1948

NEW ZEALAND

UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

REPORT BY NEW ZEALAND DELEGATION ON THE CONFERENCE HELD AT HAVANA, CUBA, FROM 21 NOVEMBER 1947 TO 24 MARCH 1948

Presented to both Houses of the General Assembly by Leave

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INTRODUCTION

THE Charter on Trade and Employment recently completed in Havana was the final outcome of the proposals issued by the United States on 6th December, 1945, which received the general approval of the United Kingdom. These proposals represented the first attempt to draft a code which could govern the pattern of international trade. For a number of years there had been a growing recognition of the need for international co-operation in post-war world trade in order to avoid the restrictive effects of irresponsible unilateral trade measures which since the latter part of the nineteenth century, and more especially between the years 1919 to 1939, had impaired the standards of living and economic development of almost all countries.

The principles contained in the "Proposals" had their origin in the declaration issued by the Prime Minister of the United Kingdom and the President of the United States of America on 14th August, 1941, which was known as the Atlantic Charter. In this Charter the desirability of fullest international collaboration was expressed as a means of securing for all, improved labour standards, economic advancement, and social security.

In Article VII of the Mutual Aid Agreement of 23rd February, 1942 (lend-lease), between the Governments of United Kingdom and United States of America the principle was further elaborated.

The proposals were considered by the Preparatory Committee of the United Nations Conference on Trade and Employment which was constituted on 18th February, 1946, by the Economic and Social Council of the United Nations. This Committee, which had the task of preparing a draft Charter for consideration by the Conference later, consisted of representatives of the Governments of the following countries; Australia, Belgium - Luxemburg, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Netherlands, New Zealand, Norway, Union of South Africa, U.S.S.R., United Kingdom, and United States of America.

The U.S.S.R., however, was not represented at any meetings of the Committee.

The Preparatory Committee held its first session in London from 15th October, 1946, to 26th November, 1946, and after examination and discussion of an amplified version of the original United States proposals a draft Charter was prepared.

This draft Charter was subsequently submitted for clarification and revision of its text to a Special Committee representative of all countries which attended the London session. This Special Drafting Committee met in New York from 20th January to 25th February, 1947, and revised the text further for submission to the second session of the Preparatory Committee.

This second session commenced at Geneva on 10th April, 1947, and completed its work on the text of the Charter on 23rd August of the same year. The final draft of the Charter as it emerged from the Preparatory Committee constituted the basis for discussion at the International Conference on Trade and Employment which was held at Havana from 21st November, 1947, until 24th March, 1948. The resultant Havana Charter is accordingly the culmination of many months of discussion and effort.

Of the seventy-one countries which were invited to the Havana Conference, fifty-eight accepted the invitation and attended. The following thirteen countries were invited but did not accept: Albania, Bulgaria, Byelorussia, Ethiopia, Honduras, Hungary, Paraguay, Roumania, Saudi Arabia, Ukraine, U.S.S.R., Yugoslavia, and Siam. Spain was not invited.

The Final Act of the Conference was signed by fifty-three countries. The external trade of the countries which attended was estimated to be approximately 90 per cent. of total world trade.

The countries present were represented by some five hundred delegates and advisers. Approximately eight hundred formal meetings were held, involving three thousand working-hours. New Zealand was represented by the following delegates and advisers:—

Rt Hon. W. Nash, Minister of Finance and Customs (*Leader*).

Mr J. P. D. Johnsen, Assistant Comptroller of Customs (*Deputy-Leader*).

Mr E. J. Fawcett, Director-General of Agriculture (*Delegate*).

Mr J. E. Stokes, Assistant Director of Commerce, Department of Industries and Commerce (*Delegate*).
Mr H. Thomas, Customs Department (*Adviser*).
Mr A. R. Low, Reserve Bank of New Zealand (*Adviser*).
Mr G. J. Schmitt, Treasury (*Adviser and Secretary to delegation*).
Mr P. A. Barnes, Ministry of Finance (*Adviser*).
Mr G. H. Datson, Ministry of Finance (*Adviser*).

Of these members of the delegation the Rt Hon. W. Nash, Mr J. P. D. Johnsen, Mr A. R. Low, Mr. G. J. Schmitt, and Mr P. A. Barnes were in attendance throughout the Conference.

The Charter as finally drawn up at Havana contains provisions designed to achieve and maintain full employment and improved living standards, and to promote economic development, particularly of underdeveloped countries.

The Charter also provides for the removal of unnecessary barriers to trade, and the reduction, by negotiation on a mutually advantageous basis, of the general level of tariffs of member countries. A substantial step in this direction was taken at Geneva when the countries represented at the second session of the Preparatory Committee carried out a series of tariff negotiations which were subsequently embodied in a General Agreement on Tariffs and Trade. Countries not party to the Geneva Agreement will be expected, within two years of their joining the International Trade Organization, to enter into tariff negotiations with a view to a reduction in tariffs on an agreed mutually advantageous basis; failure to do so without justifiable cause, will relieve parties to the Agreement from any obligation to extend concessions under that Agreement to the countries making default.

A general restriction is placed on the use of quantitative regulation of trade subject to certain exceptions, of which one of the most important is that permitting quantitative regulations to safeguard a member's balance of payments position. Also, with the prior approval of the Organization, quantitative regulations may, under certain circumstances, be adopted for purposes of economic development. Non-discrimination in the administration of quantitative regulations is provided for in the text of the Charter, but exceptions are made for periods of world disequilibrium and shortage of currencies.

Provision is made respecting the use of export subsidies which materially affect international trade. Stabilization schemes for primary products are not prejudiced under the Charter.

There is in the Charter text a general commercial code affecting such matters as valuation for Customs purposes; marks of origin, dumping, Customs regulations and formalities and freedom of transit. The creation of Customs Unions is permissible within certain defined rules.

The harmful effect of certain restrictive business practices is recognized, and the Charter lays down procedures for consultation and action by the members for removal of such harmful practices where they are found to exist.

The Charter sets out procedures designed to avoid as far as possible difficulties arising from production surpluses and price fluctuations in world trade in primary commodities.

The policy of the proposed International Trade Organization will be framed by the Conference of the Organization in which each member nation will exercise one vote only. The decisions of the Conference will be carried out by an Executive Board of eighteen members selected by the Conference.

The International Trade Organization when established under the Charter will be a specialized agency of the United Nations. Pending its establishment, certain functions will be performed by an Interim Commission which was established by a resolution of the Conference at Havana. The Commission consists of all Governments whose representatives approved the resolution and which are entitled to original membership of the Organization under Article 68 of the Charter. The Commission elected an Executive Committee comprising the following eighteen members to exercise its functions, which are outlined later in this report: United States of America, United Kingdom, Canada, France, Benelux, China, India, Brazil, Colombia, El Salvador, Mexico, Egypt, Philippines, Norway, Australia, Italy, Czechoslovakia, Greece.

I desire to affirm that the work at Havana and the preparation of this report was up to the usual high standard of delegations that have represented New Zealand at International Conferences, and I wish to pay tribute to

those who worked so hard and long at Havana to ensure that the trade practices and economy of New Zealand were fully understood by the delegations from other nations.

Mr G. H. Datson, on the Committee dealing with Employment and Economic Activity and Development and Reconstruction, gave excellent service. Mr Alan Low, of the staff of the Reserve Bank of New Zealand, who was carrying out special studies on the Federal Banking System of the United States, came from New York and was present during the whole period of the Conference, rendering invaluable service on the special Committees set up to deal with International Investments, Balance of Payments, and subjects related to currency problems. Mr J. E. Stokes gave good service at the Committee on Restrictive Business Practices, and Mr E. J. Fawcett, the Director-General of Agriculture, who was returning from his work at the Food and Agriculture Conference, provided an experience and knowledge for the work on Inter-governmental Commodity Agreements and Subsidies which brought much credit to the delegation. After the return of Mr Stokes to New Zealand, Mr Fawcett was also responsible for the work on the Committee on Restrictive Business Practices. Mr H. Thomas, of the Customs Department, with his knowledge of procedure and import and export trade, rendered excellent service on the Committees which examined and completed the draft sections on General Commercial Policy and Special Provisions. Mr G. J. Schmitt, of the Treasury, attended all the meetings on the Organization of the I.T.O. and made several valuable suggestions which were finally included in the draft of Chapters 7, 8, and 9. Mr P. A. Barnes attended all meetings as required, particularly those associated with the chapters dealing with Organization. In addition to his duties as personal secretary to the Leader of the delegation, Mr Barnes carried out the work of co-ordinating the distribution of documents, and his load of work was very heavy during the full period of the Conference.

The delegation was fortunate in having Mr J. P. D. Johnsen, the Assistant Comptroller of Customs, as Deputy-Leader. His long experience in negotiating trade agreements, his work at the London and Geneva Conferences, made him the key centre of the delegation's activities.

Mr Johnsen specialized in Committees dealing with Tariffs and Preferences, Internal Taxation and Regulations, and State Trading, and work associated with the General Agreement on Tariffs and Trade.

Miss N. Bowden and Miss E. O'Connor were untiring in their work on the reports of Committees and correspondence. Miss E. Lawrence, who came over from London, did excellent work in translation and as assistant to Messrs Barnes and Schmitt in general secretarial routine. Mr H. Saunders, from the Cipher Staff of the High Commissioner's Office in London, was on hand at all hours to receive, send, code, and decode the cables that it was necessary to exchange with Wellington, London, and Washington.

The whole delegation gave a service that could not have been surpassed, and I desire to pay this tribute to them on behalf of the Dominion, the Government, and myself personally as Leader of the delegation.

Minister of Finance and Customs.

SUMMARY OF PROVISIONS

CHAPTER I.—PURPOSE AND OBJECTIVES

(Article 1)

The first chapter sets out the objectives to the attainment of which, through individual and collective action, Members of the International Trade Organization pledge themselves to co-operate with a view to achieving the aims set forth in the Charter of the United Nations, particularly higher standards of living, full employment, and conditions of economic and social progress and development. These objectives briefly are—

(1) A balanced and expanding world economy through increased production, consumption, and exchange of goods.

(2) Industrial and general economic development, particularly of underdeveloped countries.

(3) Access to markets and products needed for economic prosperity and development.

(4) Reduction of tariffs and other trade barriers and elimination of discriminatory treatment.

(5) Avoidance of measures which would disrupt world commerce, reduce productive employment, or retard economic progress.

(6) Solution of problems affecting international trade through promotion of mutual understanding, consultation, and co-operation.

Rules designed to achieve the above objectives are set out in the succeeding chapters.

CHAPTER II.—EMPLOYMENT AND ECONOMIC ACTIVITY

(Articles 2–7)

A full flow of goods and services from where they can best be produced or supplied to where they are wanted is often prevented because there is not the purchasing-power to buy those goods or services. A permanent state of full employment, where every person is engaged in productive work, and is earning real income, is a prerequisite to the achievement of maximum international trade. Thus, while taking account of the need of new or more efficient production, the Charter aims at a large and steadily growing volume of demand for goods and services concomitant with a state of full employment.

Accordingly, Article 2 recognizes that this is a necessary condition for the achievement of the Charter objectives. Paragraph 1 points out that the avoidance of unemployment or underemployment through the achievement and maintenance in each country of useful employment opportunities for those able and willing to work is not of domestic concern alone.

The second paragraph of the Article stresses that while it is primarily the responsibility of individual nations through internal measures to avoid unemployment or underemployment there should be concerted action in that direction. It is suggested that any such concerted action should be under the sponsorship of the Economic and Social Council in collaboration with appropriate intergovernmental organizations Attention is also called to the desirability for regular exchange of information and views among members in order to ensure the fullest co-operation.

Article 3 (Maintenance of Domestic Employment) and succeeding articles in Chapter II oblige Members to take action which will give practical effect to the recognition of the principles in Article 2 ; 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."

Members must conform with the provisions of the Charter in carrying out their full employment policies. For instance, a member may not apply measures to assist or protect an industry which would be in conflict with obligations under the Charter.

Article 4 (Removal of Maladjustments within the Balance of Payments) considers the situation in which a Member's favourable or adverse balance of payments may be a major factor in involving other Members in trade difficulties which, unless trade restrictions were resorted to, would handicap their full-employment programmes. For example, measures to counteract a persistent adverse balance of payments in one country may result in a fall in exports to that country from another. Again, if a country has a persistently favourable balance of payments others may eventually have difficulty in importing from it. In each case countries might be obliged to resort to trade restrictions to safeguard their balances of payments.

To remedy such a situation, Article 4 provides that the Member whose maladjustment is embarrassing other Members shall make its full contribution towards a solution of the difficulty. Other Members concerned shall also take appropriate action. Any measures taken should, however, be directed towards the expansion rather than contraction of world trade.

Article 5 (Exchange of Information and Consultation) makes specific provision for the regular collection and interchange of information on employment problems, trends and policies, and related topics ; and for consultation with a view to concerted action—Members and the Organization are required to participate in arrangements made or sponsored by the Economic and Social Council in that connection.

When the Organization considers conditions of employment, production, or demand warrant consultation among Members it shall initiate discussions with a view to their taking appropriate rectifying measures.

Article 6 (Safeguards for Members subject to Internal or External Deflationary Pressure) recognizes that Members may need to take action to safeguard their economies against inflationary or deflationary external pressure, and the Organization is required to take account of that factor when exercising its functions under other provisions of the Charter. In the case of deflationary pressure special consideration is to be given to the effect on a Member of a serious or abrupt decline in the effective demand of other countries.

Article 7 (Fair Labour Standards) is connected, to some extent, with the provisions relating to demand. It contains a recognition by Members that measures relating to employment must take fully into account the rights of workers under intergovernmental declarations, conventions, and agreements. Next, it is recognized that all countries are interested in the achievement and maintenance of fair labour standards related to productivity and in the improvement in wages and working conditions as productivity permits. There is also a recognition that unfair labour conditions, particularly in production for export, create difficulties in international trade. In relating fair labour standards to productivity cognizance is taken of the fact that varying standards of living and productivity obtain in various areas of the world. Low labour-costs in a country may well give that country an unfair competitive advantage in world markets. Again, a low level of demand arising from unfair labour conditions could preclude other countries from a vast potential market. Accordingly, the Article provides that each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.

The Article provides that Members which are also members of the I.L.O. shall co-operate with it in carrying out the undertaking. The Organization is also required to co-operate and consult with the International Labour Organization on matters relating to labour standards referred to the Organization.

CHAPTER III.—ECONOMIC DEVELOPMENT AND RECONSTRUCTION

(Articles 8–15)

In the preceding chapter (Chapter II) the maintenance of full employment, the raising of effective demand, and the promotion of high but stable economic activity are the dominant considerations. Full employment is difficult to attain if lack of capital equipment, skills, and other facilities for development impedes the opening of new avenues for employment. A high, effective, demand is difficult to achieve in a country where potentially productive resources are exploited only to a limited extent. Stable but vigorous economic activity rarely

accompanies backward techniques and retarded living standards. Moreover, to the extent that effective demand is not raised and resources remain unexploited, other members lose markets or access to production.

Provision has accordingly been made in Chapter III designed to assist countries to give effect to policies of development and reconstruction. In particular it provides for co-operation and mutual assistance among Members as well as assistance through the Organization to that end.

Article 8, which calls attention to the importance of economic development and reconstruction in relation to the purpose of the Charter, reads as follows :—

> " The Members recognize that the productive use of the world's human and material resources is of concern to and will benefit all countries, and that the industrial and general economic development of all countries, particularly of those in which resources are as yet relatively undeveloped, as well as the reconstruction of those countries whose economies have been devastated by war, will improve opportunities for employment, enhance the productivity of labour, increase the demand for goods and services, contribute to economic balance, expand international trade and raise levels of real income."

Article 9 obliges Members to develop or reconstruct their resources, with emphasis on industrial resources, and to raise standards of productivity. In other words, both the volume and efficiency of production are to be increased. Measures used for development must not, however, conflict with provisions of the Charter. For example, quantitative regulation of trade may not be used to protect new industries, unless applied in accordance with the appropriate Charter provisions.

From the " self-help " concept in Article 9, Article 10 proceeds to wider measures to assist in promoting industrial and general economic development and in the reconstruction of countries whose economies have been devastated by war. It provides that Members shall co-operate among themselves, and with such world organizations as can assist, in facilitating the plans of Members in that direction.

With the objective of higher living standards, especially for those countries more economically immature, the Organization, in co-operation with other international bodies if necessary, shall assist any Member, on the latter's request, by studying its resources and making plans for their exploitation ; furnish advice concerning a member's own plans for development ; or assist it to procure advice, study, or technical assistance. The Member concerned and I.T.O. will agree on the terms on which the services are to be provided—the financing of the studies, for example.

Furthermore, the Organization shall co-operate with the Economic and Social Council of the United Nations and appropriate inter-governmental organizations on these bodies' work in respect of finance, equipment, technical assistance, and managerial skills for the purpose of development.

In Article 11 the chief prerequisites to sound economic development are recognized: capital funds, materials, modern equipment and technology, and technical and managerial skills.

Paragraph 1 of Article 11 obliges Members to co-operate as far as is practicable in order to assist some Members to gain fair access to the facilities, and others to provide them. Furthermore, Members must not impose unreasonable or unjustifiable impediments that would prevent other members from obtaining the facilities on equitable terms. Embargoes shall not be placed on the export of machinery or materials for development, for example, unless there is a good reason which makes the imposition of the restriction imperative.

On the other hand, Members who receive the facilities shall not take any unreasonable or unjustifiable action injurious to the rights or interests of the subjects of other Member States, in respect of the enterprise, skills, capital, arts, or technology which they have supplied. However, where the provisions of Article 12 relating to international investment are applicable, Members would not be precluded from taking any action in conformity with that Article.

Paragraph 2 of Article 11 sets out the action which the Organization may take in stimulating and assisting the provision and exchange of developmental facilities. It may recommend and promote agreements between two or more nations with these objects :—

(i) To assure fair treatment of foreign enterprises, technicians, &c., within a Member country ;

(ii) To avoid double taxation in order to encourage private investors to send their capital to the countries where it is needed, by assuring them of a larger net return ;

(iii) Generally to ensure that members receive the benefits of the provisions of this Article to the maximum extent ;

(iv) To assist in the equitable distribution of developmental facilities.

Furthermore, the Organization may formulate and promote the adoption of a general agreement or a statement of principles as to the conduct, practices, and treatment of foreign investment.

Article 12 : International Investment for Economic Development

The financial aspect of international investment for economic development is dealt with in Article 12. In the past, when monetary capital moved freely between countries, development of backward areas went on relatively fast, usually to the benefit of both borrower and lender. However, in more recent years, certain barriers have been raised against the free flow of funds. On the one hand, some countries have treated foreign investments within their territories in a manner so unjust to the investors that the provision of further capital has been discouraged. On the other hand, some capital-receiving countries have become suspicious of foreign investments because of so-called " exploitation." The result has been a substantial reduction in the flow of capital between countries,

with a consequent retardation of economic development. Article 12 lays down general principles and procedures in regard to international investment with a view to facilitating such investment and at the same time protecting the rights of both exporters and importers of capital.

First, a general statement is made as to the desirability of a substantial flow of international investment.

Secondly, some of the more important rights of capital-receiving countries are listed including—

(i) To take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies ;

(ii) To determine whether and to what extent and upon what terms it will allow future foreign investment ;

(iii) To prescribe and give effect on just terms to requirements as to the ownership of existing and future investments ;

(iv) To prescribe and give effect to other reasonable requirements with respect to existing and future investments.

Thirdly, a provision is made whereby two or more members may negotiate among themselves with a view to fixing the terms on which international investments will be made and received. Members undertake to enter into consultation or to participate in negotiations directed to the conclusion of agreements of this nature.

Fourthly, members which receive foreign investments give certain undertakings regarding their treatment of such investments, including—

(i) To provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments ; and

(ii) To give due regard to the desirability of avoiding discrimination as between foreign investments.

Since New Zealand is an importer rather than an exporter of capital it is interesting to note particularly the rights enjoyed and the responsibilities which would be undertaken by countries such as New Zealand under the text of this Article. First, in regard to rights, we can fix the terms on which *any* proposed foreign investment will be received, accept some investments and not others, or exclude new foreign investments altogether. Each such investment can be treated on its merits, taking into account all the economic and financial consequences which are likely to follow. Provided that a proposed investment is acceptable, there is an undertaking to give it reasonable treatment and to give due regard, as one of several factors to be considered, to the desirability of treating all foreign investment alike, so that there may be no discrimination between them. In this way we would be in a position to protect our essential economic rights, it being understood that fair treatment will be given to all approved foreign investments.

As a capital-importing country we will be obliged, at the request of any other Member which wants to make an investment in New Zealand, to enter into negotiations concerning terms, but we would be under no obligation to reach an agreement if the proposed terms, or if any investment at all, were not acceptable to us.

To the extent that investment of New Zealand capital is made abroad, the rights and responsibilities of capital-exporting countries under this Article would apply.

Article 13: Governmental Assistance to Economic Development and Reconstruction

In this Article recognition is given to the fact that to enable them to establish or develop industries, or branches of agriculture necessary for their economic development or reconstruction, the smaller or under-developed countries, in particular, may require to provide assistance to such industries in the form of special protection against imports involving measures which might conflict with commitments to Members or obligations under the Charter. It might be necessary, for example, to obtain release from a tariff commitment or from obligations in Chapter IV not to employ quantitative regulation of imports for protective purposes.

The Article sets out the procedure which a Member is required to follow with a view to obtaining release. Where the case involves only securing release from a tariff commitment the Member may engage in direct negotiations with the Member to whom the commitment was made, and shall be free to act in accordance with any agreement reached as a result of the negotiations. In all other cases, however, involving conflict with obligations under the Charter the prior approval of the Organization must be sought, but if certain specified conditions or criteria can be met the Organization is required to give its approval. In all cases the measure employed must be non-discriminatory. Paragraph 3 covers the procedure where only a tariff commitment is involved—that is, where it is desired to increase a rate of duty bound at a certain level under a trade agreement. The Member may (*a*) engage in direct negotiations with the other Member concerned, or (*b*) either initially, or in the event of failure to reach agreement, apply to the Organization. In the former case effect may be given to the agreement reached on the negotiations provided the Organization is informed thereof. In the latter case the Organization will sponsor negotiations with the Member or Members having contractual rights. On substantial agreement being reached the Organization may authorize release from the obligation accordingly.

Paragraph 4 sets out the procedure which a Member may follow should imports increase unduly following upon the initiation of negotiations to give increased protection. In that event the Member may, after informing and, where practicable, consulting with the Organization, adopt such measures as the situation may require, provided that imports are not

restricted more than necessary to offset the increase and, except in unusual circumstances, they are not reduced below the level previously obtaining. The Organization will determine how long the measure may be employed. Where the measure adopted materially affects the trade of another Member having contractual rights such Member may suspend the application to the trade of the other Member of substantially equivalent obligations or concessions.

Paragraph 5 deals with cases where the measure proposed to be adopted would conflict with the provisions of Chapter IV as well as with an obligation assumed through an agreement with another Member. In that case the procedure of application to the Organization and negotiation under its sponsorship as in paragraph 3 applies as well as the position under paragraph 4.

Paragraphs 6 and 7 set out the procedure where the proposed measure would conflict with Chapter IV, but not with any contractual obligation to other Members respecting particular commodities. In such cases application must be made to the Organization giving the considerations in support of adoption of the measure for a specified period. The Organization is required to give its approval to the use of the measure for that period if, having regard to the Member's need for economic development or reconstruction, it is established that the measure fulfils the criteria set out in the paragraph. Briefly, the criteria are—

(*a*) To protect an industry established under abnormal conditions during the war ; or

(*b*) To develop an industry for processing an indigenous primary commodity if exports thereof have been reduced through import restrictions employed in other countries ; or

(*c*) To develop an industry for processing an indigenous primary commodity or by-product thereof in order to utilize a Member's natural resources and man-power ; or

(*d*) The measure is unlikely to be more restrictive of international trade than other measures permitted under the Charter.

(NOTE.—The term " processing," as used in this paragraph, is interpreted to mean the transformation of a primary commodity or of a by-product of such transformation into semi-finished or finished goods, but does not refer to highly developed industrial processes.)

The above procedure, requiring the Organization to give its approval, subject to the criteria being met, would not apply in the case of a request to use the measure concerned beyond the specified period.

The Organization shall not concur in any measure under (*a*), (*b*), or (*c*) if it is likely to cause serious prejudice to exports of a primary commodity on which the economy of another Member is largely dependent.

Where approval is given, the Member must employ the measure in such a way as to avoid unnecessary damage to the interests of other Members.

Paragraph 8 deals with cases outside the criteria of paragraph 7. In such cases—

(*a*) The Member may enter into consultation with all other Members materially affected, and the Organization shall grant release, subject to such limitation as it may impose, on complete or substantial agreement being reached ; or

(*b*) The Member may initially or, in the event of failure of the Members to reach agreement under (*a*), apply to the Organization, which will transmit to Members materially affected the statement received from the Member in support of adoption of the proposed measure. If such Members inform the Organization that there is no objection to adoption of the measure the Organization shall immediately grant release to the applicant Member, but if there is objection it must promptly examine the measure, having regard, *inter alia*, to the considerations presented by the applicant Member, to the views of other affected Members, and to the likely effect on international trade. If, after such examination, it concurs in the proposed measure it shall grant release for its use, subject to such limitations as it may impose.

Paragraph 9 provides for adoption of the same procedure as in paragraph 4 where the Member finds it necessary to take special steps to avoid damage from increased imports following upon initiation of action to secure release from obligations.

Paragraph 10 fixes a period of ninety days from date of receipt of the application in which the Member shall be advised of the result of his application to the Organization under paragraph 7 or 8. Unless the period is extended after consultation with the Member, the Member is free, on expiry of the period, to institute the proposed measure.

Article 14 : Transitional Measures

In Article 14 provision is made for the maintenance temporarily, during a transitional period, of non-discriminatory protective measures which otherwise conflict with the Charter. A period is provided during which notice must be given of any such measures. In the case of signatories to the Final Act of the Second Session of the Preparatory Committee at Geneva notice, as provided in paragraph 6 of Article XVIII of the General Agreement on Tariffs and Trade, must have been given by 10th October, 1947, of any such measures in force on 1st September, 1947. In the case of any other Member, notice to the Organization must be given, on the day on which it deposits its instrument of acceptance of the Charter, in respect of measures in force on that day or on the day of entry into force of the Charter, whichever is the earlier.

Measures approved by the CONTRACTING PARTIES to the General Agreement may remain in force when the Charter enters into force, subject to possible review by the Organization. In respect to other measures a Member must, within a month of becoming a Member of the Organization, submit a statement supporting maintenance of the measure. The Organization is required, as soon as possible, but not later than twelve months after the Member becomes a Member of the Organization, to give a decision on the matter.

The Article does not apply to items respecting which a Member has committed itself to another Member under negotiations.

Article 15: Preferential Agreements for Economic Development and Reconstruction

Article 15 provides an exception from the rule of most-favoured-nation treatment in Article 16 to the extent that it allows, in approved circumstances, of new preferential agreements between two or more countries in the interest of programmes of economic development or reconstruction of one or more of them.

A Member contemplating such an agreement is required to supply the Organization with full information thereon for examination by it, and for communication to all Members of the Organization.

After examination the Organization may, by a two-thirds majority of Members present and voting, approve of an exception to Article 16 to enable the agreement to be concluded. (Such provision for approval applies also to agreements with non-Members, *vide* paragraph 3 of Article 98.)

Apart from this provision, however, the Organization is required to give its approval respecting an agreement between Members if it finds that such an agreement could not cause substantial injury to the external trade of a Member not party to the agreement, and if the agreement fulfils the conditions and requirements set out in paragraph 4 of the Article, namely—

(*a*) The territories of the parties must be contiguous or belong to the same economic region. (NOTE.—The Organization need not interpret the term "economic region" to require close geographical proximity if it is satisfied that a sufficient degree of economic integration exists between the countries concerned.)

(*b*) Any preference provided must be necessary to secure an adequate market for a particular industry or branch of agriculture.

(*c*) The parties must undertake to grant free entry for the products concerned or sufficiently low duties to ensure the objective.

(*d*) Any compensation granted by one party to the other must, if it is a preferential concession, conform to the provisions of paragraph 4—*i.e.*, 4 (*b*).

(*e*) The agreement must allow of adherence by other Members subject to negotiation as to terms and conditions.

(*f*) The agreement must contain provision for its termination on fulfilment of its purpose, but not later than ten years, subject to extension on approval of the Organization.

If the Organization finds that the proposed agreement, even though fulfilling the above conditions, is likely to cause substantial injury to the trade of another Member, it can require negotiations with that Member. When agreement is reached the Organization shall give its approval. Should there have been no conclusion to the negotiations within two months due to the attitude of the injured Member the Organization shall also give its approval to the necessary departure from Article 16 and shall fix a fair compensation for the injured Member. Where the proposed agreement is likely to jeopardize the economic position of a Member in world trade the Organization is required to withhold its approval of the agreement until the parties thereto have reached a mutually satisfactory understanding with that Member.

If, prior to 21st November, 1947, prospective parties to a regional preferential agreement have obtained from countries representing at least two-thirds of their import trade the right to depart from most-favoured-nation treatment, the Organization is authorized to give its approval; but if it finds that the trade of one or more Members which have not recognized that right is threatened with injury it shall invite the respective Members to enter into negotiations.

Where the Organization approves a margin of preference as an exception to Article 16 in respect of products to be covered by the agreement, it may require reduction of an unbound most-favoured-nation rate if a Member represents this as being excessive. In this connection the fixing of a maximum margin of preference in conjunction with the requirement in paragraph 4 (*c*) of free admission or a low rate of duty would automatically determine the most-favoured-nation rate.

CHAPTER IV.—COMMERCIAL POLICY

SECTION A.—TARIFFS, PREFERENCES, AND INTERNAL TAXATION AND REGULATION

(Articles 16–19)

Chapter IV lays down a code of conduct covering the many practices concerned with international trade. The provisions in the various sections of the chapter are directed towards the reduction or elimination of barriers to trade and to the expansion of international trade on a multilateral basis.

Section A of the chapter aims at the removal of trade barriers in the shape of excessive tariffs, preferences, also discriminatory regulations, and internal taxes employed for protective purposes.

Article 16 (General Most-favoured-nation Treatment) sets out the general principle of most-favoured-nation treatment—*i.e.*, the principle of equal treatment with respect to Customs duties and charges, also rules and formalities relating to imports or exports. It requires that any advantage or privilege granted in respect of a product originating in or destined for another country shall be extended unconditionally to like products originating in or destined for other Member countries.

An exception from this rule is provided, however, for preferences which were in existence between Members of the British Commonwealth and between countries in certain other preferential areas as listed in annexes to the Charter. In such cases the margin of preference permitted to be retained for any product must not exceed the margin provided for under the General Agreement or, if it was not covered by such agreement, the margin existing on 10th April, 1947, or, should the Member prefer, on such earlier date as may have been established by the Member for negotiations under the General Agreement.

Special provision is made in Annex A respecting the preferential quota arrangements existing on 10th April, 1947, under agreements by the United Kingdom with Canada, Australia, and New Zealand covering imports of meat into the United Kingdom. Without prejudice to any inter-governmental commodity agreement which may be made, negotiations are to be entered into, when practicable, among the countries substantially concerned or involved with a view to elimination of such arrangements or to their replacement by tariff preferences. Any such negotiations shall be in the manner provided for in Article 17—that is, on a mutually advantageous basis. Provision is also made in the Annex to the effect that the preferential internal film-hire tax in force in New Zealand is to be treated as a Customs duty, and, as such, it will be subject to negotiations under Article 17.

The imposition of a margin of tariff preference to replace a margin of preference in an internal tax existing on 10th April, 1947, between the preferential areas referred to above is not deemed to constitute an increase in tariff preference.

The term "margin of preference" is defined to mean the absolute difference between the most-favoured-nation rate of duty and the preferential rate, and not the proportionate relation between those rates. An interpretative note to the Article also provides that the following action would not be contrary to the binding of margins of preference :—

(*a*) The reapplication to an imported product of a tariff classification or rate of duty properly applicable to such product in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on 10th April, 1947 ; and

(*b*) Classification of a product under an item other than that under which importations were classified on 10th April, 1947, where the tariff law clearly contemplates classification under more than one item.

Article 17 (Reduction of Tariffs and Elimination of Preferences) provides for negotiations among Members directed to the reduction of general tariff levels and elimination of preferences on a reciprocal and mutually advantageous basis :—

> Members are obliged, upon request by another Member to enter into such negotiations which shall be subject to procedural arrangements made by the Organization, the object being to co-ordinate the negotiations as far as practicable.

Rules are laid down under which the negotiations shall generally proceed. They shall be on a selective product-by-product basis. Members are free not to grant concessions on particular items, but, under the mutually advantageous principle, failure to grant such concessions might naturally result in smaller concessions from the other party. Account is to be taken of the value to a Member of most-favoured-nation concessions and of the contribution he should make to obtain such concessions in his own right by negotiations. The binding of low duties or duty-free treatment shall be recognized, in principle, as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences. The effect on specific rates of duty of devaluation of a Member's currency or of a rise in prices would also be taken into consideration. The rules also specify how reductions in the preferential rate or the most-favoured-nation rate shall affect the margin of preference. In no case is the margin to be increased.

Prior international obligations must not be invoked to frustrate negotiations. To give effect to agreements resulting from the negotiations such obligations are to be modified or terminated either with the consent of the contracting parties or, failing that, according to the terms of the agreement.

Concessions resulting from negotiations between Members and not already included in the General Agreement shall be incorporated in that agreement on terms to be agreed with the parties to that agreement.

Paragraph 4 of Article 17 contains very important provisions since they allow in certain circumstances departure from the most-favoured-nation principle. They stipulate, in effect, that Members of the International Trade Organization shall within two years of their becoming Members carry out negotiations necessary for them to become parties to the General Agreement. At the end of that period Article 16 ceases to require a Member to continue to extend most-favoured-nation concessions under the General Agreement to another Member which fails,

on request, to conclude such negotiations, provided that the Organization may require the continued application of such concessions if it is satisfied that the Member was unreasonably prevented from becoming a party to the General Agreement.

A contracting party to the General Agreement proposing to withhold concessions from a Member which is not a contracting party must notify that Member, and the Organization, which, upon the request of that Member, may require their continuance pending its decision.

In reaching a determination regarding failure of a Member to fulfil its obligations to negotiate, the Organization must take into account all relevant circumstances, including developmental, reconstruction, and other needs, and the general fiscal structures of the countries concerned as well as the provisions of the Charter as a whole.

If the concessions are withheld, the Member affected has the right to withdraw, if it so desires, from the Organization.

Paragraph 4 (*a*) of Article 17 also provides that the provisions of Article 16 shall not affect the operation of paragraph 5 (*b*) (as amended) of Article XXV of the General Agreement on Tariffs and Trade under which the CONTRACTING PARTIES may authorize one contracting party to withhold concessions from another contracting party which unjustifiably fails to conclude negotiations with it.

Article 18: National Treatment on Internal Taxation and Regulation

As its title implies, Article 18 involves a recognition by Members that protection for domestic production should not be afforded through internal taxes or regulations affecting the internal sale, purchase, transportation, distribution, or use of products nor through internal quantitative regulations requiring the mixture, processing, or use of products in specified amounts or proportions. The principal objection to the use of such procedures is that, by their nature, they are not susceptible to public scrutiny in the same manner as a published import duty, and overseas traders may have no knowledge of their existence. From that point of view preference is given to the use of import duties as a more satisfactory and recognized method for affording protection.

The Article therefore stipulates that imported products shall not be subject to higher internal taxes or charges than those applied to like domestic products. Unless the import duty for the product concerned is bound against increase as a result of tariff negotiations, there is nothing to prevent the protection accorded through the internal tax being converted to an import duty. In cases where the duty has been bound against increase the tax may be retained until such time as a release from the tariff binding can be obtained from the other party to the trade agreement.

Paragraph 4 provides that imported products shall receive " national treatment " in respect of regulations affecting their internal sale, purchase, transportation, distribution, or use.

In paragraph 5 a prohibition is placed on the use of regulations relating to the mixture, processing or use of products, which require that any specified proportion of the product must be supplied from domestic sources.

Paragraph 6, however, creates an exemption from this provision in respect of such regulations which were in force on 1st July, 1939, 10th April, 1947, or on the date of the Charter, at the option of the member, provided that any such regulation shall not be modified to the detriment of imports and shall be subject to negotiation in the same manner as an import duty under Article 17.

Provision of a similar nature is contained in Article III of the General Agreement on Tariffs and Trade, except that the exemption there applies only to internal quantitative regulations in force on 1st July, 1939, or 10th April, 1947. A party to that agreement is accordingly bound in respect of measures as in force on those dates, and their incidence could not be increased prior to the Charter coming into force. New Zealand has an interest in this provision in respect of the regulations in force requiring tobacco-manufacturers in New Zealand to utilize a specified minimum proportion of domestic leaf. Should it be desired to have recourse to such regulations for the purpose of increasing such proportion, application may be made to the Organization under the provisions of Article 13.

There is also an exemption from Article 18 in respect of internal quantitative regulations relating to exposed cinematograph films, as these are specially provided for under Article 19. Nor does the article apply to purchases of goods for governmental purposes and not for commercial resale or for use in the production of goods for commercial resale. In that case, while the Member may discriminate in favour of the local product, it must accord fair and equitable treatment as between the products of other members, *vide* paragraph 2 of Article 29.

The Article is not to be construed to prevent payment of subsidies to domestic producers, including payments from internal taxes applied consistently with the Article, also subsidies effected through governmental purchases.

An interpretative note to the Article explains the position regarding internal taxes, inconsistent with the Article, imposed by local governments and authorities. Their repeal would not be required if, although technically inconsistent with the Article, they were not inconsistent with its spirit and if their repeal would result in serious financial hardship. Where they are inconsistent, both in letter and spirit, their gradual withdrawal may be arranged if abrupt termination would create serious administrative and financial difficulties.

Article 19 : Special Provisions relating to Cinematograph Films

This Article contains special provisions, as an exception to Article 18, relating to cinematograph films. It authorizes the use of screen quotas as a means of maintaining quantitative internal regulation of exposed cinematograph films, and thereby affording protection to local production. Within such quotas a specified minimum proportion of the total screen time for a period may require to be allocated to films of national origin, but not as between other sources of supply, except that a reservation may be made of a minimum proportion for films of a specified origin (other than that of the Member imposing the quotas) not exceeding the level in effect on 10th April, 1947. Screen quotas are subject to negotiation in the same manner as Customs duties. A note in Annex A to the Charter provides that the renter's quota in force in New Zealand is to be regarded as a screen quota for the purposes of Article 19. This provision enables the quota which has been provided for British films under the renter's quota procedure to be maintained in the same manner as if it had been a screen quota.

Section B—Quantitative Restrictions

(Articles 20–24)

The objective of this Section is to limit the use of quantitative restrictions (other than those which may be specifically approved by the I.T.O. under Article 13) to certain special circumstances, and to ensure that when permitted they shall be employed as far as possible in a non-discriminatory way. This approach to quantitative restrictions is based on the belief that they are, of all forms of trade barriers, the most rigid, and that an unlimited right to use them could be abused. Countries, wanting to use quantitative restrictions, like them because they give such effective protection and are so easily varied to meet changing circumstances ; and that is the very reason why other countries are so strongly opposed to them. It is recognized, however, that circumstances can arise in which quantitative restrictions may be the least evil of the available measures and may on balance serve a useful purpose. Many small or under-developed countries wished the Charter to contain a presumption in favour of the use of quantitative restrictions for development purposes ; others, mainly countries which are more developed, wished to see a strong presumption against quantitative restrictions, claiming that a general use of restrictions would be damaging to world trade, production, and living standards.

As might be expected, the provisions of the Charter are a compromise and the text indicates that quantitative restrictions are to be avoided as a matter of general policy, exceptions being allowed in a limited number of specified circumstances, and sometimes with the special approval of the Organization.

Those quantitative restrictions which are related to economic development and reconstruction, and for which prior approval is required, are dealt with in Articles 13 and 14. Other cases, where prior approval for the use of quantitative restrictions is not called for and which need not be specially related to economic development or reconstruction, are subject to strict limitations which are specifically set out in Articles 20–24. These Articles, which comprise Section B (Quantitative Restrictions) of Chapter IV, include the following provisions :—

(*a*) A general ban on the use of quantitative restrictions on exports or imports (Article 20, paragraph 1).

(*b*) Special exemptions in a very limited number of circumstances to meet emergencies or where there is no question of protection of the Member's own industries (Article 20, paragraphs 2 and 3).

(*c*) Provision for the use of quantitative restrictions, without prior approval, for the purpose of safeguarding a Member's balance of payments (Article 21).

(*d*) Rules which require non-discrimination in the administration of quantitative restrictions, whether applied under Article 21 or 13 or under other provisions of the Charter (Article 22).

(*e*) Special exceptions to the rule of non-discrimination (Article 23).

(*f*) Provisions to ensure that there is no conflict between the rules of the Monetary Fund regarding exchange operations and the rules of the I.T.O. regarding trade operations, together with arrangements for consultation and co-operation between the two bodies on certain matters (Article 24).

Article 20 : General Elimination of Quantitative Restrictions

In paragraph 1 there is a general ban on the quantitative restriction of either exports or imports entering into trade between Member countries. There is no ban on restrictions imposed on trade with non-Members, nor is there any ban on licensing systems as such provided that prohibitions or restrictions are not involved.

In paragraph 2 a number of special circumstances are listed in which exceptions to the general ban are permitted without specific approval of the Organization. The exceptions are very limited, and paragraph 3 ensures that they are not used so as to afford protection to any domestic industry and are not continued any longer than the special circumstances would justify.

The special exemptions cover the following cases :—

(*a*) When a critical shortage of a foodstuff or other essential commodity exists or is threatened within the Member's territory it may, in order to ease the shortage, restrict exports of the commodity concerned. Generally such shortages, and therefore the restrictions also, would be of short duration, but the phrase

" for the period necessary " is elastic enough to include cases where elimination of the shortage may take a relatively long time—*e.g.*, when the number of breeding sheep is severely reduced in Australia by drought.

(*b*) Import or export controls necessary to enforce standards or regulations relating to quality, packaging, labelling, and so on—for example, prohibition of the export of dairy-produce or meat below a certain grade of quality, or prescription of certain types of containers for these commodities. Such controls must be of a purely administrative nature and must not be quantitative restrictions in disguise, and if the Organization considers the standards or regulations unduly restrictive, the Member may be called upon to amend them.

(*c*) Quantitative restrictions on imports of any agricultural or fisheries product where such restrictions are necessary to prevent an embarrassing surplus of a like product on the domestic market which would frustrate the Government's plans to control the supply (and thus the price) of the domestically produced product. The scope of this provision is limited to agricultural and fisheries products since these are subject to special factors which do not generally apply to manufactured products. For example, there are unpredictable fluctuations in supply, output cannot be easily or quickly regulated, there are large numbers of small producers, and there is an inelastic demand for the products, all of which make surpluses most damaging to the producers.

The special circumstances in which this paragraph can be invoked are as follows :—

(i) Where a Government actually restricts the production or marketing of a domestically produced product it may at the same time limit the volume of imports of the like product or of substitute products. Imports must not, however, be limited in such a way that the proportion of imported goods to locally produced goods is reduced below the level it would be expected to reach in the absence of restrictions. In other words, this paragraph cannot be used to afford protection for the local industry at the expense of foreign suppliers.

(ii) One way to dispose of a surplus of agricultural products or fish which would otherwise ruin the market for producers is for the Government to buy up the surplus at fair prices and make the goods available free or at nominal cost to domestic consumers, such as schools, hospitals, charitable institutions, &c., or, in the case of animal foodstuffs, to small holders and similar categories with a low standard of living. So long as the

domestic market is being artificially supported in this way the Government would be authorized to restrict imports of like or substitute commodities which would merely frustrate the plan for removing the already existing surplus.

(iii) A country which, in order to prevent overproduction of a particular animal product—*e.g.*, butter or meat—places a limit on the production of that product, the production of which is dependent to a very large extent on imported fodder for its stock, may impose restrictions on the importation of that fodder. Such restrictions may be imposed only if the domestic production of the fodder is relatively negligible, otherwise the import restrictions would be of a protective nature.

In cases where any of the types of import restrictions so permitted are placed on agricultural or fisheries products the supply of which is of a seasonal nature the restrictions must not be so applied as to prevent imports sufficient to meet the demand during the " off " season. Furthermore, a country intending to introduce such restrictions on imports of agricultural and fisheries products is required to give advance notice to the Organization and Members substantially interested as suppliers. The object in this is to afford opportunity for consultation with a view to avoiding unnecessary damage to the interests of such Members.

A Member applying such restrictions must give public notice of the total quantity permitted to be imported during a period.

The rules in Section B of Chapter IV respecting quantitative restrictions apply also to restrictions made effective through State-trading operations.

Article 21 : Restrictions to Safeguard the Balance of Payments

It is acknowledged that in spite of the general desirability of avoiding the use of quantitative restrictions on trade, a situation in which a country is suffering from difficulties in regard to its balance of international payments, with consequent loss of monetary reserves, may necessitate the application of quantitative restrictions or regulation of trade. While there has been no argument on this principle, it has been necessary to formulate the rules and procedures under which the principle will be applied.

A country may be in balance of payments difficulties for a number of reasons. Its receipts of foreign exchange may have declined because of a fall in the volume or price of its exports, or both ; or the earnings derived from the sale of services—*e.g.*, shipping, banking, insurance—may have declined. There may be an abnormally high demand for imported goods, as a result of full employment or a high level of money

incomes, or a programme of capital development ; and there may be an export of capital funds. Any of these factors, singly or in combination, could so deplete a country's monetary reserves, whether in the form of gold or foreign currency, as to cause or threaten a serious financial crisis. In the case of New Zealand the existence of a situation such as this would be indicated by a serious decline in its sterling balances.

An exchange crisis of this kind could be met by a number of devices. Subsidies on exports, higher tariffs on imports, exchange devaluation, or exchange restrictions could be used. These matters are dealt with in other sections of this Charter or in the Articles of Agreement of the International Monetary Fund. This Article relates to a further method of dealing with the situation, the use of quantitative restrictions to remedy a disequilibrium in the balance of payments—*i.e.*, quotas and import licences.

Article 21 opens with a statement that when balance of payments difficulties occur it is the Member itself which must first take responsibility for remedial action ; but since other countries are necessarily affected if quantitative restrictions on trade are imposed it is desirable that the countries concerned should co-operate with each other with a view to restoring the balance at a higher rather than a lower level. The earlier such co-operative action is taken, and the more exports are expanded instead of imports being restricted, the better. Realizing that such consultation and action will not be sufficient in certain cases, paragraph 2 authorizes import restrictions to safeguard the balance of payments.

The application of quantitative restrictions on imports is authorized if and to the extent necessary to forestall an imminent threat of, or to stop, a serious decline in the Member's monetary reserves, or to build up those reserves from a very low level at a reasonable rate (paragraph 3 (*a*)). Account must be taken of all factors affecting the situation, including special factors affecting the need for reserves.

In the first instance it is the Member itself which decides what is an " imminent threat," " serious decline," " reasonable rate of increase," &c., but in the event of the Member's restrictions being challenged by another Member (paragraph 5 (*d*)) the final decision may rest with the Organization.

The term " special factors " is very wide and covers anything which may be relevant to the supply of and need for monetary reserves. Special mention is made of available credits. For example, an external debt falling due would be a " special factor " since it would increase the need for reserves of foreign currency ; but if the debt can be converted on reasonable terms, this would mean that credits are available to meet that need.

The intensity of import restrictions must be relaxed to the extent that the balance of payments situation and the level of monetary reserves improve; but final abolition is not required unless and until reasonable equilibrium has been restored (paragraph 3 (*b*)).

Import restrictions under this Article should not, without good reason, result in a complete ban of imports of any product the total exclusion of which would impair regular channels of trade; nor should they prevent the imports of commercial samples or imports necessary to maintain rights under patents, trade-marks, copyrights, &c. (paragraph 3 (*c*) (i)). Furthermore (paragraph 3 (*c*) (ii)) Members applying such restrictions must, as far as possible, avoid damaging employment in other countries (Article 3) or other countries' business interests or economic development (Article 9).

Paragraph 4 is of particular importance to countries such as New Zealand which are pursuing domestic policies designed to achieve and maintain full employment, high standards of living, and the maximum degree of economic development (see Articles 3 and 9). The result of such policies might well be to cause pressure on the Member's monetary reserves, and the application of quantitative restrictions under Article 21 may become necessary. It might be claimed by countries strongly opposed to the use of such restrictions that their application in this case is unnecessary, since the difficulties could be removed merely by modifying or reversing the domestic policy. Paragraph 4 (*b*) expressly prevents such a claim from being successfully made. This means that when a conflict arises between the desirability of pursuing policies of economic development and full employment on the one hand and the desirability of avoiding quantitative restrictions on the other, the domestic policies will take precedence. Thus a Member cannot be required to alter or suspend its policies of economic development or full employment on the grounds that such action would remove the cause of the balance of payments difficulties and render the restrictions unnecessary.

In applying its import restrictions priority can be afforded to the imports of goods which are more essential to the Member's economy (4 (*b*) (ii)).

Members acknowledge the desirability of restoring and maintaining equilibrium in their balance of payments, but this acknowledgment does not limit their rights under paragraph 4 (*b*).

Consultation with the I.T.O. is required in all cases where new quantitative restrictions are imposed under this Article, and any possible alternative measures must be discussed (paragraph 5 (*a*)). Any Member already applying such restrictions may be called upon to consult with the Organization, and shall consult within thirty days if its restrictions are substantially intensified (paragraph 5 (*b*)). Except as provided

in paragraph 5 (*d*), the Organization has no authority to require the Member to take or abstain from any particular action proposed on balance of payments grounds.

The Organization must review existing restrictions within two years of its establishment, but this provision does not give it any power to require a Member to take any particular action.

By the provisions of paragraph 5 (*c*) the procedure laid down in subparagraph (*a*) of that paragraph can be avoided, if a Member so desires, by obtaining the prior approval of the Organization for the application of quantitative restrictions under this Article. Such approval would involve setting up a kind of formula, based on the factors or criteria mentioned in paragraph 3 (*a*), which would serve as a more or less automatic guide to the Member's action. The formula would indicate when the Member's balance of payments and monetary reserves were in a sufficiently serious condition to justify the use of quantitative restrictions; the need for prior consultation would be eliminated; and challange by another Member, on the grounds that the exchange position was not sufficiently serious to justify the restrictions, would be precluded.

Complaint against quantitative restrictions imposed under this Article by a Member can be made only by another Member which considers its trade has been adversely affected (paragraph 5 (*d*)). The complaint could be lodged on the grounds that the restrictions are being applied in a manner inconsistent with the terms of Article 21, or of Article 22, which requires non-discriminatory treatment. It is only in this subparagraph that the Organization is given any authority to take action against a Member which is improperly applying quantitative restrictions under Article 21. The action would take the form of releasing any other Member from particular obligations towards the offending Member so as to compensate for the damage the affected Member is suffering.

If the application of quantitative restrictions under Article 21 becomes so widespread as to indicate the existence of a general disequilibrium in international trade, consultations shall be initiated with a view to removing the underlying causes. See also Article 4 (Removal of Maladjustments within the Balance of Payments), which has a more limited application in the same general field.

Article 22: Non-discrimination

In applying quantitative restrictions on trade, particularly on imports, a Member may seek to control only the total volume of trade in a given commodity; or it may, on the other hand, seek to regulate the direction in which trade flows, limiting transactions with some countries more than with others. Any such governmental interference with the

normal distribution of trade would constitute discrimination, and would be prohibited under this Charter except in the limited number of special circumstances set out in Article 23.

Article 22 establishes the general rule of non-discrimination and sets out a number of rules and procedures concerning its application. While these rules and procedures apply mainly to import restrictions, they are also to relate, wherever applicable, to export restrictions.

In paragraphs 1 and 2 the definition of non-discrimination is clearly set out. Restrictions, if used, must apply equally to trade with all countries, and Members must aim at a distribution of trade as near as possible to that which would operate in the absence of such restrictions. There follow a number of provisions governing the application of import controls. A Member which desires to limit the total of imports should, for preference, use the method of quotas, but where this method is not practicable import licensing may be adopted. The Member may not, however, specify on the import licence the country or source from which the goods are to be obtained, unless this is done as a part of a system of allocating import quotas among supplying countries in a non-discriminatory way. The test of whether or not an import licensing or quota system is non-discriminatory is contained in paragraph 2 (*d*), the purpose of which is to provide that—

(i) The shares in the total quota allocated to each supplying country may be agreed on between the Member and those supplying countries. Obviously if a supplier has agreed on his share in the total quota it cannot complain that the importing Member is discriminating against it. Or,

(ii) If no agreement is possible, the Member shall allot shares in the total import quota among supplying countries in accordance with the actual shares which they enjoyed in a previous "representative" or normal period, which might be some years past. Full allowance shall be made for any "special factors" which may have affected or may be affecting trade in the commodity concerned—*e.g.*, price changes, new sources of supply, availability, credit terms, and other similar matters which would affect trade in the absence of restrictions. The reference to the "previous representative period" is not designed to freeze the channels of trade, but to provide a basis of calculation by means of which import trade may be fairly distributed among suppliers. In this way there is a minimum of interference with normal commercial relationships. The selection of the "previous representative period" is made in the first instance by the Member itself, subject to complaint by another Member whose interests are affected (paragraph 4).

Members applying a system of import licensing shall supply on request to any other Member who is affected certain information concerning the administration of that system. Where quotas are imposed the Member shall normally give prior public notice of the amounts of those quotas (paragraph 3). An exception may be made to this rule, with the approval of the Organization, in cases where a Member's trade is largely with non-Members which are not under the same obligation to give public notice. (Paragraph 3 (*c*)).

A tariff quota (paragraph 5) consists of an arrangement whereby a certain customs duty is applied on imports of a given commodity up to a specified amount during a specified period ; any additional imports of that commodity during the period would be subject to a higher rate of duty.

Article 23 : Exceptions to the Rule of Non-discrimination

Trade is never perfectly bilateral—*i.e.*, it does not flow between only two countries, but between many countries. It would be a pure coincidence if there were a perfect balance of trade between two countries. It is normal for goods to be bought and sold in many markets, with merchants in any one country establishing connections with merchants over a large proportion of the world. Thus a country's over-all balance of trade is the result of a summation of balances with individual countries, some balances being negative and some positive. There are also " invisible " transactions between countries, involving payments other than those directly related to the purchase and sale of goods—*e.g.*, profits, capital transfers, earnings of shipping and financial services, and so on. These, together with trade payments, make up a country's over-all balance of payments, and, as in the case of trade, the over-all balance is the summation of many balances, positive and negative, with many countries.

In general, so long as most countries of the world, and particularly the large trading countries, are not experiencing any serious difficulty in respect of their over-all balances of payments and have adequate reserves of gold or foreign currency, all major currencies will probably be freely convertible and the problem of payments or discrimination does not arise.

However, in times such as the present, when, because of special circumstances resulting from the war, many countries are suffering from a seriously adverse balance of trade and of payments, it is necessary for them to impose severe restrictions on imports and also on invisible payments, and their currencies are no longer freely convertible. They cannot freely sell foreign currency in exchange for their own currency since they have not enough to go round, or they have not enough of the

kinds of currencies which are convertible. Hence restrictions have to be imposed on imports from or remittances to some countries more severely than in respect of other countries. This is discrimination.

Article 22 has laid down the general rule that import and export restrictions shall not, in the normal course, be applied in a discriminatory manner. There can be no quarrel with this general rule since unnecessary discrimination is damaging to world trade and is likely to cause international ill feeling. However, it has to be recognized that circumstances may arise in which discrimination is necessary, because without it a country may suffer the loss of needed imports which it could obtain only by discriminating. Article 23 is designed to cover situations such as these.

The provisions of the Article may conveniently be considered in four sections :—

(1) Transitional period, " Havana " option ;
(2) Transitional period, " Geneva " option ;
(3) Termination of the Transitional Period ;
(4) Post-transitional arrangements.

The two alternative procedures which may be adopted by Members during the post-war transitional period are contained in paragraph 1 and in Annex K. Subparagraph 1 (*a*) recognizes the special difficulties in the post-war period which hinder the immediate full achievement of the goal of non-discrimination, while subparagraphs 1 (*e*) to 1 (*h*) set out certain rules and procedures relating to both options. The " Havana " option is contained in subparagraphs 1 (*b*) and 1 (*c*), while the " Geneva " option is contained in subparagraph 1 (*d*) and the Annex.

(1) *" Havana " Option.*—The amount of discrimination which a Member is entitled to apply in the administration of its trade restrictions is limited to the amount of discrimination it may be entitled at the same time to apply in respect of exchange controls under the provisions of Article XIV of the International Monetary Fund, or under the analogous provisions of a special exchange arrangement (see Article 24 (6)). Article XIV of the I.M.F. permits certain exchange controls, discriminatory practices, and limitations on the convertibility of currencies during a post-war transitional period. Under the "Havana " option a Member would be allowed to use discriminatory trade controls having equivalent effect to the exchange controls which it is currently entitled to apply. Any other discriminatory trade measure which is not covered by the above provision and which was in force on the 1st March, 1948, may be continued subject (by paragraph 1 (*g*)) to review by the Organization.

(2) *The " Geneva " Option.*—The General Agreement on Tariffs and Trade (G.A.T.T.) which was concluded by a number of countries at Geneva on 30th October, 1947, contained certain articles which were identical with Articles in the Draft Charter of the I.T.O. as it had been

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agreed upon by the Preparatory Committee—the "Geneva" draft. Pending acceptance and entry into force of the agreement, in accordance with the terms, a procedure was established whereby individual countries which are parties to the agreement and are prepared to do so may sign a protocol of provisional application undertaking to apply the agreement provisionally. The protocol was signed at Geneva on behalf of eight countries, and it remains open for signature by other parties to the agreement until 30th June, 1948. The second option under Article 23 applies to those Members who have signed the Protocol of Provisional Application of G.A.T.T. before 1st July, 1948, and gives them the right, if they so elect, to operate under the Geneva draft text instead of under paragraph 1 (*b*) and 1 (*c*) of Article 23. The relevant portions of the Geneva text are included as an Annex rather than in the Article itself, merely for clarification.

Under this "Geneva" option a Member may deviate from the rule of non-discrimination if by doing so it can obtain additional imports. For example, a country may be able to obtain and pay for oranges from Jamaica. At the same time California may also be willing to supply oranges, but the importing country may not have the dollars necessary to pay for them. If the strict rule of non-discrimination were applied, no oranges could be imported at all—imports of oranges from California having been cut 100 per cent., imports from all other sources would have to be eliminated likewise. Therefore, in the Annex, permission is given a Member to discriminate in order to obtain additional imports which would not be allowed if the rules of Article 22 were adhered to. Three conditions are attached to such discrimination (clauses (i), (ii), and (iii) of paragraph 1 (*a*) of the Annex) requiring—(*a*) that prices paid because of the discrimination are not greatly in excess of those at which the same goods could be obtained from other sources; (*b*) that the discrimination is not part of an arrangement which will cause the country concerned to earn less gold or convertible currencies; (*c*) that unnecessary damage to the interests of other Members is avoided. Any measures adopted under this Annex are subject to scrutiny and disapproval by the Organization at any time. Approval, however, if once obtained, debars any Member of the I.T.O. from subsequently challenging the restrictions on the ground of inconsistency with the provisions of the Charter.

(3) *Termination of the Transitional Period.*—The two options referred to above are emergency procedures designed to meet the special difficulties of the post-war period and are not intended to continue indefinitely. The termination of the transitional period was fixed in relation to the provisions of Article XIV of the I.M.F.

Under this provision the period ends for each individual Member when it ceases to operate under the special provisions of Article XIV

(which it may do at any time on its own initiative or when requested to do so by the Fund), and not on any fixed date. A small number of members of the I.M.F. have chosen not to operate under Article XIV at all. Thus the transitional period will be of different duration for each Member, depending on circumstances. Each I.M.F. Member will cease to enjoy the privileges of Article XIV only when its balance of payments position has reached a sufficient degree of equilibrium to permit all restrictions on international transfers (other than those of a capital nature) to be removed and its currency to be made fully convertible once more. Members are expected to endeavour to reach this position as soon as they can.

Members of I.T.O., whether operating under the " Havana " or the " Geneva " option, must cease any discriminatory trade measure they may be applying under paragraph 1 of Article 23 when they cease to operate under Article XIV of the I.M.F. or (in the case of non-Members of the I.M.F.) under the equivalent provisions of a special exchange agreement with the I.T.O.

The date, 1st March, 1952, has a special significance for Members of the I.M.F., as after that date they shall consult with the Fund as to the retention of measures applied under Article XIV, and the I.M.F. may require them to remove or modify such measures as circumstances justify. In this way there will be a progressive elimination of the discriminatory exchange measures applied under the transitional arrangements. There will be for I.T.O. Members, after 1st March, 1952, an equivalent progressive elimination of discriminatory trade measures which they may be applying under paragraph 1 (*b*) of Article 23. In the case of measures applied under paragraph 1 (*c*)—*i.e.*, discriminatory measures actually in force on 1st March, 1948, and not covered by 1 (*b*)—the I.T.O. after 1st March, 1952, may request their removal ; while a similar provision applies to measures adopted by Members operating under the " Geneva " option.

Thus there is to be a progressive elimination of all discriminatory measures adopted under the transitional arrangements set out in paragraph 1 and the Annex to Article 23. After 1st March, 1952, all discriminatory measures still in force shall be subject to the possibility that the I.T.O. may require their removal, and new measures under the transitional provisions can only be introduced with I.T.O. approval.

(4) *Post-transitional Arrangements.*—After the post-war transitional period has been terminated for any Member its power to adopt discriminatory trade measures is strictly limited to those listed below. They can be applied also during the transitional period if necessary, but this is not very likely to happen, as the provisions of paragraph 1

and the Annex give wider scope. With the exception of paragraphs (*e*) and (*f*), discrimination can only be applied by Members which are in general balance-of-payments difficulties and operating under Article 21 :—

(*a*) Temporary discriminatory measures in respect of a small part of a Member's trade, provided the benefits resulting can be shown to outweigh the damage done to other Members' trade. Approval of the I.T.O. is required in these cases.

(*b*) Discrimination applied in favour of trade between a group of territories which are separate for trade purposes but are treated as a single unit in respect of membership of the I.M.F., and therefore can be considered to have a common monetary reserve.

(*c*) Discrimination, during the period up to 31st December, 1951, to assist a country whose economy has been disrupted by war.

(*d*) Discrimination applied to exports in cases where a special " export drive " is needed to earn " hard " currencies.

(*e*) Discrimination against imports from countries whose currencies have been formally declared " scarce " by the I.M.F.

(*f*) Preferential quota arrangements applied by United Kingdom in respect of meat imports from Canada, Australia, and New Zealand, and referred to in Annex A to this Charter. Under the provision in Annex A such quota preferences are to be subject to negotiation in the same way as tariff preferences for their elimination or replacement by tariff preferences. In the meantime their continuation is permitted.

Paragraph 1 (*e*) of Article 23 provides that, while Members may be entitled in the special circumstances of the post-war period to use discriminatory measures, they are expected at the same time to promote as far as possible an early restoration of multilateral trade and the removal of restrictions on trade and payments.

Article 24 : Relationship with the International Monetary Fund and Exchange Arrangements

In international trade, matters of commercial policy are necessarily bound up with monetary matters. To virtually every trade transaction there is a monetary aspect. In so-called normal times no special problem arises on this account, but when countries are applying restrictions on their external trade, and particularly when there is a widespread disorganization of normal trading relationships, the inter-relation of trade and finance is very close. It has already been recognized, in Articles 21 and 23, that restrictions on imports are often necessitated by abnormal monetary situations, and that such restrictions may, also for monetary reasons, be discriminatory in character. In

fact, restrictions on the international movement of goods may be accompanied, or made effective, by restrictions on international monetary transfers.

The I.T.O. is being established for the purpose, *inter alia*, of bringing greater order and freedom into international commerce. In particular it seeks to remove or reduce barriers to trade where these cannot be shown to be justifiable. The International Monetary Fund has already been established in order to deal with the same general problem, but approaching it from the monetary aspect.

It is obvious, therefore, that there should be close co-operation between these two agencies and that they should adopt similar, perhaps even identical, attitudes and policies in respect of the problems they have to face. Article 24 is designed to this end.

In order to avoid the unnecessary duplication of statistical services the I.T.O. will accept the findings of the I.M.F. regarding statistical and other facts. This is merely a matter of administrative convenience (and is also covered in Article 84 (2)). The I.T.O. shall accept the determination of the I.M.F. as to whether action by a Member is in accordance with the rules of the I.M.F. or of a special exchange arrangement thereby avoiding two separate organizations giving interpretations and rulings in the same field. The final decision in all cases remains with the I.T.O.

A Member whose trade is adversely affected by restrictions imposed ostensibly under Articles 21 or 23 by another Member may complain to the Organization that those restrictions are being imposed in circumstances or in a manner not authorized under certain provisions of Articles 21, 22, or 23. In particular, the complaint could be made that the criteria of balance-of-payments difficulties set out in Article 21 (3) (*a*) do not apply to the Member imposing the restrictions. In these cases the I.T.O. is required, as one of the factors to be considered, to accept the determination of the I.M.F. on certain technical financial aspects of the situation. Where necessary the I.T.O. will use its own judgment when considering cases under Article 21, and, as already mentioned, it is made quite clear that the final decision regarding removal or modification of restrictions applied under this Article is made by the Organization and not by the I.M.F.

Paragraph 4 places on Members the obligation not to frustrate the intent of the I.T.O. by exchange action, or of the I.M.F. by trade action. Paragraph 5 provides for the supply of information to the I.M.F. in cases where exchange controls are being used to restrict imports in a manner inconsistently with the provisions of the I.T.O. Charter.

There will no doubt be some members of I.T.O. which are not also Members of the I.M.F. and are therefore not bound by the I.M.F. rules, particularly those relating to exchange rates, exchange controls,

and convertibility of currencies. In order that such Members may not be free to frustrate the operation of I.T.O. rules relating to trade controls by resorting to exchange practices which have equivalent effect, it is provided that if they do not become Members of the Fund they shall enter into a special exchange agreement with the I.T.O. Such agreements shall provide to the satisfaction of the Organization that the objectives of the Charter will not be frustrated by a Member's action in exchange matters, but the obligations thereby imposed on Members shall not be more restrictive than those imposed by the Articles of Agreement of the I.M.F.

Paragraph 6 (*d*) covers the special circumstances of a country such as Liberia, which is not a member of the I.M.F. and which uses United States currency only, and exempts it from having to enter into a special exchange agreement, as neither country at present maintains exchange restrictions.

Members of I.T.O. who do not belong to I.M.F. will supply to the Organization information relating to such matters as monetary reserves, gold production and trade, exports and imports, balance of payments, exchange rates, exchange controls, and national income, which in the case of Fund members is supplied to the Fund and thus available to I.T.O. (paragraph 7). It is made clear that the rights of Members to adopt exchange controls under the rules of the I.M.F. are not in any way impaired by the provisions of Articles 20 to 24 of this Charter (paragraph 8 (*a*)), and may impose quantitative restrictions on exports or imports which are needed to make effective any exchange controls which it may be entitled to operate under the provisions of Articles VII, VIII, and XIV of the I.M.F. or under the analogous provisions of a special exchange agreement.

Section C.—Subsidies

(Articles 25–28)

The practice of using subsidies as a means of assisting domestic industry by helping it to withstand competition from goods imported on a lower cost basis or to sell goods for export at prices lower than would otherwise be the case has been practised in varying degrees by certain countries. While subsidies have received some recognition as a legitimate form of protection in place of tariffs, against imports, their excessive use may have harmful effects on international trade. Export subsidies, however, are regarded as detrimental to international trade and are frowned upon.

The provisions in this Section are accordingly intended to afford protection to those Members whose interests in trade may be prejudiced through the granting by another Member of subsidies which operate either to increase exports by that Member or to reduce or prevent an increase in imports of any product by that Member.

Particular emphasis is laid on the granting of export subsidies which result in the sale of a product for export at a price lower than the comparable price charged for the like product in the domestic market. In general, Members are required to abolish such subsidies within two years of the date when the Charter enters into force unless the Organization, on request, grants an extension beyond that period.

In the case of a primary commodity, however, where a Member considers that its interests would be seriously prejudiced by compliance with this requirement it shall be exempt provisionally therefrom subject to its conforming with the provisions of Article 28, which embody, *inter alia*, an undertaking to the effect that subsidies shall not be applied to maintain or acquire for the Member more than an equitable share of the world trade in the commodity concerned. The Member is required under Article 28 to notify the Organization as to the nature and extent of the subsidization and of the estimated effect on its exports of the product. It is also required promptly to consult with other Members which consider that their interests are seriously prejudiced by the subsidization. If agreement among the Members is not reached the Organization will determine what constitutes an equitable share having regard to a number of specified factors affecting trade in the commodity. The Member may also follow the procedure set out in Chapter VI regarding inter-governmental commodity agreements.

There is special provision in Article 27 to cover stabilization schemes for primary commodities, of the type operated by New Zealand in connection with dairy-produce. These are not regarded as involving an export subsidy where they are designed to stabilize the domestic price or returns to domestic producers independently of movements of export prices, even though they result at times in the sale of the product for export at a price lower than the price to buyers in the domestic market if the Organization determines—(*a*) that the system has also resulted or is designed to result in prices higher for export than for the domestic market, and (*b*) the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously to prejudice the interests of other Members.

Article 25: Subsidies in General

This article applies to subsidies in general which operate, directly or indirectly, to maintain or increase exports of a product or to reduce or prevent an increase in imports of a product. Members are required to notify the Organization of the nature and extent of such subsidization and must be prepared to discuss with a Member which considers its interests prejudicially affected thereby, or with the Organization, the possibility of limiting the subsidization.

Article 26 : Additional Provisions on Export Subsidies

This Article places an obligation on Members not to employ export subsidies which result in the sale of products for export at prices lower than those in the domestic market, due allowance being made for certain factors affecting price comparability. Such subsidies are required to be eliminated within two years of the Charter entering into force, but if it considers its interests prejudicially affected the Member may approach the Organization and seek authority for extension of the period. Subject to consultation on request by the Organization or by a Member whose interests may be seriously prejudiced by such action, a Member may subsidize exports of a product to offset a subsidy granted by a non-Member affecting the Member's exports. There is special provision in Article 27 exempting provisionally from the requirements of paragraphs 1 and 3 of Article 26 exports of a primary commodity where a Member considers that its interests would be seriously prejudiced by compliance therewith.

Article 27 : Special Treatment of Primary Commodities

This Article makes special provision relating to exports of primary commodities. Schemes for stabilization of domestic prices or returns to producers which at times result in export prices being lower than domestic prices are not regarded as involving subsidies on exports if they have resulted or are designed to result in higher export than domestic prices and are so operated or designed to operate as not to stimulate exports unduly.

Members granting subsidies affecting primary commodities are expected to co-operate in efforts to arrange inter-governmental commodity agreements.

A Member is not required to comply with paragraphs 1 and 3 of Article 26 respecting termination of an export subsidy if its interests would be seriously prejudiced by such action. In that case, however, it is required under Article 28 to notify the Organization and consult promptly with any other Members whose interests are seriously prejudiced with a view to ensuring that it is not obtaining more than an equitable share in world trade in the commodity.

Unless the Organization concurs, Members must not grant new subsidies or increase an existing subsidy on exports of a primary commodity while negotiations are taking place for an inter-governmental control agreement. If a commodity agreement is inappropriate, or if such measures fail to succeed, the Member, if its interests are seriously prejudiced, will not be bound by paragraphs 1 and 3 of Article 26, but must conform to Article 28.

Article 28: Undertaking regarding Stimulation of Exports of Primary Commodities

Any subsidy which operates directly to maintain or increase exports of a primary commodity must not be applied in such a way as to give the Member more than an equitable share of world trade in the commodity.

The Organization must be notified promptly of any such measures, and the Member must be prepared to consult with other Members whose interests are seriously prejudiced. Should no agreement be reached between the Members, the Organization will determine what constitutes an equitable share of the trade for the Member employing the subsidy, and in doing so shall have regard to any factors affecting the trade, including those specified in the Article.

Section D.—State Trading and Related Matters

(Articles 29–32)

The purpose of this Section is to establish rules to bring State trading activities, as far as practicable, into line with the conditions applying under the Charter to private trading. This provision is regarded as essential having regard to the extent to which import and export trade is undertaken by Governments not only by Departments of Governments, but also by governmental agencies. The fundamental principle underlying the provisions is non-discrimination. Purchases and sales are required to be made solely in accordance with commercial considerations.

Imports solely for governmental purposes and not for commercial resale or for use in the production of goods for resale do not fall under the provisions.

Sales or purchases made or controlled by Marketing Boards, Commissions, and similar organizations established by Members are covered by the provisions.

An endeavour is made to ensure that monopolies operate to expand rather than restrict trade. Accordingly, if a Member maintains a monopoly for exports or imports of any product it must be prepared to negotiate, upon request, with any Members substantially interested, with a view to limiting protection, through the operation of the monopoly, to domestic users or domestic producers, as the case may be. Wherever it is practicable to employ such principle the monopoly is required to import and offer for sale such quantities of the product as may be sufficient to satisfy the demand, due account being taken of any rationing to consumers.

Provision has been introduced in Article 32 to protect the interests of other Members in cases where a Member holding stocks of primary commodities accumulated for non-commercial purposes—*i.e.*, for military

use—proposes to dispose of them. Notice is required to be given of intention to dispose of such stocks, and the Member may be called upon to consult with other Members with a view to avoiding substantial injury to their interests.

Article 29 : Non-discriminatory Treatment

This Article sets out the principle of non-discrimination in State trading operations relating to purchases or sales. It applies to State enterprises and to any enterprise to which a Member grants exclusive or special privileges. Purchases and sales must be based solely on commercial considerations and enterprises of other Member countries must be afforded adequate opportunity to compete. These provisions do not apply to purchases solely for governmental purposes and not for commercial resale or for use in the production of goods for sale, but fair and equitable treatment is required to be extended to the trade of other Members respecting such imports.

Article 30 : Marketing Organizations

This Article provides in effect that sales and purchases by marketing Boards, Commissions, and similar organizations shall be made according to commercial considerations as provided in Article 29. Where such organizations lay down regulations governing purchases or sales by private enterprises, the Member establishing such organizations shall, with respect to such regulations, be subject to other relevant provisions of the Charter.

Article 31 : Expansion of Trade

This Article is designed to ensure that monopolies of imports or exports are operated to expand and not to restrict trade. A Member maintaining a monopoly must accordingly be prepared, upon request by another Member, to enter into negotiations with a view to making arrangements designed (*a*) in the case of exports, to reduce protection, through the operation of the monopoly, to domestic users or to assure exports of the monopolized products in adequate quantities at reasonable prices ; and (*b*) in the case of imports, to reduce or limit protection to domestic producers. With respect to monopolies affecting imports, the Member shall negotiate for the establishment of a maximum import duty or for any other mutually satisfactory arrangement (consistent with the Charter) if negotiation of a maximum import duty is impracticable or would be ineffective.

Where a maximum import duty is not negotiated, the Member must give notification of the maximum import duty which it will apply. The maximum import duty represents the maximum margin by which

the price at which the imported product is sold in the domestic market by the monopoly (exclusive of internal taxes, transportation, distribution, and other expenses incident to the purchase, sale, or further processing and a reasonable margin of profit) may exceed the landed cost. Paragraph 5 requires that, where practicable, imports shall be sufficient to satisfy domestic demand, due regard being had to any rationing to consumers.

In applying this Article, account is to be taken of the fact that some monopolies are established mainly for social, cultural, humanitarian, or revenue purposes.

Article 32 : Liquidation of Non-commercial Stocks

Recognizing that the interests of other Members might be prejudicially affected through the disposal by another Member of substantial stocks of a primary commodity held for non-commercial purposes, Article 32 provides for notification to be given of any such intention and for consultation, where desired, with Members whose interests might be substantially affected.

Section E.—General Commercial Provisions

(Articles 33–39)

The general purpose of this Section, comprising Articles 33–39, is to fit into the framework of the Charter provisions relating to any governmental requirements imposed in connection with the normal processes involved in sending goods from one country to another. The Section has therefore been framed to cover goods in transit, anti-dumping and countervailing duties, valuation for Customs purposes, formalities connected with importation and exportation, and marks of origin. Requirements have also been laid down respecting publication and administration of trade regulations and the supply of statistical information.

The importance of the Section is that it deals with and seeks to prevent the possible misuse of formalities which might be employed in such a way as to discriminate against the goods of particular countries or to impose barriers to trade. It might, for example, be possible to nullify or impair a concession by the use of arbitrary methods of valuation for Customs purposes or by the abuse of anti-dumping duties.

Accordingly, there have been set out in the Section principles which Member countries are required to observe in the administration of laws and requirements relating to external trade. New Zealand practice conforms with such principles.

Article 33 : Freedom of Transit

In this Article " traffic in transit " is defined as traffic in which goods, and also vessels and other means of transport, pass across the territory of a Member as part of a complete journey beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. The Article does not apply to aircraft in transit, but does apply to air transit of goods.

There shall be freedom of transit for such traffic through each Member country, and no distinction may be made which is based, for example, on the flag of vessels or on the ownership of goods, of vessels, or of other means of transport. Goods which have been in transit through a Member country must be afforded no less favourable treatment than if they had been transported from their place of origin to their destination without going through such other Member country, but an existing requirement of direct consignment, which is a requisite condition of eligibility for entry at preferential rates of duty or which is related to the method of valuation for duty purposes, may be maintained.

Article 34 : 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. Such 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 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. This provision might be employed, for example, to safeguard the interests of a Member enjoying a preference which might be prejudiced as a result of dumping. Provision is also made recognizing that the importation of products which were exported under stabilization schemes of the type in operation in New Zealand in connection with dairy-produce would not be regarded as resulting in material injury, and, therefore, would not give grounds for imposing dumping duty.

Article 35 : 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.

The practice in New Zealand in respect of goods which are subject to duty in relation to their value is to charge duty on importation on the current domestic value in the country of export, the deduction being permitted of discounts allowed on account of the quantity of the goods while special discounts, such as those given in respect of an agency, are not allowed to be deducted. Where the current domestic value is not ascertainable the value for duty is assessed on the nearest ascertainable equivalent of the actual value. This practice conforms with the principles set out in the Article.

The Article also formulates standard methods, to which Members are required to adhere, for the conversion for Customs purposes of currencies of other countries, but a country is not required to alter its present method of conversion if such alteration would have the effect of increasing generally the amounts of duty payable. Under this provision New Zealand could not be required to alter its existing method of converting foreign currencies to their equivalent in sterling.

Article 36 : Formalities connected with Importation and Exportation

This Article provides that incidental fees and charges imposed by governmental authorities on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. The Article stipulates certain services where only the fees related to the cost of such services may be charged.

Recognition is given to the need for reducing the number and diversity of such fees and charges, for the simplification of import and export documentation requirements generally, and for the imposition of penalties to be made in a fair and judicial manner.

The Organization is given authority to study and recommend to Members specific measures for the simplification and standardization of Customs formalities and for the elimination of unnecessary Customs requirements.

Article 37 : Marks of Origin

This Article sets out the general principle that in implementing laws and regulations relating to marks of origin Members should endeavour to reduce to a minimum any inconvenience and difficulty which may be caused to the commerce and industry of exporting countries. Provision is made for general most-favoured-nation treatment in respect of marking requirements, which must be such as to permit compliance without damaging the products or materially reducing their value or unreasonably increasing their cost. 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 misrepresent the regional or geographical origin of a product. This should not have the effect, however, of prejudicing the present situation as regards certain distinctive names of products, provided always that the names affixed to the products cannot misrepresent their true origin. This is particularly the case when the name of the producing country is clearly indicated. It will rest with the Governments concerned to proceed to a joint examination of particular cases which might arise if disputes occur as a result of the use of distinctive names of products which may have lost their original significance through constant use permitted by law in the country where they are used.

Article 38 : Publication and Administration of Trade Regulations

This Article provides 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.

Members are required to maintain procedures allowing for review of administrative action in Customs matters. This, however, does not require the elimination or substitution of existing procedures which in fact provide for an objective impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement.

Article 39 : 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 or to such agency as may be designated by the Organization.

Members are also required to publish regularly and as promptly as possible statistics of their external trade and of governmental revenue from import and export duties in as much detail as is reasonably practicable.

Section F.—Special Provisions

(Articles 40–45)

This Section includes certain provisions having general relationship to the other sections of Chapter IV.

Article 40 : Emergency Action on Imports of Particular Products

Compliance with the provisions of Chapter IV may require some Members to undertake substantial alterations in their present practices. This is particularly true of the alterations which will in most cases be

made to tariff schedules under the provisions of Article 17. The drafters of the Charter have recognized that circumstances not previously foreseen may arise as a result of such reductions or eliminations of protection and, in some cases, to cause or at least to threaten such severe damage to domestic industry as to warrant special action to assist the industry concerned.

Similar difficulties may arise for a third country which enjoyed in a given market a certain preference which has been reduced. In such cases the country previously granting the preference may take action designed to safeguard the interests of the third country whose trade has been seriously prejudiced.

The Charter provides for consultation and compensatory action to prevent abuse of the necessarily wide provisions of the Article.

Article 40 provides that where the obligations a Member incurs under Chapter IV lead to such a great actual increase of imports of a given product as to cause or threaten serious injury to domestic producers of the same or a like product, the affected Member may suspend the obligation or withdraw the tariff concession it has granted. Such suspension or withdrawal must, however, be limited in degree to the extent necessary to repair the injury actually caused or threatened.

If a margin of preference enjoyed by country " A " in country " B " is reduced during negotiations under Article 17, the benefit received by country " C " in the market of country " B " may lead to a substantial decrease in imports from country " A " and thus cause damage to industry in that country. In such a case, if country " A " so requests, country " B " may withdraw the reduction of the margin of preference to the extent necessary to repair the injury.

Before taking action to withdraw or modify concessions Members should consult with substantially affected Members and advise the Organization. If the urgency of the situation precludes prior consultation action may be taken provisionally to be immediately followed by consultation.

The consultations required are, of course, designed to achieve agreement among affected Members as to the appropriate action in the circumstances. Even if agreement is not reached action may be taken by the Member concerned but in such case Members affected by such action are entitled after giving thirty days' notice to take any compensatory measures of which the Organization does not disapprove.

Where action is taken without prior consultation, and results in such damage to another Member as to call for immediate compensatory action no notice of such action need be given, and the compensatory action may be continued during the consultations which are required to follow the original action by the first-affected Member.

There is no obligation on a Member to consult another Member who is not a contracting party to the General Agreement regarding withdrawal or modification in terms of Article 40 of a tariff concession embodied in the General Agreement, nor is the latter entitled under the Article to take compensatory action in such cases by withdrawal from obligations under the Charter.

It is understood that any action to withdraw or modify concessions would be non-discriminatory as among members of the Organization.

Article 41 : Consultation

This Article provides for consultation among Members with respect to all matters covered by Chapter IV.

Article 42 : Territorial Application of Chapter IV

Chapter IV applies to metropolitan and dependent territories, as does the whole Charter. Some dependent territories however have separate Customs tariffs of their own and for the purposes of Chapter IV it is therefore necessary to treat these separate Customs territories as separate Members. It is, however, specifically provided that this provision does not create any rights as between two dependent territories of the one Member.

Article 43 : Frontier Traffic

This Article recognizes that special treatment is necessary to cope with the large volume of traffic across land frontiers, which usually involves a large number of small transactions.

Subparagraph (*b*) of this Article recognizes the special treatment necessary for the well-being of the economy of the Free Territory of Trieste, which will need time to become readjusted to its new state of independence.

Article 44 : Customs Unions and Free-trade Areas

This Article gives recognition to the desirability of increasing freedom of trade by the development through voluntary agreements of closer integration between the economies of countries parties to such agreements. Agreements of that nature should, however, not raise barriers to the trade of other Members.

Chapter IV is accordingly not to be construed to prevent as between Members the conclusion of Customs unions or free-trade areas provided that they conform to the latter requirement.

The Article stipulates that any Member deciding to enter into a Customs union or free-trade area or an interim agreement leading to the formation of such union or area shall furnish the Organization with full information of the proposals. If the Organization considers that that agreement is not likely to achieve the objective within the period

contemplated, it shall make recommendations to the parties, and they shall not maintain or put into force the agreement if they are not prepared to modify it as recommended.

Paragraph 4 defines Customs unions and free-trade areas respectively. A union necessitates elimination of duties and restrictive regulations with respect to substantially all the trade between the constituent territories, and substantially the same duties and other regulations are to be applied by each of the Members of the union to the trade territories not included in the union. In a free-trade area duties and other regulations of commerce must be eliminated on substantially all the trade originating in the constituent territories.

Paragraph 5 provides that tariff preferences referred to in paragraph 2 of Article 16 shall not be affected, but may be adjusted or eliminated by negotiations with Members affected.

Provision is made in paragraph 6 for the Organization by a two-thirds majority vote to approve of proposals for Customs unions or free-trade areas not fully conforming to the requirements laid down in the Article. This provision might, for example, cover an agreement which includes a non-Member of the Organization, *vide* paragraph 3 of Article 98.

Article 45: General Exceptions to Chapter IV

This Article contains a number of necessary general exceptions to the provisions of Chapter IV which may be applied in a non-discriminatory manner, provided their application does not constitute a hidden and unwarranted restriction of trade. They relate to public morals and safety; human, animal, or plant life and health; import and export of gold or silver; patents, trade-marks, and copyrights; prison-made goods; national treasures; conservation of exhaustible natural resources where the measures are made effective in conjunction with restrictions on domestic production or consumption; measures in connection with inter-governmental commodity agreements; and restrictions on exports of domestic materials to conserve supplies for domestic industries when domestic price levels of the materials are stabilized below world market levels.

Exceptions are also provided in respect of measures, applied in the post-war transitional period, relating to shortage in supplies, price-controls, and liquidation of stocks. Such measures must be removed, however, as soon as circumstances permit.

CHAPTER V.—RESTRICTIVE BUSINESS PRACTICES

(Articles 46–54)

Throughout the Charter runs an underlying philosophy that adoption by the State, or by any enterprise within its jurisdiction, of business practices which tend to restrict international trade is harmful and likely to retard the achievement of the objectives of the Charter.

Chapter V is designed to call attention to the fact that restrictive business practices might be adopted, by State agencies, by enterprises partially or wholly owned by public authority, or by private commercial enterprises. There would be little point in reducing tariff rates or controlling quantitative restrictions imposed by Governments if their place were taken by arrangements between business agencies to restrict trade in ways which would have much the same effect. It is recognized that, in seeking to avoid competition, reduce risks, and generally to improve their trading conditions, both public and private commercial enterprises sometimes enter into cartel arrangements or some such provision for the purpose of restricting production, allocating markets, fixing prices, and otherwise restraining trade. As a result of such action the free flow of goods is hindered, and the world's economic resources are not utilized to the maximum.

It has not been possible to prescribe exactly the extent (if any) of the injury which might be caused to others by the adoption of restrictive business practices, and, conversely, it has not been possible to define exactly the processes by which injury may be avoided or alleviated. The chapter rather relies on the good faith of Members to do all within their power to prevent public and private commercial enterprises within their jurisdiction from adopting such practices, and to remedial action if injury should occur. Procedure therefore provides for complaint by a Member whose trade is affected, consultation between Members, investigation by the Organization, suggestion by the Organization in respect to remedial measures, and report by the Member on action taken. If these procedures do not achieve the desired result it is envisaged that further, and, if necessary, disciplinary, action may be taken as prescribed in other articles of the Charter. It has been apparent throughout, whilst recognizing that certain practices are restrictive of trade, that the subject has been insufficiently studied. The procedure laid down in the chapter is purposely left flexible, so that the Organization may be free to adapt itself to varying conditions as they arise.

It is recognized that services such as transportation, tele-communications, insurance, and banking can be used in such ways as to constitute practices as restrictive in their effect on trade as any practice which might be adopted by trading organizations. This field, however, presents greater difficulties in treatment than recognized trading practices, and the chapter does not proceed beyond very general principles in treating restrictive practices which might be adopted under the cloak of services. A Member considering its interests prejudiced may consult with the Member under whose jurisdiction the service complained of is operating.

Should this not result in satisfaction being obtained, the matter may be referred to the Organization. At this point the Organization has two alternatives—

(*a*) To refer the complaint to the appropriate inter-governmental Organization if one exists ; and, if not—

(*b*) To promote an international agreement to meet the situation.

With a view to avoiding conflict in functions as between the I.T.O. and the recently established Inter-governmental Maritime Consultative Organization, it was decided that Article 53 should not apply to shipping services which are subject to the Convention of the latter Organization. An interpretative note to that effect is included in Annex P to the Charter.

The sequence of procedure for complaint and investigation is as follows :—

(*a*) Any Member is entitled to complain to the Organization if it considers its trade is affected adversely on account of practices employed in other countries by any business enterprise or combination of enterprises. Members agree that properly founded complaints shall be subject to investigation.

(*b*) Consultation may take place in the first place between the Members concerned, but the injured Member can request the Organization to assist at the consultation.

(*c*) An effected Member may proceed directly to present a complaint in writing to the Organization, provided that consultation must precede written complaint if it is against a single Government-controlled agency. The Organization may request any information it thinks necessary in order that it might be in a position to determine the validity of the complaint. If the complaint is substantiated, the Organization shall arrange for or conduct a hearing, and must give all interested parties an opportunity of presenting evidence if they so desire.

After hearing the case the Organization is to notify all Members of its decision, request that remedial action be taken, and publish a full report of the evidence, and action taken by the offending Member.

(*d*) The Organization may, on its own initiative, or on request, conduct studies relative to the incidence, effect, and general operation of restrictive business practices, and may request information from Members to facilitate its study. Following such a study it may make recommendations to Members relative to their conventions and laws in so far as they relate to business practices.

(*e*) Members of the Organization accept an obligation to co-operate fully with the Organization in all matters associated with the investigation, consultation, and treatment of restrictive business practices, and may co-operate with each other for the better achievement of action required under the chapter.

Following is a review of the individual Articles in the chapter :—

Article 46 : General Policy towards Restrictive Business Practices

Discussion centres round business practices which might be adopted by private or public commercial enterprises. For the purposes of the chapter the term " public commercial enterprises " means agencies of Governments in so far as they are engaged in trade, and trading enterprises mainly or wholly owned by public authority and in respect of which a Member exercises effective control or assumes responsibility. The term " private commercial enterprises " means any other commercial enterprise.

Restrictive practices include the fixing of prices, terms, and conditions of sale and purchase ; limiting or allocating territorial markets ; fixing sale and purchase quotas ; discriminating against particular enterprises ; limiting production ; conscious prevention of the use of science and technology ; misuse of patent rights, trade-marks, &c. These practices restrain competition, limit access to markets, and foster monopolistic control.

Any Member is entitled to complain to the Organization if its trade is suffering on account of such restrictive practices employed in other countries, by any enterprise or combination of enterprises. Members accepting the Charter agree that complaints which are properly founded shall be subject to investigation.

Article 47 : Consultation Procedure

If a Member considers its trade affected by any practice which is in operation, consultation should take place between the Members in order that the position may be clarified. If requested to do so, the Organization may assist at the consultation.

Article 48 : Investigation Procedure

Any affected Member may proceed directly to ask for an investigation by presenting a written complaint to the Organization. If the complaint is against a single Government-controlled agency, consultation must precede a written complaint. The Organization may request any information it considers necessary to enable it to determine whether the practice complained of is in accordance with the definitions given and has had the effect specified in the first article of this chapter. If, on the basis

of the information supplied, the Organization decides that an investigation is justified, it shall arrange for or conduct the hearing of the case. All interested parties are to be given an opportunity of presenting evidence for or against.

If the complaint is substantiated, the Organization must notify all Members of its decision and request that remedial action be taken. It must publish a full report of the evidence and the remedial action taken by the offending Member. The Organization must not publish information which might result in injury to the legitimate interests of a business enterprise.

Article 49 : Studies relating to Restrictive Business Practices

The Organization is authorized on its own initiative, or on request, to conduct studies relative to restrictive practices, including conventions, laws, and procedure of any Member in so far as they are relevant, and for this purpose may request appropriate information from Members. It is authorized to make recommendations to Members in respect of their conventions and laws, and may arrange conferences for general discussion of practices affecting international trade.

Article 50 : Obligations of Members

Members shall take all possible measures to ensure that enterprises under their jurisdiction do not engage in restrictive practices. They must assist the Organization in every way possible, by supplying promptly and fully any information asked for. Members may, however, withhold information which, if disclosed, would damage the legitimate business interests of commercial enterprises. They must, however, indicate the nature of such information and advise why it is withheld. Members undertake to take full account of the recommendations of the Organization in accordance with their obligations under the Charter, to report fully any action taken, and, if unable to meet the requests of the Organization, are required to explain the reasons. Members undertake to enter into consultations and conferences as required by the Organization.

Article 51 : Co-operative Remedial Arrangements

Members may act co-operatively for the better achievement of remedial action required under the chapter.

Article 52 : Domestic Measures against Restrictive Business Practices

Members shall not be prevented from enforcing a national law or decree directed toward preventing monopoly or restriction of trade by an act or omission to act on the part of the Organization.

Article 53 : Special Procedure with respect to Services

It is recognized that effects similar to those resulting from the employment of practices discussed in this chapter may be precipitated through discriminatory action by special services such as shipping, insurance companies, and banks. If any Member considers its interests detrimentally affected, it can submit a written statement of the position to the Member within whose territory the service complained of is operating. Opportunity for consultation shall be given with a view to adjustment. If adjustment is not effected it may be referred to the Organization, which, in turn, shall transfer the matter to the appropriate inter-governmental organization if one exists. If not, the Organization may be asked to promote an international agreement to meet the situation.

As previously mentioned, the following interpretative note is included in Annex P in relation to this Article :—

> " The provisions of this Article shall not apply to matters relating to shipping services which are subject to the Convention of the Inter-governmental Maritime Consultative Organization."

Article 54 : Interpretation and Definition

If any Member acts in accordance with specific provisions of other parts of the Charter such action cannot be challenged under Chapter V. For instance, restrictive action taken under an inter-governmental commodity agreement is exempted. Members' rights under other provisions of the Charter must be respected.

A contract between two parties as buyer and seller is not to be regarded as a restrictive practice so long as such contract does not result in restricted competition, limiting access to markets, or foster monopolistic control.

CHAPTER VI.—INTER-GOVERNMENTAL COMMODITY AGREEMENTS

(Articles 55–70)

The concept of multilateral governmental agreements covering the conditions of trade in respect of primary commodities is not a new one. It arises from the historical fact that such products are subject to violent price fluctuations which have resulted in varying degrees of economic chaos to producers, an unsatisfactory supply position for consumers, and generally an instability in national economies.

Early in the twentieth century efforts were made to introduce international agreements of this type, but it was not until the effects of price instability were felt, in the period between the two wars, that real progress was recorded. During that period the marketing of meat, cotton, rubber, sugar, tea, timber, tin, wheat, and wool was subjected to study, and varying types of inter-governmental agreements were

completed. Since 1940 coffee, petroleum, and rice have come under review, and the marketing of accumulated stock of Dominion-grown wool came under the control of U.K. - Dominion Wool Disposals, Ltd.

The problems associated with individual primary commodities are to a great extent international in their incidence and effect, but have never been treated in a co-ordinated and systematic manner. The problems have been reviewed by some of the producer interests only—consultations on an international basis have not been possible, consumer interests have not been fully considered, and no attempt has been made to correlate action on related commodities.

The necessities of war brought about some international management of many commodities, and focused attention on the desirability of a greater degree of co-ordination.

The Food and Agricultural Organization of the United Nations at its Hot Springs and subsequent conferences devoted much time and thought to general methods of commodity control, and has taken a leading role in securing an acceptance of the practicability of utilizing inter-governmental agreements as instruments of an expanding economy for food products.

Following upon the interest created internationally in the co-ordination of policy related to trade in primary products, it was natural that international agreements and machinery for their formulation and administration should be incorporated in a wider trade policy as an integral part of the Trade and Employment Charter. The Preparatory Committee at its various conferences has worked towards the formulation of a practical code for the co-ordination of all interests, and has closely collaborated with the Food and Agricultural Organization throughout its deliberations. The result of this effort is contained in Chapter VI of the Charter. The Economic and Social Council of the United Nations has taken a keen interest in the development of a code of objectives and procedures relative to commodity agreements, and, recognizing the urgency for action in respect of certain products, has requested that the principles contained in the Charter be used as a guide in discussions taking place prior to a general acceptance of the Charter by Governments. Thus we have had the example of a wheat conference and a rice-study group working in close conformity with the provisions of Chapter VI prior to the completion of the Havana Conference.

The importance of the provisions contained in Chapter VI can best be realized if we have a proper appreciation of the following points:—

(*a*) International trade as envisaged in the Charter to a great extent revolves round export and import of food products and raw materials in their primary or partially processed form.

(*b*) It is accepted that trade in primary and related products is particularly susceptible to special difficulties. Consumer demand and price fluctations due to disequilibrium between production and consumption may result in economic chaos.

(*c*) The Charter recognizes that, in view of the special circumstances associated with primary and related commodities, the code prescribed to govern commercial practices may be inadequate to cope with situations which may arise, and is certainly unsuited to a deliberate policy of expansion of food production required to fulfil the " higher standard of living " philosophy as enunciated in the objectives of the Organization.

The objectives, procedures, principles, and administration as contained in Chapter VI are therefore designed to permit the use of trading techniques otherwise debarred in the Charter provided the provisions of the chapter are accepted as a basis for international trade in any particular commodity coming within the definition of primary and related commodities.

General Provisions of Chapter VI

Having accepted the likelihood of special difficulties arising which call for special treatment, Chapter VI proceeds to prescribe criteria and procedures to ensure that release from other provisions of the Charter is not abused, and that international trade is expanded rather than retarded. These provisions are summarized as follows :—

(*a*) Primary and related commodities are defined in the broadest way possible, as any food or raw material in its generally recognized marketable form, a combination of materials, substitution products, and, in special circumstances, commodities which do not fall precisely under the definition of primary products.

(*b*) The objectives of inter-governmental commodity agreements are, broadly, the avoidance of chaos in individual, national, and international economies ; maintenance of stability between production and consumption ; avoidance of disruption in labour ; and an expanding world economy.

(*c*) Adequate examination is required of all factors relative to any commodity coming under review, before action is taken to complete an agreement ; thus information must be collected and submitted to review by a study group and ultimately a commodity conference.

(*d*) The widest possible participation in study groups and conferences is provided for. Member and non-Member countries, whether producing or importing, must be invited to attend, and consumer interests have an equal voice with producers.

(*e*) It is stipulated that there must not be undue delay in treatment of any product under study, in order that producer interests may be safeguarded.

(*f*) Two major types of agreements are provided for—namely, control agreements which are particularly suited to commodities in respect of which a burdensome surplus position has arisen, or is expected to arise, and agreements aimed at expansion of production even beyond the point generally acceptable under normal trading conditions.

(*g*) Administration of a completed agreement is to be through a Council consisting of one representative from each participating country, with an independent Chairman, and adequate representation of the central organization and of competent inter-governmental organizations.

(*h*) The initial term for agreement shall not exceed five years, but renewal for further periods is permitted. Provision is made for general supervision by the Organization to ensure that any agreement is operating in conformity with the general provisions of the Charter.

(*i*) Appropriate co-operation is expected between inter-governmental agencies, and the position of F.A.O. is safeguarded within its special sphere.

(*j*) Existing or proposed inter-governmental agreements are to be reviewed to ensure that their provisions conform to the Charter.

(*k*) Certain inter-governmental agreements are excluded from the provisions of Chapter VI—namely, those falling under State-trading provisions ; bilateral agreements between one exporting and one importing country, but not classified as a State-trading arrangement ; agreements for the protection of morals and of human, animal, and plant life and health ; conservation of fishery resources ; agreements relating to equitable distribution of commodities in short supply and to the conservation of natural resources.

Following is an outline of the provisions in individual Articles in the chapter :—

Section A.—Introductory Considerations

Article 55 : Difficulties relating to Primary Commodities

It is recognized in this Article that special difficulties necessitating a multilateral approach are most likely to be associated with primary products, as it is in this field that disequilibrium between production and consumption is most likely to arise. Imminent or positive surpluses resulting in price-fluctuations affect producers, and ultimately consumers, with an inevitable disruption of national economy if the position is not corrected. The chapter is therefore designed to give flexibility of action to meet such conditions through inter-governmental agreements.

Article 56 : Primary and Related Commodities

In the early stages of Geneva there was a question at issue as to the commodities likely to come under Chapter VI. Some discussion took place relative to the desirability of bringing manufactured commodities within its purview, but this suggestion was resisted. It was decided to clarify the position by defining " primary and related commodities."

A primary commodity is defined as the product of farm, forest, or fishery or any mineral which is in its natural form or has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade. The term is also regarded as covering a group of commodities of which one is primary and the others so closely related as regards conditions of production or utilization to the others in the group that it would be appropriate to deal with them in a single agreement. (Examples : Fats might include butterfat, vegetable-oils, animal fats, and mixtures as in margarine. Rubber would embrace both natural and synthetic.)

In exceptional circumstances the Organization may decide that the provisions of the chapter should apply to a commodity not falling precisely within the definition of primary commodity. Synthetic fibres might come within this category, and their consideration might involve wool.

Article 57 : Objectives of Inter-governmental Commodity Agreements

The objectives for achievement of which inter-governmental commodity agreements are considered appropriate are—

(*a*) Prevention or alleviation of economic difficulties resulting from inability of normal market forces to cope with the situation.

(*b*) To promote for a limited period conditions under which internal readjustments may be made, such as a shift of resources and man-power, and, where appropriate, development of secondary industries based on the primary product concerned.

(*c*) To achieve long-term equilibrium between production and consumption and to prevent violent price-fluctuation without detriment to consumers or producers.

(*d*) To utilize natural resources to best advantage.

(*e*) To permit of an expansionist policy, particularly for foodstuffs, and, if necessary, the employment of a " special price " system.

(*f*) Equitable distribution of a commodity in short supply.

Objectives (*a*), (*b*), and (*c*) envisage control agreements as surpluses and labour difficulties would have arisen or would be anticipated, and all the provisions for control may be brought into operation. Objectives (*d*), (*e*), and (*f*) would be handled by commodity agreements devised to ensure equality of treatment, and, so far as (*c*) is concerned, an expansionist philosophy.

Section B.—Inter-governmental Commodity Agreements in General

Article 58: Commodity Studies

The basis of procedure established in this chapter provides for a careful examination of all aspects of a commodity problem before action is taken, and that such examination should be conducted with adequate representation from all the interests concerned. Thus, any Member which considers itself substantially interested in a commodity is entitled to ask that a study be instituted, and its request must be granted unless the Organization decides that the evidence submitted does not justify the calling together of a study group. The decision to attend a study group rests with individual Members. The study group must investigate and report promptly. Non-Members may attend.

The provisions relative to the formation of study groups are not new, as the principles of procedure and representation laid down are very similar to those used for some years. The same applies to the succeeding article on commodity conferences, the only fundamental difference being that, in the past, study groups and conferences have been called, after consultation between Governments, by one Government acting as host. Such commodities as beef, coffee, cotton, petroleum, rice, rubber, sugar, tea, timber, tin, wheat, and wool have been subject to study and to some form of inter-governmental agreement.

Article 59: Commodity Conferences

It is anticipated that a commodity conference will, in the main, result from the recommendations of a study group. Provision is made, however, for the Organization to convene a conference directly—

(*a*) At the request of Members whose interests represent a significant or major part of world production or consumption or trade in a commodity; or

(*b*) At the request of Members which consider that their national economies are dependent to an important extent on that commodity; or

(*c*) On its own initiative, if information is considered adequate.

In the case of (*a*) and (*b*) the requesting Members must provide the necessary information to justify their request. Any Member may attend a conference, and non-Members may be invited.

Article 60: General Principles governing Inter-governmental Commodity Agreements

All Members have equal rights to participate in initial negotiations. Non-Members may be asked to participate on the same basis as Members. There is to be no discrimination as between participating and non-participating Members. Producer and consumer countries are to have equal voice. This wide participation, combined with full publicity of

proposed and concluded agreements and of the views of Members, is calculated to prevent agreements serving the interests of some countries to the detriment of others. All Members are to give favourable consideration to any recommendation made under such agreement aimed at expansion of consumption.

Article 61: Types of Agreements

Two types of agreements are provided for (*a*) commodity-control agreements and (*b*) other inter-governmental commodity agreements. The first type might restrict international trade through adoption of quantitative control of exports or imports and regulation of production and prices.

The second type of agreement provided for envisages an expansionist programme in the fields of production and consumption. It may contain provisions for regulation of production and control of exports and imports, and also price provisions which will come into operation at a later date. All such provisions in this type of inter-governmental commodity agreement should be entered into on the basis of an expansionist philosophy. Price provisions are to be of a guarantee nature in order to protect producers and permit of expansion without fear of future collapse.

Members undertake not to enter into any new commodity-control agreement other than through the machinery provided in the chapter, except that, if delay in treatment is excessive, Members may proceed to direct negotiation.

SECTION C.—INTER-GOVERNMENTAL COMMODITY-CONTROL AGREEMENTS

Article 62: Circumstances governing the Use of Commodity-control Agreements

Conditions are prescribed which must prevail before a control agreement is justified, and Members undertake to enter into such agreements only when such conditions have arisen or are contemplated. The conditions are—

(*a*) A burdensome surplus of the commodity has developed or is expected to develop, which would result in serious hardship to producers, and in particular to small producers;

(*b*) When a fall in price would not result in a worth-while increase in consumption or adjustment in production;

(*c*) When widespread unemployment has developed or is expected to develop, with resultant hardship to workers, particularly in areas which do not lend themselves readily to alternative opportunities of employment. In other words, control agreements are particularly applicable when normal market forces are not able to correct the supply and demand position and complete economic disruption is threatened.

Article 63: Additional Principles governing Commodity-control Agreements

When concluding a commodity-control agreement Members undertake to observe certain specific principles—the agreement shall ensure supplies adequate for world demand at fair prices, and, where possible, include measures which will encourage an expanding consumption. Countries which are exporters are to have an equal voice in framing the agreement, and Members in either category who, although not large, are vitally interested owing to the importance of the commodity to them shall have an appropriate voice. Control agreements are to afford increasing opportunities for supplies from sources able to supply in the most effective and economic manner, but care must be taken to prevent economic and social dislocation, and the position of producing countries suffering abnormal disabilities must be considered.

Participating countries are expected, within their own national economy, to effect the maximum adjustment within the duration of the agreement in order that the commodity problem may be solved.

Article 64: Administration of Commodity-control Agreements

Each control agreement shall provide for a "Commodity Council" consisting of one representative from each participating country and one non-voting representative of the Organization. Competent inter-governmental organizations may be invited to nominate a non-voting representative to the Council. The Chairman without vote is to be appointed by the Council, or, at its request, the Chairman may be nominated by the Organization. The Secretary is to be appointed by the Council. Each Council is to make its own rules, but the Organization can require amendment if these are inconsistent with the provisions of this Chapter. Each Council must make periodic reports, or special reports, if requested by the Organization. Expenses of the Council are to be borne by participating countries.

Article 65: Initial Term, Review, and Renewal of Commodity-control Agreements

The initial term of agreements is to be not more than five years, but they may be renewed for periods not exceeding five years. Periodically, at intervals not greater than three years, the Organization shall publish a review of the operations of each agreement. The Organization shall have power to terminate an agreement, or to require participating countries to revise it if it is not conforming to the principles laid down in the Chapter. Agreements must permit withdrawal by any country.

Article 66 : Settlement of Disputes

The Council shall endeavour to settle disputes. Failing settlement, they shall be referred to the Organization, which shall apply the procedure prescribed in Chapter VIII.

SECTION D—MISCELLANEOUS PROVISIONS

Article 67 : Relations with Inter-governmental Organizations

Appropriate co-operation is expected between inter-governmental agencies. Those deemed competent, such as the Food and Agriculture Organization, are entitled to attend any study group or commodity conference, to ask that a study of a primary commodity be made, to submit a study to the Organization, and to recommend a further study or that a conference be convened.

Article 68 : Obligation of Members regarding Existing and Proposed Commodity Agreements

Members are to inform the Organization of the inter-governmental commodity agreements in which they are participating at the time they become Members, together with all relevant information. If found inconsistent with provisions of the Chapter, the Organization shall inform the Members concerned, in order to secure prompt adjustment, to bring any agreement into line. Similar action is to be taken in respect of any agreements under negotiation at the time of assuming membership.

Article 69 : Territorial Application

For the purpose of Chapter VI, "Member" or "non-Member" means the Member or non-Member with its dependent territories. Representation at commodity conferences or study groups might be joint representation or, if the group of territories embraces both producing and consuming areas, separate representation is permitted.

Article 70 : Exceptions to Chapter VI

The provisions of Chapter VI shall not apply to—

(*a*) Bilateral inter-governmental purchase and sale agreements falling under State-trading provisions.

(*b*) Any inter-governmental commodity agreement involving only one exporting and one importing country and not covered by subparagraph (*a*). Such an agreement is, however, subject to complaint and consequent investigation by the Organization, which may decide that the agreement shall be subject to the provisions of this Chapter.

(*c*) Provisions of any inter-governmental commodity agreements which are necessary for protection of public morals or of human, animal, or plant life or health. Such provisions must not be inconsistent with the objectives of Chapters V and VI.

(*d*) Any agreements relating solely to conservation of fisheries resources, migratory birds, and wild-life. Such agreements are subject to complaint by members.

(*e*) Inter-governmental commodity agreements relating solely to equitable distribution of commodities in short supply which may be entered into directly—that is, without calling a study group or a commodity conference.

(*f*) Commodity-control agreements relating solely to conservation of exhaustible natural resources which may be entered into without conforming to Section C of this Chapter.

CHAPTER VII.—THE INTERNATIONAL TRADE ORGANIZATION

(Articles 71–91)

This chapter relates to the membership, general functions, and structure of the International Trade Organization, and the relationship of the Organization to the United Nations and its other specialized agencies.

SECTION A.—STRUCTURE AND FUNCTIONS

Article 71: Membership

Membership is not limited to entirely sovereign States. Territories (such, for instance, as Southern Rhodesia) which, though not politically independent, have complete autonomy in the conduct of their external commercial relations may also be Members of the Organization.

The original Members shall be those States or Customs Territories invited to the Havana Conference who agree to bring the Charter into force (see Article 103). Other States and Customs Territories may later apply for, and be granted, membership.

Provision is also made for the conference to determine the terms and conditions under which the rights and obligations of membership shall be extended to the Free Territory of Trieste, and Trust Territories and other special regimes established or administered by the United Nations.

While Germany and Japan are under military occupation there is provision for the Conference to determine, upon application by the competent authorities responsible for the control of these countries, the extent to which rights and obligations under the Charter shall be extended in respect of the trade of those territories.

Article 72: Functions

This Article sets out the functions of the Organization. Besides performing the functions specially provided for in various chapters of the Charter, the Organization shall collect and publish information relating to international trade; shall encourage consultation on economic questions between Members of the Organization; shall undertake studies and promote international agreements designed—(*a*) to prevent discrimination against foreign nationals and enterprises, (*b*) to expand international trade, (*c*) encourage economic development, and (*d*) generally to achieve the objectives of the Organization as set out in Article 1.

The Organization is also bound to co-operate with the United Nations and other inter-governmental organizations in achieving the economic and social objectives of the United Nations and the restoration and maintenance of international peace.

The Organization is to study and recommend agreements between Governments in regard to the relationship between world prices of primary commodities and manufactured products.

In exercising its functions the Organization must have regard to the economic circumstances of particular Members and to the consequences its determinations may have upon the interests of Members concerned.

Article 73: Structure

This Article provides that the Organization shall have a Conference, an Executive Board, Commissions, and such other bodies as may be required.

SECTION B.—THE CONFERENCE

The principal body of the Organization will be the Conference, or general assembly of all Members. The Conference is responsible for the execution of the functions of the Organization. Thus, when under the Charter any duties or powers are imposed on, or granted to, "The Organization" these powers may be exercised by the Conference. Such powers or duties may be delegated to the Executive Board, whose constitution is dealt with in the next Section; in cases where it is considered that any function is of such importance that it should be retained by the Conference and not subject to delegation, the text dealing with that function refers to "the Conference" and not to "The Organization." An example of such a provision is paragraph 3 of Article 77.

Article 74: Composition

The Conference is to consist of all the Members of the Organization, each of whom may have one representative.

Article 75 : Voting

At the Conference each Member will have one vote. Consideration was given to the desirability of " weighing " the votes of Members according to their economic importance, but this proposal met with general opposition.

In certain cases the Charter provides for special voting requirements to take particular decisions (such as amendments to the Charter—see Article 100) ; otherwise decisions are to be taken by a simple majority of votes cast. As a safeguard against hasty or ill-considered decisions provision is made to enable the Conference to write into its rules of procedure a rule permitting a Member to request a second vote where the number of votes cast in the first ballot was less than half the number of Members.

There is no right of veto.

Article 76 : Sessions, Rules of Procedure, and Officers

There will be a regular session of the Conference each year ; in addition special sessions may be called by the Executive Board, or at the request of one-third of the Members. The Conference will generally meet at the seat of the Organization.

The Conference will establish its own rules of procedure, and make provision for the proper functioning of the Organization while it is not in session. The President and other officers will be elected annually.

Articles 77 : Powers and Duties

This Article sets out the special powers and duties of the Conference of the Organization. It is laid down that all the powers and duties attributed to the Organization elsewhere in the Charter are vested in the Conference. The Conference is, however, given power to assign the exercise of certain functions to the Executive Board except in those cases where the function concerned is expressly reserved to the Conference itself.

Paragraph 3 of this Article empowers the Organization to waive by two-thirds majority of votes cast representing more than half the Members any obligation imposed on any Member. The Conference may by similar vote define certain categories of exceptional circumstances in which other voting procedures may be adopted for the waiver of obligations—*e.g.*, to ensure speedy action in cases of urgency.

In paragraphs 4 and 5 the Conference is given wide powers to sponsor and recommend agreements upon any of the matters covered by the Charter and to make recommendations to other inter-governmental organizations.

By paragraph 6 the approval of the budget of the Organization is especially reserved to the Conference itself. The apportionment of the budget among Members will be made according to principles similar to those adopted by the United Nations.

Paragraph 7 provides for the determination by the Conference itself of the seat of the Organization.

Section C.—The Executive Board

Many of the matters coming within the purview of I.T.O. will require urgent attention, and it will not be possible to defer action until the annual session of the Conference. Provision is therefore made for an Executive Board to carry into effect the policies laid down by the Conference in the day to day work of the Organization.

Article 78 : Composition of the Executive Board

The Executive Board will have eighteen Members, each representative of one Member of the Organization.

In the election of the Executive Board the Conference shall ensure that the Board is representative of all geographic areas.

In the Executive Board a Customs Union may if it so desires be represented by one member of the Board. At the same time the Board should include a certain proportion of Members of the Organization of chief economic importance, and be representative of the diverse types and stages of development of the economies existing within the membership of the Organization.

Paragraph 3 of this Article lays down certain rules for the election of the Executive Board and for the fulfilment of the criterion of chief economic importance. This paragraph provides that the eight Members or Customs Union of chief economic importance as determined by the Conference shall be declared members of the Executive Board. The remaining ten seats will be filled by election among the Members of the Organization so as to fulfil the other two criteria of wide geographic representation and representation of diversity of economies. A two-thirds majority vote is required for appointments to the Executive Board, but this requirement will lapse in the event of a deadlock.

After the first election, Members of the Executive Board shall be elected for periods of three years.

Special rules for procedure at the first election are laid down in Annex L, referred to herein later.

Article 79 : Voting

Decisions of the Executive Board will be taken by a simple majority of the votes cast, each Member of the Board having one vote.

Article 80 : Sessions, Procedures, Officers

The Executive Board will adopt its own rules of procedure, subject to the approval of the Conference, and will elect its Chairman. If any Member not on the Executive Board is particularly concerned in a matter under consideration by the Executive Board, that Member may participate in the Board's discussion, but shall not have the right to vote.

Article 81 : Powers and Duties

The Executive Board is responsible for execution of the policies of the Organization and must perform duties assigned to it by the Conference. It is also bound to supervise the activities of the Commissions established under Section D of Chapter VII.

The Executive Board has power to make recommendations to the Conference or to inter-governmental organizations on any subject within the scope of the Charter.

Section D.—The Commissions

It is recognized that it will not be possible for many of the functions of the Organization requiring specialized knowledge, investigation, or research to be properly carried out by the principal organs of the I.T.O., or by the staff without expert assistance. Provision is therefore made for the setting-up of small commissions of experts either on a permanent basis to advise the Organization on all matters arising in a particular field, or temporarily to consider a specific problem.

Article 82 : Establishment and Functions

The Commissions shall be established by the Conference to carry out such functions as the Conference decides. They shall be supervised by, and report to, the Executive Board.

Article 83 : Composition and Rules of Procedure

The Commissions will be composed of persons chosen by the Executive Board for their individual ability, and not as representatives of Governments. The Commissions will generally consist of not more than seven Members. They shall elect their own Chairman, and adopt their own rules of procedure subject to the approval of the Executive Board. The Chairman of Commissions will be able to participate, without the right to vote, in discussions in the Executive Board and the Conference. Arrangements may be made, in appropriate circumstances, for the representatives of other inter-governmental organizations to participate in the work of Commissions.

Section E.—The Director-General and Staff

The Organization shall have a Director-General, Deputy Directors-General, and the necessary subsidiary staff.

Article 84: The Director-General

The Director-General will be appointed by the Conference on the recommendation of the Executive Board, and will carry out such powers and duties as are laid down in regulations approved by the Conference. He may participate, without the right to vote, in all meetings of all the organs of the I.T.O. and will present to the Conference the annual report, budget estimates, and financial statements of the Organization.

Article 85: The Staff

Deputy Directors-General will be appointed by the Director-General in agreement with the Executive Board. Other members of the staff may be appointed by the Director-General. All the staff will be subject to regulations approved by the Conference. Provision is also made to ensure as far as possible the impartiality and integrity of the staff whose conditions of service are to be generally in conformity with those of the Members of the staff of United Nations.

Section F.—Other Organizational Provisions

This Section covers the relationship of the I.T.O. with the United Nations, and its other specialized agencies, the legal status of the Organization, and a provision concerning the contributions of Members to the Budget.

Article 86: Relations with the United Nations

The International Trade Organization will be one of the specialized agencies of the United Nations. This Article provides for the necessary agreement of relationship to be put into force after approval by the Conference of the I.T.O.

Paragraph 3 of this Article provides that any economic measure taken by one Member of the Organization against another for political reasons shall not be dealt with by the Organization, but shall be left for action by the United Nations. Apart from the fact that the I.T.O. would, probably, be unable effectively to enforce its judgment in such cases, it was generally agreed that if political disputes were discussed in the I.T.O. the specialized and objective nature of the Organization would be impaired and its success placed in jeopardy.

Paragraph 4 contemplates that in certain cases the United Nations might require certain of its Members, in the interests of peace and security, to take economic action of a type contrary to the I.T.O. Charter. In such an event the action of the Member would not be called into question by I.T.O.

Article 87 : Relations with other Organizations

The Organization will make arrangements with other specialized agencies in the economic field in order to ensure effective co-operation and the avoidance of any duplication of activities. Paragraph 4 of the Article gives the Conference of I.T.O. power to make agreements with other inter-governmental organizations for the transfer of certain of their functions to the I.T.O., or, in appropriate cases, for the incorporation of any other inter-governmental organization as a whole into the I.T.O.

Article 88 : International Character of the Responsibilities of the Director-General, Staff, and Members of Commissions

The Director-General and staff must not, in the carrying out of their functions, be influenced by any Government or other authority external to the I.T.O. Conversely, Members are required to respect the international character of the responsibility of the staff.

Article 89 : International Legal Status of the Organization

This Article endows the Organization with such legal capacity as it needs to exercise its functions.

Article 90 : Status of the Organization in the Territory of Members

This Article provides for the Organization, its officials, and the representatives of Members of the Organization to enjoy the normal privileges and immunities accorded to international organizations. These privileges and immunities will be set out as an annex to an agreement already in force among Members of the United Nations.

Article 91 : Contributions

Every Member is required to pay its share of the budget to the Organization promptly. Any Member whose contributions are more than two years in arrear shall have no vote in the Organization unless the Conference is satisfied that the failure to pay is due to conditions beyond the control of the Member concerned.

CHAPTER VIII.—SETTLEMENT OF DIFFERENCES

(Articles 92–97)

This chapter lays down the procedure to be followed in the event of differences arising between Members of the Organization in regard to matters covered by the Charter. The right of a Member to have recourse to the procedure of this chapter is limited to cases where the complaining Member considers that a benefit accruing to it under the Charter is being nullified or impaired by the action of another Member or the existence of a situation in which another Member is concerned. The remedy available to Members who, it has been determined, are suffering nullification or impairment lies in the power given to the Executive Board and the Conference to release them from certain obligations under the Charter.

The purpose of this provision is solely to enable such injured Members to have their position in relation to the Member causing the nullification or impairment satisfactorily adjusted and is not intended to be used for the application of economic sanctions against that Member. It is contemplated that in certain circumstances, especially where the nullification or impairment is caused by action not in conflict with the Charter, the injured Member may be released from obligations towards Members not involved in any way in the action or situation resulting in the nullification or impairment. The Organization will, of course, have to exercise great care in granting such releases in order to prevent a cumulative series of injuries and consequently of releases from obligations which would stultify the whole purpose of the Organization.

Some chapters of the Charter lay down specific procedures for the settlement of disputes arising in connection with matters dealt with in the chapter concerned. In such cases recourse should be had to those procedures in the first instance before the procedures of Chapter VIII are invoked.

Broadly, the general procedure for settlement of differences laid down in this chapter is as follows :—

(1) Consultation between Members concerned.
(2) Consideration by the Executive Board.
(3) Consideration by the Conference.
(4) Review of legal aspects by the International Court of Justice.

Article 92 : Reliance on the Procedures of the Charter

In paragraph 1 Members are bound to adopt the procedures laid down in the Charter for the settlement of differences with other Members.

Paragraph 2 requires the Members to abstain from unilateral economic measures (such as sanctions) which are contrary to the provisions of the Charter.

Article 93: Consultation and Arbitration

Paragraph 1 sets out the grounds upon which the procedures of Chapter VIII may be invoked. A Member may initiate the procedures if it considers that a benefit accruing to it under the Charter is being nullified or impaired,—

(*a*) By action of another Member contrary to the Charter; or

(*b*) By action by a Member not in conflict with the Charter; or

(*c*) By the existence of any situation.

In such a case the affected Member may make an approach to any other Members it considers concerned in the nullification or impairment, and consultations with a view to settlement will follow.

Paragraph 2 provides for settlement of such disputes by reference to arbitration where the parties so desire.

Members concerned are bound by the provisions of paragraph 3 to keep the Organization informed of the progress of action taken in accordance with this Article.

Article 94: Reference to the Executive Board

In cases where the provisions of Article 93 do not enable a satisfactory settlement of a dispute the matter may be referred in accordance with paragraph 1 of this Article to the Executive Board.

Paragraph 2 provides that the Executive Board must first decide whether any nullification or impairment does in fact exist. If it determines that this is the case, it may adopt any one of five courses of action as follows:—

(1) Decide that no action is called for;

(2) Refer the matter back to the Members concerned for further consultation;

(3) Refer the matter to arbitration;

(4) Where the nullification has been caused by action in conflict with the Charter, request the Member taking such action to conform with the provisions of the Charter; or

(5) Where the nullification is not caused by action contrary to the Charter, recommend to the Members concerned such measures as will enable the nullification or impairment to be adjusted.

Paragraph 3 enables the Executive Board in cases of emergency to release the affected Members from certain obligations or the grant of concessions to other Members to the extent necessary to compensate for the nullification or impairment. For instance, failure of a large industrial country to maintain employment and demand may result in a collapse of the market for the agricultural exports of another Member. The latter Member would in such a case suffer impairment of the benefit of expanding world trade and stable markets which it had naturally expected to enjoy under the Charter. In order to compensate for this

nullification the Executive Board might, for example, decide to release the Member from its obligation to impose no import restrictions so that it might thus encourage secondary industries to employ agricultural workers displaced or impoverished by the collapse of the market in the importing country. Alternatively, the Executive Board might decide to enable the agricultural country concerned to afford protection to its secondary industry by increasing tariffs bound at given rates in negotiations pursuant to Article 17. The powers of the Executive Board under this paragraph are subject to a right of appeal to the Conference.

Paragraph 4 of this Article enables the Executive Board to consult with other Members or inter-governmental organizations or to take expert advice from the appropriate commission of the I.T.O. If the Executive Board deems it fit, it may at any stage bring a dispute before the Conference as provided in paragraph 5.

Article 95 : Reference to the Conference

Any Member may request the review by the Conference of any decision by the Executive Board under Article 90. If such a review has not been asked for within thirty days, Members shall be entitled to act in accordance with the decision or recommendation of the Executive Board. If any matter arising from this chapter is referred to the Conference it shall consider it according to the same procedure as is laid down in Article 94 for consideration of disputes by the Executive Board.

The Conference may, in the case of nullification or impairment caused by action contrary to the Charter, release Members affected by this action from certain specified obligations or grant of concessions towards other Members involved in the dispute. The Conference may also release a Member from certain obligations even where the nullification or impairment is not caused by action in conflict with the Charter. When any Members actually suspend the performance of any obligation in accordance with the authority thus given by the Conference, the Member affected by this suspension is then free to withdraw from the Organization by a sixty days' notice of withdrawal, which notice must be given within sixty days of the suspension of the obligation.

Article 96 : Reference to the International Court of Justice

The Organization may at any time request advisory opinions from the International Court on legal questions arising from the activities of the Organization. Furthermore, any Member whose interests are prejudiced by any decisions of the Conference, may request the Organization to obtain a review of the legal aspects of the decision from the

International Court of Justice. This review will be obtained in the form of an advisory opinion given by the Court, and the request shall be accompanied by a statement of the matters involved drawn up by the Organization in consultation with Members concerned.

Pending delivery of the opinion of the Court, the decision of the Conference is to continue in full force and effect unless the Conference suspends operation of the decision meantime, which it shall do where it finds that damage difficult to repair would otherwise be caused to any Member.

Upon receipt of the opinion of the International Court the decision or resolution in question shall be varied so far as necessary to make it accord with the opinion of the International Court.

It will be noted that the existing provision for reference to the International Court permits only a review of the legal issues involved, and thus no questions of fact or equity will come within the purview of the International Court under Article 96.

The present provisions of the statute of the Court do not enable a case to be dealt with in the normal judicial manner in which one of the parties is an international organization. There was some conflict of opinion at Havana as to whether this provision was desirable, and it was accordingly decided that the Interim Commission should discuss the question with the International Court and submit a report to the first regular session of the Conference of I.T.O. when established. Provision has been made in Annex N for approval by the Conference by a simple majority of Members of amendments arising from these consultations.

Article 97 : Miscellaneous Provisions

Throughout the Charter there are various provisions for consultation and settlement of differences arising in particular circumstances. The procedures provided for in these special cases are peculiarly suited to the type of dispute or difficulty in question, and therefore paragraph 1 of this Article provides that such procedures shall not be excluded by the general provisions of Chapter VIII. If these special procedures fail to result in settlement, however, any discussions, consultations, or investigations undertaken under them will be considered to comply with the corresponding requirements of Chapter VIII and will not have to be repeated before recourse to the subsequent stages of settlement under the present chapter.

Paragraph 2 of this Article provides for the Conference and Executive Board to lay down rules of procedure for dealing with complaints coming within the provisions of Chapter VIII.

CHAPTER IX.—GENERAL PROVISIONS

(Articles 98–106)

Article 98: Relations with Non-Members

The regulation of the relations of Members of the Organization with non-Members has, from the first preparatory stages, given rise to a great divergence of opinion. While it is undesirable that a premium should be placed on non-membership of the Organization, it is obvious that rules which would be tantamount to economic sanctions against non-Members would not only be unreasonably harsh on such States, but would also seriously affect the interests of such of the Members of the I.T.O. as have considerable trade with non-Members. Stringent rules would therefore probably result in an unwillingness on the part of many countries to join the Organization until the countries with whom they principally trade also joined. At the best, therefore, such stringent rules would delay the commencement of the work of the Organization; while, if a sufficient number of key countries in the various trade areas stayed out of the Organization, there might be no Organization at all.

The aim of the drafters of this Article, therefore, was to strike a happy medium between rules either too stringent or so lax as to accord advantages to non-Members as compared with Members. The text finally adopted seems to avoid satisfactorily either of these undesirable extremes.

The Article commences with a declaration that economic relations with non-Members are not prohibited. It goes on to declare the general recognition that it would be inconsistent with the Charter for Members to seek preferential treatment from non-Members or to conduct their trade with non-Members to the detriment of other Members of the Organization. In accordance with this general recognition Members undertake not to enter into any new arrangement with a non-Member which prevents that non-Member from extending to other Members the benefits provided by the Agreement. Conversely, Members are also prohibited from extending to non-Members treatment more favourable than that which they extend to other Members and which would injure the economic interests of those other Members. This latter requirement may be waived to the extent that the action does not conflict with the exceptions provided by Chapter IV.

The general effect of paragraph 2 is not such as to require Members to terminate forthwith any existing preferential agreements they may have with non-Members, but does require that existing obligations should be terminated in accordance with the provisions set out in the agreements concerned.

Despite the provisions of paragraph 2, Members may with the approval of the Organization, enter into preferential arrangements with non-Members as provided for in Article 15, or form Customs Unions or Free Trade Areas with them under the provisions of Article 44.

Paragraph 4 emphasizes what is already inherent in the text of the Charter, that Members are not required to extend to non-Members most-favoured-nation treatment.

The last paragraph of the Article recognizes that in present circumstances, when the future membership of the Organization cannot be clearly determined, precise rules to govern the relations of Members with non-Members cannot be written, and, therefore, imposes on the Executive Board the duty to make periodic studies of the question with a view to making recommendations to the Conference. Any amendments to the Charter arising from such recommendations will be dealt with in accordance with the normal procedure of Article 100.

Article 99 : General Exceptions

It would obviously be impracticable to require Members to subordinate their essential security interests to the general provisions of the Charter and its aim of securing non-discrimination and absence of restrictions in international trade. Recognizing this fact, Article 99 makes the following provisions :—

Paragraph 1 exempts any Member from liability to disclose any information which it considers it should keep secret in its essential security interests.

It is also provided that any action taken by a Member which relates to atomic energy, traffic in armaments, or goods and materials intended for a military establishment, or which is taken in time of war or other emergency, shall not be subject to the provisions of the Charter.

Subparagraph (*c*) of paragraph 1 enables Members to make arrangements with each other for the purpose of establishing stock-piles of essential materials for use in time of war.

Subparagraph (*d*), which refers to Annex M, relates to the special treatment recognized by the Charter as being necessary in the case of trade between India and Pakistan.

Paragraph 2 accords to peace treaties and other permanent settlements resulting from World War II and the instruments creating trust territories and other special regimes established by United Nations, precedence over the provisions of the Charter.

Article 100 : Amendments

Because of the importance of any amendment to the Charter, this Article imposes a requirement of approval by a two-thirds majority. Any amendment which does not alter the obligations of any Member will become effective immediately the Conference has given its approval by the vote of two-thirds of all the Members. There are two other classes of amendments envisaged in this Article where obligations of Members are affected. In the first place, there may be amendments

which alter the obligation of Members, but which are not of major importance. Such amendments, after being approved by two-thirds of the Members present and voting will become effective upon acceptance by the Governments of two-thirds of the Members, but only in respect of the Members who accept the amendments concerned. On the other hand, the Conference may consider that an amendment is of such importance that any Member who does not accept it within a certain time after it has become effective for two-thirds of the Members should be suspended. Any Member who is so suspended will have the right to withdraw from the Organization. Provision is, however, made for a suspension of membership to be waived with respect to any Member on certain terms and conditions to be laid down by the Conference in particular cases. The Article provides for the Conference to establish rules for determining whether an amendment should or should not require acceptance before becoming effective.

Article 101 : Review of the Charter

It is recognized that the economic conditions existing at the present time are unlikely to continue indefinitely, and as the Charter has been written in the light of present conditions provision is made for a general review of the Charter five years after its entry into force. This review is to be carried out at a special session in conjunction with the regular annual session of the Conference, and amendments arising from the review will be subject to the normal procedures.

Article 102 : Withdrawal and Termination

At any time after three years from entry into force of the Charter any Member may withdraw from the Organization on expiry of six months' notice thereof. The I.T.O. may be terminated at any time by agreement of three-fourths of the Members.

Article 103 : Entry into Force and Registration

In framing this Article the Conference had in mind that whereas it was undesirable to postpone the active functioning of the Organization too long, nevertheless the constitutional difficulties of some countries might involve for them considerable delay in notifying formal acceptance, and might, if the Organization were established at an early date, prevent some Governments from participating in the work of the Organization during its first stages when many decisions important for the future of the Organization would be taken.

Instruments of acceptance of the Charter shall be deposited with the United Nations and shall take effect sixty days from the date when they are deposited. Annex O makes special provision for effective date of instruments of acceptance deposited prior to the first session of the Conference.

The Charter shall enter into force on the sixtieth day following that upon which a majority of the Governments signing the Final Act of the Havana Conference have deposited instruments of acceptance with the Secretary-General of the United Nations. In other words, the Charter shall enter into force when twenty-seven acceptances have been deposited. If the required number of acceptances have not been deposited by 24th January, 1949, the Charter would not enter into force under this provision within one year after the signature of the Final Act at Havana, and in that event the Charter shall enter into force sixty days after twenty Governments have accepted it. If the Charter has not entered into force under either of the foregoing provisions by the 30th September, 1949, the Governments who have deposited acceptances may consult with each other to determine whether and under what conditions they desire to bring the Charter into force.

Until the 30th September, 1949, paragraph 3 requires that no State or separate Customs Territory which signed the Final Act shall be treated as a non-Member under the provisions of Article 98.

Paragraph 4 authorizes the United Nations to register the Charter according to their normal procedures once it has come into force.

Article 104 : Territorial Application

Governments who accept the Charter may do so for any of their dependent territories, including Condominia. Acceptance applies to the metropolitan territory of the Member and other territories for which it has international responsibility. A Member may exclude any separate Customs Territory from such acceptance.

Members are bound to ensure, as far as possible, observance of the provisions of the Charter by regional Governments within their territories.

Article 105 : Annexes

The Annexes to the Charter contain many important provisions which because of their transitory nature or for other reasons find no convenient place in the text of the Charter proper. This Article ensures that these annexes have equal force with the provisions of the various chapters of the Charter.

Article 106

In its desire to pay a tribute to the hospitality of the Cuban Government, which was the host for the Governments attending the Havana Conference, it was unanimously decided that the Charter should be known officially as the " Havana Charter."

There will be five authoritative texts in the official languages of the United Nations—that is to say, Chinese, English, French, Russian, and Spanish. The English and French texts were prepared and authenticated at Havana. The text in the other three languages will be prepared by the Interim Commission and approved and authenticated by the first Conference of the Organization (see paragraph 2 of the Final Act).

In various parts of the Charter reference is made to the date of the Charter which is by this Article declared to be the date of signature of the Final Act—*i.e.*, 24th March, 1948.

ANNEXES TO THE CHARTER

Annexes A to J relate to preferential systems, and have been commented upon in connection with appropriate articles. *Annex K* has been discussed in the section on Article 23.

Annex L

This annex sets out rules for the implementation of Article 78, which shall apply at first election in lieu of the rules to be established by the Conference under the provisions of that Article.

Paragraph 1 provides that six seats on the Executive Board shall be reserved for countries in the Western Hemisphere. As a later paragraph of this annex provides in effect for the automatic election of the United States and Canada on the grounds of economic importance, four of these six seats are reserved for Central and South American countries. If, however, five of these latter countries do not become members of the Organization, only three of these four seats shall be filled at the first election, while if ten countries or more of the Latin-American geographic group do not join the Organization, only two seats shall be filled, at the first election, from this area.

Any seats reserved by paragraph 1 and not filled under that paragraph shall remain unoccupied until the Conference decides by a two-thirds majority vote that they should be filled.

Paragraph 2 in effect provides for the election of the United States, Canada, the United Kingdom, France, and the Customs Union of Belgium, the Netherlands, and Luxemburg, on the grounds of the size of their external trade, to seats on the Executive Board. The three countries with the largest population who will qualify for seats under this paragraph are China, India, and the Soviet.

If any of the countries who would qualify for a seat are not Members of the Organization at the time of the election, the seats reserved for them by this paragraph will remain unoccupied until the Conference decides by a two-thirds majority vote that they should be filled.

Paragraph 3 of this annex recognizes that certain geographic groups (such, for instance, as the Middle East and Northern European countries) may be adquately represented by common representatives on the Board.

The last paragraph of this annex provides for staggering the terms of the members elected at the first election so as to prevent complete changes of the board at subsequent elections, to which the normal three year term of appointment shall apply.

Annex M

This annex recognizes the special economic difficulties which arise for India and Pakistan, following the partition of British India into two independent States. Accordingly, it is provided that the provisions of the Charter shall not prevent the two countries from entering into special agreements with respect to trade between them pending the necessary steps being taken by each of their Governments to establish normal trade relations on a defined basis.

Annex N

This annex relates to amendments to procedures for reference to the International Court of Justice laid down under Article 96 (see notes on Article 96). The special condition of approval of an amendment by a simple majority would not extend to an amendment which would provide for a review of any economic or financial fact established by or through the Organization, thus retaining the standing of the Organization in this field. Provision is made for the withdrawal of any Member who does not accept such an amendment if the amendment is deemed to involve an alteration in the obligations of Members.

Annex O

In order to enable as many Members as possible to participate in the work of the first session of the Conference this annex enables any Government depositing its instrument of acceptance prior to the first day of the session to participate in its work, without having to wait the normal period of sixty days for its acceptance to become effective.

Annex P

This annex contains interpretative notes relating to certain Articles in the Charter. As provided in Article 105, such notes, similarly to other annexes of the Charter, form an integral part thereof.

Resolution establishing an Interim Commission for the International Trade Organization

During the deliberations of the Havana Conference certain matters were raised which, because they required intensive study and in some cases consultation with other inter-governmental organizations, could not be brought to a conclusion in time for provision to be made in the Charter at Havana.

It was also clear that the work of the first Conference of the Organization would be expedited if preparatory work were done on certain matters which would appear on its agenda.

For these reasons it was decided to establish an Interim Commission which will function between the conclusion of the Havana Conference and the first session of the Conference of I.T.O.

The Interim Commission consists of almost all countries represented at Havana, and exercises its functions through an Executive Committee of eighteen Members elected at the conclusion of the Havana Conference. Members of the Executive Committee are as jollows :—

Australia, Benelux Customs Union, Brazil, Canada, China, Colombia, Czechoslovakia, Egypt, El Salvador, France, Greece, Italy, India, Mexico, Norway, Philippines, United Kingdom, United States.

The functions of the Interim Commission are as follows :—

(1) To convoke, and prepare the agenda for, the first session of Conference of I.T.O., including draft rules of procedure and recommendations in regard to seat of the Organization.

(2) To draft agreements of relationship with United Nations and other inter-governmental organizations.

(3) To prepare draft annex concerning immunities for staff, &c.

(4) To investigate facilities of United Nations and specialized agencies in the field of economic development.

(5) To consult with the International Court regarding the relationship with the Court under Chapter VIII with a view to improving procedures.

(6) To prepare Spanish, Chinese, and Russian texts of the Charter.

(7) To consult with United Nations concerning the expenses of the Preparatory Committee, which has been met by United Nations.

(8) To replace the Preparatory Committee in regard to the Interim Co-ordinating Committee for International Commodity Arrangements.

(9) To participate, with the Swiss Government in a study of the problems facing the Swiss economy.

The recommendations of the Executive Committee in regard to these matters will be placed before the first regular session of the Conference of I.T.O.

Resolution concerning Relation of the International Trade Organization and the International Court of Justice

This resolution requires the Interim Commission to enter into discussions with the International Court concerning procedures for review by the Court of decisions of the Conference. This matter has already been referred to in connection with Articles 96 and 100.

Resolution concerning the Interim Co-ordinating Committee for International Commodity Arrangements

The Interim Co-ordinating Committee is a body set up by the Economic and Social Council to generally supervise and study the development of International Commodity Agreements. The Preparatory Committee of the Trade and Employment Conference was represented on this Committee, and with the disbanding of the Preparatory Committee it was recommended to the Economic and Social Council that a representative of the Interim Commission should be appointed. The Economic and Social Council accepted this recommendation.

Resolution to the Economic and Social Council relating to Employment

This resolution suggests to the Economic and Social Council several courses by which international action may assist the maintenance of full employment in all countries. The courses suggested are as follows :—

(*a*) Study of the timing of international investment to promote economic development and remedy deflationary tendencies, and of means to promote stability of primary produce prices.

(*b*) Collection of information from all Members of the United Nations as to the methods they are adopting to achieve or maintain full employment, and of their plans to prevent a decline.

(*c*) A statement of the plans of the various specialized agencies to combat a decline in economic activity and employment.

(*d*) Study by the Economic and Social Council of the employment and other economic problems of migration, and distribution of population.

(*e*) Formulation of model agreements relating to seasonal migration of workers.

Resolution relating to Economic Development and Reconstruction

Many countries represented at Havana desired that the Charter should endow the Organization with more positive functions in relation to economic development. During discussion of this point it became clear that many of the courses of action proposed were already covered by other agencies of the United Nations, and it was decided to postpone the final decision on the part the I.T.O. should play until a thorough study of the activities of other Organizations could be made. This resolution charges the Interim Commission with making this review for report to the first session of the Conference of I.T.O.

Resolution of Gratitude to the Cuban Government and People

In this final resolution the Conference records its appreciation of the generous invitation of the Cuban Government to hold the Conference in Havana and of the facilities and hospitality provided and assistance given.

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