARTICLE 19. CUSTOMS FORMALITIES

Text, 1911

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

Comment

This paragraph was adopted without change by the Sub-Committee.
Text. 19:2

"Members undertake to give effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they undertake upon a request by another Member to review the operation of any of their customs laws and regulations in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph."

Comment

The original text of this paragraph included an unqualified undertaking by Members to review their customs laws and regulations with a view to giving effect to the principles and objectives etc. In view of objections made at the London session against this provision, the paragraph was redrafted so as to provide for the undertaking by Members to (1) give effect to the principles etc. and (2) review the operation of their customs laws and regulations in the light of these principles upon the receipt of a request from any Member. The new text, it will be observed is similar to that proposed by the Sub-Committee with reference to tariff valuation (paragraph 2 of Article 18).

Text. 19:3

"Except in cases of serious negligence, greater than nominal penalties over and above the duty properly payable should not be imposed by any Member in connection with the importation of any product of any other Member country because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established."
Comment

In order to meet objections raised by several delegations at the London Session, a provision in the original text for the remittance of penalties "imposed because of actions which resulted from errors and advice of responsible customs officials" was deleted and the initial few words were added making an exception from the remaining provision in cases of serious negligence. For greater clarity, the words "over and above the duty properly payable" were added after "nominal penalties."

Text, 1974

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

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

Comment

The text adopted by the Sub-Committee differs only slightly from that in the United States Draft Charter: the words "such as consular invoices and certificates" under (a) were added at the London session; and the words
end the words "(plant, animal and human)" occurring after "fumigation" (under (h)) in the original text were deleted.

ARTICLE 20 - MARKS OF ORIGIN

Text 20:1

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

Comment

This paragraph was adopted without change.

Text 20:2

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

Comment

This paragraph was adopted without any change in substance.

Text 20:3

"Whenever administratively practicable, Members should permit required marks of origin to be imposed at the time of importation."

Comment

At the London Session, certain delegates had objected to the text of the corresponding paragraph in the United States Draft Charter which started:

"Whenever
"Whenever administratively possible, Members shall ...."

The present text in which the words "practicable" and "should" are substituted for "possible" and "shall," represents a compromise acceptable to the majority of members of the Sub-Committee. The Delegates for Canada, Czechoslovakia and the United States stated that they would have preferred to leave in the word "shall."

The Delegate for the United Kingdom reserved his position on this paragraph which in his view should be deleted.

**Text, 20:4**

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

**Comment**

The Sub-Committee did not suggest any change in the text of this paragraph.

**Text, 20:5**

Alternative A.

"The Members undertake to work toward the uniform adoption of a schedule of general categories of products which shall not in any case be required to be marked to indicate their origin. With a view to furthering this work, the Organization is authorized to investigate and recommend to Members descriptions of categories of products in respect of which marking requirements..."
operate to restrict trade in a degree disproportionate to any proper purpose to be served."

Alternative B

"Members agree to work in co-operation through the Organization toward the gradual elimination, as far as practicable, of obligatory marks of origin. With a view to ..... (etc., same as the second sentence of Alternative A)."

Comment

As given in Article 14 of the United States Draft Charter, paragraph 5 enumerated categories of products which were to be exempt from marking requirements. At the London Session, however, agreement could not be reached on the original text, and the draft now submitted as Alternative A was adopted.

The text shown under B represents an alternative wording of the first sentence, going farther than the previous alternative in that it would provide that Members "agree to work in co-operation through the Organization toward the gradual elimination, as far as practicable, of obligatory marks of origin". This text, supported by the Delegates for Australia, Canada, Chile, Cuba, Czechoslovakia and France, was retained with a view to consideration at the second session of Preparatory Committee. The Delegates for Belgium-Luxembourg, the United Kingdom and the United States opposed this text because they considered that it would be going too far to make the elimination of marking requirements an obligation. The Delegate for Belgium-Luxembourg drew attention to the fact that marks of origin /are frequently
are frequently beneficial to the consumer and not of a discriminatory character. It was pointed out, however, that the elimination of marking requirements by importing countries did not preclude the use of marks of origin by exporting countries.

According to the second sentence, the Organization would be authorized to make recommendations concerning categories of products which would not be subject to marking requirements. While the majority of delegates represented at the Sub-Committee thought this the most useful procedure, the Delegate for Canada indicated that he would prefer recommendations as to products which may be made subject to marking requirements.

Text 20:6
"As a general rule, no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking has been unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted."

Comment
In order to meet objections against the original text raised by certain delegates, the obligation that would be incurred by Members was rendered less exacting by addition of the words "As a general rule" at the beginning of the Article, and by substituting the words "deceptive marks have been affixed" for "false marks have been intentionally affixed". The Delegate for the United Kingdom reserved his position on this paragraph as well as on paragraph 3 of this Article.
The question raised by certain delegates concerning the right of each country to prohibit the import, export and transit of foreign goods falsely marked as being produced in the country in question was considered to be covered primarily by the words "deceptive practices", in Article 37, sub-paragraph (g). The suggested new paragraph 7 under Article 20 would also be relevant to this matter.

Text, 2017

Alternative A

"The interest of Members in protecting the regional and geographical marks of origin of their distinctive products is recognized and shall be given consideration by the Organization which is authorized to recommend a conference of interested Members on the subject."

Alternative B

"Members agree to grant to trade names and marks of origin and quality that are recognized and protected by other Members, the same protection as is afforded by their domestic legislation to their own marks and trade names of origin and quality, provided that these marks and trade names relate to like products. They shall, for this purpose, transmit to the Organization a list of such marks and trade names as are protected by their domestic legislation and for which they wish to secure protection in importing countries.

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

/Comment
Comment

The question raised at the London Session concerning the possible extension of Article 20 to include a commitment by Members to protect in their respective countries the trade names and marks of origin and quality of other Members was taken up for new consideration.

The Sub-Committee decided to recommend the text shown under Alternative A, involving recognition of the interest of Members in such protection, and an authorization for the Organization to recommend a conference on the subject. This alternative was passed by the Sub-Committee without dissent, though at a roll taken the Delegates for Cuba and the United Kingdom did not vote and the Delegate for Chile declared that though in principle supporting this alternative, he wished to reserve his position with regard to both Alternatives A and B. He considered that further time was required to study the matter which ought to be taken up at a later date.

The Delegates for Belgium-Luxemburg, Czechoslovakia, France, and the Netherlands, while accepting Alternative A, did not consider it going far enough and were in favour of the text of Alternative B involving, among other things, the acceptance of an obligation by Members to grant the same protection for trade names and marks of origin and quality as is afforded by their domestic legislation to their own marks and trade names for like products.

In the course of the discussion, the Delegate for France, who had proposed Alternative B, pointed out that if his suggestion were adopted, the nature of the national legislation by which such protection is given would not have to be changed; in fact, if a country had no law protecting /its domestic
its domestic trade names and marks, it would not have to
grant any protection to the trade names and marks of
imported products.

ARTICLE 21 - PUBLICATION AND ADMINISTRATION OF TRADE
REGULATIONS - ADVANCE NOTICE OF RESTRICTIVE REGULATIONS

Text, 21:1

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

At the suggestion of the Delegate for Cuba, words were included rendering the provisions of this paragraph applicable also to laws, regulations, etc., affecting the transportation and insurance of imports and exports.

The words entered in square brackets in the last sentence represent an alternative text presented by the Delegate for the United Kingdom for consideration by the Drafting Committee.

The Delegate for France, while pointing out that this paragraph might replace Articles 4 and 6 of the Convention of 3 November 1923 for Simplification of Customs Formalities, suggested that it ought to be supplemented: (i) by insertion of the provisions of Article 5 of that Convention and (ii) of the Brussels Convention of 5 July 1890 on the publication of tariffs; (iii) by providing for the setting up in each Member State of an organization specially responsible for publishing, within the country and abroad, the laws and regulations relating to foreign trade; and finally (iv) by providing for the establishment within the International Trade Organisation of an office responsible for collecting, analyzing and publishing as quickly as possible in the usual languages laws, regulations and decisions concerning foreign trade and for the periodical collection, in detailed studies, of information concerning the comparative regulations of Member States on any given point.

/ The Sub-Committee
The Sub-Committee felt that it might be useful if the Preparatory Committee were to suggest the absorption by the Organization of certain existing international agencies such as the Brussels Tariff Bureau, and arrangements for collecting, analyzing and publishing the information considered in point (iv) of the suggestion just referred to. Attention was drawn in this connection to the provision of paragraph 4 of Article 81 of the Draft Charter.

"Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Moreover, Members undertake to maintain, or to institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose of inter alia, prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement."

Certain formal changes were made in the preceding sentences. In addition, the words "judicial or administrative tribunals" in the original text were changed to "judicial, arbitral or administrative tribunals or procedures", and the word "prompt" was added before "review" in the second sentence.

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

A reservation was made on this paragraph by the Delegates for New Zealand and the Union of South Africa who were of the opinion that appeals against administrative decisions might be made to the competent minister and that it should not be necessary to provide for independent tribunals or procedures.

Text, 21:3

"No administrative ruling of any Member effecting an advance in a rate of import duty or other charge under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall, as a general rule and within the limits of administrative practicability, be applied to products of any other Member already enroute at the time of publication thereof in accordance with paragraph 1 of this Article: Provided, that if any Member customarily exempts from such new or increased obligations products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the date of such publication, such practice shall be considered full compliance with this paragraph. The provisions of this paragraph shall not apply to anti-dumping or countervailing duties."
Comment

In view of the difficulty of reaching agreement on this paragraph at the London Session, the Sub-Committee introduced two important changes in the substance of the original text. First, the initial words were changed so as to render the paragraph applicable to administrative rulings only (previously laws, regulations and decisions were also covered). Secondly, the undertaking involved was modified by introducing the phrase "and within the limits of administrative practicability" after "as a general rule".

Further, it was thought advisable to limit the undertaking to imports, and references to export were accordingly deleted.

The Delegates for Brazil, Czechoslovakia, France, Norway, the Union of South Africa and the United Kingdom reserved their position provisionally on this paragraph.

In connection with this paragraph, the Sub-Committee considered the words concerning goods enroute entered in square brackets in sub-paragraph 2 (f) of Article 25 (in the version adopted at the London Session) with the indication that these words should be retained only if the matter was not fully covered in Article 21. The Sub-Committee decided to recommend to the full Committee that the words in question, as well as the preceding few lines (concerning public notice on import restrictions pursuant to sub-paragraph 2 (e) of Article 25) be deleted from sub-paragraph 2 (f) of Article 25 and that paragraph 3 of Article 27 be amended so as to include the provisions concerning public notice and goods enroute. To that effect,
the words "or made effective through import licenses or other measures" might have to be inserted after the phrase in brackets in sub-paragraph 3 (b) of Article 27, and a new paragraph would have to be included as No. 3 (c) (the present sub-paragraph 3 (c) thus becoming 3 (d)).

The sub-paragraphs in question would read as follows:

"(b) In the case of import restrictions involving the fixing of quotas (whether or not allocated among supplying countries) or made effective through import licenses or other measures, the Member applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period, or of any change in such quantity or value.

(c) Any supplies of the product in question which were enroute at the time at which public notice was given shall not be excluded from entry, provided that they may be counted, so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods."

It will be observed that the insertion in sub-paragraph 3 (b) of the words "or made effective through import licenses or other measures" would extend the obligation of giving public notice in the case of restrictions other than quotas to cover restrictions not pursuant to sub-paragraph 2 (e) of Article 25.

/ARTICLE 22
ARTICLE 22 - INFORMATION, STATISTICS AND TRADE TERMINOLOGY

General Content

The discussion at the London Session revealed that certain countries would experience difficulties in accepting the full undertakings specified in Article 22 as worded in Article 16 of the United States Draft Charter. The Sub-Committee decided, therefore, to suggest a text according to which the demands put on Members would be less exacting; hence expressions such as "so far as possible", "as is reasonably practicable" or "insofar as readily ascertainable" were inserted in certain paragraphs. A number of other changes were also introduced and the text was shortened and simplified. Paragraph 6 in Article 16 of the United States Draft Charter, referring to the promotion of international adoption of standard definitions of terms used in commercial practice and in developing standards to which goods may be manufactured or graded, appears only in a modified form in paragraph 6 of the text now suggested.

Text, 22:1

"Members undertake to communicate to the Organization as promptly and in as much detail as is reasonably practicable:

(a) Statistics of their external trade in goods (including, for example, imports, exports, re-exports, transit and trans-shipment and, where applicable, goods in warehouse or in bond);

(b) Statistics of Governmental revenue from import and export duties and other taxes on goods moving in international
international trade and, as readily ascertainable, of subsidy payments affecting such trade.

"So far as possible, the statistics referred to in (a) and (b) shall be related to tariff classifications and be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value, or by amounts of exchange made available."

Text, 22:2

"Members agree to publish regularly and as promptly as possible the statistics referred to in paragraph 1."

Text, 22:3

"Members undertake to give careful consideration to any recommendations which the Organization may make to them with a view to improvement of the statistical information furnished under paragraph 1."

Text, 22:4

"So far as reasonably practicable, Members agree to make available to the Organization on request such other statistical information as the Organization may deem necessary to enable it to fulfill its functions, provided that such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information."

Text, 22:5

"The Organization shall act as a centre for the /collection
collection, exchange and publication of statistical information of the kind referred to in paragraph 1. The Organization may, in collaboration with the Economic and Social Council of the United Nations and its Commissions, and with any other interested international Organization, engage in studies with a view to bringing about improvements in the methods of collecting, analyzing and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications."

Text. 22:6

"The Organization may also, in co-operation with the other organizations referred to in paragraph 5, study the question of adopting standards, nomenclatures, terms and forms to be used in international trade and in the official documents and statistics of Members relevant thereto, and may promote the general acceptance by Members of such standards, nomenclatures, terms and forms as may be recommended."

Comment

This paragraph corresponds generally to paragraph 7 in Article 16 of the United States Draft Charter. It will be observed, however, that unlike the last-mentioned paragraph, the text now recommended does not refer to the adoption of standards, nomenclature, terms and forms or to a procedure according to which adopted standards, etc, would become automatically effective upon notice /Given by
given by the Organization. In view of this fact, the Sub-Committee suggests deletion of paragraph 8 of Article 65, containing rules for the adoption by the Conference of standards, etc. It was noted, however, that the procedure laid down in paragraph 5 of Article 65 of the Draft Charter, as revised at the First Session of the Preparatory Committee, might be employed to assist in promoting international agreements for this purpose."

ARTICLE 23 - BOYCOTTS

Text

"No Member shall encourage, support or participate in boycotts or other campaigns which are designed to discourage, directly or indirectly, the consumption within its territory of products of any specific Member country or countries on grounds of origin, or the sale of products for consumption within other Member countries on grounds of destination."

Comment

The last sentence of the corresponding Article (No. 17) in the United States Draft Charter, providing for the discouragement by each Member of boycott campaigns by subordinate entities within its jurisdiction, was deleted since this matter would be covered by the addition of a new paragraph to Article 66 as suggested above under Article 15.

"The words "any specific Member country or countries" were substituted for the expression "other Member countries"
where this first appears in the original text of this Article, since it was considered that the ban on boycotts should not apply to campaigns in support of the use or consumption of products of national origin or manufacture and not directed against the products of any specific country.

The Delegate for India reserved his position on this Article; the Delegate for China retained his comment at the London Session that weaker countries should be allowed to resort to boycotts in self-defence, and the Delegate for Lebanon reiterated his view that boycotts may be justified on political or moral grounds.

ARTICLE 37 - GENERAL EXCEPTIONS TO CHAPTER V

General Comment

At the London Session, the Delegate for China suggested inclusion of a new paragraph covering measures "temporarily imposed to prevent, arrest or relieve conditions of social disturbance, natural calamity, or other national emergencies, provided that such measures are withdrawn as soon as the said conditions cease to exist." The suggestion was not adopted by the Sub-Committee; but it was pointed out that paragraph 2 (b) of Article 25 covers this suggestion to a large extent.

Similarly, at the London meeting, the Delegate for India had suggested that his country should be allowed, for reasons of high policy, to discriminate against a member, either on a recommendation of the ITO or on its own initiative, provided due notice had been given to the Organization.
the Organization and to every Member concerned. It was left to the Delegate for India (who was not a member of the Sub-Committee) to maintain his suggestion in the full Drafting Committee, should he so desire.

TEXT, ARTICLE 37

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of measures

(a) necessary to protect public morals;
(b) for the purpose of protecting human, animal or plant life or health, if corresponding safeguards under similar conditions consist in the importing country;
(c) relating to fissionable materials;
(d) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;
(e) in time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member;
(f) relating to the importation or exportation of gold or silver;
(g) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as, e.g. those /relating
relating to customs enforcement, state monopolies, deceptive practices, and the protection of patents, trade marks and copyrights;

(h) relating to the products of prison labour;

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

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

(k) undertaken in pursuance of obligations under the United Nations Charter for the maintenance or restoration of international peace and security."

Comment

37. Introductory part:

The initial words in this Article, ending with "disguised restriction on international trade", were added in accordance with a preliminary decision reached at the London Session.

As the question may arise whether electric power is classified as a good or a service, the Delegates for Canada and Chile reserved the right for their countries to prohibit the export of electric power.

37 (a) and (b):

The Delegate for Norway pointed out that his country's restrictions on the importation, production and sale of alcoholic beverages had as its chief object the promotion of temperance. He therefore considered that /the taxation
the taxation and the price policy of its state liquor
and wine monopoly was covered by paragraph (a) and (b)
of Article 37.

37 (b):

The Delegates for Chile, Czechoslovakia, France,
New Zealand and the United States preferred the following
shorter version of item (b): "necessary to protect
human, animal or plant life or health." The Delegate
for the United States, however, was prepared to accept
the revised language, subject to review by his Government.

37 (c):

The Delegate for Australia reserved his position
on this item.

37 (d), (e): No comment

37 (f):

At the London Session, the Delegate for India
suggested that this item should not refer to silver which
is an ordinary commodity in world trade. The
Sub-Committee was not in favour of the suggested change.

37 (g):

The words "state monopolies" were inserted with a
view to replacing sub-paragraph 2 (g) of Article 25 of
the London text.

37 (h):

The words "the products of prison labour" were
substituted for "prison-made goods".

37 (i): No comment

37 (j):

At the London Session, the Delegate for India
suggested deletion from "if such measures" to the end
of the
The Delegates for New Zealand and Brazil maintained their support given at that Session to the suggestion by the Delegate for India.

The Delegate for New Zealand maintained his proposal that the words "or other" be added before "resources".

Article 32 of the United States Draft Charter (corresponding to Article 37 of the present text) contains an additional item reading:

"(1) imposed in accordance with a determination or recommendation of the Organization formulated under paragraphs 2, 3 or 7 of Article 55,"

The respective paragraphs in the corresponding Article of the London text (No. 56) deal with the determination of criteria and the setting up of procedures by the Conference for waiving in exceptional circumstances obligations of Members pursuant to the Charter and for determinations and recommendations provided for in Article 32, paragraph 3 of Article 52, sub-paragraph 3 (d) of Article 56, paragraph 2 of Article 34 and Article 35.

The Sub-Committee considered that the articles in question covered adequately the exception considered under item (1) quoted above and was hence of the opinion that this item should not be included in Article 37.