

C. E. I. 22.

LEAGUE OF NATIONS

ECONOMIC AND FINANCIAL SECTION

INTERNATIONAL ECONOMIC CONFERENCE

Geneva, May 1927.

DOCUMENTATION



**ABOLITION OF IMPORT AND EXPORT
PROHIBITIONS AND RESTRICTION**

Commentary and Preliminary Draft International Agreement
drawn up by the Economic Committee of the League of
Nations to serve as a Basis for an International Diplomatic
Conference.

GENEVA 1927

Publications of the League of Nations

II. ECONOMIC AND FINANCIAL
1927. II. 13.

CONTENTS

I. Introduction	5
II. Results of the Enquiries and Consultations of the Economic Committee	9
III. Preliminary Draft Agreement established by the Economic Committee	15
IV. Observations of the Economic Committee on certain Articles of the Preliminary Draft Agreement	19

<i>Annex 1.</i> — Amendments proposed and Observations submitted concerning the Individual Articles of the Preliminary Draft Agreement by the Organisations concerned and by certain Governments.	26
<i>Annex 2.</i> — Miscellaneous Observations and Proposals	32

COMMENTARY AND PRELIMINARY DRAFT INTERNATIONAL
AGREEMENT FOR THE ABOLITION OF IMPORT AND EXPORT
PROHIBITIONS AND RESTRICTIONS

I. INTRODUCTION.

On September 25th, 1924, on the proposal of the Italian delegation, the Assembly of the League of Nations passed the following resolution:

“ With reference to paragraph 1 of Article 3 of the Convention relating to the Simplification of Customs Formalities which has already been signed by thirty States and ratified by six¹:

“ The Assembly,

“ Considering that the system of import and export prohibitions and restrictions constitutes a serious impediment to the free development of international trade, and also

“ That the general situation might in future be favourable to action in this sphere:

“ Desires the Council to instruct the Economic Committee to consider the possibility and expediency of an agreement between States Members of the League and States non-Members with a view to the final suppression of import and export prohibitions and restrictions, and, if necessary, to suggest the most suitable methods of achieving this object. Provisions relating to the protection of the vital interests of States shall not be affected. ”

¹ This Convention had, by February 12th, 1927, been ratified and adhered to by twenty-five States:

<i>Ratifications:</i>		<i>Ratifications:</i>	
Denmark	May 17th, 1924	Roumania	December 23rd, 1925
Italy	June 13th, 1924	Sweden	February 12th, 1926
British Empire.	August 29th, 1924	Hungary	February 23rd, 1926
Union of South Africa	August 29th, 1924	China	February 23rd, 1926
New Zealand	August 29th, 1924	Norway	September 7th, 1926
Austria	September 11th, 1924	France	September 13th, 1926
Belgium	October 4th, 1924	French Protectorate of Morocco	November 8th, 1926
Australia	March 13th, 1925	Regency of Tunis (French Protectorate)	November 8th, 1926
India	March 13th, 1925	Bulgaria	December 10th, 1926
Egypt	March 23rd, 1925	Switzerland	January 3rd, 1927
Siam	May 19th, 1925	Czechoslovakia	February 10th, 1927
Netherlands	May 30th, 1925		
Germany	August 1st, 1925		

Adhesion: Persia, May 8th, 1925.

On September 29th, the Council of the League passed the following decision:

“The Council refers to the Economic Committee the resolution adopted by the fifth Assembly regarding the abolition of import and export prohibitions and restrictions and requests the Committee to submit to it at the earliest possible date proposals in regard to this matter.

“The Council draws the attention of the States to the desirability of supplying to the Economic Committee without delay the information which will enable it to begin as soon as possible its study of this question.”

In virtue of these decisions, and more particularly in execution of the last paragraph of the Council resolution, the Secretary-General, on October 7th, 1924, addressed to the States Members and non-Members of the League a request that they would forward the desired information to the Economic Committee, together with any observations their Governments wished to make on the Assembly resolution.

* * *

At the beginning of 1925, replies from 28 States had reached the Secretary-General.

In beginning the study of this question, the Economic Committee had therefore at its disposal important information which enabled it to judge of the effect produced by the Assembly resolution on the Governments of a large number of countries, including all those which play any considerable part in Europe from the point of view of international exchanges.

It learnt at the outset that the Assembly resolution had come at an opportune moment and that the ground was already well prepared for its reception.

Considerable differences of opinion and very serious objections — which will be found summarised in Chapter II of the present memorandum — tended, it is true, to restrict to some extent the effect of the almost unanimous adherence to the idea of the abolition of economic prohibitions. These objections and differences of opinion, however, to the importance of which the Committee was fully alive, far from effacing the favourable impression derived from the replies as a whole, seemed to it to throw into relief the various aspects of the problem and furnish it with valuable material for its subsequent studies.

The following are the most important passages of the report submitted by the Committee to the Council on June 10th, 1925:

“There appears to be a sufficient consensus of opinion in favour of abolishing or reducing to a minimum the system of import and export prohibitions to warrant preparatory steps being taken with a view to some form of international action in accordance with the provisions of Article 23 (e) of the Covenant relating to the Equitable Treatment of Commerce.

“The system of import and export prohibitions, especially when coupled with a licensing system, has been repeatedly condemned by authoritative international conferences as constituting a method of restriction which is peculiarly ‘liable to give rise to abuses and, in particular, to inflict on international commerce the grave evils of uncertainty, delay and the possibility of unfair discrimination’. For these reasons, import and export prohibitions have been categorically

condemned by resolutions of the Brussels Financial Conference (1920), the Porto Rosa Conference (1921), the Genoa Conference (1922) and the Geneva Conference on Customs Formalities (1923). The last-named Conference resulted in a Convention on Customs Formalities, which included a general undertaking to limit prohibitions and restrictions as far as possible.

“ The text of this undertaking is as follows:

“ ‘ In view of the grave obstacles to international trade caused by import and export prohibitions and restrictions, the Contracting States undertake to adopt and apply, as soon as circumstances permit, all measures calculated to reduce such prohibitions and restrictions to the smallest number. ’

“ On the above grounds, the Committee, while fully recognising that prohibition is only one out of several methods by which international commerce may be unduly impeded, thinks that there is sufficient ground for considering that this particular method stands on a special footing, as one that has already been recognised as ripe for an effort at international limitation. It is therefore of opinion that the best prospect of a successful advance is to limit its consideration at the present stage to this particular question rather than to extend it to the more general and controversial problem of tariff policy. ”

* * *

During its subsequent sessions, the Economic Committee had the benefit of the assistance of experts appointed by the Austrian, German, Hungarian and Serb-Croat-Slovene Governments — Central European countries not at present represented on the Economic Committee.

While taking into account the various points of view and everything that had been done or attempted in the matter during the post-war period, the Economic Committee devoted itself to the development of the idea expressed in the Assembly resolution endeavouring to give that idea a definite contractual form.

The framing of a detailed text in the form of a preliminary international draft agreement, going wherever possible into the minutest details, was designed primarily to serve as a means whereby the Committee itself might bring out the different aspects of the problem and as an attempt to overcome the principal difficulties as they arose. This text, moreover, owing to its detailed form, produced numerous observations and important criticisms. On the basis of this first draft, it then became possible to proceed with every prospect of success to a second more detailed consultation not only with the Governments but also, through their intermediary, with the groups and persons most directly concerned in the solution of the problem — namely, the commercial and industrial organisations in the different countries.

In September 1925 the Committee proposed to the Council that this second enquiry should be held, and at the same time submitted to it its Preliminary Draft Agreement ¹.

¹ When submitting its Draft, the Committee appended certain observations bearing more particularly on the form of the proposed international Act; these are to be found in the report of the Council, document C. 510 (1). M. 185. 1925. II.

In October 1925, the Council accepted the Committee's proposal and forwarded the Preliminary Draft Agreement to the Governments of the States Members and non-Members of the League, requesting them to consult the leading commercial and industrial organisations in their respective countries and to send the results of this consultation to the Economic Committee together with any observations they considered advisable.

The Draft was at the same time communicated for examination and opinion to the International Chamber of Commerce, the International Agricultural Institute and the International Parliamentary Conference on Commerce.

In the course of the year 1926 the Committee was thus able to begin an examination of the criticisms and observations advanced by the organisations concerned and forwarded by the Governments of 36 States¹, and of the observations submitted by the international bodies referred to.

* * *

The Committee devoted two sessions to the examination of this fresh information. It has, in the present memoir, summarised all the essential data, but has not thought it necessary to modify the text of its Preliminary Draft.

This Preliminary Draft Agreement is to be found in Chapter III of the present document.

It was also necessary to forward at the same time to those who might be called upon later to take part in a future conference any observations or proposed amendments which had reached the Committee and were deserving of attention.

These observations and proposed amendments to certain articles of the Draft Agreement are to be found in Annex 1. Annex 2 contains, further, certain additional observations and proposals.

Chapter II of the present document is a brief summary of the ideas and suggestions advanced during the two successive consultations, namely, those of the Governments and those of the bodies interested in the question.

Lastly, in the "*observations of the Economic Committee on certain articles of the Preliminary Draft Agreement*" (Chapter IV of the present memorandum), the latter has attempted to indicate the exact meaning which it intended to give to certain provisions and the reasons — and the compromises — which determined the adoption of certain formulæ. This chapter constitutes a summary description of how the text was first established and how it has come to assume its present form.

¹ Namely: Australia, Austria, Belgium, Bulgaria, Chile, China, Cuba, Czechoslovakia, Denmark, Egypt, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Japan, Latvia, Lithuania, Luxemburg, Netherlands, New Zealand, Norway, Poland, Portugal, Roumania, Kingdom of the Serbs, Croats and Slovenes, South Africa, Spain, Sweden, Switzerland, Uruguay.

II. RESULTS OF ENQUIRIES AND CONSULTATIONS OF THE ECONOMIC COMMITTEE.

1. *Acceptance of the principle of the suppression of prohibitions.*

All the various causes of the system of economic prohibitions and restrictions have been examined during the course of these enquiries: destruction of economic equilibrium, persistence of the disequilibrium arising out of the war, supplies and reconstruction of indispensable stocks of raw materials and foodstuffs, protection of certain industries considered essential to national security, campaign against the rise in prices and wages, defence of the trade balance and exchanges, etc., etc.

This last question appears in a dual aspect. Countries with depreciated currencies have to arrest the fall of the currency and to guard against "Ausverkauf". Countries in which the exchange is above par have to defend the national production against the competition of those with depreciated currencies (voluntary and involuntary dumping) and to combat unemployment.

The idea of the abolition of prohibitions and restrictions has, in principle, met with general agreement, this system appearing to be justified only in exceptional circumstances, and the return to the pre-war system being regarded as desirable. Certain States, however, maintain that it would perhaps be unjust entirely to condemn the system of restrictions, which, in their opinion, has undoubtedly rendered valuable service and which appears to them, if compared with a system of blockade by means of prohibitive tariffs, to be the lesser of two evils.

2. *Is the time ripe for the international action proposed?*

Although the majority of the Governments and organisations concerned have not expressed an opinion on this particular point, it may be deduced from the general tenor of their replies that the present moment seems to them opportune and that they tend to regard the difficulties of the present time as so many arguments in favour of attempts to re-establish a normal state of affairs.

It should be noted, however, that in certain countries the opinion prevails that the persistent instability of the financial and monetary situation is such as to indicate the advisability of postponing action until a more favourable moment.

The Economic Council and the Government of the German Reich in particular are of opinion that the principal objection to the proposed agreement is to be found in the present position of the exchanges in a number of European States which play a most important part in international exchanges. They consider that it would be impossible for the proposed Convention to enter into force until after the stabilisation of the exchanges of the States in question.

The Polish Government concurs in this view, declaring that a return to complete freedom of exchange cannot be considered until after the re-establishment of monetary and economic equilibrium.

3. *Relations between prohibitions and Customs duties.*

One of the chief objections advanced against the Draft in commercial circles and by the Governments of certain countries is the fact that it treats the question of prohibition as an isolated problem, separating it from the general body of problems of commercial policy, and that it thus neglects the close relation which exists between the system of prohibitions and that of Customs duties, more particularly excessive or prohibitive duties.

What, for example, would be the position of a State having renounced its right of restriction as against another State which had established a blockade against the first State by means of prohibitive duties ?

The Economic Committee has realised to the full the importance of this objection; it has even considered it necessary to direct the Council's attention to the possibility that prohibitions, when once abolished, might be replaced in certain cases by prohibitive duties, which, although less open to criticism from certain points of view, would none the less constitute grave obstacles to international trade. One wonders whether the fear of such an effect might not be a serious obstacle to the framing of a satisfactory agreement in the matter of prohibitions.

But even without referring to the exact terms of the fifth Assembly resolution which limited the task of the Economic Committee to an enquiry into the problem of prohibitions, the Committee is convinced, as it has already stated in one of its first reports to the Council, that the practice of prohibitions, especially when accompanied by a licence system, is separate and distinct from all other types of Customs measures, in so far as the said practice constitutes a method peculiarly calculated to lead to abuses and to inflict extremely serious disadvantages on international commerce, disadvantages which, in the Committee's opinion, justify an attempt at remedy, even if the isolation of this question from other similar questions involved is considered expedient.

It is obvious that the proposed diplomatic Conference could not, in all probability, neglect the relation existing not only between prohibitions and Customs duties but also between prohibitions and other measures — different from Customs duties — which might produce the same effects, as, for example, supertaxes imposed, even after stabilisation, on goods originating in countries with depreciated currencies, certain vexatious technical conditions, the excessive charges levied for the preparation or issuing of certificates of origin, etc.

4. *Necessary reservations and the effect of certain of them on the efficacy of the proposed agreement.*

A. As regards the principle involved, unanimity exists in the case of the reservations which were generally admitted before the war as being indispensable and compatible with the system of freedom of trade; safeguards concerning the health of persons, animals and plants, morality, public order, the defence of national and public security, monopolies; the execution of international conventions, the suppression of unlawful traffic and unfair competition; the application to foreign goods of the regulations applicable to the same categories of national goods, etc.

B. Reservations of a different character and of two kinds have been advanced from several quarters; the first, which are more general, concern the extent and limits of the right which the States shall reserve, apart from the cases named in Article 4, to deal with exceptional circumstances. The second, which are of a more special character, are concerned, for example, with the suppression of dumping, the keeping of raw materials and foodstuffs in the country, the protection of certain industries considered indispensable to national safety.

C. Emphasis has also been placed upon the necessity of profiting by the opportunity of an international arrangement on prohibitions to prevent sanitary and veterinary measures from being used as a pretext for the application of economic restrictions against which the State victimised has no formal means of defence.

D. The reservation concerning the *vital interests* of the State, to be found in the Assembly resolution, appeared, generally speaking, to be justified on the same grounds as the exceptions given under Article 4 of the Preliminary Draft Agreement.

The opinion is held in certain quarters, however, that the effects of the Convention would be nullified if this reservation were not strictly limited to the exceptions named in Article 4 — exceptions which were in use before the war. It is held that all other exceptions to the principle of suppression, even those of an elastic nature which are open to more than one interpretation, should be specifically excluded. The fear is expressed that this may not be possible, and this contradiction is regarded as a proof of the difficulty of proceeding by means of an international agreement.

The reservation appears to be essential, but it is feared that, owing to the fact that its scope is inadequately defined, it might considerably reduce the practical value of the agreement.

The text of Article 5, as it appears in the Preliminary Draft Agreement established by the Economic Committee, has not proved entirely successful in dispelling this fear in the case of certain commercial organisations and some of the Governments. Anxiety is expressed more particularly in regard to the interpretation of the words "economic and financial", which, in the opinion of those concerned, appear to extend the idea of the legitimate safeguarding of vital interests.

While no fresh solutions have been suggested, and while it is admitted that the States would hardly consent to relinquish the right to define the essential interests of their national economy, it has been questioned in certain quarters whether the precautions taken by the Economic Committee when drafting the second paragraph of Article 5 are quite sufficient to preclude the danger of too wide an interpretation being given to the first paragraph of the same article.

The Economic Council and the Government of the Reich seemed to express agreement with this view, when they proposed the total deletion of Article 5 on the condition that the Agreement should not come into force until after the stabilisation of the monetary situation in the most important States.

5. *Arbitral or jurisdictional clause.*

It was chiefly the fears referred to in the preceding chapter that led the authors of several memoranda submitted to the Economic Committee to put forward the idea

of a clause designed to enable States which might feel themselves prejudiced by the undue application of the provisions of the Agreement to submit their disputes to an international body.

Supposing, for example, that a State — as suggested in certain memoranda — could reserve the right to re-apply restrictions as a measure of defence against unfair or discriminating treatment applied by other means, the authors of certain memoranda would consider it necessary to provide for an appeal, if direct negotiations failed, to an arbitral body set up by the League of Nations. To put the case in more general terms, the desire is expressed that the Contracting States should have a direct right of appeal to the League, as regard measures at variance with the spirit of the Agreement. Some are even of the opinion that a jurisdictional clause should form the keystone of an international agreement of this character, since there exists no other means of limiting in practice the effect of reservations which may be just in themselves but the arbitrary application of which might cancel the salutary effects of the Agreement.

Moreover, in certain replies which have reached the Committee, the question is raised as to whether the States could agree to the partial renunciation of their rights which would result from the acceptance of an arbitral tribunal. Further, what would be the constitution of the organisation in question ? How would it be possible to avoid delays during which the very causes of the dispute might have disappeared or been modified ?

6. *International convention or bilateral agreements.*

The Committee has received numerous adhesions to the proposal for an international agreement designed permanently to settle the question of prohibitions and restrictions. These adhesions are nearly always subject to the condition that the Agreement shall be extended to a large number of States and shall include more particularly the States which are important in international trade.

Certain commercial organisations in Italy, Switzerland and Czechoslovakia are of opinion, on the other hand, that this question can only be settled satisfactorily by commercial treaties, and that it would be expedient, in consequence, to confine matters to the careful drafting of a series of model clauses which might be inserted in bilateral agreements.

This proposal is based upon the idea that, in order to obtain a real improvement in the present situation, agreements on the abolition of restrictions should be linked up with tariff agreements, and that such a comprehensive system would be difficult to realise by means of an international agreement, whereas it would be a natural result of bilateral negotiations.

This is also the opinion of the *International Chamber of Commerce*, which passed the following resolution in the matter (on November 6th, 1925):

“ The Council of the International Chamber of Commerce has examined with much interest the draft articles of an international agreement for the suppression of import and export prohibitions and restrictions drawn up by the Economic

Committee of the League of Nations, in regard to which the League of Nations has consulted the International Chamber of Commerce.

“ The Council fully appreciates the reasons which underlie this draft. It refers in this connection to the resolutions adopted by the International Chamber of Commerce at its various congresses — Paris 1920, London 1921, Rome 1923 — and by the Council itself in 1924. All these resolutions recommend the abolition of import and export prohibitions and restrictions and express the opinion that they should only exist in exceptional circumstances.

“ The Council notes that the draft of the League of Nations does not take into consideration all the obstacles to international trade and particularly Customs tariffs, which are sometimes prohibitive and may constitute as serious a hindrance as import prohibitions themselves.

“ It considers, moreover, that this agreement, even within the limits of the draft of the League of Nations, could only be of practical value if all States without exception adopted it; otherwise its ratification might be dangerous to adhering States in their relations with other States which delayed or refused their adhesion.

“ The Council believes that the best method of solving the question at present would be to establish, in place of an international convention, a convention which might be taken as a model in drawing up bilateral conventions between States, and particularly contiguous States.”

Further, the *International Parliamentary Commercial Conference*, at its meeting in London in May 1926, adopted the following resolution:

“ The International Parliamentary Commercial Conference,

“ Being of the opinion that, amongst the hindrances to the return of normal conditions in international commerce, those caused by prohibitions and restrictions on imports and exports are especially harmful to international commerce, in that they are of an arbitrary nature, lead easily to abuses and, moreover, generally produce an effect directly contrary to that desired; and,

“ Being convinced that the time is favourable for the making of an international effort to re-establish that freedom of circulation of goods on which the economic stability of the world depends,

“ Unanimously approves the steps taken by the League of Nations and its Economic Committee with that object, and gives in principle its support to the draft agreement drawn up by that body as a basis for further consideration of the matter, but,

“ Considering that a uniform settlement in these matters, which are intimately connected with the economic situation in each country, necessitates a careful consideration of the various interests involved;

“ Expresses a hope that:

“ The suppression of prohibitions and restrictions on imports and exports may be considered in all countries without delay, that

“ With this object endeavours may be made to educate public opinion of every country, and that

“ Governments may, by concluding commercial treaties or conventions, endeavour to assist in the work, thus generally undertaken, to restore economic activity to its normal conditions. ”

The *Economic Committee*, while fully appreciating the above considerations, considers that the procedure of framing model clauses for subsequent insertion in bilateral agreements, would not in itself suffice to attain the desired object. It considers that only a consultation, in the form of an international conference, would give the representatives of the different States an opportunity of exchanging their views and arriving at formulæ which, though based upon general interests, would make it possible to conciliate local interests.

The divergences of view which are shown in the observations of the Governments and various circles concerned do not appear to be irreconcilable. A conference would afford the readiest means of arriving at the necessary compromises. The Committee therefore recommends this form of international action as being the one best calculated to attain the object which the fifth Assembly had in view.

7. *Reciprocity.*

It has been suggested to the Economic Committee that it would be expedient to make the execution of the general undertaking to be assumed in virtue of the proposed agreement subject to reciprocity. In this way, a Contracting State would have the option of applying the Convention in its relations with another Contracting State only to the extent to which it considered that the latter was applying it. The Economic Committee considers that the introduction of such a reservation would be contrary to the spirit of the proposed agreement; there is the risk that if a State, as the result of the clause concerning reciprocity, were given the right to judge of the manner in which another State was discharging its obligations, this might lead to abuses and permit of the introduction and maintenance of prohibitions other than those explicitly allowed under certain articles of the Preliminary Draft Agreement.

III. PRELIMINARY DRAFT AGREEMENT ESTABLISHED BY THE
ECONOMIC COMMITTEE.

Article 1.

Subject to the exceptions provided for in the following articles, each contracting State undertakes within a period of six months to abolish all import and export prohibitions and restrictions and not thereafter impose or maintain any such prohibitions or restrictions.

In the meantime, the contracting States will adopt all practicable measures to reduce existing prohibitions and restrictions to a minimum and to avoid the imposition of any fresh ones.

Further, they undertake to adopt all necessary measures to see that the provisions of the present Agreement are strictly observed by all Governments, central or local authorities, and that no administrative regulation is issued in contravention thereof.

Article 2.

Should the contracting States in pursuance of their general legislation subject the importation or exportation of goods to certain regulations in respect of the manner, form or place of importation or exportation, or the imposition of marks, they undertake that such regulations shall not be made a means of disguised prohibition or arbitrary restriction.

Article 3.

In the case of any prohibitions or restrictions which may be applied within the limits set by the present Agreement, the contracting States shall in the matter of licences comply strictly with the provisions of Article 3 of the International Convention for the Simplification of Customs Formalities signed at Geneva on November 3rd, 1923.

Article 4.

The following classes of prohibitions and restrictions are not prohibited by the provisions of the present Agreement, provided that they are applied equally to all foreign countries where the same conditions prevail and are not applied in such a way as to conceal measures the object of which is purely economic:

1. Prohibitions or restrictions having in view national defence, public safety or order;
2. Prohibitions or restrictions issued on grounds of public health;
3. Prohibitions or restrictions having in view the protection of animals and plants against disease, degeneration or extinction;
4. Prohibitions or restrictions imposed for moral or humanitarian reasons or for the suppression of improper traffic, provided that the manufacture of and

trade in the goods to which the prohibitions relate are also prohibited or restricted in the interior of the country;

5. Export prohibitions or restrictions issued for the protection of national treasures of artistic, historical or archæological value;

6. Prohibitions or restrictions intended, in conformity with the national legislation or international conventions, to protect industrial, literary and artistic property, and to prevent unfair competition in regard to the false marking or appellation of origin, on condition that an analogous protection or supervision is applied to national products;

7. Prohibitions or restrictions imposed for the purpose of extending to imported goods measures of control equivalent or analogous to those applying to home products of the same kind;

8. Prohibitions or restrictions applied to articles which in the interior of the country are subject to State monopoly or to monopolies granted by the State as regards either manufacture or trade;

9. Prohibitions or restrictions established in pursuance of international conventions regulating the traffic in arms, opium or other forms of trade which give rise to dangers or abuses, or relating to methods of unfair competition;

10. Prohibitions applicable to coins, gold, silver, currency notes or securities.

Article 5.

Nothing in this Agreement shall affect the right of any contracting State to take on importation or exportation all necessary measures to meet extraordinary and abnormal circumstances and to protect the vital economic and financial interests of the State. Nevertheless, in view of the grave inconveniences caused by prohibitions and restrictions, they shall only be imposed in cases of exceptional necessity and shall not be made an arbitrary means of protecting national products or of discriminating against any other contracting State. Their duration shall be restricted to that of the causes or circumstances from which they arise.

Article 6.

Each contracting State agrees not to invoke the provisions of the present Agreement as a ground of objection to measures of prohibition or restriction applied by another contracting State to the products of a third State which imposes on its products prohibitions or restrictions of a kind prohibited by the present Agreement or which subjects its commerce or shipping to measures of exclusion or discrimination or to unfair methods of competition.

Article 7¹.

Should a dispute arise between two or more contracting States as to the interpretation or application of the provisions of the present Agreement, and should such dispute

¹ This article reproduces the provisions of Article 22 of the Customs Formalities Convention, signed at Geneva on November 3rd, 1923.

not be settled either directly between the parties or by the employment of any other means of reaching agreement, the parties to the dispute may, before resorting to any arbitral or judicial procedure, submit the dispute, with a view to an amicable settlement, to such technical body as the Council of the League of Nations may appoint for this purpose. This body will give an advisory opinion after hearing the parties and effecting a meeting between them if necessary.

The advisory opinion given by the said body will not be binding upon the parties to the dispute unless it is accepted by all of them, and they are free, either after resort to such procedure or in lieu thereof, to have recourse to any arbitral or judicial procedure which they may select, including reference to the Permanent Court of International Justice as regards any matters which are within the competence of that Court under its Statute.

[If a dispute of the nature referred to in the first paragraph of this article should arise with regard to the interpretation or application of Articles (.....) of the present Agreement, the parties shall, at the request of any of them, refer the matter to the decision of the Permanent Court of International Justice, whether or not there has previously been recourse to the procedure prescribed in the first paragraph of this article.]¹

The adoption of the procedure before the body referred to above or the opinion given by it will in no case involve the suspension of the measures complained of; the same will apply in the event of proceedings being taken before the Permanent Court of International Justice, unless the Court decides otherwise under Article 41 of the Statute.

Article 8.

The present Agreement shall be open for signature for a period of twelve months from the present date by any State which is a Member of the League of Nations or to which the Council shall have communicated a copy for this purpose.

Thereafter any such State may accede to the Agreement by an instrument communicated to the Secretary-General of the League of Nations, who shall at once notify its receipt to the other parties to the Agreement.

Article 9.

The present Agreement shall be ratified and the ratifications deposited at Geneva with the Secretary-General of the League of Nations as soon as possible. It shall come into effect ninety days after the date on which the Secretary-General notifies the parties that it has been ratified or acceded to by (.....²) States, including those mentioned in Appendix³.

¹ This paragraph is put in brackets to indicate that the Economic Committee wishes to leave open the question of its eventual inclusion or omission.

² Number to be inserted.

³ The list of States to be set out in Appendix will include the principal States of Europe whose participation in the Agreement is of greatest importance, having regard to the magnitude of their trade or their geographical position.

As regards a State ratifying or acceding to the Agreement after it has come into force, the Agreement shall come into force ninety days after the notification of such ratification or accession by the Secretary-General of the League of Nations. If within two years from the present date sufficient ratifications and accessions have not been notified to bring the Agreement into force, the States which have ratified or acceded to the Agreement will confer with a view to deciding whether the Agreement should be put into effect as among themselves.

Article 10.

Any contracting State may denounce the Agreement by a notification in writing addressed to the Secretary-General of the League of Nations at any time not less than (four) years from the date when the Agreement comes into force. Such denunciation shall take effect one year after its receipt by the Secretary-General and shall only operate in respect of the denouncing State.

If one of the contracting States named in the preceding article or five other contracting States not so named denounce the present Agreement, any contracting State shall be entitled to request the Council of the League of Nations to summon a Conference to consider the situation thus created. If the Council declines this request, any contracting State may denounce the present Agreement by six months' notice. Should the Conference meet under the auspices of the League of Nations, any contracting State which dissents from its decision may similarly denounce the Agreement by six months' notice.

Article 11.

In order to indicate the progress which has been made in regard to the abolition of import and export prohibitions or restrictions, each contracting State shall, within twelve months of the coming into force in its own case of the present Agreement, furnish the Secretary-General of the League of Nations with a statement of the steps which it has taken for the purpose, with a view to the communication of a summary of this information to the various States.

Article 12.

If before the expiration of the period of four years mentioned in Article 10 one-third of the contracting States notify the Secretary-General of the League of Nations of their desire that the present Agreement should be revised, the other contracting States undertake to participate in any consultation that may take place with a view to the revision or maintenance of the Agreement.

* * *

Note. — The Agreement, if it takes the form of a Convention, will need to be completed by the usual articles which have become "common form", dealing with such matters as the position of colonies and overseas possessions or of countries which form part of the same sovereign State, the relation of the Convention to the rights and duties of States as Members of the League of Nations, etc.

IV. OBSERVATIONS OF THE ECONOMIC COMMITTEE ON CERTAIN ARTICLES OF THE
PRELIMINARY DRAFT AGREEMENT.

Article 1.

The States adhering to the Convention relating to the Simplification of Customs Formalities which was signed at Geneva on November 3rd, 1923, have undertaken (Article 3) to adopt and apply, as soon as circumstances permit, all measures calculated to reduce import and export prohibitions and restrictions to the smallest number.

This is a far-reaching moral undertaking which has undoubtedly not been without effect on the Customs policy of the States which have accepted it. It is unaccompanied, however, by any definite statement as regards either the extent of its execution or the date of its entry into force.

The present Draft is based upon the same principle, but deliberately transforms that principle into a specific undertaking; after having defined and admitted, in Articles 4 and 5, the exceptions which are indispensable, it requires not only the reduction but also the complete abolition of economic prohibitions and restrictions, and this within a definite period.

In the present Draft, this period is fixed at six months as from the date of ratification, but the Committee attaches only relative importance to this time-limit. The reason why it did not leave the figure blank was simply in order to indicate that, in its opinion, it was necessary, in the first place, to fix a maximum period, and, secondly, to fix a period long enough for the contracting States, and more particularly those whose economic system is still partly based on prohibitions, to adapt themselves to the fresh situation and to introduce the modifications involved by it gradually and by easy stages.

It is, of course, understood that in the meantime (paragraph 2) the contracting State shall not modify the situation existing at the time of ratification in such a way as to render it less favourable. It is unlikely, moreover, save in exceptional circumstances (Article 5), that a State would increase the number or severity of its economic restrictions just when it was preparing to abolish them.

* * *

The extent of the powers conferred on the local authorities varies very much in the different countries and more particularly in the countries with a federal constitution. It might happen that they would take, within the limits of their powers, measures contrary to the undertaking entered into by the central Government, thus depriving the other contracting parties of the benefits which they are entitled to expect from the execution of the Agreement.

Paragraph 3 is designed to prevent any misunderstanding on this point. A State which has no power, under its Constitution, to enter into engagements binding upon its

local authorities will thus be obliged to proclaim the fact, and this will make the situation perfectly clear as regards the relations between the different contracting parties.

* * *

Article 1 does not expressly raise the question of whether the undertaking in question is to be entered into between the contracting States only in regard to one another or whether it also applies in their relations with non-contracting States.

This is unnecessary inasmuch as, unless the contrary is expressed, the rights and obligations established by the Agreement could only be held to extend to the contracting States. It may be noted further that, subject to any undertakings that the States may have assumed to suspend all measures of reprisals during the conciliation or arbitration proceedings, every State remains free at any time to take measures of any description, including the application of prohibitions and restrictions, against a State, whether or not a party to the Agreement, which applies against it prohibitions or restrictions other than those admitted under the Agreement itself.

Article 2.

This article is based upon clauses of a similar nature to be found in several commercial treaties.

Every country must obviously be free to subject the importation and exportation of specific goods to the fulfilment of certain conditions and formalities.

It might require, for instance, that goods shall enter or leave the country by way of points on the frontier or seaports where it has the necessary installations for Customs examination, that goods shall be accompanied by a certificate vouching for their purity or their composition and that they shall bear some mark of origin; it might require for this or that article a definite kind of packing or demand that the package shall not exceed a given weight, etc., etc.

In order, however, that the principle of the freedom of trade shall be safeguarded as far as possible, it is essential in the first place that these formalities should be neither unnecessary, arbitrary nor excessive, and, secondly, that they should correspond to real necessities and should not be imposed or applied with the intention of rendering the entry or exit of certain goods either difficult or impossible.

The first of these principles forms the subject of the Convention relating to the Simplification of Customs Formalities to which reference has already been made. The second is simply a consequence of the suppression of economic prohibitions and restrictions covered by the present draft.

The text established by the Economic Committee indicates clearly that its intention was not to proclaim the right of the contracting States to issue regulations—a right which could not be disputed—but simply to create a fresh guarantee to ensure that the exercise of that right shall not degenerate into a means of disguised prohibition or arbitrary restriction.

Article 3.

Within the limits laid down in Articles 4 and 5 of the present Draft, a State may, even after having given its adhesion to the Agreement, impose or maintain prohibitions and restrictions. In such a case, it is essential that the system of licences which it might be led to apply should be such as to interfere as little as possible with commercial transactions and to reduce to a minimum the various drawbacks which normally accompany the application of this regime.

With this object, it must undertake to comply with the provisions of Article 3 of the Convention relating to the Simplification of Customs Formalities, which was signed at Geneva on November 3rd, 1923.

The complete text of this article is as follows:

“ In view of the grave obstacles to international trade caused by import and export prohibitions and restrictions, the contracting States undertake to adopt and apply, as soon as circumstances permit, all measures calculated to reduce such prohibitions and restrictions to the smallest number; they undertake, in any case, as regards import and export licences, to do everything in their power to ensure:

“ (a) That the conditions to be fulfilled and the formalities to be observed in order to obtain such licences should be brought immediately in the clearest and most definite form to the notice of the public;

“ (b) That the method of issue of the certificates of licences should be as simple and stable as possible;

“ (c) That the examination of applications and the issue of licences to the applicants should be carried out with the least possible delay;

“ (d) That the system of issuing licences should be such as to prevent the traffic in licences. With this object, licences, when issued to individuals, should state the name of the holder and should not be capable of being used by any other person;

“ (e) That, in the event of the fixing of rations, the formalities required by the importing country should not be such as to prevent an equitable allocation of the quantities of goods of which the importation is authorised. ”

Article 4.

The prohibitions or restrictions given in paragraphs 1 to 10 of Article 4 are, in the opinion of the Economic Committee, outside the scope of the Assembly resolution.

In consequence, they are not prohibited under the present Agreement and the States may continue to apply them, even after having given their adhesion to the proposed Convention.

The clause in question deals in actual fact with exceptions which have been admitted through long-established international practice, as recorded in a large number of commercial treaties, to be indispensable and compatible with the principle of freedom of trade.

While introducing them in their entirety into this Draft Agreement, the Economic Committee considered it necessary to make them subject to two conditions which are formulated in the preamble to Article 4. The prohibitions and restrictions in question shall not be applied in such a way as to result in unjust discrimination against the trade of a given country, or in such a way as to constitute a means of disguised prohibition or restriction, thus departing, for economic purposes, from the object for which they were instituted and accepted, on terms of reciprocity, by the contracting parties.

Here again the same precautions against the possibility of abusive application are to be found as in Article 2 for regulations concerning entry and departure.

Paragraphs 1 to 10 call for no comment. In Annex 1, moreover, will be found a series of observations and proposals submitted by the Governments or the organisations concerned, together with certain remarks of the Economic Committee on the majority of these provisions.

Article 5.

The Assembly resolution, while contemplating "*the final suppression of import and export prohibitions and restrictions*", adds an express reservation exempting "*provisions relating to the protection of the vital interests of States*". The purpose of Article 5 is to give effect to this reservation of the Assembly.

It is impossible to ignore the fact that, in an economic period so exceptional as the present, States would undoubtedly prefer to renounce the advantages of the general suppression of prohibitions rather than divest themselves of the right to employ this means of defence at a time when they consider, rightly or wrongly, that they may find themselves at any moment faced by exceptional circumstances of extreme gravity.

A draft agreement which failed to take this situation into account would have little prospect of obtaining the adhesion of any considerable number of States. It is essential, therefore, to admit a general reservation as a kind of safety-valve to calm apprehensions which, unfortunately, cannot yet be regarded as unjustifiable.

Again, it is essential—and the Committee had the impression that this opinion is becoming more and more prevalent—to fix a rule in the matter of prohibition which shall be applicable to a normal condition of affairs. This is the pre-war rule, *i.e.*, the suppression of economic prohibitions and restrictions; as regards this point, opinions appear to be practically unanimous. What was necessary, therefore, was to establish a clear distinction between normal conditions and exceptional circumstances, to bind the contracting parties in the first case and to leave them free to act at their discretion in the second. It is true that the terms "normal conditions, exceptional or extraordinary circumstances", can be interpreted in various ways, and this implies some uncertainty as regards their meaning, which one of the contracting parties might employ as a pretext for evading its obligations.

The Economic Committee considers, however, that the present text of Article 5 makes it exceptionally difficult to place any wide interpretation on the rights allowed to the contracting parties under this article.

The circumstances in question must be not only exceptional but "extraordinary and abnormal", and, while the words "to protect the vital economic and financial

interests of the State " may give rise to apprehensions, their meaning is strictly limited by the stipulation laid down in the second sub-paragraph, which expressly prohibits the use of import and export prohibitions and restrictions as an arbitrary means of protecting national products.

Finally, the last sentence in the article indicates even more clearly the exceptional and transitory character of the measures of prohibition which the States may take in the circumstances indicated in Article 5 by limiting their duration strictly to that of the causes from which they arise.

As regards the interpretation to be placed upon the reservation of the Assembly quoted above, and hence upon the stipulations which it would be necessary, for the purpose of satisfying it, to introduce into the proposed international agreement, certain Governments and organisations have expressed different and, in many cases, divergent opinions.

This divergence, which had already become apparent on the publication of the very concise text of the resolution in question, became yet more marked when the persons concerned had occasion to examine the text of Article 5 as established in the present Preliminary Draft.

Two opposite views were advanced simultaneously.

(a) According to the first, the Assembly reservation is applicable only to the series of exceptions which experience has shown to be indispensable and which, in the present Draft, are covered by Article 4. Outside this limited circle, no security exists: the way is clear for the whole series of objectionable prohibitions, the economic prohibitions, which it is specifically desired to suppress. Moreover, the proposed Agreement leaves States entirely free as regards the application of Customs duties and this should be a sufficient safeguard for them in any contingency.

It is essential, therefore, as in the old commercial treaties, to keep within the exceptions laid down in Article 4, and to exclude any general reservation which would necessarily lend itself to the most varied interpretations.

(b) This would be perfectly just, so supporters of the opposite view maintain, if we were back in 1914. Since then, however, fresh dangers have appeared — dangers of a financial and economic character, which, before the war, were either unknown or were maintained within limits which prevented them from constituting a serious menace to the national economy of the different States.

Before the war, it is true, there were countries with depreciated currencies, but there was no question of the complete collapse of national currencies, with all the tragic circumstances resulting therefrom. Grave economic crises had been experienced, but there had never been, for example, such great numbers of unemployed as have existed since that time, more particularly in the countries with high rates of exchange. These dangers are no less serious or urgent than those against which, in pre-war treaties, the countries reserved the right to apply prohibitions.

The exceptions as laid down in Article 4 are therefore inadequate.

Moreover, experience has shown that the system of Customs duties is not in itself sufficiently potent, rapid or elastic to cope with certain situations.

Hence, in the present circumstances, States cannot renounce the right to apply

prohibitions and restrictions, including those of an economic character, whenever this appears to them necessary. At most, they can renounce this right to a partial extent and as a provisional measure, in return for adequate compensation, by concluding short-term bilateral treaties with other States.

* * *

The two opposing points of view which have just been set out, possibly with undue emphasis, have one feature in common, namely, that the net result of both is to exclude the possibility and expediency of an international agreement in the matter of prohibitions.

The Committee's investigations, however, fortunately showed that this rigid conception of the problem was held only by a fairly small minority; the vast majority of the replies received by the Committee indicate clearly that there is a general desire to co-operate in an attempt to settle the question of prohibitions by means of international agreement.

As regards Article 5, opinions were, it is true, greatly divided, but they were always accompanied by considerations which considerably lessened the contrast between the views just described above, and which enabled the Committee to foresee the possibility of conciliation.

Article 6.

It has been observed in connection with Article 1, that the Agreement cannot establish any obligation as against non-contracting States. A State which is a party to the Agreement remains free to deal as it thinks best with any measure taken against it by a non-contracting State.

It is essential, however, that the reciprocal obligation assumed by the States parties to the present Agreement should not have the indirect effect of preventing a State party to the Agreement from applying prohibitions and restrictions, should it think this necessary, against any State which imposes on its products prohibitions or restrictions of a kind forbidden under the present Agreement or which subjects its commerce or shipping to measures of exclusion or discrimination or to unfair methods of competition.

For this object it has been suggested that the Economic Committee should introduce into the Draft Agreement an article specifically reserving the right of the contracting States to order prohibitions by way of reprisals.

The Committee rejected this suggestion, being of opinion that it would have been out of place in an agreement of this nature. It thought, however, that it should take care not to put States which, by adhering to this Agreement, might give proof of their fidelity to the principle of freedom of commerce, in a position of inferiority nor to deprive them of their legitimate means of defence. This is the principle which lies at the base of Article 6.

Article 7.

If possible, it would be expedient, in the Committee's opinion, not to leave out of the proposed Agreement the ideas of conciliation and arbitration, which undoubtedly represent a marked progress made under the auspices of the League in international relations.

The Committee has therefore inserted textually in the present draft a provision of the Convention relating to the Simplification of Customs Formalities which has already been adopted by a considerable number of States.

The Committee thought it necessary to put the text of the third paragraph of the present article in brackets, as an indication that it would prefer to leave it to be discussed at a subsequent date by the representatives of the States concerned. The same applies to those articles in regard to which any dispute will be submitted to the Permanent Court of International Justice.

Articles 9 and 10.

In its report to the Council, dated September 15th, 1925, the Economic Committee expressed itself as follows on these two articles:

“ The Committee . . . desires to call attention to Articles 9 and 10, which prescribe the character and number of the States whose adhesion and participation is regarded as essential before the proposed Agreement shall take effect; and the procedure to be followed if, through subsequent denunciation, the parties to the Agreement should be diminished below the aforesaid minimum. The form of these articles is a little unusual, but it has been strongly represented to the Committee that the practical possibility of suppressing import and export prohibitions in one country is so vitally dependent on the corresponding action of the countries with which it has important commercial relations that without some such stipulation it would probably be impossible to make the Agreement generally acceptable. ”

The Committee has put the number “ four ” in parentheses in the first paragraph of Article 10 in order to indicate that, whatever the number of years subsequently fixed, it is essential, in its opinion, that the period during which a State remains bound by its adhesion to the Agreement shall not be too limited.

It appears, moreover, to the Committee that, since the first paragraph of Article 9 gives a guarantee that the Agreement will not come into effect until it has been ratified by a certain number of States, this precludes the risk of a State renouncing economic prohibitions and restrictions without at the same time obtaining corresponding satisfaction from a certain number of other States, including those which play a particularly important part in international trade.

This risk might, however, recur if, as the result of one or more denunciations, the number of parties to the Agreement fell below the minimum fixed. The second paragraph of Article 10 is designed to provide for this eventuality.

Annex 1.

AMENDMENTS PROPOSED AND OBSERVATIONS SUBMITTED CONCERNING THE INDIVIDUAL ARTICLES OF THE PRELIMINARY DRAFT AGREEMENT BY THE ORGANISATIONS CONCERNED AND BY CERTAIN GOVERNMENTS.

Article 1.

1. Several *Hungarian* organisations desire that the question of prohibitions of imports should be kept separate from that of prohibitions of exports.

2. *With regard to exports*, they require a longer transitional period — without which Hungary could only suppress prohibitions on exports on condition that the other States do likewise and suppress export *duties* at the same time.

3. They propose to add to the Agreement an article requiring the abolition of export duties.

Note. — The Economic Committee, while realising the possible advantage of the proposed separation in paragraph 1 above, prefers not to apply it for the present because of the difficulty of establishing the same distinction when the vital interests of countries dealt with in Article 5 are concerned.

With regard to the transitional period for requisite adaptation, the Committee has decided to leave the period indefinite, merely indicating by the word “ months ” that in its opinion this period should not exceed one year.

With regard to *export duties*, the Committee considered that this was a question outside the scope of the Assembly resolution.

Article 2.

1. The *Swedish* organisations consider that the provisions of the Agreement should not be in opposition to the measures which Sweden considers or will consider it necessary to take to prohibit or regulate the import and export of certain specific goods *without indications as to origin*, or to measures calculated to safeguard the reputation of the products of Swedish industry on foreign markets.

Note. — The Economic Committee considers that this point is covered by Articles 2 and 4.

2. The *British* and *Italian* industrial federations consider the terms of this article too general and likely to lead to abuses. It would be preferable to adopt a more restrictive formula.

Article 4.

1. The *Swedish* Central Administration of Commerce considers that the right of allowing exceptions to the *prohibition to export arms, munitions and war material* should be entirely restricted to the central authorities of the exporting States, and

consequently that it should not be regulated by the provision of Article 4, which, with regard to prohibitions and restrictions, provides for the same application to all foreign countries where the same conditions obtain.

Note. — The Economic Committee is of opinion that the provision of the Preamble in no way limits the right of States to take measures against a particular country where conditions are not the same, and that the objection formulated above is covered by the words: “ where the same conditions obtain ”.

2. The *Economic Council* and the Government of the *Reich*, considering the present text too elastic, propose the following formula for paragraph 1 of Article 4:

“ Prohibitions and restrictions having in view requirements of war (*Kriegsbedarf*) in extraordinary circumstances or taken in the interests of public safety. ”

3. The *Belgian* Government and organisations would like a guarantee against the abusive application of measures having for their aim the *protection of plants against disease*.

4. The *Finnish* Government desires to add the word “ weeds ” after the word “ disease ” to paragraph 3 of Article 4.

Note. — The Economic Committee is of opinion that the Belgian Government's remark is covered by the last words of the Preamble. With regard to the Finnish proposals, paragraph 7 appears to satisfy this.

5. The *British* Government is of opinion that it will be necessary to establish, either by an amendment of the text or by a statement to be inserted in the Protocol, that prohibitions on imports of the type applied by Great Britain to dyestuffs and to extracts of coffee and tobacco stores are actually included in the exceptions provided for.

6. The Governments of *Great Britain* and of *Australia* desire to add a paragraph covering *goods manufactured in prisons*.

Note. — The Economic Committee considers that this point should be retained and that it might be embodied in an annex (*Protocole de signature*) to the Agreement in question.

7. The *Australian* Government desires to make a reserve concerning prohibitions actually in force in Australia covering the importation of sugar and dyestuffs, except from the United Kingdom, as well as the exportation of metals, alloys and minerals—for which, moreover, permits are delivered without restriction.

8. Certain *Italian* organisations consider that *the prohibitions for the purpose of ensuring protection of industrial property and those against unfair competition* may serve to disguise prohibitions of an economic nature.

9. On the other hand, the *Federation of British Industries* wonders whether the Agreement allows States a reasonable latitude with regard to the application of legislation in the matter of *patents and trade-marks*.

10. The *Austrian* Government considers that it may reserve the right of requiring permission for the importation of artificial mineral waters and the products of artificial mineral waters, in view of the fact that the production of the said articles is in Austria

also subject to a special permission. It considers that this point is covered by *paragraph 7 of Article 4*.

Note. — The Economic Committee, while drawing attention to the observation of the Austrian Government, points out the dangers inherent in so broad an interpretation of *paragraph 7*.

11. Similarly, the *Austrian* Government considers that the right of regulating imports as regards alcohol is provided for under *No. 8 of Article 4*, since the production of and trade in alcohol fall under the heading of monopolies.

12. Certain *Hungarian* organisations would like to lay stress on the condition of *reciprocity* in *Article 4*.

13. Further, they desire that the question *whether the prohibitions imposed in virtue of this article are legitimate* should be decided by the arbitration of experts to be appointed by the League of Nations according to the terms of *Article 7*.

14. Finally, they would like the measures of restriction and prohibition under *Article 4*, together with their ultimate modifications, to be collected by the Secretariat of the League of Nations, published and communicated to the other States.

15. The *Finnish* Government considers that *Article 4* should leave Governments the right of enacting *prohibitions of short duration* with a view to preventing excessive importation made for purposes of speculation when the public has been informed that *an increase of Customs duties* is imminent.

16. The Council of National Economy of *Spain* would like to see introduced into *Article 4* or *Article 5* a declaration conferring on States *an unlimited right to modify the Customs tariff* in such a way that this cannot be considered as an infringement of the Agreement.

17. With regard to exportation, the same Council desires to confirm the opinion already expressed with regard to the disadvantages arising from the application of "dry laws", the application of prohibitions in connection with the supposed existence of epiphytes, which may lead to discrimination, the application of prohibitions under pretext of false indications of origin, and, finally, the application of excessive duties for the transmission and legalisation of certificates of origin and other similar documents.

18. The *Union of South Africa* desires to reserve the right to prohibit the export of ostriches and ostrich eggs which it regards as vital to its economic interests. It also desires to reserve the right to prohibit the import of wines and of spirits from countries which prohibit their sale for home consumption.

Article 5.

1. For the reasons set forth in Chapter II, 2, and in continuation of the proposed amendment to *Article 9*, the Economic Council and the Government of the *Reich* are of opinion that *Article 5* of the Draft is superfluous and may be omitted. Once the stability of the exchanges is re-established, the maintenance of this general clause would be not only superfluous but even, in some cases, likely to render the Agreement illusory.

2. Employers' industrial and commercial organisations in *Austria*: "The present text of Article 5 is of a nature to deprive the Agreement of all practical value; a modification of the text of this article is therefore indispensable. Should it not be possible to renounce this provision by common agreement, it would be desirable to lay down certain guarantees calculated to subordinate the coming into force of such a prohibition to an impartial enquiry into the conditions which actuated this measure, and this might be arrived at by an application of the provisions of Article 7. In consequence, we propose to stipulate that prohibitions shall only come into force for the reasons mentioned in Article 5 after notification to the Council of the League of Nations, and if no objection is formulated within a relatively short period. Even in the case of protest by a single one of the States to whose ratification the coming into force of the Agreement was subordinate, an objective enquiry into the grounds for such measures should be undertaken. In a case where the reasons cited for the application of prohibitions were recognised as founded, it would further be necessary to determine by what measures of protection the States signing the Agreement might, if occasion arose, be relieved of the obligations involved by it."

3. The *Japanese* Government proposes to adopt instead of the formula: "to protect the vital economic and financial interests of the State", Article 5, paragraph 2, the following formula:

"To safeguard the maintenance of industries, the creation of which is or may be required by the vital interests of the State."

Moreover, *the commercial and industrial organisations in Japan* consider that, before prohibiting or restricting imports or exports in accordance with the provisions of the present Agreement, the States should notify the League of Nations of the measures taken, except in urgent cases.

4. The Government of the *Netherlands* expresses the fear that certain States will identify an increased Customs duty established by another State with the "extraordinary and abnormal circumstances" mentioned in Article 5, and wonders whether, under present conditions, such an interpretation can well be avoided.

5. The *Federation of British Industries* and several *Italian* organisations consider that the terms of this article are too general and may lead to abuses.

6. For this reason, the *Confederation of Italian Industries* proposes to state explicitly that the prohibitions shall only apply—with the exception of cases provided for in Article 4—in case of war, Customs disputes, famine or other public calamities, or as a measure of retaliation.

In its memorandum, the *Italian* Government examines this proposal in detail and comes to the conclusion that the proposed formula is in certain respects *superfluous*; in others, too general and lacking in precision and inadequate from certain points of view. It prefers to this the present formula of the draft.

7. The Chamber of Commerce of *Trieste* has submitted the following proposal: "In the case of certain goods, the prohibition meets the requirements of necessities which it would be difficult not to take into account, at any rate in the present economic

situation. Under these circumstances, the Agreement would have more chance of giving satisfactory results in practice, *if it were to indicate explicitly the prohibitions which each contracting State should necessarily maintain in force, at any rate during a specific period of time* ”.

The *Italian* Government considers that this proposal, although difficult of application in practice, deserves careful consideration as being capable of doing away with those apprehensions which will be among the principal causes determining the attitude of various Governments with regard to the proposed Agreement.

8. The *Belgian* Government considers it understood that Article 5 implies the power to regulate, under extraordinary and abnormal conditions, traffic:

- (a) In foodstuffs of prime necessity;
- (b) In products used as raw material in national industries;
- (c) In products delivered on account of reparations; for example, coal and dyestuffs.

With regard to (c), the *Belgian* Government would prefer that it should be expressly mentioned, either in the Agreement or in the final Protocol.

Article 7.

1. The Economic Council and the Government of the *Reich*, in continuation of observations made with regard to Article 5, note that the means laid down in Article 7 will not prevent a State from deriving profit, at any rate during a fairly long period, from the abusive application of Article 5 if the latter were maintained.

2. The commercial and industrial organisations of *Czechoslovakia* are of opinion that the arbitral procedure laid down in Article 7 constitutes an imperfect sanction, having regard to the fact that the parties giving their adhesion are not required to submit to the decision of the Permanent Court of International Justice. Further, the States will certainly desire to remain free to decide what their vital interests are, and when those vital interests are involved, since such a decision by its very nature is outside the scope of arbitral procedure.

3. The Chamber of Commerce of *Milan* proposes to render the procedure laid down in Article 7 more stringent and forceful in order to establish a close supervision of the use which the contracting States will make of the right given them by Article 5.

4. The *Belgian* Government, together with the Associations concerned, are of opinion that the procedure in question would call for very extensive delays which would possibly render it ineffective in practice. To remedy this situation and to cover cases where the prohibition would not specially injure the interests of a definite State, it is suggested that a right of initiative should be given to the technical organisations mentioned in Article 7 (or to another organisation to be set up), which should decide whether the prohibition applied remains within the limits set forth in Articles 4 and 5.

5. Employers' industrial and commercial organisations in *Austria*: “ In continuation of remarks made with regard to Article 5, we suppose that Article 7 should

apply equally to disputes which might arise from the application of Article 5. We should like to point out that we prefer the introduction of *compulsory arbitral procedure* and the competence of the Permanent Court of International Justice to an optional procedure. ”

6. The *Japanese* Government thinks that Article 5 of the Draft must be excluded from the compulsory procedure of the Permanent Court of International Justice (paragraph 3 of Article 7).

7. The National Commercial Association of *Hungary* proposes to submit disputes, which may arise from the application of Article 4, to the arbitration of experts to be appointed by the League of Nations, according to the terms of Article 7 of the Draft.

Article 9.

1. The Economic Council of the *Reich* proposed the following formula to replace the first paragraph of Article 9:

“ The present Agreement shall be ratified when the value of the currency of all States mentioned in the annex shall have been stabilised at a gold standard.

“ The instruments of ratification shall be, ” etc. (as in the draft).

The acceptance of this formula would involve the suppression of Article 5.

2. The Government of *Japan* proposes to suppress the following words:

1. In paragraph 1, “ including those mentioned in Appendix ”.

2. In paragraph 2, the last sentence which begins: “ If within two years. . . ”

3. The *Austrian* Government, together with the employers’ organisations, consider that the Agreement could only come into force for Austria when also applied in the States bordering on Austria, as well as in the Succession States.

4. The principal *Italian* organisations, after indicating the importance they attach to the principle of reciprocity, express the opinion that the Agreement should be extended at least to all the *States of Europe*.

5. The *International Chamber of Commerce* considers that the proposed Agreement could only be of practical value if it were adopted by all States without exception.

6. The commercial and industrial organisations of *Czechoslovakia* observe that the Agreement could only be effective on condition that the great majority of countries of commercial importance give it their adhesion.

Article 10.

1. As a necessary consequence of the proposed amendment to Article 9, the Economic Council of the *Reich* considers that a clause should be inserted in Article 10 whereby the Agreement may be denounced at short notice whenever the currency

of an economically important State should undergo a depreciation of more than 20 per cent of its gold value.

2. The *Japanese* Government proposes to suppress in Article 10, paragraphs 2, 3 and 4 of the French text (paragraph 2 of the English text).

3. Employers' commercial and industrial organisations in *Austria*. In the case of *Austria*, the period during which the Agreement may not be denounced should not be much longer than the periods of denunciation laid down in its most important commercial treaties. It should not, therefore, exceed one year.

4. The period of four years proposed in Article 10 appears to the *Finnish Association of Industry* too long to enable any disadvantages which experience might reveal to be met in time.

Note. — The Economic Committee does not desire to prejudge the question whether the period provided for in the first paragraph of Article 10—a period which must precede any ultimate denunciation—should count from the coming into force of the Agreement for the State in question or from the coming into force of the Agreement according to the terms of the first paragraph of Article 9.

Article 11.

1. The *General Confederation of Italian Industry* is of opinion that it would be desirable to ensure a wide diffusion of the reports dealing with the measures adopted by each country in execution of the Agreement by prescribing the publication of these reports.

2. Certain *Hungarian* organisations are of opinion that all cases which fall, or will fall, under Article 4 should be collected by the Secretariat of the League of Nations with a view to being published and communicated to the other States.

Annex 2.

MISCELLANEOUS OBSERVATIONS AND PROPOSALS.

(a) *Export Bounties and Dumping.*

Although these questions do not come within the scope of the proposed Agreement, the opinion has been expressed in various quarters that it would be useful to mention in an article of the Agreement that the latter places no obstacles in the way of restrictions having for their object the suppression of these artificial means of competition (*Belgian* Government and organisations; *Danish* organisations).

(b) *Rationings.*

The *Belgian* Government expresses the desire that it should be explicitly understood that the engagements comprising the proposed Agreement shall not be of a nature

to hinder the rations specified in certain commercial conventions (tariff arrangements involving a reduction of dues for a certain quantity or a certain ration of imported goods).

Note. — The Economic Committee considers that this interpretation might perhaps be inserted in the final Protocol, as it does not appear to be contrary to the aims of the Agreement.

(c) *Proposal relating to Parcels Post and Correspondence.*

In the course of discussions on the draft, a proposal was submitted by the *German* Government asking, in the interests of the development of international commerce, for the removal of economic prohibitions of importation and exportation, at any rate as regards parcels post and correspondence. The German Government is aware that serious objections may be raised to a measure of this nature in countries which believe they should still maintain a more or less limited system of prohibitions. Nevertheless, the German Government considers it its duty to forward this suggestion in order to contribute to the realisation of the ends aimed at by the draft.

(d) *Existing Treaties, Conventions or Agreements.*

The *Japanese* Government is of opinion that the validity of existing treaties, conventions or agreements in which there are clauses limiting the cases of prohibitions or restrictions to a greater extent than the Agreement in question is not to be annulled by the coming into force of the proposed Agreement.

It would therefore be necessary to insert a provision to this effect.

(e) *Colonies and Overseas Possessions.*

The *Japanese* Government considers that the Agreement should also apply to colonies and overseas possessions.
