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DISCRIMINATION IN TRANSPORT INSURANCE

Report by the Secretary-General

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I. INTRODUCTION

1. The question of discrimination in transport insurance was placed on the agenda of the fifth session of the Commission at the request of the International Chamber of Commerce (ICC).

2. The Commission by its resolution 12 noted the statement on the problem submitted by the ICC (E/CN.2/NGO/5)[1/] and expressed the opinion that measures requiring the insurance of goods in international trade to be placed in particular markets may interfere with the free flow of international trade and encourage the growth of retaliatory measures. It requested the Secretary-General to conduct a further study to determine the extent to which these restrictions are being applied, and their impact on international trade, with a view to determining what steps can usefully be taken by the Commission. It recommended to the Economic and Social Council that it request the governments to adopt in so far as possible, a policy of non-discrimination in transport insurance, and to permit the placing of such business on the most economic basis.

3. The Economic and Social Council at its Thirteenth Session (Geneva, July-September 1951) considered the report of the Commission (Fifth Session) and passed resolution 379 G (XIII), which reads as follows:

> "The Economic and Social Council,
>
> Referring to resolution 12 of the Transport and Communications Commission on the subject of discrimination in transport insurance,
>
> Requests governments to adopt in so far as possible a policy of non-discrimination in transport insurance, and to permit the placing of transport insurance on the most economic basis."

1/ It also considered a memorandum from the Swedish Government (E/CN.2/115) on the subject.

II. ACTION TAKEN BY THE SECRETARY GENERAL

Information received from Members of the United Nations

4. The Secretary-General drew the attention of the Members of the United Nations to the above-mentioned resolution of the Economic and Social Council and also forwarded to them copies of resolution 12 of the Commission. Some governments which have replied to the communication of the Secretary-General have commented on the resolutions contained in it. These were the Belgian, Pakistani, Thai and Turkish Governments. The Belgian Government stated that maritime insurance, including the insurance of goods, is subject to no restrictions in that country and that in consequence it supports the resolution of the Economic and Social Council. The Government of Pakistan stated that no discrimination is practised against any foreign insurer in the matter of transport insurance in Pakistan. The Government of Thailand stated that it has been its practice to adopt a policy of non-discrimination in transport insurance. The competent Turkish authorities agreed with the resolution of the Economic and Social Council. In addition to their foregoing comments, the Belgian and Turkish Governments forwarded memoranda on this question, the contents of which are contained, respectively in Annex I and II hereto.

International organizations consulted

5. The Secretary-General's consultation covered the following international organizations:

The International Civil Aviation Organization (ICAO)
The General Agreement on Tariffs and Trade (GATT)
The International Institute for the Unification of Private Law
The International Chamber of Commerce (ICC)
The International Co-operative Alliance (ICA)
The International Union of Marine Insurance (IUMI)
The International Air Transport Association (IATA)
The International Union of Railways (UIC)
The International Road Transport Union (IRU)
The International Rail Transport Committee (CIT)
The International Union of Aviation Insurers (IUAI)
The Hemispheric Insurance Conference
The Committee for Co-ordination and Drafting of the National Professional Insurance Enterprises of Western Europe 1/

1/ Comité de coordination et de redaction des entreprises professionnelles nationales d'assurances d'Europe occidentale.

6. The question of discriminatory practices in the transport insurance field is naturally of primary concern to the shippers and insurers. The ICC, representing business in general, and the International Union of Marine Insurance (IUMI), representing the interests of the insurers, have been the international bodies most directly concerned in supplying information to the Secretary-General. The memorandum by the ICC, appended as Annex III, was drawn up by the ICC with the assistance of the IUMI and can therefore be taken as representing the views of the IUMI as well as those of the ICC. It contains a description of various kinds of discrimination which shippers and insurers have encountered, an account of their effect on world trade and certain recommendations, upon all of which comments will be found hereafter.

7. The ICAO replied to the enquiry of the Secretary-General that it did not then have, nor did it expect to have, information which would measure the extent to which the restrictions referred to affect the insurance of goods carried in aircraft and what is their impact on this aspect of international trade. It had, however, passed the enquiry to the International Air Transport Association (IATA) and the International Union of Aviation Insurers (IUAI) with the suggestion that these bodies should communicate direct with the Secretary-General should they have any views or information to impart. As a result, a reply was received from the IUAI.

8. Relevant information communicated by the other organizations listed above is contained in Section V below.

III. DISCRIMINATION, ITS EXTENT AND ITS IMPACT ON INTERNATIONAL TRADE

Definition of discrimination

9. The Commission did not, at its fifth session, attempt to define "discrimination in transport insurance". From the memorandum[1/] of the Swedish Government and those submitted by the ICC[2/] it would seem that discrimination in transport insurance occurs when a country puts foreign insurers in a less favourable position than its domestic insurers either by direct or indirect means.

10. According to the attached memorandum of the ICC the discriminatory practices complained of are intended to, or are applied so as to favour domestic insurance industries. They fall under five main groups, as follows:

(1) Laws and regulations which compel the insurance on goods entering or leaving a country to be affected by a contract in the domestic insurance market, and which have as their sole purpose the supplying of the national insurance market.

In this category may be included the practice of incorporating in commercial treaties between countries clauses having the effect, if applied by either party, of reserving the whole of the transport insurance on goods exchanged under the agreements to the domestic insurance companies of the signatories.

(2) Discriminatory taxation of insurance contracts entered into between nationals and foreign marine insurance companies;

(3) Discrimination practised through the control of foreign exchange;

(4) Practices designed to discourage the admission of foreign insurance companies to do business in a country in competition with domestic companies, such as a requirement that a proportion of the capital be owned by nationals or that the managerial offices be held by nationals;

(5) Discrimination practised in connexion with nationalization of insurance industries.

1/ Document E/CN.2/115.

2/ Document E/CN.2/NGO/5 and Annex III hereof.

The extent to which restrictions in transport insurance are being applied

11. The Commission, in its resolution 12, requested the Secretary-General to conduct a further study to determine the extent to which restrictions in transport insurance are being practised. As was stated above, the Secretary-General drew the attention of Members of the United Nations to the above-mentioned resolution, a copy of which was enclosed with his memorandum to them. The small number of comments received from governments bearing upon this aspect, does not permit a comprehensive picture. According to information obtained, no restrictions are practised in Belgium, Pakistan and Thailand. In Turkey the general rule, applied as far as possible, is that insurance for foreign shipments must be placed in Turkey, a policy which would appear to fall within the first category of these practices which the ICC considers to be discriminatory. The competent Turkish authorities note, however (see Annex II), that Turkey could eventually permit full freedom for the merchant to seek the insurance market of his choice, were countries with whom she trades to repeal their statutory restrictions on transport insurance.

12. The memorandum[1/] circulated to the members of the Commission at its fifth session at the request of the Swedish Government contains some data as to countries which are said to impose restrictions.

13. The ICC, in the annex to its memorandum, has included as examples information on the legislation or control policies of twelve countries which it considers indulge in practices which militate against the free placement of marine insurance. The examples are not intended to be exhaustive. The memorandum of the ICC was drawn up with the aid of the IUMI and it would appear that the national insurance bodies represented in that Union, or a majority of them, are of opinion that restrictions are widely practised.

14. In addition to the above information it may be possible to infer from the actions of various other international organizations the extent to which restrictions in transport insurance are being practised. Thus the fact that the Organization for European Economic Co-operation (OEEC)[2/] found it necessary to include insurance transactions in its Code of Liberalization may be construed as showing that member countries had imposed restrictions on such transactions and that a need was felt to liberalize them as far as possible.

1/ E/CN.2/115.

2/ See paragraph 26 below.

15. It would seem from a study of available data that the inference may be drawn that restrictions in transport insurance, whether direct or indirect, are widespread geographically. As to the extent to which direct and indirect restrictions are prevalent and the respective importance of each -

(a) Evidence has been produced showing that there exist in a number of countries laws and regulations imposing restrictions on transport insurance. The examples quoted by the ICC, in a list which is not intended to be exhaustive, embrace eight countries. In addition to the countries mentioned in this list, it has been stated elsewhere that three others[1/] practise restrictions.

(b) It is difficult to establish the extent of discrimination practised through the control of foreign exchange since it appears that this may often be a case of the practical administration of certain regulations, the primary purpose of which should be to protect the balance of payments.

The impact of discriminatory practices on international trade

16. Another point on which the Commission in its resolution 12 requested the Secretary-General to conduct a further study is the impact of discriminatory practices on international trade. The memorandum of the ICC deals with this question in detail and the facts stated therein have been supported by various experts in the field who were consulted during researches by the Secretariat. They are also partially stated in the memorandum circulated to the Commission at its fifth session at the request of the Swedish Government. To summarize the position, the ICC claims that these practices affect international credit arrangements, result in higher insurance costs which are passed on to the consumer, interfere with the old established customs of trade and often lead to retaliatory measures. In addition to the facts mentioned by the ICC, it may be stated that inasmuch as discriminatory practices interfere with the customary insurance method of spreading the risk as widely as possible, not only within countries but between countries, they affect the whole mechanism of insurance internationally and tend also in this way to drive insurance premiums up.

1/ See paragraphs 11 above and 34 and 37 below.

17. The ICC has produced no evidence, nor has the Secretary-General's study revealed that discriminatory practices, as regards the insurance of goods, affect the various means of international transport directly although, of course, to the extent that they hamper or reduce international trade generally, they must ultimately have a harmful effect on international carriers.

IV. INTERNATIONAL LEGISLATION AGAINST DISCRIMINATION IN THE FIELDS OF COMMERCE AND TRANSPORTATION

18. It is of interest to note the provisions concerning discrimination in various recent international conventions and agreements dealing with commerce and transportation.

Havana Charter for an International Trade Organization (Havana, 1948)

19. While the Havana Charter is not in force, not having been ratified by governments, it may be recalled that The General Agreement on Tariffs and Trade (GATT), concluded on 30 October 1947, specifies in Article XXIX entitled "The Relation of this Agreement to the Havana Charter" which in an amended form came into force as between all the Contracting Parties on 24 September 1952:

> "1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapters I to VI inclusive and of Chapter IX of the Havana Charter pending their acceptance of it in accordance with their constitutional procedures."

Furthermore, in several resolutions, the Economic and Social Council recommended to Governments that their actions should be based on, or be consistent with, the principles set forth in the Havana Charter, as for instance in Resolution 298 D (XI) "Barriers to the International transport of goods", 373 (XIII) "Procedures for inter-governmental consultations on problems of primary commodities" and 375 (XIII) "Restrictive business practices".

Chapter V, Articles 46-54 of the Havana Charter deals with restrictive business practices on the part of private or public commercial enterprises.

Article 46.1 provides that "each Member shall take appropriate measures ..... to prevent on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade....." Among the practices are:

> "2. (b) excluding enterprises from or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;
>
> (c) discriminating against particular enterprises;
>
> (g) any similar practices which the Organization may declare, by a majority of two thirds of the Members present and voting, to be restrictive business practices."

20. Chapter V applies mainly to products but in Article 53 the members recognize that insurance is one of the services which are "substantial elements of international trade and that any restrictive business practices by enterprises engaged in these activities in international trade may have harmful effects similar to those indicated in paragraph 1 of Article 46". Article 53 sets forth a special procedure whereby a member which considers that its interests are seriously prejudiced by restrictive business practices on the part of the private or public enterprises of another member engaged in inter alia insurance, may submit a written statement to the latter explaining the situation. If no adjustment can be effected between the members the matter may be referred to the International Trade Organization (ITO), which will refer it with comments to the appropriate international organization, if one exists, or deal with the matter itself.

21. As has been mentioned above, the provisions of Chapter V refer to private or public commercial enterprises and not to governments. Governmental measures are covered in Articles 13, 29 and 54 of the Havana Charter. Article 13 recognizes "that special governmental assistance may be required to promote the establishment, development or reconstruction of particular industries ..... and that in appropriate circumstances the grant of such assistance in the form of protective measures is justified". At the same time the members recognize "that an unwise use of such measures would impose undue burdens on their own economies and unwarranted restrictions on international trade and might increase unnecessarily the difficulties of adjustment for the economies of other countries". By Article 29 the members undertake that their state enterprises shall act in a manner consistent with general principles of non-discriminatory treatment prescribed in the Charter for governmental measures affecting imports or exports by private traders. While Chapter V is not to be interpreted so as to prevent the adoption or enforcement of any governmental measures in so far as they are specifically permitted under other chapters of the Havana Charter, Article 54 states that the Organization may "make recommendations to members or to any appropriate inter-governmental organization concerning any features of these measures which may have the effect indicated in paragraph 1 of Article 46".[1/]

1/ See paragraph 19 above.

Convention on the Inter-Governmental Maritime Consultative Organization (Geneva 1948)

22. Amongst the purposes of the Organization as set out in Article 1 of the Convention (which has not yet come into force) are the following, which might indirectly have a bearing on the treatment of discrimination:

> "(b) To encourage the removal of discriminatory action and unnecessary restrictions by Governments affecting shipping engaged in international trade so as to promote the availability of shipping services to the commerce of the world without discrimination; assistance and encouragement given by a Government for the development of its national shipping and for purposes of security does not in itself constitute discrimination, provided that such assistance and encouragement is not based on measures designed to restrict the freedom of shipping of all flags to take part in international trade.
>
> "(c) To provide for the consideration by the Organization of matters concerning unfair restrictive practices by shipping concerns....."

23. It will be noted that here mention is made of restrictions imposed by governments as well as restrictive practices by shipping concerns. The Convention provides that cases of unfair restrictive practices by shipping concerns which cannot be settled through the normal process of international shipping business, provided they have first been the subject of direct negotiation between the members concerned, may be considered by the Inter-governmental Maritime Consultative Organization (IMCO). The Organization may also consider and make recommendations on cases of discriminatory action by governments remitted to it by members or inter-governmental organizations.

The Economic Agreement of Bogota (1948)

24. The Economic Agreement of Bogota (1948) contains an Article 35 concerned with maritime transportation which uses language similar to that of Article I of the above-mentioned Convention.

V. ACTION BY INTERNATIONAL ORGANIZATIONS

A. Intergovernmental Organizations

Contracting Parties to the General Agreement on Tariffs and Trade (GATT)

25. The Secretary-General of the International Chamber of Commerce (ICC) sent to the Executive Secretary of GATT on 23 January 1951 for consideration and, if possible, action by the Contracting Parties to GATT, a document[1] on Discrimination in the Field of Transport Insurance which had been approved by the Council of the ICC at its meeting on 9 to 10 January 1951. This document was circulated to the Contracting Parties[2] with a statement by the Executive Secretary of GATT: "The ICC is now pressing once again for inclusion of this item on the agenda of the Transport and Communications Commission of the United Nations, but it remains possible that, whatever the decision taken by the Commission, the Contracting Parties might usefully consider the ICC's recommendations." No Contracting Party took action to have the matter included on the agenda of the sixth session of the Contracting Parties held in September-October 1951. Furthermore, the ICC, when formally submitting a series of resolutions on 8 August 1951 and recommending action on them by the Contracting Parties, did not include the subject of discrimination in transport insurance.

Organization for European Economic Co-operation (OEEC)

26. As already mentioned in paragraph 14 above the OEEC has dealt with the question of transport insurance in its Code of Liberalization, agreed by the Council of OEEC on 20 July 1951. Member countries will take the necessary measures to eliminate between one another restrictions on transfers and transactions,[3] and may take such measures in respect of non-member countries.[4] The transfer of profits derived from direct insurance operations will be free. The transfer of re-insurance balances and of certain other payments in connexion with re-insurance will be authorized. Retrocession operations between member

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1/ Doc. 301/37
2/ GATT/CP/98
3/ Code of Liberalisation, Art. 13
4/ Ibid.

countries are authorized. Re-insurers are authorized to have bank accounts in the countries of ceding insurers and to operate them without restrictions, either in order to make payments in the country of the ceding insurer or to effect transfers to the country in which their head office or branch is situated. The transfers necessary for the execution of contracts for insurance and re-insurance of goods in transit will be free. When it is not possible to cover a risk in the country where such risk exists the authorization for insurance in a foreign country and the transfer of the premium will be facilitated. In member countries where insurance operations come under statutory or administrative control the transfer of all amounts which such control does not require to be kept in the country of the insured person will be freed. Controls will keep to a minimum the amounts required as guarantees in order to prevent the dispersal of the assets of the insurers, in so far as this is compatible with the protection of the parties insured. Guarantee deposits shall have no other aim than the protection of the insured parties.[1/] Member countries need not, however, take the whole of the above measures of liberalization if their economic and financial situation justifies such a course[2/] and may withdraw any of them if they result in serious economic disturbance. In general, member countries will avoid discrimination as between one member country and another.[3/]

B. Non-Governmental Organizations

International Chamber of Commerce (ICC)

27. As explained in paragraph 6 above, the report and recommendations of the ICC adopted by its Executive Committee on 22 October 1952 and which are attached hereto as Annex III, represent at the same time the views of the IUMI.

International Union of Marine Insurance (IUMI)

28. Twenty-seven of the thirty-five members of the IUMI have adopted a resolution, presented to the Council of the Union at its meeting in St. Moritz in 1951, recommending that continued efforts should be made to prevail upon the

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1/ Code of Liberalisation, Section II 36.A (iii) of Annex B.
2/ Ibid., Art. 20
3/ Ibid., Art. 22

appropriate international organizations to take all possible measures to guarantee freedom for marine insurance and that insurance associations should endeavour to obtain such freedom within their own countries. The Union further recommended that efforts should be directed toward the modification or elimination of laws and other restrictions against freedom of insurance and that endeavours should be made to ensure that marine insurance be included amongst the services accorded the most favoured nation treatment in commercial treaties. In five out of the eight countries which could not adopt this resolution, private insurance companies are allowed to do business and the restrictions imposed are only in respect of re-insurance and tariffs.

29. At a meeting held in Knokke, Belgium, in 1952, the Council of the Union decided to recommend to the members of the Union that they should urge all those interested in the problem in their own countries that their governments should endeavour to obtain a clause in trade treaties whereby "neither party shall impose any measure of a discriminatory nature, preventing or hindering the importer or exporter of products of either party from obtaining marine insurance on such products in companies of either party."

Hemispheric Insurance Conference

30. The Hemispheric Insurance Conference, composed of insurers from the Western Hemisphere, adopted at its Fourth Conference (New York, September 1952) two resolutions regarding governmental interference with or regulation of insurance.

31. The first resolution declares inter alia that "the freedom and support of the integral functions of insurance and of its resulting ample activities should be conserved for private initiative. Consequently, the Government should never have any other function in relation to private insurance than a discreet vigilance and should abstein from interfering in private insurance activities in all their technical, financial and operational aspects. It is not desirable, either, for the Government to compete with private insurers by means of the establishment of insurance entities of its own, or by the acquisition of interests already in existence, or through the action of autonomous agencies."

32. The second resolution transmits to the co-operating insurance organizations for their consideration, papers submitted respectively by the Insurance Section of the United States Chamber of Commerce and the Mexican members.

33. The paper submitted by the United States Chamber of Commerce entitled "Discrimination in Transport Insurance" drew attention to resolutions on the subject previously adopted by the Conference, the relevant resolutions of the Economic and Social Council and of the Transport and Communications Commission, and suggested that the Conference should adopt a resolution for the inclusion of a special clause in trade agreements similar to that adopted by the IUMI in 1951.

34. The paper submitted by the Mexican members, entitled "National Freedom and Protection to Inland Marine Insurance" contained comments upon the 1952 amendments to the General Insurance Law of Mexico. These amendments enumerate the insurance operations which are contrary to the laws of Mexico and they provide that not only are insurance companies forbidden to write insurance in Mexico for mercantile activities for which they are not admitted, but that insurance may not be taken out with foreign companies which are not admitted to do business in Mexico.

35. The Mexican members pointed out that the relevant provisions of the Mexican Law undoubtedly have for their purpose the protection of Mexican economy and Mexican insurance. Their objective is to ensure that insurance companies authorized to operate in the country should not be subject to competition, in so far as rates and coverage conditions are concerned, and that Mexican business should be protected from foreign companies which might operate according to different bases due to different characteristics derived from their own environment. In their view, justice demands equal opportunity for all, which implies protective measures in favour of the weaker. The Mexican insurance companies would agree that the amendments to the law, in so far as they affect marine insurance, should be interpreted to the effect that ships under the Mexican flag and their cargo should be insured with companies admitted to do business in Mexico provided that the insurable interest be Mexican or held in Mexico at the time the international voyage was started.

National Professional Insurance Enterprises of Western Europe

36. The above enterprises have not yet formally established a union but a Co-ordinating and Drafting Committee has been formed to study the work which such a union should undertake when it is set up. Although this Committee has been entrusted with the task of studying the functioning of enterprises connected with insurance and reinsurance excluding marine insurance it decided,

with one member objecting, to forward to the United Nations through the IUMI its suggestions on the problem under study. These suggestions are contained in Annex IV hereto.

The International Co-operative Alliance (ICA)

37. The ICA informed the Secretary-General that the Auxiliary Committee on Co-operative Insurance of the ICA had considered the subject of discrimination in transport insurance and had unanimously adopted the following resolution:

> "The Executive of the Insurance Committee of the International Co-operative Alliance which has member Societies in many countries throughout the world and which exists to further the unrestricted interchange of Co-operative trade in the insurance field, has noted with regret the action taken by certain governments in discriminating in transport insurance and would support any measures which may be taken by the United Nations Organisation to insure that in the best interests of the consumers the placing of transport insurance shall be free from all governmental restrictions."

In communicating the above resolution, the Director of the ICA stated that the Secretary of the Auxiliary Committee had informed him that the Government of Ceylon had recently prevented the Co-operative Insurance Society of England from granting marine insurance cover on tea to be exported from Ceylon but that it had been possible to overcome this restriction for the time being in respect of tea purchased f.o.b. Ceylon. The Government of Ceylon had also expressed the wish that all re-insurance on Co-operative premises and trade in Ceylon should be placed with domestic (non-co-operative) companies but after representations had been made, had agreed that half the re-insurance might be placed with co-operative insurance organizations outside Ceylon.

International Union of Aviation Insurers (IUAI)

38. The enquiry of the Secretary-General United Nations was passed by the ICAO to the IUAI which replied that there was complete agreement with the position of the IUMI on the question.

International Union of Railways (UIC)

39. The UIC, which has recommended to its member Administrations a certain method of insurance of international express railway parcels, stated that a detailed examination had shown no case where the refusal of an administration to participate in the scheme had been inspired by a desire to favour its national market or to save foreign exchange.

VI. POSSIBLE APPROACH OF THE COMMISSION TO THIS SUBJECT

40. In its resolution 12 the Commission requested the Secretary-General to determine, as a result of his further study of the problem, what steps could usefully be taken by the Commission.

41. It would seem, on the basis of available information analyzed in this study, that discriminatory practices in transport insurance are geographically widespread and that they may have various harmful effects, with repercussions on international trade, rather than directly on international transport.

42. It has also been demonstrated that discrimination is only the ultimate result of diverse measures. Action to prevent discrimination should therefore be concerned with these measures, and as they fall within different categories it follows that the remedies themselves would be of different kinds and may be the concern of different international organizations. It may, therefore, be helpful to examine these various categories of discrimination separately to see what action, if any, might usefully be taken in respect to them and what existing intergovernmental organizations would be competent.

(1) Laws and regulations which provide for the insurance of goods in international trade to be effected in the domestic insurance market, including provisions to that effect in commercial treaties

43. In the light of the provisions of the Havana Charter (Art. 13) it would seem that such laws and regulations, in certain circumstances, may be justified by the necessity on the part of governments to assist and encourage development of their national insurance industries. If the Havana Charter were in force, it would be for the International Trade Organization (ITO), acting under the provisions of Article 54, to make recommendations to members concerning any features of their laws and regulations relating to insurance, having harmful effects on trade or otherwise interfering with the achievement of any of the purposes and objectives of the Charter. It is suggested that under present circumstances the appropriate action might be for countries, in the light of the criteria set forth in the Havana Charter, cases where they feel that their interests are damaged through discriminatory legislation on the part of another country, and to try to adjust matters by consultation. If no satisfactory results could be achieved by such consultation, then it is possible that GATT might be the appropriate forum for discussions on the international plane since, although this organization is directed more to the problems of tariffs and exchange of goods, one of its

objectives is "the elimination of discriminatory treatment in international commerce" and, as already mentioned in paragraph 19 above by Article XXIX of the General Agreement on Tariffs and Trade, the contracting parties have undertaken to observe to the fullest extent of their executive authority the general principles of Chapters I to VI inclusive of the Havana Charter.

(2) Discriminatory taxation

44. The available data concerning discriminatory taxation do not permit the formation of a sufficiently comprehensive picture of the situation. This category of discrimination would however appear to be one which might be appropriate for study by GATT, as Article 18 in Chapter IV of the Havana Charter deals with "national treatment on internal taxation and regulation." It would therefore seem that the same remarks would apply as for category (1) above.

(3) Discrimination practiced through the control of foreign exchange

45. This type of discrimination, inasmuch as it is effected through the administrative application of laws, the purpose of which is to protect the balance of payments, seems difficult to document. In cases where the facts seem to indicate that exchange control laws are being used with the purpose of discriminating in respect of transport insurance, there might perhaps be consultation between governments along the lines of that discussed in connexion with category (1) above followed, if necessary, by reference to GATT.

46. It is possible that some governments might be prepared to exempt transport insurance from foreign exchange control if it could be shown that the loss of foreign currency involved is, in fact, relatively small and is outweighed by the harm done by such controls to their international trade. It is of interest to note that in a recent study[1/] of the Inter-American Economic and Social Council entitled "Report to the Ad Hoc Committee of Specialists of the American Republics for the Study of Freight and Insurance Rates from the Working Group", it is stated that under normal conditions of foreign trade the gross cost of marine insurance varies between 2/10 of one per cent and 7/10 of one per cent of the delivered costs of the goods insured. A proportion of this gross cost, estimated by experts elsewhere to be about 60 per cent, is however returned in the form of losses paid to the cargo owner. It would therefore seem that the insurance element of the international trade transaction is relatively small and that in many cases countries might not suffer an important loss of currency by lifting exchange controls on transport insurance transactions. An initial examination seemed to indicate that the available statistics of international insurance transactions were not complete enough to enable any final conclusion to be drawn.

1/ Doc. No.17 of 6 March 1952.

47. One of the purposes of the International Monetary Fund as set forth in Article 1 (iv) of its Articles of Agreement (Bretton Woods, 1944) is "to assist... ...in the elimination of foreign exchange restrictions which hamper the growth of world trade." Under Article XIV Sec.4 of its Articles the Fund may, in exceptional circumstances, recommend to any member that conditions are favourable for the withdrawal of any particular restriction. The Fund might therefore be interested to weigh the effects of currency restrictions on transport insurance to see whether its members could agree to their discontinuance.

(4) Practices designed to discourage the admission of foreign insurance companies

48. The same remarks would appear to apply as for category (1). The ICC has complained that, in many cases, the reserves or qualifying deposits which foreign companies are compelled to leave in a country are higher than those required from domestic companies and may be so large that to comply with the law would involve committing an amount of capital to the risks of currency depreciation and other contingencies out of proportion to the returns to be expected from the country. The basic reason for demanding such reserves or deposits is in order to protect the general public in case of failure of the foreign insurance company. During the course of preparation of this study, the question arose whether the conditions under which the international insurance markets work could not be ameliorated to some extent if a form of international certification for insurance companies could be agreed. If governments were prepared to accept certificates, issued under certain conditions by other governments, as to the financial standing of foreign insurance companies, then perhaps it might be possible to effect, in many cases, the modification of legislation or rules calling for reserves or qualifying deposits. Experts consulted agreed that such a form of international certification might be desirable but were unanimous in the opinion that the time has not yet arrived for sufficiently wide acceptance of such a plan by governments.

VII. CONCLUSIONS

49. The ICC has recommended in its attached memorandum:

(a) that discriminatory practices in the field of transport insurance should be condemned and that the Commission should recommend a policy whereby those engaged in international trade would have freedom to negotiate transport insurance where they please; and

(b) that the Commission urge the inclusion in all trade treaties of a clause prohibiting discrimination between different insurance markets in the placing of transport insurance.

The Co-ordinating and Drafting Committee of the National Professional Insurance Enterprises of Western Europe has made suggestions as to certain measures to lift restrictions which they consider are practicable at this time (see Annex IV).

50. It is suggested that, as the Economic and Social Council has already expressed its views generally on the subject of discriminatory practices in transport insurance, there would seem to be no need for a further expression, on its part, of general principle. As for the recommendations regarding particular measures to be taken, it would appear that failing adjustment by consultation between countries, GATT may be the competent body to examine in the light of the Havana Charter the cases of discrimination complained of. Further, that the International Monetary Fund may be interested in the question of exchange controls as applied to transport insurance.

51. In the light of the above, it would seem that a possible course of action for the Commission might be to recommend to the Economic and Social Council that, further to its Resolution 379 G (XIII), it should:

(a) Bring to the attention of governments the study by the Secretary-General, and its annexes, recommending to them to take national action consistent with the relevant principles of the Havana Charter and to endeavour to adjust differences through consultation;

(b) Request the Secretary-General to bring to the notice of GATT the relevant resolutions of the Council and of the Commission and the study by the Secretary-General;

(c) Request the Secretary-General to bring to the notice of the International Monetary Fund the relevant resolutions of the Council and of the Commission and the study by the Secretary-General, with a view to examination by that body of the possibility of recommending the relaxation of exchange controls as applied to transport insurance.

Translated from French

ANNEX I

OBSERVATIONS OF THE BELGIAN TRANSPORT AND MARINE ADMINISTRATION

Discrimination in Transport Insurance

I. Road and rail transport

In its letter dated 28 December 1950, the International Chamber of Commerce states that "other international inter-governmental organizations have already considered insurance problems", mentioning among others the Economic Commission for Europe "whose Inland Transport Committee is studying an insurance system for the transport of goods by road".

A distinction should be made between the goods insurance taken out by the owner of the goods and the insurance placed by the carrier to cover his liability under the transport contract.

The essential difference between these two types of insurance is that the former normally covers the risk of force majeure while the latter does not, since the carrier is never responsible for the consequences of force majeure. Moreover, consignors often insure their goods even in the case of transport by rail. The Européenne Insurance Company, for example, has concluded special agreements with the railways and insures owners of goods against damage for which the railways are not liable.

So far as the Belgian Government is aware, neither the Inland Transport Committee nor any of its subsidiary organs is actually studying an insurance system for the transport of goods by road.

Admittedly, the Working Party on Legal Questions, which is preparing a draft convention concerning the contract for the international transport of goods by road, has studied various transport insurance schemes, with a view to determining whether the carrier's liability, as defined in the draft convention, can be covered by insurance. So far, however, it has not contemplated proposing the adoption of one system in preference to another. In any case, the question of carrier's liability and that of insuring against that liability are quite distinct.

The Working Party on the Development and Improvement of Transport of Passengers and Goods by Road, for its part, which has been instructed to draft a "set of rules" applicable to all international transport operations, is considering the desirability of including in the rules a clause requiring the carrier to take out insurance covering third party risks with respect to the use of the vehicle and covering his liability under the transport contract. It has not yet come to a decision on the latter question.

Lastly, so far as Belgian law is concerned, article 40[1/] of the Royal Order of 9 May 193[illegible], establishing regulations for the carriage of goods by motor vehicles, provides that carriers must insure the goods carried against the risk of accident occurring in transit. They must also insure against the risk of theft where this is the result of an accident occuring in transit.

However that may be, as regards both goods and transport insurance, the Transport Administration sees no objection to accepting the recommendation in question, provided, of course, that, whatever the nationality of the underwriting company, Belgian and foreign carriers required under national or international law to insure against liability are able to satisfy the Belgian authorities that they have done so.

II. Sea transport.

There are no restrictions in Belgium on marine insurance with respect to goods, transport or vessels. The Belgian Government, therefore, far from objecting to the recommendation of the Economic and Social Council, proposes to support it, since its object is to induce all countries to adopt the same liberal attitude in insurance matters.

1/ Article 40.

"The carrier shall insure the goods conveyed against the risk of accident occurring in transit, as defined in article II e of the Antwerp Marine Insurance Policy (1900 clauses, as amended in 1931), and against the risk of theft where this is the result of an accident occurring in transit.

"The carrier may be exempted from this obligation by his principal.

"The procedure for applying the provisions of this article shall be determined by an order of the Minister."

Translated from Turkish

ANNEX II

Observations of the Competent Turkish Authorities

Discrimination in Transport Insurance

The general rule, applied as far as possible, is that insurance for foreign shipments must be placed in Turkey, except in special cases, in order to further the volume and growth of our domestic insurance business and also to save foreign exchange.

Where the beneficiary of locally-placed insurance relating to foreign trade is not in Turkey, benefit is exported in foreign exchange.

Other reasons in support of the principle that insurance relating to foreign trade should be placed in the country are the desire to facilitate agreement between between the insurer and the insured and the fact that, where import shipments insured abroad are damaged, the damage must be ascertained here and the related documents sent to the country of origin, with the result that difficulties are often encountered in collecting the insurance payment. There is also concern lest foreign exchange acquired through payment of benefit under foreign insurance relating to foreign trade placed outside the country might not be brought into Turkey.

While it was felt desirable and necessary for our domestic insurance business to require imports and exports to be insured in Turkey, the authorities were convinced that that goal could be achieved through complete freedom among nations.

We support the proposal contained in the Economic and Social Council resolution, with the comment that if the statutory restrictions on transport insurance in the countries with which we trade were repealed, the insurance in Turkey of our foreign trade shipments, and particularly our imports, would be possible and our merchants could eventually be allowed to place transport insurance wherever they chose.

ANNEX III

INTERNATIONAL CHAMBER OF COMMERCE

Transport and Communications
MK

Document No. 301/74
23.X.1952 - pc
(Original)

EXECUTIVE COMMITTEE
(50th Session, 22nd October 1952)

DISCRIMINATION IN TRANSPORT INSURANCE*

Memorandum
drawn up by the I.C.C.
with the assistance of the International Union of Marine Insurance

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The appended Memorandum (Doc. No. 301/70) was submitted to the Executive Committee of the I.C.C. (50th Session) on 22nd October 1952, and adopted unchanged.

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* This report was drawn up by the I.C.C. on the basis of a draft by Mr. John T. BYRNE.

Transport and Communications
MK

Document No. 301/70
6.X.1952 - pc
(Original)

GENERAL TRANSPORT COMMISSION
(Meeting on 1st October, 1952)

DISCRIMINATION IN TRANSPORT INSURANCE

Memorandum

adopted by the Commission*
for submission to the Executive Committee of the I.C.C.

This memorandum was drawn up in view of the study of the question of discrimination in transport insurance to be made pursuant to Resolution 12 of the United Nations Transport and Communications Commission. The Commission concludes therein that it "considers that measures requiring the insurance of goods in international trade to be placed in particular markets may interfere with the free flow of international trade and encourage the growth of retaliatory measures, (and) requests the Secretary-General to conduct a further study to determine the extent to which these restrictions in transport insurance are being applied, and their impact on international trade, with the view to determining what steps may usefully be taken by the Commission".

When the matter was submitted to the Commission, the representative of the International Chamber of Commerce stressed, in a statement before the Commission, the importance of an unrestricted transport insurance market to the free flow of goods in international trade.

The importance of transport insurance to international trade and its immediate relationship to the international transaction cannot be overemphasized. The contract of transport insurance, like the bill of lading, is an essential document in the transaction. It has been frequently asserted that these documents represent the goods themselves while in transit, for they make possible during that period the exchange of the goods and the extension of bank credit which facilitates

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* The Indian Delegation voted against the adoption of this report.

the exchange of the goods. Few merchants would be willing to assume the risks of loss attendant upon lengthy voyages without the security of transport insurance, but even fewer banks would be willing to advance credit without such security. The carrier, the bank and the transport insurer may appropriately be called the three pillars supporting international trade. The failure of any one would result in the collapse of the entire structure.

Discriminatory practices restricting the merchant's choice of the most advantageous insurance market seriously weaken the structure of international trade. The elimination of foreign competition in the transport insurance field inevitably results in higher insurance rates which are passed to the importer and consumer in the form of increased costs. Merchants are deprived of the opportunity to negotiate vital terms of international transactions which determine the party assuming the risks of transportation and the security from losses in transit. The difficulty of procuring bank credit without satisfactory insurance results in tying up the merchant's capital, which, in turn, prevents his initiating another transaction in international trade. The merchant may be unable to sell cargo in transit to a national of a country requiring that the insurance be placed in the local market because of the delays and technical difficulties which arise from complying with such requirements. The exporter shipping to a country having such restrictive laws may wish to purchase transport insurance in some other market in order to obtain the security he desires prior to receiving payment for the goods. It has become common practice in such case for the exporter to purchase insurance in the market of his choice in addition to the insurance which he must purchase in the country of destination. The result is a duplication which greatly enhances the cost of insurance, a cost which is passed to the ultimate purchaser in the form of an increase in price, resulting in an unnecessary economic burden to the prejudice of international trade.

It has become customary in all insurance markets throughout the world to insure merchandise from the warehouse at point of origin to the warehouse at destination. Restrictions against the continuance or the extension of insurance coverage after the merchandise has reached the national jurisdiction necessitate duplication of insurance and complicate the rendering of proper service to the merchant by the insurer.

Finally, it must be emphasized that discriminatory practices beget discriminatory practices in retaliation, and there may come a time when, if such restrictions are allowed to develop, a merchant will be unable to insure in any national market without violating the law of some country. Even before that point is reached, the merchant is plagued with uncertainty, confusion and delay and the ever present fear of incurring heavy penalties.

The Interntational Chamber of Commerce believes that this problem should be considered as one facet of the general question of trade barriers which impede the development of international trade. It is so treated in the charter of the International Trade Organization, which is, however, not presently in effect. Article 53 provides:

> "The members recognize that certain services such as transportation, telecommunications, insurance and banking, are substantial elements of international trade, and that any restrictive business practices in relation to them have harmful effects similar to those described in paragraph 1 of Article 46".

The post-war period is notable for co-operative effort on the part of the great majority of free nations to abolish trade barriers as a means of establishing world prosperity. Toward this end, efforts have been made to negotiate commercial treaties, to form customs unions, to establish uniform laws and standards and to take other measures to encourage the exchange of goods and services in international trade. Yet, in the field of transport insurance, which, prior to World War II was notably free of restriction, the world has witnessed the greatest growth in history of practices designed to hinder the free movement of trade among nations.

A certain number of examples will be found in the Appendix which illustrate the type of practice to which the report refers. They are of course in no way intended to be exhaustive.

In addition to the examples given in the Appendix, it may be helpful however for purposes of clarification to describe in general terms the various forms these restrictive practices have taken.

In the first group are the laws and regulations which compel the insurance on goods entering or leaving the country to be affected by a contract in the domestic insurance market, and which have as their sole purpose the object of ensuring the supply of the national insurance market.

In the second group is the discriminatory taxation of insurance contracts entered into between nationals and foreign marine insurance companies. In some cases these taxes are directed against foreign companies admitted to do business in the national jurisdiction. In other cases they are directed against the purchase of marine insurance outside the country, as in the case of taxes on the transfer of foreign exchange or the tax on premiums transmitted abroad. In every case, they result in placing the national insurance companies or market in an advantageous position and are in effect a form of protectionism in derogation of the principle of international competition of marine insurance.

In the third group is the discrimination practised through the control of foreign exchange. While the International Chamber of Commerce recognizes the existence of currency problems in many countries of the world, it is felt that this situation has been frequently exploited as an excuse to foster the domestic insurance market. As an example, restrictions against the purchase of marine insurance in foreign markets in connexion with exports are wholly unwarranted in view of the fact that the credit established by the buyer abroad provides for the reimbursement of the amount of the premium paid in foreign currency.

Moveover, several countries have authorized foreign exchange for the payment of premiums in foreign currency to companies in their own domestic markets although these countries refuse the exchange for the purchase of insurance in foreign markets. In some cases these countries undertake to provide foreign exchange for the payment of salvage and general average liabilities incurred by domestic companies. These practices indicate a desire to foster the national insurance industry rather than to conserve hard currency resources. It is difficult, under the circumstances, to justify any slight saving that may accrue to a country's supply of hard currency in the face of the serious impediment to world trade arising from such practices.

The decision whether to advance foreign currency for foreign transport insurance usually rests within the discretion of bank or other fiscal officials and the policy of restriction may be established unofficially upon the request of the Government. Rarely do such practices appear in the form of a regulation, and frequently they exist only in the form of a "suggestion" from the official granting the import or export licence. The local merchant, because he must necessarily maintain amicable relations with the licensing officials, is in no position to

insist on his desire to purchase foreign insurance, as he well knows that the approval of his import or export licence depends upon his compliance with the "suggestion". This kind of restrictive practice is difficult to document. Nevertheless, its existence is evident from correspondence received by members of the insurance industry who have attempted to re-establish relations with clients abroad during the post-war period, as well as from other informal sources. From these sources, there is reason to believe that officials of certain countries have on numerous occasions effectively convinced their nationals that the granting of import or export licences was contingent on the use of transportation insurance placed in the local market. Moreover, it has been possible on numerous occasions to establish the fact that the rates quoted in these countries may be substantially higher than rates available in other markets on similar terms. The results of these practices is a considerable increase in cost to the merchant, an economic waste, the cumulative effect of which constitutes a serious impediment to the flow of international trade.

The fourth group of practices are those designed to discourage the admission of foreign insurance companies to do business in the country in competition with domestic companies. While foreign insurers can rightly expect to have to meet the same requirements as domestic insurers in order to be permitted to do business within the country, instances have arisen of discrimination against foreign insurance companies. In some cases this has amounted to a requirement that a percentage of the capital be owned by nations or that the managerial offices be held by nationals. In some cases foreign insurance companies are excluded altogether from the country.

In view of the international character of the marine insurance business, such laws are detrimental to the competition necessary in the interests of international trade.

A fifth group of practices has developed in connexion with the worldwide trend toward nationalization of industry. While this is a matter of purely national concern to which no outsiders can object, it is submitted that there is a tendency of governments which have nationalized their insurance industry to pass restrictive laws to assure the growth and prosperity of their industries. Frequently where governmental re-insurance organizations are established, private companies are compelled to cede a percentage of their direct writings and, in some

cases, to accept retrocessions from the re-insurance organizations. Thus, if direct rates are not fixed by law, re-insurance rates frequently are, and private companies are compelled to adjust their rates according to the re-insurance rates rather than according to worldwide competitive conditions. The result has been in many cases that higher rates are charged in these countries. In order to maintain these higher rates, restrictive laws and practices are resorted to by the governments.

The problem of nationalization is, therefore, intimately connected with the problem of free competition in marine insurance. It is submitted, however, that countries which have nationalized insurance or segments of the insurance industry may, nevertheless, permit the insurance market to operate competitively.

Recognition of the problem of nationalization is given in Article 29 of the charter of the International Trade Organization, which provides:

"Non-Discriminatory Treatment

a) Each member undertakes that if it establishes or maintains a state enterprise wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases and sales involving either exports or imports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Charter for Governmental measures affecting imports or exports by private traders.

b) The provisions of sub-paragraph (a) shall be understood to require that such enterprise shall, having due regard to the other provisions of this Charter, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other Member countries adequate opportunity, in accordance with customary business practice to compete for participation in such purchases or sales."

Thus Article 29 of the International Trade Organization makes no attempt to interfere with the principle of nationalization of industry, but seeks to secure the existence of a competitive system in the field of transport insurance which, as heretofore explained, is a vital part of that trade.

In conclusion, the Internation Chamber of Commerce submits that discriminatory practices in the field of transport insurance should be condemned as an interference with the free flow of international trade, and requests that this Commission recommend the adoption of a policy of non-discrimination whereby the

buyer and seller engaged in international trade may be able to negotiate freely in the placing of transport insurance in any of the world's markets.

The International Chamber of Commerce further recommends that the Commission urge the inclusion in all Commercial Treaties which may be under negotiation now or in the future between member countries of the United Nations of a clause prohibiting discrimination between different insurance markets in the placing of transport insurance.

APPENDIX

containing some examples of the type of restrictive law and practice dealt with in the body of the report

* * *

N.B.- : For obvious reasons, no mention is made of the total discrimination practised in countries where there is a State monopoly of insurance

A

LEGAL DISCRIMINATION AGAINST INSURANCE WITH FOREIGN COMPANIES

Argentina

THE ARGENTINE INSURANCE LAW OF JUNE 13, 1947, provides:

"Article 14: The insurance of all classes of goods entering the country, in any manner whatsoever, must be effected by Argentine Insurance companies when the risks are borne by the consignee, and the insurance of all classes of goods leaving the country, in any manner whatsoever, must be effected under the same conditions when the risk of marine transport is borne by the consignor. The customs formalities include the obligations both to declare on oath that the risk has been covered, and to be in possession of a copy certified by the police authorities. Any infraction of these provisions will be subject to the penalties set forth in Article 12."

Article 12 provides that any infraction of this law is punishable by a fine amounting to not more than twenty-five times the value of the premium.

The Ministry of Finance subsequently excluded from the terms of section 14 imports:

(a) where the merchandise is purchased f.o.b. delivery at a point in the Argentine;

(b) on consignment; and

(c) for sale through representatives or agents of a foreign firm when the importation is carried for account of the principals.

The Reinsurance Institute has interpreted "f.o.b. point in the Argentine" to mean that unless all customs duties, taxes and other charges are paid in the currency of the foreign seller, the risk is considered to be upon the Argentine importer. Obviously, the Argentine importer will not be willing to pay customs duties, taxes, drayage and other expenses in foreign currency, even if the foreign currency is available for such purposes.

In the case of exports, the Insurance Institute considers the risk for account of the Argentine exporter in cases where goods are shipped on consignment or sent for sale through agents or representatives of the export firm abroad, and in cases where goods are shipped f.o.b., with named point in the interior of the country of destination.

The Argentine law has characteristically resulted in a burden on trade which is beyond the scope of the law itself, affecting, as it does, trade in which the merchant would otherwise be free to place insurance in the market of his choice. Thus, a case has been reported where an Argentine national shipping to the United States on consignment, desired to place warehouse insurance on arrived goods in the American marine insurance company whose rates and conditions were more favourable than in the Argentine market. Such insurance is legal under the Argentine law. The American company, however, fearing claims for concealed damage attributable to the period of transportation from the Argentine, was compelled to decline the risk unless it could at the same time share in the transportation risk which is prohibited under the Argentine law.

In an attempt to overcome the discriminatory effects of the Argentine law upon their respective national markets, various countries entered into trade agreements with Argentina. The agreement with Norway, which is, we believe, similar in this respect to agreements made with France, Italy, the Netherlands, Switzerland and Spain provided that:

> "Insurances - The Government of Argentine reserves the right to let those Argentine goods which are exported to Norway and those Norwegian goods which are imported into Argentine to be insured in Argentine companies when the transport takes place for the account of the seller or buyer respectively."

A similar reservation is made in the case of imports and exports at the risk of the Norwegian buyer and seller, respectively. Such a treaty, it is submitted,

is discriminatory in itself, reserving, as it does, the insurance of Argentine goods imported into Norway to the Argentine insurance market.

Information received from Swiss and Norwegian underwriters' representatives indicates that unsuccessful efforts were made by members of their respective delegations which concluded the treaties to delete the discriminatory provision as to marine insurance. The Swiss report concludes that only the Argentine has availed itself of the benefits of the provision, it being contrary to established principle for the Swiss Government to interfere, unless necessary, with the terms of private contracts.

The discriminatory laws of the Argentine have resulted in higher cost of marine insurance, a cost which is passed to the ultimate consumer, and which constitutes a serious impediment to international trade. At the time the decree went into effect in 1948, Argentine exporters expressed concern over the possible loss of business due to the higher rates of insurance which would have to be paid under the new law.

In addition, the decree 12988 discriminates in respect to reinsurance against foreign companies admitted to do business in the Argentine.

Article 15 of decree 12988 provides:

"Argentine insurance companies must cede to the Institute all surpluses above above their own retentions, which latter they may fix freely. The Institute shall then proceed in accordance with the provisions of Article 17, particularly bearing in mind the capacity of the market and the volume and nature of the business individually ceded to it by each company."

Article 16:

"Companies whose management and capital are not established in the country must cede to the Institute, at the original acquiring commission, not less than 30 per cent of all general and personal risks contracted in the country. These companies are free to dispose of the remaining 70 per cent."

Article 17:

"Cessions received by the Institute under the provisions of the foregoing Article, and the surpluses received in accordance with Article 15, shall, once the Institute's own retention is fixed be offered preferentially as reinsurance to Argentine Insurance companies; any excesses then left may be

placed with Companies whose management and capital are not established in the country, or in foreign markets; reciprocity may be established as suitable."

Thus, the Argentine Law discriminates against foreign marine insurers doing business in the Argentine by requiring the cession to the Institute of a fixed percentage of every risk written and by granting Argentine companies a preference as to retrocessions from the Institute.

Although premiums on direct writings are not fixed by the Institute, insurance companies compelled by law to cede a portion of the risk to a governmental reinsurance agency must consider the rates it will have to pay for the compulsory reinsurance. It may therefore be impossible to compete with rates charged by insurance companies abroad which are free to reinsure or not as they see fit. The degree of control exercised in the Argentine over direct premium rates is suggested by the provisions of Article 8 of Marine Circular No. 5 containing the regulations of the Argentine Reinsurance Institute in force on September 11, 1948:

"8 - The Institute will study the risks ceded to it, and when the terms of the insurance are inadequate or unsuitable according to the local practice or the rates differ in a consideralbe proportion or frequently from those usual in the market for similar risks and the normal acceptance is disadvantageous for the Institute and its retrocessions, it reserves the right to demand an alteration in rates for similar future business, whether isolated or arising from floating policies already contracted".

Finally, the Argentine law imposes a discriminatory tax on foreign companies admitted to do business in the Argentine.

DECREE 12901 OF NOVEMBER 19, 1947, provides:

Article 39:

"The Argentine Insurance Companies shall pay on premiums received, 2.50 per cent for personal risks and 7 per cent for general risks."

Article 40:

"The companies whose captial and management are not located in the country shall pay the folloiwing rates on premiums received:

(a) On all assignments to the Institute ard to the Argentine Insurance Companies 2.50 per cent on account of personal risks and 7 per cent on account of general risks;

(b) Upon those retained by them, 6 per cent on account of personal risks and 16 per cent on account of general risks;

and

(c) On all the excess over that retained by them and the assignments to the Institute and to the Argentine Insurance Companies 6 per cent on account of personal risks and 18 per cent on account of general risks."

Brazil

The law of Brazil prohibits the extension of transport insurance in companies not admitted in Brazil after the goods have been deposited in the warehouse in Brazil and are at the risk of the Brazilian consignee. This leads to a number of difficulties. If the consignee in Brazil wishes to send the goods to some other point in Brazil by either land or water, he cannot exercise the option of extending his original insurance. Local Brazilian companies are reluctant to insure the goods for the reason that if the goods remained in the original package they are unable to ascertain whether there has been any previous loss or damage. The consignee is then compelled to cable to the shipper abroad and request the extension. Unless the consignee is a reliable client, the shipper is reluctant to have the insurance extended for the reason that he cannot be assured of recovering the premium from the shipper. These complications and added expense constitute an unnecessary burden on international trade.

In the case of exports from Brazil which remain at the risk of the Brazalian shipper during the period of transit, Article 165 of Decree Law No. 2063 of 7 March 1940, requires that insurance be effected in companies established in Brazil. The fine for violating this precept amounts to 10 per cent of the value of the amount insured.

Insurance in Brazil is regulated by the Reinsurance Institute of Brazil, a governmental organization. Companies operating in Brazil are compelled to cede a portion of every transport risk assumed. (Article 73 of Decree Law No. 2063 of 7 March 1940.) Moreover, under Decree Law No. 3784 of 30 October 1941, acceptance of retrocessions offered by the Institute is compulsory on the part of all companies authorized to operate in Brazil. The Technical Council of the I.R.B. (Conselho Tecnico) fixes the rates, the terms and forms of retrocession and the commissions.

No foreign marine insurance companies not presently doing business in Brazil may be admitted to do such business.

Chile

Chile imposes a discriminatory tax which penalizes the purchase of foreign marine insurance.

DECREE No. 251 of 20 MAY 1931 provides:

"Article 14. Any person, concern, company or commercial house which desires to insure in companies not established in Chile, property or other insurable interests in the country against risks comprised under the First Group (which includes marine insurance) shall pay a special tax to the fiscal benefit varying between 25% and 60% of the premiums which it would have had to pay in Chile to cover the respective risk.

Insurance effected abroad, covering material damage on land on goods imported into this country, on consignment or in transit, when these latter are intended to be utilized in the territory of the Republic, is subject to the tax established in the present Article.

The President of the Republic shall fix annually, or when he deems advisable, the amount of this tax within the limits indicated."

The tax is inapplicable if the insurance must be effected abroad because no Chilean company will cover the risk

Chilean insurance laws restrict the right of foreign companies to do business in Chile. Although no translation of the law is available it is reported that, in order to qualify to do business in Chile, an insurance corporation must have at least two-thirds of its capital subscribed for and held by Chilean shareholders or foreigners domiciled in Chile. Moreover, the laws of Chile discriminate against foreign companies in respect to reinsurance by requiring such companies to cede to the Caja Reaseguradora a 20 per cent Quota Share of every direct Fire, Accident and Coastwise Marine policy issued. National companies, on the other hand, are not compelled by law to cede any portion of their writings to the Caja, but they are not permitted to reinsure any surpluses, over retentions, with foreign companies.

Columbia

Columbia has two laws which impede the freedom of marine insurance, although the restrictive effect of the later law quoted hereinafter, has been partly diminished by interpretation of the Office of Exchange Control charged with its enforcement.

ARTICLE 8 OF DECREE LAW 1403 OF 1940 provided that:

"Persons, organizations or firms which effect (sic) insurance in companies not legally established in Colombia are subject to a special fine of 50% of the amount of the premium which they should have had to pay in Colombia on the respective risk."

Subsequently the government issued Decree No. 2615 of 26 August 1949, authorizing the Exchange Control to refuse licenses for the payment in foreign currencies of the value of premiums on insurance which could be contracted with firms legally established in Colombia. The decree reads as follows:

DECREE No. 2615 of 1949 (AUGUST 26)

by which is approved Resolution No. 13 of the Board of Directors of the Office of Exchange, Import and Export Control.

The President of the Republic of Colombia,

pursuant to his legal powers and especially those conferred on him by Law 90 of 1948

decrees:

Solo Article. The following resolution of the Board of Directors of the Office of Exchange, Import and Export Control is approved:

RESOLUTION No. 13 of 9 August 1949

The Board of Directors of the Office of Exchange, Import and Export Control exercising the power conferred on it by Law 90 of 1948

considering

1) That article 7 of Decree 1403 of 1940 states:
'The insurance business may only be practiced by national and foreign companies duly authorized therefore in accordance with the law, by the bank superintendent'

2) That article 8 of the same decree provides:
'Persons, organizations or firms which effect (sic) insurance in companies not legally established in Colombia are subject to a special fine of 50 per cent of the amount of the premium which they should have had to pay in Colombia on the respective risk';

3) In addition to the prescribed legal provisions which should also be fulfilled by the Office of Exchange Control, the condition of the balance of payments (exchange) does not permit authorizing the expenditure of foreign currencies to pay premiums on insurance which can be contracted in Colombia,

be it resolved that:
Article 1) The Office of Exchange Control shall abstain from authorizing licenses for payment in foreign currencies of the value of premiums on insurance which can be contracted with firms legally established in Colombia.

Article 2) Licenses for paying abroad the value of indemnities for losses which have been insured in firms legally established in Colombia will be authorized as if dealing with payments prescribed in paragraph 4 of resolution 7 of 1949.

Article 3) The Office of Exchange Control will grant the necessary import licenses for replacing insured merchandise which has been lost. The value of such licenses shall not affect basic shares or quotas or any other system of individual limitation of imports.

Article 4) Insurances contracted before the effectiveness of Decree 1403 of 1940 and the premiums for which are payable in foreign currencies shall not be affected by the provisions of Article 1 of this resolution.

Article 5) This resolution takes effect from the date of promulgation."

The Exchange Control Authorities have interpreted the above decree to permit insurance on imports of merchandise in companies not established in Colombia when the shipper is obliged to deliver the merchandise at Colombian ports on c.i.f. terms. In the event of loss, however, the importer is not permitted a new import license to replace the merchandise, unless he has insured in a company established in Colombia. Marine insurance can, therefore, be purchased outside of Colombia only at the risk of losing the quota assigned for the import of such merchandise in case it should be damaged or destroyed in transit. The foreign shipper who insists, for his own protection, on insuring on c.i.f. terms may lose a valuable client in Colombia whose interests demand that the merchandise be insured in Colombia.

Cuba

While the present laws of Cuba do not discriminate in any way against the free exchange of marine insurance, a bill is presently under consideration which would establish a Central Reinsurance Company of Cuba to be owned 20 per cent by the government of Cuba. The Central Reinsurance Company of Cuba would be empowered to supervise the operations of the various insurance companies in Cuba, to transact reinsurance operations, and to promulgate the tariffs of rates to be applied in the transaction of business by the insurance companies established in Cuba.

Although it may be premature to raise at this time the question of discrimination in connexion with Cuba, the situation is submitted as an example of the trend towards regulation of marine insurance evident throughout the world in the post World War II period.

Haiti

The Haitian law of February 22, 1948 imposes a tax which discriminates against foreign marine insurance companies admitted to do business in Haiti. In addition to the regular tax of 10 per cent of premiums collected paid by Haitian and foreign admitted companies alike, Article 5 of the above law provides:

> "The amounts derived from premiums collected by the Insurance Companies may not be transferred abroad until after having paid an export tax of 3 per cent."

The tax also discriminates against non-admitted marine insurance companies in cases where the coverage is extended by the Haitian importer after arrival of the goods and additional premiums are paid.

Iran

The Government of Iran promulgated two decrees, on December 8, 1946 and May 13, 1947, which discriminate against the free placement of marine insurance.

DECREE OF 9.III.1326 (MAY 31, 1947) OF THE IRANIAN COUNCIL OF MINISTERS provides:

"The Council of Ministers decrees, at its meeting of 9.III.1326, on the proposal of the Ministry of Finance:

(a) All goods imported into Iran must be insured with an insurance company registered in Iran. When the credit for the import of the goods is opened, the authorized banks shall demand of the import merchant the insurance policy proving that the goods were insured with a company registered in Iran. After this insurance policy has been submitted, the bank may proceed to the opening of the credit.

(b) Are exempted from the provisions of Decree No. 34198, export goods which are sold f.o.b. or which are the property of foreign merchants. In these cases the buyer may insure the goods with the insurance company of his choice. Nevertheless, other export goods must be insured with the Iran Insurance Company, as laid down in the said decree.

(Observation - The f.o.b. sale must be certified by one of the authorized banks.)

DECREE OF 16.IX.1325 (DECEMBER 8, 1946) OF THE IRAN COUNCIL OF MINISTERS (Translation)

'At its meeting of 6.IX.1325, the Council of Ministers on the proposal of the Ministry of Finance, and with the intention of enforcing paragraph 4 of Decree No. 11215 of 26.VII.1316, decrees that the general customs administration shall, for all export goods dispatched by motor-lorry, railway, steamship or aircraft, demand the insurance policy proving that the goods were insured in Iran. The administration may refuse permission to export the goods if such an insurance policy is not submitted to it.

'Trade in frontier regions is exempted from these provisions. The present tasks required of customs administrations are enforceable in the customs areas where the agents of authorized insurance companies agree to insure the goods and where the necessary means for technical inspection by the insurance companies are to be found. These circumstances must be certified by the general customs administrations and by the Iran Insurance Company'."

The Iranian law has resulted in an unwarranted burden on international trade. Reports have been received of specific insurances where premiums charged in Iran have been as much as four times the premium offered in another country where international competitive conditions exist. Cases have been reported moreover, where foreign importers have for their own protection taken out insurance in their

own markets, as well as the insurance required by Iranian law. This double insurance is an economic waste which directly hinders the flow of goods in international trade.

Peru

Peru discriminates against foreign marine insurance by placing a tax on insurance contracted with companies not admitted to do business in Peru.

Article 4 of Law No. 9796 of January 27, 1943 provides:

> "Insurance contracts made with companies which are not established in the country in accordance with existing laws, must pay a tax of one fourth of one per cent on the amount of the original policy and on subsequent renewals, Laws 7750 and 8914 being hereby amended in this respect."

The law excepted, foreign insurance in cases where the risks were not covered by domestic companies. However, by a decree of January 28, 1944, marine insurance was declared available in Peru and, therefore, not exempted from the tax.

Premium rates on risks located within the jurisdiction are regulated and may be altered only after authorization by the government upon petition by the Comité de Asguradores de Peru, an organization to which all insurance companies in the country must belong. (Article 7 of Law No. 9796 of January 27, 1943). The effect of this law is to control the rates of transport insurance after the goods imported into Peru are landed and prior to the time goods exported from Peru are loaded on board the overseas vessel.

B

DISCRIMINATION RESULTING FROM FOREIGN EXCHANGE REGULATIONS

Austria

Austrian exchange control regulations make it impossible for the Austrian merchant to purchase foreign insurance. On the other hand, the Austrian merchant is permitted to insure against limited coverage in hard currency, provided the insurance is placed in the Austrian market.

Austria imposes a discriminatory tax on the purchase of marine insurance from foreign insurance companies not admitted to Austria of ten times the tax on insurance purchased in the national market. Insurance Tax Law of January 17, 1939, D.R.G.B.L. I S-48. This tax, which amounts to 50 per cent of the premium, virtually eliminates foreign competition.

In the case of Austria, due allowance should of course be made for the special political circumstances of that country and for the fact that the measures in question were introduced before the war.

France

In France, the possibility of insurance abroad is subject to currency restrictions. These restrictions, which apply to insurance as to other sectors of French industry, are the result of restrictions inherent in the existence of the Exchange Control Office. Since 1948, owing to these currency restrictions, it is in many cases practically impossible to insure otherwise than with French or foreign companies operating on the French market.

There are no laws or regulations in France that discriminate against the admission of a foreign company to do insurance business.

The marine reinsurance business is strictly regulated in France. French companies and foreign companies operating in France are compelled to cede a portion of every direct risk accepted to the "Groupement de Réassurance Maritime".

The ordinance of January 23, 1945 regarding marine reinsurance provides:

Title I Ordinary Marine Risks

"Article 1: The French companies, with the exception of (life insurance companies in their various forms) ...., are compelled to establish a groupement of marine reinsurance ....."

This "Groupement" which has civil personality is entrusted with the conclusion, for account of all its participants, of marine reinsurance treaties, hull, cargo or faculty, and to distribute amongst its participants the results of these operations.

"Article 2: The French and foreign companies authorized to exercise in France and in the overseas territories operations of marine insurance hull, cargo and faculty, are compelled to conclude with the "Groupement" reinsurance treaties for these operations. The maximum amounts which these companies are authorized to subscribe and keep without reinsurance are fixed, as well for hull as for cargo or faculty by the Ministry of Finance."

Italy

In Italy exchange regulations also exist which interfere with the insurance in foreign currency of certain categories of imports, particularly government purchases from the dollar area.

The Netherlands

The Netherlands exchange control law delegate to the Netherlands Bank complete discretion in the matter of authorizing foreign exchange for the purchase of foreign marine insurance. It has been reported that only under exceptional circumstances will permission be granted for the purchase of foreign marine insurance, as, for instance, in cases where the premium offered in the foreign country is at least 25 per cent lower than that offered in the national market. On the other hand, it is reported that the Netherlands Bank readily grants foreign exchange to national insurance companies for reinsurance abroad.

N.B.- : Restrictions similar to those mentioned for Italy, France or the Netherlands are in force in all Western European countries with the exception of Belgium, Switzerland and Great Britain.

Translated from French

ANNEX IV

Suggestions made by the Co-ordinating and Drafting Committee of the National Professional Insurance Enterprises of Western Europe

Discrimination in Transport Insurance

1. General principles

(a) Prior permission which foreign companies have to obtain under certain legislations

In order to ensure perfect equality, foreign insurance companies should be admitted on the same terms as domestic companies and in particular their claims or petitions should be treated on an equal footing in cases of refusal or withdrawal of permission. The right to undertake reinsurance operations should not be subject to any prior permission.

(b) Obligations imposed by certain national legislations and control regulations

The OEEC Code of Liberalization contains certain principles which the Committee seeks to persuade the Member States to apply in practice and which it hopes will be adopted universally. One of these principles, in particular, lays down that "Present and future statutory and administrative controls shall keep to a minimum the amounts required as guarantees in order to prevent the dispersal of the assets of the insurers, in so far as this is compatible with the protection of the parties insured. Guarantee deposits shall have no other aim than the protection of the insured parties."

(c) Financial transfers in connexion with insurance and reinsurance transactions

Such transactions should be entirely free.

2. Practicable measures

The Committee offers the following suggestions for measures which it might be practicable to apply, and which might be recommended within the terms of the United Nations study, with a view to minimizing the disadvantages resulting from discriminatory practices in transport insurance. After studying inter alia the

memorandum submitted by General Transport Commission of the ICC to the Transport and Communications Commission of the United Nations (doc. No. 301/50 CCI), the Committee considers that in the first instance discriminatory measures might be removed which, in any given country:

(a) reserve a monopoly in transport insurance to national companies only, by the systematic exclusion of foreign companies which wish to be admitted on the same conditions as those laid down for national companies;

(b) impose a general obligation on national importers and exporters to export C.I.F. and import F.O.B. in such a way as to reserve the insurance of the country's imports and exports to the national insurance market;

(c) make the concession of licences or the granting of foreign exchange conditional upon the insurance of cargoes on the national insurance market;

(d) forbid insurance being placed in foreign exchange in every case, and without justification by overriding considerations connected with the exchange balance;

(e) forbid the placing in the foreign insurance market of risks which cannot be covered in the domestic market.

The Committee points out that the above observations do not express its ideas of the characteristics which the organization of the different national marine insurance markets should possess under normal economic and political conditions. It wishes to emphasize that in making this study it has been guided by the desire to make only those suggestions which can be considered in the light of the present economic and financial situation. In particular it has regretfully come to the conclusion that the present situation is not calculated to make governments desist from the efforts which they have undertaken, notably as a result of experiences during the last war, to establish in their countries, at the cost of certain restrictions, national marine insurance markets capable of covering a certain minimum of their national needs under all circumstances.

The Committee is, however, of the opinion that this objective can be attained without the establishment or maintenance of the discriminatory measures mentioned above.
