

A CHARTER FOR WORLD TRADE

Report of the Council of the International Chamber of Commerce
to the Havana Trade and Employment Conference
(November 1947)

Paris

38, Cours Albert 1er
Office of the President

November 7th, 1947

Sir,

I have the honour to submit herewith for consideration by the Havana Conference on Trade and Employment, a report entitled "A Charter for World Trade" approved yesterday by the Council of the International Chamber of Commerce, which expresses the considered and agreed views of world business on the Geneva Draft of the Charter of the International Trade Organization. Both the English and French texts are enclosed. I am also submitting the report to the Secretary General of the United Nations.

May I convey to the Havana Conference, on behalf of our Council, the most sincere wishes of the International Chamber of Commerce for the success of this the first world economic conference to be held since the war. Great hopes are placed in it by the commercial, industrial, and financial communities of the world.

I have the honour to remain, Sir,

Your obedient servant

(signed) Arthur Guinness
President of the
International Chamber of Commerce

Mr. E. Wyndham White,
Executive Secretary,
United Nations' Trade and
Employment Conference,
HAVANA.

/INTERNATIONAL

INTERNATIONAL CHAMBER OF COMMERCE
International Headquarters
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TO THE HAVANA TRADE AND EMPLOYMENT CONFERENCE*
(NOVEMBER 1947)

PART I

A CHARTER FOR WORLD TRADE

I - GENERAL COMMENTS

1. From the very outset, the International Chamber of Commerce has given its full and whole-hearted support to the project of establishing an International Trade Organization. The re-establishment of the freest possible flow of multilateral trade is in fact indispensable, if the world is to achieve economic stability and rising standards of living. Emerging from the greatest economic crisis in history, followed by the most devastating of wars, the nations of the world must inevitably be overwhelmed by the task of economic reconstruction that confronts them. They must pull together in a common effort to overcome their divisions and strengthen their ties. In this, international institutions can be of great assistance, provided their members are genuinely inspired by the desire to work out together a solution of their common problems. This implies a renunciation of complete freedom of national action in those sectors where action in common is indispensable, and where separate action could harm the common endeavour. The International Chamber of Commerce has always looked upon the proposed International Trade Organization as an agency to be built upon a clear definition of agreed objectives in the field of international trade and upon an equally clear renunciation by its members of certain practices standing in the way of these objectives.
2. In its Report to the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, the International Chamber of Commerce urged that "the first act of the Conference should be to draw up a statement of principles", and that "having in the initial statement

* The Czechoslovak National Committee, while pursuing the same objective as the other National Committees, namely that of ensuring high and rising standards of living for its people, feels unable to associate itself with the I.C.C.'s Report, which in its opinion does not meet the economic requirements of countries for which the policy of free and expanding trade is closely and inseparably bound up with that of full employment and economic recovery.

The Indian National Committee recorded strong opposition to certain sections of the original draft of this Report and particularly to the sections on economic development, foreign investments, and balances of payments. Unfortunately, the representatives of the Indian Committee, who were to attend the discussions at which the final version of the report was drawn up, were not able to arrive in time for the meetings.

of principles outlined the general framework of the world economy it has set before it as its final goal, the Conference should then survey the immediate problems of the transition phase concurrently, the Conference should start work on the long-term elaboration of a detailed Charter of principles and methods of action for the post-emergency period, with particular emphasis on methods of international co-operation to cope with future economic depressions". (Brochure 101, pages 5 and 6).

3. The I.C.C. has closely followed the London and Geneva Sessions of the Preparatory Committee of the Trade and Employment Conference of the United Nations. It presented to the Committee's Second Session a detailed memorandum containing comments and suggestions regarding the Draft Charter prepared in London and edited by the Drafting Committee in New York (I.C.C. Brochure 106). It now presents to the Havana Conference further comments based upon the new Draft of the I.T.O. Charter, prepared in Geneva at the Second Session of the Preparatory Committee.

4. The suggestions the I.C.C. has offered in the past and offers now are inspired by the profound conviction that the world stands in desperate need of effective international economic co-operation and that an international trade organization based on a strong and forthright Charter could be the focal point of such co-operation. It is because it believes that, according to the Character of its Charter, the new Agency may make a historic contribution to world prosperity and world peace, or become another monument of international frustration, that the I.C.C. has been urging, and continues to urge, the elaboration of a strong and clearly worded Charter.

5. There are two conflicting tendencies in the world today. On the one hand, there is everywhere an overwhelming desire for peace and prosperity based on international co-operation, on the other, there is a sharp draft towards economic nationalism, aggravated more often than not by economic emergencies. While seeking peace, countries are intent on maintaining the right to take whatever measures they consider necessary for their economic salvation. They are suspicious of limitations placed on their freedom of action, and wary of international commitments. And yet, in spite of nationalistic anxieties, and because there somehow exists the feeling that not only is peace but also prosperity indivisible, international conferences are being called and attended, and international charters are being worked out. Eventually, the nations of the world will have to choose one road or the other; the road of sincere and comprehensive co-operation or that of nationalism blind to international necessities. As the I.C.C. pointed out in the Resolution of its Montreux Congress, unless the first

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course is chosen and is supported by a well-conceived charter, "there will inevitably be a reversion to the narrow economic nationalism of the inter-war period with all that that entails for prosperity and even for peace".

6. A new Draft of the I.T.O. Charter (hereafter referred to as the Geneva Draft) has now been produced in Geneva by the Second Session of the Preparatory Committee for submission to the United Nations Trade and Employment Conference meeting in Havana on 21 November 1947.

7. The Geneva Draft is the result of over four months of painstaking efforts on the part of delegates of seventeen countries and of the Conference Secretariat. In its over-all plan, this new Draft is better than the previous ones and some important improvements have been made in its provisions, though in essentials it differs little from the previous Draft. The I.C.C. welcomes the improvements in the text, detailed reference to which is made in the second part of this Report. It regrets, however, that many of the fundamental revisions it suggested to the Geneva Conference were not accepted. The I.C.C. urged the Conference to produce a document which would be shorter and simpler than the previous one, in which a sharper dividing line would be drawn between rule and exception, between long-term and short-term provisions, between normal and emergency provisions. It emphasized that the aims of the new organization should be plainly set out and has made in the course of the Geneva Session concrete suggestions to that effect.

8. The real test of the Charter is whether it will result in the Member countries' adapting their policies progressively to the requirements of international economic solidarity and whether the existence of the I.T.O. will make a substantial difference to the course of future events. If the Charter merely codifies existing practice and is no more than a faithful portrait of the perplexities of our time, its existence will not fulfil the high hopes that are placed in it.

9. The I.C.C. has repeatedly pointed out that the specific role of the I.T.O. within the United Nations' network of economic agencies should be to promote the freest possible multilateral exchange of goods, services, capital and men. Already in Brochure 106 it recorded its views on the disadvantages of combining in one Charter objectives which are potentially conflicting, but it must now direct its attention to the Charter as it is. The diversity of objectives in Chapter 1 and the probability that the aims of stability of employment, and in some countries of their economic development, may in certain circumstances come into conflict with the expansion of free multilateral trade, make it inevitable that recommendations in regard to one objective are weakened by reservations introduced to permit

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action by Member countries for another objective.

10. The I.C.G. fully realizes the immense difficulties the Preparatory Committee has had to cope with in the elaboration of the Charter. It is convinced that the shortcomings of the Geneva Draft are due to no small extent to the emergencies with which most countries are faced, and that these shortcomings could have been largely eliminated by segregating the long-run and the short-run provisions of the Charter. The problems of employment and the business cycle, of economic and industrial development, and of the achievement of balance of payments equilibrium are capable of being tackled without sacrificing the long-term objectives of the I.T.O. viewed as an agency for the promotion of freer multilateral trade among nations.

II THREE FUNDAMENTAL ISSUES

1. Employment and the Business Cycle

11. The importance of the problem of maintaining economic activity and employment at high levels has been emphasized by the I.C.C. in its Report on Maximum Employment in a Free Society (Brochure 101, December 1946) as well as in the Report presented to the Geneva Session of the Preparatory Committee (Brochure 106). The widespread and protracted unemployment of the Thirties has left such painful memories throughout the world that, having emerged from the cataclysm of the recent war, people are anxious not to fall again into the throes of depression and governments of many countries have therefore pledged themselves to policies of "full employment". Clearly, the problem is not only one of domestic significance for the various countries, it is also an international problem. On that there is general agreement; there is no such agreement on the way in which one should interpret the international character of the employment problem.

12. The I.C.C. believes that the Preparatory Committee has been too much inspired by the conception that the requirements of employment policy, nationally designed, must be a source of important exceptions to those provisions of the Charter which would * trade freer and more abundant. Under Article 3, paragraph 1 of the Charter, each Member of the I.T.O. undertakes 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". Article 21, paragraph 3 (b) acknowledges that as a result of these domestic policies, a country may get into balance of payment difficulties and prohibits the Organization from suggesting to the member that a change in its domestic policies would improve the situation. On the other hand, the Member is allowed to safeguard the equilibrium of its balance of payments by quantitative trade restrictions, in spite of the fact that the Charter aims, in principle, at the elimination of such restrictions. In the same circumstances, a Member may also engage in certain discriminatory practices - a further exception to a basic principle of the Charter. Thus, the employment goals of the Charter may clash with the commercial policy goals.

13. The I.C.C. is of the opinion that the problem of employment is primarily outside the scope of the I.T.O. That this is the case seems to be recognized both implicitly and explicitly by the Preparatory Committee. Implicitly, through the paucity of the provisions in Chapter II devoted to employment, none of which provides the I.T.O. with concrete tasks to fulfil. Explicitly, by stating in Article 2, paragraph 2, that "while the avoidance of unemployment or under-employment must depend primarily on domestic measures, such measures /should

should be supplemented by concerted action under the sponsorship of the Economic and Social Council of the United Nations in collaboration with the appropriate inter-governmental organizations". This is an entirely accurate description of the real position.

14. Granted that the maintenance of stable and prosperous conditions throughout the world is indispensable if world trade is to flourish, measures taken to promote employment should be such as not to interfere with the flow of international commerce. There are many ways in which one can approach the problem of business cycle policy; the I.C.C. considers it essential that the methods chosen should not be disruptive of international economic relations. It looks upon the requirements of a well-knit world economy as limiting the freedom of national action in the field of employment and business cycle policies. It follows that these policies should be designed not in a spirit of nationalism and "insulation", but through a process of international co-operation. The I.C.C. questions whether the proposed International Trade Organization is the proper place in which to work out an international approach to business cycle policy, and it would view with favour the development of appropriate methods of action outside of the I.T.O. There is no basic conflict between high levels of production and employment in the various countries of the world and the freedom of international economic relations. Where conflict arises, this is by the adoption of an excessively nationalistic approach to the problems of business cycles.

2. Economic Development

15. The speeding-up of their economic development is a matter of great concern to a number of countries whose natural resources, if properly developed, could secure for their populations a higher standard of living than that experienced at present. The I.C.C. is in complete sympathy with these aspirations. It considers that the development of the latent wealth of any part of the globe is a source of well-being not only for the population immediately concerned, but for the world at large.

16. As in the case of employment policies, so in that of economic development, the I.C.C. warns against the adoption of measures which are disruptive of the fabric of international economic relations. Economic development of an under-developed area can be sought within the framework of expanding multilateral trade and with the assistance of foreign capital. Or it can be sought mainly by means of national programmes carried out behind the wall of artificial barriers to international trade. The I.C.C. strongly urges the need for adopting the first approach rather than the second.

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17. In the I.C.C.'s opinion, the problem of economic development, important though it is, lies outside the scope of an international trade organization, except to the extent to which the expansion of multilateral trade and the creation of conditions favourable to foreign investment assists the economic growth of under-developed areas. The provisions of Chapter III of the Geneva Charter contain a number of possible exceptions to the basic commercial principles of the Charter in the interest of furthering economic development. There is an evident danger that advantage may be taken of these provisions to subserve narrowly nationalistic aims, and that protection may be given to branches of industry or agriculture for which the country in question is unsuited in the long run. The prima facie case against measures to encourage economic development that are restrictive of international trade, is a strong one; and the Chamber would welcome a more explicit recognition of this in Chapter III of the Charter.

3. Balance of Payments Problems

18. The Charter of the I.T.O. is being drafted at a time when a great many countries are faced with serious difficulties in making their international payments balance. These are due to exceptional import requirements incidental to reconstruction coupled with a weakening of productive capacity as a result of the dislocations and destructions of the war. On the other hand, certain countries with considerable productive capacity find themselves faced with great export surpluses which are partly financed by capital export, and partly lead to an international scarcity of particular currencies. Countries experiencing balance of payments difficulties and which at the same time wish to avoid the depreciation of their national currencies thus resort to various methods of curtailing their imports and of allocating their inadequate supply of foreign exchange to purchases which have the highest priority in terms of national reconstruction.

19. The Charter is bound to pay regard to the abnormal conditions of the present time and to provide for the possibility that measures may have to be adopted which run counter to its essential objectives. Measures of this sort are regrettable for their own sake and still more for the causes which necessitate their adoption; while there is always the danger that emergency measures, acceptable for a transition period, may become perpetuated by the growth of vested interests and the sheer force of administrative inertia. They therefore require the closest scrutiny at all times.

20. The maintenance of equilibrium in international payments, under normal peace-time conditions and in the absence of exchange controls and quantitative restrictions, is accomplished through the operation of price and market mechanisms, though not without serious fluctuations from time to time in the general level of world prices and money incomes and in the volume of international trade. The International Chamber of Commerce has consistently advocated

advocated policies aiming at the restoration as far as possible of these mechanisms. It hopes that it will be practicable, when the Charter is revised, to lessen the scope of the exceptions which are now included in it and to provide for a nearer approach to the full operation of multilateralism. Full recognition should be given to the disruptive effects narrowly conceived and purely selfish national planning has upon international relations. Such planning sooner or later leads to balance of payments difficulties and these, under the Geneva Charter, can legitimately give rise to the adoption of quantitative restrictions and certain discriminatory practices.

21. Both these countries with balance of payments deficits and these with chronic and cumulative surpluses should accept commitments to counteract these tendencies by appropriate domestic policies. Were they to do this, the assistance afforded by the International Monetary Fund should prove sufficient to deal with short-term balance of payments difficulties arising under normal peace-time conditions. At the same time it is right that the Charter should provide Members of the I.T.O. with a procedure to deal with transition period difficulties; exceptions will evidently have to be made from the long-range policy principles of the Charter to allow countries to solve their post-war problems.

22. However, it must be realized that national action authorized by these transition period exceptions cannot possibly cope with the present international disequilibrium. Special programmes of emergency action such as the "Marshall Plan" are indispensable. The Charter itself recognizes this in Article 21, paragraph 5, where it states: "If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall initiate discussions to consider whether other measures might be taken, either by those Members whose balances of payments are under pressure, or by those Members whose balances of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental organization, to remove the underlying causes of the disequilibrium. On the invitation of the Organization, Members shall participate in such discussions."

III THE STRUCTURE OF THE I.T.O. CHARTER

23. The I.C.C. submits that the Charter of the I.T.O. should have had quite a different structure from that adopted by the Preparatory Committee. It realizes, nevertheless, that the considerable amount of work that has gone into the elaboration of the Geneva Draft makes it unlikely that the Havana Conference will be able substantially to alter the framework as drafted. The I.C.C. seriously questions whether the present Draft Charter is likely to fulfil all the expectations that are placed in it, and believes that fundamental changes and amendments will prove inevitable. The I.C.C. accordingly takes this opportunity of restating and amplifying its views. The following suggestions are therefore no more than an elaboration of what the I.C.C. has consistently urged in its successive reports to the Preparatory Committee.

24. The I.C.C. considers that in the interests of effective operation of the I.T.O. there would have been a gain if the structure of the Charter had been divided into three parts:

- (a) Statement of long-range principles of national policy in international economic relations;
- (b) Provisions relating to the present "transition period";
- (c) Permanent emergency procedures.

25. The first and basic part of the Charter would include such long-range commitments as the promotion of multilateral trade, the reduction of tariffs, the elimination of quantitative trade restrictions, non-discrimination and most-favoured-nation treatment, the elimination of subsidies and of measures of indirect protection, fair treatment of foreign investments. It might also include sections recognizing the importance to the world economy of high and stable levels of employment and economic activity and of the economic growth of under-developed areas, and emphasizing the need of dealing with these problems in a manner compatible with the healthy expansion of international trade. This part should be brief and should be strong. It should be understandable to the man-in-the-street. It should serve as a guidance to governments and as an inspiration to public opinion during the difficult years ahead. It should be phrased in such a way as to retain its meaning when more normal conditions have been restored.

26. The second part of the Charter would list the transition period exceptions to the principles laid down in Part I. These exceptions should be as few as possible and should be precisely worded. Instead of fixing a time-limit, the I.T.O. should hold conferences at regular and frequent intervals to review the situation and reduce, where possible, the number
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and scope of the exceptions. In the meantime, the I.T.O. should work in close co-operation with all other appropriate international agencies with a view to finding ways and means of removing the fundamental causes of the disequilibria standing in the way of its long-run objectives. It should also constantly keep the long-range principles of the Charter before governments, so that these principles may increasingly guide their policies.

27. The third part of the Charter would provide permanent emergency procedures. There is much concern in many countries today over the possibility of serious difficulties and crises developing after what is currently termed the "transition period" has come to an end. In view of these anxieties and in order that they should not lead to a weakening of the basic principles of the I.T.O., the Charter should include emergency provisions. By virtue of these provisions, a country faced with grave and urgent problems in its economic situation would find in the I.T.O. help and guidance in the overcoming of its difficulties. It might be freed, in agreement with the I.T.O. and for a limited duration, from certain of the commitments entered into under Part I of the Charter as outlined above. It might thus be authorized to adopt certain policies which stand in opposition to the principles of the Charter, but it would be pledged to work out its rehabilitation in consultation with the I.T.O. and to resume its full duties as a Member of the I.T.O. as soon as circumstances made this possible.

IV. CONCLUSIONS

28. In presenting the foregoing comments, the I.C.C. is moved by the deep conviction that the Havana Conference on Trade and Employment can be of unique importance for the shaping of the world's economic future, that the Conference will have the opportunity of taking bold and far-reaching decisions in the realm of international economic relations and that it will be nothing short of a tragedy if it fails to stem the tide of economic nationalism and to give a strong impetus to effective economic co-operation.

29. The I.C.C. is far from under-estimating the work that has gone into the Geneva Draft of the Charter, or the difficulties its authors have had to face in reaching an agreement. The I.C.C. nevertheless feels in duty bound to warn the Havana Conference against the establishment of a weak and ineffectual Organization.

PART II

A REVIEW OF THE GENEVA CHARTER

30. The basic issues have been covered in Part I. This second part is a more detailed review of the actual text of the Geneva Draft, chapter by chapter. However, since Chapter I on the purposes of the ITO has already been adequately covered in Part I, it opens with Chapter II.

Employment and Economic Activity

31. Chapter II of the Charter centres around the commitment of Members 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", (Article 3 (1)). As in the previous Draft, the Chapter is inspired by the theory which attributes economic depressions to deficiency of effective demand, while considerations of economic structure are left out of account. There is again an implicit assumption that governments are capable, through their policies, of achieving and maintaining high and steady levels of economic activity and employment, and there is still no recognition of the role of private enterprise and of spontaneous market supply.

32. The I.C.O. is pleased to note that the Geneva Draft places greater emphasis than the New York Draft upon the international aspects of employment policies. Thus, in Article 2, paragraph 2, it is now stated that domestic measures for the avoidance of unemployment "should be supplemented by concerted action under the sponsorship of the Economic and Social Council of the United Nations in collaboration with the appropriate inter-governmental organizations". Emphasis is also placed in Article 5, paragraph 2, on "the desirability of employing methods which expand rather than contract international trade".

33. It is worth noting, however, that the implication behind the first of the above-quoted statements is that the real objectives of Chapter II belong jointly to a number of international agencies under the direction and sponsorship of the Economic and Social Council. It is clear, in fact, from the other provisions and particularly from Article 5 (1), that the main practical effect of this Chapter is to qualify still further the commitments entered into under Chapter IV.

34. Article 5, paragraph 1, admits that employment policies of the ITO members adopted by virtue of this Chapter, may lead to balance of payments difficulties which in turn may result in the adoption of new trade restrictions. This is borne out by the provisions of Article 21, paragraph 3 (b).

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35. Should such a course of events develop, the only remedy proposed is that "the Member shall make its full contribution, while appropriate action shall be taken by the other Members concerned, towards correcting the situation". This is not clear and gives no precise directives for action either by the Organization or by its Members.

*36. Article 7, which is concerned with "safeguards for Members subject to external deflationary pressure", appears to imply the acceptance of a particular theory concerning the propagation of economic depressions. The I.C.C. still believes that the Charter of an international agency should not commit that agency and its Members to the acceptance of any particular body of theory in a much controverted field.

*37. Should countries faced with depression abroad and a decline in their exports caused by such a depression radically restrict their imports by virtue of Article 7 (instead of using the means of action provided elsewhere by the Charter and by the International Monetary Fund), the result would be a further shrinkage in international trade. This, experience shows, will merely aggravate and perpetuate the depression. Article 7 is potentially one of the most dangerous provisions of the Charter and should be deleted.

Economic Development

38. The I.C.C. is necessarily in full agreement on the general observations of Article 8 of the Draft Charter. It too believes that the economic development of the under-developed areas of the world is highly desirable as a means of raising living standards throughout the world. But, in spite of references here and there to other aspects of economic development, the whole emphasis of the Charter is still on the expansion and creation of industry. The I.C.C. feels that the dangers of excessive industrialization and of the protectionism arising out of it should receive special mention in this Chapter, and that the importance to the world of greater efficiency in agriculture, mining, forestry and fishing should be brought out explicitly.

* The British National Committee dissents from paragraphs 36 and 37 of the Report. It shares the opinion expressed in paragraph 37 that ill-considered action to restrict imports, in the circumstances envisaged in Article 7, would "aggravate and perpetuate the depression". It holds, nevertheless, that the Charter should give formal recognition to the fact that countries may, in the interests of their domestic stability, be forced to take action in order to protect themselves from balance of payment difficulties resulting from deflationary pressure from abroad. In the circumstances envisaged quantitative restrictions might well be less detrimental to the aggregate volume of international trade than the alternatives of either internal deflation or devaluation.

39. The International Chamber of Commerce misses in Article 8 any reference to multilateral trade. In its opinion, multilateral trade creates the environment in which economic development can be most effectively and most safely pursued.

40. The International Chamber of Commerce notes that the Geneva Draft has widened the scope of Chapter III to cover "reconstruction". This is entirely justified on a short-term view. But the I.C.C. wonders whether it is useful to do so in the Charter of a permanent international agency. Once the transition period is over, references to "reconstruction" will look out of place in the Charter.

41. As indicated in Part I of this Report, economic development is of concern to the ITO only to the extent to which the growth of multilateral trade and of international capital movements are helpful to the economic advance of the less developed areas of the world. This is not, however, the principal emphasis of Chapter III. Already in the New York Draft, economic development took its place prominently among the broad exceptions to the commitments entered into by members of the ITO elsewhere. The emphasis remains unchanged in the Geneva Draft.

42. The I.C.C. notes with regret that not only has Article 13, which it previously criticized as standing in opposition to the main objectives of the Charter, been maintained, but that its provisions have become even less satisfactory than they were before. In its previous form, the Article contained the requirement of prior approval by the ITO of protective measures introduced by a member to assist his domestic development programmes. In the present Draft, there appear two escape clauses from the principle of prior approval:

1. the Organization is instructed by the terms of paragraph 4 (b) of Article 13 to concur in a restrictive measure adopted, if it is established that it is "unlikely to be more restrictive of international trade than any other practicable and reasonable measure permitted under this Charter which would be imposed without undue difficulty and that it is the one most suitable for the purpose having regard to the economics of the industry or the branch of agriculture concerned and to the current economic condition of the applicant Member". The vagueness of this terminology is disquieting and it is also difficult to see how it would be possible in actual practice to establish such a presumption.
2. the obligation of prior approval is waived entirely in cases where the developing country is faced with a great increase of imports of the products for which they are endeavouring to build up a domestic industry (Article 13, 4 (c)). Since policies aiming at economic
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development must in any event be carefully thought out in advance, it is hard to see the justification for the introduction of an emergency provision of this kind in Article 13.

43. The provisions both of Article 15 and of Article 42 (see later) are welcomed by the I.C.C. but only in so far as they are capable of contributing to a regional organization of international trade which prepares the way to or marks a step towards a world organization. The I.C.C., however, draws attention to the danger of fostering by the same provisions autarkic policies leading to the creation of areas of isolation or exclusion in international trade. For that reason, it is essential that the words at present in square brackets "by affirmative vote of two-thirds of the Members voting" should be retained.

Foreign Investment

44. The introduction into the Charter of provisions for the protection of foreign investments is a source of great satisfaction to the I.C.C. They go some way to meet the recommendations contained in the I.C.C.'s Report to the Geneva Conference (Brochure 106), and in the Resolution on Foreign Investments adopted by its Montreux Congress.

45. By virtue of Article 11, (3), the ITO: "may make recommendations for and promote international agreement on measures designed to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another, including the elaboration and adoption of a general agreement or statement of principles as to the conduct, practices and treatment of foreign investment".

46. The I.C.C. welcomes sub-paragraphs 1 and 3 of Article 12 and also that part of sub-paragraph 2 (a) which states that no Member shall impose requirements on the investments of nationals of other members which are appreciably more onerous than those imposed on its own of other nationals. Unfortunately, the rest of paragraph 2 (a) sets out exemptions which in effect nullify the protection accorded in the early part of this paragraph. The I.C.C. strongly urges reconsideration of paragraph 2, because it considers the exemptions and compensations proposed will create among potential investors a sense of even greater insecurity than at present, and will thus retard and not advance economic development. Paragraph 2 should be limited to the statement in the first sentence of paragraph 2 (a), and the Organization relied upon to elaborate as soon as possible a general agreement on the conduct and treatment of foreign investment as referred to in Article 11 (3).

47. The I.C.C. must dissent from the official commentary appended to paragraph 2 of Article 12, according to which "a Member's obligation to ensure the payment of just consideration or just compensation to a foreign
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national (in so far as it is an obligation to make payment in currency) is essentially an obligation to make payment in the local currency of that Member". The problem of compensation arises especially in the case of foreign investments affected by a nationalization programme; in such a case, it is essential that a guarantee of transfer should accompany the obligation to make just compensation; under the present interpretation, the foreign investor may find himself, under certain circumstances, owner of a large blocked balance in a possibly depreciating currency. In such a case, the compensation received would not return to him a fair and freely available equivalent of the investment which he had previously made in good faith.

Commercial Policy

48. The I.C.O. considers the Chapter on commercial policy to be the heart of the Charter. It notes with approval the re-statement of the most-favoured-nation principle at the opening of this Chapter. But it misses an equally strong statement in support of the principle of expanding multilateral trade. Coming after the Chapters on employment and economic development which, as has been pointed out, constitute important derogations of principle, Chapter IV should at least provide an unambiguous guidance to the long-term commercial policies of Members of the ITO.

49. Chapter IV lays down the following general rules:

- (a) Members undertake to negotiate substantial reductions of tariffs and other charges on imports and exports (Article 17, 1);
- (b) Members undertake to negotiate the elimination of preferences and not to increase existing margins of preference (Article 17, 1);
- (c) Members undertake not to resort to measures of indirect protection such as the imposition of internal taxes and other internal charges of any kind in excess of those applied directly or indirectly to like products of national origin (Article 18, 1);
- (d) Members undertake not to institute or maintain any prohibitions and restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country (Article 20, 1);
- (e) Members shall not grant any subsidy, whether directly or indirectly, on the exportation of any product, or establish or maintain any other system which would result in export sale at a price lower than the comparable price charged for the like product to buyers in the domestic market (Article 26, 1). Nor will Members grant any subsidy on the exportation of any product which has the effect of acquiring for that Member an increased share of world trade in that particular product (Article 28).

50. The general rules set out in paragraph 20 above should be the basic principles of the Charter and the exceptions to them are acceptable only if they have been framed in order to deal with emergencies. The operation of the emergency provisions must not be allowed to deprive these principles of their paramount importance and validity as long-term objectives. While it cannot be denied that circumstances may arise where the application of restrictions is necessary, the International Chamber of Commerce wishes again to lay stress on the strength of the prima facie case against measures which are restrictive of international trade, and its strong desire that the Charter should recognize more explicitly and emphatically than is at present the case both the obligation of Members to pursue domestic policies which are not harmful to world trade, and also the duty of the ITO to survey and report on all restrictive measures, with a view to reaching agreement upon their withdrawal at the earliest possible moment. In the course of revision and in the work of elaborating the exceptional provisions of the Charter, there would seem to have been a regrettable loss of balance, with the result that the primary function of the ITO - that of working for the development and expansion of freer world trade - has been overshadowed by the sheer volume and complexity of these exceptional provisions.

Preferences

51. A lengthy list of preferences which are in effect at the present time and are listed in annexes A to F of the Geneva Draft Charter may remain in force (Article 16, 2). They will be gradually reduced by the process of tariff negotiation and the application of most-favoured-nation treatment (Article 17, 1).

52. While this process of reducing or eliminating existing preferences by autonomous measures or negotiations is going on, temporary economic arrangements or permanent customs unions may, in accordance with Article 42, be concluded, subject to prior approval by the International Trade Organization. The I.C.C. believes, as it has already stated in connection with Article 15, that such arrangements are to be recommended provided that they contribute, through the reconstruction or organization of certain areas of the world, to the expansion of world trade and that they do not create unfair discrimination against third countries.

Quantitative Restrictions

53. In spite of the general rule against quantitative restrictions in Article 20, 1, to which reference has been made, the Geneva Draft of the ITO Charter sanctions quantitative restrictions as transitional or emergency devices which, if they became permanent instruments of commercial policy, would be completely destructive of the rule itself. Even apart
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from the emergency provisions under Article 20, 2 (a), and Article 43, II (the latter bearing a time limit of 1 January 1951), quantitative restrictions are allowed:

- (a) to protect balance of payments (Article 21),
- (b) to protect under conditions laid down in Chapter II, national employment programmes,
- (c) to protect, under conditions laid down in Chapter III, national development programmes.

The latter two points have already been dealt with in this Part of the Report; the balance of payments provisions are discussed below.

Balance of Payments Provisions*

54. As regards the balance of payments, undoubted dangers may arise from the operation of maximum employment policies, if these are unwisely conceived. The I.C.C. would draw particular attention to the provisions of Article 21, 3 (b) (1), which states that: "Notwithstanding the provisions of paragraph 2 of this Article, no Member shall be required to withdraw or modify restrictions on the ground that a change in such policies would render unnecessary the restrictions which it is applying under this Article". This could open the road to very serious and protracted infringements of the general rule against quantitative restrictions. The International Chamber of Commerce is not satisfied that the great importance of the obligation of Members to pursue their national employment and development policies in ways which are not destructive of the balance of payments equilibrium, and thereby of the world economy, is sufficiently emphasized by the undertakings of Members under paragraph 3 (c) of the same Article. It would welcome a more specific recognition of the harm that might be done to international trade and well-being under the guise of national policies. Furthermore, it considers that the ITO should have the duty of reporting at regular intervals on quantitative restrictions which are imposed in the circumstances envisaged in Article 21, 3 (b), and that any such report should have regard to the way in which the undertakings in Article 21, 3 (c) have been carried out by the Member applying the restrictions.

* The Swiss National Committee, supported by several other National Committees, wishes to draw attention to the fact that, were Article 21 to remain unchanged, it would hardly be reasonable to refuse to countries whose payments at present balance, the same freedom of action granted to those whose balances of payments are in disequilibrium. Action taken by the latter under Article 21 may in fact inflict serious damage on the former and these, in turn, should logically be entitled in their turn to take defensive action.

/55. It will

55. It will be noted that according to sub-paragraph b (ii), "any Member applying import restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of such policies". This provision, it is feared, may open the door to widespread discrimination and perhaps even to bilateralism.

56. Detailed consultation provisions are listed under paragraph 4 of Article 21. The I.C.C. regrets, however, the absence of prior approval by the Organization, which, except under conditions of real crisis or urgency, it considers to be of great importance. The provision of sub-paragraph (c) that "any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes, under this Article, to maintain, intensify or institute" is rendered ineffectual by the fact that it is a permissive and not a mandatory clause. The paragraph continues with provisions for what happens should the Organization approve in advance these restrictions; but nothing is said about what happens if the approval should be denied.

57. The final paragraph of Article 21 is worthy of very special notice. It recognizes that the "safeguarding" of balances of payments by quantitative restrictions may lead to a widespread contraction of international trade and that measures outside the scope of the Charter provisions may be required as a corrective. In the opinion of the I.C.C. it is precisely these latter measures which constitute the real answer to the problem of a persistent and widespread disequilibrium in balances of payments.

58. In paragraph 3, sub-paragraph c (ii) of this Article, there is an undertaking not to apply restrictions... "which would prevent the importation of commercial samples or prevent compliance with patent, trade mark, copyright or similar procedures". The I.C.C. welcomes this provision in so far as it goes some way to meeting the recommendation submitted on this subject to the Geneva meeting by its Montreux Congress (Resolution 35). It feels, however, that the whole question of the treatment of samples and advertising material, which is of great importance to commerce, should be dealt with on its own merits under the general commercial provisions of Chapter IV where it properly belongs, instead of being buried as a side-issue in the complex balance of payments provisions of the Charter.

Non-Discrimination

59. The New York Draft of the ITO Charter provided for the non-discriminatory administration of quantitative restrictions. This provision remains in the Geneva Draft, but the exceptions to the rule have been made more comprehensive.

/60. Quantitative

60. Quantitative restrictions are almost inevitably discriminatory, as the I.C.C. has frequently pointed out in the past. Indeed, this is one of their main drawbacks. The rule that "in applying import restrictions to any product. Members shall aim at a distribution of trade in such a product approaching as closely as possible to the shares which the various Member countries might be expected to obtain in the absence of such restrictions" is theoretically sound, but inapplicable in practice, since in a changing world no one can know what trade channels would develop in the absence of actually existing trade restrictions.

61. The exceptions to the rule of non-discrimination now listed in Article 23 are far too extensive. According to paragraph 1 (a): "the Members recognize that when a substantial and widespread disequilibrium prevails in international trade and payments, a Member applying restrictions under Article 21 may be able to increase its imports from certain sources without unduly depleting its monetary reserves, if permitted to depart from the provisions of Article 22. The Members also recognize the need for close limitation of such departures so as not to handicap achievement of multilateral international trade." This last sentence is inadequate as a safeguard. Whereas Article 21, 3 (b) (ii), admits discrimination by products, the above quoted paragraph admits discrimination by countries. What they amount to, taken in conjunction, is a declaration that the principle of non-discrimination is a fair-weather principle, and that "anything goes" under conditions of international economic disequilibrium. But it is precisely in the latter circumstances that the need for international discipline and mutual understanding becomes paramount.

62. The I.C.C. approves the provision of paragraph 3 of Article 23, according to which prior approval by the Organization will be required after 1 March 1952, for any action taken under this Article. It also welcomes the provision that the ITO will report on action taken by members under this Article and that these reports will be made annually thereafter. It notes finally that, should the Organization determine, as a result of its review of the international situation, that a general disequilibrium in international trade and payments has ceased to exist, the provisions of Article 23, paragraph 1, will be suspended and that all actions authorized thereunder shall cease six months later.

Relations with International Monetary Fund

63. The Geneva Charter marks a great advance over the New York Draft in the direction of establishing close working relations between the ITO and the International Monetary Fund. Article 24, 1, stipulates that "the Organization shall seek co-operation with the International Monetary Fund

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to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the Organization."

64. The I.C.C. feels some apprehension as to whether action permitted under Article 21, as limited by its paragraph 2 (a) read with Article 24 (c), will be able to be taken sufficiently early to prevent the economic situation of the country concerned from becoming seriously impaired. It, therefore, wishes to emphasize the importance of ensuring that the International Trade Organization, in conjunction with the International Monetary Fund, shall institute the necessary enquiries and consultations as early as possible, and as soon as it realized that a situation is developing which is likely to lead to a serious decline in a country's monetary reserves.

65. The I.C.C. which has consistently favoured a close working relationship between the two institutions, welcomes the provisions of Article 24. It notes in particular that in all matters relating to monetary reserves, balances of payments and foreign exchange arrangements, the ITO shall "accept all findings of statistical and other facts presented by the International Monetary Fund". In particular, the Organization in administering Article 21 shall accept "the determination of the International Monetary Fund as to what constitutes a serious decline in the Member's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves...".

66. The Article in question also contains the important provision that "Members shall not, by exchange action, frustrate the intent of the provisions of this section, nor by trade action, frustrate the intent of the provisions of the Articles of Agreement of the International Monetary Fund" (paragraph 4).

Subsidies

67. The I.C.C. believes that Section C would be strengthened by placing Article 26, which contains the general anti-subsidy rule, before Article 25.

68. It is further suggested that the provision of Article 28 that "no Member shall grant any subsidy on the exportation of any product which has the effect of acquiring for that Member a share of world trade in that product in excess of the share which it had during a previous representative period..." should logically follow paragraph 1 of Article 26, and that both should be placed at the head of this Section on Chapter IV.

/69. The I.C.C.

69. The I.C.C. draws attention to the danger that the exceptions to the anti-subsidy rule may lead in practice to the wide application of an instrument of commercial policy which may seriously distort the normal channels of world trade.

State Trading

70. In commenting on the previous Draft of the Charter, the I.C.C. suggested that the provisions dealing with complete State monopolies of foreign trade should be either entirely re-written or left out of the Charter. The I.C.C. notes with approval that the Article dealing with this subject in the New York Draft (Article 33) does not appear in the Geneva Draft. The I.C.C. also notes that the question of relationship with non-Members has not been settled in Geneva and that the Preparatory Committee has established, in Article 93, three alternative texts for submission to the World Conference.

71. The provisions on State trading that remain deal with the conduct of business by State enterprises in a non-discriminatory way solely in accordance with commercial considerations (Article 30), and with the expansion of trade by State monopolies of individual products (Article 31). These provisions are not substantially different from Articles 31 and 32 of the New York Draft, and the I.C.C.'s comments on these Articles presented to the Geneva Session of the Preparatory Committee (Brochure 106, paragraphs 54 to 58 and 99 to 101) are still applicable to the Geneva Draft.

General Commercial Provisions

72. Most of the detailed provisions grouped under this heading of the Charter are of great practical importance to the business man engaged in international trade. In many respects the Geneva Draft is an improvement over the New York Draft, but the I.C.C. has certain suggestions to make for still further clarifying the provisions of this Section.

73. Article 33 lays down the conditions governing the application of anti-dumping and countervailing duties. This Article would be greatly improved if it were preceded by a paragraph or by a separate article placing an obligation on Members of the ITO to refrain from dumping. In that case, the notion of dumping would itself have to be clearly defined. The effect of the Article as it stands at present is merely to give Members authority to levy anti-dumping and countervailing duties at their own discretion in circumstances which are not defined with sufficient precision. It should be remembered that there is a grave doubt as to whether the imposition of such duties is compatible with the most-favoured-nation clause.

74. From the point of view of the trader, Article 34 on valuation for customs purposes is more satisfactory than the previous Draft. It still fails, however, to meet the need of "a simple rule-of-thumb method for assessing duties" (Brochure 106, paragraph 68) which would reduce to a minimum the

/present uncertainty, delays,

present uncertainty, delays, and disputes. The I.C.C. still urges that the definition of "actual value" should be the actual price shown on the commercial or consular invoice, unless there is reason to suspect fraud, and not a price which the customs administration has to work out on the basis of ill-defined criteria. The I.C.C. would prefer to see Article 34 cut down to two paragraphs only, the first paragraph being the present opening paragraph of Article 34, and the second paragraph consisting simply of paragraph 3 (a). This would leave it to the ITO to work out a satisfactory international system of valuation based on a thorough investigation of present practice and of the needs of trade.

75. As regards Article 35 on Formalities connected with importation and exportation the I.C.C. believes that the Havana Conference might usefully adopt a resolution in favour of an early conference under the auspices of the ITO or of the Economic and Social Council for the simplification of import and export formalities. The need for improvement in this field is particularly urgent.

76. With regard to marks of origin (Article 36), administration of trade regulations (Article 37), information, statistics and trade terminology (Article 38), the I.C.C. is in full agreement with the Geneva Draft. It believes, however, that Article 38 would be improved by a reference to the importance of unifying Customs nomenclatures, on which so much work was done before the war by the League of Nations.

Emergency Action on Imports of Particular Products

77. Under this heading Article 40 provides that tariff concessions as well as concessions with respect to preferences may be withdrawn, should they be followed by such increases in imports as to "cause or threaten serious injury" to domestic producers of like or directly competitive products. This provision makes it possible for a Member to withdraw unilaterally from a tariff agreement. It is true that the Article provides, in its paragraph 2, for a procedure of consultation, but it is also provided (paragraph 3) that if no agreement is reached among interested Members in the course of such consultations, the unilateral action referred to above can nevertheless be taken. Members affected by such unilateral action may take retaliative measures.

78. The I.C.C. views with apprehension this acceptance of the principle of unilateral cancellation of trade concessions made by agreement and the possibilities of economic strife latent in the provisions of paragraph 3 of this Article.

Restrictive Business Practices

Restrictive Business Practices

79. The I.C.C. continues to believe that the present Draft of this Chapter is as good an attempt at steering an acceptable middle course between the opposing points of view as could be hoped for.

80. The I.C.C. has only one observation to add. A new provision has been included under Article 44, paragraph 3 (g), giving the Organization power to decide what "similar practices" are restrictive business practices. The I.C.C. urges that if this provision is to be maintained at all, it would be preferable to word it as follows: "any similar practices which the Conference by a two-thirds majority may from time to time decide are restrictive business practices".

Inter-Governmental Commodity Agreements

81. The I.C.C. notes with satisfaction the improvements in the new text of Chapter VI. Definitions have been made clearer and the procedure proposed for study groups and conferences less cumbersome.

82. The I.C.C. welcomes the placing at the head of Chapter VI of a definition of the term "primary commodities" (Article 53). The I.C.C. feels, however, that that while the definition given in paragraph 1 of this Article is very clear, the notion of what range of commodities is covered by Chapter VI becomes less and less precise in the subsequent paragraphs. In particular, paragraph 3 would seem to make it possible for governments to enter into commodity agreements with respect to manufactured goods. The I.C.C. strongly urges the deletion of this paragraph.

83. The scope of the provisions of Chapter VI would be made much clearer if Article 52 were to indicate the production and marketing characteristics which distinguish commodities covered by the Chapter from other commodities, and if Article 53, paragraph 1, were specifically to exclude manufactured goods.

84. The I.C.C. continues to hold that if inter-governmental commodity agreements are permissible and even desirable in certain circumstances, so are agreements between private producers. In fact, such agreements should normally be between the producers concerned, unless they are too numerous and dispersed.

85. As the I.C.C. has already pointed out in its comments on the New York Draft (Brochure 106, paragraph 124), it should be made clear in this Chapter that inter-governmental commodity agreements are temporary emergency arrangements, and not a permanent feature of economic life.

Settlement of Differences

86. The I.C.C. is glad to see that, in accordance with the proposal it made in its Report to the Geneva Meeting (Brochure 106), the provisions relating to the settlement of differences and to interpretation have now been grouped into a separate Chapter of the Geneva Draft (Chapter VIII).

/87. The Preparatory

87. The Preparatory Committee refers the subject for particularly careful re-examination to the Havana Conference. In view of this recommendation, the I.C.C. wishes to suggest again that a machinery of conciliation and arbitration should be set up comprising three distinct stages of action (cf. Brochure 106, paragraph 134):

(a) The Organization should be under an obligation to make recommendations to Members in circumstances where it has reason to believe that differences or disputes are likely to arise;

(b) when a complaint or a dispute actually occurs, the Organization should be under an obligation to provide its good offices for purposes of conciliation;

(c) Members should undertake, in case conciliation fails, to submit disputes to an arbitration tribunal external to the Organization, aided where necessary by technical assessors.

Review of the Charter

88. Article 96 provides that "the Conference (of the ITO) shall convene a special session for the purpose of reviewing the provisions of this Charter before the end of the tenth year after its entry into force". In view of the fact that the Charter contains a great many provisions inspired by the present emergency situation of many countries of the world, it is particularly desirable, in the opinion of the I.C.C., to include in the Charter machinery for the revision and liquidation of such provisions at the earliest possible moment. The I.C.C. suggests therefore that the ten years' period provided under Article 96 is too long and that the ITO Conference should be called in special session at regular and frequent intervals to review the international situation and examine the need for changes in the provisions of the Charter.