

THIRD COMMITTEE: COMMERCIAL POLICY

JOINT SUB-COMMITTEE OF
COMMITTEES II AND III ON ARTICLES 15, 16 AND 42
REPORT TO COMMITTEE III ON ARTICLES 16 AND 42

PART I

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, Frontier Traffic and Customs Unions) 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, and its Report to the Sub-Committee is contained in document E/CONF.2/C.2&3/A/14. It was recorded in that Report that before the Working Party had completed its work on Article 15, that Article, with others relating to economic development, was referred to the Co-ordinating Committee of the Conference.

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The work of the Sub-Committee on Article 15 and the recommendations of the Co-ordinating Committee will be reported to Committee II in a second Report. The present Report will be confined to a record of the work of the Sub-Committee on Articles 16 and 42 and to the Sub-Committee's recommendations on these Articles.

4. Part II of this Report contains a brief statement on the main changes proposed in Articles 16 and 42 and on the manner in which the Sub-Committee dealt with proposed amendments. The texts of Article 16, the Annexes relating to that Article and Article 42 (now 42, 42A, and 42B) are contained in Part III, in which the proposed changes in the Geneva text are indicated by square brackets and underlining. For the convenience of Committee III those parts of Article 16 and of the Annexes which were within the terms of reference of Sub-Committee A and have already been adopted by Committee III are shown together with the recommendations of the Joint Sub-Committee.

PART II

Article 16

General Most-favoured-nation Treatment

Paragraph 1

5. 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.

Annexes relating to Paragraph 2

6. The Sub-Committee recommends the addition of four new Annexes in order that certain preferences existing on 10 April 1947 may qualify for exemption from the provisions of paragraph 1. Of these new Annexes one is for the territories under common Portuguese sovereignty or relations of protection or suzerainty on 1 July 1939 and the other three are for 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 are recommended in Annexes A and B at the request of the delegations of Pakistan and France respectively.

7. In connection with Annex F the delegate for 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 (e) should be included in the Sub-Committee's Report.

Paragraph 2 (c)

8. The Sub-Committee is unable to recommend the deletion of this sub-paragraph as proposed by the delegation of Peru (C.3/6, Item 8).

9. The Sub-Committee considered the proposal of the Dominican Republic (C.3/6, Item 9) 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 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."

/10. The delegate

10. The delegate for 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 is unable to make any recommendation in this connection.

11. The Sub-Committee also considered the proposal of the delegation of Haiti (C.3/6, Item 10) that this subparagraph 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 for 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.

San Marino and Vatican City

12. The Sub-Committee discussed with the delegate for Italy the proposal (C.3/6, Item 22) to exempt 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 for Italy withdrew his proposal on the understanding that this opinion would be included in the Report.

Other Proposals on Article 16

13. The Sub-Committee examined the amendments proposed by the delegations of Ecuador, Bolivia, Lebanon and Syria, Turkey, Egypt, Afghanistan, Burma, Argentina and Czechoslovakia (respectively, C.3/6, Items 15, 16, 17, 18, 19, 20, 21, 23 and C.3/6/Add.1), and 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 Co-ordinating Committee and the Heads of Delegations.

14. 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.

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

Article 42

Territorial Application of Chapter IV -

Frontier Traffic - Customs Unions

16. The text of Article 42 has been 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

of Lebanon and Syria (C.3/11, Item 13). 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 recommends a separate Article devoted exclusively to customs unions and free-trade areas:

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

Article 42 - Territorial Application

18. The Sub-Committee recommends 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" "customs territory", should comprise a separate Article and be amended as shown in the Annex to this Report. The Sub-Committee considered whether the definition of "customs territory" should be moved to some other part of the Charter in view of the fact that this term appears also in Articles 68, 97 and 99, and decided to recommend to Committee VI that it should consider whether this definition applies to other Articles of the Charter and if so whether it should be removed to a more suitable place.

19. 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 paragraph 2 and reserved their position pending discussion in Committee III.

Article 42A - Frontier Traffic

20. The proposal of the delegation of Argentina (C.3/11, Item 9) to delete the words "in order to facilitate frontier traffic" from paragraph 2 (a) of Article 42 (Geneva text) 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, Article 42A is recommended without change in the words used in the Geneva draft.

21. The proposal of the delegation of Italy (C.3/6, Item 22), requesting exemption from 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 has been inserted in Article 42A, and the Sub-Committee suggests 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.

/Article 42B -

Article 42B - Customs Unions and Free Trade Areas

22. The first paragraph of Article 42B 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.

23. The second paragraph, providing for the establishment of customs unions, is based upon paragraph 2 (b) of the Geneva draft, but there has been added to it a new provision covering the establishment of free-trade areas. An amendment proposed by the United Kingdom (C.3/11, Item 10) has been incorporated, and it is felt that the new text of the Article largely covers an amendment proposed by Chile (C.3/11, Item 11).

24. 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. A majority favoured the insertion of the words "as between the territories of Members" in the second line of the preamble but the delegations of Argentina, Chile and Venezuela asked that their reservations be recorded, and the delegate for Syria said that he was not at that time able to give the decision of his delegation. It was the view of the Members who supported the insertion of these words, that Article 42B, 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 for Chile stated that this question should be settled in connection with Article 93 and that in his opinion the recommendation of the Sub-Committee should not be deemed to prejudge the decision on Article 93.

25. The Sub-Committee recommends that the words "average level of the duties" be replaced by "general incidence of the duties" in paragraph 2 (a). It is 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.

26. 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 (C.3/11, Item 14). The substance of a proposal by the delegation of Italy (Item 15) has been 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 (C.3/11; Items 16, 17, 18, 19, 20 and 21).

/27. In paragraph 4

27. In paragraph 4 the definition of a customs union, which was contained in the second sentence of paragraph 4 of the Geneva draft, has been amended and a definition of a free-trade area has been 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) are eliminated on substantially all the trade between the constituent territories or at least on substantially all the trade in products originating in such territories.

28. A fifth paragraph has been added to cover the problems which will 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 has been 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 is 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.

29. The proposal by Iraq (C.3/11, Item 22) 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 covered the point raised by the amendment. These texts are also thought to cover to a large extent a proposal by Argentina (C.3/11, Item 12).

PART III

Article 16

General Most-favoured-nation Treatment

(Paragraph 1 - as adopted by Committee III on the recommendation of Sub-Committee A)

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters within the scope of paragraphs 2 and 4 of Article 18, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries respectively.

(Paragraph 2 - Preamble - as recommended by the Joint Sub-Committee)

2. The provisions of paragraph 1 of this Article shall not require the elimination, except as provided in Article 17, of any preferences in respect of import duties or charges which do not exceed the levels/ margins provided for in paragraph 3 of this Article and which fall within the following descriptions:

(Sub-paragraph (a) - as in Geneva text)

(a) preferences in force exclusively between two or more of the territories listed in Annex A to this Charter, subject to the conditions set forth therein;

(Sub-paragraph (b) - as recommended by the Joint Sub-Committee)

(b) preferences in force exclusively between two or more territories which on 1 July 1939 were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C, D and [...] E of this Charter, subject to the conditions set forth therein;

(Sub-paragraph (c) - as in the Geneva text)

(c) preferences in force exclusively between the United States of America and the Republic of Cuba;

/(Sub-paragraph (d) -

(Sub-paragraph (d)) - as adopted by Committee III on the recommendation of Sub-Committee A)

(d) preferences in force exclusively between the Republic of the Philippines and the United States of America, including the dependent territories of the latter;

(Sub-paragraph (e)) - formerly sub-paragraph (d) - as recommended by the Joint Sub-Committee)

(e) preferences in force exclusively between neighbouring countries listed in Annexes [E, F and ...] F, G, H, I and J of this Charter.

(Paragraph 3) - as in the Geneva text)

3. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 of this Article shall not exceed (a) the maximum margin provided for under the General Agreement on Tariffs and Trade or any subsequent operative agreement resulting from negotiations under Article 17, or (b) if not provided for under such agreements, the margin existing either on 10 April 1947 or on such earlier date as may have been established for a Member as a basis for negotiating the General Agreement on Tariffs and Trade, at the option of such Member.

(Paragraph 4) - as adopted by Committee III on the recommendation of Sub-Committee A)

4. The imposition of a margin of tariff preference not in excess of the amount necessary to compensate for the elimination of a margin of preference in an internal tax existing on 10 April 1947 exclusively between two or more of the territories in respect of which preferential import duties or charges are permitted under paragraph 2 of this Article shall not be deemed to be contrary to the provisions of this Article, it being understood that any such margin of tariff preference shall be subject to the provisions of Article 17.

Interpretative Note

(As adopted by Committee III on the recommendation of Sub-Committee A).

The term "margin of preference" means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates.

As examples:

1. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were 24 per cent ad valorem, the margin of preference would be 12 per cent ad valorem, and not one-third of the most-favoured-nation rate;

/2. If the most-

2. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent ad valorem;
3. If the most-favoured-nation rate were 2 francs per kilogram and the preferential rate were 1.50 francs per kilogram, the margin of preference would be 0.50 francs per kilogram.

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

- (i) the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on 10 April 1947; and
- (ii) the classification of a particular product under a tariff item other than that under which importations of that product were classified on 10 April 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item.

ANNEXES PERTAINING TO PARAGRAPH 2 OF ARTICLE 16

ANNEX A

(Annex A - as adopted by Committee III on the recommendation of Sub-Committee A and with the addition of a fourth paragraph in the text recommended by the Joint Sub-Committee)

List of Territories Referred to in Paragraph 2 (a) of Article 16

United Kingdom of Great Britain and Northern Ireland
Dependent territories of the United Kingdom of Great Britain and Northern Ireland
Canada
Commonwealth of Australia
Dependent territories of the Commonwealth of Australia
New Zealand
Dependent territories of New Zealand
Union of South Africa including South West Africa
Ireland
India (as at 10 April 1947)
Newfoundland
Southern Rhodesia
Burma
Ceylon

/Certain of

Certain of the territories listed above have two or more preferential rates in force for certain products. Any such territory may, by agreement with the other Members which are principal suppliers of such products at the most-favoured-nation rate, substitute for such preferential rates a single preferential rate which shall not on the whole be less favourable to suppliers at the most-favoured-nation rate than the preferences in force prior to such substitution.

The preferential arrangements referred to in paragraph 5 (b) of Article 23 are those existing in the United Kingdom on 10 April 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork, and bacon. Without prejudice to any action taken under sub-paragraph (a) (x) of paragraph 1 of Article 43, negotiations shall be entered into when practicable among the countries substantially concerned or involved, in the manner provided for in Article 17, for the elimination of these arrangements or their replacement by tariff preferences. If after such negotiations have taken place a tariff preference is created or an existing tariff preference is increased to replace these arrangements such action shall not be considered to contravene Article 16 or Article 17.

The film hire tax in force in New Zealand on 10 April 1947 shall, for the purpose of this Charter, be treated as a customs duty falling within Articles 16 and 17. The renters' film quota in force in New Zealand on 10 April 1947, shall for the purposes of this Charter be treated as a screen quota falling within Article 19.

The Dominions of India and Pakistan have not been mentioned separately in the above list since they had not come into existence as such on the base date of 10 April 1947.

ANNEX B

(Annex B - as recommended by the Joint Sub-Committee)

List of Territories of the French Union Referred to in Paragraph 2 (b) of Article 16

France

French Equatorial Africa (Treaty Basin of the Congo* and other territories)

French West Africa

Cameroons under French Mandate*

* For imports into Metropolitan France and territories of the French Union.

/French

French Somali Coast and Dependencies
French Establishments in India*
French Establishments in Oceania
French Establishments in the Condominium of the New Hebrides*
Guadeloupe and Dependencies
French Guiana
Indo-China
Madagascar and Dependencies
Morocco (French zone)*
Martinique
New Caledonia and Dependencies
Reunion
Saint-Pierre and Miquelon
Togo under French Mandate*
Tunisia

ANNEX C

(Annex C - as in the Geneva Draft)

List of Territories of the Customs Union of Belgium, Luxembourg and
The Netherlands Referred to in Paragraph 2 (b) of Article 16

The Economic Union of Belgium and Luxembourg
Belgian Congo
Ruanda Urundi
The Netherlands
Netherlands Indies
Surinam
Curacao

(For imports into the metropolitan territories of the Customs Union.)

ANNEX D

(Annex D - as adopted by Committee III on the recommendation
of Sub-Committee A)

List of Territories of the United States of America Referred to in
Paragraph 2 (b) of Article 16

United States of America (customs territory)
Dependent territories of the United States of America

* For imports into Metropolitan France and territories of the French Union.

/ANNEX E

ANNEX E

(Annex E - as recommended by the Joint Sub-Committee)

List of Portuguese Territories Referred to in Paragraph 2 (b) of Article 16

Portugal and the Archipelagoes of Madeira and the Azores
Archipelago of Cape Verde
Guinea
St. Tome and Principe and Dependencies
S. Joao Batista de Ajuda
Cabinda
Angola
Mozambique
State of India and Dependencies
Macao and Dependencies
Timor and Dependencies

ANNEX F

(Annex F - formerly "E", as recommended by the Joint Sub-Committee)

List of Territories Covered by Preferential Arrangements Between Chile and Neighbouring Countries Referred to in Paragraph 2 [(d)] (e) of Article 16

Preferences in force exclusively between, on the one hand,
Chile

and, on the other hand,

1. Argentina
2. Bolivia
3. Peru,

respectively.

ANNEX G

(Annex G - formerly "F", as recommended by the Joint Sub-Committee)

List of Territories Covered by Preferential Arrangements Between the Syro-Lebanese Customs Union and Neighbouring Countries Referred to in Paragraph 2 [(d)] (e) of Article 16

Preferences in force exclusively between, on the one hand,

The Syro-Lebanese Customs Union

and, on the other hand,

1. Palestine
2. Transjordan,

respectively.

/ANNEX H

ANNEX H

(Annex H - as recommended by the Joint Sub-Committee)

List of Territories Covered by Preferential Arrangements Among Colombia, Ecuador and Venezuela Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between two or more of the following countries:

Colombia
Ecuador
Venezuela

ANNEX I

(Annex I - as recommended by the Joint Sub-Committee)

List of Territories Covered by Preferential Arrangements Among the Republics of Central America Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between two or more of the following countries:

Costa Rica
El Salvador
Guatemala
Honduras
Nicaragua

ANNEX J

(Annex J - as recommended by the Joint Sub-Committee)

List of Territories Covered by Preferential Arrangements between Argentina and neighbouring countries Referred to in Paragraph 2 (e) of Article 16

Preferences in force exclusively between, on the one hand,
Argentina

and, on the other hand,

1. Bolivia
2. Chile
3. Paraguay

respectively

REVISION OF

REVISION OF ARTICLE 42

(Showing the changes from the Geneva text
recommended by the Joint Sub-Committee)

Article 42

Territorial Application of Chapter IV

1. The rights and obligations arising under this Chapter shall be deemed to be in force between each and every customs territory ~~which is a separate customs territory and~~ in respect of which this Charter has been accepted by a Member in accordance with Article 99.
2. For the purposes of this Article ~~Chapter~~ a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of ~~substantially all~~ the trade of such territory with other territories.

Article 42A

Frontier Traffic

The provisions of this Chapter shall not be construed to prevent:

- (a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or
- (b) advantages accorded to the trade with the free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace.

Article 42B

Customs Unions and Free-Trade Areas

1. Members recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the parties to it and not to raise obstacles to the trade of other Members with such parties.
2. The provisions of this Chapter shall not therefore be construed to prevent as between the territories of Members [(a).....] the formation of a customs union or the establishment of a free-trade area or the adoption of an interim agreement necessary for the [attainment] formation of a customs union or a free-trade area; Provided, that:
 - (a) with respect to a customs union, or an interim agreement leading to the establishment of a customs union, the duties and other regulations of commerce imposed [by] or any margins of

/preference

preference maintained by,] at the institution of any such union or interim agreement in respect of trade with Members of the Organization shall not on the whole be higher or more [stringent] restrictive than the [average level] general incidence of the duties and regulations of commerce [or margins of preference] applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b) with respect to a free-trade area, or an interim agreement leading to the establishment of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the establishment of such free-trade area, or the adoption of such interim agreement, to the trade of Members not participating in the arrangement shall not be higher or more restrictive than the corresponding tariffs and other regulations of commerce existing in the same constituent territory prior to the establishment of the free-trade area, or interim agreement, as the case may be; and [provided further]

(c) any [such] interim agreement referred to in sub-paragraphs (a) and (b) above shall include a [definite] plan and schedule for the attainment of such a customs union or the establishment of such a free-trade area within a reasonable length of time.

3. (a) Any Member [proposing] deciding to enter into a customs union or a free-trade area, or an interim agreement leading to the formation of such a union or free-trade area, shall [consult with] promptly notify the Organization and shall make available to it such information regarding the proposed union or free-trade area as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

(b) [No Member shall institute or maintain any interim agreement under the provisions of paragraph 2 (b) of this Article]. If, after [a study of the plan and schedule proposed in such agreement] having studied the plans and schedules provided for in an interim agreement under paragraph 2, in consultation with the parties to that agreement and giving due account to the information made available in accordance with the terms of sub-paragraph (a), the Organization finds that such agreement is not likely to result in [such] a customs union or in the establishment of a free-trade area within [a reasonable length of time], the period contemplated by the parties to the agreement or that such period is not a reasonable

/one, the

one, the Organization shall make recommendations to the parties to the agreement. If the parties are not prepared to modify the agreement in accordance with such recommendations they shall not maintain it in force or institute such agreement if it has not yet been concluded.

(c) Any substantial change in the plan or schedule shall not be substantially altered without consultation with be notified to the Organization which may request the Members concerned to consult with it if the change seems likely to jeopardize or delay unduly the achievement of the customs union or the free-trade area.

4. For the purposes of this Charter:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) all tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 43) as between the territories of members of the union are substantially eliminated are eliminated on substantially all the trade between the constituent territories of the union or at least on substantially all the trade in products originating in such territories and

(ii) substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union, subject to the provisions of paragraph 5;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the tariffs and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 43) between such territories are eliminated on substantially all the trade in products originating in constituent territories of the free-trade area.

5. The preferences referred to in paragraph 2 of Article 16 shall not be affected by the constitution of a customs union or a free-trade area but may be eliminated or adjusted by means of negotiations with Members affected. This procedure of negotiations with affected Members shall in particular apply to the elimination of preferences required to conform with the provisions of sub-paragraphs (a) (i) and (b) of paragraph 4.

./6. The Organization

6. The Organization may by a two-thirds majority of the Members present and voting approve proposals which do not fully comply with the requirements of the preceding paragraphs, Provided that they lead to the establishment of a Customs Union or a free-trade area in the sense of this Article.

INTERPRETATIVE NOTE

Paragraph 5.

It is understood that the provisions of Article 16 would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty and is re-exported to the territory of another member of such union or area, the latter member should impose a duty equal to the difference between the duty already paid and the most-favoured-nation rate.