In accordance with the direction of Committee II, your Technical Sub-Committee has considered items A - 2 to 10, inclusive of I of the provisional agenda of 18 October 1946 (C.II/2). The results of this consideration are stated below.

A-2 (Article 9 of Suggested Charter) - National Treatment on Internal Taxation and Regulations

The Sub-Committee did not consider national treatment in governmental purchasing of supplies, as this matter must be decided in relation to matters (Article 8) not referred to this Sub-Committee. The Canadian Delegate observed that unless a clear statement of the decision reached on this point is placed in the Charter in proper relation to Article 9, the term "use of any kind whatsoever" in paragraph 2 below will include governmental use. Any intention to the contrary should be clearly expressed.

There was much uncertainty in the Sub-Committee as to the meaning of Article 9, particularly paragraph 2. It was discussed on the basis of the following meaning:

1. The products of any member country imported into any other member country shall be exempt from internal taxes and other internal charges of any character whatsoever higher than those imposed directly or indirectly on identical or similar products of national origin.

2. The products of any member country imported into any other member country shall be accorded treatment no less favourable.
than that accorded identical or similar products of national origin in respect of all internal laws, regulations or requirements affecting their 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, exhibited or used.

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

4. 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.

There was general agreement in the Sub-Committee with the principles thus expressed, except as stated hereafter.

The Netherlands and Belgium believe that a date should be specified after which no prohibited discriminatory practice should be allowed to continued. Australia, Norway and Brazil believe that a specified time should be allowed for the suppression of practices now applied by members.

South Africa reserves its position as to preferential rates for internal transportation granted to certain domestic products.

Australia, Brazil, New Zealand, the Netherlands, Belgium and Czechoslovakia believe that discriminatory restrictions on mixing, exhibition, or other use should not be prohibited because they are used in lieu of allowable practices which would interfere more seriously with international trade. South Africa holds the same view with a suggestion that an adequate counter-benefit, such as a reduction in or exemption from customs duty, might be required where any such restriction affects an imported product in which a member has an interest. New Zealand observes that this is a matter closely related to industrialization and should be
considered in connection with the findings of the Joint Committee handling that subject. Australia believes that any such restriction could be complained about to ITO if unreasonably applied. Australia and Brazil believe that, if such restrictions must be prohibited in the future, existing practices in this field should be eligible for bargaining in the same manner as customs duties. New Zealand suggests that provision be made whereby any member who is employing a practice contrary to the Charter, or later finds it necessary to do so, shall notify ITO thereof and agree to discuss the matter with ITO or any member whose interests might be affected. Brazil suggests that it be made clear that there is no internal discrimination if an internal tax on an imported product is higher than the corresponding tax on a like domestic product provided other internal taxes are imposed on materials or processes used in making the domestic product so that there is no discrimination if the total tax burden is considered.

The United Kingdom will insist upon the exception of restrictions upon the exhibition of imported cinema films from Article 9, but is willing to enter into bilateral negotiations with any country interested in the United Kingdom film quota. In accordance with this position, and for other purposes, the United Kingdom submits the following proposals for re-drafting Article 9 as stated above:

1. Paragraph 1 - in the second line delete "and" after "internal taxes" and insert "whether imposed directly or indirectly and from". Line 3. Delete "directly or indirectly".
2. Paragraph 3 - add at the end "against an identical or similar product of foreign origin".
3. The United Kingdom Delegation suggests the insertion of a new paragraph 4 as follows:

"Nothing in paragraphs 2 and 3 of this Article, insofar as those paragraphs relate to internal regulations or requirements, shall apply to cinematograph films".

(Czechoslovakia and Norway join in urging this amendment).
4. Paragraph 4 should consequently be re-numbered as paragraph 5.

The Netherlands and Belgium observe that the word "internal" should be inserted before "charges" in paragraph 3 to indicate clearly that the latter term does not embrace customs duties.

The Netherlands and Belgium, France, China, and other countries believe that several terms used in Article 9 and other parts of the Suggested Charter should be defined by international agreement before the objectives of the Charter can be accomplished. Examples of such terms are:

"products of any member country" - several Delegates believed that for purposes of allowing preferences or according most-favoured-nation or national treatment an article should be considered by importing country to be a product of country B only if it were produced in country B and definitely intended to be sent to A when it was shipped from B. They also believed that a definition of nationality of origin is generally necessary in the case of a product which has been processed in one or more countries outside the country of its original production.

"Like products" and "similar products" - China, India and others asked what characteristics and degree of similarity would bring two products within those terms.

The Netherlands, Belgium and France submit the following comments regarding the translation of the English text into French:

1. It is clear that the word "frais" in the first paragraph of the French text is too limited in meaning and is not exactly equivalent to the word "charges" in the English text. The word "impôts" would be better.

2. In the third paragraph of the French text, the words "d'ordre intérieur" should be added after the word "charges" to bring the third paragraph into line with the first.

South Africa recognizes that discriminatory rates for overseas transportation does not come within the purview of Article 9, but believes such discriminations interfere seriously with international trade and
that some effort should be made in the Charter to control them.

South Africa believes it should be made clear that paragraph 3 of Article 9, as stated above, is not to be construed as

(a) precluding action being taken in terms of a country's customs legislation;

(b) precluding the application of an act protecting prices (either minimum or maximum) which does not discriminate between the domestic and the imported article; or

(c) precluding all quantitative restrictions, a matter which is still being considered by another committee.