



THE DEPARTMENT OF STATE

CONTENTS

- I. Introduction
- II. History of the Development of the Charter
- III. The Relationship of the Chapters of the Charter to Each Other
- IV. The Substance of the Charter
 - 1. Commercial Policy (Chapter IV) (Articles 16-45)
 - A. Tariffs, Preferences and Internal Taxation and Regulation (Articles 16-19)
 - B. Quantitative Restrictions and the Balance-of-Payments Problem (Articles 20-24)
 - C. Subsidies (Articles 25-28)
 - D. State Trading (Articles 29-32)
 - E. The "Invisible Tariff" (Articles 33-39)
 - F. Special Provisions (Articles 40-45)
 - 2. Restrictive Business Practices (Chapter V) (Articles 46-54)
 - 3. Intergovernmental Commodity Agreements (Chapter VI) (Articles 55-70)
 - 4. Employment and Economic Activity (Chapter II) (Articles 2-7)
 - 5. Economic Development and Reconstruction (Chapter III) (Articles 8-15)
 - 6. Security Exceptions (Article 99)
 - 7. The International Trade Organization (Articles 71-91)
 - 8. Settlement of Differences (Chapter VIII) (Articles 92-97)
 - 9. Amendments, Withdrawal and Termination (Articles 100-102)
 - 10. Relations with Non-Members (Article 98)
- V. Summary of Commitments and Exceptions in the Charter
 - 1. Commitments
 - 2. Exceptions

SUMMARY ANALYSIS OF THE ITO CHARTER

I

INTRODUCTION

This document is intended as a guide to the study of the Havana Charter for an International Trade Organization. It contains first, a brief history of the development of the Charter; second, a general statement of the subject matter of the Charter and the relation of its various parts to one another; third, an analysis in some detail, but in non-technical language, of the contents of the Charter's various sections; and, finally, a summary of the major commitments and exceptions in the Charter.

The summary does not cover every paragraph nor refer to every special situation with which the Charter deals. It does, however, attempt to deal with all major points and all points of general application. It takes up the various sections of the Charter in an order different from that in which they appear in the document, for there is a central core to the Charter to which the other parts are related, and if that is understood the significance of the various parts of the document becomes more clear.

II

HISTORY OF THE DEVELOPMENT OF THE CHARTER

Even before the end of hostilities in World War II, people in the United States and other governments were laying plans to secure international agreement on trade policies designed to avoid, so far as possible, the economic conflicts of the inter-war period. In the Atlantic Charter of August 1941, the President of the United States and the Prime Minister of Great Britain enunciated the principle of equal access to the markets and raw materials of the world. In the Lend-Lease Agreements between the United States and other recipients of Lend-Lease aid, beginning with the agreement signed with Great Britain in February 1942, the parties agreed to work together for arrangements, open to all countries of like mind, for the expansion of production, employment and exchange and consumption of goods, the reduction of tariffs, the elimination of tariff preferences, and for the removal of other barriers to the expansion of international trade. When the Bretton Woods Conference concluded its deliberations with agreement on the structure of the Inter-

national Bank and International Monetary Fund, the delegates called upon member nations to continue to work to reduce obstacles to international trade and to facilitate by co-operative effort the harmonization of national policies designed to promote and maintain high levels of employment and progressively rising standards of living.

When the Congress accepted membership for the United States in the Bretton Woods organizations, it expressed its desire that further steps be taken and stated it to be the policy of the United States "to seek to bring about further agreement and co-operation among nations and international bodies as soon as possible on ways and means which will best reduce obstacles to and restrictions upon international trade, eliminate unfair trade practices, promote mutually advantageous commercial relations, and otherwise facilitate the expansion and balanced growth of international trade and promote the stability of international economic relations".

In December 1945 therefore, as part of its consistent pursuit of this objective, the United States published its Proposals for the Expansion of World Trade and Employment. The basic ideas of the Charter will be found in these Proposals. They were developed after months of consideration by an inter-departmental committee representing all interested agencies of the Executive Branch of the Government and after intergovernmental consultation.

At the suggestion of the United States delegation, the Economic and Social Council of the United Nations, during its first meeting in February 1946, appointed a committee of eighteen nations to prepare an agenda for an international conference on trade and employment. When this Preparatory Committee met for the first time in London in October 1946, the United States laid before it a Suggested Charter for an International Trade Organization which the Committee adopted as its basic working document.

The Preparatory Committee agreed upon a draft of a Charter at its London meeting. This was published. Public hearings on this draft Charter were held in seven cities in the United States. The Senate Finance Committee also held extensive hearings. Many of the suggestions made at these hearings subsequently were incorporated into the Charter.

A second meeting of the Preparatory Committee was held in Geneva in 1947 at which the London draft was revised. The draft agreed at Geneva was then considered by representatives of fifty-six nations at the Havana Conference which convened

in

in the fall of 1947 and completed its labors on March 24, 1948. The result of these deliberations is the Havana Charter for an International Trade Organization.

III

THE RELATIONSHIP OF THE CHAPTERS OF THE CHARTER TO EACH OTHER

Commercial Policy

The Charter deals primarily with the international exchange of goods. Its central core is the Chapter on Commercial Policy, (Chapter IV, pp. 45 to 84). It is that Chapter which contains the underlying principles of the document, and its other sections for the most part complement or qualify those central principles. These principles can be simply stated.

First, there is the familiar principle of most-favored-nation treatment, that is, that no country should give special favors to the trade of another country, but should treat all alike.

Second, there is the principle, already embodied so far as the United States is concerned, in the Reciprocal Trade Agreements Act, that countries should be prepared to negotiate with each other for the selective reduction of tariffs and for the elimination of preferences.

Third, there is the principle that any barriers to trade or limitations on imports should be openly concentrated at the customs frontier, that after imported goods cross the frontier they should receive the same treatment as domestic goods, and that tariff concessions given or received should not be nullified by internal taxes or regulations which discriminate against imported goods.

Fourth, there is the principle that the "invisible tariff" of customs regulations, often more burdensome to trade than actual tariff rates, should be lowered by simplification.

Fifth, there is the principle that quotas on imports and exports should not be used for protective purposes.

If these principles are accepted and put into operation, the movement of goods in international trade would be greatly facilitated and the businessmen and producers of the various nations of the world would have the best opportunity to sell their goods on a competitive basis.

Cartels

Cartels

It was apparent, however, that this Chapter on Commercial Policy could not do the job alone. In certain cases, experience has shown that restrictive agreements and practices of private business groups had prevented and diverted the competitive movement of goods in international trade as effectively as barriers imposed by governments. We have had experience with such restrictive practices in the United States and we have domestic laws and institutions, such as the anti-trust laws and the Federal Trade Commission to deal with them. But there is as yet no mechanism for dealing with such practices in international trade. A Chapter is therefore included in the Charter to deal with this problem.

Commodity Agreements

The Chapters on Commercial Policy and Restrictive Business Practices are designed to deal with situations in which the normal competitive forces of the market place, if allowed to operate, will usually deal satisfactorily with the situation. In one important area of international trade, however, special governmental measures may be required. This is the area of primary commodities, where burdensome surpluses may develop which would create widespread hardship in the absence of governmental action, and where the normal forces of the market place do not operate effectively to give relief.

We have recognized in our domestic farm legislation (e.g. price supports) the special problems which often confront our producers of primary products. The Charter similarly recognizes that special measures may be required from time to time to deal with the problems of such producers in international trade. Hence it includes a Chapter on Intergovernmental Commodity Agreements.

Economic Development

Moreover, the Charter recognizes that action to remove barriers to the movement of goods will be futile unless there are goods to move and purchasing power to buy them. Men who are unemployed do not buy the products of their own or other countries. Countries in a primitive state of development do not provide substantial markets for the goods of other countries, nor do they produce many things for their own citizens and those of other countries to buy. Therefore the Charter contains Chapters dealing with certain international aspects of employment and economic development.

Organization

Organization

Finally, the Charter establishes an international organization in which problems arising out of trade relationships can be discussed and solutions reached.

The Organization, after discussion of a problem, can make recommendations for action by members. Members are free to decline to follow the recommendations of the Organization. If they do, however, the Organization can release other affected members from their obligations under the Charter to the member refusing to follow the recommendations.

The Organization has no power to direct or require any member to take action.

Thus it will be seen that the various Chapters of the Charter are closely interrelated. They seek to deal with various trade problems which, though they arise in widely different forms, require consistent treatment if the central objective of the Charter, namely

"To assure a large and steadily growing volume of real income and effective demand, to increase the production and exchange of goods, and thus to contribute to a balanced and expanding world economy" (Article 1 (I))

is to be achieved.

IV

THE SUBSTANCE OF THE CHARTER

1. CHAPTER IV - COMMERCIAL POLICY

(Articles 16 - 45)

The six Sections of this Chapter deal with the following subjects:

- A. Tariffs, Preferences, and Internal Taxation and Regulation.
- B. Quantitative Restrictions and Related Exchange Matters.
- C. Subsidies.
- D. State Trading and Related Matters.
- E. General Commercial Provisions.
- F. Special Provisions.

A

Section A - Tariffs, Preferences and Internal Taxation and Regulation

(Articles 16 - 19)

1. General Most-Favored-Nation Treatment (Article 16).

Section A begins with a statement of the principle of general most-favored-nation treatment. It commits each Member to extend any advantage which it grants to any other country with respect to customs duties or charges on imports

or exports, or regulations dealing with imports or exports, immediately and unconditionally to like products originating in or destined for all other member countries. This has been the policy of the United States since 1923. It is embodied in the Trade Agreements Act of 1934, six times extended by the Congress.

There are certain preferential systems which are of considerable importance and which have long been in effect. The Ottawa preferences between the members of the British Commonwealth and the preferences between the United States and Cuba are examples. It was recognized that these preferences could not be abolished overnight and, therefore, they are excepted from the requirement of general most-favored-nation treatment.

Members are, however, committed in the following Article to negotiate for the elimination of those preferences, and are also committed not to increase them above the level existing on certain specified dates.

The rule of general most-favored-nation treatment has been included in our treaties and trade agreements, and each of them has contained an exception for these established preferential systems.

2. Negotiation for the Reduction of Tariffs and the Elimination of Preferences (Article 17).

Article 17 embodies the principles of the Reciprocal Trade Agreements Act. It provides that each Member shall, upon the request of any other Member, enter into and carry out negotiations directed to the substantial reduction of the general levels of tariffs and to the elimination of tariff preferences on a reciprocal and mutually advantageous basis.

The Article further provides certain rules for such negotiations, principally that they shall be conducted on a selective, product-by-product basis which will afford adequate opportunity to take into account the needs of individual countries and industries; that Members shall be free not to grant concessions on particular products; and that no Member shall be required to grant concessions to other Members without receiving adequate concessions in return. These are the principles under which the Trade Agreements Act has been administered and the United States retains the same control over its tariff as it has had in the past.

The Article contemplates that tariff concessions negotiated under it will be incorporated in the General Agreement on Tariffs and Trade concluded at Geneva on October 30, 1947 and expanded at Annecy in 1949. It further contemplates that if any Member fails within two years after becoming a Member to negotiate its way into the General Agreement on Tariffs and Trade, the other Members who are parties to that Agreement may be released from their obligations under Article 16 to give the non-negotiating Member the benefits of the concessions which they granted in the General Agreement on Tariffs and Trade.

3. National Treatment with Respect to Internal Taxes and Regulations (Article 18).

Article 18 embodies a recognition by Members that internal taxes and regulations should not be used as protective measures, and that products of any member country imported into any other member country shall not be subject to internal taxes or charges in excess of those applied to like domestic products. It requires similarly that internal regulations must not be applied to imported products in a more burdensome manner than to domestic products.

Regulations requiring the mixture of domestic products with imported products are forbidden for the future, though existing mixing requirements are permitted to continue. These may not be increased and are subject to negotiation for their liberalization. This exception will permit the continuance of the mixing regulations imposed by the United States with respect to synthetic rubber, which is the only regulation of this type used by the United States.

4. Provision with Respect to Motion Picture Films (Article 19).

Motion picture films are different from ordinary imports in that their value is not in the film itself, but in its earning power. Hence, the tariff is not an adequate protective device for motion picture films. It was therefore agreed that protection for domestic motion picture industries could be given by a so-called screen quota, which reserves a certain proportion of the playing time in domestic theaters for films of domestic origin. The amount of time thus reserved is made subject to negotiation, as are tariff rates, and the balance of time not reserved cannot be allocated as between imports from different sources.

B

Section B - Quantitative Restrictions and the Balance-of-Payments Problem (Articles 20 - 24)

Section B deals with quantitative restrictions (such as quotas) and related exchange matters. The Section contains a general commitment not to use quantitative restrictions. This rule has certain exceptions, the most important of which are that agricultural or fisheries imports may be limited when the production or marketing of the like domestic product is limited, and that imports may be limited when a country is in balance-of-payments difficulties. The determination as to whether a country is or is not in balance-of-payments difficulties rests with the International Monetary Fund.* If a country is permitted to restrict imports by quotas, it is required to apply those restrictions in a nondiscriminatory manner, except, during the postwar transitional period contemplated by the Fund Agreement, when it may discriminate in the application of quotas permitted for balance-of-payments reasons.

1. General Elimination of Quantitative Restrictions (Article 20).

Article 20 contains a basic undertaking of Members not to use quotas to restrict imports or exports. This is one of the major commitments in the Charter, since quotas are potentially most obstructive of all barriers to trade. A tariff, even though high, may be surmounted if there is sufficient demand, but the quota imposes an absolute limitation upon the amount of products which may be admitted.

There are, necessarily, important qualifications to the full application of this principle. Some of these are permanent, others temporary. The net effect of Section B, however, is a general ban on the quota as an instrument of protection, though it may, under certain circumstances, be used for specified other purposes.

For

* The International Monetary Fund was established in 1945 as a means of promoting stability in the field of foreign exchange. Forty-eight nations are members. United States membership was authorized by the Congress.

For example, when surpluses of agricultural products develop, it may be necessary for a government to step in to engage in price support and in connection therewith to limit domestic production. It would obviously be inequitable and unsound to allow imports to enter freely when domestic production or marketing is being limited. Therefore, this Article allows quotas to be used in connection with governmental measures which operate effectively to restrict the quantities of the like domestic product permitted to be marketed or produced. Any restrictions should be applied proportionately, the normal test suggested being the proportion prevailing in a previous representative period.

2. Restrictions for Balance-of-Payments Reasons (Article 21).

Article 21 contains the important balance-of-payments exception. It recognizes that when a country is in balance-of-payments difficulties and short of foreign exchange, it must budget its purchases from hard-currency areas, just as an individual must budget his purchases to fit within his income. The Article therefore authorizes restrictions on imports in order to safeguard a member country's balance of payments.

The conditions under which such restrictions may be imposed are, however, specifically and closely defined. In the first place, they cannot be imposed except to the extent necessary to forestall the imminent threat of or stop a serious decline in a Member's monetary reserves, or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in such reserves. Members are obligated progressively to relax and ultimately to eliminate such restrictions as their external financial position improves. In the application of such restrictions they must permit "token" imports where total exclusion would unreasonably wipe out established trade connections, and they must avoid unnecessary damage to the commercial or economic interests of other Members. In other words, every effort has been made to prevent the use of quantitative restrictions for purely protective purposes.

Members which are contemplating the application of new restrictions under this Article are required to consult with the Organization, and any Member which considers that another Member is applying restrictions under this Article improperly may bring the matter before the Organization. In such case, the Organization shall mediate the dispute. If no settlement satisfactory to the parties and to the Organization can be reached, and the Organization determines that the restrictions are being improperly applied, it shall recommend their withdrawal or modification. If the Member does not comply with

this recommendation within sixty days, the Organization may release other Members from specified obligations under the Charter toward the Member failing to comply.

The Article (para. 4(b)) makes it clear that no Member shall be required to withdraw or modify restrictions which it is applying under this Article on the ground that a change in its domestic policies would render these restrictions unnecessary.

Conversely, Members undertake in carrying out their domestic policies "to pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis".

3. General Principles Governing the Use of Permitted Quantitative Restrictions (Article 22).

Article 22 requires generally that any quotas which Members are permitted to apply to the importation of products of another Member or to exports to another Member may not be applied unless they are similarly applied to imports from, or exports to, all other countries.

The Article lays down certain rules designed to assure, in the event restrictions are applied, a distribution of trade in the product concerned approaching as closely as possible the shares which the Members would have in the absence of restrictions. These rules include provision for fixing total quotas wherever practicable and giving public notice of their amounts and for allocating quotas among supplying countries either by agreement or on the basis of shares supplied during a previous representative period. Provision is also made for furnishing relevant information concerning the administration of import licensing systems.

4. Special Provisions Governing the Use of Permitted Quantitative Restrictions During the Post-War Transitional Period (Article 23).

Article 23 contains the recognition that the aftermath of the war has brought numerous difficult problems of economic adjustment which do not permit the immediate full achievement of the nondiscriminatory administration of quantitative restrictions, and therefore requires certain exceptional transitional period arrangements.

Those arrangements are that so long as, and only so long as, a Member is availing itself of the post-war transitional

period * arrangements contemplated by Article 14 of the Articles of Agreement of the International Monetary Fund, a Member may discriminate in the application of quantitative restrictions which are imposed for balance-of-payments reasons.

The reason for this provision is that completely non-discriminatory application of limitations on imports which are imposed for balance-of-payments reasons would, in many cases, prevent a member country from getting things which it absolutely needed for the life of the country and which would be available to it from soft-currency areas, but which it could not afford to buy from a hard-currency area. Therefore, Members are permitted by Article 23 to discriminate in the use of quantitative restrictions imposed for balance-of-payments reasons in either of two ways:

(a) within the limits specified for the post-war transitional period by the Articles of Agreement of the International Monetary Fund, or

(b) according to specified criteria set forth in Annex K to the Charter. The main criteria in Annex K are that the discrimination must result in more imports than the country would get without discrimination, and that the prices paid for such imports must not be substantially higher than the prices in the countries discriminated against.

Members agree to apply policies in the use of permitted import restrictions generally which shall be designed to (a) promote the maximum development of multilateral trade possible during the transitional period, and (b) to expedite the attainment of a balance-of-payments position which will no longer require such discriminatory arrangements. Moreover, after March 1952, Members using discriminatory practices under Annex K to the Charter are required to report to and consult with the Organization about them and the Organization may require the limitation or termination of such discrimination. The Fund has similar powers of consultation and limitation with respect to discriminations permitted under its Articles.

The Organization may not, however, require a Member to change its domestic employment or development policies.

5. Relationship with the International Monetary Fund, (Article 24).

Article 24 contains the important provision that in all cases in which the Organization has to deal with problems concerning monetary reserves, balance of payments, or foreign exchange arrangements, it must fully consult with the International Monetary Fund. In such consultation, the Organization

shall

* Roughly until March 1, 1952.

shall accept all the Fund's findings of fact with respect to foreign exchange, monetary reserves, or balance-of-payments matters, and shall accept as conclusive the determination of the Fund as to what constitutes a serious decline in a Member's monetary reserves, a very low level of its monetary reserves, or a reasonable increase in the level of its reserves. In other words, final determination as to whether a state of facts exists which justifies the use of the balance-of-payments exception of the Charter rests with the Monetary Fund.

Certain countries which may be members of the Organization may not be members of the Fund. In such case, the Charter requires that they enter into a special exchange arrangement with the Organization which shall ensure that the objectives of the Charter will not be frustrated as a result of action with respect to exchange matters by the Member which is not a member of the Fund.

C

Section C - Subsidies

(Articles 25-28)

The Charter does not forbid the use of subsidies for the protection of national security, the diversification of industry, or the promotion of economic development. The use of direct subsidies for such purposes is preferable, in general, to the restriction of imports by tariffs and quotas. The cost of subsidies is clear and taxation can distribute its burden equitably among those who benefit. Any subsidy that affects the ability of domestic producers to compete with foreign producers, however, either in the home market or abroad, will exert an influence on the flow of trade. This is particularly evident in the case of export subsidies. It is with these effects of subsidies upon the flow of international trade that these Articles of the Charter deal.

The four Articles should be considered together. In substance, they provide that:

a. Any Member granting a subsidy (broadly defined as including any form of income or price support) which operates to increase exports or reduce imports is obligated to notify the Organization as to the extent and nature of the subsidization, its estimated effect on exports or imports, and the circumstances which make it necessary. The Member maintaining the subsidy is obligated, upon request, to consult with other Members who consider that the subsidy prejudices their interests with respect to the possibility of limiting it. (Article 25)

b. Export subsidies, i. e. those which result in the sale of a product for export at a price lower than the domestic price, are generally prohibited for products other than primary commodities after two years from the date on which the Charter enters into force. This period may be extended if the Organization approves. (Article 26)

c. In cases involving primary commodities, Members may continue export subsidies if they consider that their interests would be seriously prejudiced by eliminating the subsidy, or may seek a solution of their problem through the mechanism of a commodity agreement provided for in Chapter VI. If they do the latter, they are precluded, without Organization concurrence,

from

from initiating new subsidies or increasing old ones during the course of the procedures involved in the negotiation of such an agreement. (Article 27)

d. No Member granting any subsidy which operates directly or indirectly to maintain or increase its exports of primary commodities may apply such subsidy in a way which would give it more than an equitable share of the world market. What constitutes an equitable share of the world market is to be determined either by agreement between the Member granting the subsidy and other affected Members, or, if such agreement is not reached, by the Organization. In making a determination as to what constitutes an equitable share of the world market, the Organization shall have particular regard to the Member's share of world trade in the commodity during a previous representative period. (Article 28)

D

Section D - State Trading (Articles 29-32)

Many of the countries who negotiated the Charter, including the United States, engage in various forms of state trading. Their state trading enterprises are usually to some extent in competition with private traders. The purpose of this Section of the Charter is to provide rules for the conduct of state trading operations which would cause them to operate as nearly as possible according to the same principles and subject to the same rules as private enterprises. Two essential principles are involved -- non-discrimination and the expansion of trade by reduction or limitation of barriers.

Article 29 contains an undertaking by each Member that it will administer its state enterprises the purchases and sales of which involve imports and exports in a manner consistent with the general principles of non-discriminatory treatment prescribed in the Charter for governmental measures affecting imports or exports by private traders. This would require that such enterprises should make their purchases and sales solely in accordance with commercial considerations, including price, quality and other conditions of sale, and also should afford the enterprises of other member countries adequate opportunity in accordance with customary business practices to compete for participation in such purchases or sales.

This

This Article does not apply to imports of products purchased solely for governmental purposes which are not for resale in commercial markets, e.g., stockpiling.

Article 30 deals with marketing organizations such as are maintained by a number of countries partly for regulatory purposes and partly for buying and selling. It states that such organizations are subject to the rules of Article 29 when they engage in purchases and sales, and that any regulations they may impose on private enterprises are subject to the other provisions of the Charter, e.g. Chapter IV.

Article 31 requires Members to negotiate for the reduction of any protective elements that may exist in the operation of an export or import monopoly. For example, a state trading enterprise, importing a product which is also produced domestically, may charge more than its cost plus profit when it sells the product. This mark-up operates to protect the domestic producer. The Charter requires that it must be notified to the Organization and shall be subject to negotiation in the same manner as a tariff. Moreover, it requires that an import monopoly shall import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand for it.

Article 32 requires that any Member having acquired a stockpile of a product and wishing to liquidate it must do so in a manner calculated to avoid disturbance of world markets or serious injury to the interests of producers and consumers of the product, to give at least four months' notice of intention to liquidate, and to consult with other Members whose interests may be affected, at their request.

E

Section E - The "Invisible Tariff" (Articles 33 - 39)

This Section deals with the important subject of customs regulations, which often have a more restrictive effect on trade than the actual level of tariff rates. Therefore, in these Articles, the drafters of the Charter sought to reach agreement for material simplification and standardization of such regulations, and particularly to ensure that they be precise and widely published, so that traders could know what was expected of them.

1. Freedom

1. Freedom of Transit (Article 33)

Article 33 expresses the principle that there should be freedom of transit through each member country by the most convenient route for goods which are simply going through its territory from one outside country to another. Charges may be imposed for services in transit, but they must be reasonably commensurate with the cost of the service. There must be no discrimination in treatment as between goods going from or coming to one member country rather than another.

2. Anti-Dumping and Countervailing Duties (Article 34)

Article 34 recognizes that dumping of products of one country into another at less than their normal value is to be condemned if it causes or threatens material injury. There has been much disagreement in the past as to just what constitutes dumping and measures hampering normal competition in international trade have been adopted as "anti-dumping" measures. This Article therefore contains a definition of dumping and provisions designed to prevent abuse of anti-dumping measures. It permits Members to levy an anti-dumping duty, but this duty may not be greater in amount than the margin of dumping. It also permits an imposition of countervailing duties to offset the effect of subsidies paid on export, manufacture, or production in exporting countries. But neither anti-dumping nor countervailing duties may be levied unless the effect of the dumping or subsidy involved is determined to cause or threaten material injury. The Article does not apply to incidental subsidization resulting from domestic price stabilization systems which result from time to time in sales abroad at prices higher than are charged domestically.

3. Valuation for Customs Purposes (Article 35)

Perhaps no other subject has given more difficulty in the administration of customs laws. Clearly, the basis of valuation upon which an ad valorem rate of duty is imposed is just as important as the rate of duty itself.

Therefore,

Therefore, in this Article Members agree to work towards the standardization of definitions of value and procedures for determining the value of products subject to ad valorem duty, and meanwhile to accept certain principles of valuation. The basic principle laid down is that the value for customs purposes shall be the actual value of the kind of merchandise imported. It may not be based on the value of merchandise of domestic origin or upon some arbitrary or fictitious value. Actual value is defined as the price at which such or like merchandise is sold in the ordinary course of trade, under fully competitive conditions, in comparable quantities, or in quantities not less favorable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

The Article requires that any currency rate used in the computation of value shall normally be based on the par value of the currency involved, established pursuant to the Articles of Agreement of the International Monetary Fund.

Finally, and very important, the Article requires that the basis and methods of determining dutiable value shall be stable and shall be given sufficient publicity to enable traders to know what is involved.

4. Customs Formalities (Article 36)

In this Article Members recognize the need for reducing the number and diversity of fees and charges connected with importation and exportation and for simplifying tariff formalities and documentation. They commit themselves to take action to effect this simplification as quickly as they can. They also agree that fees and charges shall not be used for protective or fiscal purposes, but shall be reasonable and related to the cost of the service rendered.

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

5. Marks of Origin (Article 37)

This Article requires that marking requirements should be uniform for imports from all countries and contains a number of technical provisions designed to reduce the administrative difficulties connected with the requirement of marks of origin.

6. Publication and Administration of Trade Regulations (Article 38)

Article 38 provides for the prompt publication of all laws and regulations affecting foreign trade in such manner as to enable governments and traders to become acquainted with them. It also provides for the administration of such laws and regulations in a uniform, impartial and reasonable manner, and for the setting up of suitable facilities to enable traders to consult with the appropriate authorities regarding these laws and regulations.

This Article also contains a very important provision requiring each Member to maintain an impartial tribunal, such as the United States Customs Courts, separate from the authority administering the customs regulations to which appeal from administrative decisions can be made.

7. Information, Statistics, and Terminology (Article 39)

Article 39 provides for the collection and publication of international trade statistics. It requires Members to publish as promptly as possible statistics on their external trade, their revenue from customs duties, and their subsidy payments affecting export and import trade. It authorizes the Organization to act as a center for the collection, exchange and publication of statistical information and for promotion of the comparability of statistics and standardization of nomenclature used in tariff and trade documents.

F

Section F - Special Provisions
(Articles 40 - 45)

1. Consultation, Territorial Application and Frontier Traffic (Articles 41, 42, 43)

Articles 42 and 43 are technical articles dealing

respectively with the territorial application of the Chapter and frontier traffic.

Article 41 requires each Member to give sympathetic consideration to, and adequate opportunity for, consultation regarding problems raised with it by other Members with respect to matters arising under the Chapter.

2. Emergency Action - The "Escape Clause" (Article 40)

This Article is the so-called "escape" clause which it has been the policy of the United States since 1942 to include in its reciprocal trade agreements. It provides that if as a result of unforeseen circumstances and of the effect of obligations incurred by a Member under the Chapter, including tariff concessions, a product is being imported into a Member's territory in such relatively increased quantities and under such conditions as to cause or threaten injury to domestic producers of like or directly competitive products, the Member shall be free to suspend the obligation in whole or in part or withdraw or modify the concession to the extent and for such time as may be necessary to prevent or remedy the injury.

Members contemplating such action are required if practicable to give advance notice to the Organization and to give the Organization and Members having a substantial interest in the trade in the product concerned an opportunity to consult with respect to the proposed action. However, in cases where delay would cause damage which would be difficult to repair, action may be taken without prior consultation on condition that consultation is effected immediately after the action is taken.

If agreement among the Members with respect to the action involved is not reached in such consultation, the Member proposing to take the action may nevertheless do so, but in such case other Members may suspend such substantially equivalent obligations or concessions vis-a-vis the Member taking the action as the Organization does not disapprove.

3. Customs Unions (Article 44)

Customs unions have been generally accepted as desirable
in

in that they create larger trading areas. This Article recognizes the desirability of increasing freedom of trade by the development, through voluntary agreement, of closer integration between the economies of the countries which are parties to such agreements.

The Article requires that when two countries merge their tariffs in a customs union the level of the new tariff must not exceed approximately a weighted average of the two previous tariffs and must not result in a general increase of tariff rates around the new area.

The Article also recognizes that the merger of customs tariffs is a difficult undertaking, particularly if there is a disparity in the size of the countries involved. Therefore, it authorizes what is called a free-trade area. This is a modified type of customs union which has one major characteristic of the usual customs union, namely, substantially free trade between the constituent countries for products originating in such countries, but allows each of them to retain the same tariff vis-a-vis the outside world that it had before.

The Article goes beyond the provisions with respect to customs unions in previous treaties and trade agreements by recognizing that a customs union is a complicated thing which takes a considerable time to develop, and that it may not be possible for two countries which wish to form a customs union, even with the best will in the world, to do it all at once. Therefore, the Article authorizes interim agreements leading to a customs union, and thus permits the formation of a customs union by stages. However, it requires that the plan for the customs union must contain a schedule for its formation within a reasonable length of time, and must be notified to the Organization. If the Organization finds that such an agreement is not likely to result in the formation of a customs union within the period contemplated, the Organization may suggest modifications. The parties may not proceed with the agreement unless they are ready to accept those recommendations.

4. General Exceptions (Article 45)

Article 45 contains certain general exceptions to Chapter IV. Most of these are standard exceptions which appear in normal commercial treaties and trade agreements, allowing measures necessary to protect public morals, plant life or health, etc. Others deal with short-run problems which have arisen out of the recent war. The main new exception is permission to adopt restrictive measures necessary to the acquisition or distribution of products in general or local short supply.

IV

2. CHAPTER V - RESTRICTIVE BUSINESS PRACTICES (Article 46 - 54)

Chapter V deals with the restrictive practices of private or public commercial enterprise which, as previously stated may be utilized as effectively to divert or limit trade as measures adopted by governments.

The Chapter opens (Article 46) with an undertaking by each Member to take appropriate measures and to cooperate with the Organization to prevent practices of private or public commercial enterprises which would restrain competition, limit access to markets, or foster monopolistic control in international trade, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives specified in Article 1 of the Charter.

The Article defines a number of restrictive practices which may be subject to investigation under the Charter, e.g. fixing prices, terms or conditions to be observed in the purchase, sale or lease of any product; excluding enterprises from, or allocating or dividing, markets or fields of business activity, or allocating customers, or fixing sales quotas or purchase quotas; preventing by agreement the development or application of technology; etc.

In line with the general principle which runs throughout the Charter that solution of problems should be sought in the first instance by direct consultation between Members affected, any Member which considers that in a particular instance practices are being indulged in which have these harmful effects may consult with other Members or with the Organization with a view to finding a mutually satisfactory solution. (Article 47)

A Member may also present a written complaint to the Organization in any instance when it believes that a practice has or is about to have the harmful effect referred to above. If the Organization decides that an investigation is justified, it must notify all Members and arrange for a hearing on the complaint. It must then review the information available and decide whether the complaint is justified. If it decides that the complaint is well-founded, it must request the Members concerned to take every possible remedial action and it may also make recommendations to the Members concerned with respect to the nature of such action. It may also request Members to report on the remedial action which

they have taken in any particular case. A public report of the proceedings and of recommendations made is required. (Article 48)

Each Member is obligated to take all possible measures, in accordance with its own constitution or system of laws, to insure within its jurisdiction that public and private commercial enterprises do not engage in the harmful practices specified. (Article 50)

Each Member must, moreover, take full account of each request, decision, and recommendation of the Organization in the case of any specific complaint, and, in accordance with its constitution or system of laws, take action considered appropriate having regard for its obligations under this Chapter. Each Member is also obligated to furnish the Organization, as promptly and fully as possible, information requested by the Organization for its consideration and investigation of complaints. Safeguards are provided with respect to the disclosure of information which would damage legitimate business interests. (Article 50)

The Organization is authorized to conduct studies relating to the general effect of restrictive business practices affecting international trade. (Article 49)

It is made clear that no act or failure to act on the part of the Organization shall preclude any Member from enforcing its own statutes or regulations directed toward preventing monopoly or restraint of trade. (Article 52)

Similar complaint procedures are established with respect to restrictive business practices in the field of services, such as transportation, but if any such complaint is made and if another intergovernmental organization exists which is qualified to deal with the problem, the complaint must be referred to that organization. (Article 53)

Article 54 is a technical article, dealing with interpretation and definition.

It is noteworthy that this Chapter represents the first international agreement ever reached for the establishment of a mechanism and procedure for dealing with restrictive business practices in the field of international trade.

3. CHAPTER VI: INTERGOVERNMENTAL COMMODITY AGREEMENTS (Article 55 - 70)

The Chapter opens with the recognition that special difficulties of production adjustment and extreme fluctuations in prices, which would jeopardize the Charter objectives of economic expansion, have at times characterized primary commodities produced and marketed under certain economic circumstances. These conditions occur (a) where small producers account for a substantial part of total output and neither consumption nor production responds readily to price changes, or (b) where consumption does not respond readily to price changes and important producing areas afford no alternative employment opportunities for displaced labor. Under such circumstances, there may appear burdensome surpluses of a commodity or widespread unemployment, which cannot be corrected by normal market forces in time to prevent serious adverse effects on international trade as a whole.

Consequently, the Charter recognizes that intergovernmental commodity agreements are appropriate in order to prevent or alleviate the economic difficulties which will arise when normal market forces alone cannot effect the necessary adjustments between production and consumption as rapidly as may be needed, and to provide a sort of breathing spell during which measures would be developed looking toward promotion of the expansion of consumption or a shift of resources out of overexpanded industries into new and productive occupation, to prevent or moderate pronounced price fluctuations, or for other purposes. (Article 57)

All such agreements must be open initially to all Members on equal terms; they must provide for adequate participation by countries which have an interest in the importation or consumption of the commodity; they must accord fair treatment to Members which do not participate; and full publicity must be given to their administration and negotiation. Non-Members may be invited to participate. (Article 60) A commodity agreement cannot normally be entered into unless there has been a commodity conference which finds that conditions are such as to require an agreement and at which the agreement has been negotiated. (Article 59)

Such conferences will usually be preceded by the formation of a study group which is charged with developing the facts and making recommendations as to how to deal with them. (Article 58)

Where commodity agreements involve the regulation of production or the quantitative control of exports or imports of a primary commodity or the regulation of prices, they can only be entered into if certain additional conditions are met. (Article 61)

Those conditions are that one of two types of findings must be made through a commodity conference, or by general agreement among Members particularly interested in the commodity. The first is that a surplus of a primary commodity has developed, or is expected to develop, which is so burdensome as to cause or threaten serious hardship, and that it is impossible to prevent this hardship by relying on the normal operation of market forces, since a substantial reduction in price would not readily lead either to a significant increase in consumption or to a significant decrease in production. (Article 62 (a)) These circumstances arise from time to time in the case of agricultural commodities. The second type of finding is that widespread unemployment must have developed or be expected to develop which, in the absence of specific governmental action, would not be corrected by normal market forces in time to prevent widespread hardship to workers, because a substantial reduction in the price of the commodity does not readily lead to significant increase in consumption but rather to reduction of employment, and because the areas where the commodity is produced do not afford alternative employment opportunities for the workers involved. (Article 62 (b)) These circumstances arise from time to time in the case of certain minerals.

Commodity control agreements must be designed to assure the availability of adequate supplies at fair prices. They must give as many votes to countries interested mainly in imports as to those interested mainly in exports. They must provide, where practicable, for measures designed to increase consumption. They must seek to permit production to expand in areas where it can be carried out with the greatest economy. And countries participating in such an agreement must formulate and adopt programs of internal economic adjustment designed to ensure all practicable progress during the life of the agreement toward conditions that will obviate the necessity for its renewal. (Article 63)

The life of such agreements is not to exceed five years, renewable for not to exceed five years. (Article 65)

These rules do not apply to agreements to conserve natural resources or to allocate commodities in short supply (Article 70, (2) and (3)), or to agreements dealing with health, fisheries, migratory birds, or wild animals (Article 70 (1)).

Detailed provision is made for the administration of such agreements by commodity councils (Article 64), for the periodic review of their operation by the Organization (Article 65), and for the settlement of disputes (Article 66). If any agreement existing at the time the Charter comes into force is found to be inconsistent with its rules, it must be modified (Article 68), and if the Organization finds that an agreement is not operating in accordance with these rules, it must be terminated or revised (Article 65, (3)).

Any agreement negotiated by the United States pursuant to this Chapter would be submitted to the Congress for its approval.

4. CHAPTER II - EMPLOYMENT AND ECONOMIC ACTIVITY (Article 2 - 7)

From the beginning of the Charter project, in the original United States Proposals for the Expansion of World Trade and Employment, it was recognized that the effectiveness of efforts to reduce trade barriers and to eliminate discrimination in international trade would be nullified if there was not in the world a large and reasonably stable demand for the products of international trade. A Chapter on Employment and Economic Activity was therefore included, which gives the Organization little specifically to do in the field of employment and industrial stability, but contains certain specific commitments for member countries and states certain considerations which the Organization is required to keep in mind in the exercise of its other functions.

In this Chapter Members recognize that the avoidance of unemployment or under-employment must depend primarily on internal measures taken by individual countries (Article 2 (2)), but that the avoidance of unemployment is not of domestic concern alone. It is also a necessary condition for the expansion of international trade (Article 2 (1)), for under conditions of serious unemployment, demand for

all

all kinds of products, imported as well as domestic, declines. In undertaking to maintain employment, production and demand, Members are obligated to adopt measures which are consistent with the other objectives and provisions of the Charter and to seek to avoid measures which would have the effect of creating balance-of-payments difficulties for others. (Article 3 (2)). In seeking to balance their external payments and receipts, they must have due regard to the desirability of employing methods which expand rather than contract international trade. (Article 4 (2)).

Since the avoidance of unemployment is not of domestic concern alone, the Charter recognizes that measures taken by individual countries should be supplemented by concerted action under the sponsorship of the Economic and Social Council of the United Nations (Article 2 (2)), and requires Members and the Organization to participate in arrangements made or sponsored by that body for the collection, analysis and exchange of information, studies about the international aspects of population and employment problems and in consultation with a view to concerted action on the part of government and intergovernmental organizations in order to promote employment and economic activity (Article 2 (3), 5).

The objective of employment policy is stated (Article 2 (1)), in words taken from the United States Employment Act of 1946, as the provision of "useful employment opportunities for those able and willing to work".

The specific commitment taken by each Member in the field of employment is that it shall take action designed to achieve and maintain full and productive employment and large and steadily growing demand within its own territory through measures appropriate to its political, economic and social institutions. (Article 3) It should be noted that the employment contemplated is to be "productive" as well as "full", thus avoiding the concept of pure make-work policy. It is also to be noted that no power is conferred on the Organization or any of its Members to question the propriety of measures taken by any other Member to this end, as those measures are specifically described as those which the Member deems to be appropriate to its own particular institutions.

Article 4 recognizes that a persistent and extensive lack of balance in the trade of a major nation may be an

important factor in the balance-of-payments difficulties of other nations. It commits all Members concerned, the Members having the favorable trade balance as well as those Members having balance-of-payments difficulties, to use their best efforts and make their full contribution toward a solution of the problem.

Article 6 recognizes that a serious or abrupt decline in the effective demand of other countries may have serious repercussions for individual Members and may require them to take certain measures to protect their own economy. The Organization is directed to keep this in mind in making the decisions required of it by the other parts of the Charter.

Finally, in Article 7, Members recognize that all countries have a common interest in the achievement and maintenance of fair labor standards related to productivity and in the improvement of wages and working conditions as productivity may permit. They recognize that unfair labor conditions, particularly in production for export, create difficulties in international trade and, accordingly, each Member agrees to take whatever action may be appropriate and feasible to eliminate such conditions within its territory.

5. CHAPTER III -- ECONOMIC DEVELOPMENT AND RECONSTRUCTION

(Articles 8-15)

The Chapter opens with the recognition that the industrial and general economic development of all countries, particularly those as yet relatively undeveloped, contributes to economic balance, expands international trade, improves opportunities for employment, and raises levels of real income.

Accordingly, Members undertake, within their respective territories, to take action designed progressively to develop their industrial and other economic resources, and to raise standards of productivity through measures consistent with the Charter. (Article 9) The choice of what action each Member will take is entirely for it to decide.

Article 10 provides for cooperation between the Members and by the Organization with the Economic and Social Council of the United Nations and other appropriate inter-governmental organizations for the promotion of industrial and general economic development and the reconstruction of countries whose economies have been devastated by the war. It directs the Organization, at the request of any Member, to study the Members' resources and potentialities, to assist in formulation of plans for its development and to give advice with respect to carrying out such plans.

Article 11 recognizes the importance to economic development of adequate supplies of capital, equipment, technology and managerial skills. Members agree to cooperate in providing or arranging for the provision of such facilities. Members able to provide such facilities agree not to impose any unreasonable or unjustifiable impediments which would prevent other Members from obtaining them on equitable terms, and Members receiving them agree to take no unreasonable or unjustifiable action injurious to the rights or interests of nationals of other Members in the enterprises, skills, capital, arts or technology which they have supplied.

The Organization is authorized to make recommendations for and promote bilateral or multilateral agreements designed to facilitate the interchange of

technology and capital, though no Member is committed to accept the Organization's recommendations or to participate in such agreements.

Article 12 recognizes the importance of the contribution which international investment, both public and private, can have in promoting economic development, and also the extent to which the international flow of capital can be stimulated if Members afford nationals of other countries opportunities for investment and security for existing and future investments. It therefore provides that Members will provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments. On the other hand, it recognizes the right of each Member to take appropriate safeguards necessary to insure that foreign investments are not used as a basis for interference in its internal affairs; to determine whether, and to what extent, and on what terms, it will allow future investments; and to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments.

It is recognized that treaties or other agreements relating to the opportunities and security for investment will promote the movement of capital, and Members undertake, upon the request of other Members, to enter into consultation and participate in negotiations directed to the conclusion of mutually-acceptable treaties or agreements for this purpose.

Articles 13, 14 and 15 define certain limited cases in which tariffs, quotas, or preferences, which would not be permitted under the rules and obligations of the Commercial Policy Chapter of the Charter, may be allowed for the purpose of promoting the establishment or development of particular industries or branches of agriculture.

Article 13 provides that if a Member wishes to increase a tariff rate which it has bound in a trade agreement with another Member or Members, or to impose a quota on a product included in such an agreement, for the purpose of establishing a new industry or branch of agriculture or materially developing one which exists, it must seek the consent of the other Member or Members with which it has made the trade agreement. If it secures the consent of the Members substantially affected it may impose the proposed measure. If it does not secure such consent, it may not do so. The Organization may assist in the negotiations and, where a multilateral

trade

trade agreement is involved such as the General Agreement on Tariffs and Trade, has a responsibility for determining which Members are substantially interested in the proposed measure. This is to assure that some Member with a legal right under the General Agreement on Tariffs and Trade, for example, to a given tariff rate, but which has only a small interest in the trade in the product concerned, cannot block an agreement reached by all of the other Members who are substantially interested. If the measure proposed affects a product which is not included in a trade agreement, the Member would, of course, be free to change its tariff in any way it wished.

If, however, a Member desires to impose a quota which would be prohibited by the commercial policy provisions of the Charter, it must obtain the consent of the Organization. If the Member can show that the proposed quota meets certain specified and limited conditions (Article 13 (7)(a)), the Organization must grant permission to use the quota for a specified period. If the proposed quota does not meet these specified conditions, the Organization must arrange for consultation with other Members which would be materially affected by the proposed measure and, after obtaining their views, may approve or disapprove it. A time schedule is specified for the consideration of such applications so that applications cannot be blocked simply by inertia or delay.

Whereas Article 13 sets up procedures under which proposed measures for economic development (which would otherwise conflict with obligations under the Charter) may obtain the approval of the Organization, Article 14 establishes special transitional procedures for dealing with existing measures for economic development which Members have in effect when they join the ITO. Generally speaking, such measures which are already in effect may be continued if they are non-discriminatory and if advance notice is given, but they are subject to a kind of post-audit by the Organization, i.e. they are subject to review and possible disapproval by the Organization as if they had been submitted for approval under Article 13. It is specifically provided that Article 14 is not to apply to measures relating to products on which tariff concessions were made in a trade agreement.

Article 15 would permit new preferential arrangements between two or more countries in the interests of their programs of economic development if the Organization approves the proposal by a two-thirds vote, or if the Organization

finds that several carefully defined conditions have been met and that the proposed arrangement will not cause substantial injury to the external trade of other members.

6. SECURITY EXCEPTIONS

(Article 99)

All of the provisions of the Charter which have been described are subject to the express proviso that they shall not be construed:

a. to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

b. to prevent a Member from taking, either singly or with other States, any action which it considers necessary for the protection of its essential security interests, where such action

i. relates to fissionable materials or to the materials from which they are derived, or

ii. relates to the traffic in arms, ammunition or implements of war, or to traffic in other goods and materials carried on directly or indirectly for the purpose of supplying a military establishment of the Member or of any other country, or

iii. is taken in time of war or other emergency in international relations; or

c. to prevent a Member from entering into or carrying out any intergovernmental agreement made by or for a military establishment for the purpose of meeting essential requirements of the national security of one or more of the participating countries.

7. CHAPTER VII - THE INTERNATIONAL TRADE ORGANIZATION

(Articles 71-91)

These provisions of the Charter consist, in effect, of a series of agreements among the member governments upon substantive questions relating to international trade in the

fields

fields of commercial policy, restrictive business practices, commodity problems, employment, and economic development. The Organization which the Charter would create will derive its powers from those agreements. It is designed to be a specialized agency of the United Nations, along with the Food and Agriculture Organization, the International Bank and the International Monetary Fund.

The functions assigned to the Organization are to collect, analyze and publish information, to make studies and issue reports, to recommend changes in laws and procedures, to promote international agreement in the area of its interest, to encourage and facilitate consultation, and to call conferences and sponsor negotiations between its Members. It will administer the provisions of the Charter, receive complaints, settle disputes between Members, and permit withdrawal of concessions in cases of violation so that a balance of interests may be maintained.

Countries invited to attend the Havana Conference may become original members of the Organization. Other countries may join with the approval of a majority of the Members. (Article 71)

The final authority for determining the Organization's policies is a Conference composed of all Members. (Articles 74, 77) Responsibility for execution of policies is placed in an Executive Board of eighteen Members. Eight of the Board's eighteen seats will always be assigned to the eight Members of chief economic importance. (Article 78)

Each Member has one vote in the Conference and in the Executive Board. (Articles 75, 79)

The formula provided for the determination of economic importance makes it clear that the eight seats on the Executive Board will go to the United States, United Kingdom, Canada, France, the Benelux Customs Union, India, China, and, if it should join, to the Soviet Union. Four of the remaining seats will go at the first election to countries in Latin America, and one each to countries in Scandinavia, the Near and Middle East, and the Arab States. (Annex L)

The detailed work of the Organization will be carried on under the supervision of the Executive Board, by a Director-General and a staff. (Articles 84, 85)

The Conference may also establish, if it desires, specialized commissions to be staffed by technical experts selected by the Executive Board. These experts will serve in their professional capacity and not as representatives of governments. (Articles 83, 88)

The relationship of the Organization to the United Nations will be defined in an agreement similar to those entered into by other specialized agencies (Article 86). Certain relationships with the Fund and the FAO are described in detail (e.g. Article 24, 67). It is contemplated that such relationships in general are to be subject to agreement that will ensure effective cooperation and the avoidance of unnecessary duplication. The Organization may also absorb or bring under its supervision certain existing organizations, such as the International Customs Tariff Bureau, whose operations fall within its competence. (Article 87)

Contributions for the support of the Organization are to be apportioned among its Members in accordance with such principles as may be followed in financing the United Nations. If a maximum limit is placed upon the share that any Member may be asked to contribute to the budget of the United Nations, this limit must also be applied to its contribution to the Organization. (Article 77, (6))

8. CHAPTER VIII - SETTLEMENT OF DIFFERENCES

(Articles 92-97)

The Members undertake that they will follow the procedures envisaged in the Charter for settling differences arising out of its operation. (Article 92)

If any Member considers that any benefit accruing to it under the Charter is being nullified or impaired by the action of another Member or the existence of any other situation, it may consult with the other Members concerned. Arbitration may be employed if desired. (Article 93)

If this procedure does not effect a settlement, the case may be taken to the Executive Board of the Organization which, after investigation, may dismiss the complaint, suggest further consultation, refer the case for arbitration if this is agreed by the Members concerned, or make

recommendations

recommendations to the Members concerned. If these steps fail, and if the Board finds the case to be serious and the complaint to be valid, it may release the complaining Member from obligations assumed toward the other Member under the Charter. Such release must be limited in extent to that required to compensate the complaining Member for its loss of benefit. (Article 94)

If either Member requests, the case must be referred to the Conference for review. The Conference may confirm, modify or reverse the decision of the Executive Board. It may recommend further consultation, arbitration or corrective action, and, in serious cases, it may release the complaining Member, on a compensatory basis, from obligations toward the other Member for concessions granted it. (Article 95)

Decisions of the Conference are subject to review as to legal aspects by the International Court of Justice by means of a request for an advisory opinion pursuant to the statutes of the Court. (Article 96)

9. AMENDMENTS, WITHDRAWAL AND TERMINATION

(Articles 100-102)

Amendments to the Charter require approval of two-thirds of the Conference. Amendments which do not alter the obligations of the Members become effective upon such approval. Amendments which do alter the obligations of Members become effective upon acceptance of two-thirds of the Members, but only for the Members accepting them. Acceptance for the United States would be by Congressional action. The Conference may, in its decision approving an amendment, determine that it is of such a nature that Members which do not accept it within a specified period after it becomes effective shall be suspended from membership in the Organization. The determination of whether an amendment does or does not change the obligations of Members is made by a two-thirds majority of the Conference. Any Member not accepting an amendment of this kind is free to withdraw from the Organization, after the amendment becomes effective, on sixty days' notice. (Article 100)

After five years, the Conference is obligated to carry out a general review of the provisions of the Charter. (Article 101)

At various places in the Charter (e.g. Articles 17 (4)(e), 95 (4)), it is provided that a Member dissatisfied with a decision of the Organization may withdraw upon sixty days' notice. In addition, any Member may withdraw at any time, on six months' notice, after three years from the date on which the Charter enters into force. The Charter may be terminated at any time by the agreement of three-fourths of the Members. (Article 102)

10. RELATIONS WITH NON-MEMBERS

(Article 98)

Nothing in the Charter precludes Members from having economic relations with non-Members. However, the Charter prevents any Member from entering into an arrangement with a non-Member which would give the Member more favorable treatment than the non-Member gives to other Members. It prevents members from giving non-Members more favorable treatment than they give to other Members, thereby injuring the economic interests of such other Members. It also makes it clear that Members are not required by the Charter to give non-Members treatment as favorable as that which they give to other Members. (Article 98)

SUMMARY OF COMMITMENTS AND EXCEPTIONS IN THE CHARTER

There follows a summary of the commitments that will be assumed by the countries that join the ITO and the possible escapes from these commitments that are contained in the Charter.

1. COMMITMENTS

I. With respect to the reduction or elimination of restrictive or discriminatory measures imposed on international trade by governments, countries joining the ITO will commit themselves, save where specific exceptions are contained in the Charter or specific exemptions may be granted by the Organization:

- (1) to enter into and carry out negotiations directed toward the substantial reduction of tariffs and the elimination of preferences (Art. 17);
- (2) to introduce no new preferences and to increase no old preferences (Art. 16, 17);
- (3) to give effect, at the earliest practicable date, to common definitions and procedures for determining the value of imported goods when value is the base upon which customs duties are levied (Art. 35);
- (4) to reduce the number and diversity of other customs fees and charges and to limit them, in amount, to the value of services rendered (Art. 36);
- (5) to reduce and simplify import and export formalities and documentation requirements (Art. 36);
- (6) to eliminate unnecessary marking requirements and reduce the burden of complying with such requirements as are retained (Art. 37);
- (7) to prevent the use of trade names in such a manner as to misrepresent the true origin of a product (Art. 37);
- (8) to confine anti-dumping and countervailing duties to cases of actual injury and to limit them, in

amount, to the margin of dumping or the value of the bounty or subsidy they are designed to offset (Art. 34);

- (9) to afford freedom of transit to goods moving across their territories (Art. 33);
- (10) not to impose on imported goods internal taxes higher than those imposed on like domestic goods (Art. 18);
- (11) not to impose on the distribution or use of imported goods laws, regulations or requirements more onerous than those imposed on the distribution or use of like domestic goods (Art. 18);
- (12) not to impose any new requirement that any specified amount or proportion of any product must be supplied from domestic sources and to include the reduction or elimination of existing mixing requirements in international trade negotiations (Art. 18);
- (13) not to discriminate against the distribution or exhibition of imported motion picture films by any means other than requiring that a certain amount of screen time be reserved for the exhibition of domestic films and to include the reduction or elimination of such screen quotas in international trade negotiations (Art. 19);
- (14) not to allocate imported products affected by domestic mixing requirements or screen quotas among foreign sources of supply (Art. 18, 19);
- (15) in all these matters, to accord to each other Member country treatment no less favorable than that accorded to any third country (Art. 16);
- (16) in all cases other than those specifically excepted by the Charter or exempted through approval by the IFO, to abandon the use of import or export licenses, quotas, or other quantitative restrictions (Art. 20);
- (17) in those cases and at those times when quantitative restrictions may be used, so to administer them as to avoid discrimination between other Member countries (Art. 22);
- (18) to join the International Monetary Fund or enter

into a special exchange agreement with the ITO (Art. 24);

- (19) not to evade the Charter rules on quantitative restrictions by using exchange controls and not to evade the Fund's rules on exchange controls by using quantitative restrictions (Art. 24);
- (20) in the case of a state monopoly of export trade, to enter into and carry out negotiations directed toward the limitation or reduction of any competitive advantage that may be afforded to domestic users of the monopolized product and toward assurance that the product will be exported in adequate quantities at reasonable prices (Art. 31);
- (21) in the case of a state monopoly of import trade, to enter into and carry out negotiations directed toward the limitation or reduction of any competitive advantage that may be afforded to domestic producers, the relaxation of restrictions on imports, and the satisfaction of the full domestic demand for the imported product (Art. 31);
- (22) in any state trading operation, to act solely in accordance with commercial considerations and to afford the enterprises of other Member countries adequate opportunity, in accordance with customary business practice, to compete for participation in purchases or sales (Art. 29);
- (23) to publish, fully and promptly, statistics, laws, regulations, judicial decisions, administrative rulings, and international agreements affecting international trade (Art. 38, 39);
- (24) to administer trade regulations uniformly and impartially, and to afford traders suitable facilities for consultation with administrative authorities (Art. 38); and
- (25) to maintain or establish independent tribunals or procedures for the prompt review and correction of administrative action (Art. 38).

It will be noted that in the main, these are commitments either to do things which the United States is already doing and intends to continue doing, or to refrain from doing things which the United States is not doing and does not desire nor intend to do.

II. With respect to the elimination of restrictive business practices by public or private commercial enterprises possessing monopoly power in international trade or conspiring to restrain international trade, each country joining the ITO will commit itself

- (1) to "take appropriate measures . . . to prevent" such practices whenever they "have harmful effects on the expansion of production or trade" (Art. 46);
- (2) to "take all possible measures, by legislation or otherwise . . . to ensure, within its jurisdiction, that private and public commercial enterprises do not engage in practices" which have such effects (Art. 50); and
- (3) to "take full account of each request, decision, and recommendation" made by the ITO and "take in the particular case the action it considers appropriate having regard to its obligations" under the Charter (Art. 50).

These commitments are consistent with the policy embodied by the Congress of the United States in the Sherman Anti-Trust Act of 1890, as interpreted by the Supreme Court. For most other countries, however, they represent a radical departure from established policy.

III. With respect to intergovernmental agreements to regulate the production, exportation, importation, or prices of primary commodities, each country joining the ITO will commit itself

- (1) not to enter into any such agreement unless the industry in question displays a number of specific economic characteristics that are to be found in combination only in the case of certain agricultural staples and of a few minerals (Art. 62);
- (2) not to adhere to any such agreement unless its duration is limited to five years or less and to formulate and adopt, during the life of the agreement, measures of domestic economic adjustment designed to render its extension unnecessary (Art. 63, 65);
- (3) not to adhere to any such agreement unless it contains specified provisions designed to safeguard the interests of consumers, including an

equal vote for producer and consumer interests, and full publicity (Art. 60, 63); and

- (4) to modify or withdraw from any agreement that the ITO finds to be inconsistent with these requirements (Art. 68).

IV. With respect to subsidies, each country joining the ITO will commit itself

- (1) not to subsidize the exportation of any commodity other than a primary commodity (Art. 26);
- (2) not to subsidize the exportation of any primary commodity to an extent that would maintain or acquire for itself more than an equitable share of world trade in that commodity (Art. 28); and
- (3) upon request, to discuss with the ITO or its Members the possibility of limiting any subsidy that operates, directly or indirectly, to maintain or increase exports or to reduce or limit imports (Art. 25).

In these cases, as elsewhere, the procedure of enforcement through nullification and impairment action applies.

The limitations on the freedom to subsidize are admittedly weak. The rules governing commodity agreements are more important. In the absence of these rules, no government will be under any commitment not to enter into such agreements, in any field, for any period of time, containing no safeguards for the protection of consumer interests. Under the Charter, in effect, no such agreement can be concluded unless its terms are acceptable to the United States.

V. With respect to the inter-relationship between the international trade program and domestic programs for the stabilization of industrial activity, each country joining the ITO will commit itself

- (1) to "take action designed to achieve and maintain full and productive employment and large and steadily growing demand within its own territory through measures appropriate to its political, economic and social institutions" (Art. 3).

This commitment, originally proposed by the United States, is consistent with the provisions of the Employment Act of 1946.

If pronounced imbalance in international trade persists, a Member with a heavy export balance commits itself

- (2) to "make its full contribution, while appropriate action shall be taken by the other Members concerned, toward correcting the situation" (Art. 4).

This wording involves a recognition of the inescapable fact that no country can continue indefinitely to sell far more than it buys. The character of the "contribution" by the overselling country is for it alone to decide. And "appropriate action" by others is also required.

VI. With respect to economic development, each country joining the ITO will commit itself

- (1) to take action designed to develop its resources and to raise standards of productivity (Art. 9);
- (2) not to impose "unreasonable or unjustifiable impediments" that would prevent other Members from obtaining facilities for their development (Art. 11); and
- (3) to cooperate with other international organizations in promoting and facilitating economic development (Art. 10).

VII. With respect to the treatment of private foreign investments, countries joining the ITO will commit themselves

- (1) not to take "unreasonable or unjustifiable action . . . injurious to the rights or interests of nationals of other Members in the enterprise, skills, capital, arts or technology which they have supplied" (Art. 11);
- (2) to provide "adequate security for existing and future investments . . ." (Art. 12);
- (3) to impose no requirements as to the ownership of investments that are not "just" (Art. 12);
- (4) to impose no other requirements with respect to investments that are not "reasonable" (Art. 12); and
- (5) to "enter into consultation or to participate in negotiations directed toward the conclusion" of "bilateral or multilateral agreements relating to . . . opportunities and security for investment" (Art. 12);

and

and the ITO may "formulate and promote the adoption of a general agreement . . . regarding the conduct, practices and treatment of foreign investment" (Art. 11).

If another Member

fails to provide adequate security for American investments,

imposes requirements as to the ownership of investments which are not just,

or other requirements with respect to investments that are not reasonable,

or takes any unreasonable or unjustifiable action injurious to American investors,

or refuses to participate in negotiations directed toward agreements regarding the treatment of foreign investments,

the United States may complain that benefits accruing to it under the Charter are being nullified or impaired (Art. 93),

and the ITO may then release the United States, on a compensatory basis, from "obligations or the grant of concessions to the offending Member" (Art. 94).

2. EXCEPTIONS

The exceptions or possible exceptions to the general rules contained in the Charter fall into the following general categories:

- (1) definitions of jurisdiction which except matters covered in other parts of the Charter, by other international agreements, or by other inter-governmental organizations;
- (2) routine, boiler-plate exceptions copied from previous commercial treaties and trade agreements;
- (3) temporary exceptions, limited to the post-war transition or to the duration of some other period of emergency;
- (4) exceptions permitting the retention of existing preferences, mixing regulations, and screen

quotas, but making them subject (like tariffs) to reduction or elimination through negotiation;

- (5) other exceptions of minor importance which are designed, in most cases, to permit a single country to continue to employ a particular measure which would otherwise be inconsistent with the general principles of the Charter; and
- (6) a half dozen exceptions of major importance.

Among these major exceptions, three were included on the initiative of the United States as prerequisites to acceptance of the Charter:

- (1) tariff concessions may be suspended or withdrawn if increased imports cause or threaten serious injury to domestic producers (Art. 40);
- (2) quotas may be imposed on imports and subsidies paid on exports of agricultural products when domestic prices are maintained at levels higher than world prices through measures of the sort that are employed in the United States (Art. 20, 27); and
- (3) measures adopted and agreements entered into for the protection of essential security interests are exempt, in general, from the provisions of the Charter (Art. 99).

None of these escapes requires the prior approval of the ITO.

There remain three possible escapes of major importance that are likely to be used by other countries and not by the United States:

- (1) quantitative restrictions may be imposed and discrimination practiced by countries that are in balance-of-payment difficulties (Art. 21, 23);
- (2) exceptions to the most-favored-nation rule; involving new preferences, may be granted where incidental to the formation of customs unions or free trade areas or required for economic development (Art. 44, 15); and
- (3) exceptions to other rules respecting restrictions

on imports may be granted for non-discriminatory measures proposed for the promotion of economic development (Art. 13, 14).

Each of these possible escapes is circumscribed by limiting criteria, accompanied by additional commitments, and subject to detailed procedures and administrative controls. The last two of them require the prior approval of the ITO.

I. A country member of ITO that is in balance-of-payments difficulty may use import quotas, but only during the period and to the extent that this is necessary "to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves", or "to achieve a reasonable rate of increase in its reserves" (Art. 21). The ITO must base its decision as to whether a country falls within this exception on a determination made by the International Monetary Fund (Art. 24).

A country making use of this exception commits itself

- (1) to "pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis";
- (2) "to the desirability of assuring an economic employment of productive resources";
- (3) "to admit any description of merchandise in minimum commercial quantities";
- (4) "to avoid unnecessary damage to the commercial or economic interests of any other member"; and
- (5) progressively to relax and ultimately to eliminate its restrictions as its financial condition improves.

It may consult with the ITO on its own initiative and must do so on request before increasing old restrictions or applying new ones.

A member may ask the ITO to approve old or new restrictions and the ITO, if it does so, may limit their extent, intensity, and duration. In other cases, any member may complain that the foregoing rules have been violated, and the ITO may release it from concessions or obligations toward the violator.

For the duration of its transition period under Article XIV of the International Monetary Fund, a country in balance-of-payments difficulty may discriminate in administering import quotas on either of two bases (Art. 23 and Annex K):

- (1) any country operating under Article 23 may employ discriminations paralleling those permitted under Article XIV of the Fund (or an analagous exchange agreement with the ITO) or continue and adapt discriminations in effect on March 1, 1948; or
- (2) any country operating under Annex K may employ discriminations if they satisfy the following criteria:
 - i) they must be necessary as a means of obtaining additional imports;
 - ii) prices paid for such imports must not be substantially above the general market level;
 - iii) any excess in such prices must be progressively reduced;
 - iv) exports salable for hard money must not be contractually committed through bilateral agreements with soft-money countries; and
 - v) the discrimination permitted must not cause unnecessary damage to the commercial or economic interests of another member.
 - vi) after March 1, 1952, they must make any new discriminations conform to such limitations as the Organization may prescribe.

Countries operating under either of the foregoing provisions must

- (1) promote the maximum development of multilateral trade possible during the transition period, and
- (2) consult the ITO, after March 1, 1952, concerning the continued use of discriminatory measures.

During and after the Fund transition period, a country in balance-of-payments difficulty may ask the ITO for permission temporarily to employ discriminatory measures affecting a small part of its external trade.

II. Members of the ITO who enter into an interim agreement leading to the eventual formation of a customs union or free trade area may establish customs duties departing from the most-favored-nation rule if they satisfy the following conditions (Art. 44):

- (1) they must proceed by reducing duties to insiders, not by raising duties to outsiders;
- (2) they must move toward the ultimate elimination of duties on substantially all of their internal trade;
- (3) in the case of a customs union, they must move toward the ultimate elimination of all other internal restrictions and the establishment of a common tariff;
- (4) they must present to the ITO a plan and schedule which provides for the final establishment of the customs union or free trade area within a reasonable period of time;
- (5) if the ITO is convinced that the plan and schedule will, in fact, result in the establishment of such an arrangement within a reasonable period they may proceed with the project;
- (6) otherwise, they must modify or abandon their plans.

Members of the ITO can grant new tariff preferences to one another, but not to non-members, if they surmount the following obstacles (Art. 15):

- (1) the ITO must find that their territories are contiguous or belong to the same economic region;
- (2) the ITO must find that each preference granted on each product by each of the parties to the agreement is "necessary" to promote the economic development of that party by assuring a sound and adequate market for a new industry and is adequate to accomplish this purpose;
- (3) the ITO will not approve the agreement if it is not open to adherence by other Members, if it jeopardizes the position of another Member in world trade, or if it is likely to cause substantial injury to another Member, unless the

agreement is modified, or the other Member consents to it, or is awarded fair compensation;

- (4) in approving an agreement, the ITO can require that unbound duties charged to outsiders be reduced and can fix specific margins of preference for particular products;
- (5) it cannot approve such agreements for an initial period of more than ten years or renew them for periods of more than five years;
- (6) if new preferences are granted which do not conform to these rules and regulations, action for the suspension of obligations or concessions to the offending Members may be brought on the ground that benefits afforded by the Charter have been nullified or impaired.

III. New non-discriminatory measures affecting imports (import quotas and mixing regulations) may be imposed for the promotion of economic development if the following obstacles are surmounted (Art. 13):

In the case of products included in trade agreements (the major part of the world's trade) if the other parties to the agreement consent, and subject to such conditions as may be agreed upon.

In the case of products not included in trade agreements (the minor part of the world's trade):

- (1) if Members whose trade would be materially affected consent, subject to such limitations as they may accept; or
- (2) if the ITO grants prior approval after considering
 - (a) the views of the applicant,
 - (b) the views of other Members who would be affected,
 - (c) the effect on international trade,
 - (d) the effect on standards of living,subject to any limitations it may impose; or

(3) if the ITO finds that any one of the following conditions is fulfilled:

- i) the industry in question was established between 1939 and 1948;
- ii) the industry processes an indigenous primary commodity and external sales of that commodity have been sharply curtailed by new or increased restrictions imposed abroad;
- iii) the industry processes an indigenous primary commodity or has a by-product which would otherwise be wasted; the measure is required to achieve a fuller and more economic use of resources and raise living standards; it is unlikely to harm international trade; it is "necessary";
- iv) the measure is the one most suitable for the purpose and is "unlikely to be more restrictive of international trade than any other practicable and reasonable measure" permitted under the Charter; and also if the measure would not cause serious prejudice to the exports of a primary commodity on which the economy of another Member depends.

The ITO, in its discretion, may fix an initial period during which the measure may be used. It may not grant a renewal on the basis of these conditions.

A Member who is permitted to impose restrictions on this basis must "avoid unnecessary damage to the commercial or economic interests of any other Member". If this commitment is violated, the nullification and impairment provisions of the Charter may be brought into play.

Existing non-discriminatory measures affecting imports which are inconsistent with the provisions of the Charter must be reported and the ITO may approve or disapprove them within one year after its establishment (Art. 14).