

1947
NEW ZEALAND

UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

REPORT BY NEW ZEALAND DELEGATION OF
CONFERENCE PROCEEDINGS PRIOR TO THE FINAL
CONFERENCE AT HAVANA, CUBA, SCHEDULED TO
OPEN ON 21 NOVEMBER, 1947

Presented to both Houses of the General Assembly by Leave

UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

The attached report covers the proceedings of the Preparatory Committee of the United Nations Conference on Trade and Employment in so far as they relate to the preparation of a Draft Charter for the proposed Organization. The detailed negotiations concerning a General Agreement on Tariffs and Trade, which took place concurrently at Geneva during 1947, are not dealt with in this report, since these negotiations had not been completed at the time when the present report was prepared.

New Zealand has been represented at the preliminary conferences as follows :—

First Session of the Preparatory Committee, London, 15 October, 1946, to 26 November, 1946—

Mr. J. P. D. JOHNSEN, Assistant Comptroller of Customs (*Leader*).

Mr. H. E. DAVIS, New Zealand Marketing Department, London.

Mr. F. W. LAWRENCE, Official Representative of New Zealand Customs Department, London.

Mr. G. LAURENCE, Department of Industries and Commerce (*Secretary to Delegation*).

Drafting Committee, New York, 20 January to 25 February, 1947—

Mr. T. O. W. BREBNER, Consul-General for New Zealand, New York (*Leader*).

Mr. L. S. NICOL, Official Representative of New Zealand Customs Department, London.

Mr. G. D. L. WHITE, Economic Stabilization Commission, Treasury Department.

British Commonwealth Talks, London, 11 March to 2 April, 1947—

The Rt. Hon. WALTER NASH, Minister of Finance and Minister of Customs (*Leader*).

Mr. J. P. D. JOHNSEN, Assistant Comptroller of Customs (*Alternate Delegate*).

Mr. T. P. DAVIN, Department of External Affairs.

Mr. H. E. DAVIS, New Zealand Marketing Department, London.

Mr. G. LAURENCE, Department of Industries and Commerce.

Mr. F. W. LAWRENCE, Official Representative of New Zealand Customs Department, London.

Mr. J. P. LEWIN, Office of the Minister of Finance.

Mr. I. G. LYTHGOE, Office of the Minister of Finance.

Mr. N. S. MCCLUMPHA, New Zealand Marketing Department, London.

Mr. L. S. NICOL, Official Representative of New Zealand Customs Department, London.

Mr. K. L. PRESS, Customs Department.

Mr. J. E. STOKES, Assistant Director of Commerce, Department of Industries and Commerce.

Second Session of the Preparatory Committee Geneva, 10 April, 1947, to 23 August, 1947 (date of completion of Charter discussions only)—

Delegates :

The Rt. Hon. WALTER NASH, Minister of Finance and Minister of Customs (*Leader*).

Mr. J. P. D. JOHNSEN, Assistant Comptroller of Customs (*Acting Leader*).

Mr. L. C. WEBB, Director of Stabilization (*Alternate*).

Alternate Delegates and Advisers :

Mr. S. N. BRAITHWAITE, Department of Industries and Commerce, London.

Mr. T. P. DAVIN, Department of External Affairs (*Secretary to Delegation*).

Mr. H. E. DAVIS, New Zealand Marketing Department, London.

Mr. E. J. FAWCETT, Director-General of Agriculture.

Mr. G. LAURENCE, Department of Industries and Commerce.

Mr. F. W. LAWRENCE, Official Representative of New Zealand Customs Department, London.

Mr. J. P. LEWIN, Office of the Minister of Finance.

Mr. I. G. LYTHGOE, Office of the Minister of Finance.

Mr. N. S. McCUMPHY, New Zealand Marketing Department, London.

Mr. L. S. NICOL, Official Representative of New Zealand Customs Department, London.

Mr. K. L. PRESS, Customs Department.

Mr. J. E. STOKES, Assistant Director of Commerce, Department of Industries and Commerce.

Mr. G. D. L. WHITE, Economic Stabilization Commission, Treasury Department.

Non-official Advisers :

Mr. J. H. COLLINS, New Zealand Federation of Labour.

Mr. W. H. HINDLE, Associated Chamber of Commerce of New Zealand.

Mr. D. I. MACDONALD, New Zealand Manufacturers' Federation.

Mr. W. N. PERRY, Federated Farmers of New Zealand.

Mr. D. L. M. MARTIN, Federated Farmers of New Zealand (*Alternate*).

Whilst all the delegations worked excellently as teams in the difficult and exhaustive work preparatory to the final session, I desire to extend my special personal appreciation and that of the Government to the Assistant Comptroller of Customs, Mr. J. P. D. Johnsen, who has carried out the major work of leadership since the opening session in November, 1946, and also to Mr. Leicester Webb, Director of Stabilization, for his work at Geneva after my departure at the end of May last.

SECTION 1—GENERAL

(1) The Preparatory Committee of the United Nations Conference on Trade and Employment was constituted by a resolution dated 18 February 1946, of the Economic and Social Council, in order to prepare the ground for an International Conference on Trade and Employment which the Council in the same resolution had called for the purpose of promoting the expansion of production, exchange, and consumption of goods. The Preparatory Committee was charged, among other tasks, with the elaboration of an annotated draft agenda, including a draft convention for consideration by the Conference after taking into account suggestions which might be submitted by the Council or by any Member of the United Nations. The Preparatory Committee was also asked to recommend the date and place of the Conference, and which States, if any, non-Members of the United Nations should be invited. The Committee comprised representatives of the Governments of the following countries: Australia, Belgium-Luxembourg, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Netherlands, New Zealand, Norway, South Africa, U.S.S.R., the United States of America, and the United Kingdom.

(2) The Preparatory Committee held its First Session in London from 15 October 1946 to 26 November 1946, and, after a detailed examination and discussion on the basis of a suggested draft of a Charter which had been formulated by a technical staff within the Government of the United States of America, prepared a draft Charter which was embodied in a published Report of the Committee's work. All Members of the Committee were represented at the First Session except the Union of Soviet Socialist Republics, which indicated that it did not feel able to participate as it had not found it possible to devote sufficient preliminary study to the important questions which were the subject of the Committee's discussion. The Union of Soviet Socialist Republics did not participate at the Second Session.

(3) Another important step taken at the First Session was the adoption by the Committee of a resolution regarding the Negotiation of a Multilateral Trade Agreement embodying Tariff Concessions. The United States Government had invited the Governments represented on the Committee to meet to negotiate arrangements for the reduction of tariffs and trade barriers. The Committee, considering that the task of the World Conference would be facilitated if reciprocal negotiations were entered into by the principal trading nations for the substantial reduction of tariffs and the elimination of preferences on a mutually advantageous basis, adopted a Resolution regarding the carrying-out of tariff negotiations under its sponsorship in connection with and as part of the Second Session.

(4) The First Session of the Preparatory Committee also appointed a Drafting Committee which was to meet as soon as possible after the end of the Session in order to edit the draft Charter adopted in

London. This Drafting Committee met in New York from 20 January to 25 February 1947, and the results of its work were recorded in a published Report showing the revised text of the draft Charter. The First Session adopted a further resolution convening a Second Session of the Preparatory Committee at Geneva in April 1947.

(5) Prior to the opening of the Second Session in Geneva a series of British Commonwealth talks was held in London for the purpose of exchanging views among Commonwealth members on matters of common concern, particularly tariff preferences, which would be under discussion at Geneva. These discussions, which were at the official level, lasted from 11 March 1947 until 2 April 1947, and assisted to clarify some of the very complex issues which would be involved in the tariff negotiations and Charter discussions at Geneva.

(6) The Second Session of the Preparatory Committee opened at Geneva on 10 April 1947, and concluded the Charter discussions on 23 August 1947. The tariff negotiations opened formally on 23 April 1947, when certain countries met to negotiate. They are expected to conclude with a Final Act embodying the text of a General Agreement on Tariffs and Trade, and will be the subject of a separate Report. Only Plenary Meetings of the Preparatory Committee were open to the public, and of these, four were held in the opening stages and two in the concluding stages of the Session. At the opening Plenary Sessions opportunity was taken to explain New Zealand's position in relation to international trade and its views on the objectives which the World Conference hoped to attain. The final Plenary Sessions were occupied with a review of the Charter as redrafted, in the course of which delegates made general comments on the new text. During the period between the opening and closing Plenary Sessions meetings of the Committee were conducted in Executive Session, and these were not open to the public.

Two specialized agencies of the United Nations (The Food and Agricultural Organization and the International Labour Organization) and two other inter-governmental organizations (the International Bank for Reconstruction and Development and the International Monetary Fund) were actively associated with all the proceedings of the Session. Some Members of the United Nations who were not Members of the Preparatory Committee were represented by observers.

(7) The following were elected as Chairman and Vice-Chairmen of the Preparatory Committee during the Second Session :

Chairman : H.E. M. MAX SUETENS (*Belgium*).

Vice-Chairmen :

First Vice-Chairman : H.E. M. ERIK COLBAN (*Norway*).

Second Vice-Chairman : Sir RAGHAVAN PILLAI (*India*).

H.E. Dr. ZDENEK AUGENTHALER
(*Czechoslovakia*).

Mr. SERGIO I. CLARK (*Cuba*).

Hon. L. D. WILGRESS (*Canada*).

(8) Early in the Committee's work a Chairman's Committee, consisting of the Heads of Delegations was established to guide the work of the Session. This Committee met regularly throughout the Session. The Chairman's Committee decided that as Delegations were committed to tariff negotiations during the first few weeks of the Session, the general discussions on the Charter would not begin until several weeks after the opening of the Session. This procedure was followed.

(9) In order to discuss certain technical Articles of the draft Charter (Articles 32 to 39, and Article 43) which had been drafted by the Drafting Committee in New York, the Executive Committee sat early in May and set up a Working Party to review these Articles and to accord them the same status as the remaining Articles of the draft Charter which had been adopted during the First Session. This Working Party, which established *ad hoc* sub-committees on particular Articles, held eleven meetings and was then formally wound up, its recommendations on the various Articles referred to it being reported to Commission A of the Executive Committee, referred to later in paragraph 11. Early in the Session the Executive Committee held a series of discussions on Chapter II (Employment and Economic Activity), and on Article 16 of Chapter IV (General Most-favoured-nation Treatment). The Committee established a sub-committee to deal with amendments to Chapter II, but as Commissions A and B of the Executive Committee were set up before it completed its work this sub-committee, like the Working Party on the Technical Articles, reported to Commission A.

(10) The Chairman's Committee, after a few meetings established a Charter Steering Committee consisting of representatives of the following delegations: Australia, China, Cuba, France, United Kingdom, and United States of America. This Committee prepared a programme for the Charter discussions which was adopted by the Executive Committee and which provided for the establishment of two Commissions, A and B, on each of which all Delegations were represented. Commission A, in addition to dealing with the Reports of the Working Party on the Technical Articles and the sub-committee on Chapter II, referred to in the preceding paragraph, dealt with Chapter III (Economic Development), and Chapter IV (Commercial Policy). Commission B dealt with Chapters I (Purpose and Objectives), V (Restrictive Business Practices), VI (Inter-governmental Commodity Agreements), VII (the International Trade Organization), VIII (Settlement of Differences—Interpretation), and IX (General Provisions). The Chairman of the Preparatory Committee (H.E. M. Max Suetens—Belgium) was made Chairman of Commission A, and one of the Vice-Chairmen (the Hon. L. D. Wilgress—Canada) was made Chairman of Commission B.

(11) The procedure adopted in the Commissions was to have a general discussion on particular Chapters and Articles in the course of which delegates referred to and explained particular amendments which they

had tabled. After the general discussion the Article or Articles concerned, together with proposed amendments, were referred to sub-committees for detailed study and report back to the Commission, with, if possible, a draft text.

The sub-committees were indispensable to enable discussions to get down to detail. A sub-committee normally consisted of six Members chosen from those who had shown most interest in the subject, but it was possible for non-Members to observe the proceedings and to explain their viewpoint on matters of particular concern. The New Zealand Delegation took full advantage of this procedure.

The Reports of sub-committees, after consideration in the appropriate Commission, were referred to a Legal Drafting Committee for review of the English and French texts, and were then submitted to the final Executive and Plenary Sessions of the Preparatory Committee which met on 22 and 23 August 1947.

(12) Early in its meetings the Committee gave considerable thought to the problem of consultation with non-governmental organizations. Because of pressure of business at the First Session and because most of the Committee's work was conducted in closed meetings, the non-governmental organizations had comparatively limited opportunities to observe the discussions or to enter into consultation on matters of interest to them. The desirability of making a more adequate arrangement during the Second Session was recognized, and accordingly a Consultative Committee was established consisting of representatives from the Australian, Chinese, Czechoslovakian, Indian, French, Norwegian, United Kingdom, and United States delegations who had special knowledge of the draft Charter. This Committee held a series of meetings with the representatives of certain non-governmental organizations, in the course of which it heard the views of such representatives and explained the viewpoint of the Preparatory Committee on the points raised. After a time it was found necessary to extend membership of the Consultative Committee to include representatives from all delegations. These representatives constituted a panel from which four or five representatives of the Preparatory Committee were selected for each meeting with any of the non-governmental organizations. The views of non-governmental organizations were recorded at meetings of the Consultative Committee and circulated among the sub-committees dealing with the portions of the draft Charter concerned.

(13) In July 1947 the Preparatory Committee, in order to expedite arrangements for the World Conference, submitted to the Economic and Social Council and interim report, which, after reviewing the progress of the Committee's work, made recommendations as to the agenda of the World Conference, the date and place of the World Conference, and the invitation to it of non-members of the United Nations. The relevant sections of this interim report are reproduced in Part III, Enclosure I, of the Preparatory Committee's Report which has been printed separately.*

(14) The interim report recommended that the headings of the Charter as then drafted should be adopted as the agenda for the World Conference and that the relevant Chapters of the draft Charter should be taken as the principal working paper under each heading.

As additional annotations to the agenda it was stated that there would also be available the Reports of the First and Second Sessions of the Preparatory Committee and of the Drafting Committee.

The Economic and Social Council on 28 July 1947 approved the recommendations of this interim report.

(15) The interim report recommended that the World Conference should be convened on 21 November 1947, and that, in view of the invitation extended by the Government of Cuba, it be held in Havana, if practicable. The Economic and Social Council adopted these recommendations.

(16) The interim report recommended that, subject to the Resolution regarding Spain adopted by the General Assembly on 12 December 1946, those States non-Members of the United Nations which have an appreciable interest in world trade should be invited. It therefore recommended that invitations to attend should be extended to Albania, Austria, Bulgaria, Eire, Finland, Hungary, Italy, Portugal, Rumania, Switzerland, Transjordan, and the Yemen. It also recommended that provision should be made for the attendance of persons qualified to represent the appropriate authorities in Germany, Japan, and Korea. The attention of the Council was also drawn (special reference in this connection being made to Burma, Ceylon, and Southern Rhodesia) to the position of territories under the sovereignty of a Member of the United Nations which are self-governing in matters provided for by the draft Charter and which, for that reason, in the opinion of the Preparatory Committee, ought to be invited to participate in the work of the Conference.

(17) The Economic and Social Council on 1 August 1947 resolved that invitations to the Conference be sent to the non-Members named by the Preparatory Committee, with the addition of Pakistan, that the Allied Control Authorities in Germany, Japan, and Korea be invited to send qualified representatives to the Conference in a consultative capacity, and that invitations to participate should be sent through the United Kingdom to the Governments of Burma, Ceylon, and Southern Rhodesia. In addition, the Council resolved that a direct invitation to participate in the Conference should be sent to the Indonesian Republic and to certain specialized agencies and other appropriate inter-governmental organizations.

The Council decided, however, that voting rights at the Conference would only be exercised by Members of the United Nations attending the Conference, which means that the non-Members of the United Nations referred to above will be unable to vote. This was contrary to the

unanimous view of the Preparatory Committee, which sent a telegram to the Council to that effect, stating also its view that the denial of voting rights to these countries might seriously impair prospects for a successful Conference. The Resolution was, nevertheless, adopted.

(18) The Official Report of the Second Session containing the text of the draft Charter as it finally emerged has been reproduced as Parliamentary Paper A-2EEE (External Affairs Publication No. 41). To assist in understanding the provisions of the draft Charter there follows a brief summary of the contents of each Chapter.

SECTION II.—SUMMARY OF CONTENTS OF DRAFT CHARTER ADOPTED BY SECOND SESSION

CHAPTER I.—PURPOSE AND OBJECTIVES

The first Chapter of the draft Charter sets out briefly the purpose of the proposed International Trade Organization and the reasons for its promotion.

The purpose is to achieve through international co-operation in the fields of trade and employment, peaceful and friendly relations among nations. Particular emphasis is given to the attainment of the higher standards of living, full employment and conditions of economic and social progress, and development envisaged in Article 55 (*a*) of the Charter of the United Nations.

In the opinion of the Preparatory Committee the purpose of the Organization can best be realized if certain particular objectives can be attained. These objectives have as their main characteristic the concept of a lasting and balanced economic development in all countries through means that will not only increase production of goods, but which will also ensure their exchange and their consequent availability for consumption by all requiring them. The Charter is an elaboration of the means which the Preparatory Committee considers are appropriate for the attainment of the objectives of the Organization and the realization of its purpose.

CHAPTER II.—EMPLOYMENT AND ECONOMIC ACTIVITY. (Articles 2-7)

In Chapter II it is recognized that the objectives of the Charter cannot be realized in the field of trade and commercial policy alone, and that parallel action is necessary in the field of employment policy and in the maintenance of large and steadily growing demand for goods and services. It is also recognized that policies of full employment, while primarily depending on domestic measures, are not of domestic concern alone, and should be supplemented by international action. To avoid duplication of functions between organs of the United Nations, the International Trade Organization is not given full and final responsibility in this field, but each member is required to take positive action within its own jurisdiction to maintain domestic employment and is required also to participate in international action under the sponsorship of the Economic and Social Council of the United Nations.

Chapter II consists of six Articles. Article 2 sets out the importance of employment, production, and demand in relation to the realization of the purposes of the Charter, and provides for collaboration among Members to that end. Article 3 obliges each Member to "take action designed to achieve and maintain full and productive employment and

large and steadily growing demand within its own territory through measures appropriate to its political, economic, and social institutions," having due regard to the interests of other Members. Article 4 provides for the elimination of sub-standard labour conditions, in co-operation with the International Labour Organization. Article 5 obliges Member countries with a persistent maladjustment in their balance of payments which involves other Members in balance of payments difficulties to take appropriate corrective action, and, in doing so, to avoid action which contracts international trade. Article 6 provides for concerted action by Members in the employment field, and Article 7 provides safeguards for Members which are subject to external deflationary pressure because of a serious or abrupt decline in the effective demand of other countries.

CHAPTER III.—ECONOMIC DEVELOPMENT. (Articles 8–15)

This Chapter recognizes the importance of economic development, particularly in countries the resources of which are relatively undeveloped, as a factor contributing to the expansion of trade and the raising of levels of real income. It deals with the means whereby economic development may be promoted, both by national and by international action.

Article 12 deals with one factor in economic development—namely, international investment—and lays down a code governing the treatment of foreign investments. Members undertake to provide, for international investments acceptable to them, "reasonable opportunities upon equitable terms" to nationals of other Members and also "security for existing and future investments." These undertakings are, however, qualified by a recognition of a Member's right to decide what foreign investments are acceptable to it, and to take measures to ensure that foreign investments are not used as a basis for interference in a Member's domestic affairs. Moreover, subject to an obligation regarding compensation, there is no restriction of a Member's right to nationalize an industry or to require that an industry shall be owned by its own nationals.

Article 13 deals with the situation which arises when a Member desires to protect an industry by employing a measure which would conflict with an obligation undertaken during negotiations under Article 17 or which may be contrary to some other provision of the Charter—*e.g.*, Articles 18 or 20. The general requirement is that the prior approval of the Organization must be obtained for such measures, but paragraph 4 (c) allows a Member, in certain circumstances, to take such action as is necessary, pending the Organization's decision, to prevent its plans from being jeopardized by an increase or threatened increase of imports of the product concerned.

Article 14 covers the case of a Member which, at the time of signing the Charter, has in force protective measures of a type not permitted

under the Charter. Such measures may be maintained pending a decision of the Organization, which must be given within twelve months of the Member's assuming membership.

Article 15 recognizes that special circumstances may justify new preferential arrangements by two or more countries in the interests of economic development or reconstruction. The question whether the Organization should approve such arrangements by a two-thirds majority of Members voting or by some other voting procedure is left open for determination by the World Conference.

Chapter III stands in an important relationship to Article 21, dealing with the use of quantitative restrictions for balance of payments reasons. In the first place, the obligation imposed on Members by Article 9 to develop their economic resources is mentioned in Article 21 (3) (b) as a factor which may increase a Member's demand for imports, and therefore justify the imposition of quantitative restrictions. In the second place, it is clear that the right of import selection conferred by Article 21 (3) (b) (ii) is not qualified by anything in Articles 13 or 14 because these Articles deal only with measures not otherwise permitted by the Charter.

CHAPTER IV.—COMMERCIAL POLICY

SECTION A.—TARIFFS, PREFERENCES, AND INTERNAL TAXATION AND REGULATION. (Articles 16–19)

Article 16.—General Most-favoured-nation Treatment

The rule of general Most-favoured-nation Treatment amongst Members provides that, with respect to customs duties and certain related matters, "any advantage, favour, privilege, or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries respectively."

Exceptions are made for certain preferential arrangements, provided the margins of preference do not exceed defined levels. The preferences in question are listed in the text of Article 16, and in annexes to the Charter. They include British Commonwealth preferences and certain other preferential systems. The maximum margins of preference are defined as those resulting from the Geneva negotiations, or from subsequent negotiations, or, if not provided for under agreements resulting from such negotiations, those existing on 10 April 1947 or on some earlier base date used in the negotiations.

Special provision is made regarding the replacement of multiple preferential rates by a single rate, of preferential internal taxes by tariff preferences, and of quota preferences by tariff preferences; also regarding British Commonwealth preferential meat quotas, and the New Zealand preferential film hire tax (see Annex A of the Charter).

Article 17.—Reduction of Tariffs and Elimination of Preferences

Article 17 provides for negotiations among Members directed towards the substantial reduction of tariffs and other charges on imports and exports and to the elimination of preferences. Detailed rules are set out concerning such negotiations. In the case of the Members of the Preparatory Committee negotiations have already been entered into in accordance with the provisions of this Article, but it is necessary to retain the Article in the Charter to govern subsequent negotiations, including negotiations with new Members. Failure, without sufficient justification, to carry out negotiations in accordance with the provisions of this Article renders a Member liable to lose the benefits of tariff reductions made by other Members. If such benefits are in fact withheld by other Members, the offending Member is free to withdraw from the Organization within a defined period.

Article 18.—National Treatment on Internal Taxation and Regulation

Since it is considered that internal taxes can be operated in such a way as to be equivalent to a tariff or trade barrier, new internal taxes and other internal charges are not to be applied to goods imported from other Member countries in excess of those applied to similar domestic goods. Existing internal taxes of this kind are to be subject to negotiation for their reduction or elimination in the manner provided for in respect of tariffs and preferences.

Similar provisions apply regarding all laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution, or use of imported products.

A general rule is set out against regulations relating to the mixing, processing, or use of domestic and imported products in specified amounts or proportions. This rule does not prevent the continuation of existing measures of this nature, provided that they are not modified to the detriment of imports and that they are subject to negotiation in the manner provided for in respect of tariffs and preferences. New Zealand's practice requiring the use of a specified minimum proportion of domestically grown tobacco leaf in the manufacture of tobacco and cigarettes would be covered by this provision. The Article does not apply to the procurement by governmental agencies of products purchased for governmental purposes and not for resale or use in the production of goods for sale.

Article 19.—Special Provisions relating to Cinematograph Films

Conditions and requirements are stipulated regarding internal quantitative regulations relating to cinematograph films. The method of "screen quotas" is affirmed as the best method for such regulations to take. Minimum quotas for films of national origin may be established

but the allocation of foreign quotas among sources of supply is not allowed, except in the case of existing measures of this nature, which must, however, be subject to negotiation for their limitation, liberalization, or elimination in the manner provided for in respect of tariffs and preferences.

Annex A of the Charter provides that the New Zealand Renters' Film Quota shall be treated as a screen quota falling within Article 19.

SECTION B.—QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROLS. (Articles 20-24)

The structure of this Section is as follows: Article 20 begins with a general rule against the use of quantitative import or export prohibitions or restrictions, subject to specified exceptions. Article 21 makes an exception in favour of restrictions to safeguard the balance of payments. Article 22 provides for non-discriminatory administration of quantitative restrictions (whether imposed for balance of payments reasons or otherwise under the Charter) and Article 23 permits specified exceptions to this rule of non-discrimination. Article 24 provides for co-operation between the Organization and the International Monetary Fund on questions of common interest, and, since exchange control is in many ways an alternative device to quantitative trade control, sets out rules to ensure that Members do not by exchange action evade their obligations regarding trade action under this Section of the Charter.

The Section on quantitative restrictions has a close connection with other parts of the Charter. For example, a cross-reference to Articles 3 and 9 on employment and development appears in Article 21; Chapter III also permits, in appropriate circumstances, the use of quantitative restrictions for protective, developmental, and reconstruction purposes; and Article 43 (General Exceptions to Chapter IV) permits various specified uses of quantitative controls, some during a post-war transition period, others permanently. The latter class includes controls necessary to the enforcement of state-trading monopolies, inter-governmental commodity agreements, and certain types of controls in connection with stabilization schemes.

The approach of the Preparatory Committee to the question of quantitative control of trade has therefore been to enunciate a general rule and then to elaborate the exceptions which can reasonably be justified in order to make provision for particular situations and policies without frustrating the objectives of the Charter.

Article 20.—General Elimination of Quantitative Restrictions

The general rule reads as follows: "No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any Member on the importation of any product of any

other Member country or on the exportation or sale for export of any product destined for any other Member country." It should be noted that only Member countries are referred to, since trade with non-Members is the subject of a later Article (Article 93) ; also that the rule does not prevent the maintenance of licensing systems as such, provided that prohibitions or restrictions are not involved.

The first exceptions concern restrictions to prevent or relieve critical shortages in an exporting country, and restrictions necessary to the application of standards or regulations for the classification, grading, or marketing of commodities in international trade. Next there are some exceptions for import restrictions on agricultural or fisheries products, but only in cases where this is necessary to the enforcement of certain domestic measures—*e.g.*, measures to restrict the production or marketing of the like domestic product or to remove a temporary surplus of the like domestic product. It is not permitted to use these exceptions in a manner which reduces imports relatively to domestic production of an agricultural product, and which thereby gives protection to domestic agricultural production by means of quantitative restrictions. Agricultural protection by means of measures such as tariffs and subsidies is permitted to a wider extent under the Charter, but the use of quantitative restrictions for this purpose is only permitted by means of the provisions of Chapter III relating to economic development and reconstruction.

Article 21.—Restrictions to Safeguard the Balance of Payments

Article 21 recognizes the right of a Member to restrict imports in order to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves, due regard being paid in either case to any special factors affecting a Member's reserves or its need for reserves. (No definition of monetary reserves is provided in the Charter.)

A Member is entitled to maintain such existing restrictions as it considers necessary under this Article, but is obliged to consult, if practicable, with the Organization before instituting new restrictions. There is an obligation to relax the restrictions as conditions improve, and to eliminate them when they can no longer be justified. No time limit is stipulated, since the continuing need for restrictions will vary according to the different circumstances of Members. Special recognition, however, is given to the problems of economic adjustment resulting from the war.

As a result of fulfilling its obligations to maintain full employment, large and steadily growing demand, and to promote development of economic resources, a Member may experience a high level of demand for imports. In this case, the continuing pressure on foreign exchange

resources might be the direct result of domestic policies of full employment and development which a Member is pursuing in conformity with other parts of the Charter.* Accordingly, no Member may be required to withdraw or modify its balance-of-payments restrictions on the grounds that a change in domestic policies (for example, a deflation) would render such restrictions unnecessary. Provision is also made for import selection in order to give priority to imports which are more essential in the light of domestic policies. There is thus a certain parallel with the United Nations Charter (Article 2, paragraph 7) which does not authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State. Under the draft Charter of the Trade Organization, however, Members undertake, in carrying out their domestic policies, certain obligations regarding balance-of-payments restrictions so that the trade of other Members is not unnecessarily damaged.

The final part of Article 21 concerns procedure for complaint and consultation. The Organization may at any time enter into consultations with a Member regarding its balance-of-payments restrictions, and within two years of the Charter entering into force the Organization is to make a review of such restrictions as are being applied by Members. The Organization is not empowered, however, to recommend withdrawal or modification of restrictions as a result of this review, since such recommendation can only arise from a complaint by a Member whose interests are prejudiced. A Member may, if it so desires, approach the Organization with a view to obtaining prior approval for the institution or maintenance of restrictions. In cases where this is not obtained a complaint procedure operates and a Member may consequently be recommended to modify or withdraw restrictions which are unjustified in the light of the earlier provisions of the Article, subject, of course, to the safeguards relating to domestic policies.

Article 22.—Non-discriminatory Administration of Quantitative Restrictions

Whenever either import or export prohibitions or restrictions are being applied under the Charter, the rule of non-discrimination applies. Detailed provisions are made to ensure that in applying import restrictions to any product Members shall aim at a distribution of trade in such product approaching as closely as possible to the shares which the various Member countries might be expected to obtain in the absence of such restrictions. These provisions also apply to tariff quotas, and, in so far as applicable, to export restrictions and to internal regulations and requirements (such as taxation and mixing regulations) under Article 18.

* NOTE.—In this connection reference should be made to the footnote appended to Article 31, which is relevant to New Zealand's position.

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

Exceptions from the rule of non-discrimination are permitted in the case of exchange and currency difficulties. If a substantial and widespread disequilibrium prevails in international trade and payments, it is recognized that a greater volume of trade may result from discriminatory trade than from the strict observance of the rule of non-discrimination. Thus a Member which experiences a shortage of hard currency such as dollars, and is forced to cut down imports from dollar sources, need not cut down imports from soft currency sources proportionately if such action would have the result of reducing its total imports below the level it could otherwise afford. In order that the achievement of international multilateral trade, which is envisaged in the objectives of the Charter, is not handicapped, discriminatory action under this Article is closely limited by detailed technical rules, and, after a transition period, requires the prior approval of the Organization.

Certain other exceptions are also provided for, including particular reference to preferential meat quotas among British Commonwealth countries (see paragraph 5 (b)).

Article 24.—Exchange Arrangements

Provision is made for the fullest co-operation and consultation between the International Trade Organization and the International Monetary Fund, since many of the matters dealt with in Section B are of common interest, and a duplication of functions and of statistical services regarding monetary reserves, balances of payments, and foreign exchange arrangements needs to be avoided. The International Monetary Fund is given special competence regarding some aspects of the balance-of-payments criteria in Article 21, but it should be noted that other aspects of these criteria (for example, the extent of the balance-of-payments restrictions which is necessary, and the special factors affecting a Member's need for reserves) are not specifically referred to the International Monetary Fund. It is also stipulated that the final decisions concerning quantitative restrictions rest with the International Trade Organization. New Zealand recorded a reservation on this portion of the text in order that its full implications might receive further study.

Members are obliged not to frustrate, by exchange action, the intent of the provisions of Section B relating to quantitative control of trade, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund. It is recognized that common membership of both international Organizations would be desirable, but special provision has been made for Members of the International Trade Organization which are not Members of the International Monetary Fund. Such Members cannot, of course, be required to become Members of the Fund, but they are required to enter into a

special exchange agreement with the International Trade Organization. It is intended that such an agreement would parallel the provisions of the Articles of Agreement of the Fund relating to exchange control and exchange rates, but would not be more restrictive than those provisions.

SECTION C.—SUBSIDIES. (Articles 25–29)

The general intention of the Section on subsidies is to give Members whose interests are prejudiced by subsidization the right to a full international consideration of their case, to oblige subsidizing Members to participate in such consideration, and to provide for limiting subsidization so that its prejudicial effects may be reduced.

A Member employing subsidies is not required to seek the prior approval of the Organization, but Article 25 provides that a Member must inform the Organization concerning such of its subsidies as operate to increase its exports or reduce its imports of any product. Other Members have a right of complaint and consultation, with a view to limiting subsidization when it is determined that serious prejudice to their interests is caused or threatened.

Article 26 looks towards the early elimination of export subsidies, which result in the sale of a product for export at a lower price than the comparable price charged to buyers on the domestic market. Whereas a subsidy to all producers of a product, irrespective of whether it is exported or not, would be subject only to the provisions of Article 25, an export subsidy of the type referred to in Article 26 is required to be eliminated within two years. An extension of this time limit can only be made by the Organization after a careful analysis of the situation.

Article 27 provides an exemption from this rule in the case of stabilization schemes for primary products. Such schemes may at times result in the price to buyers on the domestic market being higher than the export price, and at times the reverse. This is permitted, provided the interests of other Members are not seriously prejudiced. If serious difficulties occur concerning a primary commodity, the negotiation of a commodity agreement might be the best solution, and provision is made for following that course of action where practicable. If such a commodity agreement is unsuccessful, the Organization may in some circumstances permit the re-application of an export subsidy.

Article 28 provides that, in the exceptional cases in which export subsidies are permitted to be retained, such subsidies shall not be used to “pirate” markets by increasing a Member’s share of world trade in a product above such share in a previous representative period.

Article 29 is purely procedural.

SECTION D.—STATE TRADING. (Articles 30–31)

The purpose of Articles 30 and 31 is to bring the trading activities of State enterprises, or enterprises granted exclusive or special privileges by the State, into conformity with the principle of non-discriminatory treatment. The main requirements imposed on such enterprises are that they shall make their purchases and sales “solely in accordance with commercial considerations” and shall afford the enterprises of other Members adequate opportunity to compete for participation in such purchases or sales. The term “commercial considerations” is not defined in the Charter, and in the absence of such definition can be assumed to have a wide connotation.

In order that State trading enterprises shall not be subject to requirements under the Charter more onerous than those imposed on private enterprises, paragraph 1 (c) of Article 30 imposes an obligation on Members not to prevent any enterprise, private or otherwise, from acting in accordance with the principles set out above.

Paragraph 2 relaxes the main provisions of Article 30 in favour of imports of products for governmental use and not for resale or use in the production of goods for sale.

Article 30 deals with State trading enterprises generally; Article 31 deals with the particular case of State trading monopolies, its object being to ensure that such monopolies promote expansion of trade. The basic requirement of Article 31 is that a Member maintaining a State trading monopoly shall on request negotiate with Members substantially interested in the product concerned in the manner provided for under Article 17 in respect of tariffs.

Paragraphs 1 (a) and 1 (b) of Article 31 define the purpose of these negotiations in the case of export and import monopolies respectively. In the case of exports the intention is to negotiate arrangements designed to limit the protection afforded through the operation of the monopoly to domestic users of the monopolized product, or designed to ensure exports in adequate quantities at reasonable prices. In the case of imports negotiations must be directed towards the establishment of a maximum import duty on the product concerned, unless the negotiating parties agree that this procedure is impracticable or would be ineffective. In the latter case any other mutually acceptable arrangement consistent with the purposes of the Charter may be negotiated.

Paragraph 4 requires State trading monopolies not to sell imported products in the domestic market at a price exceeding the landed cost plus the maximum import duty plus a due allowance for certain internal charges and a reasonable margin of profit. This requirement is, however, subject to a proviso to meet the needs of domestic stabilization schemes for primary products.

Paragraph 5 requires State trading monopolies to satisfy the full domestic demand for the imported product, wherever this principle can be effectively applied.

The Preparatory Committee considered the special case of countries maintaining a complete or substantially complete monopoly of their whole foreign trade. The New York draft made special provision for economies of this type in an Article entitled "Expansion of Trade by Complete State Monopolies of Import Trade." Since no representative of a country with this type of economy attended the sessions of the Preparatory Committee it was decided to leave for the decision of the World Conference the question whether such economies were adequately provided for in Article 31.

The proposal of the New Zealand Delegation, which is referred to in the footnote to Article 31, was a proposal based on the view that, if countries maintaining a complete State monopoly of their foreign trade or carrying out State trading operations were to be provided for in the Charter, special provision should also be made for countries which maintained a complete control of their foreign trade by other methods. The New Zealand proposal was designed to ensure that such countries should expand their foreign trade in consonance with the purpose of the Charter, and included certain safeguards against the use of such controls in a restrictive and discriminatory manner to the prejudice of the interests of other Members.

The Preparatory Committee, while fully recognizing the value of the objectives of the New Zealand proposal in relation to the purpose of the Charter, was concerned also to avoid abuse of such a provision in the Charter by countries which might not pursue the expansionary policy which New Zealand affirmed.

The opinion, therefore, of the Preparatory Committee was that, since the maintenance of quantitative regulation of trade in the case of economies of the New Zealand type was closely related to the fact that such economies carried out domestic policies of full employment and economic development involving the maintenance of a high level of effective demand, including demand for imports, Article 21 should be so written as to recognize this situation. Accordingly, Article 21, paragraph 3 (b), was drafted in its present form.

The reservation of the New Zealand Delegation was recorded in order that the Government might study the full implications of the position.

SECTION E.—GENERAL COMMERCIAL PROVISIONS. (Articles 32–39)

This Section contains general commercial provisions of a technical nature, which are of considerable importance in the Charter in relation to other provisions respecting the reduction of trade barriers. The mere reduction of a tariff, for example, is not of real significance unless

it is accompanied by an assurance that the concession will not be nullified by an unfair system of assessing valuation for customs purposes or by formalities relating to trade. The section is intended to ensure the elimination of unfair practices in the administration of governmental requirements affecting trade. Existing practices in New Zealand are in conformity with the provisions of this section.

Article 32.—Freedom of Transit

This article provides for freedom of transit through each Member country for traffic in transit to or from other Member countries.

Article 33.—Anti-dumping and Countervailing Duties

Conditions are stipulated in which anti-dumping and countervailing duties may be used, and limits are set to their severity. Anti-dumping and countervailing duties must not be charged unless material injury is caused or threatened to an established domestic industry, or unless it would appear that dumping or overseas subsidization would prevent or materially retard the establishment of a domestic industry. Co-operation in the imposition of anti-dumping measures is also provided for when, although no injury is being occasioned to a domestic industry, another Member is resorting to dumping measures which injure the trade of a third country. The use of anti-dumping measures is restricted solely to the open imposition of dumping duty, since this is considered preferable to the imposition of other restrictions which might be difficult for the exporting Member to detect.

Article 34.—Valuation for Customs Purposes

In order that the administration of customs valuation legislation shall be free from abuses which have existed in the past in certain countries, this Article provides safeguards to ensure that the value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values. Standard methods are also formulated for the conversion of foreign currencies for customs purposes.

Article 35.—Formalities connected with Importation and Exportation

This Article provides for consultation between Members to reduce the number and diversity of incidental fees and charges and for the simplification of import and export requirements generally. It also provides that the imposition of penalties shall be made in a fair and judicial manner, and stipulates certain services where only the fees related to the cost of such services may be charged.

Article 36.—Marks of Origin

Members are obliged to work in co-operation through the Organization towards the early elimination of unnecessary marking requirements. Steps are also to be taken towards the prevention of the use of trade names so as to mis-represent the regional or geographical origin of a product.

Article 37.—Publication and Administration of Trade Regulations

The object of this Article is, first, to provide for prompt publication of laws, regulations, and decisions concerning the classification and valuation of goods for duty purposes or affecting regulation of imports or exports, &c., so that governments and traders may become acquainted with them, and, secondly, to ensure that Members maintain procedures allowing for review of administrative action in customs matters.

Article 38.—Information, Statistics, and Trade Terminology

The Organization is to act as a centre for the collection, exchange, and publication of statistical information relating to trade, and Members will be obliged to communicate the necessary information to the Organization.

Article 39.—Boycotts

Members will be obliged not to encourage, support, or participate in boycotts or other campaigns against the products of other Members.

SECTION F.—SPECIAL PROVISIONS. (Articles 40–43)

Article 40.—Emergency Action on Imports of Particular Products

This Article provides the main escape clause in the event of a tariff reduction or other concession resulting in an increase of imports of a product either to the serious detriment of domestic producers or, in the case of a reduction in a preference, to the producers of the Member which receives or received such preference.

Prior consultation with interested Members is provided for except in critical circumstances, although if action is taken provisionally without consultation subsequent consultation shall be effected without delay.

If agreement is not reached among the interested Members, action may still be taken by the importing Member, but subject to such retaliatory action by the exporting Member as is not disapproved by the Organization.

Article 41.—Consultation

Members are obliged to accord sympathetic consideration to, and afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to all matters affecting the operation of Chapter IV.

*Article 42.—Territorial Application of Chapter IV: Frontier Traffic—
Customs Unions*

This Article provides that the rights and obligations arising under this Chapter shall be deemed to be in force between each and every territory which is a separate customs territory and in respect of which the Charter has been accepted. It also deals with the conditions attaching to the formation of Customs Unions, and provides reasonable safeguards against the application of new unilateral preferences under the guise of a partial Customs Union.

Article 43.—General Exceptions to Chapter IV

The general exceptions to Chapter IV are divided into two categories, permanent and temporary. Exceptions of a permanent nature are those relating to public morals, health, gold or silver, enforcement of legislation, products of prison labour, protection of national treasures, conservation of exhaustible natural resources, inter-governmental commodity agreements, and export restrictions in connection with governmental stabilization plans. Exceptions which are intended to be used only until 1951 are those relating to the acquisition or distribution of products in short supply, to price control by Member countries undergoing shortages subsequent to the war, and to the orderly liquidation of wartime surplus stocks or of uneconomic wartime industries. The Organization may extend these exceptions beyond 1951 in particular instances if necessary.

CHAPTER V.—RESTRICTIVE BUSINESS PRACTICES. (Articles 44–51)

The Chapter on restrictive business practices is the first codification that has been made by a group of countries of the principles to which it is desirable to have international adherence in order to limit, or to eliminate business practices having harmful effects on world trade which monopolists, whether individual entities or cartel organizations, are in the position to pursue. The Charter would be inadequate in its scope if it did not provide for the correction of harmful conduct of that type by commercial enterprises. However, since international trade is not carried on by privately-owned commercial enterprises only, the Preparatory Committee agreed that the Charter should not leave the way open for one standard of conduct in those respects for State enterprises, and a different standard for others. The Chapter as drafted does, nevertheless, make a distinction between State and other enterprises in the operation of the complaints procedure prescribed in paragraphs 1 and 2 of Article 45, but this does not extend to relaxation in the standard of conduct expected.

In paragraph 3 of Article 45 an enumeration is made of what are regarded as the main restrictive business practices, but it is not claimed that it is an exhaustive specification. It is important when considering Chapter V to appreciate that it does not condemn such practices, but is designed to eliminate them when they have harmful effects. Some delegates held the view that whenever the practices listed are pursued their effect must be harmful, but others saw merit in them in circumstances, for instance, when a cartel arrangement :

- (1) Brings stability to industries requiring large investments and depending mainly on external markets ; or
- (2) When it leads to exchange of technical information and thus facilitates the establishment of new industries in, for example, the less industrialized countries.

The Chapter represents the compromise made between the extremes of these points of view. Its essence is that business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control and which have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives of the Organization are the ones to which Members are expected to give their attention.

The significance of the Chapter will be more readily appreciated if paragraph 1 of Article 44 is identified as a statement of general policy towards restrictive business practices to which Members subscribe. If there were the likelihood that all Members of the Organization could agree on whether or not any particular practice had harmful effects on the expansion of production or trade and interfered with the achievement

of any of the other objectives of the Organization, it would perhaps be unnecessary to set out in the Charter any more than that one paragraph. However, because of the probabilities of differences of viewpoints on such questions, and because in consequence one Member may allow practices to continue which would not find favour with another Member, the Preparatory Committee set out detailed provisions in the Charter on the subject. Furthermore, because the provisions of the Chapter break new ground in a field of which knowledge is not complete the Article providing for the study of a wide range of aspects of restrictive business practices affecting international trade is an important one.

The more significant provisions of the respective Articles in the Chapter, other than paragraph 1 of Article 44, which is the general undertaking by Members to prevent harmful practices, may be stated briefly.

Paragraph 2 of Article 44 contains an agreement by Members that complaints regarding practices of the types listed in paragraph 3 of the Article should be investigated by the Organization to determine whether or not they are harmful if they are engaged in by commercial enterprises which, individually or collectively, possess effective control of trade between two or more countries in one or more products.

Article 45 prescribes procedures for consultation between Members and for dealing with complaints. It also empowers the Organization to seek information relating to complaints (the undertaking by Members to supply it is contained in Article 47), and if the case is such as to justify such a course the Organization is authorized in any particular case to request each Member concerned to take remedial action. A Member may be requested to report on the action which it takes and the Organization will publish its decisions, its recommendations to Members, and the action taken by them.

Article 46 provides for studies relating to restrictive business practices. It provides, too, for the Organization, firstly, to make recommendations to Members concerning conventions, laws, and procedures which are relevant to their obligations under Chapter V, and, secondly, to arrange for conferences of Members to discuss any matters relating to restrictive business practices in international trade. One of the subjects listed among those which the Organization is authorized to study is the registration of restrictive business agreements. The Preparatory Committee considered whether the Charter should contain specific provisions requiring all cartel arrangements affecting international trade to be registered with the Organization, but for various reasons decided not to include such provisions.

In Article 47 the obligations of Members under the Chapter are set out. In addition to the general undertaking to suppress harmful practices Members undertake to make the arrangements necessary for presenting complaints and furnishing information to the Organization. If, however, information is called for which, if disclosed, would substantially damage the legitimate business interests of a commercial enterprise it

may be withheld. It is convenient to draw attention at this point to the fact that Article 94 provides that a Member shall not be required to furnish information if its disclosure were contrary to that Member's essential security interests. Members further agree to take full account of requests, decisions, and recommendations of the Organization, but what action is taken by Members in any particular case is for each of them to determine.

Article 48 envisages that Members may co-operate among themselves to carry out an enactment of any one of them which has as its effect the furtherance of the objectives of the Chapter.

The recital in Article 49 that no act or omission to act on the part of the Organization shall preclude any Member from enforcing any of its own enactments directed towards preventing monopoly or restraint of trade was included at the request of a Member of the Preparatory Committee which saw necessity for it in relation to its anti-trust legislation and administration.

The manner in and the extent to which the Organization will concern itself with restrictive business practices in such services as transportation, telecommunications, insurance, and banking affecting international trade are set out in Article 50. If a Member considers its interests are seriously prejudiced by such practices engaged in by enterprises within the jurisdiction of another it will attempt to have the matter corrected through consultation with that other Member. Should this method fail, the matter may be referred to the Organization whose course of action on it will be determined by whether or not another inter-governmental organization exists by which it may more appropriately be dealt with. For instance, if the proposed inter-governmental maritime organization is formed and if its functions include the handling of restrictive business practices in the field of shipping, then it would be appropriate for that body rather than the international Trade Organization to deal with any complaint regarding shipping. If however, there is no such other authority the Organization may make recommendations to remedy the particular situation in so far as it comes within the scope of the Charter. The Organization is also authorized to co-operate with other inter-governmental organizations concerning restrictive business practices affecting any field within the scope of the I.T.O's Charter.

Specific exceptions from the provisions of the Chapter are made under Article 51 to apply to inter-governmental commodity agreements which comply with Chapter VI and to bilateral inter-governmental agreements for the purchase or sale of goods within the terms of the Articles on State trading. Nevertheless, if it appears to the Organization that there are features of these State trading agreements which are inconsistent with the objective to remove the harmful effects of monopolistic practices the Organization may make appropriate recommendations concerning them.

CHAPTER VI.—INTER-GOVERNMENTAL COMMODITY AGREEMENTS.
(Articles 52–67)

This Chapter is an important part of the Charter since the conditions of production and consumption of certain primary commodities are such that international trade in these commodities is subject to special difficulties not generally associated with manufactured goods. These difficulties arise from inelasticities of supply and demand, often involving the accumulation of surpluses, which cause serious hardship particularly to small producers. Experience has shown that such difficulties have been greatly accentuated by booms and slumps. To the extent, therefore, that a policy of high and stable employment is successful on an international scale, the fluctuations in production and consumption of primary commodities are likely to be reduced, and the special difficulties correspondingly eased. On the other hand, the achievement of greater stability in the real income of primary producers will in its turn assist in the general maintenance of high and stable levels of employment.

There is therefore a need, in certain circumstances, for inter-governmental commodity agreements in the interests of producers and consumers alike. The Charter does not deal with the great variety of special difficulties peculiar to individual commodities. Instead, it develops the broad general principles which should govern the use of inter-governmental commodity agreements, with the objective of preventing countries from resorting, as in the past, to action restrictive of world trade and production.

Section A.—Introductory Considerations. (Articles 52–54)

Article 52 describes in general terms the difficulties relating to primary commodities. It should be noted that it does not exclude the possibility that similar difficulties may sometimes also apply to non-primary commodities. Article 53 provides a definition of primary commodities which is wide enough to include both processed commodities and synthetics, and also permits non-primary commodities to be subject to inter-governmental commodity agreements under this Chapter in appropriate circumstances. Article 54 sets out in some detail the objectives of inter-governmental commodity agreements.

Section B.—Inter-governmental Commodity Agreements in General.
(Articles 55–58)

In order that inter-governmental commodity agreements shall not be made without a full study and discussion of the problems relating to the commodity in question and of the effects on countries substantially interested, Articles 55 and 56 provide for study groups and commodity conferences. Article 57 then sets out the principles governing the

constitution and operation of all agreements. For example, since certain agreements in the past operated to the benefit of producing countries only, it is provided that all agreements shall include provision for adequate participation by consuming and importing countries as well as by producing and exporting countries. Article 58 defines the two types of inter-governmental commodity agreements as (a) control agreements and (b) other agreements. The reason for this distinction is that restrictive control agreements to deal with a surplus situation are made subject to special rules which are not necessarily applicable to other agreements designed to expand production and consumption of the commodity concerned.

Section C.—Inter-governmental Commodity Control Agreements.

(Articles 59–63)

Article 59 provides that control agreements may be employed only in the case of a burdensome surplus or of widespread unemployment in connection with a primary commodity. In these cases major adjustments by way of expanding world consumption of the commodity or of shifts of production may be necessary, and importing countries must have an equal voice with exporting countries in formulating programmes of adjustment. Article 60 accordingly sets out additional principles which apply only to control agreements of this nature. Articles 61, 62, and 63 describe the procedural and organizational arrangements appropriate to commodity control agreements.

Section D.—Miscellaneous Provisions. (Articles 64–67)

Article 64 ensures full co-operation with any inter-governmental organization, such as the Food and Agriculture Organization, which is competent in the same field, so that duplication of functions and conflicting action may be avoided. Article 65 provides for submission of information to the Organization and consultation with the Organization regarding existing and proposed commodity agreements, to ensure that they conform with the appropriate provisions of this Chapter. Article 66 sets out the position of dependent territories of any country regarding participation in commodity agreements. In Article 67 exceptions from the provisions of this Chapter are made in the case of certain special types of inter-governmental commodity agreements, including, in particular, bilateral inter-governmental agreements relating to the purchase and sale of a commodity falling under the State-trading provisions of the Charter.

CHAPTER VII.—THE INTERNATIONAL TRADE ORGANIZATION

MEMBERSHIP OF THE ORGANIZATION. (Article 68)

The Charter as now drafted envisages different classes of Members, including :—

- (1) Those States which are invited to the World Conference and whose Governments accept the Charter by a date to be specified, or, if the Charter shall not have entered into force by a date to be specified, those States whose Governments are applying the General Agreement on Tariffs and Trade (still to be concluded) together with any other Governments represented at the said World Conference.
- (2) Those States whose membership is approved by the Organization and which accept the Charter, but which do not fall under paragraph (1) above.
- (3) Certain separate Customs Territories which do not have full responsibility for the formal conduct of their diplomatic relations but which are autonomous in the conduct of their external commercial relations and which are admitted to the Organization on such terms as are to be determined. These Customs Territories may include either of the following classes :—
 - (a) Those invited to the World Conference ;
 - (b) Those not so invited.

Acceptance of the Charter on their behalf will be made by the Member which has the responsibility for the conduct of the formal diplomatic relations of the respective Customs Territories.

Conditions upon which membership rights are to be extended to Trust Territories administered by the United Nations and to the Free Territory of Trieste are to be determined by the Conference of the I.T.O. In this respect, although there is no specific provision to that effect, it is assumed that in the agreement to be entered into with the United Nations in terms of paragraph 1 of Article 84 of the Geneva Draft the necessary consultation regarding the Trust Territories will be provided for.

While provisions of Article 68 as it is at present drafted relate only to admission to the Organization, questions are yet to be resolved respecting suspension and expulsion.

Once a State or a Customs Territory becomes a Member, the Charter as at present drafted provides for membership to be terminated by the following means :—

- (1) Under paragraph 3 of Article 97 the Charter itself may be terminated at any time by agreement of three-fourths of the Members.

- (2) Under paragraph 1 of Article 97 voluntary withdrawal of individual members may be made by written notice at any time after the expiration of three years from the day of the entry into force of the Charter.
- (3) Under paragraph 2 of Article 95 the Conference may at any time determine that if a Member has not accepted a particular amendment to the Charter that Member shall be required to withdraw from the Organization.
- (4) Under paragraph 2 of Article 95 a Member not accepting an amendment to the Charter shall be free to withdraw from the Organization upon the expiration of six months from the day on which written notice to that effect is received by the Director-General. This power appears to be available to a Member in the circumstances prescribed even though the three years' period referred to in subparagraph (2) above may not have expired.
- (5) Under Article 17 if a Member is found by the Organization to have failed, without sufficient justification, to carry out negotiations for tariff adjustments, benefits may be withheld from that Member. If they are so withheld and result in effects described in paragraph 2 of Article 17, the Member shall be free to withdraw from the Organization.
- (6) Under paragraph 4 of Article 90 provisions similar to those described in subclause (5) above are prescribed to extend to obligations under the Charter other than those set out in Article 17.

Expression has been given in the proceedings of the Preparatory Committee to the viewpoint that the Charter should provide for additional means of terminating membership. One Delegation proposed that a provision be included in the Charter to empower the Conference under such conditions as it may deem appropriate to require any Member which has persistently violated the provisions of the Charter to withdraw from the Organization. Another Delegation in the closing stage at Geneva proposed that Members of the Organization which are suspended from the exercise of the rights and privileges of membership of the United Nations shall, upon the request of the latter be suspended from the rights and privileges of the International Trade Organization, and that Members of the Organization which are expelled from the United Nations shall automatically cease to be members of the International Trade Organization. This proposal would bring the I.T.O. Charter in this respect into conformity with the Constitution of the United Nations Educational Scientific and Cultural Organization. If the foregoing proposals are brought forward at the World Conference, consideration will require to be given whether more harm than good may not result from expelling a Member from the trade organization, particularly when termination of membership of the United Nations may have been on grounds not associated with trade.

FUNCTIONS OF THE ORGANIZATION. (Article 69)

Functions devolve upon the Organization from the operation of the provisions of many Articles in the Charter. Article 69 does not restate those functions, which are specified elsewhere. It completes the specification by making provisions for obtaining and dealing with information on matters with which the Organization will be concerned, for encouraging and facilitating consultation among Members, for undertaking studies on matters affecting the achievement of the objectives of the Organization, for assisting Members in carrying out the provisions of the Charter, and, finally, provision is made for co-operation with the United Nations and inter-governmental organizations in furthering the achievement of the economic and social objectives of the United Nations and the restoration and maintenance of international peace and security.

CHARACTER OF THE ORGANIZATION AND ITS STRUCTURE. (Articles 70-88)

It is provided in Article 86 that the Organization shall have legal personality and shall be vested with such legal capacity (which in terms of Article 87 shall apply also within the territory of each of its Members) as may be necessary for the exercise of its functions.

It is proposed under Article 84 that the Organization shall become one of the specialized agencies of the United Nations and that there shall be effective co-operation not only between the Organization and the United Nations, but also between the Organization and inter-governmental and non-governmental organizations respectively having related responsibilities and interests. Moreover, if it should appear to the competent authorities of the organizations concerned that there would be merit in bringing within the International Trade Organization all or a part only of the functions of another organization whose purposes and functions lie within the scope of the Charter, power is given to make such arrangements as are appropriate.

Within its own structure the Organization is to have a Conference, an Executive Board, a Tariff Committee, such Commissions as the Conference may establish, together with a Director-General and staff. Power is also given for the establishment of such other organs as may be required.

Subject to the exception that the Tariff Committee is to have final authority on certain tariff questions, the Conference, on which all Members of the Organization are to be represented, is to hold the highest authority in the conduct of the affairs of the Organization. Its powers are set out in Article 74.

The Tariff Committee, which is to comprise those contracting parties to the General Agreement on Tariffs and Trade which are also Members

of the Organization, is to initiate the negotiations and make the determinations and recommendations provided for in Article 17 concerning tariff questions.

While the Preparatory Committee has resolved to include an Executive Board as one of the main organs in the administrative structure, unanimity of view was not reached in the Committee on such essential points as its size, the method of appointment, and the basis of representation. The Executive Board is to be responsible for the execution of the policies of the Organization and shall exercise the powers and perform the duties assigned to it by the Conference.

In view of the wide range and the complexity of the tasks which it is anticipated will fall on the Organization in the carrying-out of its functions under the various headings of the Charter, the Preparatory Committee is of the opinion that permanent bodies composed of specialists would, in certain fields, more efficiently sift the issues in problems to the point where decision on them is called for, than either the full Board or sub-committees of its Members or individual persons on the staff. The Charter accordingly empowers the Conference to establish such Commissions as may be required. The Commissions are to have the functions determined for each by the Conference, but they will be under the supervision of the Executive Board, and the Board will take such action on their recommendations as it deems appropriate. The number of Members of any Commission shall not exceed seven, but the Organization is obliged to arrange for representatives of inter-governmental organizations which it considers to have special competence in the field of activity of any of the Commissions to participate in their work. For example, it may be assumed that the Food and Agriculture Organization will have special competence in the field of activity of a Commission dealing with Inter-governmental Commodity Agreements under Chapter 6 of the Draft Charter. It is anticipated that, except in cases where special arrangements are otherwise made, the participation of other Organizations in the work of Commissions of the International Trade Organization will not extend to membership of the Commission.

The Chief Administrative Officer of the Organization is to be the Director-General, who shall be subject to the general supervision of the Executive Board, although his powers and duties, and the conditions and the term of his appointment, are all to conform to regulations approved by the Conference. The task is specifically imposed upon him of presenting to the Conference an annual report on the work of the Organization, as well as the annual budget estimates and the financial statements. However, it is important to note that he will be subject to the general supervision of the Executive Board. The Conference is obliged to approve the budget and to apportion the expenditure among the Members which under Article 88 all undertake to contribute their shares promptly.

Provision for the appointment of staff is contained in Article 83, and Article 85 specifies that the responsibilities of the Director-General and the staff, including the Members of Commissions, are to be exclusively international in character and that they shall not be subject to any authority external to the Organization.

Two subjects concerned with administration on which the Preparatory Committee is presenting a choice of texts for consideration by the World Conference are voting in the Conference and composition of the Executive Board.

So far as voting in the Conference is concerned, it will be noted that Article 72 includes three texts. The points of difference between them are :—

- (1) Alternative A provides that each Member shall have one vote in the Conference,
- (2) Alternative B provides that each Member shall have in the Conference the number of votes allocated to it in pursuance of the provisions of an Annex to the Charter which will contain a schedule of votes ascribed to each Member under a system of weighting, and
- (3) Alternative C provides in the first instance for each Member to have one vote in the Conference, but there is the further provision that, at the instance of any Member, any decision on certain matters yet to be specified (which decision is reached by the Organization under the procedure of each Member having one vote) is to require corroboration by a second vote taken by a simple majority of votes cast in accordance with the plan of weighted voting which, if adopted, is to appear as an Annex to the Charter.

The attention given by the Preparatory Committee to this subject has been confined mainly to the principle involved in the issue of one Member one vote as compared with weighted voting. Accordingly, little consideration has been given to the merits of alternative systems of weighting. An Appendix to the Geneva Draft contains two formulæ. They are similar to the extent that both include external trade and national income as elements. They differ in that Formula A includes population and also the percentage of external trade to national income, while 100 basic votes are accorded to each Member. Formula B, on the other hand, does not include population directly as an element, but only by relating the total of external trade to total population, and it accords only 10 basic votes to each Member. Formula A is described as a system of "light" weighting because the highest number of votes its use gives to a Member in the illustration is 399 against 100 as the least. Formula B is described as a system of "heavy" weighted voting. The highest and the lowest numbers of votes in the illustration are 378 and 10 respectively.

In Article 75, dealing with the composition of the Executive Board,, three texts are being submitted to the World Conference. The main points in each are :—

- (1) Alternative A provides for permanent seats for Member States named therein (though this, with other provisions of the Article, will be subject to periodic review) and for other seats to be allocated in a manner to give representation to geographical areas.
- (2) Alternative B does not specifically provide for seats to be held permanently, but it states that seven of the Members may be immediately re-elected on the expiration of the term for which they have been elected. The choice of those seven would require to be made from time to time by the Conference, but, by inference, the remaining Members would not be eligible for immediate re-election.
- (3) Alternative C provides for permanent seats after the manner of alternative A, but, in respect of the remaining seats, no provision is made for allocation on a geographical basis.

CHAPTER VIII.—SETTLEMENT OF DIFFERENCES— INTERPRETATION. (Articles 89–92)

The purpose which underlies Chapter VIII is the desire to ensure that all necessary facilities will be available whereby differences of viewpoint which will inevitably arise out of the operation of the Charter can be resolved without resort to retaliatory measures by any Member. In Article 89 provision is made for an aggrieved Member to represent the subject of its grievance to the other Member or Members which it considers to be concerned, and Members undertake that if they are thus approached they will give sympathetic consideration to the representations or proposals so made. If settlement of the difference does not result from such consultation, the matter may be referred to the Organization for investigation and action. Under Article 90 it rests with the Executive Board as to whether any matter so referred shall be submitted to the Conference before an investigation is made, but if the Executive Board does deal with it and make a ruling upon it, such a ruling will at the instance of any interested Member be subject to review by the Conference. In turn, any resolution passed by the Conference upon such a ruling of the Executive Board shall at the instance of any substantially interested Member be subject to review by the International Court of Justice.

A power vested in the Conference is that, if it considers the circumstances are serious enough to justify such a course in relation to a matter in dispute, it may authorize a Member or Members to suspend the application to any Member or Members of such obligations or concessions under the Charter as the Conference determines to be appropriate. If

in such a case the application to any Member of an obligation or concession is suspended that Member shall then be free within a limited period to withdraw from the Organization.

It is important to note that a resolution or decision of the Conference shall have full force and effect even though the subject is referred to the International Court of Justice, but some safeguard against damage to a Member's interests from such a position is given by the provision in paragraph 4 of Article 91 that the Conference may suspend the operation of its decision if it so resolves. The question of whether rulings of the Executive Board are to be maintained or suspended pending their review by the Conference under paragraph 3 of Article 90 is to be settled under rules of the Conference.

If the Members which are parties to a dispute consent, the Executive Board may refer a question at issue to arbitration. One Delegation reserved its position on this provision on the grounds that it is anxious to see built up a body of case law on the matters on which Members differ. If the arbitration procedure is widely resorted to it is alleged that it is unlikely that any consistency will emerge in the awards made. In matters to be referred by the Organization to the International Court of Justice the procedure to be followed is that specified in the Statute of the Court relating to advisory opinions. This follows from the consideration that because it is expected that most of the problems confronting the Organization will be associated with economic and technical matters in the field of trade it would be preferable if the case on which the Court is to adjudicate were stated in accordance with the advisory opinion procedure rather than for the Court to have to seek the facts. The statement of the facts underlying the question upon which the opinion of the Court is to be requested is to be furnished by the Organization in consultation with the Members substantially interested. The opinion of the Court is to be binding upon the Organization.

Nothing in Chapter 8 is to be construed to exclude other procedures provided for in the Charter for consultation and settlement of differences arising out of its operation. Article 92 provides that Members will not have recourse to any procedure other than one envisaged in the Charter for complaints and settlement of difficulties.

CHAPTER IX.—GENERAL PROVISIONS. (Articles 93–100)

Three texts of Article 93 dealing with relations with non-Members appear in the draft Charter since the Preparatory Committee was unable to reach finality on this subject in the absence of information as to the probable membership of the International Trade Organization. The problem becomes particularly difficult in the case of Members which carry on a substantial part of their trade with countries which might not join the International Trade Organization but which might nevertheless be Members of the United Nations. In this case the withholding of

benefits under the Charter would be embarrassing. On the other hand, if non-Members can gain advantages from the operation of the Charter without accepting any obligations, the incentive to join the Organization is weakened. The texts represent three different shades of opinion—alternative A gives Members substantial latitude in relations with non-Members; alternative B steers a middle course; alternative C is more severe, especially regarding contractual relations with non-Members.

Article 94 deals with general exceptions from the Charter on matters relating to national security. The effect is to exclude from the scope of the Charter—(a) information which in the opinion of the Member would, if given, prejudice its essential security interests; (b) action by a Member which it considers necessary in time of war or for protection of its essential security interests in relation to fissionable materials and to traffic in arms; and (c) action in pursuance of obligations of Members under the United Nations Charter for the maintenance of international peace and security.

Under Article 95 amendments to the Charter may be made with the approval of the Conference by the affirmative votes of two-thirds of the Members. If any amendment does not involve a change in the obligations assumed by Members it becomes effective when it is made. If any amendment is made that does involve a change in Members' obligations it is effective for those Members which accept it. However, the Conference may determine that any amendment is of such a nature that Members which have not accepted it within a period to be specified shall be required to withdraw from the Organization. There is provision for the Conference to waive this requirement in particular cases. A Member not accepting an amendment may withdraw from the Organization.

Article 96 provides for the convening of a special session of the Conference to review the provisions of the Charter before the end of the tenth year after its entry into force, while Article 97 specifies procedures whereunder Members may withdraw from the Organization or, if three-fourths of them agree, they may terminate the Charter.

The procedure for bringing the Charter into force and the authority for its registration with the United Nations are contained in Article 98.

Under Article 99 the territorial application of the Charter is defined and an undertaking is given that each Member shall take such reasonable measures as may be available to it to assure observance of the provisions of the Charter by regional and local governments and authorities. Special provisions are made to cover the requirements of separate Customs Territories which do not have full responsibility for the formal conduct of their diplomatic relations but which are autonomous in the conduct of their external commercial relations.

The final Article provides for deposit of the Charter in the official languages of the United Nations and for certified copies of it to be furnished to all interested Governments.

CONCLUSION

Finally, in presenting this report I should like to pay a tribute to all the other members of the New Zealand Delegation for their strenuous labours in connection with the work of the Second Session, and to express my appreciation of the co-operation at all times shown by them as a Delegation in carrying out New Zealand's responsibilities as a Member of the Preparatory Committee.

A handwritten signature in dark ink, appearing to read 'M. Nash', with a long, sweeping horizontal stroke underneath.

Leader,
New Zealand Delegation.

Wellington, N.Z.,

6 November, 1947.