1. Discussion of Article 13

The CHAIRMAN called upon Mr. Sim (Canada), Rapporteur of the Technical Sub-Committee, to answer questions on the Rapporteur's Report on item A/6 of the provisional agenda, covering Article 13 (Customs Formalities).

Mr. Sim (Canada) said that several Delegates had suggested that Article 13 should be reviewed in the light of the Geneva Convention of 1923 on Customs Formalities. The French Delegate had even contended that the Article would be superfluous, if all countries were to adhere to the Convention.

There was general agreement that subsidiary fees and charges should not be used as indirect protection for domestic products.

The Netherlands Delegate and the Belgo-Luxembourg Delegate had proposed that a definite date should be fixed for implementing the measures referred to in the Article.

Australia and New Zealand had suggested that countries should not be required to review the whole of their customs procedure, except in cases where a specific request from another Member country for the review of a particular law or laws was made.

Several Delegates had objected to any international agreement to impose penalties for clerical errors or errors not involving bad faith.
They did not wish to undertake a binding obligation which might prove embarrassing to their officials.

There was general disagreement with the second sentence of paragraph 3 on the grounds that a government could not be held responsible for the acts of its servants.

The Brazilian Delegate had requested more detailed information on the question of subsidiary fees and charges. The United Kingdom Delegate had raised a question regarding Consular transactions; and the Australian and Canadian Delegates had proposed to omit the final sentence of paragraph 3 of Article 13.

Mr. KENNEDY (United States) wished to insert the word "subsidiary" in paragraph 4. The paragraph would then read: "The provisions of this Article shall extend to subsidiary fees, charges, formalities ..."

As to paragraph 4(a), the term "Consular transactions" covered Consular invoices and all other documents involving the payment of fees. He had no objection to a further definition of the words "Consular transactions", should that be desired.

He thought the principle underlying the last sentence of paragraph 3 of Article 13 was sound. The United States Delegation would not agree to the deletion of that sentence.

Mr. RHYDDERCH (United Kingdom) considered the last sentence of paragraph 3 thoroughly dangerous, and pressed for its deletion.

He would be satisfied with paragraph 4(a), if a further definition of the words "Consular transactions" was included.

Mr. MORTON (Australia) supported the United Kingdom Delegate's proposal to delete the last sentence of paragraph 3. Should it be deemed necessary to retain that sentence, he suggested that the word "should" should be substituted for the word "shall".
He thought that customs laws and regulations should be reviewed only where representations had been made by a Member country.

Mr. CHEERRY (South Africa) agreed with the Australian Delegate's suggestion regarding customs laws and regulations. He thought that paragraph 3 of Article 13 should be couched in more general terms.

The Sub-Committee agreed to the deletion of the last sentence of paragraph 3 of Article 13, the United States Delegate dissenting.

(The United States Delegate was for the retention of the above-mentioned sentence, but was prepared to accept the substitution of the word "should" for "shall".)

Mr. LE BON (Belgium) drew the attention of the Committee to the first sentence of paragraph 3 of Article 13. He asked for a revision of the sentence, as he considered the words "good faith" to be dangerous.

2. Discussion of Article 32 - General Exceptions to Chapter IV

The CHAIRMAN welcomed the presence of Dr. Speekenbrink, Chairman of the Procedures Sub-Committee and Mr. Leddy, Rapporteur of the Procedures Sub-Committee.

Mr. ROUX (France), Rapporteur of the Technical Sub-Committee, drew the attention of the meeting to E/PC/T/II/W.20 in which had been clearly set out the views submitted in writing by the various Delegates in regard to Article 32. He pointed out that the Brazilian proposal that "the Charter should not apply to frontier traffic or in the case of Customs unions" was a question related to the application of most-favoured-nation treatment.

As French Delegate, he wished to associate himself with the contention of the Netherlands and Belgian Delegates that "exceptions such as (b) are often used for indirect protection".

The CHAIRMAN suggested that the Brazilian proposal should be dealt with under Article 33, which did not come within the competence of the Technical Sub-Committee.

Dr. SIEKEKEMRINK (Chairman of the Procedures Sub-Committee) urged the meeting to keep in mind the provisions of Articles 29, 30 and 55, paragraph 2, during its discussion of Article 32. Secondly, he urged the meeting to differentiate between temporary and permanent exceptions to Chapter IV. The proposals of the Chinese Delegation were for temporary exceptions, and as such ought to be dealt with under Article 29, or better, Article 55, paragraph 2. The proposal of the Netherlands and Belgian Delegates should be discussed in connection with the provisions of Article 30. In regard to the Indian proposal, he thought that the ITO should only regulate the exchange of goods.

In reply to Mr. Johnsen (New Zealand), he said that final decision on Article 19, paragraph 2, had not yet been reached.

Mr. JOHNSEN (New Zealand) pointed out in reference to sub-paragraph (j) of Article 32 that it would not be advisable to differentiate between natural and manufactured products that were exhaustible. A country might have valid reasons for desiring to curtail the exportation of manufactured products in short supply. Article 30 certainly provided for Members entering into negotiations in regard to that matter; but he felt that it should be specifically laid down that no Member country should be compelled to export both manufactured and natural products which it wished to conserve for domestic purposes. It was obvious that no country would restrict its export trade except for valid reasons. He therefore proposed to amend the wording of sub-paragraph (j) to read: "relating to the conservation of exhaustible natural or other resources...".
Mr. GANGULI (India) reminded the meeting of his suggestion that there should be allowances for abnormal measures for political reasons to meet unexpected contingencies. He could not agree that India's efforts to attain autonomy should be shackled.

In reference to sub-paragraph (f) he questioned whether silver should be excepted in the same way as gold. Unless silver became a currency basis again, it remained an ordinary commodity. As such it ought not to be included in the list of exceptions.

He proposed the deletion of sub-paragraph (j). He felt that his country might have to conserve for domestic use its exhaustible and scarce resources, even if such a measure was not "pursuant to international agreements", or was not "made effective in conjunction with restrictions on domestic production or consumption".

Mr. SIM (Canada) agreed with Article 32 in general, but thought that another sub-paragraph should be added to except measures "relating to the importation of goods, the manufacture of which is not permitted in the importing country."

He reminded the meeting that the Rapporteurs' report on Article 14 referred to the exceptions contained in Article 32 as covering the proposals of the French, Cuban, and Czechoslovakian Delegates for the protection of national and regional marks of origin. He himself felt that such protection was adequately provided for in sub-paragraph (g), but suggested that this was the right time for other Members to comment on this subject.
Mr. CHERRY (South Africa) felt that the exceptions laid down in sub-paragraph (b) were rational but were open to wide abuse, and technical advantage might be taken of these exceptions so as to result in a form of protection. He was not prepared to contradict the statement of the Chairman of the Procedures Sub-Committee that the provisions of Article 30 dealt adequately with this question; however he thought that provision to prevent abuse of these exceptions ought to be included in Article 32.

Mr. LEDDY (Rapporteur of the Procedures Sub-Committee) stated that one of the main objectives of Article 30 was to prevent evasion of the provisions of Chapter IV. If a member country used the exceptions of sub-paragraph (b) as a means of protection, Article 30 provided that another Member might make representations to the ITO and so obtain satisfaction. It was almost impossible to draft exceptions, which could not be abused, if good faith was lacking. The League of Nations had adopted an Article on the lines of Article 30, precisely because they had been unable to formulate exceptions which would exclude all possibility of abuse.

Mr. LOpes RODRIGUES (Brazil) was willing that his suggestion that the Charter should not apply to frontier traffic or in the case of customs unions should be dealt with under Article 33. He agreed with the Netherlands and Belgian proposal contained in E/PO/T/C.II/W.20. He seconded the New Zealand Delegate's proposal for the addition of the words "or others" in sub-paragraph (j).
Mr. RHYDDERCH (United Kingdom) agreed that it had been the practice in international agreements to include such exceptions as those laid down in Article 32, but only exceptions to provisions on import prohibitions and restrictions. The exceptions of Article 32 covered a far wider field.

In order to prevent abuse of the exceptions of Article 32 he proposed that the following sentence should be inserted as an introduction:

"The undertakings in Chapter IV of this Charter relating to import and export restrictions shall not be construed to prevent the adoption or enforcement by any Member of the following measures, provided that they are not applied in such a manner as to constitute a means of arbitrary discrimination between countries where the same conditions prevail, or a disguised restriction on international trade."

He deprecated the suggestion of the New Zealand Delegate that the exception contained in sub-paragraph (j) should be widened to include manufactured products.

Dr. SPEKKBINK (Chairman of the Procedures Sub-Committee) and Mr. BAYER (Czechoslovakia) agreed to the introduction to Article 32 proposed by the United Kingdom Delegate, and also to his remarks in regard to sub-paragraph (j).

Mr. LE BON (Belgium) agreed with the United Kingdom Delegate, but thought it would suffice to lay down that Member countries must not use the exceptions as a means of economic protection.

Mr. JOHNSEN (New Zealand) agreed with the introductory sentence proposed by the United Kingdom Delegate, but pointed out that its adoption would make it all the more necessary to extend sub-paragraph (j) to include manufactured products.
Mr. BAYER (Czechoslovakia) interpreted the exceptions contained in sub-paragraph (g) as demonstrative, and therefore covering measures relating to state monopolies as measures not inconsistent with the provisions of Chapter IV. As the maintenance of such monopolies was materially recognized and fully dealt with in Section F of Chapter IV, he merely wished to make this formal statement during the discussion of Article 32.

Mr. LEDDY (Rapporteur of the Procedures Sub-Committee) thought such interpretation correct.

Mr. ROUX (France) agreed with the Czechoslovakian Delegate's statement on monopolies, and pointed out that the Canadian Delegate's suggestion that an extra sub-paragraph be added to include measures "relating to the importation of goods, the manufacture of which was not permitted in the importing country" covered the point.

He commented on the relation of Article 32 to Article 14. The Report on Article 14 dealt with three different questions:

(a) the Charter itself and where it was necessary to have Marks of Origin,

(b) the reservation of the absolute right to refuse products falsely marked, and

(c) the reference to Article 32 in regard to protection of national and regional Marks of Origin.

Neither Article 14 nor Article 32 sub-paragraph (g) covered specifically such protection. Article 32 dealt only with exceptions in which certain restrictive measures were allowed. Therefore, although it was possible for a country under the provisions of Article 32 (g) to protect national and regional Marks of Origin, he felt that Article 14 was the correct place to include the French proposals on the protection of national and regional Marks of Origin, as such proposals did not constitute exceptions to the provisions of Chapter IV.
Mr. GANGULI (India) thought it advisable to include both "natural and other exhaustible resources" in sub-paragraph (j), but reminded the meeting that his own suggestion had been for the deletion of the whole of sub-paragraph (j).

Dr. SPEEKENBRINK, Chairman of the Procedures Sub-Committee, remarked that the exceptions contained in sub-paragraph (j) had always been found useful in deliberations of the Procedures Sub-Committee. However, rather than extend sub-paragraph (j) to such an extent as almost to nullify the provisions of Chapter 4, it would be preferable to delete it, and leave Article 55 to cover the cases at present provided for in sub-paragraph (j).

Mr. LEDDY, Rapporteur of the Procedures Sub-Committee, in reply to the Canadian Delegate, agreed that the words "deceptive practices" in sub-paragraph (g) were broad enough to cover cases of false marking. He felt that the Sub-Committee would need to study very carefully the implications of the Canadian Delegate's proposal to include as exceptions "measures relating to the importation of goods, the manufacture of which is not permitted in the importing country".

Mr. MORTON (Australia) asked what provision the Canadian Delegate proposed in regard to countries prohibiting the importation of products, the manufacture of which was permitted in the importing country.

Mr. LEDDY, Rapporteur of the Procedures Sub-Committee, suggested the approval in principle of the introductory sentence to Article 32 proposed by the United Kingdom Delegate, subject to further study of the wording. The present wording should be checked to ensure that it did not run counter to provisions laid down elsewhere.
He enquired if it was agreed to deal with the Chinese Delegate's observations contained in E/PC/II/C.II/J.20 under articles 55 and 29.

Mr. Ma (China) replied that he could only deal with the question after consultation with the Chinese representative on Committee V.

The meeting rose at 12.30 p.m.
The Ninth Meeting (continued) held on Wednesday, 13 November 1946 at 3 p.m.

Chairman: Mr. VIDELA (Chile)

1. Discussion of Proposed Amendment to Article 32.

Mr. MA (China) referred to the amendment to Article 32 proposed by the Chinese Delegation. That amendment proposed to provide an exception for 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 Netherlands Delegate had suggested that the Chinese proposal should be dealt with in connection with Article 55. But the Chinese Delegation felt that their amendment should be included in Article 32. They did not wish to create difficulties for the Conference. The exception, for which the amendment provided, would benefit other countries as well as China. China would not necessarily make use of the right which the amendment would provide.

China wished to co-operate with all nations in efforts to reach the objectives set forth in the Charter. But China had difficulties, difficulties (as he believed) of temporary nature, which made it necessary that China should have time in which to make certain adjustments. This need for time was reflected in a number of suggestions made by the Chinese Delegation with respect to various Articles of the Charter.

He was confident that China would overcome its difficulties, as she had done at many times during her long history. China had always followed the "golden mean" and would not go to extremes.
It would not be possible in cases of emergency to follow the procedures envisaged in paragraph 2 of Article 55.

Accordingly China pressed for consideration of the Chinese amendment in connection with Article 32.

The CHAIRMAN asked whether the provisions of Article 29 would meet the Chinese requirements.

Mr. MA (China) reiterated that the Chinese proposal should come under Article 32. Whether the Sub-Committee accepted or rejected his proposal, he wanted it to be recorded in the Sub-Committee's Report.

The CHAIRMAN indicated that under the new procedure which had been accepted the Chinese proposal would be included in the Report.

2. Discussion of the Report of the Rapporteurs on Article 14

The CHAIRMAN asked whether the Committee wished to discuss the Report of the Rapporteurs on Article 14 (E/PC/T/C.11/5,16). Mr. SHACKLE (United Kingdom) did not feel that it would serve any useful purpose to revive discussion of the Article. He suggested that, if delegates desired changes in or addition to, the Report, they should submit their suggestions in writing to the Rapporteurs.

Mr. ROUX (France) said that the French Delegation had submitted an amendment to Article 14. Since it had been submitted only recently, it was understandable that the Rapporteurs had not been able to embody it completely in the Report.
The last paragraph of the Report did take some note of the French position; but that paragraph was confusing in that it dealt with two separate matters. The first of these, relating to the deliberate use of false names, should properly be dealt with in Article 32. The second, relating to protection of geographical or regional marks of origin, should be dealt with in Article 14. He hoped the Report would take that distinction and the French proposal into account.

The CHAIRMAN felt that the matter of protection of regional and national marks of origin should be dealt with through bilateral negotiations rather than in the Charter. Alternatively, it might be considered by a special conference on trade marks. He referred to his own past study of the problem, and gave a number of examples to illustrate the complexities which were bound to arise in the consideration of the protection of regional and national marks of origin.

Mr. RHYDDERCH (United Kingdom) agreed that the matter was one for bilateral agreements.

Mr. ROUX (France) pointed out that France had agreed to protect the names of certain Portuguese wines. He thought that there should be a provision in the Charter encouraging fair practices with respect to regional and national marks of origin. He could not admit that the question should be dealt with in bilateral agreements rather than in the Charter. The whole purpose of the Charter was to deal with trade matters on a multilateral rather than a bilateral basis. At least the principle of protection of names of origin should be incorporated into the Charter, even though the formulation of more specific provisions might have to be postponed.
Mr. SIM (Canada), although expressing sympathy for the French position, felt that it would not be feasible to work out provisions for effective protection of names of origin in the Charter. Accordingly he supported the view of the United Kingdom Delegate: but he thought at the same time that the Report should give due emphasis to the French position.

Mr. BÁYER (Czechoslovakia) associated himself with the views of the French Delegate. If Article 14 of the Charter dealt only with obligatory marks of origin, and not with regional and national marks of origin, it would not be complete.

The CHAIRMAN agreed with the Canadian Delegate that the views of the Delegates for France and Czechoslovakia should be put on record.

The Report of the Rapporteurs was approved for submission to Committee II, with the understanding that it would be amended so as to include a statement of the views of France and Czechoslovakia.


Mr. RHIDDERCH (United Kingdom) Rapporteur, asked whether the Report on Article 17 (E/PC/T/C.11,43) expressed the delegates' views correctly.

Mr. MORTON (Australia) said that the Report was in accordance with his understanding of the discussion, except in the last sentence. It was his recollection that Mr. Johnson (United States) had stated that the phrase "political entities" referred only to local or subsidiary governments. He (Mr. Morton) suggested that the sentence should read:

"The phrase 'political entities' was clarified in the sense that only action by local or subsidiary governments is contemplated in this sentence."

Mr. Sim (Canada) said that Mr. Johnson had suggested that the phrase "subordinate jurisdictions" should replace "political entities in order to make the meaning completely clear."
Mr. MORTON (Australia) indicated that he was satisfied with that change.

Mr. OFTEDAL (Norway) said that the Report met the views of the Norwegian Delegation.

4. Discussion of Rapporteurs' Report on Article 11, Anti-dumping and Countervailing Duties

The following corrections and amendments were made in the Report on Article 11 (E/PC/T/C.II/1147):

Proposal by the Delegate of New Zealand - Page 3
Line 16, substitute "reserved" for "insured".
Line 17, insert "immediately" after "duties".

Proposal by the Delegate for India - Page 4
Line 18, substitute "Trade Organization" for "Chamber of Commerce".
Line 19, add the following sentence after "definition."
"India also referred to the difficulty of ascertaining costs of production for purposes of anti-dumping."

Proposal by the Delegate for South Africa - Page 4
Line 31, delete the phrase "to ten per cent".

Proposal by the Delegate for France - Page 4
Line 32, the sentence beginning on that line to read:
"France thinks the allowance should be ten per cent (of the IMF position)."

Mr. LE BON (Belgium) desired to make a change in the Summary Record of the Sub-Committee's meeting of 8 November 1946 (E/TC/T/C.II/48). On page 9, lines 11 and 12, the term "export duties" should be changed to "drawbacks".
5. **Discussion of Rapporteur’s Report on Article 12, Tariff Valuation**

Mr. MA (China) asked the Rapporteurs to add to their Report (E/PC/T/C.II/W.52) the statement that the Chinese Delegation reserved its position with respect to sub-paragraphs (a) and (c) of paragraph 2 of Article 12. Its views had been stated in E/PC/T/C.II/35.

Mr. JOHNSEN (New Zealand) proposed to omit the reference to New Zealand in line 22 of page 2 of the Report. He further wished to amend the sentence beginning on line 13 of page 4 so as to read:

"New Zealand uses an assessed domestic value in the country of export, where no other value can be ascertained."

Mr. HUTCHINS, Secretary, stated that the Delegate for India wished the reference to India to be omitted in line 22 of page 4 of the Report.

The CHAIRMAN suggested that, as soon as French-speaking Delegates had had an opportunity to review the Reports on Article 12 (E/PC/T/C.II/W.52) and Article 11 (E/PC/T/C.II/W.47) in the French, they should immediately call the Rapporteurs’ attention to any changes they desired to make.

6. **Discussion of Sub-Committee’s Report to Committee II, and Next Meeting of Sub-Committee.**

Mr. RHYDDERCH (United Kingdom) said he had told Dr. Coombs, Chairman of Committee II, that the Technical Sub-Committee would complete its work at the present meeting, and that its final report would be completed by Monday, 18 November. That would entail a great deal of work by the Rapporteurs, including the review of all reports submitted by the various Delegations.

Mr. SIM (Canada) felt that the Rapporteurs had fairly represented the various points of view which had been brought out in the discussions, and suggested that the Vice-chairman of the Technical Sub-Committee should work with the Rapporteurs in the preparation of the Report.
Mr. CHEERRY (South Africa) asked whether the Sub-Committee would have an opportunity to review the Report before it was submitted to Committee II.

Mr. HYDDERCH (United Kingdom) felt it would be more satisfactory if members of the Sub-Committee had an opportunity to see the final draft which the Rapporteurs would prepare for Committee II.

It was therefore agreed to meet on Friday, 15 November, at 3 p.m.

7. Votes of Thanks

At the suggestion of the CHAIRMAN, it was agreed to send a telegram or letter to Mr. JOHNSON (United States) to express the thanks of the Sub-Committee for his contribution to its work.

Mr. SIM (Canada) proposed, and Mr. MA (China) seconded, a vote of thanks to the CHAIRMAN, and paid tribute to his splendid work in presiding over the meetings of the Sub-Committee.

The meeting rose at 6 p.m.