UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT
HELD AT
HAVANA, CUBA
FROM 21 NOVEMBER 1947 TO 24 MARCH 1948

ARCHIVES

REPORTS OF COMMITTEES
AND
PRINCIPAL SUB-COMMITTEES

INTERIM COMMISSION
FOR THE INTERNATIONAL TRADE ORGANIZATION
GENEVA
SEPTEMBER 1948
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INTERIM COMMISSION
FOR THE INTERNATIONAL TRADE ORGANIZATION
GENEVA
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This collection of reports has been assembled and edited by the Secretariat of the Interim Commission. These reports are to be read in conjunction with *The Final Act and Related Documents* of the Havana Conference (United Nations document ICITO/1/4 or E/CONF. 2/78) and the *Report of the Second Session of the Preparatory Committee* (United Nations document E/PC/T/186). The texts of the Havana Charter and Resolutions appear in the former. The text of the "Geneva Draft" appears in the latter.
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INTRODUCTION

The terms of reference of the Interim Commission for the International Trade Organization, after enumerating certain specific functions, provide that the Commission shall "generally perform such other functions as may be ancillary and necessary to the effective carrying out of the provisions of this Annex". Among "such other functions" the Executive Committee decided that arrangements should be made for the publication, as soon as possible, of the principal background documents on the Havana discussions. At its first meeting the Executive Committee directed the Executive Secretary to "publish the reports of the principal committees, supplemented by such sub-committee reports and other documents or extracts therefrom as may be necessary for an understanding of such reports". In the preparation of the present collection of reports, and particularly in securing comparability between the English and French texts, the Secretariat has had the benefit of advice from the panel designated by the Executive Committee consisting of Mr. Jean Royer (France), Mr. H. M. Catudal (United States of America), Mr. J. E. S. Fawcett (United Kingdom), Baron de Gaiffier (Belgium), and Mr. L. E. Couillard (Canada).

The general aim in preparing this material has been to provide a record of the principal discussions at the Havana Conference which would give an indication of the origins of the various articles in the Havana Charter, explaining particularly the changes made in the Geneva draft, and which would preserve the comments or observations of the committees and sub-committees regarding the text of the Charter. The material covers also the origins of the resolutions adopted by the Conference. It has not been feasible to include the numerous proposals made by individual delegations with respect to the Charter or to the resolutions. For convenience of reference, however, a list of the principal formal proposals made by individual delegations, with identifying document symbols, appears in an annex to the present collection of reports. File copies of the documents listed are available for reference in the

In preparing these reports for publication certain procedural portions have been deleted as being unnecessary in the published edition and certain other portions have been changed slightly, particularly in order to reduce duplication as between the reports of committees and their respective sub-committees. No change has been made which would affect in any degree the substance of the reports. It has been found impossible, without taking considerable liberties with the original text, to present all of the reports in a uniform manner, in view of differences in the form in which they were approved. Accordingly, the section relating to each committee has been prefaced by a brief note concerning the form in which the reports in that section have been presented.

In general the chapter, section, article and paragraph numbers used in the original reports (i.e., numbers based on those of the Geneva draft) have been retained in the present edition, with the corresponding number of the Havana Charter given in square brackets in each case in which the Havana number differs from the original number. When a number appears without any corresponding number in square brackets the intention, unless otherwise stated in the particular case, is to indicate that the original or Geneva number and the Havana number dealing with that particular subject are identical, although, of course, the two texts may not be exactly the same.

This collection of reports is accompanied by an index indicating the pages on which references will be found to each article, section or chapter.

Concerning the status of these reports, the President of the Conference at the final Plenary meeting on 24 March declared the reports of the full Committees approved by the Conference. The status of the reports of the various sub-committees is indicated in the reports of the full Committees.
I. REPORTS RELATING TO THE FIRST COMMITTEE

EMPLOYMENT AND ECONOMIC ACTIVITY

This section contains the following documents relating to the work of the First Committee:

(i) Report of the First Committee.
(iii) Report of Sub-Committee B: Articles of Chapter II other than the Article on Fair Labour Standards.
(iv) Report of Sub-Committee C: Resolution on Employment.

REPORT OF THE FIRST COMMITTEE: EMPLOYMENT AND ECONOMIC ACTIVITY

1. The First Committee was responsible for the examination of the Geneva draft text of Chapter II on "Employment and Economic Activity", together with proposals submitted by delegations relating to the subject matter of that Chapter.

2. Mr. J. J. DEDMAN (Australia) was elected Chairman. Mr. E. WAERUM (Denmark) was elected Vice-Chairman.

3. The Committee held thirteen meetings and succeeded in resolving all issues before it. Mr. DEDMAN presided at the first ten meetings and Mr. WAERUM at the last three meetings.

4. To facilitate its work the Committee established three sub-committees.

5. Sub-Committee A was appointed to consider proposals relating to the article on "Fair Labour Standards".

6. Sub-Committee B was appointed to examine proposals relating to the other articles of the Chapter.

1 E/CONF.2/55.
7. Sub-Committee C was set up to consider the draft resolution on employment which had been prepared by the First Session of the Preparatory Committee, together with any new proposals which might be submitted relating to this subject.

8. In the preparation of the text of the Chapter assigned to it, the First Committee took account of the suggestions put forward by the Central Drafting Committee.

9. The reports of the Sub-Committees which examined these proposals were accepted. Certain questions which the Sub-Committees were not able to resolve have now been resolved as indicated in the attachment to the present Report. The text of Chapter II was recommended unanimously by the First Committee for approval by the Conference.

10. The First Committee transmitted to the Conference, and a Plenary Session of the Conference acted upon, the text of a resolution to the Economic and Social Council relating to employment.¹

ATTACHMENT TO THE REPORT
OF THE FIRST COMMITTEE

Disposition of Proposals Remaining after the Submission of the Sub-Committee Reports.

The following statement indicates, with reference to each Article, the action taken on proposals which had not been satisfied by the Sub-Committee texts or which arose after the submission of the Sub-Committee reports.

Article 2.

All proposals were dealt with in the Sub-Committee's report.

Article 3.

The proposal of the delegation of Norway concerning fluctuations in demand and prices, which had not been covered in the Sub-Committee's report, was dealt with in a modified form through

¹ The text recommended by the Committee was approved by a Plenary Meeting of the Conference with the insertion of the word "may" before "need to be combatted" in the third paragraph (E/CONF.2/SR.13). The approved text appears on page 75 of the Final Act and Related Documents (ICITO/1/4 or E/CONF.2/78).
the amendment of Article 7 [6] at the eleventh meeting of the Committee. The question raised by this proposal was also mentioned in the preamble of the Resolution on Employment.

The proposal by the delegation of Italy concerning the international mobility of labour was dealt with in a modified form by introducing present paragraph 1 (b) in Article 6 [5] and by Section 3 of the Resolution on Employment.

The proposal by the delegation of Mexico concerning migratory workers was dealt with in a modified form in Section 4 of the Resolution on Employment.

Article 5 [4].

The proposal of the delegation of Peru regarding the disposal of surpluses during periods of widespread balance-of-payments difficulties was withdrawn at the ninth meeting in view of the fact that the Sub-Committee had not been prepared to recommend the inclusion of a provision on this subject in Chapter II.

Article 6 [5].

As indicated above in connection with Article 3, sub-paragraph (b) was added to paragraph 1 of Article 6 [5] as a result of a proposal by the delegation of Italy.

Article 7 [6].

As in the case of the proposal relating to Article 3, mentioned above, the proposal by the delegation of Norway relating to Article 7 [6] concerning the stabilization of prices was dealt with in a modified form through the amendment of Article 7 [6] and through the preamble to the Resolution on Employment.

Article 4 [7].

The provisional reservation by the delegation of Mexico mentioned in paragraph 8 of the Report of the Sub-Committee on this Article was withdrawn at the eighth meeting.

In the first sentence of paragraph 1 of the new text of the Article the word "international", referring to declarations, conventions and agreements, was changed to "inter-governmental" at the ninth meeting. At the thirteenth meeting some delegates indicated

1 As indicated in the introduction square brackets [ ] have generally been used where appropriate throughout the present collection of reports to indicate the corresponding number in the Havana Charter when it differs from the number in the Geneva draft or in the original report.
that they would prefer to have retained the word "international" as being wider than "inter-governmental" in its application. Other changes in this sentence suggested by the Drafting Committee were not accepted.

The problem raised by the delegation of Belgium concerning a possible misinterpretation of the last part of the second sentence in paragraph 1 of the new text of this Article was initially discussed at the tenth meeting. Subsequently a suggestion was put forward by the Central Drafting Committee which was considered by the First Committee at its eleventh and twelfth meetings. At the twelfth meeting it was decided that the English text should read "... the improvement of wages and working conditions as productivity may permit ". At the thirteenth meeting, after receiving further advice from the Central Drafting Committee, the First Committee decided that the corresponding French text should read "aux conditions de rémunération et de travail meilleures que cette productivité rend possibles ".

The words "within its territory" were added after "conditions" in the third sentence of paragraph 1 of the new text of this Article at the eighth meeting.

At the eighth meeting the representative of the International Labour Organisation proposed a change in the third paragraph of the new text. This proposal was discussed at the ninth meeting and was adopted in a modified form.

REPORT
OF SUB-COMMITTEE A OF THE FIRST COMMITTEE:
"FAIR LABOUR STANDARDS" ¹

3. Mr. D. K. Lieu (China) served as Chairman of the Sub-Committee.

4. The representatives of the delegations of the Philippines and of Haiti attended the meetings of the Sub-Committee when proposals originating with those delegations were under discussion. The Sub-Committee also had the benefit of expert advice from the representative of the International Labour Organization.

5. After a discussion of the points of substance in the Sub-Committee a Drafting Group was constituted, comprising representatives of the delegations of Mexico, the Union of South Africa and the United States of America. The text prepared by this Drafting Group was subsequently considered and modified by the full Sub-Committee.

6. The Sub-Committee held four meetings and reached agreement on a text. The representative of the delegation of Argentina indicated that while he was prepared provisionally to agree with the text produced by the Sub-Committee, it might be necessary for his delegation, after it had had an opportunity to examine a Spanish translation of the text, to express certain views concerning that text in the full Committee. The representative of the delegation of Mexico indicated that his delegation reserved its position for discussion in the full Committee on the relation between the present proposed text and the amendment put forward by that delegation earlier for a provision relating to non-discriminatory treatment of labour.

7. In the view of the Sub-Committee the text which it was recommending for consideration and approval by the First Committee was in most respects self-explanatory. Accordingly in its report the Sub-Committee confined its remarks largely to observations concerning the relation between the recommended text and the amendments which were under consideration.

Paragraph 1.

8. In the drafting of the first sentence of paragraph 1 the Sub-Committee was prompted by the amendment proposed by the delegation of Mexico to the effect that a reference should be made in the Article to the safeguarding of the rights acquired by labour, especially those embodied in the Declaration of the Aims and Purposes of the International Labour Organization adopted by the ILO Conference at Philadelphia in May 1944. In the use of the words "international declarations" the Sub-Committee had
in mind particularly this Declaration. It was felt by the Sub-Committee that this language (together with the reference elsewhere in the Chapter to "large and steadily growing . . . effective demand") also covered the proposal of the delegation of the Philippines concerning the importance of social security since the Declaration of Philadelphia stresses the significance of social security measures. The language of this first sentence was, however, drafted sufficiently broadly to include not only the Philadelphia Declaration but any other international instruments whereby rights of workers were established.

9. In the second sentence the Sub-Committee incorporated the proposal of the delegation of Argentina that "wages" should be specifically mentioned. By its use of the word "improvement" in this sentence the Sub-Committee felt that it also embodied the substance of the amendment proposed by the delegation of Burma.

10. In the third sentence the Sub-Committee endeavoured to take account of various proposals which were made concerning the use previously of the words "production for export". The recommended language indicated that the sentence was concerned with any unfair labour conditions which create difficulties in international trade.

11. The Sub-Committee did not retain the words "throughout its territory" which appeared in the text submitted by the Preparatory Committee. The Sub-Committee was of the opinion that these words were unnecessary since the sense was clear without them, but that the Central Drafting Committee might consider from a drafting point of view whether or not they should be retained. The representative of the delegation of Turkey indicated that his delegation might find it necessary during the discussion of this matter in the First Committee to suggest that the words "within its territory" be inserted.

**Paragraph 2.**

12. The proposed text of paragraph 2 was identical with the corresponding sentence in the text submitted by the Preparatory Committee.

**Paragraph 3.**

13. The text of the new paragraph 3 was prepared on the basis of various suggestions which were made in the original amendments concerning the division of functions between the ILO and the ITO (e.g., the amendments proposed by the delegations
of Ceylon, Colombia and the Union of South Africa). In view of the special competence of the ILO in the field of labour standards it was considered desirable to provide in the Article itself for consultation between the ILO and the ITO. This paragraph was also designed to meet the requirements of those countries which had proposed various procedures for dealing with situations in which a Member felt it necessary to protect its industries from the competition of products produced under unfair conditions of labour (e.g., the amendments proposed by the delegations of Colombia, Mexico and Uruguay). The proposed language of this paragraph was intended to bring out explicitly the relationship between this Article and the procedure established in Article 90 [94 and 95] for the reference of matters to the Organization.

14. The Sub-Committee recognized that in the proposed text specific provision had not been made for non-discrimination in the treatment of labour as proposed by the delegations of Mexico and Haiti. During the discussion of this matter in the Sub-Committee note was taken of the work being done on this subject by the ILO and by such other bodies as the Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. The majority of members of the Sub-Committee felt that the question of non-discrimination in respect of the employment of labour could not be dealt with appropriately or adequately in a charter of an international trade organization. To the extent, however, that provisions concerning non-discriminatory treatment of labour might have been, or might in the future be, incorporated in other “international declarations, conventions and agreements” to which Members may subscribe the proposed language of the Article recognized that measures relating to employment must take fully into account any such provisions.

Location of the Article.

15. The Sub-Committee learned that Sub-Committee B of the First Committee proposed a re-arrangement of the Articles in the Chapter whereby the Article on “Fair Labour Standards” would be removed from its present position between two Articles on balance-of-payments questions to a position at the end of the Chapter in order to secure continuity in the provisions relating to balances of payments. The Sub-Committee agreed with the suggestion that for this reason the Article on fair labour standards should appear at the end of Chapter II.
REPORT

OF SUB-COMMITTEE B OF THE FIRST COMMITTEE: ARTICLES OF CHAPTER II OTHER THAN THE ARTICLE ON FAIR LABOUR STANDARDS

1. At the sixth meeting of the First Committee, 8 December 1947, the Chairman appointed a Sub-Committee which was instructed to examine the amendments relating to all Articles of Chapter II with the exception of Article 4 [7] and to prepare texts for those Articles.

2. Representatives of the following delegations were appointed members of the Sub-Committee: Australia, Canada, France, India, Italy, Lebanon, Norway, Mexico, Peru, Philippines, United Kingdom and the United States of America.

3. M. J. ROYER (France) served as Chairman of the Sub-Committee.

4. The representative of the delegation of Denmark attended the meeting of the Sub-Committee when the proposal originating with that delegation was under discussion. The Sub-Committee also had the benefit of expert advice from the representatives of the International Labour Organization and the International Monetary Fund.

5. It was agreed that the amendment proposed to Article 6 [5] by the delegation of Mexico concerning the safeguarding of the rights of workers should be transferred to Sub-Committee A and discussed in connection with Article 4 [7]. Accordingly Sub-Committee A reported on this proposed amendment.

6. The Sub-Committee held five meetings and agreed to recommend a text to the First Committee for its approval in respect of the matters covered therein. On other points not covered specifically in the proposed text certain members, as indicated below, stated that in the full Committee, they might wish to have these points discussed further. In respect of the various amendments originally proposed the delegations concerned were able in most cases either to withdraw their proposals after some discussion, or to consider their proposal as satisfactorily covered by the changes suggested in the present text. Accordingly the

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comments of the Sub-Committee in its report were confined to only certain of the amendments proposed earlier.

7. The Sub-Committee agreed with a suggestion by the representative of the United States of America that, in order to secure continuity in the balance of payments provisions, it would be desirable to move the Article on fair labour standards from its earlier position to a position at the end of the Chapter.

8. The Sub-Committee discussed the proposal presented by the delegation of Italy for the inclusion of a provision for international co-ordination of employment services with a view to facilitating the migration of labour where desirable. In the course of the discussion information was supplied concerning the activities of the Permanent Migration Committee of the International Labour Organization in this field and reference was also made to the Population Commission of the Economic and Social Council. It was the view of the Sub-Committee that the question of the international movement of labour was only one aspect, although an important one, of the general question of international action to assist in securing high levels of employment and that if mention were to be made of this aspect reference to other aspects would also have to be included at some length. It was the view of the Sub-Committee that it was unnecessary to include in Chapter II any specific reference to this particular aspect of the question since the present language of the Chapter included all the various aspects. The Sub-Committee considered that in connection with the proposed Resolution on Employment consideration might be given to the desirability of drawing the attention of the Economic and Social Council to the importance of international mobility of labour and of securing an international co-ordination of employment services for this purpose. The representative of Italy indicated that his delegation reserved its position pending discussion in the First Committee.

9. The Sub-Committee considered the proposal by the delegation of Mexico concerning the treatment of migrant workers and concluded that particular situations of the sort referred to in the discussion of the amendment should be the subject of special agreements and could not appropriately be included in the charter of an international trade organization. Reference was made also to the work being done by the International Labour Organization and particularly its Permanent Migration Committee on the general question of the treatment of migrant workers.
representative of the delegation of Mexico reserved the right of his delegation to raise the question again in the full Committee.

10. Concerning the proposal by the delegation of Denmark relating to the initiative of the Organization in the event of Members experiencing balance-of-payments difficulties, the Sub-Committee was of the view that, even if the particular case were not of sufficient urgency to come under paragraph 2 of Article 6 [5], the Member would be permitted under Articles 89 and 90 [93-95] to make representations to other Members and to the Organization and that if such representations were made to the Organization it was already empowered under the present text of the Charter to consult with, and make recommendations to, any or all Members. Accordingly the Sub-Committee felt that the inclusion of a special reference to the initiative of the Organization in connection with this Article was not required and that the insertion of such a reference might appear to cast doubt on the Organization's right of initiative in connection with other Articles if that right were not also specifically mentioned in such cases.

11. The Sub-Committee discussed the proposal of the delegation of Peru regarding the disposal of surpluses during periods of widespread balance-of-payments difficulties. It was generally agreed that this problem related closely to the provisions of Chapter VI and that the courses of action contemplated by the representative of Peru were already provided for, so far as feasible, in Article 55 [58] (and the other Articles of Chapter VI) and Article 69 [72]. Accordingly the Sub-committee decided not to recommend the inclusion of any provision on this subject in Chapter II. The representative of Peru indicated that his delegation reserved its position pending discussion in the full Committee.

12. The Sub-Committee discussed at some length the proposals by the delegation of Norway concerning price stabilization and the prevention of inflationary developments. The Sub-Committee was of the opinion that rather than consider the need for a modification in the Chapter at the present time it would be preferable to await the examination of the various Articles which relate to measures available to governments pursuing a policy of price stabilization, such as Articles 18, 20, 25-29 [25-28] and 43 [45], reserving the right of the delegation of Norway to raise the question again after those Articles had been examined by the appropriate Committees.
REPORT OF SUB-COMMITTEE C OF THE FIRST COMMITTEE: RESOLUTION ON EMPLOYMENT

As authorized by the First Committee at its ninth meeting, 20 December 1947, the Chairman of the Committee appointed a Sub-Committee to consider whether or not a resolution was required and, if so, to recommend a text for such a resolution in the light of the draft prepared by the First Session of the Preparatory Committee and any further proposals which might be received from individual delegations. The Sub-Committee was instructed to take account also of the new text of Chapter II and of the information reported in a document reporting on activities of the United Nations and Specialized Agencies in the field of employment.

Representatives of the following delegations comprised the Sub-Committee: Australia, Belgium, Brazil, France, Italy, Lebanon, Mexico, Pakistan, Poland, El Salvador, Sweden, the United Kingdom and the United States of America.

Mr. J. H. G. Pierson (United States of America) was elected Chairman.

After some discussion the Sub-Committee agreed that it would be appropriate and desirable to recommend that the Conference adopt a resolution relating to employment.

The Sub-Committee concluded that it would not be desirable to reiterate the text of the draft resolution prepared by the First Session of the Preparatory Committee since that resolution had already been mentioned in a resolution of the Economic and Social Council and, at least in part, had been included in instructions to the Sub-Commission on Employment and Economic Stability. It was felt, however, that it would be useful to affirm in the present text the interest of the Conference in all four of the measures dealt with in the draft resolution of the Preparatory Committee.

In the preparation of a text the Sub-Committee examined proposals submitted by the delegations of Australia, Brazil, Denmark, Italy, Mexico and Poland, and an informal draft put forward by the Chairman of the Sub-Committee. The Sub-Committee also took account of suggestions presented orally by the representatives of Czechoslovakia, France, Lebanon and Pakistan.

1 E/CONF.2/C.1/17.
2 E/CONF.2/5.
The Sub-Committee appointed a Drafting Group, comprising representatives of the delegations of Australia, Mexico and the United Kingdom, which met under the chairmanship of Miss N. K. Fisher (United Kingdom) and prepared a text which was subsequently considered and modified by the full Sub-Committee.

The Sub-Committee held four meetings and reached agreement on a text which it recommended to the First Committee for approval.
II. REPORTS RELATING TO THE SECOND COMMITTEE

ECONOMIC DEVELOPMENT

The Report of the Second Committee as approved by that Committee and by the Conference indicated in detail with respect to each Sub-Committee the changes which the Committee considered necessary in the reports which had been submitted by the Sub-Committees, but did not reproduce the texts of the Sub-Committees' reports. Since the texts of the Sub-Committees' reports, with the changes indicated in the Committee's Report, had been approved by the Committee it has been considered desirable and appropriate, particularly for reasons of convenience, to insert the various Sub-Committee reports in the Committee Report, indicating with square brackets and footnotes the changes which the Committee made in approving these reports.

REPORT OF THE SECOND COMMITTEE:
ECONOMIC DEVELOPMENT

1. The Second Committee was responsible for the examination of the Geneva draft text of Chapter III on "Economic Development" together with proposals submitted by delegations relating to the subject matter of the Chapter.

2. Mr. Ramon Beteta (Mexico) was elected Chairman at the first meeting of the Committee and Mr. Emilio Abello (Philippines) was elected Vice-Chairman at the second meeting. On the departure of Mr. Abello, Mr. Jose Garrido Torres (Brazil) was elected Vice-Chairman at the twenty-first meeting.

3. The Committee held twenty-six meetings and succeeded in solving all the issues before it. Mr. Beteta presided at all meetings except the seventh to nineteenth inclusive, presided over by Mr. Abello and the twenty-second presided over by Mr. Garrido Torres.

4. To facilitate its work the Committee established six sub-committees, two of them jointly with other committees. The Reports of the Sub-Committees as submitted to and as approved by the Committee, and any reservations made, are set out below in six Parts¹, viz.

Part I Sub-Committee A on Article 8
Part II Joint Sub-Committee of Committees II and VI on Articles 9, 10 and 11 and on the Mexican proposal for the establishment of a Committee for Economic Development
Part III Sub-Committee B on Article 12
Part IV Sub-Committee C on Articles 13 and 14
Part V Joint Sub-Committee of Committees II and III on Articles 15, 16 (2) and 16 (3) and 42 [15, 16 (2), 16 (4), 42, 43 and 44]
Part VI Sub-Committee D on footnote to Chapter III on “Reconstruction”.

PART I

SUB-COMMITTEE A OF THE SECOND COMMITTEE ON ARTICLE 8

Sub-Committee A on Article 8, consisting of representatives of Australia, China and the United Kingdom was set up at the fifth meeting of Committee II to examine the Article in the light of the discussion at that meeting. Mr. D. K. Lieu (China) was elected Chairman of the Sub-Committee. A recommendation ² was submitted to the sixth meeting of Committee II but after further discussion at that meeting the Sub-Committee was reconstituted with the addition of the representatives of Argentina, Iran and New Zealand. A further recommendation ³ was submitted to and approved by the ninth meeting of Committee II as follows:

¹ In the case of Sub-Committee A no formal report was issued and the recommendation of the Sub-Committee is to be found in a Secretariat Note. In the case of the Joint Sub-Committee of Committee II and III the report reproduced here is that on Article 15. The report of this Sub-Committee on other Articles is to be found in the collection of reports relating to the Third Committee.
² Secretariat Note E/CONF.2/C.2/A/1.
³ Secretariat Note E/CONF.2/C.2/A/3 considered by the Committee at its ninth meeting.
"It was agreed to accept the following text:\1:

'The Members recognize that [all countries have a common interest in] the productive use of the world's human and material resources is of concern to and will benefit all countries, and that the industrial and general economic development of all countries, . . . .'

"It was furthermore agreed that the phrase 'is of concern to all countries' was to be understood in a completely general sense, i.e. that all countries have a collective concern in the development of resources of the world at large. It in no way implied a right of interference in the internal affairs or national policy of a Member, either on the part of any other individual Member or Members generally.

"The delegation of Argentina accepted the above text subject to a satisfactory translation of the word 'concern' into Spanish."

PART II

JOINT SUB-COMMITTEE OF THE SECOND AND SIXTH COMMITTEES
ON ARTICLES 9, 10 AND 11 AND ON THE MEXICAN PROPOSAL
FOR THE ESTABLISHMENT OF A COMMITTEE FOR ECONOMIC
DEVELOPMENT

The following is the Report of the Joint Sub-Committee on Articles 9, 10 and 11 considered by Committee II at its twentieth, twenty-first and twenty-second meetings, together with the modifications made by the latter.

1. The Joint Sub-Committee was appointed at the sixth meeting of Committee II and the fifth and seventh meetings of Committee VI with terms of reference:

"1. To examine Articles 9, 10 and 11 of Chapter III, proposed amendments thereto and any proposed new articles relating to the positive functions of the Organization in promoting economic development in the light of discussion in Committee II with a view to making recommendations as to the texts of these articles and any organizational provisions which may be required as a consequence thereof.

"2. To examine the proposal of the Mexican delegation for the establishment of an Economic Development Committee of the Organization taking into account any conclusions reached under paragraph 1 and any other relevant considerations.

"3. In making recommendations under paragraphs 1 and 2 to take into account the functions of other organs of the Organization and of the United Nations and Specialized Agencies in general in the field of economic development and any financial implications.

"4. To report to both Committee II and Committee VI."

1 In this instance [ ] signifies deletion from the Geneva text, and words in italics signify addition to the Geneva text.
2. The Joint Sub-Committee was composed of representatives of:

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Dr. H. C. COOMBS (Australia) was elected Chairman of the Sub-Committee.

3. A number of representatives of delegations who were not members of the Sub-Committee attended as observers and in many cases took part in the discussion on particular amendments for which they were primarily responsible or in which they had special interest. Representatives of the International Bank for Reconstruction and Development and of the Food and Agriculture Organization, as well as the Director of the Fiscal Division of the Economic Affairs Department of the United Nations gave their views to the Sub-Committee.

4. The Sub-Committee had held twenty-seven meetings at the date of approval of this Report. It examined Articles 9, 10 and 11 and all the amendments and proposals submitted to it in connection with these articles in accordance with paragraphs 1 and 3 of its terms of reference. As a result of its examination the Sub-Committee decided to recommend:

(i) revised texts of Articles 9, 10 and 11;
(ii) a resolution for adoption by the Conference;
(iii) changes in Article 69 [72];
(iv) inclusion of a new Article in Chapter IX.

It was agreed that the aforementioned recommendations disposed of all the amendments and proposals submitted.

5. The constitutional provisions of certain Members were brought to the attention of the Sub-Committee. [These provide that all controversies which may arise out of contracts in which the State or one of its sub-divisions are parties are to be resolved

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1 As regards the consideration of paragraph 2 of the terms of reference see Secretariat Note on page 25.
2 See page 76 of the Final Act and Related Documents (ICITO/1/4 or E/CONF.2/78.)
3 See paragraphs 1 (c) (iii), 1 (c) (iv), and 1 (f) of Article 72 of the Havana Charter.
4 See paragraph 2 of Article 72 of the Havana Charter.
by national tribunals.\[1\] It was agreed that these constitutional requirements are not in conflict with any provisions of the articles with which the Sub-Committee was concerned and that the Organization would not in any manner have jurisdiction over facts resulting from such a situation nor over the decisions of the national tribunals. The action which the Organization would be able to take in relation to such cases would be limited to a release or a diminution of the obligations assumed or concessions granted by the Member which asserts a nullification or impairment of a benefit under the Charter, if the Organization finds that the situation which has been created justifies such action.

6. The representatives of Belgium and the United States expressed the view that Article \(\text{II}\) did not prevent any government from taking such action as might be reasonable or justifiable to protect the savings of its nationals, such action being subject to review by the Organization. However, the Sub-Committee considered the text of the article to be clear and, therefore, agreed unanimously that it was not necessary to include any explanation in the report.

7. With respect to paragraph 2 of Article \(\text{II}\) the Sub-Committee took the view that agreements promoted or recommended for adoption under paragraph 2 of Article \(\text{II}\) would not fall within paragraph 4 of Article 74 [77].

8. With respect to paragraph 2 \((b)\) of Article \(\text{II}\) the Sub-Committee took the view that, while it was difficult to be precise at this stage as to the nature of appropriate measures, more equitable and widely spread use of the means to economic development could be achieved by joint action by Members. It seemed desirable, therefore, that it should be made clear that the Organization had the necessary authority, with due respect to the functions and activities of other inter-governmental organizations, to make recommendations for and promote agreements whether bilateral or multilateral to provide for such joint action, if study of the circumstances suggested that such a course were desirable. The Sub-Committee drew attention to the fact that whether any agreements would in fact be concluded was dependent upon the willingness of governments to enter into them and that the scope of such

\[1\] The Committee decided to approve the following two sentences in place of the sentence in square brackets approved by the Sub-Committee:

"These provide that controversies, which are within the domestic jurisdiction of such states, are to be resolved by national tribunals. In some cases such controversies may arise in connection with matters dealt with in Article \(\text{II}\)."
agreements would be dependent upon the discretion of the governments concerned. The Sub-Committee felt that the proposed paragraph 2 (b) would enable the Organization to make recommendations and promote agreements to assist countries encountering difficulties as a result of actual or prospective shortages. The Sub-Committee considered that:

(a) the promotion of an agreement to facilitate an equitable distribution of skills, arts, technology, materials and equipment, was not restricted by the use to which these facilities were put, \textit{i.e.} if these facilities were essential to established industries as well as to economic development, the Organization could recommend an agreement in appropriate circumstances;

(b) without presuming to judge whether such action would in fact be desirable, the text approved would permit the Organization, if it believed that speculation was affecting the equitable distribution of the facilities referred to in paragraph 1 and it judged that such action was relevant and appropriate, to recommend and promote agreements between governments providing for measures against speculation;

(c) the authority granted to the Organization to make recommendations and promote agreements designed to facilitate an equitable distribution of skills, arts, technology, materials, and equipment would enlarge the scope of the co-operation and the assistance which the Organization could give to Members in accordance with Article 10 and would be of assistance to countries which were having difficulties in obtaining the capital goods, equipment and materials which they required;

(d) "industrial patents" were included in the term "technology".

9. With reference to the text recommended to be included in Chapter IX as a new article, the Sub-Committee noted that this text would be acceptable to the Italian delegation in disposing of the new article proposed by it to be inserted between Articles 69 and 70 of the Geneva draft \textsuperscript{1} and the amendment submitted by that delegation to Article 81 of the Geneva draft \textsuperscript{2}. The Sub-

\textsuperscript{1} E/CONF.2/C.6/12, page 4.  
\textsuperscript{2} E/CONF.2/C.6/12, page 13.
Committee agreed that this text would require the Organization in cases where the economic circumstances of Members were relevant, to give consideration to all of the factors affecting those economic circumstances. Among such factors might be the degree of assistance extended to a Member by other Members or by existing inter-governmental organizations.

Note: The Committee approved the following paragraphs with regards to the deletion of paragraph 4 of Article X of the Geneva draft:

"In connection with the deletion of paragraph 4 of Article X of the Geneva Draft Charter it was pointed out that the paragraph merely stated that the term 'nationals' as used in that Article and in Article 12 comprised natural and legal persons. However, certain delegations called the attention of the Committee to provisions in their constitutions requiring certain types of activities to be carried on by legal entities incorporated under their domestic laws and also affecting the rights of persons holding shares of such entities. It was further suggested by certain delegations that the problem of the determination of the nationality of legal entities was very complicated and raised many questions of international law.

"The deletion is to be taken as reflecting only the view of the Committee that the constitutional provisions referred to are not prejudiced and are outside the scope of the Charter, though in their opinion this does not affect the construction of the term 'nationals' as used in Articles X and 12, without prejudice to such provisions, as including both legal and natural persons. The Committee also considered that the problem of the nationality of legal entities was not raised by the paragraph or by its deletion."

The following is the Note by the Secretariat with regard to the Action of the Joint Sub-Committee as Regards Paragraph 2 of its Terms of Reference.

1. The Mexican proposal for the insertion of a new Section D bis—Committee for Economic Development—in Chapter VIII was referred by Committee VI to the Joint Sub-Committee of Committees II and VI in accordance with the terms of reference.

2. This proposal was considered by the Joint Sub-Committee and a Working Party was set up to examine the proposal. However, in view of the connection between the Mexican proposal for the establishment of a Committee for Economic Development and the proposal with regard to the establishment of a Tariff Committee these questions were considered by a Joint meeting of Sub-Committee A of Committee III, of Sub-Committee D of Committee VI and of the Joint Sub-Committee of Committees II and VI held on 3 February 1948 which considered suggestions of the Mexican, Australian, United States and Pakistan delegations and set up

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a Working Party representing the three Sub-Committees. This Working Party reached provisional agreement. At that stage, the Co-ordinating Committee, which was considering a number of unresolved issues affecting economic development, decided that the questions before the Working Party should be transferred to it. After consultation with the Chairmen of the Sub-Committees concerned, the questions were so transferred. As no changes in the text of the Charter were indicated by the Co-ordinating Committee, no further action was required by the Joint Sub-Committee of Committees II and VI and the Report of the Joint Sub-Committee on Articles 9, 10 and 11 is its final Report. In view of the agreement reached by the Heads of Delegations with regard to the suppression of the proposed Tariff Committee and other related matters, the Mexican delegation agreed that no further action was required on its proposal.

PART III

SUB-COMMITTEE B OF THE SECOND COMMITTEE ON ARTICLE 12

The following is the Report of Sub-Committee B on Article 12 considered by the Committee at its seventeenth, eighteenth and nineteenth meetings, together with the modifications made by the latter.

1. At its thirteenth meeting Committee II appointed a Sub-Committee to consider Article 12 and the amendments submitted thereto. The Sub-Committee consisted of the delegates of Australia, Brazil, Canada, Ceylon, Czechoslovakia, Egypt, India, Mexico, Netherlands, New Zealand, Sweden, United Kingdom, United States of America and Venezuela.

Mr. Jose Garrido Torres (Brazil) was elected Chairman of the Sub-Committee.

2. The Sub-Committee held seven meetings and agreed on a text of Article 12. In the course of the discussion of Article 12 certain members of the Sub-Committee withdrew their proposed amendments. The Sub-Committee considered that the amendments not so disposed of were either taken into account or disposed of by the text of Article 12. The Sub-Committee also considered that certain amendments relating to the provision of capital on reasonable terms by capital-exporting countries were met to a reasonable extent by the provisions of Article 11. It was considered

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1 The Report of the Co-ordinating Committee on this matter is contained in Annex 3 of E/CONF.2/45/Rev.1 and the recommendations thereon of the Heads of Delegations in E/CONF.2/51 (see page 126 et seq.) of the present Reports.

2 E/CONF.2/58.

that the Chilean amendment relating to adequate participation of nationals of a capital-importing country in the financing, management, and administration of enterprises referred to in paragraph 3 of Article 12 was covered to the extent appropriate in the text of Article 12.

3. In the course of considering Article 12 the Sub-Committee agreed on several interpretations of the Article as follows:

[(a) The requirements referred to in paragraph 1, sub-paragraph (c) (iv) of the Havana Charter may, provided they are reasonable, relate either to foreign investments only or to investments generally.

(b) Legislative or constitutional requirements, existing at the time that an investment is made and providing for recourse only to national courts, would not in themselves be reviewable pursuant to Chapter VIII. Chapter VIII provides for review by the Organization of whether nullification or impairment of a benefit accruing to a Member under the Charter has taken place, even if the nullification or impairment arises out of a measure completely consistent with the Charter, or "any other situation", even if there is no violation of the Charter, and without involving the power of the Organization to pass or judge upon the validity of the measure itself taken by a Member, or of a decision taken by a Member's national courts.

(c) The Articles of Agreement of the International Monetary Fund are included among the international agreements referred to in paragraph 2, sub-paragraph (b) of the Havana Charter.]

4. The Indian delegation reserved its position on paragraph 2 of the text of Article 12 of the Havana Charter, pending instructions from its Government.

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1 The Committee approved the following text in place of sub-paragraphs (a), (b) and (c) of paragraph 3:

"(a) legislative or constitutional requirements, existing at the time that an investment was made and providing for recourse only to national courts, would not in themselves be reviewable pursuant to Chapter VIII. Chapter VIII provides for review by the Organization of whether nullification or impairment of a benefit accruing to a Member under the Charter has taken place, even if the nullification or impairment arose out of a measure completely consistent with the Charter, or "any other situation", even if there was no violation of the Charter, but without involving the power of the Organization to pass or judge upon the validity of the measure itself taken by a Member, or of a decision taken by a Member's national courts; and

"(b) the Articles of Agreement of the International Monetary Fund were included among the international agreements referred to in paragraphs 1(c) and 2(b) of the text of the Havana Charter."

2 This reservation was subsequently withdrawn.
PART IV

SUB-COMMITTEE C OF THE SECOND COMMITTEE ON ARTICLES 13 AND 14

The following is the Report of Sub-Committee C on Articles 13 and 14 considered by Committee II at its twenty-third and twenty-fourth meetings, together with the modifications made by the latter.

1. Sub-Committee C was appointed at the sixteenth meeting of Committee II with terms of reference as follows:

"To examine and submit recommendations to Committee II concerning the proposals on Articles 13 and 14 with authority to consult, if considered necessary, with the Sub-Committee of Committee III on Articles 20 and 22."

2. The Sub-Committee was composed of representatives of:

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<tr>
<th>Argentina</th>
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<td>Australia</td>
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<td>Netherlands</td>
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<td>Canada</td>
<td>India</td>
<td>Norway</td>
<td>Uruguay</td>
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Dr. Gustavo Gutierrez (Cuba) was elected Chairman of the Sub-Committee.

3. A number of representatives of delegations who were not members of the Sub-Committee attended as observers and in many cases took part in the discussion on particular amendments for which they were primarily responsible or in which they had a special interest.

4. The Sub-Committee held fourteen meetings. It examined Articles 13 and 14 and the amendments submitted thereto. The delegation of Brazil submitted two working papers, which redrafted paragraphs 2 to 5 inclusive of the Geneva draft of Article 13. These were adopted as the basis for discussion. After the Sub-Committee had almost completed its work on Article 13 and the amendments submitted thereto, the Article was also examined by the Co-ordinating Committee. The Sub-Committee took into account the text submitted by the Co-ordinating Committee in accordance with the recommendations of the Heads of Delegations.

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1 E/CONF.2/C.2/41.
3 E/CONF.2/51.
As a result the Sub-Committee recommended texts of Articles 13 and 14. It was agreed that these recommended texts disposed of all the amendments submitted.

5. The Sub-Committee considered the amendment of Cuba to insert the word “maintenance” and the amendment of New Zealand to insert the word “maintain” in paragraph 1 of Article 13 and the amendments arising as a consequence thereof and expressed the view that the amendments were already covered in the texts proposed. It was agreed that the word “development”, as used in Article 13, might cover cases in which the branch of industry or agriculture to be developed had been established before the date of the Member’s application to the Organization.

6. The Sub-Committee considered it desirable to record that paragraph 7 (a) (ii) of Article 13 of the Havana Charter as originally submitted to the Co-ordinating Committee ended with the words “reduced as a result of new or increased restrictions imposed by some other government or governments”.

7. [With regard to the meaning of the word “processing” appearing in paragraphs 7 (a) (ii) and 7 (a) (iii) of Article 13 of the Havana Charter, it was agreed that processing meant the transformation of a primary commodity into semi-finished or finished goods but did not refer to highly developed industrial processes such as the manufacture of precision instruments.]

8. [With regard to the reference to international trade at the end of paragraph 7 (a) (ii) of Article 13 of the Havana Charter it was agreed that this was a reference to international trade in general and not to trade in the specific product to which the measure in question related.]

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1 The Committee approved the deletion of this paragraph and its substitution by the following:

"With regard to the meaning of the word ‘processing’ appearing in paragraphs 7 (a) (ii) and (iii) of Article 13 of the Havana Charter consideration was given to the view of the Co-ordinating Committee and the proposal of the delegation of Pakistan. It was agreed that processing meant the transformation of a primary commodity or of a by-product of such transformation into semi-finished or finished goods but did not refer to highly developed industrial processes such as the manufacture of precision instruments. Accordingly it was decided to insert the interpretative note set out in the Havana Charter."

2 The Committee approved the deletion of this paragraph and its substitution by the following:

"With regard to the references to international trade in paragraphs 7 (a) (iii) and 8 (b) (ii) of Article 13 of the Havana Charter it was agreed that these were references to international trade in general and not to trade in the specific product to which the measure in question related."
9. [With regard to the interpretation of the words "materially affected" in paragraphs 5 and 8 of Article 13 of the Havana Charter, it was agreed that this term was not restricted to those countries which in the past were the principal suppliers and that it would be proper for the Organization to have regard, for instance, to the interests of those Members which supplied a large proportion of the imports of the applicant Member in the product concerned, those Members which were substantially interested in exporting the product to world markets, and those Members whose economies were materially dependent on exports of the product.]

10. With regard to paragraph 9 of Article 13 of the Havana Charter the Sub-Committee agreed that the powers of the Organization under Article 13 were vested in the Conference in accordance with paragraph 1 of Article 74 [77] and that it would be for the Conference under the provisions of paragraph 2 of Article 74 [77] to assign any of these functions to the Executive Board. At that time the Conference would determine the extent and conditions of appeal to the Conference from any decision of the Executive Board and the circumstances in which appeals could be made. The Sub-Committee further agreed that the phrase "pending a decision by the Organization" should refer to the final decision, which would be taken by the Conference in the event of previous adverse decisions being followed by an appeal to the Conference by the applicant Member.

11. It was agreed that the proviso at the end of paragraph 9 of Article 13 of the Havana Charter would permit a Member to prohibit entirely or reduce the imports of a product to the extent needed to ensure that, over the whole period following the increase in imports referred to in that paragraph, that product was not imported at a rate greater than in the most recent representative period preceding the date of notification.

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1 The Committee approved the deletion of this paragraph and its substitution by the following:

"With regard to the interpretation of the words 'materially affected' in Article 13 of the Havana Charter it was agreed that this term was not restricted to those countries which in the past were principal suppliers. With regard to the use of these words in sub-paragraph 3 (b) it was assumed that the Organization would have due regard to the contractual rights of Members. In interpreting these words in paragraphs 5 and 8, it would be proper for the Organization to have regard, for instance, to the interests of Members which supplied a large proportion of the imports of the applicant Member in the product concerned, those Members which were substantially interested in exporting the product to world markets, and those Members whose economies were materially dependent on exports of the product."
12. With regard to paragraph 10 of Article 13 of the Havana Charter it was agreed that the date cited therein by which the applicant Member would be notified whether or not it would be released from its obligations should be the date on which the competent organ of first jurisdiction would give its ruling. It was also noted that paragraph 2 of Article 73 permitted the Conference to establish rules of procedure appropriate for the carrying out of its functions during the intervals between its sessions, e.g. voting by cable or airmail.

13. In connection with Article 14 the attention of the Sub-Committee was invited to the possibility that in certain special circumstances beyond their control some signatories to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment may find themselves unable for some time to apply the provisions of the General Agreement on Tariffs and Trade. The Sub-Committee noted that an application could be made to the Contracting Parties for an amendment to that Agreement to meet these cases. If the amendment were accepted, it would then be possible for the Contracting Parties to consider an application for new dates to be established and to replace those of 1 September 1947 and 10 October 1947 at present specified in paragraph 6 of Article XVIII of the Agreement. In order to prevent any decision under the provisions of such an amendment, if it were accepted by the Contracting Parties, from becoming ineffective on the date of entry into force of the Charter the Sub-Committee agreed to insert the exception appearing at the end of paragraph 1 (a) of Article 14 of the Havana Charter. The representative of Brazil reserved his position pending a decision by the Contracting Parties with regard to such an amendment to the agreement.1

14. The representative of Argentina reserved the position of his country with respect to Articles 13 and 14.2

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1 The Brazilian reservation contained in this sentence was withdrawn at the twenty-sixth meeting of the Committee.
2 In addition a reservation on Article 13 was made by the representative of Ceylon at the twenty-third meeting of the Committee.
PART V

JOINT SUB-COMMITTEE OF THE SECOND AND THIRD COMMITTEES ON TARIFF PREFERENCES

The following is the Report¹ of the Joint Sub-Committee to Committee II on Article 15, considered by Committee II at its twenty-fourth and twenty-fifth meetings, together with the modifications made by the latter.

1. The Joint Sub-Committee of Committees II and II was established with the following terms of reference:

   "To consider and submit recommendations to both Committees regarding Articles 15, 16 (2) and (3) and 42 and the relevant proposals and amendments submitted in relation thereto with a view to finding a solution of the question of new preferential arrangements, including those for purposes of economic development and reconstruction, and of the maintenance of existing preferences as an exception from the most-favoured-nation clause."

2. The Joint Sub-Committee consisted of representatives of the following delegations: Argentina, Belgium, Brazil, Canada, Chile, El Salvador, France, Haiti, Iran, Poland, Sweden, Syria, Turkey, United Kingdom, United States and Venezuela.

3. Mr. Stig SAHLIN (Sweden) was elected Chairman. At the eleventh meeting, Mr. Jean ROYER (France) was elected in the place of Mr. Sahlin who had left Havana.

4. The Sub-Committee held fourteen meetings. At the tenth meeting, it was decided to set up a Working Party, consisting of representatives of Belgium, Chile, France, Syria, United Kingdom, United States and Venezuela. The Working Party held twenty-nine meetings, under the Chairmanship of Mr. Royer, and reported to the Sub-Committee.²

5. The Working Party made substantial progress in drafting a revised text of Article 15. Certain major points of difference were, however, taken up by the Co-ordinating Committee whose proposals were endorsed by the Heads of Delegations.³ Acting on the basis of these recommendations, the Sub-Committee submitted the text of Article 15. In doing so, it emphasized that in its consideration of the text received from the Co-ordinating Committee, it had confined itself to matters of drafting and clarification and, in accordance with the recommendation of Heads of Delegations, had made no

¹ E/CONF.2/C.2/42.
changes of substance. Support of the compromise text by members of the Sub-Committee did not mean that they entirely agreed with it, but only that they were willing to approve the text as a whole in order to reach the general settlement recommended by the Heads of Delegations.

6. The recommendations of the Sub-Committee in regard to Articles 16 and 42 [16, 42, 43 and 44] are contained in its Report to Committee III.

7. Paragraphs 8 to 20 of this Report contain a brief statement on the main changes in the text of Article 15 of the Geneva draft and on the manner in which the Sub-Committee dealt with the proposed amendments.

8. The main change in Article 15, originating in a proposal by the Polish delegate, was the introduction of specific "conditions and requirements" relating to proposed new preferential agreements. If the Organization finds that a proposed agreement fulfils these conditions and requirements, its approval of it will in effect be automatic, provided only that the Organization also finds that the agreement is unlikely to injure substantially the external trade of Members not parties to it; moreover, even if substantial injury is found to be likely, provision is made for negotiation and compensation, so that under certain specified conditions the Organization shall nevertheless approve the agreement. As a result of this elaboration of Article 15, it was possible to confine the more stringent procedure of prior approval as set out in the second sentence of paragraph 1 of the Geneva draft to new preferential agreements which do not conform to the above-mentioned conditions and requirements. It was felt that the introduction of a procedure for automatic approval partly covered proposals by Chile and Venezuela. The delegation of Brazil withdrew its reservation on condition that the recommendations of the Heads of Delegations were accepted as a whole. Proposals by Argentina relating to the powers of the Organization were not accepted, and the delegation of Argentina reserved its position as it considered that sovereign powers should not be placed in the hands of an international organization. The delegations of Haiti and Turkey reserved their positions on the whole Article [pending decisions on Article 16].¹ The delegation of Chile maintained the reservation

¹ On approval by the Committee it was agreed that the words "pending decisions on Article 16" should be deleted. The reservation of Haiti was withdrawn at the eighteenth plenary meeting.
with respect to the whole Article which it had put on record at the meeting of Heads of Delegations.

9. Paragraph 1 of Article 15 of the Havana Charter consists only of the first sentence of paragraph 1 in the Geneva draft, which remains substantially unchanged. An interpretative note has been added to make it clear that the special circumstances mentioned are those referred to in the Article itself.

10. Paragraph 2 of Article 15 of the Havana Charter, regarding notification, is substantially the same as the first sentence of paragraph 2 in the Geneva draft.

11. Paragraph 3 of Article 15 of the Havana Charter contains the substance of the second sentence of paragraph 1 of the Geneva draft, but now in effect applies only to new preferential agreements which do not fulfil the conditions and requirements of paragraph 4. Proposals by Argentina, Chile and Venezuela to delete this sentence in the Geneva draft were not accepted.

12. Paragraph 4 of Article 15 of the Havana Charter is entirely new, and states the conditions and requirements determining the Organization’s approval of a proposed new preferential agreement. It is thought that these new provisions go some way to meet the proposal by Chile for a new paragraph designed to permit preferential arrangements between adjacent underdeveloped countries.

13. A proposal was considered to delete the words “between Members” from the preamble to paragraph 4 of Article 15, it being argued that this limitation had been introduced without adequate discussion. It was the view of the Sub-Committee, however, that the words should remain. [The delegates of Argentina, Chile, Poland, Syria and Venezuela wished it put on record that in their view no final decision should be taken on this point until a definitive text of Article 93 [98] was available, and the delegate of Argentina reserved his position.] ¹

14. The delegate of the United Kingdom entered a formal reservation on paragraph 4 (a) of Article 15 of the Havana Charter and the interpretative note pending instructions from his Government.²

¹ The Committee approved paragraph 13 of this Report with the deletion of the last sentence and its substitution by the following:

“The Delegate of Syria wished it put on record that, in the light of the definitive text of Article 93 [98], he was still opposed to their inclusion.”

² This reservation was withdrawn at the twentieth plenary meeting.
15. [The delegate of Poland presented an amendment to paragraph 4 (d) of Article 15 of the Havana Charter designed to permit compensatory tariff preferences on products not conforming to the development and reconstruction criteria of paragraph 4 (b), subject to progressive elimination and limits as to duration and margins of preference. The Sub-Committee could accept neither this proposal nor an alternative proposal by the delegate of Argentina to insert a text previously discussed by the Working Party. The delegates of Argentina, Chile and Poland asked for their view to be recorded that rejection of these proposals would make the introduction of new preferential arrangements very difficult, if not impossible.] ¹

16. Paragraph 5 of Article 15 of the Havana Charter is a new provision by which the Organization may require a reduction in an unbound most-favoured-nation rate of duty on a product covered by a proposed preferential agreement, if, on appeal by an affected Member, it considers the rate to be excessive. [A number of delegates would have preferred greater clarity in this paragraph, but, taking into account the recommendations of the Heads of Delegations, the Sub-Committee was unable to draft a clearer text which would have been acceptable to all its members.] ²

17. Paragraph 6 of Article 15 of the Havana Charter provides for approval by the Organization within two months if it finds that an agreement fulfils the conditions of paragraph 4 of the Havana Charter and would not injure substantially the external trade of other Members. Moreover, conditions are laid down in regard to compensation for injured Members, etc.

¹ The Committee approved the following in substitution of the text of paragraph 15 of the Report of the Sub-Committee.

"The Polish delegation presented an amendment designed to permit temporarily compensatory preferences on products not conforming to the development and reconstruction criteria of paragraph 4 (b) of the Havana Charter and subject to progressive elimination and limits as to duration and margins of preference. The amendment was not accepted. The Polish delegation asked for its view to be recorded that paragraph 4 (d) of Article 15 of the Havana Charter concerning preferential concessions nullified to a large extent the advantages of paragraphs 4, 5 and 6 of the Havana text and made the introduction of new preferential arrangements very difficult if not impossible. An alternative proposal by the delegate of Argentina to insert a text previously discussed by the Working Party was also rejected. The delegates of Argentina and Chile asked for it to be recorded that they were in general agreement with the views expressed by the delegate of Poland in this matter."

² The Committee approved paragraph 16 of this Report with the deletion of the second sentence.
18. In regard to the compensation provided for in paragraph 6 (b) of Article 15 of the Havana Charter, it was understood that this might be of either a negative or positive character; that is to say, the Organization might, in appropriate circumstances, allow compensation to take the form of withdrawal of concessions by an injured Member, and not merely the establishment of new concessions in favour of the latter.

19. Provision was made regarding existing agreements, such as those deriving from the Treaty of Lausanne, entitling Members to depart from most-favoured-nation treatment for the purpose of establishing regional preferences. An interpretative note was also added in regard to rights to conclude preferential agreements which may have been recognized in respect of mandated territories which became independent before 21 November 1947.

20. In regard to paragraph 6 (d) of Article 15 of the Havana Charter, the delegate of Iraq (not a member of the Sub-Committee) proposed that the provision relating to substantial injury should be limited to Members which, in their most-favoured-nation treaties with the parties to the agreement, have not recognized the right in question to depart from most-favoured-nation treatment. [The sense of the Sub-Committee was against this proposal, therefore the delegates of Iraq and Syria reserved their right to reopen the question in Committee.]¹ The word “procedure” agreed by the Co-ordinating Committee in the last sentence of this sub-paragraph was changed to “provisions” in order to make it clear that sub-paragraph (d) was not subject to the provisions of sub-paragraph (c).

Note: The reservations on Article 15 made or maintained at the time of approval of the Report of the Sub-Committee by Committee II at its twenty-fourth meeting were as follows:

- Afghanistan
- Argentina
- Chile
- China
- Haiti
- Iraq (on paragraph 6 (d))
- Turkey
- United Kingdom (on paragraph 4 (a) and on the interpretative note thereto)

The reservation of Afghanistan was withdrawn at the twenty-fifth meeting of Committee II. The reservations of China, Haiti and the United Kingdom were withdrawn at the nineteenth, eighteenth and twentieth plenary meetings respectively. The reservation of Turkey was also withdrawn (E/CONF.2/76).

There therefore remained at the end of the Conference reservations by Argentina, Chile and Iraq.

¹ The Committee approved paragraph 20 of the Report with the substitution of the following for the second sentence:

"The sense of the Sub-Committee was against this proposal."
SUB-COMMITTEE D OF THE SECOND COMMITTEE ON FOOTNOTE TO CHAPTER III OF THE GENEVA DRAFT ON RECONSTRUCTION

The following is the Report 1 of Sub-Committee D on the footnote to Chapter III of the Geneva draft on “Reconstruction” considered at the twentieth and twenty-second meetings of Committee II and approved without modification and with endorsement of the recommendation that reconstruction and development should be treated on equal terms.

1. At the sixteenth meeting of Committee II the Chairman appointed a Sub-Committee composed of representatives of Australia, El Salvador, France, Mexico, Poland and the United Kingdom with terms of reference as follows:

“To examine and submit recommendations concerning the footnote to Chapter III on “reconstruction” appearing at the bottom of page 12 of the Draft Charter”.

2. The Sub-Committee held three meetings on 3, 13 and 28 January 1948. Mr. C. NOVOA (Mexico) was appointed Chairman.

3. While the Sub-Committee agreed that there was a difference between reconstruction and development, they also agreed that for the purpose of the provisions of Chapter III reconstruction and development should be treated on equal terms. It was accordingly agreed to recommend the following changes in Article 8 and in paragraphs 2 and 3 of Article 10 of the Geneva draft as amended by the Sub-Committees concerned. In the text below the words in italics are those recommended by the Sub-Committee:

Article 8.

“The Members recognize that . . . . and that the industrial and general economic development of all countries, and particularly of those in which resources are as yet relatively undeveloped, together with the reconstruction of those countries whose economies have been devastated by war, will improve opportunities . . . .”

Article 10, paragraph 2.

“With a view to facilitating and promoting industrial and general economic development and consequently higher standards of living, especially of those countries which are

1 E/CONF.2/C.2/35.
still relatively undeveloped, together with the reconstruction of those countries whose economies have been devastated by war, and subject to any arrangements . . . . 

*Article 10, paragraph 3.*

"With a view to facilitating and promoting industrial and general economic development especially of those countries which are still relatively undeveloped, together with the reconstruction of those countries whose economies have been devastated by war, the Organization shall . . . ."

With respect to other parts of Chapter III it was agreed to recommend that the Central Drafting Committee be asked to include at the appropriate places such references to reconstruction as will result in the treatment of reconstruction and development on equal terms.

*Note:* The Central Drafting Committee made recommendations for the inclusion of appropriate references to reconstruction in Chapter III and these were incorporated in the Havana Charter.
III. REPORTS RELATING TO THE THIRD COMMITTEE

COMMERCIAL POLICY

This section contains the following documents relating to the work of the Third Committee:

(i) Report of the Third Committee.
(ii) Report of the Joint Sub-Committee of the Second and Third Committees on Articles 16 and 42 [16, 42, 43 and 44].
(iii) Report of Sub-Committee A on Articles 16, 17, 18 and 19.
(iv) Report of Sub-Committee B on proposed new Article 18 A.
(v) Report of Sub-Committee C on Articles 32-39 [33-39].
(vi) Report of Sub-Committee D on Articles 40, 41, and 43 [40, 41 and 45].
(vii) Report of Sub-Committee E on Articles 20 and 22.
(viii) Report of Sub-Committee F on Articles 21, 23 and 24.
(ix) Report of Sub-Committee G on the Swiss Proposal.
(x) Report of Sub-Committee H on Articles 25-29 [25-28].
(xi) Report of Sub-Committee J on Articles 30 and 31 [29-32].

REPORT OF THE THIRD COMMITTEE: COMMERCIAL POLICY

The Third Committee was responsible for the examination of the Geneva draft text of Chapter IV and related matters.

The Honourable L. D. Wilgress (Canada) was unanimously elected Chairman, and Mr. Walter Muller (Chile) was elected Vice-Chairman, but it was learned that Mr. Muller would be unable to accept office and Mr. E. Puig Arosemena (Ecuador) was then appointed in his stead. Later Mr. E. Puig Arosemena returned to Ecuador and on 18 December Mr. Lleras Restrepo (Colombia) was elected Vice-Chairman.

The first reading of the Chapter and the preliminary discussion of the amendments proposed by delegations continued up to and including the twenty-eighth meeting on 8 January. During the

1 E/CONF.2/70.
first reading of the six sections of the Chapter, ten Sub-Committees were appointed including a Joint Sub-Committee with Committee II on Tariff Preferences.

The second reading of the Chapter and consideration of the Sub-Committee reports began at the thirtieth meeting on 31 January and were completed at the forty-seventh meeting on 17 March. All of the Sub-Committee reports were approved in full, subject to a few changes in the text of the articles as noted in this Report.

**SUMMARY OF SUB-COMMITTEE REPORTS**

*Joint Sub-Committee of the Second and Third Committees on Tariff Preferences (Articles 16 and 42 [16, 42, 43 and 44]).*

1. The Joint Sub-Committee, in its study of Articles 15, 16 and 42 [15, 16, 42, 43 and 44] and in its examination of the amendments proposed by delegations, took into account most of the problems which arise from exceptions to the most-favoured-nation clause for the establishment of tariff preferences. The detailed examination of the amendments was consigned to a Working Party which held twenty-nine meetings.

2. With regard to Article 15, a Report was submitted by the Joint Sub-Committee to the Second Committee (see Part V of the Report of that Committee on pages 32-36.

3. With respect to Articles 16 and 42 [16, 42, 43 and 44], the Sub-Committee’s Report was submitted to Committee III. The changes proposed in Article 16 were accepted without much discussion and the Committee also approved the request of the delegation of Turkey for the insertion of a paragraph providing for preferences established under Article 15 between countries belonging to the Ottoman Empire prior to 1923, and the request of Venezuela for exemption for a period of five years for special surcharges levied on products imported via certain territories.

4. Committee III adopted the recommendation that Article 42 should be devided into three Articles dealing separately with the Territorial Application of Chapter IV, Frontier Traffic, and Customs Unions and Free-Trade Areas. The first of these three Articles was amended by a Working Party prior to final approval. The recommendation of the Sub-Committee extending the third to cover free-trade areas as well as customs union’s was accepted, but the Committee decided to preface the first paragraph with a statement recognizing the desirability of increasing freedom of trade by the development of close integration between national economies through voluntary agreements.

*Sub-Committee A of the Third Committee on Tariff Negotiations, Internal Taxation and Regulation (Articles 16 to 19).*

5. In Article 16 two paragraphs were added: (1) to bring into the text of the Article, from two of the Annexes, a provision relating to the imposition of a margin of tariff preference to compensate for the elimina-

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tion of a margin of preference in an internal tax, and (2) to give recognition to the principle that tariff descriptions based on distinctive regional or geographical names should not be used in such a manner as to discriminate against products of Member countries. Committee III decided to transfer the second new paragraph to Article 35. Further, an interpretative note defining the term "margin of preference" was appended to Article 16 as had been done in the corresponding Article of the General Agreement on Tariffs and Trade. In Annex A the Sub-Committee altered the provisions for the elimination, or replacement by tariff preferences, of certain preferential quota arrangements between the United Kingdom and Canada, Australia and New Zealand on the trade in meat.

6. In Article 17, the rules for the conduct of tariff negotiations between Members were extended and clarified. Paragraph 2, relating to the failure of a Member to carry out negotiations, was revised by the Sub-Committee, and Committee III added "reconstruction" to the specified needs of Members to be taken into account along with other relevant circumstances by the Organization in judging the justification for a failure to carry out negotiations. This paragraph was further amended by the Co-ordinating Committee of the Conference in conjunction with the over-all settlement of issues on economic development which included also the decision that the Charter should not provide for the establishment of a Tariff Committee. This involved the deletion of the relevant paragraph (3 of Geneva draft). The Sub-Committee added two interpretative notes to Article 17: the first provides that an internal tax, applied to a product which is not produced domestically, shall be treated as a customs duty in certain circumstances; and the second provides that the effects of the devaluation of a Member's currency or of a rise in prices would be a matter for consideration during tariff negotiations.

7. Article 18, which deals with national treatment on internal taxation and regulations, was extensively revised and clarified, but the general principle that internal taxes and regulations should not be applied in such a manner as to afford protection to domestic production was preserved. During consideration of the Sub-Committee's Report certain delegations suggested that a special exception would be warranted for certain discriminatory internal taxes, and a Working Party was appointed to review the problem once more. The Report of the Working Party contained no definite recommendations; it was discussed at the forty-second meeting of the Committee on 8 March but it was found that there was no substantial support for any change in the text.

Sub-Committee B of the Third Committee on Discrimination in Shipping and Insurance Services (Proposed Article 18 A).

8. The Sub-Committee concluded that it was desirable to avoid an overlapping of functions and a possible conflict of activities between the International Trade Organization and the Inter-Governmental Maritime Consultative Organization and that therefore questions of shipping should not be dealt with in the Havana Charter. Accordingly, the Sub-Committee recommended that Article 18 A should not be adopted and that Committee IV be asked to amend Article 50 to take into

account the considerations mentioned above. The Committee decided to recommend to Committee IV that a satisfactory solution be sought for the relation of shipping services to Chapter V in order to avoid conflict with the IMCO. Committee IV inserted an interpretative note to Article 50 [53] stipulating that the provisions of that Article would not apply to matters relating to shipping services which are subject to the Charter of the IMCO. In the light of the action taken by Committee IV, Committee III decided at the forty-sixth meeting to adopt the first of the Sub-Committee’s recommendations, rejecting Article 18 A.

Sub-Committee C of the Third Committee on General Commercial Provisions (Articles 32 to 39 [33 to 39]).

9. The amendments introduced by the Sub-Committee include:

(i) In Article 33 [34], the insertion of a statement recognizing that dumping is to be condemned if it causes or threatens material injury to an established industry in a Member country or materially retards the establishment of a domestic industry;

(ii) The insertion of an additional interpretative note on paragraph 3 of Article 34 [35] allowing Members to continue in certain circumstances existing systems of applying ad valorem rates of duty on the basis of fixed values;

(iii) The addition of a new paragraph to Article 35 [36] giving recognition to the principle that tariff descriptions based on distinctive regional or geographical names should not be used in such a manner as to discriminate against products of Member countries; and

(iv) The deletion of Article 39 on Boycotts.

10. In the course of discussion in second reading, Committee III established two Working Parties, whose Reports were approved by Committee III at the thirty-first and thirty-fourth meetings; the first involved the insertion of an interpretative note on paragraph 9 [6] of Article 32 [33] and the second introduced an extension of the Note on paragraph 3 of Article 34 [35] mentioned under (ii) above. Also the Committee agreed to the deletion of a paragraph inserted by the Sub-Committee in Article 32 [33] which provided that transportation charges on traffic in transit were not to be considered as falling within the purview of that Article, and added instead an interpretative note to paragraphs 3, 4 and 5 explaining that the word “charges” in the English text is not to be deemed to include transportation charges.

11. At the thirty-sixth meeting, the Committee added a paragraph to Article 33 [34] dealing with systems for the stabilization of domestic prices which result at times in the sale of products for export at prices lower than the comparable prices charged for the like products to buyers in domestic markets. The paragraph thus added to Article 33 [34] is similar to a paragraph in the corresponding Article of the General Agreement on Tariffs and Trade.

Sub-Committee D of the Third Committee on Special Provisions (Articles 40, 41 and 43 [40, 41 and 45]).

12. Only slight changes in the texts of Articles 40 and 41 were introduced by the Sub-Committee. In Article 43 [45], two new excep-
tions to the provisions of Chapter IV were inserted, namely, for measures necessary to the enforcement of laws and regulations relating to public safety (a) (ii), and for measures taken in pursuance of inter-governmental agreements relating to the conservation of fisheries resources, etc., (a) (x).

13. During the second reading by Committee III, two Working Parties were established; their Reports were approved at the thirty-fourth and thirty-fifth meetings. The former introduced an amendment of the interpretative note to Article 40, dealing with the non-discriminatory aspect of emergency action on imports of particular products, while the latter provided that situations developing from the fulfilment by a Member of its obligations under Article 3 or 9 might constitute an "unforeseen development" for the purpose of Article 40.

14. The Committee also considered and approved the proposal of the representatives of Argentina, Ecuador, Guatemala and Uruguay to add an interpretative note to Article 41 on the obligations of Members to supply information on regulations for the protection of human, animal or plant life or health.

Sub-Committee E of the Third Committee on Quantitative Restrictions (Articles 20 and 22).

15. The Sub-Committee established nine Working Parties to consider in detail the proposals contained in the Annotated Agenda. In its Report to Committee III, the Sub-Committee recommended a few changes in the text of the Articles and the addition of several interpretative notes explaining and clarifying certain passages of the text.

16. In Article 20, the Sub-Committee inserted two sub-paragraphs. The first (paragraph (3) (a)) provides that import restrictions on agricultural or fisheries products, applied in connection with the enforcement of governmental measures of control on domestic production or marketing, shall be applied only so long as those measures are in force and shall not operate in such a way as to prevent imports in quantities sufficient to satisfy demand for current consumption during times of the year when domestic supplies are not available. The second (paragraph (3) (b)) requires that notice in writing of an intention to introduce import restrictions on agricultural or fisheries products shall be given to the Organization and to Members having a substantial interest in supplying the products concerned with a view to the holding of prior consultations.

17. In Article 22, a sub-paragraph was inserted providing that the Organization may release delete Members from the obligation of giving public notice of the total quantity or value of quotas when the interests of the Member concerned would be prejudiced by reason of the fact that a large part of the imports of the products affected are supplied by non-Members.

Sub-Committee F of the Third Committee on Restrictions to Safeguard Balance of Payments (Articles 21, 23 and 24).

18. The main change introduced by the Sub-Committee in Article 21 was the insertion of a paragraph stating that it is primarily the responsibility of each Member to safeguard its external financial position and to achieve and maintain stable equilibrium in its balance of payments, that the Organization should promote consultations and action

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for the purpose of correcting maladjustments in the balance of payments, and that the methods employed by Members to restore equilibrium should be those which will expand rather than contract international trade. This new paragraph and the other changes proposed by the Sub-Committee in Article 21 were adopted by Committee III.

19. The revision of Article 23 proved the most difficult part of the Sub-Committee’s work. The Working Party on this Article held meetings regularly from 17 January until 15 March and eventually agreed to recommend a substantially new text. It was evident, however, that the revised provisions governing the exceptions to the rule of non-discrimination might not meet the needs of all Members during the difficult transitional years which still lie ahead, and therefore the principles of the original Geneva draft were retained in an Annex. It has been laid down that a Member which, before 1 July 1948, provisionally accepts the principles of paragraph 1 of Article 23 of the Geneva text by its signature of the Protocol of Provisional Application to the General Agreement on Tariffs and Trade, may elect, prior to the end of 1948, to operate during the transitional period under the provisions of the Annex.

20. Article 23 itself defines the exceptions to the rule of non-discrimination permissible during the post-war transitional period. This transitional period and its application in respect of individual Members are defined by reference to the Articles of Agreement of the International Monetary Fund. The discriminatory measures, including adaptations thereof, permitted under paragraph 1 of Article 23 may be applied by a Member during the transitional period without the prior approval of the Organization. After the termination of the transitional period for a Member provision is made for limited departures from the rule of non-discrimination with the prior approval of the Organization.

21. The title of Article 24 was altered to read “Relationship with the International Monetary Fund and Exchange Arrangements”. A drafting change was made in paragraph 2 while other changes were made in paragraphs 6 and 8 (formerly 9) of the Article.

22. The Sub-Committee recommended a change in the title of Section B to read “Quantitative Restrictions and Related Exchange Matters”. This was approved by the Committee.

Sub-Committee G of the Third Committee on the Swiss Proposal (Proposed New Article in Section B).

23. The Sub-Committee based its enquiries on the assumption that the Member concerned was not eligible to impose quantitative restrictions under Article 21 but was liable to suffer damage from restrictions imposed by other Members under that Article. A variety of factors were discussed by the Sub-Committee as possibly justifying special measures and while no single factor was judged to be sufficient by itself to justify special treatment the Sub-Committee agreed that a number of factors when taken together might represent a combination of circumstances requiring special consideration.

24. The Sub-Committee found that the solution proposed by the delegation of Switzerland would constitute too great a weakening of the principles of the Charter. However, in view of the recognition of the special consideration required to be given to the case of Switzerland, the
Sub-Committee recommended that the Conference should direct the Interim Commission to invite the Swiss Government to participate in a study of the problems facing the Swiss economy with a view to submitting to the first Conference of the Organization a report as to the measures for dealing with the Swiss problem which could be taken in accordance with the procedures established in the Charter.

25. The Committee approved this recommendation.

Sub-Committee H of the Third Committee on Subsidies (Articles 25 to 28).

26. A large part of the work of the Sub-Committee was performed by a Working Party which held ten meetings. The main changes in Section C are in Articles 27 and 28. The new paragraph 5 (replacing paragraph 3 of the Geneva text) of Article 27 now permits Members, who consider their interests seriously prejudiced, to apply or maintain export subsidies on primary commodities, without prior approval by the Organization where Chapter VI procedure has failed or does not promise to succeed or where an inter-governmental agreement is not an appropriate solution. Paragraph 4 of Article 27 is a new provision prohibiting a Member from granting a new subsidy or increasing an existing subsidy, affecting the export of a primary commodity, during a Commodity Conference dealing with that commodity, unless the Organization concurs.

27. In the light of the relaxation of the provisions of Article 27, the safeguards contained in Article 28 have been strengthened. In particular, provision has been made, where consultation fails, for the Organization to make determinations as to what constitutes an equitable share of world trade in the commodity concerned for the subsidizing country. Members are required to conform to such determinations and factors are specified to which, amongst others, the Organization shall have particular regard when making determinations. Under the new text, Article 28 applies to all subsidies affecting the exports of primary commodities.

Sub-Committee J of the Third Committee on State Trading (Articles 30 and 31).

28. Articles 30 and 31 were not substantially altered by the Sub-Committee but two new Articles were introduced. Article 30A entitled “Marketing Organizations” provides that marketing boards, commissions or similar organizations established or maintained by Members shall be subject to the provisions of paragraph 1 of Article 30 with respect to their purchases and sales and shall be subject to the other relevant provisions of the Charter with respect to their regulations governing the operations of private enterprises.

29. The second new Article introduced by the Sub-Committee is entitled “Liquidation of Non-commercial Stocks”. This provides that any Member deciding to liquidate stocks of a primary commodity accumulated for non-commercial purposes shall give four months prior notice either publicly or to the Organization and shall, upon request, consult with other Members as to the best means of avoiding substantial injury to the economic interests of producers and consumers of the commodities concerned.
30. Committee III referred Article 32 to a Working Party whose Report was approved at the forty-first meeting on 23 February, involving a few modifications in the text of the Article.

REPORT OF JOINT SUB-COMMITTEE OF THE SECOND AND THIRD COMMITTEES ON ARTICLES 16 AND 42 [16, 42, 43 and 44]

1. Committees II and III at their eleventh and seventeenth meetings, respectively, appointed a Joint Sub-Committee with the following terms of reference:

"To consider and submit recommendations to both Committees regarding Articles 15, 16 (2) and (3) and 42 and the relevant proposals and amendments submitted in relation thereto with a view to finding a solution of the question of new preferential arrangements, including those for purposes of economic development and reconstruction, and of the maintenance of existing preferences as an exception from the most-favoured-nation clause."

2. The Joint Sub-Committee consisted of representatives of the following delegations: Argentina, Belgium, Brazil, Canada, Chile, El Salvador, France, Haiti, Iran, Poland, Sweden, Syria, Turkey, United Kingdom, United States and Venezuela. Mr. Stig SAHLIN (Sweden) was elected Chairman. At the eleventh meeting, Mr. Jean ROYER (France) was elected in the place of Mr. Sahlin who had returned to Sweden.

3. The Sub-Committee examined the amendments proposed to Article 15 ( Preferential Arrangements for Economic Development), Article 16 (General Most-favoured-national Treatment) and Article 42 (Territorial Application of Chapter IV [42], Frontier Traffic [43] and Customs Unions [44]) and at its tenth meeting appointed a Working Party consisting of representatives of Belgium, Chile, France, Syria, United Kingdom, United States and Venezuela. This Working Party held twenty-nine meetings, under the Chairmanship of Mr. Royer. The present Report is confined to a record of the work of the Sub-Committee on Articles 16 and 42 [16, 42, 43 and 44] and to the Sub-Committee's recommendations on these Articles.

\(^1\) E/CONF.2/C.3/64.
\(^2\) E/CONF.2/C.3/78. The report of this Sub-Committee relating to Article 15 appears with the report of the Second Committee.
Article 16 — General Most-favoured-nation Treatment.

Paragraph 1.

4. The Sub-Committee considered the proposal of the delegation of Chile to add the words "with the exception of the arrangements contemplated in Article 15" at the end of the first paragraph. The Sub-Committee decided not to accept this amendment and the delegations of Chile and Syria reserved their position pending the decision of the Contracting Parties to the General Agreement on the final text of Article I of the General Agreement.¹

Annexes relating to Paragraph 2.

5. The Sub-Committee recommended the addition of four new Annexes in order that certain preferences existing on 10 April 1947 may qualify for exception to the provisions of paragraph 1. Of these new Annexes one relates to Portuguese territories and the other three, to neighbouring countries in South and Central America. There are a few consequential amendments in other Annexes and in paragraph 2 of Article 16. Also, additions were recommended in Annexes A and B at the request of the delegations of Pakistan and France respectively.

6. In connection with Annex F (E in the Geneva draft) the delegate of Peru enquired whether it was meant to include preferences granted by Chile to Peru as well as those granted by Peru to Chile. Members of the Sub-Committee replied in the affirmative and at the request of Peru it was agreed that this interpretation of the Annexes relating to paragraph 2 (c) of Article 16 (Paragraph 2 (d) of the Geneva draft), should be included in the Sub-Committee's Report.

Paragraph 2 (c).

7. The Sub-Committee decided not to recommend the deletion of this sub-paragraph as proposed by the delegation of Peru.

8. The Sub-Committee considered the proposal of the Dominican Republic to delete this sub-paragraph or alternatively to provide that the preferences between the United States and Cuba shall not operate to the detriment of products of the Dominican Republic, which products should receive unconditionally the same advantages as like products of Cuba. Subsequently, the

¹ The reservation of Chile was withdrawn at the final Plenary Meeting of the Conference.
delegation of the Dominican Republic put forward the following alternative proposal:

"That under Article 16 of the Charter the Dominican Republic and Haiti, or one or other of them, on the one hand, and the United States of America on the other be permitted to grant reciprocal preferences similar in nature and duration to those now in force between the United States and Cuba, dealt with in paragraph 2 (c) of Article 16."

9. The delegate of the United States informed the Sub-Committee that there was no possibility of his Government accepting the conditions proposed by the Dominican Republic and therefore the Sub-Committee was unable to make any recommendation in this connection.

10. The Sub-Committee also considered the proposal of the delegation of Haiti that this sub-paragraph should be extended to include preferences between the United States and other countries in the Caribbean area. During the discussions of the Sub-Committee the delegate of Haiti stated that his delegation was prepared to support the proposal of the Dominican Republic and would be satisfied with that solution, but since the Sub-Committee decided not to recommend the amendment proposed he wished to reserve the position of his delegation on Article 16 as a whole, pending the final text of Article 15.¹

San Marino and Vatican City.

11. The Sub-Committee discussed with the delegate of Italy the latter's proposal to except the special regime existing between the Republic of Italy and the Republic of San Marino and the State of the Vatican City from the provisions of paragraph 1 of Article 16. The Sub-Committee was of the opinion that the special arrangements existing between Italy and these two territories were not contrary to the Charter and offered to record this opinion in its report to Committee III. The delegate of Italy withdrew his proposal on the understanding that this opinion would be included in the Report.

Other Proposals on Article 16.

12. The Sub-Committee examined the amendments proposed by the delegations of Ecuador, Bolivia, Lebanon and Syria, Turkey, Egypt, Afghanistan, Burma, Argentina and Czechoslovakia and

¹ When this Report was approved by Committee III, the delegate of the Dominican Republic also reserved his position, but at the final Plenary Meeting of the Conference, the reservation of Haiti was withdrawn.
whilst unable to accept them felt that their substance was covered, in whole or in part, by the revised text of Article 15 as drafted by the Working Party and as eventually recommended by the Coordinating Committee and the Heads of Delegations.

13. The Turkish delegation, however, expressed the desire to discuss their amendment again in Committee III, so as to make their attitude clear on this problem and to submit an alternative proposal.

14. The Brazilian reservation on Article 16 was provisionally maintained.

Article 42 [42, 43 and 44] — Territorial Application of Chapter IV.

Frontier Traffic — Customs Unions.

15. The text of this Article was redrafted on the basis of proposals by the French delegation, the main change being to extend to free-trade areas the provisions relating to customs unions, as requested by the delegations of Lebanon and Syria. This subject was considered to be of sufficient importance to require its separation from the other matters dealt with in Article 42, and accordingly the Sub-Committee recommended a separate Article devoted exclusively to customs unions and free-trade areas.

16. The new text thus contains three Articles: Article 42, dealing with territorial application; Article 42A [43], dealing with frontier traffic; and Article 42B [44], dealing with customs unions and free-trade areas.

Article 42 — Territorial Application.

17. The Sub-Committee recommended that paragraph 1 of Article 42 of the Geneva draft, which defines the territorial application of Chapter IV, and the first part of paragraph 4, which contains a definition of "customs territory", should comprise a separate Article and be amended as shown in the revised text. The Sub-Committee considered the question of moving the definition of "customs territory" to some other part of the Charter in view of the fact that this term appears also in Articles 68 [71], 97 [102] and 99 [104], and decided to recommend to Committee VI that it should consider whether this definition applies to other

1 When this Report was approved by Committee III, the reservation of Brazil was not maintained, but Bolivia, Ecuador and Iraq recorded reservations.
Articles of the Charter and if so whether it should be removed to a more suitable place.

18. The delegations of the United Kingdom and the United States expressed some doubt about the substitution of “substantially all” for the words “a substantial part of” in the new paragraph 2 and reserved their position pending discussion in Committee III. A Working Party was subsequently set up by the Committee which recommended returning to the words “a substantial part of”, which was approved by the Committee.


19. The proposal of the delegation of Argentina to delete the words “in order to facilitate frontier traffic” from paragraph 2 (a) of Article 42 [43] was not adopted by the Sub-Committee, which was of the opinion that provisions for arrangements to facilitate frontier traffic should be retained and should comprise a separate Article. Accordingly, the text recommended for Article 42 A [43] is reproduced without changing the words used in the Geneva draft.

20. The proposal of the delegation of Italy, requesting an exception to the most-favoured-nation clause for a special regime between Italy and the Free Territory of Trieste, was subsequently altered to refer only to advantages accorded to trade with Trieste by contiguous countries. The Sub-Committee decided it could accept the modified proposal on condition that trade advantages thus accorded were not contrary to the terms of the Italian Peace Treaty. Accordingly a new provision was inserted in Article 42 A [43], and the Sub-Committee suggested that the Central Drafting Committee should consider whether the title should be altered. The delegation of Czechoslovakia (not a member of the Sub-Committee) joined in the discussion of this item and requested that its reservation be recorded.¹

Article 42 B [44] — Customs Unions and Free Trade Areas.

21. The first paragraph of Article 42 B [44] is new. It states that the general purpose of a customs union or free-trade area should be to facilitate trade between the participating parties and not to create new obstacles to the trade of these parties with other Members of the Organization.

¹ When the Report was adopted by Committee III, this reservation was withdrawn.
22. The second paragraph, providing for the establishment of customs unions, is based upon paragraph 2 (b) of Article 42 of the Geneva draft, but there was added to it a new provision covering the establishment of free-trade areas. An amendment proposed by the United Kingdom was incorporated, and it was felt that the new text of the Article largely covered an amendment proposed by Chile.

23. The Sub-Committee could not reach a unanimous decision on the question whether the provisions of this paragraph should or should not apply to customs unions and free-trade areas of which one or more parties are not Members of the Organization. A majority favoured the insertion of the words “as between the territories of Members” in the second line of the preamble to paragraph 2 but the delegations of Argentina, Chile and Venezuela asked that their reservations be recorded, and the delegate of Syria said that he was not at that time able to give the decision of his delegation.\footnote{When the Report was adopted by Committee III, the delegation of Peru also recorded a reservation. At the final Plenary Meeting the reservation of Venezuela was withdrawn.} It was the view of the members who supported the insertion of these words, that this Article, including the new paragraph 6 mentioned below, would not prevent the formation of customs unions and free-trade areas of which one or more parties were non-Members but would give the Organization an essential degree of control. The delegate of Chile stated that this question should be settled in connection with Article 93 \[98\] and that in his opinion the recommendation of the Sub-Committee should not be deemed to prejudge the decision on Article 93 \[98\].

24. The Sub-Committee recommended that the words “average level of the duties” be replaced by “general incidence of the duties” in paragraph 2 (a) of the new Article. It was the intention of the Sub-Committee that this phrase should not require a mathematical average of customs duties but should permit greater flexibility so that the volume of trade may be taken into account.

25. The third paragraph is based on paragraph 3 of the Geneva draft. It defines the powers of the Organization in respect of interim agreements for the establishment of customs unions and free-trade areas. The Sub-Committee was unable to accept the proposal of Argentina in regard to sub-paragraph (a) of the Geneva text. The substance of a proposal by the delegation of Italy was
included in the revised sub-paragraph (a). In regard to sub-paragraphs (b) and (c) it was felt that the revised text went some way to meet the views of Argentina, Chile and Italy.

26. In paragraph 4 of the new Article the definition of a customs union, which was contained in the second sentence of paragraph 4 of the Geneva draft, was amended and a definition of a free-trade area was added. This describes a free-trade area as a group of two or more customs territories within which tariffs, etc. (except, where necessary, those permitted under Section B of Chapter IV and under Article 43 [45] are eliminated on substantially all the trade between the constituent territories in products originating in such territories.¹

27. A fifth paragraph was added to cover the problems which would arise in cases where there were preferential rates of duty in force between a country entering a customs union or a free-trade area and a country remaining outside. And a sixth paragraph was added to provide that the Organization may, by a two-thirds vote, approve proposals which do not fully comply with the requirements of the Article provided that they lead to the establishment of a customs union or a free-trade area in the sense of the Article. It was the understanding of the Sub-Committee that this new paragraph 6 will enable the Organization to approve the establishment of customs unions and free-trade areas which include non-Members.

28. The proposal by Iraq to add a new paragraph regarding economic relations between members of the Arab League was not accepted; it was felt that the revised texts of Articles 15 and 42 [44] covered the point raised by the amendment. These texts are also thought to cover to a large extent a proposal by Argentina.

REPORT OF SUB-COMMITTEE A OF THE THIRD COMMITTEE ON ARTICLES 16, 17, 18 AND 19²

1. Sub-Committee A was appointed at the ninth meeting of the Third Committee, 12 December, to examine the proposals and amendments relating to Articles 16 and 17 (other than those relating to paragraphs 2 and 3 [4] of Article 16 which were referred

¹ When the Report was adopted by Committee III, Australia and New Zealand reserved their positions on paragraphs 4 and 5.
to the Joint Sub-Committee of the Second and Third Committees) with a view to reaching agreement on a text to be recommended to the Third Committee. At the thirteenth meeting of the Third Committee, 17 December, it was also agreed to refer the amendments on Articles 18 and 19 to Sub-Committee A.

2. The Sub-Committee consisted of representative of the following delegations: Australia, Brazil, China, Colombia, Cuba, Denmark, France, Mexico, Netherlands, New Zealand, Peru, Turkey, United Kingdom, United States and Uruguay. The delegate of Norway replaced the delegate of Denmark when Articles 18 and 19 were under discussion. The Sub-Committee had the benefit of consultation with representatives of the following delegations, not members of the Sub-Committee: Argentina, Ceylon, Chile, Czechoslovakia, Ecuador, Ireland, the Philippines, Sweden, Syria and Venezuela, and with a representative of the International Monetary Fund. A considerable number of observers regularly attended the Sub-Committee meetings.

3. Dr. G. A. Lamsvelt (Netherlands) was elected Chairman. The Sub-Committee held thirty eight meetings. Four Working Parties were established which drafted revised texts of the note to Annex A of Article 16 and of Articles 17, 18 and 19, respectively, and a drafting group was named which produced the new paragraph 4 [5] of Article 16.

Article 16. — General Most-Favoured-Nation Treatment.

Annexes A and D and Paragraph 4 [5].

4. The note to Annex A was redrafted with respect to the imposition of a margin of tariff preference to replace the preferential quantitative arrangements described therein, and the reference to the imposition of a margin of tariff preference to replace a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories listed was deleted, as well as the entire note to Annex D. In lieu of the provisions deleted, a new paragraph 4 [5] was added to Article 16 which also provides that any such margin of tariff preference shall be subject to the provisions of Article 17.

5. The Danish proposals to amend the note to Annex A with respect to the imposition of a margin of tariff preference to replace the existing quantitative arrangements, and the Cuban proposal to amend the notes to Annexes A and D with respect to a margin of tariff preference to replace a margin of preference in an internal
tax, were met by these changes. The Cuban delegation accordingly withdrew its reservation recorded in the Geneva draft.

6. As a consequential change, the Sub-Committee recommends amending paragraph 5 (b) of Article 23 by changing the words "subject to the conditions set forth therein" to read "pending the outcome of the negotiations referred to therein".

7. The Brazilian delegation maintained provisionally its reservation on sub-paragraph 5 (b) of Article 23 which appears in the Geneva draft both in connection with Article 23 and with Annex A. The Peruvian delegation reserved its position on Article 16, paragraphs 2, 3 [4] and 4 [5] of Article 16 and on the interpretative note to Article 16, pending final settlement of Article 15. The Uruguayan delegation reserved its position on Annex A pertaining to Article 16 and on sub-paragraph 5 (b) of Article 23.¹

Annex D and Sub-paragraph 2 (c) bis [2 (d)].

8. On the suggestion of the delegate of the Philippines, it was agreed to delete from Annex D the reference to the Republic of the Philippines and to insert in paragraph 2 a new sub-paragraph referring to the preferential arrangements in force between the United States of America and the Republic of the Philippines.

Proposed New Paragraph.

9. The Cuban proposal to add to paragraph 1 of Article 16 a provision to the effect that tariff descriptions based on distinctive regional or geographical names should not be used in such a manner as to discriminate against products of Member countries was referred to Sub-Committee C by the Third Committee. Sub-Committee C recommended the inclusion in Article 35 [36] of a new paragraph along these lines unless its substance were added to Article 16. Sub-Committee A considered both Sub-Committee C’s recommendation and the suggestion of the Chairman of the Third Committee, i.e., that an even broader provision be included in Article 16, but decided not to recommend any such addition on the grounds that it might have the effect of limiting the scope of the most-favoured-nation clause. The Third Committee subsequently requested Sub-Committee A to incorporate the pro-

¹ When the Report was adopted by Committee III, the reservation of Brazil and Peru were not maintained, but that of Uruguay was maintained in respect of Annex A.
vision recommended by Sub-Committee C in Article 16, and a new paragraph was accordingly added.¹

Interpretative Note.

10. The Sub-Committee recommended as an interpretative note to Article 16 the note to paragraph 3 of Article I of the General Agreement on Tariffs and Trade which includes the interpretative note to Article 16 appearing in the Geneva draft.

Article 17. — Reduction of Tariffs and Elimination of Preferences.

Paragraph 1.

11. Most of the amendments proposed to paragraph 1 of the Geneva draft, whether relating to the principles laid down in the first sentence or to the rules for negotiations, were either met by, or withdrawn in view of the revised text which specified in greater detail the rules for negotiations, without altering the principles. In addition to the amendments referred to the Sub-Committee, suggestions submitted by Australia, Colombia, France, Mexico, the United Kingdom and the United States were taken into consideration in revising the text.

12. The Argentine, Mexican and Uruguayan proposals relating to the initiation of and the participants in negotiations were substantially covered by redrafting the first part of paragraph 1. The Argentine amendment to the effect that negotiations should be directed to the “progressive” rather than “substantial” reduction of tariffs received no support, and the Mexican amendment also relating to the purpose of negotiations, was withdrawn in view of the incorporation of more detailed rules for negotiations.

13. The proposal by the delegation of the Philippines to modify the phrase “elimination of preferences” by the word “gradual” was withdrawn in view of the provisions of new paragraph 2 (a).

Paragraph 2 (formerly included in paragraph 1).

14. The Mexican proposals to insert additional rules for negotiations were met to a considerable extent by the revised text, particularly new paragraphs 2 (a) and (b). The Mexican delegate accepted the revised text and did not press those amendments which were not specifically adopted.

¹ Subsequently Committee III transferred this new paragraph to Article 36.
15. The Peruvian and Colombian amendments relating to the effects of currency devaluation on tariffs were withdrawn because:

(a) prior to negotiations, a Member would be free to increase the specific duty on any unbound item since Article 17 does not provide for a general binding of all items;

(b) subsequent to negotiations, should a Member’s currency be devalued consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per cent, the General Agreement (Article II, 6 (a)) permits the readjustment of specific duties to take account of such devaluation, subject to certain safeguards;

(c) an interpretative note was recommended to sub-paragraph 2 (d) (1 (b) of the Geneva Draft), stating that the effects of currency devaluation would be a matter for consideration during negotiations.

16. The Sub-Committee considered, and the Turkish delegate agreed, that this interpretation would also cover the Turkish delegation’s proposed amendment to Article 14.

New Sub-Paragraph 2 (a).

17. It was the Sub-Committee’s understanding that the words “undertake not to raise it (i.e., a tariff duty) above a specified higher level” merely mean that in certain cases it might be advantageous to any Member to obtain a tariff binding, even though at a higher level, and that the provisions of sub-paragraph 2 (a) are therefore not inconsistent with the aims of paragraph 1, i.e., the substantial reduction of tariffs and elimination of preferences.

18. It was considered necessary to describe the “basis” for negotiations by the word “selective” as well as by the term “product-by-product”, in order to make it clear that negotiations would not proceed on a product-by-product basis with respect to all products, but rather on the basis of lists of requests and offers of concessions on products in which there was mutual interest.

Sub-Paragraph 2 (b).

19. Former sub-paragraph 1 (c) of the Geneva draft was expanded to assure that concessions incorporated in the General Agreement on Tariffs and Trade which were previously provided for in bilateral agreements would be considered as concessions under Article 17 in the same way as concessions already granted
by original contracting parties to the General Agreement for which compensation could be asked.

New Sub-Paragraph 2 (e).

20. The Cuban amendment relating to prior international commitments as subsequently amended by the Sub-Committee was incorporated in the text as sub-paragraph 2 (e) of the Havana Charter. The interpretative note to paragraph 1 of the Geneva draft was accordingly deleted. In connection with this sub-paragraph, the Sub-Committee considered that, since all agreements concluded under this Article are to be on a reciprocal and mutually advantageous basis, the phrase “carry out negotiations” appearing in paragraph 1 of this Article does not mean that agreements must invariably result from negotiations which have been initiated.

Paragraphs 2 and 4 (in part, 1 and 2 of the Geneva draft).

21. The Ceylonese, Chilean, Colombian, Mexican and Peruvian amendments, proposing that account be taken by Members during negotiations and by the Organization in making determinations under new paragraph 4 of the needs of countries in special categories, particularly underdeveloped and ward-amaged countries, and of the revenue aspect of Members' tariffs, were met by the addition of sub-paragraph 2 (a) and (b) and by the addition of language in paragraph 4 (formerly 2) with respect to the criteria which should be taken into account by the Organization in determining whether a Member had failed to fulfil its obligations under Article 17. The Sub-Committee concluded that it would be impracticable and unwise to attempt to set out in the Charter itself detailed descriptions of all the specific criteria necessary to cover all possible future situations. Accordingly, it was agreed that the Organization should be instructed, broadly, to have regard to “all relevant circumstances”.

22. The specific language recommended by the Sub-Committee was “all relevant circumstances, including the developmental and other needs and the general fiscal structures of the Member countries concerned and the provisions of the Charter as a whole.” It was not felt necessary to refer specifically to the balance of reciprocal concessions offered by the countries concerned, and the probable effect or value of these concessions, since it was obvious that these elements would comprise the very foundation of any case before the Organization which would inevitably take them
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into account. With regard to the suggestion that language should be included recognizing the need of countries to maintain reasonable tariff protection, it was felt that (a) in general it is implicit in Article 17 that reasonable tariff protection is consistent with the principles of the Charter, and (b) the needs of underdeveloped countries in this respect are recognized in paragraph 1 of Article 13 and would be given further specific recognition by the inclusion of the reference to "developmental needs" in Article 17. This means that the Organization, in assessing the total value of the concessions which a Member may be willing to grant to another Member, shall take into account the needs resulting from the different general conditions prevailing in different Member countries with respect to their ability to maintain or develop their industries. It was understood that the term "developmental and other needs" would cover, inter alia, a Member's need for reconstruction.

23. The Chilean delegate withdrew his proposal to add "balance of payments" and "monetary reserves" as criteria to be taken into account by the Organization on the grounds that these subjects were more relevant to Articles 21, 23 and 24.

24. The amendments proposed by Haiti and El Salvador to the effect that Members should be released from the obligation to negotiate because of their economic development and revenue needs were met in part by the addition to paragraph 4 of the phrase "the general fiscal structures of the Member countries concerned".

Paragraph 3 (1 (d) of the Geneva draft).

25. The substance of the United States amendment was adopted as the first and second sentences of this paragraph. The third sentence of the paragraph was added to cover the substance of the Norwegian amendment and the interpretative note to Article 17 of the Geneva text relating to existing bilateral agreements. The Interpretative Note shown in the Geneva text was accordingly deleted, and the Cuban delegation withdrew its reservation.

26. As regards any difficulties which might arise from a possible conflict between the provisions of the Charter and the general provisions of the General Agreement on Tariffs and Trade, the Subcommittee was of the opinion that the best method of eliminating such difficulties would be for the Governments which signed the Final Act adopted at the conclusion of the Second Session of the
Preparatory Committee of the United Nations Conference on Trade and Employment to hold a meeting before the signing of the Final Act of the Havana Conference in order to agree with respect to the supersession of the general provisions of the General Agreement by the corresponding provisions of the Charter. Members of the Conference would then be in a position to know the provisions of the final text of the General Agreement on Tariffs and Trade, referred to in paragraph 3, prior to signing the Final Act in Havana. The desirability of amending the unanimity requirement with respect to agreement on the terms of accession to the General Agreement might also be considered at such a meeting.

27. The Mexican delegate did not press his amendment relating to the revision of negotiated agreements in view of the revised text of paragraph 3 (1 (d) of the Geneva draft) and the Sub-Committee’s opinion expressed above.

Paragraphs 4 and 5 (2 and 3 of the Geneva draft).

28. There was no substantial support in the Sub-Committee for the Peruvian proposal that the Tariff Committee should be only an investigatory and recommendatory body and that the Executive Board rather than the Tariff Committee should have the power to make determinations under paragraph 4. No agreement was reached as to whether the decisions of the Tariff Committee should be final or whether an appeal from its decisions should be provided for, although there was considerable support for providing some appeal procedure. At the time the present Report was submitted the Uruguayan proposal to delete paragraph 2 of the Geneva text was still pending. The Sub-Committee had made no change in paragraph 5 (paragraph 3 of the Geneva text) and the Uruguayan and Peruvian proposals to delete this paragraph were being held in abeyance. The Sub-Committee indicated that it might wish to make further recommendations to the Third Committee when the Report of the Tripartite Working Party of Sub-Committee A of the Third Committee, Sub-Committee D of the Sixth Committee and the Joint Sub-Committee of the Second and Third Committees, which was considering matters relating both to the Tariff Committee and the proposed Economic Development Committee, was available.

29. The Cuban delegation proposed inserting in the thirteenth line of new paragraph 4 of Article 17 the words “and/or the provisions of the General Agreement on Tariffs and Trade”. This
amendment would enable the Organization to waive the require-
ments of Article II of the G.A.T.T., as well as of Article 16 of the
Charter, in order to authorize contracting parties to withhold
benefits embodied in the G.A.T.T. from another contracting party
with whom they had not completed negotiations, if it were deter-
mined that the latter contracting party had failed to fulfil its obliga-
tions under paragraph 1 of Article 17. The Cuban proposal,
although originally referred to the Joint Working Party of Sub-
Committee A of Committee III and Sub-Committee D of Com-
mittee VI, was being studied by the Tripartite Working Party
referred to above. The Cuban delegation reserved its position on
paragraph 4 of Article 17 pending the outcome of the considera-
tion of this amendment, and the final decision which the Contracting
Parties would take in respect of the amendment to Article II of the
delegate stated, on instructions from his delegation, that this was
a reservation on the whole position of the Cuban delegation with
regard to the acceptance of the Charter by its Government.\footnote{See note to paragraph 35 below.}

30. The Mexican and Peruvian delegations each reserved
 provisionally its position on paragraph 5 of Article 17.\footnote{See note to paragraph 35 below.}

\textit{General.}

31. The Sub-Committee considered in principle, at the request
of Sub-Committee H of the Third Committee, paragraph 1 of
Article 27 as proposed by Brazil as follows:

"1. No Member shall grant, directly or indirectly, any
subsidy on the domestic production of any commodity, in
respect of which the tariff has been reduced or bound by nego-
tiation pursuant to Article 17."

32. A majority of the Sub-Committee considered that, in view
of the provisions of Section C of Chapter IV, it was not necessary
to write into the Charter the proposed Brazilian amendment, either
in its original form or as revised during the Sub-Committee's
discussion, whereas a minority of the Sub-Committee supported
the principle contained in the Brazilian amendment. Sub-Com-
mittee H was advised accordingly.

33. The Brazilian delegation reserved its position on Article 17
pending the report of the Joint Sub-Committee of the Second and Third Committees.¹

34. The delegate of Venezuela withdrew his amendment which would have permitted the adjustment of customs duties to compensate for the elimination of an internal tax, in view of the addition to Article 18 of new paragraph 3.

35. The Danish, Norwegian and the United Kingdom delegations each reserved provisionally its position with respect to the first interpretative note relating to the whole of Article 17.²

Article 18. — National Treatment on Internal Taxation and Regulation.

General.

36. The recommended text differs considerably in form from the Geneva text but has been changed substantially in only one respect. The second sentence of paragraph 1 of the Geneva draft provided that existing internal taxes which afford protection to directly competitive or substitutable products in cases in which there was no substantial domestic production of the like product could be maintained, subject to negotiation for their elimination or reduction in the manner provided for in Article 17. The Subcommittee recommended their outright elimination. Members would, of course, be free to convert the protective element of such taxes into customs duties. The new form of the Article makes clearer than did the Geneva text the intention that internal taxes on goods should not be used as a means of protection. The details have been relegated to interpretative notes so that it would be easier for Members to ascertain the precise scope of their obligations under the Article.

37. The Norwegian delegation withdrew its reservation on the whole of Article 18 recorded in the Geneva draft, but maintained provisionally a reservation on new paragraphs 7 and 9.³

¹ See note to paragraph 35 below.
² These reservations and that of Brazil mentioned in paragraph 33, were not maintained when the Report was adopted by Committee III. Switzerland, however, recorded a reservation on the interpretation of the term "mutually advantageous" to cover negotiations relating both to tariff and their related matters, and Mexico on paragraph 3, pending decision of the contracting parties to the General Agreement on the question of supersession. The delegation of Cuba reserved their position on paragraph 4 but this was withdrawn at the final Plenary Meeting.
³ This reservation was withdrawn when the Report was adopted by Committee III.
Paragraphs 1 (new), 2 (formerly 1) and 3 (new).

38. The Sub-Committee considered the Argentine (insofar as it related to local taxes for revenue purposes), Colombian, Irish and Uruguyan amendments to paragraph 1 of the Geneva text to have been covered insofar as feasible by the revised text and by the interpretative note to paragraph 1 relating to paragraph 3 of Article 99 [104].

39. The Sub-Committee considered that charges imposed in connection with the international transfer of payments for imports or exports, particularly the charges imposed by countries employing multiple currency practices, where such charges are imposed not inconsistently with the Articles of Agreement of the International Monetary Fund, would not be covered by Article 18. On the other hand, in the unlikely case of a multiple currency practice which takes the form of an internal tax or charge, such as an excise tax on an imported product not applied on the like domestic product, that practice would be precluded by Article 18. It may be pointed out that the possible existence of charges on the transfer of payments insofar as these are permitted by the International Monetary Fund is clearly recognized by Article 16.

40. The Sub-Committee agreed that a general tax, imposed for revenue purposes, uniformly applicable to a considerable number of products, which conformed to the requirements of the first sentence of paragraph 2 would not be considered to be inconsistent with the second sentence.

41. It was agreed further that a tax applying at a uniform rate to a considerable number of products was to be regarded as a tax of the kind referred to in the preceding paragraph and in the parenthesis in the interpretative note to Article 17, notwithstanding the fact that the legislation under which the tax was imposed also provided for other rates of tax applying to other products.

42. The delegations of Chile, Lebanon, and Syria inquired whether certain charges imposed by their countries on imported products would be considered as internal taxes under Article 18. The Sub-Committee, while not attempting to give a general definition of internal taxes, considered that the particular charges referred to are import duties and not internal taxes because according to the information supplied by the countries concerned (a) they are collected at the time of, and as a condition to, the entry of the goods into the importing country, and (b) they apply exclusively to imported products without being related in any way to similar
industry, provided that they have no harmful effect on the expansion of international trade. The Sub-Committee was of the opinion that this amendment would not be necessary because the Article as drafted would permit the use of internal regulations required to enforce standards. In accordance with this opinion the Norwegian delegation withdrew its amendment.

50. The Sub-Committee inserted the word "internal" to make it clear that the phrase "differential transportation charges" does not refer to international shipping.

51. Since paragraph 4 relates solely to the question of differential treatment between imported and domestic goods, the inclusion of the last sentence in that paragraph should not be understood to give sanction to the use of artificial measures in the form of differential transport charges designed to divert traffic from one port to another.

52. The Cuban proposal to delete the word "transportation" in the first sentence of this paragraph and to delete the second sentence received no support.

53. The Mexican delegate withdrew his amendment which he regarded as adequately covered elsewhere in the Charter.

Paragraph 5 (3 of the Geneva draft).

54. The Sub-Committee was in agreement that under the provisions of Article 18 regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against the domestic production of another product (say, domestic oleomargarine) of which there was a substantial domestic production as they are against imports (say, imported oleomargarine).

55. The Mexican proposal to delete paragraph 3 of the Geneva draft was withdrawn in view of the revised text.

56. The first proposal made by the delegation of Ceylon, not a member of the Sub-Committee, was considered to have been covered by the revised draft of this paragraph and its second proposal was withdrawn.

57. The Chilean delegation, not a member of the Sub-Committee, maintained provisionally its reservation to paragraph 3 of the Geneva draft.\(^1\)

\(^1\) This reservation was withdrawn in Committee III.
charges collected internally on like domestic products. The fact that these charges are described as internal taxes in the laws of the importing country would not in itself have the effect of giving them the status of internal taxes under the Charter.

43. The delegation of Chile, not a member of the Sub-Committee, maintained provisionally its reservation recorded in the Geneva text.\(^1\) The Sub-Committee considered that the Lebanese and Syrian amendment was covered in view of the revised text and of the Sub-Committee’s understanding set forth above. The Chinese delegation withdrew its amendment and its reservation recorded in the Geneva draft in view of the revised text.

44. The Peruvian delegate withdrew his amendment in view of the Sub-Committee’s interpretation that neither income taxes nor import duties fall within the scope of Article 18 which is concerned solely with internal taxes on goods.

45. The Costa Rican proposal was not accepted on the grounds that it was not necessary.

46. The Norwegian proposal, which would have exempted from the provisions of Article 18 domestic price stabilization arrangements involving subsidies and internal taxes on imported products for the purpose of preventing or modifying inflationary or deflationary pressures, received no substantial support, although the Sub-Committee was in sympathy with the objectives the Norwegian delegation had in mind in proposing this amendment.

47. The Brazilian delegation reserved its position on paragraphs 1, 2 and 3 of the Havana text for the time being.

48. The Cuban delegation maintained provisionally its reservation recorded in the Geneva text.\(^2\)


49. The Norwegian delegation had proposed to insert a new paragraph in Article 18 to make sure that the provisions of this Article would not apply to laws, regulations and requirements which have the purpose of standardizing domestic products in order to improve the quality or to reduce costs of production, or have the purpose of facilitating an improved organization of internal

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\(^1\) See note to paragraph 48 below
\(^2\) The Cuban reservation was withdrawn at the final Plenary Meeting while those of Chile (paragraph 43) and Brazil (paragraph 47) were not maintained in Committee III. Argentina, on the other hand, subsequently recorded a reservation on paragraph 3.
Paragraph 6 (4 of the Geneva draft).

58. The exception permitting the continuance of existing mixing regulations has been redrafted as suggested by the delegation of Sweden so as to bring out more clearly that a Member would be free to alter the details of an existing regulation provided that such alterations do not result in changing the overall effect of the regulation to the detriment of imports.

59. The delegate of Ireland inquired whether the phrase “shall not be modified to the detriment of imports” would permit changes in the amounts or proportions of a product required to be mixed under an existing regulation in Ireland, which changes are the result of changes in crops from year to year. The Sub-Committee decided that since the regulation in question clearly contemplates such changes, the changes would not be precluded by paragraph 6 and the Irish delegate withdrew his amendment.

60. The Mexican and the Argentine amendments were met by the addition of the date of the signing of the Final Act of the United Nations Conference on Trade and Employment.

61. Another Argentine proposal, except insofar as it related to local taxes for revenue purposes, and the Brazilian proposal received no support.

62. The amendment submitted by the delegation of Ceylon received no substantial support and the Ceylonese delegation reserved its position on this paragraph.

63. The New Zealand delegation withdrew its reservation to paragraph 4 (b) of the Geneva draft.

64. The Brazilian delegation reserved provisionally its position on this paragraph.

Paragraph 7 (new).

65. The Norwegian delegation reserved provisionally its position on this paragraph.1

Paragraph 8 (5 of the Geneva draft).

Sub-Paragraph (a).

66. The Chinese delegation withdrew its amendment and its reservation recorded in the Geneva draft in view of the revised text of this sub-paragraph.

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1 See note to paragraph 70 below.
67. Ceylon and Mexico accepted the new text and withdrew their proposal to delete paragraph 5 of the Geneva draft.

68. The Argentine amendment received no support.

Sub-Paragraph (b).

69. This sub-paragraph was redrafted in order to make it clear that nothing in Article 18 could be construed to sanction the exemption of domestic products from internal taxes imposed on like imported products or the remission of such taxes. At the same time the Sub-Committee recorded its view that nothing in this sub-paragraph or elsewhere in Article 18 would override the provisions of Section C of Chapter IV.

Paragraph 9 (new).

70. The Sub-Committee was in agreement that the addition to this paragraph proposed by Australia was unnecessary because the words “to the fullest practicable extent” in the recommended text had the same intent as the words “having due regard for the legitimate purposes of a particular price control measure and the legitimate interests of the prejudicially affected Member or Members” which Australia proposed adding at the end of the paragraph. The Australian delegate accepted this view.

71. The Norwegian and United Kingdom delegations each reserved provisionally its position on this paragraph.¹

Recommended Consequential Changes.

72. If the proposed new paragraph 7 of Article 18 were adopted, paragraph 5 of Article 22 would have to be amended by the deletion of the words “and to any internal regulation or requirements under paragraph 2 of Article 18”.

73. The Sub-Committee recommended that paragraph 2 of Article 30 [29] be amended, (a) to bring it in line with the wording of paragraph 8 (a) of Article 18 so as to avoid difficulties of interpretation, and (b) to extend the “fair and equitable treatment” rule established in paragraph 2 of Article 30 [29] with respect to imports for governmental purposes excepted from the provisions of paragraph 1 of Article 30 [29] to the laws, regulations and requirements relating to procurement for governmental purposes referred to in paragraph 8 (a) of Article 18.

¹ These reservations, and that of Norway mentioned in paragraph 65, were withdrawn in Committee III.
74. The delegate of Ecuador stated that imports into Ecuador of tobacco and spirits by the state monopolies are subject to import duty and, in addition, to an internal tax levied at the time of sale which does not apply to the domestic products. He inquired whether the maintenance of this tax would be contrary to the provisions of Article 18. It was the view of the Sub-Committee that if the tax were treated as a negotiable monopoly margin, under Article 31 (i.e. an "import duty" in the sense of paragraphs 2, 3 and 4 of Article 31), it would not fall within the scope of Article 18. The Sub-Committee considered that this would be accomplished by notifying the Organization that the charge concerned is a monopoly margin (or "import duty" in the sense of Article 31) which is subject to the provisions of Article 31. It might also be desirable to change the legal designation of the charge so as to refer to it as a monopoly margin rather than an internal tax.

75. In connection with the opinion expressed above, the Sub-Committee recommended the following interpretative note to Article 31:

"The term 'maximum import duty' would cover the monopoly margin which has been negotiated or which has been published or notified to the Organization, whether or not collected at the customs as an ordinary customs duty."

76. The delegation of Ecuador reserved its position on Article 18 pending the Third Committee’s consideration of this recommendation.1


77. The Sub-Committee recommended the omission of sub-paragraph 4 (a) of the Geneva draft of Article 18, which specifically excepted any internal quantitative regulation relating to cinematograph films and meeting the requirements of Article 19 from the provisions of paragraph 3 [5] of Article 18, and the introduction at the beginning of Article 19 of the words "The provisions of Article 18 shall not prevent any Member from establishing or maintaining internal quantitative regulations...." so that all special provisions relating to cinematograph films will be contained in Article 19. No substantive change was made in this Article.

78. The delegate of Czechoslovakia reaffirmed the views expressed by the head of his delegation in Committee III to the

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1 This reservation was withdrawn in Committee III, but the delegation of Switzerland reserved its position on the whole of Article 18.
effect that cinematograph films should be explicitly excluded from the competence of the ITO on the grounds that films, being works of art, are not just simple commercial commodities or industrial products. However, if the majority of the Conference favoured the retention of Article 19 his delegation would no longer press its objections.

79. The delegate of Norway fundamentally agreed with the view expressed by the Czechoslovakian delegation. However, as this view had not been sufficiently supported, he did not reserve his position.

80. The Argentine delegate withdrew his amendment in view of the Sub-Committee’s interpretation that the date fixed in sub-paragraph (c) clearly relates only to discriminatory measures as between foreign films, not as between domestic and foreign films.

REPORT OF SUB-COMMITTEE B OF THE THIRD COMMITTEE ON PROPOSED NEW ARTICLE 18A

1. Sub-Committee B was established at the eleventh meeting of the Third Committee, held on 16 December 1947, for the purpose of studying, and making recommendations regarding the Norwegian proposal for a new Article 18A as follows:

"The products of any Member country exported to any other Member country shall not be subject to any measure imposed by either the exporting or the importing country requiring such exports to be financed, shipped or insured by enterprises of any prescribed nationality."

2. Delegates of Argentina, France, Greece, India, Norway, the Union of South Africa, United Kingdom and Venezuela were appointed members of the Sub-Committee.

3. At the first meeting Dr. J. E. Holloway (Union of South Africa) was unanimously elected Chairman of the Sub-Committee which held five meetings.

4. The Sub-Committee discussed fully and in great detail the Norwegian proposal as well as an alternative proposal submitted by the United Kingdom delegation.

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1 E/CONF.2/C.3/76.
5. It also had the benefit of hearing the views of representatives of Australia, Brazil, Ireland, New Zealand, Sweden and Switzerland.

6. Before the deliberations of the Sub-Committee were concluded, the International Maritime Conference met in Geneva and decided upon the establishment of the Inter-Governmental Maritime Organization the functions of which cover the purpose of the proposed Article 18A as well as of Chapter V insofar as it relates to shipping.

7. In view of this the Sub-Committee arrived at the opinion that in order to avoid an overlapping of functions and a possible conflict of activities between the two organizations it would be advisable not to deal with questions of shipping in the Havana Charter.

8. Accordingly, the Sub-Committee agreed to recommend to Committee III:

(a) that Article 18A should not be inserted in the Havana Charter, the countries having made and supported the proposal not insisting upon its insertion, and
(b) to recommend to Committee IV that shipping be excluded from the provisions of Chapter V by adding to Article 50 [53] a new paragraph as follows:

"5. The provisions of this Chapter shall not apply to shipping."

9. The representative of Venezuela reserved the position of his delegation on the decision of the Sub-Committee.¹


1. In its fifteenth meeting, Committee III appointed Sub-Committee C to deal with Section E of Chapter IV of the Geneva draft.

2. The following terms of reference were given to the Sub-Committee by Committee III:

(a) To consider all proposed amendments to Section E of Chapter IV as contained in document E/CONF.2/C.3/10 together with suggestions made during the discussions of Committee III and

¹ This reservation was not maintained in Committee III.
any other amendments that may be presented during the work of the Sub-Committee; and

(b) to recommend texts of Articles 32-39 which would reconcile the various points of view expressed.

3. The representatives of the following countries were elected members of the Sub-Committee: Afghanistan, Argentina, Australia, Canada, Cuba, France, Lebanon, Mexico, Netherlands, Norway, Pakistan, Portugal, United Kingdom, United States and Uruguay. After the first two meetings the representative of Norway renounced his membership on the Sub-Committee and the representative of the Union of South Africa was elected. The Sub-Committee unanimously elected at its first meeting Mr. C. E. Morton (Australia) as its Chairman.

4. A number of representatives of delegations who were not members of the Sub-Committee attended as observers and in many cases took part in the discussions on particular amendments for which they were primarily responsible or in which they had special interest. A representative of the International Monetary Fund and a representative of the Statistical Office of the United Nations also participated in the work of the Sub-Committee. The Sub-Committee held nineteen meetings.

5. The Sub-Committee appointed the following Working Parties to deal with special points which emerged during the discussions:

Working Party I — composed of the representatives of Australia, Brazil, Cuba, Lebanon, Netherlands, United Kingdom and United States, to consider Article 33 [34].

Working Party II — composed of the representatives of France, United Kingdom, United States and Uruguay, to consider paragraph 3 of Article 34 [35].

Working Party III — composed of the representatives of Australia, Haiti, Lebanon, Peru, United Kingdom and the United States, to consider paragraph 1 of Article 35 [36].

Working Party IV — composed of the representatives of Afghanistan, Australia, France, Lebanon, Pakistan, United Kingdom and the United States to consider an amendment calling for studies directed towards improvement of transport facilities for traffic in transit.

Working Party V — composed of the representatives of Australia, Cuba, France, United Kingdom and the United States to consider an amendment concerning the usage of regional and geographical names for purposes of tariff classification.

Working Party VI — composed of the representatives of Australia, Norway, United Kingdom, United States and of the Statistical Office of the United Nations, to consider a redraft of Article 38 [39].
These Working Parties, together with several Drafting Groups which were concerned with the improvement of the text of several Articles, greatly facilitated the work of the Sub-Committee; their comprehensive reports proved an excellent help towards speeding up the progress of the discussions.

6. The Sub-Committee was aware of the decision of the General Committee of the Conference to eliminate whenever possible the interpretative notes appended to the Geneva draft. The Sub-Committee could not fail to recognize, however, the special character of the articles of Section E of Chapter IV in regard to which many specific provisions of an administrative and/or procedural nature, rather than principles of commercial policy, required recognition. It was therefore considered desirable to retain certain interpretative notes as such in a number of cases where the content of the note could not readily be incorporated in the text of the article without rendering the text unduly cumbersome. As a result of discussions and recommendations of Working Parties certain additional notes were presented for acceptance by Committee III, although certain Notes appearing to the Geneva text were deleted. The Sub-Committee did not consider the question of the manner in which the interpretative notes should be appended to the Charter.

Article 32 [33]. — Freedom of Transit.

7. The delegate of Chile withdrew its reservation to this Article as recorded in the Geneva Report.

8. The proposal of Argentina that the phrase “and also vessels and other means of transport” be deleted from lines 1 and 2 of paragraph 1 found no support in the Sub-Committee.¹

9. To meet the proposal of Afghanistan a note to paragraph 1 was appended in order to clarify the “in transit” status of goods which were assembled, or disassembled, or reassembled in the transit country solely for convenience of transport.

10. At the suggestion of the representative of Chile (not a member of the Sub-Committee) the Sub-Committee agreed to state in its report that a movement between two points in the same country passing through another country was clearly “in transit” through the other country within the meaning of paragraph 1.

¹ When the Report was adopted by Committee III, the delegation of Argentina reserved its position on paragraph 1.
11. The proposal of the representative of Argentina to delete paragraph 2 received no support in the Sub-Committee.

12. The proposal of the representative of Chile that a note be appended to paragraph 2 to the effect that this Article does not preclude agreements between neighbouring countries for the regulation of transit in respect of their own trade was not approved because such agreement are clearly permissible under the terms of the Article if they do not prejudice the interests of other Members in violation of the most-favoured-nation provisions of the Charter, and if they do not limit freedom of transit for other Members. The representative of Chile reserved his position.

13. At the suggestion of the representative of the Netherlands and on the recommendation of a Working Party, the Sub-Committee approved the deletion of the Note appended to paragraph 5 of the Geneva draft. It was agreed that a new paragraph should be added to the Article stating that transportation charges on traffic in transit did not come within the purview of Article 32 [33], but were subject to the provisions of paragraph 2 of Article 18 of the Geneva Draft. This would require the deletion of the words “for transportation or those” from the third line from the end of paragraph 3 of Article 32 [33]. Any subsequent amendment of substance in Article 18 might necessitate a revision of the text of this paragraph.

14. The proposal of the representative of France to delete the provision in paragraph 6 [7] that requirements of “direct consignment” should be limited to those existing on the day of signature of the Charter and requisite to eligibility for entry at preferential rates of duty, or related to the Member’s system of valuation for duty purposes did not receive any support in the Sub-Committee. A further proposal of the representative of France for the continuance of a Member’s requirement of “direct consignment” for exemption from surtaxes likewise received no support.

15. The proposal of Afghanistan (originally made with reference to Article 35 [36]) was regarded as appropriate for adoption with some modification, but was considered to be more pertinent to Article 32 [33]. On the recommendation of a Working Party the Sub-Committee approved the inclusion in Article 32 [33] of a new paragraph which specifically authorizes the Organization to make studies and recommendations and promote international

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1 See note to paragraph 18 below.
agreement concerning measures designed to further the broad objectives of the freedom-of-transit provisions of the Charter, and under which Members agree to co-operate with each other directly and through the Organization to this end.

16. Although there was no doubt that the general functions of the Organization as set forth in Article 69 [72] are sufficiently broad to authorize the action contemplated by the new paragraph, the Sub-Committee felt, in view of the great importance of this matter to many countries, particularly to those countries which have no access to the sea, that it was desirable to make specific provision for the matter, as had been done with regard to other matters of outstanding importance in other articles of the Charter.

17. While the implementation of the provisions of this paragraph must be left to the Organization and to the Members directly concerned, it is the Sub-Committee’s understanding that these provisions would afford a specific basis for studies and recommendations by the Organization, and for one Member to seek the cooperation of another, concerning measures to facilitate “traffic in transit” generally, and with regard to special arrangements for transit to and from countries which do not have access to the sea. The Sub-Committee believes that, in the case of such countries, special arrangements regarding transport, loading and unloading, storage and warehousing et cetera may be necessary to enable such countries fully to participate in and promote the expansion of international trade envisaged by the Charter.

18. The representative of Chile reserved his position with regard to the text of the new paragraph 6.1

Article 33 [34]. — Anti-dumping and Countervailing Duties.

19. This Article and the proposals to amend its content developed considerable discussion in the Sub-Committee as a result of a wide divergency of views amongst Members as to the requisite means to afford protection against dumping.

20. At one end of the range of views certain countries believed that the primary object of the Article should be to restrict abuses and evasion of commitments by Members under the guise of measures against dumping or subsidization. At the opposite end, other countries proposed that the Article should be expanded to include a condemnation of dumping and to cover forms of dumping other

1 This reservation was maintained by the Chilean delegation in Committee III, but that recorded in paragraph 12 above was withdrawn.
than the injurious sale of merchandise for export at less than its
normal value; it was sought to include in the Charter an express
authorization for any Member to combat all forms of dumping and
subsidization by any measures the Member should see fit to adopt.

21. The various proposals were thoroughly discussed and
statements by representatives of countries not members of the Sub-
Committee were taken into account. All proposals and suggestions
were referred to a Working Party whose first report led to further
discussion in the Sub-Committee with a view to arriving at a
compromise. The matter was then referred to an enlarged
Working Party for further consideration.

22. The Working Party finally produced a compromise text
which was approved by all Members of the Sub-Committee except
the representative of Argentina who reserved his position. The
representative of Czechoslovakia, whose delegation was not repre­
sented on the Sub-Committee, indicated that he was not fully
satisfied with the compromise achieved. It was, however, the
general view of the Sub-Committee that the point of chief concern
to Czechoslovakia and some other countries (i. e. adequate means for
dealing with abuses by a Member unnecessarily levying anti-
dumping or countervailing duties) was adequately covered by the
general provisions of the Charter, particularly by Articles 41 and
89 [93].

23. The Article as agreed to by the Sub-Committee condemns
injurious "price dumping" as defined therein and does not relate
to other types of dumping.

24. The Sub-Committee desired it to be understood that,
where the word "industry" is used in the Article, it includes such
activities as agriculture, forestry, mining, etc., as well as manu­
facturing.

25. The Sub-Committee agreed to the deletion of paragraph 6
of the Geneva Draft which expressly prohibited the use of measures
other than anti-dumping or countervailing duties against dumping
or subsidization. It did so with the definite understanding that
measures other than compensatory anti-dumping or countervailing
duties may not be applied to counteract dumping or subsidization
except in so far as such other measures are permitted under other
provisions of the Charter.

26. The Interpretative Note to paragraph 1 was revised to
clarify the basis for calculating the "margin of dumping" in cases
within its purview and to conform in certain other respects to the corresponding Note in the General Agreement on Tariffs and Trade.

27. It was agreed that a new interpretative note should be appended to paragraph 2 to answer any doubt that a Member could require security for the “payment of anti-dumping or countervailing duty pending final determination of the facts in cases of suspected dumping or subsidization”.

28. The final sentence of paragraph 5 of the Geneva text (paragraph 6 of the proposed text) which contains a reference to “conditions prescribed in Article 27”, would require review should a substantial change be made at this Conference in the “conditions” laid down in paragraph 1 of Article 27 of the Geneva text in relation to systems for the stabilization of primary products.

Article 34 [35]. — Valuation for Customs Purposes

29. The Sub-Committee found very little to change in this Article. It agreed that it would not be feasible now or in the reasonably near future to fix a specific time limit for compliance with paragraph 2, and that the expression “at the earliest practicable date” sufficiently and correctly expresses the time for compliance. It was of the opinion further that the Note to paragraph 2 of the Geneva draft was unnecessary and should be omitted.

30. To meet the purpose of an amendment proposed by Argentina it was agreed that words should be inserted in paragraph 2 to make it clear that a Member need respond to a request for a review of its customs valuation procedures only if such request is made by another Member directly affected by such procedures.

31. During the discussions of the proposals of Uruguay and Chile it was revealed that in certain countries it had been the practice to apply ad valorem tariffs to established values of goods which remain fixed for various periods of time. It was agreed that, in such cases, the ad valorem rates are, in practical result, the equivalent of specific duties so long as the established values of goods are not changed. It was agreed that a note recognizing this fact should be appended to paragraph 3. However, it was agreed (the representative of Chile, non-member of the Sub-Committee reserving his position)\(^1\) that it would not, and should not be compatible with the letter or spirit of the Article to accept

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\(^1\) This reservation was withdrawn at the final Plenary Meeting.
the principle of variable schedules of “fixed values” for products subject to *ad valorem* rates of duty.

32. The Sub-Committee adopted the substance of a proposal of Uruguay and it was agreed that the first paragraph of the Note to paragraph 3 of the Geneva draft should be amended so as to provide expressly for the presumption that contract prices may represent the basis for establishing “actual values” in the case of government contracts in respect of primary products.

33. The proposal of the delegation of Argentina that paragraph 5 be deleted found no support in the Sub-Committee. The Sub-Committee agreed to accept the substance of the proposal of Uruguay, and an interpretative note was appended to paragraph 5 stating that if compliance with that paragraph would result in decreases in amounts of duty payable, the Member concerned was allowed a reasonable time to obtain adjustment of any international agreement which bound the rates of duty.

34. In order to obviate any misunderstanding of the concept of paragraph 5, sub-paragraph (d) of that paragraph in the Geneva draft was set up as a special paragraph [6].

*Article 35 [36]. — Formalities Connected with Importation and Exportation.*

35. The discussion of amendments proposed by Argentina, Turkey and Peru revealed that the intended scope of this Article was not clearly indicated in the Geneva draft. Particular difficulty was occasioned by a distinction observed in the Spanish translation of certain types of governmental charges. It was accordingly agreed that paragraph 1 should be revised and care should be taken in the translation to show definitively that this Article relates to all payments of any character required by a Member on or in connection with importation or exportation, other than import and export duties, and other than taxes within the purview of Article 18 of the Geneva draft.

36. The representative of Haiti (not member of the Sub-Committee), who appeared as an observer, stated that the resultant change in the Article did not meet the purpose of his proposal and he therefore reserved his position.

37. The representative of Chile, likewise present as an observer, also reserved his position.

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1 When the Report was adopted by Committee III, the delegation of Argentina reserved its position on paragraph 5.
38. In this connection the Sub-Committee was of the unanimous opinion that, although this Article established the principle that fees and charges of the types therein covered should not represent any taxation on imports or exports for fiscal or protective purposes, adequate provision was made in other parts of the Charter for the raising of revenue by means of duties on imports and exports or by non-discriminatory internal taxes collected on imports at the time of importation.

39. At the suggestion of the representative of Argentina it was agreed that paragraph 2 should be amended to show clearly that a Member need respond to a request to undertake the review of its laws and regulations only if such request is made by another Member directly affected.

40. The Sub-Committee adopted the substance of the proposal of the delegation of Uruguay by agreement that an express authorization should be included in paragraph 3 [4] of the Geneva draft for studies and recommendations by the Organization in relation to customs requirements in respect of advertising matter and samples for use only in taking orders for merchandise.

41. At the joint instance of the representatives of Peru (not member of the Sub-Committee) and the International Monetary Fund it was agreed that the Interpretative Note to this Article should be amended by replacing the words "with the approval of the International Monetary Fund" by the words "not inconsistently with the Articles of Agreement of the International Monetary Fund," since the express approval of the Fund was not required in all cases covered by the Note.

42. In view of the retention of this Note the representative of Brazil (not member of the Sub-Committee) withdrew his reservation concerning certain charges imposed on the international transfer of payments.

43. The proposal of Cuba to add to paragraph 1 of Article 16 of the Geneva draft a reference to tariff discriminations resulting from the use of distinctive regional or geographical names in tariff descriptions was referred by Committee III to Sub-Committee C. Although some Members of the Sub-Committee felt that this matter was appropriate for Article 16, there was a general agreement that the principle of the Cuban proposal should be expressed in some article of Chapter IV of the Charter. It was agreed that the principle should be stated provisionally in a new paragraph at the end of Article 35 [36].
44. At the request of the Chairman of Committee III the matter was accordingly referred to Committee III to be considered by that Committee in the light of any views which might be obtained later from Sub-Committee A of Committee III on the inclusion of some similar provision in Article 16. Although the new paragraph is limited to discrimination effected through the use of distinctive regional or geographical names, the Sub-Committee recognized that discrimination against the products of Member countries by tariff descriptions can occur other than by the use of distinctive regional or geographical names. It was not considered practical at this time either to list all the discriminatory practices or to formulate a general provision covering them. The matter is undoubtedly one which the Organization will study under the authority provided for elsewhere in the Charter. The Sub-Committee desired however, to make it clear that the presence in the Charter of a provision directed against the use of distinctive regional or geographical names in such a manner as to result in discrimination against the products of Member countries, is in no sense to be understood as implying that other discriminatory practices in tariff descriptions are thereby authorized.

45. The Sub-Committee agreed that the order of the paragraphs of Article 35 would be more systematic if paragraph 5 of the Geneva Draft were made paragraph 3 of the Article since it relates only to the matters covered by paragraphs 1 and 2.1

Article 36 [37].—Marks of Origin.

46. There were only two suggested amendments to this Article. The delegation of Argentina proposed that paragraph 7 be deleted, and the delegation of Chile (not member of the Sub-Committee) proposed that paragraph 7 be amended to include an express statement to the effect that consumers would not be misled as to the true origin of products bearing certain types of names if the name of the country of actual origin were to appear legibly on the label affixed to the product. Neither of these proposals received any support and the Sub-Committee accordingly recommended that the Geneva draft of Article 36 be adopted without change.

47. The representative of Argentina reserved the position of his Government.

1 In Committee III reservations were recorded by Bolivia on the whole Article, by Haiti on paragraph 1, 2 and 3, and by Chile on paragraph 1; the last named was withdrawn at the final Plenary Meeting.
48. As a result of the discussions on paragraph 7 which had taken place in the Sub-Committee and at the request of the representative of Chile, it was agreed that the text of paragraph 7 should not have the effect of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the governments concerned to proceed to a joint examination of particular cases which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used.

49. The representative of Chile maintained his reservation on this Article pending consideration by his Government as to whether the statement by the Sub-Committee appearing immediately above satisfies the Chilean position on this matter.

Article 37 [38]. — Publication and administration of Trade Regulations.

50. The proposal of Argentina to delete from paragraph 3 (c) the provision for the right of determination by the Organization as to whether or not a Member's procedures for review of administrative action comply with Charter requirements, was not supported by any other Member of the Sub-Committee.

51. The proposal of New Zealand and the United Kingdom to the effect that the reference to sub-paragraph (b) at the end of paragraph 3 (c) was erroneous and should be deleted, was adopted by the Sub-Committee. The substance of a proposal of Uruguay originally proposed to Article 34 [35] was adopted by the Sub-Committee with some expansion of its scope and a sentence was added to paragraph 3 (a) to require that suitable facilities to consult with the proper governmental authorities should be afforded to traders directly affected by any law, regulation, decision or ruling of a kind described in paragraph 1.

52. At the suggestion of the representative of the United States it was agreed that the word "published" at the end of paragraph 2 should be replaced by the expression "made public". In the opinion of the Sub-Committee this would make clearer the intention that the term "published" did not require the prior public issue

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1 In Committee III the delegation of Argentina reserved its position on paragraph 3 (c).
of an official document, but that the effect could also be accomplished by an official announcement made in the legislature of the country concerned.


53. The delegation of Norway proposed a redraft of this Article and the delegations of Australia and Czechoslovakia proposed some changes in this redraft.

54. During the course of its discussions of this Article the Sub-Committee had the opportunity of hearing from a representative of the Statistical Office of the United Nations particulars of the types of activities which were being carried out by that Office in the field of international statistics. Members of the Sub-Committee were impressed by the work being undertaken by the Statistical Office with the object of providing an international centre for statistics and avoiding duplication of demands for statistical information made on countries by various Specialized Agencies of the United Nations. They were also impressed with the need for the Organization to collaborate with the United Nations and other inter-governmental agencies, as provided in Article 84 [87], to ensure that the statistics of external trade of Members are available in a form that will enable the statistical information to fit into the general pattern of international statistics. They accordingly considered it important that contact be established as early as possible between the Organization and the United Nations (Economic and Social Council) with a view to suitable arrangements being made for co-operation in the fields related to international statistics.

55. The Sub-Committee agreed that the Organization has an obligation to satisfy itself that the statistical information it requires (other than that referred to in paragraph 1 of the Article) cannot be obtained from other inter-governmental organizations before requesting such information from Members.

56. The Sub-Committee considered the inter-relation of paragraphs 4 and 7 and agreed that paragraph 4 relates to the obligation of Members to give careful consideration to recommendations made to them by the Organization, while paragraph 7, on the other hand, provides for the Organization to co-operate in studies and make consequent recommendations to Members.

57. In view of the opinions expressed by the Sub-Committee the representative of Norway withdrew his amendment.
Article 39 (Geneva draft). — Boycotts.

50. The representative of the United States stated during the discussions that the original draft of this Article (Article 17 of the suggested Draft Charter) was designed to preclude “Buy National Goods” measures and campaigns by Members on the ground that they were detrimental to the expansion of international trade. He further stated that, since there was no agreement at London or later for any such prohibition in the Charter, and since Article 39 of the Geneva draft related only to the trade of individual countries and not to any matter likely to affect the total of external trade, this Article should be deleted in its entirety and the subject matter should be omitted from the Charter.

59. There was unanimous agreement in the Sub-Committee that the matters covered by Article 39 of the Geneva draft were not appropriate for inclusion in the Charter and that this Article should be deleted.

REPORT OF
SUB-COMMITTEE D OF THE THIRD COMMITTEE ON
ARTICLES 40, 41 AND 43 [40, 41 AND 45]¹

1. The Third Committee at its seventeenth meeting on 22 December 1947 approved the formation of a Sub-Committee on Section F—Special Provisions—of Chapter IV consisting of the representatives of Argentina, Belgium, Colombia, Denmark, France, Italy, Peru, Southern Rhodesia, United Kingdom and the United States of America.

2. The terms of reference of the Sub-Committee were to consider and make recommendations upon Articles 40 to 43 of the Geneva text and the amendments submitted to these Articles, with the exception of those amendments to Article 42 which affected the question of preferences and were referred to the Joint Sub-Committee of Committees II and III, and the Swiss proposal for a new provision, which was referred to Sub-Committee G of Committee III.

3. At its twentieth meeting on 31 December 1947, the Third Committee adopted a recommendation by the Joint Sub-Committee of Committees II and III to refer to that Sub-Committee

also those proposals relating to Article 42, which had been previ­
ously referred to Sub-Committee D.

4. The Sub-Committee held its first meeting on 29 De­
cember 1947, and unanimously elected Mr. R. J. SHACKLE (United
Kingdom) its Chairman.

5. The Sub-Committee held eight meetings. Delegates for
several countries not members of the Sub-Committee attended
its meetings. Representatives of Afghanistan, Cuba, Netherlands,
Norway and Turkey took an active part in the discussion on points
of special interest to them.

6. In the course of its work the Sub-Committee examined the
text of Articles 40, 41 and 43 [40, 41 and 45], all outstanding
amendments to these Articles as listed in the annotated agenda,
as well as amendments and observations subsequently submitted
by members and recommendations received from other committees
and sub-committees. The Sub-Committee did not examine the
text of Article 42 which it considered to be outside its terms of
reference, all amendments to that Article having been referred to
another sub-committee.

7. The Sub-Committee was able to reach unanimous agree­
ment on most points, only a small number of decisions taken being
subject to reservations by individual delegations. The majority
of such reservations were concerned with matters forming part of
larger issues or related to problems still under discussion in other
sub-committees.

Article 40. — Emergency Action on Imports of Particular Products.

8. The Sub-Committee did not consider justified a proposal to
exclude quantitative restrictions on imports of agricultural and
fisheries products from the measures provided for in this Article.
The delegation of Peru reserved its position in this matter.

9. The Sub-Committee was unanimous in its understanding
of this Article that action taken by Members under paragraphs 1
(a), 1 (b) and 3 (b)—as distinct from paragraph 3 (a)—should not
involve any discrimination against the trade of any Member.
As the Geneva text might leave room for doubts on this point, it
was felt that this intention, as interpreted by the Sub-Committee,
should be expressly stated in the Charter. The Sub-Committee
decided therefore to recommend that this interpretation be embo­
died in a footnote attached to the Article and forming part of the
Charter. The delegation of Argentina reserved its position.
10. The question was raised whether, in taking action under paragraph 1 of Article 40, Members would be limited to the reimp­position of measures which had been in effect prior to the entry into force of the Charter. It was agreed that the text as drafted does not limit the measures which Members might take. For example, it would be possible, under this paragraph, for a Member to impose a quantitative restriction on imports of a particular product, if such a restriction were in fact necessary to prevent or remedy serious injury to domestic producers in the face of increased imports, even though a quantitative restriction had not been applied prior to the adoption of the Charter. There would, however, have to be a relationship of cause and effect between (a) the increase in imports resulting in injury, and (b) the obligations assumed by Members under Chapter IV. Such a relationship might exist in the following cases, among others:

(i) The granting of a tariff concession (either the reduction of a duty or the binding of a duty against increase) might lead to injurious imports;

(ii) The elimination of a quantitative restriction existing prior to the adoption of the Charter might lead to injurious imports. This might happen even though the restriction in question had never been actually applied but had merely been provided for under the laws or regulations of a Member.

In view of the broad scope of paragraph 1, as illustrated above, the amendment proposed by the delegation of Cuba was withdrawn.

11. In sub-paragraph 1 (a) the word “relatively” was inserted between “such” and “increased” so as to make it clear that Article 40 could apply in cases where imports had increased relatively to domestic production, even though there might not have been an absolute increase in imports as compared with a previous base period.

12. The Sub-Committee was unable to accept a proposal to delete sub-paragraph 1 (b).

13. The Sub-Committee shared the doubts expressed by the delegation of Argentina as to the exact meaning of the word “critical” in paragraph 2 and recommended its substitution by the words “of special urgency” to follow after “circumstances”.

14. The delegation of Argentina recorded a reservation in respect of the words “the suspension of which the Organization does not disapprove” at the end of sub-paragraph 3 (a).¹

¹ This reservation was not maintained in Committee III.
Proposed New Article 40 A.

15. The Sub-Committee, having given full consideration to the Colombian proposal for insertion of a new Article, decided that internal price regulation and internal taxation were matters outside the scope of Section F and might properly be discussed in relation to Article 18. The proposal of the Working Party composed of the representatives of Colombia and the United States to recommend that a provision dealing with certain aspects of these matters be included in Article 18, was therefore referred to the Sub-Committee dealing with that Article.

Article 41. — Consultation.

16. It was decided to add to the measures mentioned specifically in this Article "internal price regulations" and "practices and regulations affecting the freedom of transit", the latter being subject to examination by the Central Drafting Committee.

Article 43 [45]. — General Exceptions to Chapter IV.

17. The numbering of paragraphs in this Article was changed so as to bring it into line with all other provisions of the Charter since there did not seem to be any reason for departing from the general practice followed elsewhere.

18. Upon recommendation of Sub-Committee I of Committee VI an exception was added concerning "laws and regulations relating to public safety", the latter term, in the view of the Sub-Committee, including the concept of "public order".

19. In discussing an amendment to sub-paragraph (a) (v), previously I (d), of the Geneva draft, designed to exempt measures against so-called "social dumping" from the provisions of Chapter IV, the Sub-Committee expressed the view that this objective was covered for short-term purposes by paragraph 1 of Article 40 and for long-term purposes by Article 4 [7] in combination with Articles 89 and 90 [93, 94 and 95].

20. The delegation of Australia maintained its reservation in respect of sub-paragraph (a) (viii) of paragraph 1, formerly I (g) of the Geneva draft, subject to the final wording of Article 94 [99].

21. Upon recommendation of Committee V a further exception was inserted for measures taken under inter-governmental agreements for the conservation of fisheries resources, migratory

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1 This reservation was withdrawn in Committee III.
birds and wild animals, as a corollary to a similar addition made to paragraph 1 of Article 67 [70]. It was thought desirable, however, that the Central Drafting Committee should examine the wording of this provision as well as the question whether it should be stated separately or might be incorporated in sub-paragraph I(h) of the Geneva draft.

22. In sub-paragraph (a) (x) [ix], previously I (h) of the Geneva draft, the words "terms of" were substituted for "obligations under" since it was felt that the word "obligation" was liable to misinterpretation. It was agreed that this change should be subject to further examination by the Central Drafting Committee.

23. The Committee was unable to accept a proposal for deletion of the last part of sub-paragraph (a) (xi) of the Havana text beginning with the words "during periods". The delegation of Argentina reserved its position on this point.¹

24. The Sub-Committee expressed the view that governmental measures relating to the orderly marketing of agricultural commodities for which storage facilities in both the countries of origin and destination were insufficient, were covered in paragraph 2 (b) of Article 20. On this understanding the proposal by the delegation of Afghanistan to add a new provision to paragraph 1 (a) was withdrawn.

25. In sub-paragraph (b) (i), previously II (a) of the Geneva draft, the words "general inter-governmental" were substituted for the word "multilateral". In the view of the Sub-Committee the provision is intended to require Members to take guidance not from any multilateral agreement as such, but from agreements of a wide and general character, and the change was made so as to express this intention more accurately. The delegate of Argentina recorded a reservation.²

26. The Sub-Committee in considering sub-paragraphs (b) (ii) and (iii), formerly II (b) and (c) of the Geneva draft, agreed that the words "the war" were intended solely to refer to World War II. In the course of the discussion it appeared, however, that not only there might be room for a different interpretation, but that the concept of World War II, as applied to different parts of the world, is in itself not sufficiently precise. It was decided, therefore, to recommend that the Central Drafting Committee

¹ In Committee III reservations on this paragraph were recorded by the delegations of Argentina, Ecuador and Uruguay.
² This reservation was not maintained in Committee III.
examine this provision with a view to removing any ambiguity and vagueness.

27. A proposal to delete the proviso in sub-paragraph (b) (iii), previously II (c) of the Geneva draft, was not accepted. The delegation of Argentina recorded a reservation on this point.

28. The Sub-Committee decided to recommend that, instead of including a definite date in the final paragraph, the Organization should be authorized to specify when the measures permitted under sub-paragraph 1 (b), previously II, should be discontinued. It was felt that the conditions due to the war had not improved at the rate and to the extent expected when the Charter was first drafted and that even now it was not possible to foresee with any accuracy when these conditions would be likely to cease to exist. It appeared desirable therefore not to specify a date in advance, but to empower the Organization to fix the time limit for the termination of all or any measures in the light of future developments.

29. The delegate of Belgium did not insist on a proposal to leave the present text unchanged and to add a provision empowering the Organization to authorize the application of particular measures in respect of particular products if it considered such measures warranted by circumstances then ruling. A proposal by the delegation of Argentina to delete the last part of paragraph 2, formerly part of I of the Geneva draft, beginning with the words "and in any event" having found no support, the representative of Argentina reserved his position.

REPORT OF SUB-COMMITTEE E OF THE THIRD COMMITTEE ON ARTICLES 20 AND 22

1. Sub-Committee E was appointed on 30 December 1947 to examine and submit recommendations to Committee III on all proposed amendments to Articles 20 and 22 and was given authority to consult, if necessary, with Sub-Committee C of Committee II on Articles 13 and 14.

2. The Sub-Committee was composed of the delegations of Ceylon, Chile, China, Colombia, Egypt, France, Ireland, Mexico, 

Netherlands, New Zealand, Peru, the Union of South Africa, Sweden, the United Kingdom and the United States.

3. The Sub-Committee at its first meeting on 5 January 1948, unanimously elected Mr. J. E. Holloway (Union of South Africa) as Chairman.

4. The Sub-Committee held eleven meetings and established nine Working Parties to consider particular proposals in detail. All the amendments listed in the Annotated Agenda were fully studied, together with various proposals arising out of those amendments.

5. The Sub-Committee and the Working Parties enjoyed the benefit of consultation and co-operation with the delegations of Argentina, Australia, Canada, Cuba, Czechoslovakia, Denmark, Greece, India, Lebanon, Norway, Syria and Turkey.

Article 20. — General Elimination of Quantitative Restrictions.

6. The Sub-Committee was unable to recommend the deletion of the Article proposed by the delegation of Ceylon. The representative of Ceylon reserved his position on the Article, pending a final settlement on the provisions of Article 13. The representatives of Colombia, Mexico and Peru reserved their positions on Article 20 until final settlement had been reached on Article 13.

Paragraph 2. — General.

7. A Working Party, set up to consider the amendments proposed by Chile and Argentina, reported that its work had not been completed as it depended on a proposed amendment\(^1\) to Article 21 and a proposed interpretative statement\(^2\) by a delegate on the text of that Article. The representative of Chile reserved his position until the proposal mentioned above had been accepted and pending the final text of Article 13. The representatives of Argentina (who was not a member of the Sub-Committee) and Ireland also reserved the positions of their delegations pending the final text of Articles 13 and 21.\(^3\)

8. The representative of China reserved his position until the general situation became clearer. The representative of Lebanon (who was not a member of the Sub-Committee) withdrew his reservation, considering that the problem of the use of quantitative

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\(^1\) E/CONF.2/C.3/82.
\(^3\) See note to paragraph 13 below.
restrictions by underdeveloped countries should be solved under Article 13.¹

9. There was no support for the amendments of Cuba. The representative of Cuba (who was not a member of the Sub-Committee) reserved his position with regard to the second of his amendments.²

Paragraph 2 (a).

10. The following text was recommended to meet the amendment put forward by the delegation of Australia:

"(a) export prohibitions or restrictions [temporarily] applied for the period necessary to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member country."

11. The Sub-Committee considered the request of the delegation of Australia that the reference to the term "critical" in the minutes of the proceedings of Commission A in the Second Session of the Preparatory Committee (document E/PC/T/A/PV/40 (1) pages 4, 6, 8 and 9) be concurred in by Committee III and included in its minutes. The Sub-Committee unanimously concurred in the conclusions of Commission A as set out in Geneva document and recommended to the Committee that the Australian request be met.

12. In connection with the amendment submitted by the delegation of Greece, the Sub-Committee felt that the position could best be met by an interpretative footnote. It recommended that this note should take the following form:

"In the case of products which are basic to diet in the exporting country and which are subject to alternate annual shortages and surpluses, the provisions of this sub-paragraph do not preclude such export prohibitions or restrictions as are necessary to maintain from year to year domestic stocks sufficient to avoid critical shortages."

13. The delegation of China withdrew its amendment, while reserving its position should certain other provisions in the Charter be altered.³

14. The Sub-Committee was satisfied that the terms of paragraph 2 (a) of Article 20 are adequate to allow a country to impose temporary export restrictions to meet a considerable rise in domestic prices of foodstuffs due to a rise in prices in other

¹, ² See note to paragraph 13 below.
³ The reservation of Colombia, Mexico, Peru, Chile, China, Ireland and Cuba, mentioned in paragraphs 6, 7, 8, 9 and 13 were withdrawn in Committee III.
countries. In view of this consideration the amendment of Sweden was withdrawn.

15. The amendment of Mexico was withdrawn.

Paragraph 2 (c).

16. The Sub-Committee agreed that paragraph (2) (c) was not intended to provide a means of protecting domestic producers against foreign competition but simply to permit, in appropriate cases the enforcement of domestic governmental measures necessitated by the special problems relating to the production and marketing of agricultural and fisheries products.

17. The Sub-Committee agreed that in interpreting the term "restrict" for the purposes of paragraph (2) (c) the essential point was that the measures of domestic restriction must effectively keep domestic output below the level which it would have attained in the absence of restrictions.

Amendments Designed to Narrow the Scope of Paragraph (2) (c).

18. The Sub-Committee was unable to recommend the adoption of the amendments proposed by Peru, Mexico and Norway.

19. The Sub-Committee discussed fully the proposals of Egypt and Peru seeking to provide that paragraph (2) (c) should apply only:

(a) where the restrictions on domestic output were temporary (Egypt);
(b) to permit only temporary use of import restrictions (Peru);
(c) where there was a surplus of production (Egypt, supported by Peru);
(d) where there was no subsidy to domestic production (Peru).

20. As regards (a) and (b) it was noted that the term "temporary" was difficult to define, and that the terms of paragraph (2) (c), particularly with the additional provision of the proposed new sub-paragraph 3 (a), would ensure that import restrictions could be applied only for as long as they were necessary to the enforcement of restrictions on domestic output. It was agreed that governments would certainly not wish to restrict domestic output of agricultural and fisheries products for any longer period than was really necessary. The delegates of Egypt and Peru withdrew these proposals.

21. As regards (e), the Sub-Committee agreed that no government would wish to restrict domestic output except when obliged
to do so by the existence of a surplus or by a persistent tendency towards the production of a surplus; however, to write (c), or indeed (a) or (b), into the text of the Charter would in practice have the effect of giving the Organization the power to determine whether and when Members could or could not institute or enforce particular restrictions on domestic agricultural production, a condition which governments could not reasonably be expected to accept.

22. As regards (d) the Sub-Committee agreed that it was not the case that subsidies were necessarily inconsistent with restrictions of production and that in some cases they might be necessary features of a governmental programme for restricting production. It was recognized, on the other hand, that there might be cases in which restrictions on domestic production were not effectively enforced and that this, particularly in conjunctions with the application of subsidies, might lead to misuse of the provisions of paragraph (2) (c). The Sub-Committee agreed that Members whose interests were seriously prejudiced by the operation of a domestic subsidy should normally have recourse to the procedure of Article 25 and that this procedure would be open to any Member which considered that restrictions on domestic agricultural production applied for the purposes of paragraph (2) (c) were being rendered ineffective by the operation of a domestic subsidy. The essential point was that the restrictions on domestic production should be effectively enforced and the Sub-Committee recognized that unless this condition were fulfilled, restrictions on imports would not be warranted.

23. It was agreed (except by the representative of Peru who reserved his position as regards the question of subsidies) that points (c) and (d) might adequately be met by the insertion of “effectively” after “operate” in the fourth line of paragraph (2) (c) and by the provision of other suitable safeguards for the interests of exporting countries (see paragraphs 24 and 26 below).

Safeguards for Exporting Countries.

24. The Sub-Committee gave full consideration to the question of safeguards to prevent prejudice to the interest of exporting countries by import restrictions imposed in consequence of restrictions on domestic output under paragraph (2) (c). It was agreed that the possibility that the provisions of the Article might be misused by the imposition of restrictions on domestic output which
were not effectively enforced should be dealt with by the amend­ments suggested in paragraph 23 above.

25. The Sub-Committee further noted that the provisions of Article 22, and in particular the consultation provisions of para­graph 4 of Article 22 applied to import restrictions imposed under paragraph (2) (c); further, that it would be open to a Member at any time to make representations under Article 41 to a Member applying import restrictions under paragraph (2) (c), or to raise under Articles 89 and 90 [93, 94 and 95] the question whether the governmental measure restricting domestic output were such as to warrant the application of import restrictions under para­graph (2) (c).

26. It was pointed out that the sudden imposition of import restrictions under paragraph (2) (c) might have serious effects on the interest of exporting countries, and that to avoid this there should be provisions requiring Members intending to introduce such import restrictions to give as much advance notice as possible to exporting countries in order to afford adequate opportunity for consultation before the import restrictions were put into effect. It was suggested that this point might be met by the inclusion of the provisions as to prior notice and consultations set out in the proposed new sub-paragraph 3 (b).

27. It was agreed that provision should be made for the observ­ance of secrecy with regard to prior notice of, and consultation concerning, the proposed introduction of restrictions if the Member proposing to introduce such restrictions should so request.

28. It was pointed out that it was possible that import restrictions might in certain circumstances operate so as to give undue advantage to particular exporting countries. For example, global quotas not allocated among supplying countries might sometimes operate in a manner unduly favorable to those countries best able for any reason to take prompt advantage of the global quota at the opening of the quotas period; and it was agreed that Members, in administering import restrictions, should pay due regard to the need for avoiding such a result. It was also agreed that, in the case of perishable commodities, due regard should be had for the special problems affecting the trade in these commodities.

Amendments Designed to Widen the Scope of Paragraph (2) (c).

29. A majority of the Sub-Committee felt that the amendment of Ireland, and an amendment of Colombia introduced during the
discussion providing for the use of import restrictions to stabilize agricultural prices, provided for the use of import restrictions on a much broader basis than that provided in the case of restrictions under (i) of paragraph (2) (c), and if generally applied would widen the scope of the Article in a way which would seriously endanger the interest of agricultural exporting countries, and that the particular difficulties of Ireland should be met by other measures. Accordingly the Sub-Committee was unable to recommend the adoption of these amendments.

30. The Sub-Committee discussed the amendment of Sweden providing for the use of import restrictions to mitigate seasonal and short-term fluctuations in the supply of agricultural products. After hearing a statement by the representative of Sweden as to his Government's policy in regard to livestock production, the Sub-Committee agreed that a number of measures that he had described were certainly capable of being used for restricting domestic production, and, to the extent that they were so used, would be covered by the provisions of paragraph (2) (c) (i). On this understanding the representative of Sweden withdrew his amendment.

31. The Sub-Committee did not recommend the adoption of the amendments of Uruguay and Ireland.

Other Amendments.

32. The Sub-Committee decided that the proposal by the delegation of Norway to substitute the word "partly" for "mainly" in paragraph (2) (c) (iii) was unnecessary. It was agreed that, under the existing text, in a case for example in which a Member wished to restrict the quantities permitted to be produced of any animal product the production of which was dependent wholly or mainly on two or more imported kinds of feeding stuffs considered together but not necessarily on either kind considered separately, it would be open to that Member to restrict the production of animal products, provided that domestic production of the imported kinds of feeding-stuffs were relatively negligible, by treating the imported kinds of feeding-stuffs as a single commodity and applying import restrictions thereto.

33. It was further agreed that if the various imported feeding-stuffs were in fact treated as a single commodity, import restrictions thereon should be applied globally on the total combined imports without allocating shares to the individual feeding-stuffs. It was felt that, in cases where this procedure would not be practicable,
the import restriction should take the form of an equal proportionate reduction in the amount permitted to be imported of each of the several feeding-stuffs. The representative of Norway accordingly withdrew his amendment.

34. The Sub-Committee agreed that the provisions of paragraph (2) (c) (ii) would cover arrangements under which the government concerned made temporary surpluses of grain available as animal feeding-stuffs to small holders and similar categories with a low standard of living, free of charge or at prices below the current market level. In the light of this the representative of Sweden withdrew the amendment.

35. The amendment of Mexico did not find the support of the Sub-Committee.

36. The amendment of the United Kingdom was withdrawn. The Sub-Committee accepted a further United Kingdom suggestion that in order to avoid ambiguity the words "agricultural or fisheries" should be inserted between "domestic" and "product" at the end of paragraph 2 (c) (i). A drafting amendment of the United Kingdom was accepted.

37. The Sub-Committee agreed that a new paragraph (3 (a) in the revised draft of the text) should be inserted to achieve the objectives of the amendment of Chile.

*Geneva Draft Notes.*

38. With regard to the footnote in the Geneva text on the term "in any form" the Sub-Committee accepted as valid the criticism put forward by the representative of the United States that the introduction of the term "perishable" which is inapplicable to many types of agricultural products had unduly narrowed the scope of paragraph 2 (c). It considered, therefore, that some clarification of the text was required and accordingly recommended to the Committee the wording set forth in the revised text.

39. The Sub-Committee, however, wishes to make clear that the omission of the phrase "when in an early stage of processing and still perishable" is dictated solely by the need to permit greater flexibility in taking into account the differing circumstances that may relate to the trade in different types of agricultural products, having in view only the necessity of not making ineffective the restriction on the importation of the product in its original form and is in no way intended to widen the field within which quanti-
tative restrictions under paragraph 2 (c) may be applied. In particular, it should not be construed as permitting the use of quantitative restrictions as a method of protecting the industrial processing of agricultural or fisheries products.

40. The word "utilization" refers to the ultimate use of the products and is not used in a technical sense. For example, wheat and flour are so closely related as regards utilization that flour is to be regarded as a processed form of wheat such as is referred to in the interpretative note.

41. The Sub-Committee took note that paragraph 3 (a) was not intended to and did not establish any new exception permitting the use of quantitative restrictions on imports. It is to be understood that the basic requirement of the effective operation of restrictions on domestic production or marketing remains as a condition precedent for all cases in which import restrictions may be imposed under paragraph 2 (c) (i).

42. With regard to the interpretative note on "special factors" the Sub-Committee agreed that it was desirable to make clear that changes in relative productive efficiency between the home producers and foreign producers should be taken into consideration in determining the size of import quotas under paragraph (2) (c) (i). The Sub-Committee recommended that the note to paragraph (2) (c) of the Geneva text on "special factors" should be retained as an interpretative note to paragraph 3 (d) of the Havana Charter in the form set out in the revised text.

43. The Sub-Committee, after consideration of the interpretative notes on "special factors" to Articles 20 and 22 of the Geneva text, agreed that, as stated in those notes, changes artificially brought about since the representative period (assuming that period to have preceded the coming into force of the Charter) by means not permissible under the provisions of the Charter were not to be regarded as "special factors" for the purposes of paragraph (2) (c) and Article 22. The Sub-Committee agreed, however, that it was unnecessary to state this specifically in the text of the Articles or in the interpretative notes.

44. The Sub-Committee agreed that the use of the words "inter alia" in the footnotes to Articles 20 and 22 on "special factors" should be brought to the notice of the Central Drafting Committee in order that the footnotes throughout the Charter might be standardized as to their form.
Other Points.

45. At the request of the representative of Mexico the Sub-Committee agreed to have it recorded that in its view the freedom given to a Member to apply restrictions under paragraph (2) (c) did not free such Member from a prior obligation to any individual Member.

46. The representatives of Colombia, Mexico and Peru reserved their positions on Article 20 until final settlement was reached on Article 13.1

47. The representative of Ireland maintained that the provisions of Article 20 should be extended so as to enable countries to use import restrictions at least to meet situations arising out of unavoidable seasonal fluctuations in supply, and also to allow for the maintenance of stable incomes in agriculture. He accordingly reserved his position on these points.2

Article 22. — Non-Discriminatory Administration of Quantitative Restrictions.

48. The amendment of the delegation of Argentina to delete paragraphs 2, 3, 4 and 5 found no support in the Sub-Committee.

49. The amendments of Uruguay and Mexico were withdrawn since the Sub-Committee considered that their objectives were covered by the existing text of the Article; the amendments of Mexico and Turkey were withdrawn in view of the revision of the interpretative note on “special factors” (see paragraph 51 below).

50. The amendment of Syria and Lebanon was referred to Sub-Committee F with the concurrence of those delegations and of Sub-Committee F.

51. The Sub-Committee agreed to delete the footnote to paragraph 2 (d) of the Geneva text.

52. The Sub-Committee agreed that the interpretative note on “special factors” should be retained as a note but should be made more explicit both by the deletion of the cross reference to the note to Article 20 which appears in the Geneva text and by the specific mention of certain additional factors which should be taken into account in the allocation of quotas. The Sub-Committee also agreed that it was desirable to make clear that, in cases where

1, 2 The reservations mentioned in paragraphs 46 and 47, were withdrawn in Committee III, but the delegation of Bolivia entered a reservation on the whole of Article 20.
separate import quotas were allotted to the various foreign suppliers, a country whose productive efficiency or ability to export had increased relatively to other foreign suppliers since the representative period on which import quotas were based should receive a relatively larger import quota. The Sub-Committee accordingly recommended the wording shown in the revised text (see also paragraph 43 under Article 20).

53. The Sub-Committee agreed that the objectives of the amendments of India could best be met by the insertion of a new interpretative note to the text.

54. The Sub-Committee considered that some provision should be made in the Charter for releasing a Member from its obligation to give public notice under paragraphs 3 (b) and 3 (c) in the case of a Member trading with a non-Member or non-Members. Accordingly the Sub-Committee recommended that a new paragraph 3 (d) be inserted in the text. The Sub-Committee expressed the view that, to enable prompt consideration of applications under paragraph 3 (d) it would be desirable for the Organization to delegate its functions in respect of this sub-paragraph to the Executive Board; and that, provided an application under this sub-paragraph was made sufficiently early and accompanied by sufficiently full information to enable adequate consideration by the Executive Board before the commencement of the quota period the Executive Board should temporarily release the applicant Member from the requirement to give public notice for the period necessary for the Executive Board to make a decision on the application.¹

REPORT OF SUB-COMMITTEE F OF THE THIRD COMMITTEE ON ARTICLES 21, 23 AND 24.²

1. Sub-Committee F was appointed on 5 January 1948 to examine and submit recommendations on all proposed amendments to Articles 21, 23 and 24.

2. The Sub-Committee was composed of representatives of Argentina, Australia, Belgium, Brazil, Canada, Cuba, Czechoslovakia, France, Greece, India, Italy, Lebanon, Liberia, Norway, the Philippines, the United Kingdom and the United States.

¹ In Committee III the delegation of Switzerland reserved its position on the whole of Section B of Chapter IV. The delegation of Bolivia reserved its position on Article 22, and that of Argentina on paragraphs 2, 3 and 4 of Article 22.
3. Mr. J. MELANDER (Norway) was unanimously elected Chairman.

4. The Sub-Committee held fourteen meetings.

5. A number of representatives of delegations who were not members of the Sub-Committee attended as observers and also took part in the discussion of amendments which they had submitted. The Sub-Committee also heard statements by the representatives of the International Monetary Fund.

Article 21. — Restrictions to Safeguard the Balance of Payments.¹

6. The main change in Article 21 recommended by the Sub-Committee was the inclusion of a new paragraph 1. This change was made in response to an amendment submitted by Belgium and related to action which may be taken to correct maladjustments in the balance of payments.

7. In response to an amendment of Australia certain changes were made in paragraph 3 (b), formerly 2 (b) of the Geneva draft.

8. Paragraph 3 (c) (i), formerly 3 (c) (ii), was amended in response to a proposal submitted by Argentina.

9. Paragraph 4 (b), formerly 3 (b) of the Geneva draft, was amended in response to an amendment by Denmark.

10. The introductory phrase of paragraph 4 (b) (i), formerly 3 (b) (i) of the Geneva draft, was deleted and, paralleling this, the Sub-Committee recommended the deletion of the interpretative note relating to this phrase.

11. In response to a proposal by Brazil, sub-paragraphs (ii) and (iii) of paragraphs 3 (c) of the Geneva text were transferred to paragraph 3 (c) of the present text (paragraph 2 of the Geneva text) on the ground that they constitute limitations on any kind of quantitative restrictions irrespective of whether the restriction is a consequence of the domestic policies referred to in paragraph 3 (c) of the Geneva text or of other causes.

12. In response to a proposal by New Zealand an interpretative note appended to Article 31 of the Geneva text was transferred to Article 21.

13. The delegation of Chile reserved its position on paragraph 3 (a), formerly 2 (a) of the Geneva draft.²

² This reservation was withdrawn in Committee III.
14. The delegation of Argentina reserved its position on Article 21 (paragraphs 4 (a) and 5).

*Article 23.* — *Exceptions to the Rule of Non-discrimination.*

15. In addition to the amendments to Article 23 in the Annotated Agenda, the Sub-Committee considered an amendment to Article 22 proposed by Syria and Lebanon which was referred to it by Sub-Committee E as falling more properly under Article 23.

16. After a thorough consideration of the amendments mentioned above, the Sub-Committee concluded that a substantial redraft of Article 23 was desirable. Since, however, certain Members would have already accepted the principles of Article 23 of the Geneva text and would have begun to apply them, the Sub-Committee considered that such Members should be allowed, if they so desired, to continue to apply these principles during the transitional period as defined below in paragraph 20. The Sub-Committee accordingly submitted a revised text together with a proposed new Annex which embodies these principles. Two interpretative notes were attached to the text of the Article and one to the Annex.

17. The new text did not require the Interpretative Note to paragraph 3 of Article 23 of the Geneva Draft and it was accordingly dropped.

18. The major changes from the Geneva text of Article 23 were to be found in paragraphs 1, 2 and 4 of the revised Article.

19. In conjunction with the proposed revision of Article 23, it was considered desirable that paragraph 9 of Article 24 of the Geneva text (renumbered paragraph 8 in the text submitted by the Sub-Committee) be amended by the deletion of the phrase "Subject to paragraph 4 of this Article," at the beginning of the paragraph. As consequence of this change the Sub-Committee recommended that the interpretative note now attached to paragraph 4 of Article 24 of the Geneva text be attached to paragraph 8 of that Article, that the first sentence of the note be deleted, and that certain consequential drafting changes be made as shown in the recommended text.

20. Paragraph 1 of the revised Article defines the exceptions to the rule of non-discrimination permissible during the post-war transitional period. This transitional period and its application in

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2 Consequently, the references to the paragraphs of Article 23 relate to the Havana Charter.
respect of individual members are defined by reference to the provisions of Article XIV of the Agreement of the International Monetary Fund or by reference to an analogous provision of a special exchange agreement entered into pursuant to paragraph 6 of Article 24. The discriminatory measures, including adaptations thereof, permitted under paragraph 1 may be applied by a Member during the transitional period without the prior approval of the Organization.

21. Sub-paragraph 1 (d) of the new text provides that a Member may under certain condition elect to operate during the transitional period under the Annex rather than under sub-paragraphs (b) or (c) of paragraph 1. The subject matter of the Annex is dealt with in paragraph 26 below. Sub-paragraphs (g) and (h) deal with the administrative control which is to be exercised by the Organization over measures taken by a Member under this Article. The attention of the Sub-Committee was particularly directed to ensuring that Members operating under sub-paragraphs (b) and (c) and Members operating under the Annex enjoyed equality of treatment in this respect. As a consequence, the Sub-Committee in drafting these sub-paragraphs took account of the procedures laid down in Article XIV of the Articles of Agreement of the International Monetary Fund.

22. After the termination of the transitional period for a Member, paragraph 2 makes provision, subject to the prior approval of the Organization, for limited departures from the rule of non-discrimination.

23. Paragraph 4 permits a Member applying import restrictions in accordance with Article 21 to control its exports in such a manner as to increase its earning of currencies which it can use without deviation from the provisions of Article 22.

24. The effect of the amendment to paragraph 9 [8] of Article 24 is that the measures defined in that paragraph are not precluded by the provisions of this Section of the Charter.

25. Paragraph 3 is identical with paragraph 4 of the Geneva text and paragraph 5 is substantially the same as paragraph 5 of the Geneva text. Paragraph 5 (b) of the revised article incorporates an amendment which is a consequential change resulting from certain amendments to Annex A of Article 16 which were approved by Committee III with reservation by the delegations of Brazil and Uruguay.

26. The Annex contains a substantial part of the provisions of the Geneva text of Article 23. Certain sections of that text were,
however, transferred to the new Article proper and the declaration in sub-paragraph 1 (a) of the Geneva text was omitted in view of sub-paragraphs 1(a) and 1 (f) of the new Article. The procedures for administrative control in sub-paragraphs 3 (a) and 3 (c) in the Geneva text were replaced by sub-paragraphs 1 (f), 1 (g) and 1(h) of the new Article. The criteria in sub-paragraph 1 (b) of the Geneva text remain the same.

27. Certain delegations suggested that the provisions of paragraph 4 of Annex K be transferred to the body of Article 23 so that they would be applicable both to Members who elect Annex K and those who do not so elect. The Sub-Committee felt that this purpose was covered in part by the procedures available under Article 21, and that the change need not therefore be made.

28. It was considered by the Sub-Committee that the above changes met a large number of the objectives to which the amendments submitted were directed. In view of the extensive revision of Article 23 it was not practicable to indicate how particular amendments were accommodated. However, the amendments submitted by the following countries were considered by the delegates of those countries to be covered by the new text:

(a) Belgium
(b) Czechoslovakia (amendments to paragraphs 1 (a), 1 (b), 2, 3 (a) and 3 (c) are covered by Article 23 and the proposed amendment to paragraph 5 is covered by the proposed revision of paragraph 8 of Article 24).
(c) Denmark
(d) France
(e) Lebanon
(f) Norway (amendment to paragraph 1 (b) (i))
(g) Syria.

29. The Norwegian delegate indicated that the new text of Article 98 [98] on relations with non-Members which has been approved by the Sixth Committee met the major part of the problem to which his amendment on long-term agreements was directed, and, accordingly, withdrew this amendment.

30. With respect to the amendment submitted by Italy the Sub-Committee considered that paragraph 2 of the revised text takes account of the concept of relative injury.

31. The delegate of Mexico stated that his delegation was at that time reviewing the new text to see whether the purpose of its amendment was met.
32. The amendment submitted by Greece proposing a new Article 23A was replaced by an amendment to paragraph 5 of Article 23 submitted by that delegation. When the new text of Article 23, together with the change proposed in Article 24, were before the Working Party dealing with this matter, the delegate of Greece agreed that these new texts went a long way to meet the problem of his country. However, he did not feel that his point was met entirely, particularly in the post-transitional period. The Sub-Committee believed that further amendment in this respect would provide too wide an exception, and therefore recommended no further change in the text. The delegation of Greece reserved its position.¹

33. The delegation of Argentina reserved its position on Article 23. The delegation of Brazil expressed no opinion on the Article.

34. After consideration of paragraph 2 of Article 25 in the light of the amendments proposed by Australia and New Zealand, the Sub-Committee recommended an amendment.

35. The Sub-Committee gave consideration to an amendment to paragraph 6 proposed by the delegate of Liberia referring to the case of a country which does not use its own currency. The Sub-Committee recommended that to meet this case the new subparagraph 6 (d) should be included.

36. In this connection, two members of the Sub-Committee, while having no objection in substance to the proposed text, thought that the Committee should consider whether such a provision should be included in the text of Article 24, or whether the special situation of Liberia could be suitably dealt with under Article 74 [77], which provides for the waiver of obligations under the Charter.

37. The Sub-Committee also considered that paragraphs 6 and 7 of Article 24 could be combined with advantage, since they dealt with the same subject. It also recommended that a consequential amendment should be included in paragraph 8 (new paragraph 7).

¹ This reservation was withdrawn in Committee III.
38. The Sub-Committee, while aware of the desirability of keeping interpretative notes to a minimum, considered that the interpretative footnote to paragraph 4 of Article 24 of the Geneva text relating to "frustration" is both essential and too detailed for inclusion in the text of Article 24. It therefore recommended that this interpretative note, with the amendment thereto proposed in paragraph 19 above, be appended to the text of Article 24.

39. The Sub-Committee took note of the amendment of Mexico but felt that it would be desirable that a more specific amendment be submitted by Mexico. Having heard a further explanation by the delegation of Mexico, the Sub-Committee did not consider that the text of Article 24 required any change in the light of the proposed Mexican amendment. It took note that the problem to which the delegation of Mexico had directed its amendment was similar to that being considered by Sub-Committee G of Committee III. In the light of the Sub-Committee's recommendation the Mexican delegate stated that his delegation reserved its position on Article 24. ¹

40. The Sub-Committee considered that the title of Article 24 would more clearly its content if it were changed to read as follows: "Relationship with the International Monetary Fund and Exchange Arrangements".

41. It recommended also that the title of section B of Chapter IV would more clearly indicate the content of the section if it were to read: "Quantitative Restrictions and Related Exchange Matters" instead of "Quantitative Restrictions and Exchange Controls".

REPORT OF SUB-COMMITTEE G OF THE THIRD COMMITTEE ON THE SWISS PROPOSAL²

1. Sub-Committee G was appointed by Committee III on 5 January 1948 with the following terms of reference:

"To consider the proposal of the Swiss delegation (reference E/CONF.2/C.3/11) that the following new paragraph be inserted in Chapter IV:

'A Member, unable to invoke the provisions of Article 21 and finding that its economic stability, particularly in the fields of agriculture and employment, is being seriously impaired or gravely threatened, may take such steps as are necessary for safeguarding its vital interests.'"

¹ The reservation of Mexico was withdrawn in Committee III, but a reservation was entered by the delegation of Argentina.

2. The following delegations were appointed to the Sub-Committee: Belgium, China, France, Poland, Sweden, Switzerland, the United Kingdom, the United States of America, Uruguay and Venezuela. The Sub-Committee held ten meetings. Mr. L. P. THOMPSON-MCCAUSLAND (United Kingdom) was unanimously elected Chairman. Owing to the departure of Mr. L. P. THOMPSON-MCCAUSLAND before the work of the Sub-Committee was completed Mr. A. PHILIP (France) was unanimously elected Acting Chairman at the tenth meeting.

3. Proceeding from the draft amendment contained in its terms of reference, the Sub-Committee based its enquiries on the assumption that the Member concerned was not eligible to impose quantitative restrictions under Article 21 but was liable to suffer damage from restrictions imposed by other Members under that Article.

4. A variety of factors was put before the Sub-Committee as justifying special measures. Several were regarded by the Sub-Committee as irrelevant, others as doubtful, and no single factor was judged to be sufficient by itself to justify special treatment. The Sub-Committee, however, agreed that the following factors advanced by the delegate of Switzerland represented, when taken together, a combination of circumstances requiring special consideration:

(a) that a relatively high proportion of the country's total production depended upon export markets;
(b) that a relatively high proportion of these exports consisted of goods and services considered as non-essential by many importing countries and treated by them accordingly; and
(c) that the country's normal export markets were in countries which were applying restrictions in accordance with the principles of the Charter.

5. The Sub-Committee therefore recognized that a small country, in which a relatively high proportion of workers depend for their employment on the manufacture of non-essential goods for export, may be liable to serious unemployment when the countries to which it normally exports such goods can, under the Charter, greatly restrict, or stop completely, their imports of them. This risk is increased when the exporting country has a convertible currency, since countries in balance-of-payments difficulties would be anxious both to reduce their imports from it to save "hard currency" and to increase their exports to it to earn "hard currency". The country would, in fact, be an attractive export
market for all other countries, and while in normal conditions economic forces would operate to limit the impact of excessive imports, there is in present conditions a threat of imports flooding in at a rate which would endanger domestic production and employment. These pressures, in combination, might in the long run undermine the convertibility of the currency. The Sub-Committee agreed that it would not be in the interests of the Members to expose such a country to such pressures.

6. The Sub-Committee considered whether the existing provisions of the Charter would give the necessary safeguards to a country in the situation described above and came to the conclusion that with respect to both exports and imports a certain protection exists in Articles 21 and 40. It was, however, recognized that these provisions are insufficient to meet the exceptional needs of Switzerland. It was accordingly agreed that if such a country has to engage in bilateral negotiations with other countries which are themselves applying restrictions to their imports, it will need bargaining powers to safeguard its export interests by the use of necessary measures. It may also need powers to defend itself against the pressure of excessive imports.

7. The amendment presented by the Swiss delegation would safeguard the country’s freedom of action. The majority of the Sub-Committee, however, was of the opinion that this proposal was so far-reaching that its adoption by the Conference would dangerously weaken the structure of the whole Charter. The Sub-Committee was therefore unable to recommend the amendment as a solution of the problem (4 delegates being against the amendment, 3 for it, 2 abstaining and 1 absent).

8. In an effort to enable Switzerland to adhere to the Charter the Sub-Committee examined other solutions, but regretted that it had been unable to find one which could accommodate Switzerland without excessive weakening of the Charter. The Sub-Committee, therefore, aimed at keeping open a way by which Switzerland might later enter into negotiations with the Organization regarding its adherence to the Charter. Before specific proposals to this end could be submitted further and more detailed examination of the problem was called for.

9. The Sub-Committee recommended, therefore, that the Conference should direct the Interim Commission to invite the Swiss Government to participate in a study of the problems facing the Swiss economy with a view to submitting to the first Conference
of the Organization a report as to the measures which could be taken in accordance with the procedures established in the Charter for dealing with the problem.

10. The Sub-Committee also examined the cases of Venezuela and Uruguay which were presented to it and found that neither of these countries had established any special problems connected with transition from their present systems of trading to that contemplated by the Charter.

11. It was the view of the Sub-Committee that the present text of Article 21 made adequate provision for many of the considerations put forward by the delegates of Venezuela and Uruguay. Thus, it was pointed out that paragraph 2 (a) [3 (a)] requires that "due regard" be paid in the monetary reserve questions there involved "to any special factors which may be affecting the Member's . . . need for reserves . . ." It was pointed out that a country exporting principally a small number of products would, in like conditions, probably be considered to have need for greater reserves than a country exporting a large variety of products, particularly if the exports were exhaustible or subject to considerable fluctuations of supply or price. A country actively embarked on a programme of economic development which is raising levels of production and foreign trade would probably then be considered to have need for greater reserves than when its economic activity was at a lower level.

12. Beyond this the issues raised involved matters which were then under active consideration in connection with Articles 13 and 14. The considerations put forward by Venezuela and Uruguay in this connection were not dissimilar from those being urged by a considerable number of other "underdeveloped" countries in connection with the economic development chapter of the Charter. This Sub-Committee felt it should not pursue this matter any further since to do so would be to duplicate the work of Committee II and its Sub-Committees.

13. The delegate of Venezuela had advised the Sub-Committee that he was satisfied with the foregoing statements by this Sub-Committee.

14. The delegate of the United States, while agreeing with the final conclusion, stated that he was not in agreement with certain aspects of this Report.¹

¹ See E/CONF.2/C.3/73.
REPORT OF
SUB-COMMITTEE H OF THE THIRD COMMITTEE
ON ARTICLES 25-29 [25-28] ¹

1. The Sub-Committee was appointed at the twenty-seventh meeting (7 January 1948) of the Third Committee. It was given the following terms of reference:

"(a) To consider all proposed amendments to Section C of Chapter IV of the Draft Charter as contained in document E/CONF.2/C.3/8, together with all suggestions and proposals made during discussion of those proposed amendments in Committee III; and

"(b) to recommend texts to reconcile the various points of view expressed."

2. The Sub-Committee consisted of representatives of the following delegations:

Argentina, Australia, Brazil, Canada, Cuba, Denmark, France, Netherlands, Peru, Philippines, Sweden, Turkey, United Kingdom, United States of America and Venezuela.

3. Mr. E. McCarthy (Australia) was elected Chairman. At the seventh meeting of the Sub-Committee Mr. G. Warwick Smith (Australia) was elected in place of Mr. McCarthy who had to leave Havana.

4. At the fifth meeting of the Sub-Committee it was decided to set up a Working Party to examine proposed amendments to Articles 26 to 29. The Working Party consisted of representatives of Brazil, Canada, Peru, United Kingdom, United States of America and Venezuela, together with the Chairman of the Sub-Committee. It held ten meetings.

5. The Sub-Committee held eight meetings and reached general agreement on a text to submit to the Committee.

General.

6. The delegation of Brazil provisionally reserved its position on Section C of Chapter IV. ²

7. The delegation of Peru wished its view recorded that there was a difference of treatment as between subsidies which operate directly or indirectly to maintain or increase the export of any primary commodity, and subsidies which operate directly or indi-

¹ This reservation was withdrawn in Committee III.

² This reservation was withdrawn in Committee III.
rectly to reduce, or prevent an increase in, the imports of any primary commodity. The former were subject to the provisions of Article 28, while the latter were subject only to the much weaker provisions of Article 25. In the view of that delegation the latter type of subsidy ought to be subject also to provisions parallel to those of Article 28, because the interests of exporting countries were prejudiced just as much by a subsidy which decreases imports in an importing country as by one which increases exports from a competing exporting country. Consequently the delegation of Peru reserved its position on Section C.

8. The Sub-Committee considered an inquiry from the Central Drafting Committee as to whether it was desired that references in Section C to primary commodities should be covered by the definition of a "primary commodity" contained in Article 53 [56]. It was agreed that the definition contained in paragraph 1 of Article 53 [56] was applicable to all such references.

9. The Sub-Committee considered the suggestions of the International Chamber of Commerce\(^1\) regarding the arrangement of the Section, but thought that the present arrangement was appropriate.

**Article 25. — Subsidies in General.**

10. The Sub-Committee was unable to agree to the inclusion of the words "direct or indirect", or of an alternative amendment having a similar purpose, proposed by the delegation of Cuba.

11. The representative of Cuba explained to the Sub-Committee that the amendment constituted a matter of immediate and practical importance to his country, which could not afford to promote its economic development by the methods of direct subsidization. It had therefore introduced a system by which certain domestic industries were exempted from internal taxes payable on imported goods. This was simpler in practice than, though no different in principle from, the system of "payments to domestic producers derived from the proceeds of internal taxes or charges" which was permitted under paragraph 5 [8 (b)] of Article 18. The system employed in Cuba had secured favourable results, particularly in encouraging capital investment, both domestic and foreign.

12. The Sub-Committee was in general agreement that the terms of Article 25 were sufficiently wide to cover a case such as

\(^1\) E/CONF.2/14.
that described by the Cuban delegation. It was considered that the proposals of Cuba in regard to Article 25 would not alter the sense of the Article, nor would they have the effect of permitting continuance of the Cuban system if it conflicted with other provisions of the Charter such as those regarding non-discrimination. The appropriate place to consider an amendment with this purpose was under Article 18 concerning the non-discriminatory application of internal taxation. The representative of Cuba maintained the reservation of his delegation on Article 25.¹

13. Arising from an amendment proposed by the United States delegation, it was agreed to make the following changes in the first sentence:

"... which operates directly or indirectly to maintain or increase exports of any product from, or to reduce, or prevent an increase in, imports of any product into ..."

It was felt that the Geneva text of the Article failed to cover subsidies which, whilst not increasing a Member’s exports nor reducing its imports, might nevertheless affect a Member’s share of total trade.

14. It was agreed to accept the proposal by the United States delegation to introduce in the last sentence the phrase “a Member considers” in place of determinations by the Organization. It was thought that this change was consistent with similar changes made in Chapter VI and would expedite procedure.


Paragraph 1.

15. The Sub-Committee was unable to accept the proposal of the United States delegation to except subsidies on primary commodities from the provisions of paragraph 1, and the consequential changes proposed in regard to other Article. The United States delegation, however, submitted alternative suggestions to which reference is made in the notes on Articles 27 and 28 below.

Paragraph 2.

16. Drafting changes proposed by the United States delegation were accepted with slight modification.

17. The insertion of the words “in general of those products” after “payments to domestic producers” was intended to make it

¹ This reservation was withdrawn at the final Plenary Meeting. In Committee III a reservation was entered on Article 25 by the delegation of Bolivia.
clear that the payments in question refer to general subsidization of domestic producers of like products.

18. The delegation of Sweden withdrew its proposal to insert the words "directly or indirectly" between the words "taxes" and "imposed". It was understood that the text—particularly the phrase "remission of such duties or taxes... which have accrued"—covers the case of remission of duties or taxes imposed on raw materials and semi-manufactured products subsequently used in the production of exported manufactured goods.

19. It was understood that the term "like products" is intended to mean closely similar products in the corresponding stage of production, allowing for such differences as are necessary for export purposes.

Paragraph 3.

20. The Sub-Committee was unable to accept the proposal of the delegation of Argentina to delete the time-limit provisions in this paragraph. The delegation of Argentina reserved its right to reopen the question in Committee.

21. The introduction of the words "and if so on what terms" in the last sentence of paragraph 3 was prompted by the decision to exclude subsidies on non-primary commodities from the provisions of Article 28. It was felt that the position of the Organization in relation to such subsidies should be stated more explicitly.

22. The Sub-Committee agreed to certain drafting changes proposed by the delegation of the Netherlands.

Proposed New Paragraph.

23. The Sub-Committee considered the proposal of the delegation of Venezuela to insert a new paragraph designed to except certain types of subsidies from the provisions of paragraph 1 of Article 26. It was felt that the subsidies in question, i.e. those whose effect on world trade in the community is of minor significance, would be largely covered by the proposed new texts of paragraphs 3 and 5 of Article 27, and of sub-paragraphs 4 (b) and 4 (c) of Article 28. In particular it was understood that the phrase "if an agreement is inappropriate" in the proposed text of paragraph 5 of Article 27 meant that if Chapter VI procedure was inappropriate (including cases judged to be inappropriate by the Organization under Article 55 [58], paragraph 2), a Member could grant or maintain an export subsidy without being bound to
seek an inter-governmental agreement on the commodity in question. Moreover, in cases where negotiation did take place toward an inter-governmental agreement, a Member would be free (under paragraph 3 of Article 27), pending the outcome of such negotiations, to maintain export subsidies on the commodity in question.

**Article 27. — Special Treatment of Primary Commodities**

24. Specific references in Article 27 to the provisions of Article 28 are not intended to be exclusive. They are included for purposes of emphasis.

**Paragraph 1.**

25. It was agreed to insert in sub-paragraph (a) the words "or is so designed as to result" after the words "has also resulted". It was felt that this covered the substance of a similar amendment proposed by the delegation of Venezuela. A corresponding addition has been made in sub-paragraph (b).

**Proposed New Paragraph 2.**

26. The Sub-Committee considered the new paragraph proposed by the delegation of the Netherlands relating to certain types of price stabilization schemes. It was generally agreed that a system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movement of import prices, which results, or is so designed as to result, in the sale of the commodity in the domestic market at a price at times higher and at times lower than the comparable landed cost for the imported product, should be treated as a case under Article 25. On this understanding the delegation of the Netherlands withdrew its proposal.

**Paragraph 2.**

27. Paragraph 2 is a new provision emphasizing the responsibility of Members granting any form of subsidy on a primary commodity to co-operate in negotiating inter-governmental agreements under Chapter VI.

**Paragraph 3.**

28. This paragraph takes the place of paragraph 2 in the Geneva text of Article 27. The Sub-Committee was unable to accept the proposal by the delegations of Argentina and Peru to delete the paragraph.
29. The paragraph has been redrafted to make it clear that, as regards serious prejudice caused by the granting of a subsidy, the paragraph applies to all types of subsidization of primary commodities.

30. A new provision has been added to permit a Member to maintain a subsidy pending the outcome of negotiations under Chapter VI.

Paragraph 4.

31. Paragraph 4 is a new provision prohibiting a Member from granting a new subsidy or increasing an existing subsidy, affecting the export of a primary commodity, during a commodity conference dealing with the commodity in question, unless the Organization concurs. This provision serves to limit the above-mentioned new provision contained in paragraph 3. The Sub-Committee was unable to agree to a proposal by the delegation of Argentina to delete the phrase “unless the Organization concurs”, and that delegation reserved its right to reopen the question in Committee.

Paragraph 5.

32. This paragraph takes the place of paragraph 3 in the Geneva text of Article 27. The Sub-Committee was unable to accept the proposal by the delegations of Argentina and Peru to delete the paragraph; the delegation of Argentina was satisfied, however, that its point was covered by the new text. The delegation of Peru reserved its position on the paragraph.

33. On the basis of a suggestion by the United States representatives, the paragraph was redrafted in order to permit Members who consider their interests seriously prejudiced to apply or maintain export subsidies on primary commodities, without prior approval or a determination by the Organization, where Chapter VI procedure has failed or does not promise to succeed or where an inter-governmental agreement is inappropriate. It was recognized that any judgment by a Member that an agreement is “inappropriate” could subsequently be challenged by any other Member through the procedure of Chapter VI.

Article 28. — Undertaking regarding Stimulation of Exports of Primary Commodities.

34. In the light of the relaxation of the provisions of Article 27 the safeguards contained in Article 28 were strengthened. In
particular, provision was made, where consultation fails, for the Organization to make determinations to which Members shall conform. Other changes which were agreed are as follows:

(i) The new Article refers not only to export subsidies but to any form of subsidy operating directly or indirectly to increase or maintain exports; its application, however, is now limited to primary commodities.

(ii) The concept of a "previous representative period" as the basic criterion has been replaced by that of "an equitable share of world trade". This is intended to meet criticisms that the Article, as in the Geneva text, would tend to stabilize an existing trade situation to the detriment of under-developed countries. It is thought that the new text will, in this respect cover the case of these countries and go some way to meet the position of the delegation of Argentina expressed in its proposal to delete the Article.

(iii) Factors are specified which, amongst others, the Organization shall take into consideration in making its determination of an "equitable share". In regard to sub-paragraph 4 (c) of Article 28 it is understood that the terms "the economy" and "the economies" mean national economy as a whole and would include the balance-of-payments situation of the Members concerned. The terms would naturally cover any special aspect of the economic structure of a Member.

35. It was felt that the new text, by its application of safeguards to general subsidies affecting exports, partly met the point raised in the amendment submitted by the delegation of Brazil (paragraph 2 of proposed Article 27 A). Regarding the other point raised by the delegation of Brazil (paragraph 1 of proposed Article 27 A), which was referred to Sub-Committee A, the Sub-Committee noted the latter's decision, namely, that a majority of the Members of Sub-Committee A felt that it was unnecessary to insert the amendment, whereas a minority supported the Brazilian proposal, at least in principle.

36. The representative of Argentina proposed to amend paragraph 3 so as to remove the provision that a Member should conform to a determination by the Organization. The Sub-Committee was unable to accept the proposal, and the representative of Argentina reserved his delegation's position on the paragraph.

37. In regard to paragraph 4 (d), one delegation called attention to the fact that a major consideration in deciding what is an "equitable share" is the extent to which a country may successfully have limited the supply of a surplus commodity. This is recognized as concerns one kind of such limitation in the reference
to paragraph 1 of Article 27. However, there are other methods of limiting supply which also deserve mention because of their specific and important relevance.

38. The term "other measures" in paragraph 4 (e) refers only to measures permitted under Section C.


39. It was agreed to delete this Article and instead to make appropriate reference to the Organization in paragraph 3 of Article 26 and in paragraph 1 of Article 27 in regard to the determinations provided for in those paragraphs. The deletion of Article 29 had been proposed by the delegation of Argentina.

REPORT OF SUB-COMMITTEE J OF THE THIRD COMMITTEE ON ARTICLES 30 AND 31 [29 TO 32][1]

1. The Third Committee at its twenty-eight meeting on 7 January 1948 approved the formation of a Sub-Committee on Section D—State Trading—of Chapter IV consisting of the representatives of Czechoslovakia, Ecuador, Egypt, Mexico, the Netherlands, Pakistan, Switzerland, the United Kingdom and the United States.

2. The terms of reference of the Sub-Committee were to consider and make recommendations concerning the text of Articles 30 [29] and 31 and the notes attached and amendments submitted to these Articles.

3. The Sub-Committee understood the proposal by the delegation of Argentina to delete the entire Section D, which had met with no support during the discussion in Committee, to be outside its terms of reference and did not, therefore, include it in its considerations.

4. The Sub-Committee held its first meeting on Monday, 12 January 1948 and unanimously elected the Right Honourable Walter Nash (New Zealand) its Chairman.

5. The Sub-Committee held seven meetings. Representatives of several countries not members of the Sub-Committee attended the meetings as observers. Delegates of Belgium, Canada, Cuba

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1 E/CONF.2/C.3/43. 
and Denmark took an active part in the discussion on points of special interest to them.

6. In the course of its work the Sub-Committee examined the text of Articles 30 [29] and 31, the notes attached and all outstanding amendments submitted to these Articles, as well as amendments and observations subsequently submitted by members and recommendations made by other Sub-Committees.

7. In order to facilitate the work of the Sub-Committee, several Working Groups to consider particular items were established on which the delegates of Czechoslovakia, Mexico, the Netherlands, New Zealand, Switzerland, the United Kingdom and the United States were represented.

8. The Sub-Committee was able to reach unanimous agreement on most points, only a small number of decisions taken being subject to reservations by individual delegations.

General.

9. In view of the additional provisions included in this Section it was considered necessary to make a change in the title of the Section by adding the words "and Related Matters".

Article 30 [29]. — Non-discriminatory Treatment.

10. In the opinion of the Sub-Committee, the term "state enterprise" in the text did not require any special definition; it was the general understanding that the term includes, inter alia, any agency of government that engages in purchasing or selling.

11. A drafting amendment, replacing in sub-paragraph 1 (a) the words "applied in this Charter to governmental measures" by "prescribed in this Charter for governmental measures" was adopted so as to express more correctly the purpose of the provision.

12. It was decided to embody the substance of the paragraphs in the footnotes to paragraph 1 relating to Marketing Boards in a new Article.

13. In regard to the footnote to paragraph 1 concerning different prices in different markets for sales of products by state enterprises, it was decided to retain the interpretation contained in the footnote. The Sub-Committee agreed, therefore, to amend the text so as to include purchases as well as sales and to take account also of relevant factors other than supply and demand. The representative of Belgium stated that if the new text were
approved his delegation would not maintain the reservation made at Geneva.

14. The Sub-Committee felt that the Note appended to sub-paragraph 1 (a) could not be dispensed with. It was unanimously agreed to recommend the retention of its text, with certain alterations, as a footnote attached to that sub-paragraph and forming a part of the Charter.

15. It was felt that the matter covered in the Note appended to sub-paragraph 1 (b) did not require express statement. It was therefore agreed to delete this Note.

16. An amendment by Mexico proposing to delete paragraph 2 was withdrawn.

17. It was considered necessary to retain the Note attached to paragraph 2 in the Geneva draft.


18. Following the discussion on the footnotes relating to marketing boards appended to paragraph 1 of Article 30 of the Geneva draft and on the amendment by the New Zealand delegation as to how the provisions of the Charter would apply to the activities of marketing boards, commissions and similar bodies it was agreed unanimously that a provision dealing with this question should be included in the Charter. A suitably drafted text for a new Article, headed “Marketing Organizations”, was accordingly inserted.

**Article 31.** — Expansion of Trade.

19. Arising from the amendment proposed by the United States, the Sub-Committee agreed that the last phrase of sub-paragraph 1 (b) as previously drafted did not accurately express the intention of that provision. It was therefore decided to make the drafting change indicated in the revised text.

20. The Cuban delegation explained the object of its amendment and advised that the delegation would be satisfied if paragraph 2 (b) was altered in any of the following ways:

(A) “. . . or would be not wholly effective for the achievement of . . .”

(B) “. . . or would not be satisfactorily effective for the achievement of . . .”

Provided that a record should also be kept with the Committee with an explanation of the interpretation to the effect, that if the negotiation of the maximum import duty should not be entirely or
partially effective in attaining the objects mentioned in sub-paragraph 1 (b), any other agreement which is reached in accordance with sub-paragraph 2 (b) does not exclude the agreement regarding the maximum import duties mentioned in sub-paragraph (a).”

21. It was considered that the proposed change in the wording would not add anything to the present scope of sub-paragraph (b). The Sub-Committee expressed the view that the wording of sub-paragraph (b) was not intended to preclude a negotiation by mutual agreement under this sub-paragraph in conjunction with, or in addition to, a negotiation under sub-paragraph (a).

22. The Sub-Committee expressed the view that the Note appended to paragraph 3 of the Geneva draft which reads:

“If the maximum import duty is not bound by negotiations according to sub-paragraph 2 (a) the Member is free to change at any time the declared maximum import duty, provided that such change is made public or notified to the Organization.”

represents a correct interpretation of the provision. It was considered, however, that the text as drafted was sufficiently clear and that there was no need to retain the footnote.

23. In order to remove any possible misinterpretation of paragraph 4 and to make its intention fully clear the words “exclusive of” were substituted for “after due allowance for”.

24. In paragraph 4 as well as in the Note to paragraph 4 the words “primary product” were replaced by the words “primary commodity”. In using the expression “primary commodity” in Section D the Sub-Committee had in mind the definition contained in paragraph 1 of Article 53 [56].

25. The Sub-Committee considered that it was desirable to retain the Note appended to paragraph 4 of the Geneva draft as a footnote.

26. The proposal by Denmark to add to paragraph 5 the following proviso:

“Provided that such rationing does not aim at restrictions over and above such restrictions that are otherwise justified according to the Charter.”

was not approved as it was felt that Chapter VIII gave adequate safeguards in the event of abuse by any Member, and furthermore that Article 41 provided specifically for consultation with regard to all state-trading operations. The representative of Denmark thereupon withdrew his amendment.
27. An amendment to paragraph 6 submitted by the delegation of Switzerland was fully considered in the Sub-Committee. It was decided to retain the present text.

28. The delegate of Mexico, supported by the delegate of Ecuador, made the following statement and then withdrew his amendment:

"The delegation of Mexico has noted the views of the Sub-Committee that it was not intended in the drafting of paragraph 6 of Article 31 to define in any narrow sense the term 'social purposes', and further that it would be unwise for the Sub-Committee itself to decide that a particular interpretation should have greater force than any other.

"The responsibility placed on the Members and the Organization is simply that they should pay 'due regard' to the fact that some monopolies may be established mainly for 'social purposes' and, to that extent, general economic considerations would not be the sole factor to be taken into account in any negotiations.

"In these circumstances, the delegation of Mexico considers that this term would appropriately include, amongst other aspects of monopolies established and operated mainly for social purposes, such state monopolies as are set up under specific legislation to supply the necessary elements for the people's subsistence and to foster the social development of the nation."

29. The representative of Ecuador provisionally reserved his position in respect of all provisions relating to state monopolies for fiscal purposes.¹

30. It was decided to omit the Note attached to Article 31 of the Geneva draft, concerning the deletion of Article 33 as contained in the London draft.

31. The following statement appears as a footnote under Article 31 on page 29 of the Geneva draft:

"Arising out of a proposal by the New Zealand delegation to make an addition to the previous text of Article 33, the Preparatory Committee considered the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulations of their foreign trade. In the opinion of the Preparatory Committee the present text of Article 21, together with the provision for export controls in certain parts of the Charter, e.g. in Article 43 [45], fully meet the position of these economies."

"The delegation of New Zealand reserved the position of its Government on this question."

¹ This reservation was withdrawn in Committee III.
The New Zealand delegation stated that until the final text of the Charter had been determined it maintained its reservation on this question.\(^1\)

\textit{New Article 31 A [32]. — Liquidation of Non-Commercial Stocks.}

32. The Sub-Committee considered the following communication from the Chairman of Sub-Committee I of Committee VI:

"The Joint Sub-Committee of Committees V and VI has been considering the substance and the location of an exception to be made in respect of agreements made by or for military establishments for the purpose of meeting essential requirements of national security. The Sub-Committee had decided to recommend the inclusion of the appropriate provision in Article 94 [99].

"However, in putting forward this recommendation, the Sub-Committee is of the view that a related provision should be introduced elsewhere in the Charter concerning the need for consultation on the liquidation of any stock piles accumulated under such a provision in Article 94 [99]. The Sub-Committee considers that the insertion of a provision on liquidation might best be considered in Section D of Chapter IV. Accordingly, the Joint Sub-Committee would be grateful if Sub-Committee J of the Third Committee would give consideration to this question. The Joint Sub-Committee has instructed me to communicate this request to you, and at the same time to transmit for possible consideration by Sub-Committee J two alternative versions of such a provision which the Joint Sub-Committee had before it:

(1) That following the word "sale" at the end of the first sentence in paragraph 2 of Article 30 [29] a proviso might be added to the following effect:

'\textit{Provided that, upon a complaint that substantial injury is being caused or is anticipated, a Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to disposal of reserve stocks so acquired.}'

(2) That any provision to be made in Section D might be along the following lines:

'\textit{Any Member accumulating non-commercial reserves of primary commodities for military purposes under an inter-governmental agreement ... shall not make arrangements for the commercial liquidation of such reserve stocks in such a way as to injure the commercial interests of producers of the commodities in question, and shall consult with the Organization as to the best means to that end.}'

"While the Joint Sub-Committee was agreed in recommending that Sub-Committee J consider the inclusion of some provisions for consultation on the liquidation of such stock piles, the Joint Sub-Committee has not examined the merits of either of the texts reproduced above and is merely transmitting them for information and to provide a possible basis for discussion."

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\(^1\) This reservation was withdrawn in Committee III.
33. The Sub-Committee decided to recommend the insertion of a new Article, to follow Article 31, dealing with the liquidation of non-commercial government stocks of primary commodities. The term “non-commercial purposes” was used to make clear that the stocks held by governments for commercial purposes’ e. g., those of state trading enterprises, are excluded from the provisions of the proposed new Article. The main reason for the inclusion of Article 31 A [32] was to provide machinery for prior consultation in regard to the liquidation of stocks accumulated for security reasons. It is implied in the text of the Article that the Organization on receipt of notice as provided shall advise the Member governments accordingly.

34. The Sub-Committee considered that Article 31A [32] did not in any way affect the obligations of Members under Article 30 [29] as it relates solely to public or prior notification of an intention to liquidate stocks.1

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1 In Committee III the delegation of Chile recorded a reservation which was subsequently withdrawn in the final Plenary Meeting.
IV. REPORTS RELATING TO THE FOURTH COMMITTEE

RESTRICTIVE BUSINESS PRACTICES

This section contains the Report of the Fourth Committee. The Sub-Committee Report (E/CONF.2/C.4/5) has not been reproduced since virtually all of its contents as modified by the full Committee were incorporated in the Committee Report.

REPORT OF THE FOURTH COMMITTEE:
RESTRICTIVE BUSINESS PRACTICES

1. The Fourth Committee, established by a decision of the Third Plenary Meeting to examine Chapter V of the Geneva draft (Restrictive Business Practices), considered all the amendments proposed to that Chapter and, subject to the reservations mentioned in Part I of this Report, agreed on the new text of Chapter V.

2. Dr. C. CHARLONE (Uruguay) was appointed Chairman, and Mr. A. J. van VELDEN (Union of South Africa) Vice-Chairman; on Mr. van Veldens' departure from Cuba on 16 January 1948, Mr. B. N. BANERJI (India) was appointed as his successor. In the absence of the Chairman and Vice-Chairman Mr. de BARROS (Brasil) presided at one meeting of the Committee.

3. After the first reading of the text, the Committee set up a Sub-Committee to study all the amendments proposed in relation to Chapter V. Mr. J. H. LOPEZ ALCAR (Mexico) was appointed Chairman of the Sub-Committee, which was composed of representatives of the following ten delegations: Argentina, Belgium, Canada, Ecuador, India, Iraq, Mexico, Norway, the United Kingdom and the United States of America. The Sub-Committee held

1 E/CONF.2/53 with Addendum 1.
twenty-three meetings and submitted its final report to the Fourth Committee on 10 January 1948.¹

4. The Committee held fifteen meetings.

PART I

GENERAL COMMENTS.

5. The delegations of Ceylon, India, Pakistan and Venezuela reserved their positions on Chapter V, and especially on Article 50 [53], pending the outcome of discussions on the new Article 18 A.² The delegations of Denmark, France, Greece, Norway and Sweden reserved their positions on Article 50 [53], pending the outcome of discussions on the new Article 18 A.² The delegation of Colombia reserved its position with respect to the scope of Article 50 [53].³

6. The delegation of Argentina reserved its position in respect of the inclusion of "public commercial enterprises" within the scope of Chapter V and in respect to Article 50 [53].⁴ In this connection the Committee made a clear distinction between the State acting in a legislative or executive capacity and the State pursuing the activities of a business enterprise. It was considered important to point out that the inclusion of business practices of public commercial enterprises in Chapter V does not infringe upon the sovereignty of the State itself, but is designed to bring within the framework of the Chapter the business practices of public commercial enterprises in so far as they may harmfully affect international trade.

7. As an aid to proper interpretation of the words "decide" and "decision" a new sub-paragraph was added to Article 51 [54], and it was decided to incorporate the following explanatory note in the report of the Committee:

"The words 'decide' and 'decision' ('constate' and 'constatation' in the French text) as used in Articles 44 [46], 45 A [48]

¹ E/CONF.2/C.4/5.
² See pp. 68-69 for the Report of Sub-Committee B to the Third Committee concerning the decision to omit the proposed Article 18 A.; see also pp. 41-42.
³ At the fifteenth meeting of the Committee the delegations of Denmark, Greece, Norway, India, Pakistan and Sweden withdrew the reservations previously recorded. The delegations of Chile, El Salvador, New Zealand and Venezuela reserved their positions on Article 50 [53] in the light of the notes adopted at that meeting relating to that Article. Certain of these reservations were indicated to be of a provisional character pending further consideration. All of these reservations were withdrawn during the final plenary meetings of the Conference.
⁴ Subsequently the delegation of Argentina entered a reservation to the entire Chapter (E/CONF.2/74).
(except in paragraphs 3 and 4) and 47 [50] relate to conclusions by the Organization whether or not particular practices have had, have or are about to have the harmful effects described in paragraph 1 of Article 44 [46], and do not prescribe the obligations of Members. Members' obligations regarding these ' decisions ' are set out in the relevant paragraphs of Article 47 [50]. Therefore, such ' decisions ' (or constations) are not to be construed as binding the legislative, executive or judicial activities of Member States."

8. The Committee discussed at length the relation between the procedures of Chapter V under Articles 45 [45] and 45 A [48], and those of Chapter VIII. In the course of its discussions, the Committee had the benefit of a communication from Committee VI ¹ setting forth the opinion of that Committee on the subject of Chapter VIII in its general relation to other parts of the Charter. Committee IV found that the question was full of complexities and that it was difficult to foresee at this stage all implications of cases that may in practice arise.

However, Committee IV calls attention to the fact that the procedures under Chapter V apply to complaints directed against harmful effects arising out of business practices of commercial enterprises, while the procedures under Chapter VIII apply to complaints against Members as such. Therefore, the procedures set forth in Chapter V cannot preclude resort by a Member to the procedures under Chapter VIII, whenever it considers that there is nullification or impairment of the benefits under the Charter by another Member.

PART II

SPECIAL COMMENTS

Article 44 [46].

9. In paragraph 1 of Article 44 [46] the words "and shall co-operate with the Organization" were substituted for the words "individually or through the Organization or in both ways" in order to express the general principle of co-operation between Members and the Organization.

10. In considering paragraph 2, sub-paragraph (c) of Article 44 [46], the Committee was of the opinion that the expression "effective control of trade between two or more countries" was open to possible misinterpretation. The amendment was designed to make it clear that the activities of an enterprise which has been granted sole rights of import or export of a particular product in a

¹ See Attachment 2 to the Report of the Sixth Committee.
particular country, and which might, therefore, be said to have de jure control of trade between that country and any other, will not be liable to complaint unless it also has de facto control of trade and is in a position to exert monopolistic pressure on its suppliers or customers to accept certain terms or conditions. It is clear that if a Member’s exports or imports of a product are a negligibly small proportion of international trade in that product, business practices of firms under that Member’s jurisdiction in respect of this product could not be subject to complaint. Generally speaking an enterprise situated in one country will not be in a position to exert such de facto control of trade with any other single country unless it also controls trade among several countries, and it is for this reason that the Committee introduced the more general expression “effective control of trade among a number of countries”. This phrase is also intended to cover the less frequent case of an enterprise which exerts de facto control of trade between two countries only.

11. In Article 44 (46), paragraph 3 (a) the term “third parties” was changed to read “others” in order to maintain uniformity with the French text of the Geneva draft and to reflect the understanding of the representatives of some delegations as to the meaning of this sub-paragraph. It was the Committee’s view that the language should be broad enough to allow the procedures of Chapter V to be applied to (i) cases in which two or more parties agree upon the terms of their behaviour towards other parties, including prices or other conditions of doing business with, such other parties; and (ii) cases in which one enterprise including a complex of firms related by common ownership of some or all of their respective capital, engages in the practice of monopolistic extortion towards other buyers or sellers.

The Committee emphasized that this sub-paragraph is not to be construed as applying to simple price situations where, for example, an enterprise during the period of a “sellers” market may be charging prices higher than could normally be obtained. It was not the Committee’s intention that the Organization should exercise functions similar to those of a national price control agency. The Committee pointed out that sub-paragraph 3 (a), like all other sections of paragraph 3, can be construed only together with paragraphs 1 and 2.

12. In the French text of sub-paragraph (c), paragraph 3 of this Article, the word “déterminées” was substituted for the
word "particulières", as the latter word could be misinterpreted as meaning "private".

Article 45A [48].

13. The Committee felt that paragraph 7 of Article 45 A [48] was of considerable importance. This paragraph provides that if the Organization decides that certain restrictive business practices have harmful effects, it shall call upon the Members concerned to take remedial action. The paragraph provides further that the Organizations may make recommendations to the Members concerned regarding remedial measures to be taken in the particular case.

In view of its importance the Committee called attention to this distinction between a decision of the Organization and a recommendation. The term decision relates to conclusions by the Organization as to whether the practices in question have harmful effects. The term recommendation relates to specific or general suggestions formulated and advanced by the Organization which set forth a course of action that might be followed to advantage by the Members concerned in remedying the situation under complaint. It is not contemplated in paragraph 7 that in every case such a recommendation would be proper or necessary. In simple situations involving one or perhaps two countries, a recommendation by the Organization might not be appropriate; however, in complex cases involving a number of countries, it is frequently difficult, if not impossible, for one country to act effectively and properly in the absence of knowledge as to the lines of conduct which other countries propose to follow. In the view of the Committee it appeared inadvisable to require the Organization to make recommendations in every case or to define the type of cases in which recommendations would be appropriate. This matter should be left to the discretion of the Organization.

Article 47 [50].

14. In Article 47 [50], the transposition of the words "in accordance with the Member's system of law and economic organization" and the addition of the word "constitution" to paragraph 1, were intended to make it clear that in implementing the obligations undertaken by a Member in terms of this Article it has to proceed in accordance with its own system of political and economic organization. The nature of the exact legal or administrative implementations of these obligations would accord-
ingly vary from country to country, and no impairment of fundamental legislation or basic economic policy would be involved in giving effect to a Member's obligations under this Article. In other words the phrase "system of law" is complementary to the words "constitution" or "basic legislation". The words "constitution" and "system of law" represent two different concepts—one the actual existence of basic fundamental legislation, and the other the general legal framework within which remedial action was carried out by a Member of the Organization.

15. A small amendment in paragraph 1 of Article 47 [50] makes it clear that the practices referred to in Article 47 [50] in respect of which Members undertake obligations are those which meet the conditions of paragraphs 1, 2 and 3 of Article 44 [46].

Article 48 [51].

16. It was the intention of the Committee that the co-operative action permitted under Article 48 [51], paragraph 1, should be entirely voluntary and that this Article should not be construed as implying any obligation upon Members to participate in co-operative action. The Committee was also of the opinion that the parties to such co-operative action should be those Members directly interested in any particular instance of restrictive business practices.

Article 50 [53].

17. The alteration of the word "banking" in the first sentence of paragraph 1 of Article 50 [53] to the phrase "the commercial services of banks", is designed to make it perfectly clear that the banking operations to which the paragraph refers are simple financial services directly and intimately connected with international commercial transactions such as the provision of short-term credit facilities to cover imports and exports of goods; and the alteration of the phrase "in relation to them" to the phrase "enterprises engaged in these activities in international trade" is intended to show that the paragraph refers only to banking institutions which are themselves directly engaged in international commercial transactions.

The Committee agreed that the provisions of Article 50 [53] do not refer to such activities as the regulation of internal credit or of internal monetary circulation by a central bank or to longer term international lending by a governmental agency.

The note to Article 50 [53] was added in order to avoid conflicts of responsibility and jurisdiction between the International Trade
Organization and the proposed Inter-governmental Maritime Consultative Organization.

18. Electricity as a service or as a product is covered by Chapter V. On the question of whether electricity should be considered as a product and its transmissions as a service, the Committee felt that it should be left to the Organization itself to come to a conclusion.

Article 51 [54].

19. The first sentence of paragraph 1 of the new Article 51 [54] was intended to make it clear that action by commercial enterprises necessary to implement, for instance, an inter-governmental commodity control agreement which meets the requirements of Section C of Chapter VI cannot be subject to challenge under Chapter V, but that effects of such action which are restrictive beyond the scope and purposes of the said agreement may be subject to complaint.

20. The Committee agreed that the use of the words "may have" in paragraph 1 of Article 51 [54] did not entail any extension of the provisions of Chapter V.

21. Paragraph 2 (a) specifically lays down that single contracts of purchase, sale or lease concluded between two commercial enterprises whether public or private, shall not except in the special circumstances set out in the proviso be considered as falling within the meaning of the term "business practices" as used in this Chapter. It was believed that this provision would be a safeguard against certain types of complaints which did not properly fall within the scope of Chapter V.

22. An alteration in the definition of public enterprises was made in paragraph 2 (b) (i) in order to distinguish between the actions of a State when acting in its sovereign legislative or administrative capacity and when acting in a trading or commercial capacity. In the former case the actions of a State are not subject to investigation under Chapter V.

23. The delegation of India accepted paragraph 2 (d) of Article 51 [54] provisionally and reserved its right to reconsider its position in the plenary session.
V. REPORTS RELATING TO THE FIFTH COMMITTEE

INTER-GOVERNMENTAL COMMODITY AGREEMENTS

This section contains the following documents relating to the work of the Fifth Committee:

(i) Report of the Fifth Committee.
(ii) Report of the Drafting Sub-Committee of the Fifth Committee.
(iii) Report of Sub-Committee A of the Fifth Committee.
(iv) Report of the Joint Sub-Committee of the Fifth and Sixth Committees.
(v) Note on a Resolution concerning the Interim Co-ordinating Committee for International Commodity Arrangements.

REPORT OF THE FIFTH COMMITTEE: INTER-GOVERNMENTAL COMMODITY AGREEMENTS

1. The Fifth Committee was charged with the examination of the Geneva draft of Chapter VI — Inter-governmental Commodity Agreements, together with the amendments to this Chapter proposed by delegations.

2. Mr. George Hakim (Lebanon) was elected Chairman and Mr. Mauritz Bonow (Sweden) was elected Vice-Chairman.

3. The Committee was able to resolve all issues before it. To facilitate its work the Committee established two Sub-Committees and a Joint Sub-Committee with the Sixth Committee.

4. The Committee recommended adoption of a resolution regarding the composition of the Interim Co-ordinating Committee for International Commodity Arrangements.²

5. The next Section of this Report includes for each Article of Chapter VI the action taken by the Committee on amendments

¹ E/CONF.2/39 and 40.
² The Resolution is contained in the Final Act and Related Documents (ICITO. 1/4 or E/CONF.2/78).
proposed by delegations. The delegations of Colombia, El Salvador\(^1\) and Guatemala\(^2\) reserved their position on the action by the Committee rejecting the Colombian proposal for a new Article.

SECTION A. — INTRODUCTORY CONSIDERATIONS

**Articles 52 [55]. — Difficulties Relating to Primary Commodities.**

1. There were no amendments proposed to this Article.
2. The footnote to the Geneva text was withdrawn.
3. The Committee adopted the Geneva text.

**Article 53 [56]. — Primary and Related Commodities.**

1. Amendments were proposed by the delegations of Chile, Italy and Uruguay.
2. The Committee accepted the principle of the proposal by the delegation of Chile that the definition should be uniform throughout the Charter. The Central Drafting Committee made the appropriate changes.\(^3\) The proposal of the delegation of Italy was withdrawn. The Committee did not accept the proposal by the delegation of Uruguay.

**Article 54 [57]. — Objectives of Inter-Governmental Commodity Agreements.**

1. Amendments were proposed by the delegations of Ceylon, Chile, Cuba, El Salvador, Mexico, Philippine Republic, Uruguay and Venezuela.

   (a) In consideration of the proposal by the delegation of Chile the Committee revised the preamble of this Article.

   The delegation of El Salvador withdrew its proposed amendment to the preamble.

   (b) Arising out of the proposal of the delegation of Mexico, the Committee revised sub-paragraph (b) of this Article.

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\(^1\) The reservation by the delegation of El Salvador was withdrawn during the final plenary meetings of the Conference.

\(^2\) The reservation by the delegation of Guatemala was withdrawn prior to the final plenary meetings of the Conference.

\(^3\) E.CÔNF.2/40.
(c) In consideration of the proposals by the delegations of Ceylon, Cuba, El Salvador, Mexico, Philippine Republic, Uruguay and Venezuela to amend sub-paragraph (c) the Committee substituted the phrase "such prices as are fair to consumers and provide a reasonable return to producers" for "fair to consumers and remunerative to efficient producers" in the Geneva text. The Committee agreed, in view of the purpose of the Venezuelan proposal to amend Article 59 [62], to insert the words "prevent or" between "to" and "moderate" in the Geneva text.

(d) The proposal by the Cuban delegation to amend sub-paragraph (e) was withdrawn. The Committee accepted an addition to the text incorporating the sense of the footnote to the Geneva text. (See Report of Drafting Sub-Committee.)

(e) The proposals by the delegation of El Salvador to add two new sub-paragraphs to this Article were withdrawn. The Committee decided against acceptance of the new sub-paragraph proposed by the Uruguyan delegation.

Note: In connection with the amendments proposed to Article 54 [57] attention is drawn to the addition in Havana of present sub-paragraph (d) of paragraph 1 of Article 69 [72] to cover international agreements concerned with the relationship between world prices of primary commodities and manufactured goods.

SECTION B. — INTER-GOVERNMENTAL COMMODITY AGREEMENTS IN GENERAL

Article 55 [58]. — Commodity Studies.

1. Amendments were proposed by the delegations of Ceylon, El Salvador, and Uruguay.

2. To meet the proposals of the delegations of El Salvador and Uruguay the Committee substituted "considers itself" for "is" in the first line of paragraph 1 and "itself" for "that it is" in paragraph 2. The Committee agreed that the intentions of the Ceylon proposals were in fact covered by the existing text.

Article 56 [59]. — Commodity Conferences.

1. Amendments were proposed by the delegations of Ceylon, Egypt, El Salvador, and Peru.

2. The proposals of the delegations of Peru and El Salvador to add a new paragraph to this Article were withdrawn. The Committee revised paragraph 1 and substituted "itself" for "that it is" in paragraph 2 to meet the proposals of Ceylon, Egypt and the balance of the El Salvador amendment.

Article 57 [60]. — General Principles Governing Inter-Governmental Commodity Agreements.

1. An amendment was proposed by the delegation of the Philippines but later withdrawn.

2. The Committee adopted the Geneva text.

Article 58 [61]. — Types of Agreements.

1. Amendments were proposed by the delegations of Mexico and India.

2. To provide for a smooth transition at the time when an "expansion" agreement becomes a control agreement, paragraph 5 was redrafted. The Committee redrafted paragraph 6 to cover the first part of the Mexican proposal, and the remaining two parts of this amendment were withdrawn. As the amendment proposed by the Indian delegation was consequential to their proposal to Article 64 [67], it was dealt with during the consideration of that Article.

Section C. — Inter-Governmental Commodity Control Agreements.

Article 59 [62]. — Circumstances governing the use of Commodity Control Agreements.

1. Amendments were proposed by the delegations of Ceylon and Venezuela.

2. Although the Committee did not accept the Ceylon proposal to delete this Article, it endeavoured to meet the points made in the discussion of this proposal by deleting paragraph 2 and inserting a revised preamble to this Article. The Venezuelan proposal was dealt with by amending paragraph (c) of Article 54 [57].

Article 60 [63]. — Additional Principles Governing Commodity Control Agreements.

1. There were no amendments proposed to this Article.
2. In order to incorporate the sense of the explanatory footnote to sub-paragraph (a) the Committee agreed that the words "reasonable prices" in the Geneva text should be replaced by the words "prices which are in keeping with the provisions of Article 54 [57] (c)". The Committee agreed to delete the explanatory footnote to sub-paragraph (b) of this Article.

Article 61 [64]. — Administration of Commodity Control Agreements

There were no amendments proposed to this Article and the Committee adopted the Geneva text.

Article 62 [65]. — Initial Term, Review and Renewal of Commodity Control Agreements [Initial Term, Renewal and Review of Commodity Control Agreements].

1. An amendment was proposed by the delegation of Costa Rica.
2. The Committee did not accept this proposal and adopted the Geneva text.

Article 63 [66]. — Settlement of Disputes.

There were no amendments proposed to this Article and the Committee adopted the Geneva text.

SECTION D. — MISCELLANEOUS PROVISIONS.

Article 64 [67]. — Relations with Inter-Governmental Organizations.

1. Amendments were proposed by the delegation of India.
2. The Committee decided that this proposal together with a consequential proposal to Article 58 [61] should not be accepted. However, it was agreed to delete the words "on the basis thereof" from sub-paragraph (c) of the Geneva text.

Article 65 [68]. — Obligations of Members Regarding Existing and Proposed Commodity Agreements.

1. Amendments were proposed by the delegation of Argentina.
2. The Committee revised the text to incorporate the intention of these amendments.
Article 66 [69]. — Territorial Application.

There were no amendments proposed to this Article and the Committee adopted the Geneva text.

Article 67 [70]. — Exceptions to Provisions Relating to Inter-Governmental Commodity Agreements [Exceptions to Chapter VI].

1. Amendments were proposed by the delegations of Norway and the United States.

2. The Committee adopted a new sub-paragraph 1 (d) covering the proposal by Norway and recommended to the Third Committee that a comparable exemption be inserted in Chapter IV. This exemption had been agreed to by the Third Committee. As regards the United States proposal the Committee accepted the principle involved; however, it referred the matter to the Joint Sub-Committee of the Fifth and Sixth Committees which recommended that the proposal be met by amendments elsewhere in the Charter. This recommendation was accepted (see page 145).

Proposed New Article.

1. The addition of a new Article to Chapter VI was proposed by the delegation of Colombia.

2. The Committee did not accept this proposal. The delegations of Colombia, El Salvador\(^1\) and Guatemala\(^2\) reserved their position.

Note: The Committee agreed to recommend to the Third Committee that the word “terms” be substituted for the word “obligations” in Article 43 [45] paragraph I (b) \[(a) (ix)\]. The Third Committee approved a redraft of this provision deleting the word “obligations”.

REPORT OF THE DRAFTING SUB-COMMITTEE OF THE FIFTH COMMITTEE\(^3\)

1. The Drafting Sub-Committee was established to consider:

(a) the interpretative footnotes to the Articles, and

(b) the preamble to Article 54 [57].

\(^1\) The reservation by the delegation of El Salvador was withdrawn during the final plenary meetings of the Conference.

\(^2\) The reservation by the delegation of Guatemala was withdrawn prior to the final plenary meetings of the Conference.

The Sub-Committee was composed of the representatives of Argentina, Australia, Colombia, France, India, the Netherlands, the United Kingdom and the United States of America.

Mr. R. B. SCHWENGER (United States) was elected Chairman.

2. Explanatory Note to Article 54 [57] (e).

It was decided to submit to the Fifth Committee the following draft of sub-paragraph (e), which would incorporate the sense of the footnote in the text:

"(e) to provide for the expansion of the production of a primary commodity where this can be accomplished with advantage to consumers and producers, including in appropriate cases the distribution of basic foods at special prices."

The representative of the Food and Agriculture Organization participated in the discussion of the Sub-Committee and expressed agreement with this draft.

3. Explanatory Note to Article 60 [63].

The delegate of Cuba participated in the discussion of the action to be taken on this footnote.

The Sub-Committee considered it inadvisable to make a recommendation regarding the status of this footnote, as the adoption of a text for Article 54 [57] (e) would necessarily influence the position of Article 60 [63] (a) in regard to the term "reasonable price."

4. Preamble to Article 54 [57].

The Sub-Committee submitted for consideration by the Committee the following text of the preamble:

"The Members recognize that inter-governmental commodity agreements are appropriate for the achievement of the following objectives:"

The delegate for Chile participated in the discussion of the item and agreed that this text should be submitted to the Committee.

5. The explanatory footnotes to Articles 52 [55] and Article 60 [63], sub-paragraph (b) were deleted in Committee and were not, therefore, before the Sub-Committee.
REPORT OF SUB-COMMITTEE A OF THE FIFTH COMMITTEE

PART I

1. The Sub-Committee was given the following terms of reference:

“(1) to consider all proposed amendments to Chapter VI, together with the suggestions made during the discussions in Committee V of these proposed amendments; and

“(2) to recommend texts which would reconcile the various points of view expressed.”

2. The Sub-Committee consisted of representatives of the following delegations: Argentina, Australia, Colombia, Cuba, Egypt, El Salvador, France, India, Italy, Netherlands, Pakistan, Sweden, the United Kingdom and the United States of America.

3. Mr. R. B. SCHWENGER (United States) was elected Chairman.

4. A number of representatives of delegations not appointed to the Sub-Committee attended as observers and, as far as possible, such representatives participated in the discussion of particular amendments for which they were primarily responsible. Observers from the Food and Agriculture Organization, International Co-operative Alliance and International Federation of Agricultural Producers also attended.

5. There follows in Part II a brief statement of the disposition agreed on for each of the matters dealt with.

PART II

Article 42 [55]. — Difficulties Relating to Primary Commodities.

The Sub-Committee noted the fact that the explanatory footnote to Article 52 [55] was withdrawn in Committee.

Article 53 [56]. — Primary and Related Commodities.

1. The Sub-Committee discussed the proposals of the delegation of Uruguay regarding paragraph 1 of this Article. The
proposed preamble, dealing with the extent of application of the definitions, was considered to raise similar questions to those contained in the Chilean amendment which the Committee had decided to refer to the Central Drafting Committee.

2. The latter part of the Uruguayan amendment would include processing equipment in the definition of a primary commodity, and thus permit separate agreements for such equipment. It was the general opinion of the Sub-Committee that this would be undesirable, largely on the grounds that such equipment presented different characteristics from primary commodities; that agreements for such equipment would, in practice, tend to be of the nature of cartels, with unfavourable results for the users of the equipment; and that, because of lack of standardization of processing equipment, multilateral inter-governmental agreements were impracticable.

In this connection, concern was expressed about the equitable distribution of non-primary products in short supply. The Sub-Committee took note of the fact that agreements for the equitable distribution of non-primary products in short supply are clearly contemplated under Article 43, II (a) [45, 1 (b) (i)] as direct exceptions to Chapter IV. Moreover, it was agreed that the Charter contemplated that members of a commodity conference (Article 56 [59]) or a Commodity Council under a primary commodity control agreement (Article 61 [64]) might discuss and seek agreement covering any or all phases of a commodity problem, including those relating to production difficulties.

3. The delegation of Italy, in the light of the discussion in Committee, withdrew its proposal to alter the word “exceptional” in Article 53 [56], paragraph 3.

Article 54 [57]. — Objectives of Inter-Governmental Commodity Agreements.

1. Preamble.

The proposal by El Salvador to replace the word “may” by “may only” was withdrawn in view of the new draft of the preamble recommended by the Drafting Sub-Committee.

2. Sub-paragraph (b).

(i) The Sub-Committee discussed the proposed amendment of the delegation of Mexico to include in this paragraph mention of the promotion of the processing of primary commodities in
the producing countries. It was agreed to recommend the addition to sub-paragraph \((b)\) of the words:

"including, as far as possible, in appropriate cases, the development of secondary industries based upon domestic production of primary commodities."

(ii) The Sub-Committee considered an amendment submitted by the delegation of El Salvador to the effect that a statement should be added to Article 54 \([57]\) \((b)\) to make it clear that the provisions of the sub-paragraph would be applicable to uneconomic agricultural industries based on protection. The delegation of El Salvador withdrew its amendment on the understanding of the Sub-Committee that the matter was covered adequately by the provisions of Article 60 \([63]\) \((c)\) and \((d)\).

3. **Sub-Paragraph \((c)\).**

The Sub-Committee considered amendments proposed by the delegations of Ceylon, Cuba, El Salvador, Mexico, Philippines, Uruguay and Venezuela, designed to clarify the term "fair to consumers and remunerative to efficient producers" relating to the prices which may be negotiated in an agreement designed to moderate pronounced price fluctuations. The discussion resulted in general agreement that the existing text was sufficiently flexible to cover the substance of all the proposed amendments. In the negotiation of a commodity agreement, countries would in fact be able to put forward all of the considerations raised in the amendments. These were of the nature of elaborations of the phrase under discussion, particularly of the word "fair". Complete elaboration of the word "fair", however, would involve mention of a number of "fair" considerations besides those raised in the amendments. The negotiation would take place in the light of the objectives of the Charter as a whole, and it was unnecessary to repeat at this point factors which were included more appropriately in other parts of the Charter.

For these reasons the Sub-Committee generally favoured retention of the Geneva text.\(^1\) It was agreed, however, in connection with an amendment to Article 59 \([62]\) proposed by the delegation of Venezuela (see note on Article 59 \([62]\),\(^2\)) to add the words "prevent or" in sub-paragraph \((c)\) in order to streng-

\(^1\) The action of the Fifth Committee on this sub-paragraph is set out in the Report of that Committee (see pages 128-129).

\(^2\) Page 141.
then the text in regard to the use of commodity agreements to deal with pronounced price fluctuations.

4. **Sub-paragraph (e).**

The Drafting Sub-Committee recommended a text which included the sense of the footnote to the Geneva text.

5. **Proposed New Sub-Paragraphs.**

New sub-paragraphs were proposed by the delegations of El Salvador and Uruguay:

(i) The proposal by El Salvador for a new sub-paragraph (h) was withdrawn in the light of the new draft of the preamble to this Article recommended by the Drafting Sub-Committee.

(ii) In the discussion of the El Salvador proposal for a sub-paragraph (g) designed to give small countries access to intergovernmental agreement procedure to deal with certain policies of commercial enterprises purchasing their primary commodities, attention was drawn to the provisions of Chapter V for intergovernmental co-operation on the problems involved. The Sub-Committee thought that, either through the procedures of that Chapter or, insofar as a specific commodity problem was concerned, through Article 55 [58], it would be possible to request the formation of a study group to consider these problems. On this understanding, the delegate of El Salvador withdrew the proposal.

(iii) The Sub-Committee agreed that the sub-paragraph proposed by the delegation of Uruguay, concerning fair prices for equipment and facilities required for industrialization, was dealt with adequately in connection with its conclusions reported above on Article 54 [57] (c) and on the latter part of the Uruguayen amendment to Article 53 [56].

*Article 55 [58]. — Commodity Studies.*

1. **Use of term “substantially interested”**.

The Sub-Committee examined the use of the term “substantially interested” in Articles 55 [58] and 56 [59] in the light of the Committee’s instruction that the term should be used consistently. In the Geneva text the term was used both subjectively and objectively according to the particular context. In regard to paragraph I of Article 55 [58], it had been the original intention to limit the Members who might ask for a study group to those “substantially interested” in an objective sense. It was now
agreed, however, that any Member substantially interested from its own (subjective) viewpoint should have the right to ask for a study group.

It was therefore agreed to redraft the opening words of paragraph 1 as follows:

"Any Member which considers itself substantially interested in the production or . . . ."

It was considered that this change would cover the intentions of the amendments submitted by the delegations of Uruguay and El Salvador.

The Sub-Committee also agreed to a consequential drafting change in paragraph 2: "if the Member considers itself substantially interested ".


(i) In regard to the proposed amendments of the delegation of Ceylon the Sub-Committee agreed that the intentions of these amendments were in fact covered by the existing text. In particular, it was understood that the power of a study group to make recommendations to its members and to the Organization as to how best to deal with special difficulties includes the power to recommend that the situation requires an agreement or a continuing study group. Moreover, if the situation warrants, Article 56 [59] permits going straight to the conference stage without calling a study group.

(ii) It was agreed to strengthen the text of paragraph 3 by deleting the word "may" from the phrase "which may exist" in line 7 of the Geneva text.

Article 56 [59]. — Commodity Conferences.

1. The Sub-Committee arrived at general agreement that the substance of the amendments to paragraph 1 submitted by Ceylon, Egypt and El Salvador, and also of the suggestions made in Committee¹, would be covered by the new text.

¹ The following suggestions had been made in Committee, and referred to the Sub-Committee:

(a) in line 3, for " whose interest represents " to substitute " whose interests represent ".

(b) if possible to redraft this paragraph as regards " substantial interest " so as to introduce the subjective element contained in paragraph 2 (i.e." . . . which considers that it is substantially interested . . . ").

(c) to state that, on the basis of a request by any Member particularly affected the Organization should consult with other interested Members regarding the need for a conference.
In sub-paragraph (b) of this new text the word "significant" was substituted for "substantial" because the Sub-Committee thought that the latter might be open to a restrictive interpretation. In using the term "significant", the Sub-Committee intended that account be taken of considerations additional to the proportion of total world production, consumption or trade, which the term "substantial" might be taken to imply. It is still the intention in this sub-paragraph, however, that there should be a finding by the Organization as to the extent of Members' interest.

The new sub-paragraph (c) agreed by the Sub-Committee was designed to permit Members, whose economies are dependent to an important extent on a primary commodity, to call on the Organization to convene a commodity conference. In this instance, as distinct from sub-paragraph (b), judgment as to the extent of Members' interest is left to the Members themselves, but the Organization may reject their request for a conference if, and only if, it thinks that no useful purpose would be served.

2. In line 1 of paragraph 2 it was agreed to substitute the word "itself" for the words "that it is", in order to secure consistency with the new text of Article 55 [58].

3. The delegation of El Salvador, in the light of the discussion on Article 55 [58] regarding the powers of study groups, withdrew its proposal for a new paragraph in Article 56 [59].

Article 57 [60]. — General Principles governing Inter-Governmental Commodity Agreements.

In the light of the Sub-Committee's discussion of the "due consideration" clause at the end of paragraph 1 (c) of Article 57 [60], the delegation of the Philippines withdrew its proposed amendment. The Sub-Committee was of the opinion that the existing clauses covered the situation envisaged in the Philippine amendment. The Geneva text was necessary because other situations that might arise in relation to non-participants in a commodity agreement had also to be covered.

Article 58 [61]. — Types of Agreements.

1. Paragraph 5.

The Sub-Committee gave consideration to the proposal made in Committee that the last sentence of paragraph 5 of this Article should be redrafted so as to provide for smooth transition at the
time when an "expansion" agreement becomes a commodity control agreement through the entry into operation of its price provisions. It was thought necessary to remove the implication, contained in the present text, that the Organization must call substantially interested Members together to make a finding under Article 59 [62] at the time the price provisions of any such agreement become operative. The Sub-Committee therefore agreed to the new text.


(a) (i) In regard to the proposals of the delegation of Mexico on paragraph 6, it was agreed that the delegation’s first point, relating to the word “recommended”, was covered by the new text agreed to in Committee for the first sentence of this paragraph.\(^1\)

(ii) Regarding the second part of the Mexican amendment, designed to prevent delay between a study group and a conference, the delegate of Mexico agreed to withdrawal on the understanding that the changes agreed to in Articles 55 [58] and 56 [59] had reduced the danger of delay to a minimum. In this connection, it was agreed to extend the “unreasonable delay” provisions by adding the words “in the convening or” before “in the proceedings” in paragraph 6.

(iii) In explanation of the third part of the Mexican amendment relating to the “provisional” nature of agreements reached by direct emergency negotiation, it was pointed out that an agreement reached by such action would be subject to revision in the light of any conflicting decision which might subsequently be reached by a properly constituted commodity conference. It was also pointed out that agreements reached by direct negotiation would have to conform to the other provisions of Chapter VI. On this understanding the amendment was withdrawn.

(b) At the suggestion of the Cuban member the Sub-Committee agreed that, for the purposes of clarification, paragraph 6 should contain references to the provisions of Article 59 [62]. It was

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\(^1\) The Committee had pointed out that the use of the term “recommended” in this paragraph in a different sense from its use in regard to study groups in Articles 55 [58] and 56 [59] might lead to misunderstanding. Substitution of the term “decided” was suggested; an alternative suggestion was the use of the following wording:

"6. The Members shall enter into a new commodity control agreement only through a conference called . . . ."
therefore agreed to make the following additions to the Geneva text:

(i) in line 4, after "Article 56 [59]", to add "and after an appropriate finding has been made in accordance with Article 59 [62]".  
(ii) to insert at the end of the paragraph "provided that the situation falls within the cases contemplated in Articles 59 [62] (a) or (b) and...".  

Article 59 [62]. — Circumstances governing the use of Commodity Control Agreements.

1. In discussing in Committee his delegation's proposal to delete this Article, the representative of Ceylon brought out the point that the determinations required under the Article might be interpreted to call for a procedural step additional to those provided in Articles 55 [58] and 56 [59]. For this reason it was agreed to eliminate paragraph 2 of Article 59 [62] and to redraft the preamble of paragraph 1.

The new text is intended to make it clear that procedure additional to that set out in Articles 55 [58] and 56 [59] is not called for. The Sub-Committee took the view that the finding referred to would in most cases be made by substantially interested Members through a commodity conference.

2. Arising from discussion on a new sub-paragraph to Article 59 [62] proposed by the delegation of Venezuela in place of its earlier proposal, it was agreed to amend Article 54 [57] (c) as noted earlier in this Report. As concerns the text of Article 59 [62] itself, there was general agreement that the Venezuelan delegation's concern about the use of control agreements to deal with pronounced price fluctuations was covered.

Article 60 [63]. — Additional Principles governing Commodity Control Agreements.

Sub-paragraph (a).

In order to incorporate in the text of the Charter the sense of the explanatory footnote to sub-paragraph (a), it was agreed to amend the text as follows:

"(a) . . . for world demand at prices agreed in the light of Article 54 [57] (c), and . . ."  

1 This wording was subsequently redrafted by the Central Drafting Committee.  
2 The Fifth Committee altered this wording. (See the records of the Twelfth Meeting).
Article 62 [65]. — Initial Term, Review and Renewal of Commodity Control Agreements.

Paragraph 1.

The amendment proposed by the delegation of Costa Rica would have removed the limit on the term of a commodity control agreement. One delegation wished to fix a shorter maximum term. There was general agreement in favour of retaining the existing text.

Article 64 [67]. — Relations with Inter-Governmental Organizations.

Discussion of the amendment proposed by the delegation of India resulted in a general agreement that the existing text should be retained.\(^1\) It was felt that this text provided an appropriate recognition of the special responsibilities of the FAO in the field of food and agriculture. The FAO has continuing responsibility in this field, and this was emphasized in Article 64 [67]. The ITO would have the responsibility for inter-governmental commodity agreements with respect to which Members of ITO were granted exceptions to the general commercial provisions of the Charter. Therefore, the ITO should appropriately be the organization to convene conferences to negotiate such agreements. Under the provisions of Article 84 [87] a detailed working agreement would have to be made between the two specialized agencies, to provide for effective co-operation in their related fields of activity. The representative of India indicated that his delegation reserved its position pending discussion in Committee.

Article 65 [68]. — Obligations of Members regarding Existing and Proposed Commodity Agreements.

In order to give effect to the proposal by the delegation of Argentina to amend paragraph 1, it was agreed that the last sentence of paragraph 1 should read:

"If, after review, the Organization finds that any such agreement is inconsistent with the provisions of this Chapter, it shall communicate such findings to the Members concerned in order to secure promptly the adjustment of the agreement to bring it into conformity with the provisions of this Chapter."

\(^1\) The Fifth Committee subsequently agreed to amend this Article by deleting "on the basis thereof". (See the records of the Twelfth Meeting).
Similarly the amendment proposed by Argentina to the second sentence of paragraph 2 was given effect by amending that sentence to reads:

"If, after review, the Organization finds that any such negotiations are inconsistent with the provisions of this Chapter, it shall communicate such findings to the Members concerned in order to secure prompt action with regard to their continued participation in such negotiations."

Article 67 [70]. — Exceptions to Provisions Relating to Intergovernmental Commodity Agreements. [Exceptions to Chapter VI.]

Paragraph 1.

(i) The Sub-Committee accepted the proposal of the delegation of Norway to exclude, subject to safeguards, certain conservation agreements from the provisions of the Chapter, and agreed to the addition of a new sub-paragraph (d) to paragraph 1 of Article 67 [70].

It was pointed out that a comparable exemption would be needed in Chapter IV, and it was agreed to refer this matter to the Third Committee.

(ii) Regarding the amendment proposed by the delegation of the United States,\(^1\) the Sub-Committee reached agreement on the following points:

(a) That the Charter should be amended to make clear that it was intended to have an exception for action relating to primary commodities as defined in Article 53 [56] taken in concert as well as taken unilaterally, applying to the requirements of national security — in whatever way the reference to national security should appropriately be drafted.

(b) That it was desirable that the exceptions be drafted as narrowly as possible consistently with achieving adequately the purpose of the exceptions.

(c) That decision as to (i) the drafting of the exception, and (ii) its location in the Charter, might best be taken in connection with the discussion of the related portion of Article 94 [99], though not necessarily by the Committee responsible for that Article.

\(^1\) See also the Report of the Joint Sub-Committee of the Fifth and the Sixth Committees.
That the Sub-Committee should report that the following two texts had been before it for discussion:

Proposal 1 — the addition of the following sub-paragraph:

"(e) to any inter-governmental commodity agreement, or any provision in such an agreement, made to meet the essential requirements of national security."

Proposal 2

(i) The addition of the following sub-paragraph:

"(e) to any inter-governmental agreement concluded solely for the purpose of the non-commercial accumulation of reserves of primary commodities for military purposes or of the expansion of facilities for the production of such primary commodities: Provided that any Member, not being a party to such agreement, may bring a complaint that its commercial interests are seriously prejudiced by the operation of the agreement and the Organization, if it so finds, shall request the participating Members to consult with the complaining Member in order to safeguard the latter's commercial interests"; and

(ii) The addition of the following new paragraph 2:

"Any Member accumulating non-commercial reserves of primary commodities for military purposes under an inter-governmental agreement, to which paragraph (1) (e) of this Article applies, shall not make arrangements for the commercial liquidation of such reserve stocks in such a way as to injure the commercial interests of producers of the commodities in question, and shall consult with the Organization as to the best means to that end."

Proposed New Article.

The Sub-Committee considered the proposal of the delegation of Colombia to insert a new Article which would except from the Chapter agreements concluded by countries whose economies depend essentially on the export of certain primary commodities, to defend the prices of these commodities against the effects of pronounced short-term fluctuations in foreign markets. There was general agreement that the proposed amendment would widen the terms of Chapter VI by permitting producer countries to conclude agreements not contemplated under the present text and would not accomplish the intention of the proposal because:

(i) consumer countries would insist on equivalent rights which might nullify its aims, and
(ii) its purposes could not be achieved without adequate participation by consuming countries.

It was generally felt that the purpose of the amendment could be best achieved through inter-governmental agreements made in accordance with the present provisions of the Chapter. The representative of one delegation called attention to Article 27 as presenting a possible solution to the problem raised by the proposal. The representative of Columbia reserved his position.

Note on References in Chapter IV.

In considering the relation of Chapter VI to the Charter as a whole, it was agreed to recommend to the Committee that it should discuss the desirability of requesting Committee III to amend paragraph I (h) of Article 43 [45] to read as follows:

"(h) undertaken in pursuance of the terms of inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VI; or"

It was considered that the word "terms" conveys more appropriately the understanding of the Sub-Committee as to the desired exception from Chapter IV. It was felt that the word "obligation" was subject to possible misinterpretation.

REPORT OF THE JOINT SUB-COMMITTEE OF THE FIFTH AND SIXTH COMMITTEES

1. With the agreement of the Sixth Committee, the Fifth Committee at its thirteenth meeting approved the establishment of a joint sub-committee, consisting of the members of Sub-Committee I of the Sixth Committee, together with representatives of the Fifth Committee, to

(a) draft an exception for national security in relation to inter-governmental commodity agreements on the basis of the recommendations contained in the Report of Sub-Committee A of the Fifth Committee, and

(b) recommend regarding the location in the Charter of such an exception.

2. The Joint Sub-Committee consisted of representatives of the following delegations:

Australia   Iraq
Chile       Netherlands
Costa Rica  New Zealand
Czechoslovakia  Pakistan
Denmark     Philippines
Guatemala  Union of South Africa
France     United Kingdom
India      United States of America

3. Mr. Luis Tinoco (Costa Rica) was elected chairman of the Joint Sub-Committee.

4. The Sub-Committee reached agreement on the following points:

(a) that the exception to be made regarding the requirements of national security should appear in Article 94 [99].

(b) That the terms of this exception should be as follows:

“Nothing in this Charter shall be construed to prevent any Member from entering into or carrying out any inter-governmental agreement, or other agreement on behalf of a government for the purpose specified in this exception, made by or for a military establishment for the purpose of meeting essential requirements of the national security of one or more of the participating countries.”

(c) That the insertion of this provision in Article 94 [99] be accompanied by the addition to Section D of Chapter IV of a provision for consultation on the liquidation of any stock piles accumulated pursuant to this paragraph of Article 94 [99].

5. The Joint Sub-Committee communicated informally to the Sub-Committee of the Third Committee dealing with Section D of Chapter IV its views concerning the desirability of amending that Section to cover consultation on the liquidation of stocks and also transmitted to that Sub-Committee possible texts for such a provision which might serve as a basis for discussion. The representative of the United Kingdom indicated that acceptance by his delegation of the proposed new paragraph in Article 94 [99] was contingent upon the insertion elsewhere in the Charter of a satisfactory provision relating to consultation on the liquidation of stocks.2

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1 This sub-paragraph was subsequently redrafted by the Central Drafting Committee.
2 This was dealt with by the Third Committee and a new Article 32 relating to consultation on liquidation of stocks was included in Section D of Chapter IV.
6. The Joint Sub-Committee considered the possible inclusion of the word "solely" before "for the purpose of . . . ." in the text recommended for the new paragraph (c) of Article 94 [99] but felt that the question of including or omitting this qualifying word should be dealt with by Sub-Committee I of the Sixth Committee in relation to Article 94 [99] as a whole.

7. It is suggested by the Joint Sub-Committee that the Central Drafting Committee might be asked to consider whether at the end of the proposed new paragraph of Article 94 [99], the word "countries" or the word "states" should be used.1

8. The representative of Iraq indicated that his delegation could not agree to the inclusion of the proposed new paragraph in Article 94 [99] pending determination of the final shape of the whole of Article 94 [99] in the light of the amendment submitted by the Iraqi delegation.2

NOTE CONCERNING A RESOLUTION ON THE INTERIM CO-ORDINATING COMMITTEE FOR INTERNATIONAL COMMODITY ARRANGEMENTS 3

During the first session of the Preparatory Committee a resolution was communicated to the Economic and Social Council recommending the establishment of an Interim Co-ordinating Committee for International Commodity Arrangements (see Annexure 9 to the Report of the first session, document E/PC/T.33).

On the basis of this recommendation, which was endorsed in principle by the Preparatory Commission on World Food Proposals of the Food and Agriculture Organization, the Economic and Social Council adopted a resolution on 28 March 1947 requesting the Secretary-General of the United Nations to appoint such an interim co-ordinating committee which would have the function of keeping informed on, and facilitating by appropriate means, inter-governmental consultation on action with respect to commodity problems. The Resolution of the Economic and Social Council provided that the Committee should consist of "a Chairman to represent the Preparatory Committee of the United Nations Conference on Trade

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1 The word "countries" was retained.
2 The representative of Iraq subsequently agreed to the revised Article, including this provision.
and Employment, a person nominated by the Food and Agriculture Organization of the United Nations to be concerned in particular with agricultural primary commodities, and a person to be concerned in particular with non-agricultural primary commodities."

In view of the fact that the Preparatory Committee had ceased to exist, it was considered appropriate that the Conference propose that the composition of the Interim Co-ordinating Committee be revised to provide that the Interim Commission for the International Trade Organization should assume in respect of this Co-ordinating Committee the position previously filled by the Preparatory Committee.

The Fifth Committee recommended the text of a resolution to a Plenary Session of the Conference. The Conference approved the resolution, and the recommendations contained therein were accepted by the United Nations Economic and Social Council during its sixth session.

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1 The Resolution is contained in the *Final Act and Related Documents* (ICITO.1/4 or E/CONF.2/78).
VI. REPORTS RELATING TO THE
SIXTH COMMITTEE

ORGANIZATION

This section contains the following documents relating to the work of the Sixth Committee:

(i) Report of the Sixth Committee.
(ii) Attachment 1—Report of the Sixth Committee upon the question of an Interim Commission for the International Trade Organization.
(iii) Attachment 2—Notification by the Sixth Committee to the other Committees of the Conference concerning the Relationship between Chapter VIII and other parts of the Charter.

The reports of the Sub-Committees have not been reproduced as virtually all of their contents were incorporated in the Report of the Committee.

REPORT OF THE SIXTH COMMITTEE: ORGANIZATION

1. The Sixth Committee was charged with the consideration of Chapters I (Purpose and Objectives), VII (The International Trade Organization), VIII (Settlement of Differences — Interpretation) and IX (General Provisions) of the Draft Charter prepared by the Preparatory Committee. The Committee, under the chairmanship of Mr. Erik Colban (Norway), held forty-one meetings.

2. The Committee established seventeen sub-committees, the principal ones being those set up to discuss Article 1 (Purpose and Objectives), the proposal of the delegation of Mexico to establish an Economic Development Committee and related matters (this sub-committee worked jointly with a sub-committee of the Second Committee), Article 75 [78] (Composition of the Executive Board), Article 81 [no equivalent article in the Havana Charter] (The Tariff Committee), Chapter VIII (Settlement of Differences — Interpretation), Article 93 [98] (Relations with Non-Members),

1 E/CONF.2/68 with Addenda 1 and 2.
Article 94 [99] (General Exceptions) and Articles 95, 96, 98, 99 and 100 [100, 101, 103, 104, 106] (Amendments, Review of the Charter, Entry into Force and Registration, Territorial Application and Deposit of Texts respectively). The composition of these sub-committees was as follows:

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<th>Sub-Committee on Article 1</th>
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<th>Sub-Committee on Article 81³</th>
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Joint Sub-Committee of the Second and Sixth Committees⁴

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<th>Sub-Committee on Chapter VIII⁵</th>
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### Sub-Committee on Article 93 [88]

- Argentina
- Australia
- Belgium (Chairman)
- China
- Cuba
- Czechoslovakia
- France
- Greece
- Iran
- Italy
- Lebanon
- Sweden
- United Kingdom
- United States

### Sub-Committee on Article 94 [99]

- Argentina
- Australia
- Costa Rica (Chairman)
- Czechoslovakia
- Guatemala
- Iraq
- India
- Pakistan
- South Africa
- United Kingdom
- United States

### Sub-Committee on Articles 95, 96, 98, 99 and 106 [100, 101, 103, 104, 106]

- Argentina
- Belgium
- Czechoslovakia
- France
- India
- Italy
- Mexico
- United Kingdom
- United States
- Uruguay

3. In addition to the sub-committees already mentioned the Sixth Committee established a number of working parties, the principal one being that set up to consider the question of the establishment of an Interim Commission for the Organization. The report of this Working Party is attached hereto.

4. The reports of all sub-committees were approved subject only to drafting amendments. The Sixth Committee placed on record the following comments, declarations and reservations:

#### CHAPTER VII

**THE INTERNATIONAL TRADE ORGANIZATION**

**Article 68 [71]. — Membership.**

The Committee did not discuss the question of which were the "competent authorities" for the purpose of paragraph 5 of Article 68 [71] with respect to any particular territory. The delegation of Czechoslovakia declared that in its viewpoint the competent authority in respect of Germany is the Inter-Allied Control Commission in Berlin. The delegation of Poland stated that in its opinion the competent authorities in respect of Germany and Japan are the Inter-Allied Control Commission in Berlin and the Far Eastern Commission in Washington respectively. The delegations

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of Czechoslovakia and Poland reserved their positions upon paragraph 5 of Article 68 [71].

Article 69 [72]. — Functions.¹

(a) The Committee in discussing Article 69 [72] was of the opinion that whenever the United Nations creates agencies for certain specific purposes, such as, for example, the Fiscal Commission of the Economic and Social Council, the Organization shall make its studies and recommendations in close collaboration with these agencies.

(b) Regarding sub-paragraph (d) [(e)] the Committee agreed that, although general recommendations are to be made to “the Members”, meaning the Members as a whole, nevertheless there are, through the Charter, provisions which envisage recommendations to one or more Members especially, for example as in Chapter VIII. The Committee did not intend to change the effect of such specific provisions.

Article 74 [77]. — Powers and Duties.

With regard to paragraph 6, the Committee agreed that if a maximum limit upon contributions were established and if the efficiency of the Organization would otherwise be seriously impaired for lack of funds, a Member may agree, as a purely temporary measure, to pay more than the maximum limit in any given year.

Article 75 [78] — Composition of the Executive Board.

(a) The Committee agreed that paragraph 3 of the Annex to Article 75 [78] is intended to cover also the case of certain geographical groups, such as the Arab States, other Middle and Near Eastern States and States in the north of Europe. It is anticipated that any one of such groups may deem it convenient to present a common candidate to represent the particular interest of all the countries of the group.

(b) The Committee agreed that the text of Article 75 [78] implies that each Member of the Executive Board should act for the Organization as a whole and should bear in mind the interests of all the Members.

(c) The delegation of Italy reserved its position on Article 75[78].²

¹ The delegation of Argentina subsequently entered a reservation to the Article (E/CONF.2/74).
² The Delegation of Argentina subsequently entered a reservation to this Article (E/CONF.2/74).
The delegation of Costa Rica proposed to add the following words at the end of paragraph 1 of Article 80 [83]:

"Not more than one person of the same nationality shall form part of any commission."

The Committee agreed that normally not more than one person drawn from any one Member should form part of any commission. It considered that it was not necessary to state this in the text.

**Article 83 A [86] — Relations with the United Nations.**

(a) On examining several of the proposals submitted by delegations relating to action taken in connection with political matters or with the essential interests of Members, the Committee concluded that the provisions regarding such action should be made in connection with an article on "Relations with the United Nations", since the question of the proper allocation of responsibility as between the Organization and the United Nations was involved. Accordingly, the Committee adopted a new Article 83 A [86]. Paragraphs 1, 2 and 4 of the new text of this article replace paragraph 1 of the former text of Article 84 and sub-paragraph (c) of the former text of Article 94.

(b) Paragraph 3 of Article 83 A [86] which, like paragraph 4, is independent in its operation, is designed to deal with any measure which is directly in connection with a political matter brought before the United Nations in a manner which will avoid conflict of responsibility between the United Nations and the Organization with respect to political matters. The Committee agreed that this provision would cover measures maintained by a Member even though another Member has brought the particular matter before the United Nations so long as the measure was taken directly in connection with the matter. It was also agreed that such a measure, as well as the political matter with which it was directly connected, should remain within the jurisdiction of the United Nations and not within that of the Organization. The Committee was of the opinion that the important thing was to maintain the jurisdiction of the United Nations over political matters and over economic measures of this sort taken directly in connection with such a political matter, and nothing in Article 83 A [86] could be held to prejudice the freedom of action of the United Nations to settle such matters and to take steps to deal with such economic measures in accordance with the provisions of the Charter of the United Nations if they see fit to do so.
(c) It was the view of the Committee that the word "measure" in paragraph 3 of Article 83 A [86] and in the interpretative notes to that paragraph refers only to a measure which is taken directly in connection with a political matter brought before the United Nations in accordance with Chapters IV and VI of the Charter of the United Nations and does not refer to any other measure.

(d) The delegation of South Africa reserved its position upon paragraph 3 of Article 83 A [86] and the interpretative notes to that paragraph pending the receipt of instructions from its Government.

CHAPTER VIII

SETTLEMENT OF DIFFERENCES. — INTERPRETATION


(a) The Committee examined the question of the relation between paragraph 1 of Article 88 A [92] and paragraph 2 of Article 89 [93] in connection with procedures for arbitration as agreed between Members under existing or future bilateral or multilateral treaties. It decided that no clarification is necessary as to whether the procedure established in the Charter or in other treaties should have priority since procedures for arbitration under other treaties would not be inconsistent with the procedures of the Charter.

(b) Pending the result of the consultation which, by resolution of the United Nations Conference on Trade and Employment, the Interim Commission of the International Trade Organization is instructed to carry out with appropriate officials of the International Court of Justice or with the Court itself, regarding possible amendments to Chapter VIII designed to ensure recourse to the International Court of Justice by Members of the Organization which are parties to the Statute of the Court in respect of questions arising from the Charter but not covered by Chapter VIII, the delegation of Mexico maintained the view that paragraph 1 of Article 88 A [92] does not impair the rights of Members under the Statute of the International Court of Justice as regards questions arising from the Charter but which are not covered by Chapter VIII of the Charter.

1 The delegation of South Africa formally maintained its reservation to this Article during the final plenary meetings of the Conference.

2 See also attachment 2 accompanying the present edition of the Committee's Report.
Article 89 [93]. — Consultation between Members.

(a) The Committee was of the opinion that, in case of widespread unemployment or a serious decline in demand in the territory of another Member, a Member might properly have recourse to Article 89 [93], if the measures adopted by the other Member under the provisions of Article 3 had not produced the effects which they were designed to achieve and thus did not result in such benefits as might reasonably be anticipated.

(b) The Committee agreed that the word “matter” as used in Article 89 [93] and in the rest of Chapter VIII refers to nullification or impairment of a benefit and not to the action, failure, measure or situation referred to in sub-paragraphs (a), (b) or (c) of Article 89 [93].

(c) The delegation of Belgium reserved its position upon the words “other than Article 1” in paragraph 1 of Article 89 [93].

Article 90 [94 and 95]. — Reference to the Organization.

(a) The Committee drew attention to the fact that in both Article 90 [94] and Article 90 A [95] the text provides that the nature of the relief to be granted is compensatory and not punitive. The word “appropriate” in the texts should not be read to provide for relief beyond compensation.

(b) It was agreed that sub-paragraph 2 (e) of Article 90 [94] does not empower the Executive Board or the Conference to require a Member to suspend or withdraw a measure not in conflict with the Charter.

Articles 91 [96] and 92 [97]. — Reference to the International Court of Justice and Miscellaneous Provisions, respectively; — Annex to Article 95 [100] and Draft Resolution.

(a) The Committee agreed to use the phrase “whose interests are thereby prejudiced” in paragraph 2 of Article 91 [96] in order to make it clear that a real interest of a Member must be adversely affected before that Member can compel recourse of the Organization to the International Court of Justice. A remote, theoretical or unsubstantial interest of a Member in the decision in question would not be sufficient to give a Member rights under Article 91 [96].

(b) The view of certain delegations was expressed that the provisions of Chapter VIII did not provide for recourse to the International Court of Justice on all questions arising out of the
Charter. Those delegations urged that the text be in particular amended so as to provide that Members might refer such questions as could not be decided by the Organization to the International Court. It was made clear, however, that these delegations did not urge that a Member should be allowed to attack the validity of an advisory opinion of the Court obtained through the procedures of Chapter VIII on the points covered by such opinions. The views of other delegations were expressed that the procedures of Chapter VIII were plenary and adequate.

In view of the limited time available for further discussion, the Committee agreed that the Interim Commission should examine the question, and the Committee proposed a resolution providing for such examination. The Committee also agreed that amendment to the provisions of the Charter in this respect should be relatively easy in the light of the report to be presented by the Interim Commission and therefore suggested an annex to Article 95 [100] providing for amendments in this respect by a simple majority vote of the Conference. It was agreed that the first proviso to the proposed Annex to Article 95 [100] covers the questions dealt with in sub-paragraph 2 (c) of Article 36 of the Statute of the International Court of Justice.

(c) The delegations of Colombia, Iraq and Peru reserved their positions upon the first proviso to the Annex to Article 95 [100].

CHAPTER IX

GENERAL PROVISIONS

Article 93 [98]. — Relations with Non-Members.

(a) In the course of the discussion of paragraph 1 and 2 of the text, the Committee agreed that termination of any existing obligations of Members towards non-Members should be in accordance with the terms of the agreements embodying such obligations.

(b) The Committee understood that, in general, sub-paragraph (a) of paragraph 2 applies to treaties or agreements which, by their terms, preclude the extension to other Members of benefits provided for in such treaties or agreements. This interpretation does not rule out the possibility that, if a Member were wilfully to accomplish the same result by other means, this sub-paragraph should be held to apply.
(c) The Committee further understood that action by a state trading enterprise of a non-Member which would be non-discriminatory under the terms of Article 30 [29] would also be considered non-discriminatory for the purpose of interpreting the provisions of paragraph 2 (a) of Article 93 [98].

(d) The delegation of Iran suggested the following interpretative note to paragraph 4 of the text:

"In making its recommendations the Executive Board shall have due regard to special conditions and economic circumstances of those Members which are creditor countries or have substantial long-standing trade with such non-Members of which they are neighbours and shall take appropriate account of the consequences of its recommendations upon the interests of such Members."

The Committee agreed that the text suggested contained considerations which would be among those in the mind of the Executive Board when making its recommendations pursuant to paragraph 4. It also considered that the text of Article 93 [98] as a whole was in accordance with the considerations put forward by the delegation of Iran, which therefore did not insist upon its proposal to have an interpretative note.

(e) The delegations of Argentina, Bolivia, Chile, Peru and Poland reserved their positions on Article 93 [98].

Article 94 [99]. — General Exceptions.

(a) The delegation of Italy reserved its position on sub-paragraph 2 (a) of Article 94 [99].

(b) The delegation of Turkey reserved its position upon Article 94 [99] pending the outcome of the discussions on Article 16 and pending the receipt of instructions from its Government.¹

Article 95 [100]. — Amendments.

The Committee agreed that the phrase "a two-thirds majority of the Members" as used in paragraph 1 of Article 95 [100] means that in order to approve an amendment under that paragraph the affirmative vote of two-thirds of the Members of the Organization is required.²

Article 99 [104]. — Territorial Application.

(a) The Committee agreed that the provisions of paragraph 1 of Article 99 [104] cannot in any way affect rights and obligations under or pursuant to the General Agreement on Tariffs and Trade.

¹ This reservation was subsequently withdrawn (E/CONF.2/76).
² This paragraph is contained in document E/CONF.2/68/Add.1
(b) The delegation of Egypt, desiring to avoid any misunderstanding to which the interpretative note to Article 99 [104] might give rise, desired to record the attitude of the Egyptian Government as regards the Sudan. In view of the fact that there are no customs boundaries between Egypt and the Sudan and in view of the fact that Egypt and the Sudan are one and the same territory, customs matters concerning the Sudan are the exclusive concern of the Egyptian Government.

(c) The Committee agreed that no presumption should be drawn from the text of paragraphs 1 and 2 of Article 99 [104] that the dependent territories were autonomous or quasi-autonomous in the conduct of their external commercial relations and of the other matters provided for by the Charter for the purposes of paragraph 3 of Article 68 [71].

(d) The delegation of the United Kingdom said that the Government of the United Kingdom of Great Britain and Northern Ireland would not have thought that the general principle laid down in the interpretative note to Article 99 [104] required any qualification, since it in no way prejudices the question of what is or is not a condominium. In view, however, of the declaration by the delegation of Egypt, the Government of the United Kingdom decided to place on record that, as is well known, it does not accept the thesis of the Egyptian Government in regard to the Anglo-Egyptian Condominium of the Sudan.

ATTACHMENT 1 TO THE REPORT OF THE SIXTH COMMITTEE

REPORT OF THE SIXTH COMMITTEE UPON THE QUESTION OF AN INTERIM COMMISSION FOR THE INTERNATIONAL TRADE ORGANIZATION.¹

1. The Working Party set up to consider the question of an Interim Commission for the International Trade Organization was composed of Canada, Colombia, El Salvador, France, Iraq, Mexico, Netherlands, New Zealand, Norway (Chairman), Pakistan, Peru, Philippines, Turkey, the United Kingdom and the United States.

2. The Committee agreed that the performance of the functions specified in sub-paragraphs 2 (c), (d) and (e) of the annex to the Resolution² could not result in the increase of the obligations or the decrease of the rights of Members under the Charter.

3. It was agreed that under the second sentence of paragraph 3 of the annex to the resolution the Executive Secretary of the Commission,

¹ E/CONF.2/C.6/111.
² The Resolution Establishing an Interim Commission is contained in the Final Act and Related Documents (E/CONF.2/78 or ICITO/1/4).
might, for example, be authorized to make available to the Contracting Parties to the General Agreement on Tariffs and Trade acting jointly in accordance with Article XXV thereof, at their request, the services of the staff upon terms to be agreed.

4. The Committee considered that a function which the Executive Committee might usefully perform under sub-paragraphs 2 (b) and 2 (i) of the annex would be the publication of the important documents issued at Havana. The Committee noted, however, that it had not been possible at the Conference to establish texts of the reports of committees and sub-committees properly revised by drafting sub-committees. The attention of the Executive Committee of the Interim Commission was drawn to this fact. The Committee assumed that, before the Executive Committee published, whether for use at the first regular session of the Conference of the Organization or otherwise, the texts of any of these reports or of any other important document issued at Havana, the Executive Committee will ensure that such texts are, as far as possible, correctly drafted and that they correspond in each language that is employed.

5. The delegation of Bolivia reserved its position upon the question of establishing an Interim Commission.

ATTACHMENT 2 TO THE REPORT OF THE SIXTH COMMITTEE

NOTIFICATION BY THE SIXTH COMMITTEE TO OTHER COMMITTEES OF THE CONFERENCE.¹

The Sixth Committee has discussed the question of the relationship between Chapter VIII and other parts of the Charter. In the light of its discussion the Committee wishes to make known to other Committees of the Conference that, in its opinion, where an article of the Charter other than those contained in Chapter VIII establishes procedures for action by a Member or by the Organization, action in accordance with that procedure should precede that provided for in Chapter VIII, but shall not, unless it is so specified, impair the rights of Members under Chapter VIII. However, it is the view of the Committee that if consultation or investigation has taken place under the provisions of another article, the Organization may regard such consultation or investigation as fulfilling, either in whole or in part, any similar procedural requirement in Chapter VIII. This will be made clear in the appropriate article of Chapter VIII.

VII. DOCUMENTS RELATING TO THE CO-ORDINATING COMMITTEE

This section contains the following documents:
(i) Report of the Co-ordinating Committee to the Heads of Delegations.
(ii) Recommendations by the Heads of Delegations regarding the Report of the Co-ordinating Committee.

REPORT OF THE CO-ORDINATING COMMITTEE TO THE HEADS OF DELEGATIONS

The Co-ordinating Committee, consisting of the following individuals acting in a personal capacity: Messrs. Abello, Beteta, Coombs, Ferrero, Hakim, Holmes, Lleras Restrepo, Malik, Muller, Philip, Wunsch King and Wilcox, under the chairmanship of Mr. Max Suetens, was established by the Heads of Delegations at their meeting on 4 February 1948, in order to expedite the successful termination of the Conference by recommending compromise solutions for differences relating primarily to questions of economic development.

The Committee therefore devoted its attention to establishing a basis for agreement on Article 13, Article 15 and the Tariff Committee and the proposed Economic Development Committee and included in its Report annexes relating to Article 13, Article 15

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2 Mr. Abello was unable to attend the later meetings.
3 Annex 1 was a draft of Article 13 with footnotes; the text and the footnotes were incorporated in substantially the same form either into the text of the Charter including one interpretative note in Annex P or into the Report of Sub-Committee C of Committee II. One change was made by the Heads of Delegations namely in the footnote on "processing" which was incorporated into the interpretative note in Annex P. Annex 1 is not reproduced. Annex 2 was a draft of Article 15 with footnotes; the text and the footnotes were incorporated in substantially the same form into the text of the Charter including interpretative notes in Annex P. Annex 2 is therefore not reproduced. Annex 3 consisted of a report on "proposals dealing with the Tariff Committee, the Committee on Economic Development and Reconstruction, etc.". This annex is reproduced with the exception of the recommended texts substantially incorporated into the Charter. Annex 4 consisted of a statement made by Mr. Lleras Restrepo (Colombia) at the meeting of the Co-ordinating Committee held on 25 February 1948 and is not reproduced.
and amendments concerning the Tariff Committee and the proposed Economic Development Committee, which represented the result of the Committee's consideration of these matters.

The Committee recommended that the Heads of Delegations consider these drafts from the standpoint of obtaining an overall solution to the problems involved and of reaching a decision on the proposals as a whole. If an agreement on these lines was reached, it was recommended that it should be accompanied by withdrawal of a number of amendments and reservations entered pending the settlement of the final drafts of the Articles involved in the overall settlement. The Committee also considered that, as a decision on the Report of the Sub-Committee on Article 75 [78]¹ had been postponed pending a settlement of the matters referred to above, that Report should also be included as part of the overall settlement.

If this procedure was acceptable to the Heads of Delegations, and it proved possible to reach agreement on the substance of the drafts submitted, it was recommended that the drafts be referred to the appropriate committees as the basis for the adoption of final texts.

ANNEX 3 TO THE REPORT

Proposal dealing with the Tariff Committee, the Committee on Economic Development and Reconstruction, etc.

1. The Co-ordinating Committee considered three alternative proposals submitted by the delegation of the United States, for dealing with the problem of the Tariff Committee, the proposed Committee on Economic Development and Reconstruction and a possible Commercial Policy Committee.

2. It was agreed that the second proposal would be accepted as a basis for the work of the Committee. Under this alternative:

(a) there would be no provisions in the Charter for a Tariff Committee, a Committee on Economic Development and Reconstruction or a Commercial Policy Committee.

(b) [Members, not parties to the GATT would enjoy GATT concessions for two years, but these concessions would thereafter be withdrawn unless the Member concerned had become party to the GATT.]²

² The Heads of Delegations approved the following text instead of the words in square brackets:

"Any Member, not party to the GATT would enjoy GATT concessions for two years, but these concessions would thereafter be withdrawn subject to certain provisos by any other Member which has requested such Member to negotiate with a view to becoming a contracting party to the GATT, without concluding an agreement."
The Committee considered in addition amendments to this proposal submitted by various members of the Committee.

4. The Committee agreed to submit texts of Articles 70 [73] and 74 [77] and also of paragraph 4 of Article 17 of the Havana Charter.

5. The Committee proposed the deletion of Article 81 of the Geneva draft on the Tariff Committee and agreed that the fact that no provision was made in the Charter for a Tariff Committee, a Committee for Economic Development and Reconstruction or a Commercial Policy Committee, would not preclude the establishment by the Organization of [any of these]1 Committees in the future.

6. In relation to paragraph 4 (a) of Article 17 of the Havana Charter, it was agreed that whereas this paragraph provides that Article 16 does not require the continued application of the tariff concessions embodied in the schedules of the GATT to the trade of a Member which has failed to become a party of the GATT, it does not permit the withdrawal of other forms of most-favoured nation treatment required by the Charter, e.g. in relation to internal taxation, the administration of quantitative restrictions, etc.

7. It was also agreed that since Members would under the provisions of Article 17 be required to become Contracting Parties to the GATT, it was desirable that they should be aware of the obligations which would be imposed upon them as contracting parties. In this connection attention was drawn to the fact that:

(a) it had been proposed to amend the GATT to permit the admission of a country as a contracting party upon a vote of two-thirds of the contracting parties instead as of a unanimous vote as at present required;

(b) it was decided to suggest to the Heads of Delegations that they should recommend to the Contracting Parties that they amend the text of paragraph 5 of Article XXV of the GATT.2

RECOMMENDATIONS BY THE HEADS OF DELEGATIONS REGARDING THE REPORT OF THE CO-ORDINATING COMMITTEE 3

There are set out below, for the guidance of the Committees and Sub-Committees concerned, recommendations approved at a meeting of the Heads of Delegations held on Wednesday, 3 March regarding the Report of the Co-ordinating Committee.4

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1 The Heads of Delegations agreed to substitute the words “either or both of the two latter” for the words in square brackets.
2 The recommended text, with minor changes, is embodied in the Protocol Modifying Certain Provisions of the General Agreement on Tariffs and Trade signed at Havana on 24 March 1948. It now constitutes the whole paragraph 5 of Article XXV of the GATT as amended by the Protocol, with the exception of sub-paragraph (d), which was added by the Contracting Parties.
3 E.CONF.2 51.
4 E.CONF.2 45 Rev.1.
I. (a) the Heads of Delegations recommended the contents of the Report of the Co-ordinating Committee as an overall settlement of the issues dealt with therein;

(b) this recommendation was subject to reservations by the delegations of Afghanistan, Argentina, Poland, Turkey and the United Kingdom;

(c) the delegations of Iraq, Ireland and the Philippines felt unable to express an opinion in the absence of instructions from their Governments.

2. The Heads of Delegations therefore recommended that the texts submitted by the Co-ordinating Committee be accepted as the basis for the preparation of final texts by the Committees and Sub-Committees of the Conference.

These recommendations were accompanied by a resolution approved by a large majority of the Heads of Delegations, that the proposals of the Co-ordinating Committee be adopted by the Sub-Committees and Committees without major changes of substance.

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1 Subject to corrections indicated in the accompanying text of the Report of the Co-ordinating Committee.

2 The Indian delegate stated that his adherence to the recommendations and the resolution was subject to a satisfactory settlement of another Article of the draft Charter.
REFERENCE LIST OF THE PRINCIPAL DOCUMENTS CONTAINING PROPOSALS MADE BY INDIVIDUAL DELEGATIONS DURING THE HAVANA CONFERENCE

CHAPTER I

Article 1.
Ecuador E/CONF.2/C.6/12/Add.2.
El Salvador Add.II
Mexico Add.I and Add. 12

CHAPTER II

Article 2.
Italy E/CONF.2/II/Add.18
Mexico Add.28
Peru Add.4

Article 3.
Italy E/CONF.2/II/Add.18
Mexico Add.28
Norway E/CONF.2/C.1/3/Add.7
Philippines Add.4

Article 4 [7].
Argentina E/CONF.2/II/Add.3
Belgium E/CONF.2/C.1/15/Add.1
Burma E/CONF.2/II/Add.23
Ceylon Add.33
Colombia E/CONF.2/C.1/3/Add.5
Haiti Add.1
International Labour Organization E/CONF.2/C.1/12

1 As indicated in the Introduction these documents are available for reference at the Headquarters of the United Nations, Lake Success, New York, and at the office of the Interim Commission for the International Trade Organization, Geneva, Switzerland.
2 The article numbers of the Havana Charter are indicated in square brackets following those of the Geneva draft when they differ.
Article 5 [4].

Denmark E/CONF.2/C.1/3/Add.6
Peru E/CONF.2/II/Add.32 and E/CONF.2/C.1/7/Corr.1

Article 6 [5].

Italy E/CONF.2/C.1/13
Mexico E/CONF.2/II/Add.31

Article 7 [6].

Norway E/CONF.2/C.1/7/Add.2 and E/CONF.2/C.1/21

CHAPTER III

Article 8.
No formal proposals.

Article 9.

Ceylon E/CONF.2/C.2/9
Mexico 

Article 10.

Burma E/CONF.2/C.2/9
Mexico
Pakistan
Turkey

Article 11.

Afghanistan E/CONF.2/C.2/9
Burma 
Chile 
China 
Italy 
Mexico 
Norway 
Peru 
Uruguay and Add.4/Corr.3
Article 12.

Afghanistan ........................................... E/CONF.2/C.2/9
Argentina ............................................... "  and Add.4/Corr.3
Burma .................................................... "
Ceylon .................................................. "
Chile .................................................... "
Costa Rica ............................................. "
Czechoslovakia ........................................ "
Denmark ................................................ "
India .................................................... "
Mexico .................................................. "
New Zealand .......................................... "
Norway .................................................. "
Pakistan ............................................... E/CONF.2/C.2/9/Add.5  and Add.5/Corr.1
Peru ..................................................... E/CONF.2/C.2/9/Add.5  and Add.5/Corr.1
Sweden .................................................. E/CONF.2/C.2/9
United States of America ............................... "
Uruguay ................................................ "
Venezuela ............................................... "  and Add.4/Corr.3

Article 13.

Argentina .............................................. E/CONF.2/C.2/9
Brazil ................................................... E/CONF.2/C.2/C/5  and E/CONF.2/C.2/C/13
Burma ................................................... E/CONF.2/C.2/9
Ceylon .................................................. "
Chile .................................................... "
China .................................................... E/CONF.2/C.2/9
Colombia ............................................... "
Cuba ..................................................... "
Ecuador .................................................. "  and Add.3  and Add.4/Corr.3
India .................................................... "
Iraq ..................................................... "
Mexico .................................................. "
New Zealand .......................................... "
Pakistan ................................................. E/CONF.2/C.2/C/14
Philippines ............................................ E/CONF.2/C.2/9
United Kingdom ....................................... E/CONF.2/C.2/6/Add.23
Uruguay ............................................... E/CONF.2/C.2/6/Add.23

Article 14.

Costa Rica .............................................. E/CONF.2/C.2/9
Ecuador .................................................. "
Italy ..................................................... "
Philippines ............................................. "
Turkey .................................................... E/CONF.2/C.2/C/5  and E/CONF.2/C.2/C/13
United Kingdom ....................................... E/CONF.2/C.2/9
Uruguay ............................................... E/CONF.2/C.2/6/Add.23
Article 15.

Chile
Ecuador
El Salvador
Poland

CHAPTER IV

Article 16.

Afghanistan E/CONF.2/C.3/6
Argentina
Bolivia
Burma
Chile
Colombia
Costa Rica
Cuba
Czechoslovakia E/CONF.2/C.3/6/Add.1
Denmark E/CONF.2/C.3/6
Dominican Republic
Ecuador
Egypt
El Salvador
France E/CONF.2/C.3/6/Add.7
Greece E/CONF.2/C.3/6 and Add.3
Guatemala
Haiti
Iran
Iraq
Italy
Lebanon
Peru
Philippines and Corr.1
Portugal and Corr.4
Syria
Transjordan
Turkey E/CONF.2/C.3/77/Rev.1 and Add.4 and
Venezuela E/CONF.2/C.3/79

Article 17.

Argentina E/CONF.2/C.3/6
Ceylon
Chile
Colombia
Cuba
El Salvador
Haiti
Mexico E/CONF.2/C.3/A/W.13
Norway
Peru
Article 18.

Argentina E/CONF.2/C.3/6
Brazil E/CONF.2/C.3/6
Ceylon E/CONF.2/C.3/6
Chile E/CONF.2/C.3/6
China E/CONF.2/C.3/6
Colombia E/CONF.2/C.3/6
Costa Rica E/CONF.2/C.3/6
Cuba E/CONF.2/C.3/6
Ireland E/CONF.2/C.3/6
Lebanon E/CONF.2/C.3/6
Mexico E/CONF.2/C.3/6
Norway E/CONF.2/C.3/6
Peru E/CONF.2/C.3/6
Sweden E/CONF.2/C.3/6
Syria E/CONF.2/C.3/6
United Kingdom E/CONF.2/C.3/6
United States of America E/CONF.2/C.3/6
Uruguay E/CONF.2/C.3/6

Article 19.

Argentina E/CONF.2/C.3/6
Czechoslovakia E/CONF.2/C.3/6
United Kingdom E/CONF.2/C.3/6

Article 20.

Argentina E/CONF.2/C.3/7
Australia E/CONF.2/C.3/7
Ceylon E/CONF.2/C.3/7
Chile E/CONF.2/C.3/7
China E/CONF.2/C.3/7
Cuba E/CONF.2/C.3/7
Egypt E/CONF.2/C.3/7
Greece E/CONF.2/C.3/7
Ireland E/CONF.2/C.3/7

Peru E/CONF.2/C.3/7
Sweden E/CONF.2/C.3/7
United Kingdom E/CONF.2/C.3/7
Uruguay E/CONF.2/C.3/7

Article 21.

Argentina E/CONF.2/C.3/7
Australia E/CONF.2/C.3/7
Belgium E/CONF.2/C.3/7
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Article 28.
Argentina E/CONF.2/C.3/8
Brazil E/CONF.2/C.3/H/5
United States of America E/CONF.2/C.3/8

Article 29 [deleted].
Argentina E/CONF.2/C.3/8
Ecuador
United States of America

Article 30 [29].
Argentina E/CONF.2/C.3/8
Mexico
New Zealand and Add.1
United Kingdom

Article 31.
Argentina E/CONF.2/C.3/9
Cuba and Add.2
Denmark
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United States of America

Article 32 [33].
Afghanistan E/CONF.2/C.3/10
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Article 33 [34].
Argentina E/CONF.2/C.3/10
China
Cuba
Denmark
Lebanon
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Philippines
Syria

Article 34 [35].
Argentina E/CONF.2/C.3/10
Chile
Uruguay

Article 35 [36].
Afghanistan E/CONF.2/C.3/10
Argentina
Brazil
Haiti E/CONF.2/C.3/10/Add.1
Peru E/CONF.2/C.3/10/Add.2
Turkey E/CONF.2/C.3/10
Uruguay
Article 36 [37].
Argentina E/CONF.2/C.3/10
Chile " and Corr.1

Article 37 [38].
Argentina E/CONF.2/C.3/10
New Zealand "
United Kingdom "

Article 38 [39].
Australia E/CONF.2/C.3/10/Add.4
Czechoslovakia E/CONF.2/C.3/10/Add.3/Rev.1
Norway E/CONF.2/C.3/10 and Add.3

Article 39 [deleted].
Iraq E/CONF.2/C.3/10
Lebanon "
Mexico "
Syria "

Article 40.
Argentina E/CONF.2/C.3/11
Colombia "
Denmark "
Peru "

Article 41.
Afghanistan E/CONF.2/C.3/11
Argentina E/CONF.2/C.3/11/Add.1
Ecuador "
Guatemala "
Uruguay "

Article 42 [42, 43 and 44].
Argentina E/CONF.2/C.3/11
Chile "
France E/CONF.2/C.3/11/Add.1
Iraq E/CONF.2/C.3/11
Italy "
Lebanon "
Syria "
United Kingdom "

Article 43 [45].
Afghanistan E/CONF.2/C.3/11
Australia "
Argentina "
Cuba "
Norway "
Switzerland "
Uruguay "
CHAPTER V

Article 44 [46].

Afghanistan
Argentina
Ceylon
Czechoslovakia
Greece
Italy
Mexico
Norway

Article 45 [47 and 48].

Argentina
Italy
Mexico

Article 45 A [48].

Norway

Article 46 [49].

Argentina
Ceylon
Italy
Mexico

Article 47 [50].

Argentina
Italy
Mexico

Article 48 [51].

Mexico

Article 49 [52].

No formal proposals.

Article 50 [53].

Argentina
Ceylon
Ecuador
Norway
United States of America

Article 51 [54].

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Mexico

CHAPTER VI

Article 52 [55].

No formal proposals.
Article 53 [56].
Chile ......................................... E/CONF.2/II/Add.30
Italy ........................................... E/CONF.2/C.5/Add.2
Uruguay ...................................... " Add.12

Article 54 [57].
Ceylon ........................................ E/CONF.2/C.5/3/Add.6
Chile ......................................... E/CONF.2/II/Add.30
Cuba .......................................... E/CONF.2/C.5/3/Add.3
El Salvador .................................. " Add.8
Mexico ........................................ " Add.9
Philippines .................................. " Add.12
Uruguay ...................................... " Add.11
Venezuela .................................... " Add.11

Article 55 [58].
Ceylon ........................................ E/CONF.2/C.5/3/Add.6
El Salvador .................................. E/CONF.2/C.5/5/Add.3
Uruguay ...................................... E/CONF.2/C.5/3/Add.12

Article 56 [59].
Ceylon ........................................ E/CONF.2/C.5/3/Add.6
Egypt ......................................... " Add.13
El Salvador .................................. E/CONF.2/C.5/5/Add.3
Peru .......................................... E/CONF.2/C.5/3/Add.4

Article 57 [60].
Philippines ................................. E/CONF.2/C.5/3/Add.7

Article 58 [61].
India ........................................... E/CONF.2/II/Add.27
Mexico ........................................ E/CONF.2/C.5/3/Add.9

Article 59 [62].
Ceylon ........................................ E/CONF.2/C.5/3/Add.6
Venezuela .................................... E/CONF.2/II/Add.11

No formal proposals.

Article 60 [63].
No formal proposals.

Article 61 [64].
No formal proposals.

Article 62 [65].
Costa Rica .................................... E/CONF.2/II/Add.16

Article 63 [66].
No formal proposals.

Article 64 [67].
India ........................................... E/CONF.2/II/Add.27

Article 65 [68].
Argentina ..................................... E/CONF.2/II/Add.3

No formal proposals.

Article 66 [69].
Article 67 [70].

Norway E/CONF.2/C.5/3/Add.10
United States of America " Add.5

Proposed New Article.

Colombia E/CONF.2/C.5/3/Add.1

CHAPTER VII

Article 68 [71].

New Zealand E/CONF.2/C.6/W.88

Article 69 [72].

Costa Rica E/CONF.2/C.6/12/Add.17
Czechoslovakia " Add.3

No formal proposals.

Article 70 [73].

No formal proposals.

Article 71 [74].

No formal proposals.

Article 72 [75].

No formal proposals.

Article 73 [76].

No formal proposals.

Article 74 [77].

Czechoslovakia E/CONF.2/C.6/12/Add.5

Article 75 [78].

Australia E/CONF.2/C.6/W.11
China E/CONF.2/C.6/W.5/Add.1 Add.2, and
Czechoslovakia E/CONF.2/C.6/W.51 and
E/CONF.2/C.6/W.72


No formal proposals.

Article 76 [79].

No formal proposals.

Article 77 [80].

No formal proposals.

Article 78 [81].

No formal proposals.

Article 79 [82].

No formal proposals.

Article 80 [83].

Costa Rica E/CONF.2/C.6/12/Add.16

Article 81 [deleted].

China E/CONF.2/C.6/12/Add.7
No formal proposals.

Article 82 [84].

Chile ........................................ E/CONF.2/C.6/12/Add.14
Ireland ...................................... " Add.6

Article 83 [85].

Australia ................................... E/CONF.2/C.6/93/Add.3 and
India ........................................ " Add.1
South Africa ............................... " Add.2 and
United Kingdom ............................. " E/CONF.2/C.6/100
Add.4

Article 83 A [86].

Australia ................................... E/CONF.2/C.6/93/Add.3 and
India ......................................... " Add.1
South Africa ............................... " Add.2 and
United Kingdom ............................. " E/CONF.2/C.6/100
Add.4

No formal proposals.

Article 84 [87].

No formal proposals.

Article 85 [88].

No formal proposals.

Article 86 [89].

No formal proposals.

Article 87 [90].

No formal proposals.

Article 88 [91].

CHAPTER VIII

Article 89 [92 and 93].

India ........................................ E/CONF.2/C.6/12/Add.4

Article 90 [94 and 95].

Colombia ..................................... E/CONF.2/C.6/W.53

Article 91 [96].

United States of America ................. E/CONF.2/C.6/W.81

Article 92 [92, 97 and 106].

Colombia .................................... E/CONF.2/C.6/12/Add.23
Costa Rica .................................. " Add.15
France ....................................... " Add.23

CHAPTER IX

Article 93 [98].

Chile ......................................... E/CONF.2/C.6/106
Peru ......................................... E/CONF.2/C.6/106
United Kingdom ............................ E/CONF.2/C.6/35 and
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