The Delegations of the Netherlands and the Belgian-Luxembourg Economic Union are of the opinion, that, generally speaking, it will be of great interest to the international trade when the stipulations implied in Articles 9 - 17 inclusive are accepted. The delegations feel that the acceptance of these Articles will assist in great measure in the disappearance of undesired barriers of international trade and will prevent similar measures occurring in future. This is in particular the case with those stipulations which are directed against various forms of indirect protection. The delegations are of the opinion that - even in case of different opinions about the desirability of direct, open, protection - in any case indirect protection is an undesirable and dangerous phenomenon. The delegations are confident that a general agreement will be obtained re the release of methods of indirect protection. In this line of thought they hold a positive view towards the proposals made.

The Articles mentioned give rise to a number of questions and lead to some special remarks. Reserving the completion of these Articles in course of discussion and to making more concrete proposals later on, the following remarks are brought to the attention of the Sub-Committee.
The delegations are of the opinion that with the stipulations of chapter IV the measures to take against indirect protection are not exhausted. This applies expressly to the well known phenomenon of a too broad specification of tariffs; in this way also the value of the most-favoured-nation clause can be diminished and moreover such procedure makes very difficult to state what import-duty is due.

The delegations propose to add a stipulation in virtue of which members will be obliged to renounce in future other specifications than those reasonably harmonizing with the nature of the goods as well as in autonomic legislations as in treaties and other international agreements, and further more to aim at the abolishing of existing unreasonable specifications.

Article 15 relates to the publication of stipulations concerning the international trade; lack of the necessary publication can also form an indirect protection. The same effect is given by the spreading of customs regulations and other stipulations in a great number of separate and obscure regulations, that they are practically inaccessible and incomprehensible for non-insiders. The delegations propose that members ought to pledge themselves to come within due course to a codification of customs regulations and other to be indicated regulations concerning international trade.

It is also to be recommended to insert in the draft charter a definition of the summary "origine". As to the comprehension "origine" it is generally agreed upon mentioning the country of origin, the country where the products have been gathered in, extracted or produced.

For products subject to the fabrication in various countries, the following definition was adopted in 1931 by the Comité Économique de la Société des Nations:
"In the case of goods undergoing manufacturing processes in several countries, the country in which the final processing is carried out shall be considered the country of origin provided that the process be extensive and economically justified. A process shall be deemed "extensive" which involves essential conversion of the product, whether such conversion be affected in or out of bond."

This wording may serve as a base for the discussion of the adoption of a general definition of origin which avoids, as much as possible, uncertainty. But, seeing the considerable differences existing in the customs regulations of the various countries, this definition should not contain an obligatory character and will only be applicable in case of absence of special arrangements in the national legislations.

A special study to be made in the framework of the Organization with a view to examining the principles, according to which, the various definitions adopted by the countries on the matter of country of export of the merchandise for application of the customs tariffs and the elaboration of the economic statistics could be unified.

A general stipulation is to be added, that any differences of opinions concerning any measure forming an unlawful, indirect protection, can be submitted for an arbitrary college, to be indicated.

ARTICLE 9

1. The expression "the production of any members" is vague; seen in connection with the expression in Article 9 "products of national origin" and in a view of Article 8, this expression apparently signifies: "products originally in the country of a member". With reference to the remarks made by the French Delegate in the meeting of 25 October of the 2nd Committee re Article 8, it is
proposed that the rule of Article 9 shall be applicable on products originally in and consigned from the country of any member.

2. The question arises whether any government in order to save foreign exchange, dictating the mixing of benzine (petrol) with benzol originally from the national industry is violating Article 9, 1. There might be countries, which have issued mixing commands as a part of all the stipulations in the interest of the maintenance of the agriculture. It is not to be considered that such a measure, when once a protection is accepted, is to be prohibited, while indirect protection is out of the question.

3. The first paragraph - in contradiction to the second - states that existing stipulations will have to be abolished. This needs a very careful examination of the natural legislations, moreover because in many cases stipulations are concealed more or less. It will be necessary to state a term in which all members will have to supply the modifications.

The sudden abolition of certain stipulations cancels the protection which has existed during a great number of years. The query presents itself whether or not the possibility must be given in such cases to maintain the existing protection in a form of import duties - in an open form - be it wholly or partially.

4. What is the meaning of the expression "competitive products".

ARTICLE 10

1. The question has still to be answered, which will be the most desirable relation between the Charter on the one side and on the other side the agreement of Barcelona regarding transit and the agreement of Geneve of 1923, into which agreements a great number of countries have entered. The question arises also if it is useful to have several international documents concerning the same subjects.
2. In any case it is to be recommended to express that the members will positively facilitate free transit and that between the members of the Charter, no discrimination whatever will take place, neither on the ground of the nationality of persons nor of the flag of the vessels, nor of the places of origin or exportation etc. one and the other in the spirit of and as provided for, by Article 2, first paragraph of the statute of Barcelona.

3. The fourth paragraph is to be understood as not contradictory to the application of simplified formalities for transit - whether or not from or to members or non-members - along certain rivers and roads, such according to existing international agreements, as the Rhine-Traffic-agreements, Scheldt-treaty and others.

4. The question arises whether these definitions oppose a preferment regime, at the import of goods from certain countries only to be applied when the goods are directly imported - ergo without transhipment or being bonded - into third countries (members).

5. However much the definition of Article 6 is in accordance with those data in Article 1 of the Statute of Barcelona, it is to be observed:

(a) that in a definition of transit in principle the formal criterium is to be inserted that the goods remain under customs custody. Goods answering to the definition, but which are not being brought under customs-custody, or which have been released from customs-custody, can't be considered as being on "traffic in transit".
(b) that the definition does not take sufficiently into consideration those goods whose destination in transit by arrival in the country is not yet definite, which, for example being bonded in a warehouse, the destination for transit is then decided. It ought to be ascertained that such consignments will be considered as "traffic in transit".

(c) that the mentioning of "persons" in paragraph 6 is not very clear, as all foregoing rules are only dealing with goods.

ARTICLE II

The proposals contained the stipulations that members will place themselves under the obligation "to subscribe to a general definition of the circumstances under which anti-dumping and countervailing duties may properly be applied to products imported from other members".

Article II of the draft-charter in paragraph 1 and 2 contains some stipulations which concern the amount of such "duties" while the fourth paragraph under certain circumstances excludes cumulation of those "duties". The third paragraph contains a stipulation concerning interdiction of levying these duties in relation with freedom of internal taxes. The fifth paragraph is the most important stipulation for execution of the line of thoughts of the "proposals". However, it is recommended to cancel in Article II, paragraph five the words "as a general rule", as, there is no reason in levying anti-dumping and countervailing duties, if there is no harm or threatening for harm "to injure or threaten to injure" for a domestic industry or a danger that the establishment of a domestic industry is to be prevented. Furthermore it is better to require that the industry must be seriously injured and that such a result or danger must be proved by the importing country.
In order to give further execution to the above mentioned stipulation of the "proposals" Article 11 may be completed by a stipulation that one can only speak of commercial dumping when there is a systematical manner of acting. For practical reasons it could further be stated that the sale in a foreign country, when only some percentages lower than the normal price will not be considered as dumping.

2. Under anti-dumping measures, other measures than "duties" are to be considered. It is recommended to limit also the application of those other measures.

3. The third paragraph might be interpreted that the same applies if by export not exemption but restitution of the duties or taxes mentioned therein takes place.

4. Also in this paragraph the expression "product of any member" needs precisely definition as aimed at in Articles 8 and 9.

ARTICLE 12

1. Acknowledging that the Article gives valuable rules as to the definition of value and concerning the determination of the value with which the Delegations fully agree - they are of the opinion that in connection with the procedure of determination of the value, more concrete indications can be given either in the wording of the article or in a recommendation. They therefore suggest the following lines as a basis for discussion:

The declaration of the importers has to be supported by all justificating documents (invoices, buying contracts, offers, copies and confirmations of orders, etc.)

The customs authorities in charge of the control on the declaration have the right to acquaint themselves with the books, correspondence and other documents connected with the trade of merchandise.
In case of litigation they may be given "main-levee" of the merchandise on the conditions laid down in Article 8 of the Convention signed in Geneva on the 3 November 1923.

The contest will be brought before a tribunal independent of the two parties and which specializes in settling suchlike dispute and consists of experts on agriculture, commerce or industry, according to the respective dispute.

The importer will be given the opportunity to explain his point of view before the same authority.

If the value has been considered insufficient, fines may be imposed upon the debtor.

If the declaration is considered correct and if the interested party states that a loss has been suffered, this question may be investigated in order to ascertain whether an indemnification has to be granted in case the merchandise has been unduly retained by the customs authorities without the debtor being in a possibility of acquiring "main-levee".

The Governments have to take all measures to accelerate the decisions.

2. Taking into consideration that in several countries taxes on the value other than custom duties (excise duties, export duties, etc.) are imposed upon importation and upon exportation and furthermore in order to express that this stipulation only concerns taxes upon importation or exportation, it is suggested the first paragraph after "custom duties" should read: taxes or other restrictions imposed on or in connection with importation or exportation based upon or regulated on any manner by value.

3. It has to be expected that with a number of countries the abandonment of the system rejected in the second paragraph will depend upon similar
abolitions in other countries. Therefore it is recommended to include in the beginning of the second paragraph a fixed date or a date to be fixed by an appropriate institution.

4. It occurs that in the second paragraph under (d) the words following on "stable" are superfluous next to Article 15.

ARTICLE 13

1. The question is to be answered which relations between Charter and the Agreement of Geneva of 1923 relating to customs-regulations is the most desirable.

2. In the same line of thought as is expressed in Article 12 under paragraph 3 it is recommended to fix a certain date for coming to an agreement, concerning the execution of measures as stated in the first phrase of Article 13, or to stipulate that a date will be fixed by an appropriate committee. For the measures mentioned in the second phrase of Article 13 first paragraph - these being of more formal nature - the regulation of the second paragraph could remain valid, whereon this phrase as the first sentence of the second paragraph could be inserted.

3. According to the opinion of the Netherlands and Belgium Delegations the stipulations of the third paragraph relating to cases of "good faith" goes too far. "Good faith" only excludes intention (dolus) and in cases of negligence (culpa) a "nominal penalty" is not always sufficient. Only in cases of an obvious and accidental error there can be given "a nominal penalty". Although the Delegations agree with the principle pointed out in the third paragraph, it appears to the Delegations that this stipulation has to be taken as a recommendation for the treatment, in practice of the customs-administration - as this is indeed the case in the Netherlands and Belgium (Luxembourg) - and not as stated in Article 13 as a juridical rule, to which the individuals interested could appeal before the tribunals. Cancelling the third paragraph of Article 13 will, moreover, ameliorate the structure of Article 13.
4. "Products of any other member-country" (paragraph 3): refer to remarks 1 ad Article 9.

ARTICLE 14.

1. It is remarked that this article relates to the so called "marque d'origine", viz., those marks, which according to the law, has to be fixed on goods. This stipulation does not relate to regulations concerning the import, export or transit of commodities provided with false marques nationales and which stipulations are directed in order to protect the trade against deñoyal competition.

2. Explanation is asked of the exemption mentioned in the fifth paragraph under (h).

3. The claim of "intention" ("intentionally") mentioned in paragraph 6 seems to be too severe.

ARTICLE 15.

1. The useful stipulation of the second paragraph second phrase is not covered by the heading. This heading should be completed. The stipulation is of such importance and essential, that it is proposed to draw up the expression, "as soon as possible", more exactly as proposed for Article 13, first paragraph.

2. Ad third paragraph. The circumstances in a country can require the execution, without hesitation, of certain measures, viz. "prohibitions, restrictions on imports or exports or in the transfer of payments therefore". The application of the old stipulation on the import of goods which were already "on route", meets with difficulties, especially when a voyage lasts some weeks. It is also not equitable, nor reasonable to treat certain goods arriving in a country, at the same time as other goods more advantageously than those other goods. Moreover, inland price
regulations are being brought into accord with the latest taxes, so that application of the lower taxes on goods which were there already "en route", gives an unwarranted advantage to the owners. Furthermore the expression "en route" is a very vague and gives rise to misuse. As yet there are objections for accepting this third paragraph.

ARTICLE 16

It is recommended, for the question of nomenclature - as well as for tariffs or as for statistics - to proceed on the already preparatory work of Geneva.

ARTICLE 17

The question arises if the article defends the supporting of actions aiming at buying "national products".

ARTICLE 32

1. Many times the stipulations "to protect animal or plant life or health" are misused for indirect protection. It is recommended to insert a clause which prohibits expressly to direct such measures that they constitute an indirect protection or, in general, to use these measures to attain results, which are irreconcilable with the aim of chapters IV, V or VI.