

AN INFORMAL SUMMARY OF THE ITO CHARTER

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FOREWORD*

The purpose of this information paper is to provide for the non-technical reader a summary of the Draft Charter for an International Trade Organization, submitted for the consideration of the World Conference on Trade and Employment, November 1947.

This summary attempts to restate in simple terms the salient features of each Article of the Draft Charter. Short, informal and unofficial comments have been added where necessary in order to indicate the relationship between one part of the Charter and another or to suggest some of the factors which were taken into consideration by the members of the Preparatory Committee during the formulation of the Draft.

It should be made clear that this summary does not claim to deal with every aspect of every Article of this highly complex document. Further, the substance of the footnotes, some of which have an important bearing on the interpretation of certain articles, has been largely omitted. For these and for the reservations which were made against certain Articles or sections of Articles by members of the Preparatory Committee, readers should consult the full text of the Draft Charter, as contained in the Report of the Preparatory Committee of the United Nations Conference on Trade and Employment, which also contains, in the introduction, a brief historical background to the Draft Charter.

* Acknowledgment is made to the Informal Commentary on the first (London) draft, published by the Office of Public Affairs, Department of State, Washington, D.C., February 1947.

CHAPTER I.

Purpose and Objectives

(Article 1) sets out the Purpose and Objectives to which the members of ITO pledge themselves. After referring to the relevant Article of the United Nations Charter (Article 55a) which enjoins the United Nations to promote "higher standards of living, full employment, and conditions of economic and social progress and development", the chapter is completed by listing six major objectives, which are to be achieved through creating the ITO. These are:

1. A balanced and expanding world economy, through assuring a large and steadily growing volume of real income and effective demand, and by increasing production, consumption and exchange of goods;
2. Industrial and general economic development, particularly in "underdeveloped" countries, and the flow of capital for productive investment, between nations;
3. Access to markets, products and productive facilities which are needed by all countries for their prosperity and development;
4. Reduction of tariffs, trade barriers and elimination of discriminatory treatment, such as preferences, in international commerce;
5. Enabling countries to abstain from restrictive practices, which would disrupt world commerce, reduce employment or slow down economic progress, by increasing the opportunities for their trade and development "on a mutually advantageous basis;
6. Solution of international trade problems, in the fields of employment, economic development, commercial policy, business practices and commodity policy, through "the promotion of mutual understanding, consultation and co-operation".

The purposes and objectives in Chapter I provide, as it were, a general panorama of the scene. Subsequent chapters, examine in detail the economic principles and practices on which the above "purposes and objectives" are based, and which are recognized by ITO member countries as valid.

CHAPTER II.

Employment and Economic Activity

Chapter II sets out six groups of prerequisites-essentials, if the aims of ITO in lowering trade barriers and in increasing the free flow of goods between countries are to be achieved. As in many other parts of the Charter, the aims set down in this Chapter can only be achieved when world commerce has returned to a relatively stable condition. The "disequilibrium" of today, such as balance of payments difficulties facing certain countries or the uneven spread of purchasing power between countries, will have to be at least partially resolved before the approach towards recognized economic ideals can be effectively tackled. But this does not mean that the aims set down in Chapter II and Chapter III are beyond possibility of achievement; on the contrary, the representatives of the countries which drafted the Charter looked forward to them as a practical probability, after the current period of unbalanced world trade and finance gives way to more normal conditions. The purpose of these Chapters is therefore to set out certain long term aspects of economic stability as affecting both domestic conditions in individual countries and trade and commerce among countries as a whole. It may be added here that certain countries which were members of the Preparatory Committee felt strongly that the ITO aims of reducing barriers to trade on a significant world wide scale could not be achieved, except to the extent that the conditions outlined in these Chapters were wholly or partially fulfilled.

Article 2, the Importance of Employment, Production and Demand in relation to the purposes of the Charter, provides first a statement that full employment (here described as the avoidance of unemployment or under-employment) is not only the domestic concern of each individual country, but is also essential from an international point of view if the purposes and objectives of ITO, as outlined in Chapter I, are to be realized. It is recognized that while full employment depends largely on action taken by each country in its domestic affairs, supplementary action by international agencies (under ECOSOC sponsorship) and by intergovernmental organizations should be taken. Further, if ITO members are to achieve their aims of full employment, they must regularly exchange information and views with the aid if necessary of ITO.

In Article 3, Maintenance of Domestic Employment, ITO members are pledged to adopt whatever measures may be necessary "to achieve and maintain full and productive employment and large and steadily growing demand" in their territories, provided that these measures do not conflict with obligations in other parts of the Charter. The important proviso is
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added that Members should try to avoid measures which would create balance of payments difficulties for other countries.

Article 4, Fair Labour Standards states the obligation upon all members to do everything possible to "eliminate substandard conditions of labour" and, if they are members of the International Labour Organization, to co-operate with the I.L.O. to make this effective.

The important factor of balance of payments between countries is introduced into the Charter in Article 5, Removal of Maladjustments within the Balance of Payments. If an ITO member finds it cannot without resorting to trade restrictions maintain full employment owing to balance of payments difficulties involving other members, the member affected and the other member concerned are to take appropriate action to correct the situation, by methods which will, if possible, expand rather than contract international trade.

Another aspect of unbalanced world trade is covered in Article 7, Safeguards for Members subject to External Deflationary Pressure, which reminds the ITO that ITO members may need to take action, within the provisions of the Charter, to safeguard themselves against the threat of deflation, if there should be a "serious or abrupt decline in the effective demand of other countries".

The need for the organized exchange of information between member countries (as mentioned in Article 2) and for organized consultation is set out in Article 6, Exchange of Information and Consultation. ITO members are to participate in arrangements made or sponsored by ECOSOC (a) for collecting information about domestic employment problems, including as far as possible, information about national income, demand and balance of payments and (b) for consultation in the field of employment policies. If an urgent situation arises, ITO may itself initiate consultations to deal with the threat of declining employment, production or demand, thus avoiding possible delays in waiting for action through ECOSOC.

CHAPTER III

Economic Development

The subject of Economic Development, covered in Chapter III proved one of the most controversial both in principle and in detail during the discussions of the draft Charter, not least because the Chapter as a whole was regarded by many of the delegations formulating the Charter as one of the keys to the effectiveness of the Charter as a whole. The reasons, in general, for the prolonged discussions on this Chapter were the differences of views which exist as to what protective measures can be used to promote economic development in a country (and to approach nearer the ITO target of full employment and maximum production as expressed in Chapter I) and in what circumstances. A balance has had to be struck between, on the one hand, the promotion of economic development of undeveloped countries by the use of protective devices such as quantitative restrictions and, on the other hand, the reduction or elimination of barriers to world trade (in particular of quantitative restrictions) which is a fundamental objective of the Charter.

It is universally agreed that the promotion of the economic development of undeveloped countries is a matter of first importance. If world trade is to be expanded, world economy - the products of industry and agriculture - has to be expanded. But the direction in which expansion of world trade can most fruitfully take place is in the development of undeveloped countries. On the other hand, if less developed countries are allowed the free use of protective devices for economic development, there is great danger that one of the fundamental aims of the Charter in reducing or eliminating barriers to world trade, particularly in regard to quantitative restrictions, will be negative.

Quantitative restrictions, which many regard as the most objectionable form of protection since they easily lend themselves to discrimination, not only tie up world trade, they also tend to subordinate world trade to government control and hence to national politics. On the other hand, there is no doubt that quantitative regulation is often the most effective device for the protection of a new industry - more effective than a high tariff, for example. A new industry, comparatively small in itself, may contribute only a very small part of the total domestic consumption of the goods it produces. In these circumstances, a high tariff will penalize the domestic consumer of the product, most of which has to be imported; and will throw a burden on the whole community for the sake of protecting one industry. The same objections can be made against subsidies; a rich and highly developed country can afford subsidies, whereas the undeveloped country, by its nature is less well equipped to provide the funds to make the subsidy

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effective.

The Charter provides a compromise between the use of quantitative restrictions and the reduction of trade barriers.

The imposition of quantitative restrictions will be subordinated to the jurisdiction of ITO and, except in emergencies, will not be embarked upon without full prior consultation, which would enable ITO to determine whether the objective should be sought through quantitative restrictions, whether possible injuries to other countries would outweigh the benefits to an undeveloped industry, and in particular whether the benefits could be obtained in some other way. In other words, the judgment of ITO would not be concerned with whether the young industry concerned should be developed, but with what would be the least harmful method of protecting it in the interests of world trade as a whole.

Chapter III opens with a general statement on the importance of Economic Development in Relation to the Purpose of the Charter (Article 8). All countries have a common interest in making the best use of the world's human and material resources. The industrial and general economic development (including reconstruction of industries) of all countries, "and particularly of those in which resources are as yet relatively undeveloped" will create new employment, expand trade, increase the level of real income and so on. ITO members are therefore - in Article 9, Development of Domestic Resources and Productivity - enjoined to develop (and where necessary, to reconstruct) their industries and other resources and to increase levels of output, without, however, transgressing any part of the code of the ITO Charter. There shall be Co-operation for Economic Development (Article 10) between ITO members, with ECOSOC, with ITO itself, and with appropriate inter-governmental agencies. The ITO is to be able to advise any member country on its plans for economic development or to procure technical assistance on terms to be agreed.

Article 11, Means of promoting Economic Development, stipulates that no ITO member shall "impose unreasonable or unjustifiable impediments" which would prevent other members from obtaining the essentials which they may need for industrial and general economic development, such as capital funds, materials, modern equipment and technology, and technical and managerial skills. Nor shall ITO members in any way penalize the rights or interests of the nationals of other members in what they have contributed in enterprise, skills, capital, arts or technology. On measures designed to assure just and equitable treatment for contributions under these headings (including treatment of foreign investment) brought from one member country to another, ITO may make recommendations for and promote
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international agreement.

Article 12 deals with the protection and fair treatment of International Investment for Economic Development, a subject which was considerably developed during the Geneva discussions. An important effect of the Article is to recognize the need for encouraging the flow of private capital which has largely dried up since the end of the war. The Article first establishes an accepted principle that with appropriate safeguards including a safeguard against interference through foreign investment in the internal domestic affairs of a country, international investment, both public and private, can be of great value in promoting economic development and consequent social progress. With this in mind, ITO members agree to provide "the widest opportunities for investment and the greatest security for existing and future investments", within certain limitations specified in this Article. Subject to restrictions imposed under the Articles of Agreement of the International Monetary Fund or to special exchange agreements entered into between the ITO and an ITO member, the Article states what is in effect the doctrine of most favoured nation treatment applied to international investment; namely that "no member shall impose, directly or indirectly, requirements on the investments of nationals of other members which are appreciably more onerous than those which the member imposes in similar circumstances upon its own nationals or upon the nationals of third countries." Thus, for the first time, fair treatment of international investment is brought within the control of an international agency.

A further provision states that ITO members shall make "just compensation" if the property in which a national of another member has an interest, is nationalized or placed under public management or occupation. (The term "just compensation" is discussed at length in a footnote to the draft Charter on page). The article lists certain eventualities which shall not be regarded as in conflict with most favoured nation treatment for investments. These relate to (a) requirements in force at the time of making the investment or at the time of any substantial addition to the investment or change in the nature of the business (b) measures to ensure participation by the nationals of the member in the expansion of any industry within its territories through increased investment and (c) measures to ensure the transfer of ownership of any investment from the nationals of any other member to the nationals of the member concerned.

In Article 13, the Charter deals with the important and controversial problem of Governmental Assistance to Economic Development, and lays down a series of detailed procedures under which a member country wanting to give
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protection to its economic development can state its case, and under which the ITO can consider the request. The first paragraph of the article states the problem in these words: "Members recognize that special government assistance may be required to promote the establishment, development or reconstruction of particular industries or particular branches of agriculture, and that in appropriate circumstances the grant of such assistance in the form of protective measures may be justified." But it is recognized that such protection, if unwisely used, may burden the economy of the country concerned; it may place "unwarranted restrictions" on international trade; and it may add to the difficulties of other countries in adjusting their economic problems.

If for the reasons stated above any ITO member country wishes to adopt a protective measure which would conflict with its obligations under Chapter IV of the ITO Charter (which sets out the principles of commercial policy accepted by ITO members) the following steps are to be taken. First, the member is to provide ITO with a statement justifying the proposed protection; secondly, the ITO is to send the statement to all members so that any member likely to be affected can send its views to ITO within a given time; thirdly, the ITO is to examine the proposal in all its aspects; fourthly, if ITO considers the proposed protective measures justifiable in principle, ITO is to sponsor negotiations between members with a view to obtaining their agreement. If, in examining the proposed protective measures ITO finds that the proposed measure is not likely to restrict international trade any more than any alternative practicable measures and that the proposed measure is the one most suitable for protecting the particular industry or branch of agriculture of the member concerned, the ITO is to agree to grant whatever release from Charter obligations are necessary to make the proposed protection effective.

There is, however, a vital time factor, which may jeopardize the procedure outlined above. A country, which has made public its intention to impose protection in order to establish, develop or reconstruct certain industries or branches of agriculture, may be faced with increased imports, or a threatened increase, large enough in volume to throw out of gear its plans for adopting protective measures. In such circumstances (and if no other device permitted by the Charter seems likely to prove effective) the country in question may "adopt such other measures as the situation may require pending a determination by ITO", provided that these emergency measures do not reduce imports below the level prevailing immediately before the time when the country applied for ITO permission to adopt protective measures.

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In view of this vital time factor and the threat of dumping of imports during the "waiting" period while the ITO procedure operates, the Charter gives the ITO a maximum of fifteen days (after receiving the member country's application) in which to notify the member of the target date by which ITO will allow or disallow the proposed protective measure.

Article 14, Transitional Measures, provides for the continuing use of protective measures by ITO members during the transitional period immediately following the time when a member using these measures joins the ITO. The article (which deals with a short-term situation not precisely covered in the earlier drafts of the Charter) lays down a procedure by which a member using protective measures is to inform other members in detail about these measures and to provide them with full justification, and similarly to inform the ITO within one month of becoming a member. The ITO is then to examine each protective measure (under the procedure described in Article 13 above) and to give its decision in any event within twelve months. ITO is instructed, in specifying a date for modifying or withdrawing a protective measure to "have regard to the possible need of a member for a suitable period of time in which to make such modification or withdrawal".

The Charter recognizes in Article 15, Preferential arrangements for Economic Development that two or more countries which are not contemplating a customs union, but which have related programmes of economic development or reconstruction, may be justified in adopting new preferential arrangements. In such cases ITO may, after the usual notification and examination, grant exceptions to the ITO principles of fair and equal trading specified in Chapter IV. To ensure that such exceptions are not lightly accorded the applicant must win a two-thirds majority of the members in support of his application.

CHAPTER IV

Commercial Policy

The twenty-seven Articles which comprise Chapter IV, under the general heading of Commercial Policy, undertake the enormous task of laying down a code of conduct for members of the proposed ITO and relating the principles set out in the draft Charter to the multitudinous practices of commerce and trade as operating today amongst all countries from the largest to the smallest, in every quarter of the globe. In general terms, Chapter IV is concerned with the reduction or elimination of barriers, to international trade, and with stimulating international trade on a "multilateral" basis.

The motives of Governments for imposing trade barriers, preferences, quotas, subsidies and so on, are well known and, in relation to their short term benefits, understandable. But it is generally agreed that the barriers which grew up between the two wars, particularly after the impact of the world depression in the early nineteen thirties, have had a cumulatively damaging effect on world trade. The intention of Chapter IV, insofar as it concerns removal or reduction of these barriers, is not hard to understand. It is easy to see how (in the long run, and in a world of comparatively stable producing, trading and monetary exchange conditions) buyers and sellers, producers and consumers will benefit everywhere from lowering tariffs and removing preferences or quotas. A freer movement of goods not only offers opportunities of selling more widely and buying more cheaply, it clears the way towards full employment and maximum production.

The value of "multilateral" trading as opposed to "bilateral" trading which is fundamental to the ITO Commercial Policy set out in this Chapter may not be so easy to understand. Multilateral means many-sided. Most transactions of trade occur between two parties, the buyer and the seller; these transactions are two sided, or bilateral. In what sense, therefore, can trade be multilateral? Take the imaginary instance of countries Eastland, Westland, Northland and Southland.

Eastland wishes to import bicycles, let us say, and Messrs. Smith, the importers, proceed to survey the market for bicycles. Messrs. Smith then buy from the country (Westland) which offers the best bicycles on the best terms. It may be that Messrs. Smith buy bicycles of a second quality from Northland and Southland as well. When the bicycles arrive in Eastland, Messrs. Smith put them on sale at a fair price, knowing that other importers can purchase in the world market and offer competitive prices. When Messrs. Smith settle their bill with the exporters in Westland, Northland and Southland, they do not insist that these exporters buy an equivalent amount of goods from Eastland. Messrs. Smith pay in cash, which the exporters in Westland, Northland and Southland can use to
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pay their employees, or to buy the goods they need from other countries, or for any purpose that suits them. This flow of purchasing power, as set out in this highly simplified example, provides in effect a series of bilateral transactions. But in fact the picture as a whole is of multilateral trading in ideal conditions.

Such conditions very rarely exist in the trading world of today. The obstacles are numerous and formidable; Eastland may allow only so many bicycles to be imported per year (to protect her bicycle industry) or she may give preference to bicycles imported from Northland (perhaps for political reasons) or she may be unable to pay for Westland's bicycles except in a currency which Westland cannot use to buy imports she needs from Northland and Southland; or Eastland may only be able to pay in goods of a kind which are not wanted by Westland or are too expensive to import. It might also be that Eastland, a fully developed country with a high standard of living, makes bicycles for home consumption and for export while Westland with but a few new industries and a large amount of cheap labour can produce bicycles far more cheaply and thus threaten to undercut Eastland in her home and overseas markets.

Such are the kinds of obstacles to multilateral trading today which encourage bilateral trading between countries, but which if not diminished will continue to hinder the achievement of full production and full employment. Admittedly, multilateral international trade, free of all hindrance, is an ideal conception. But there is no doubt that substantial progress can be made towards conditions of multilateral trade. That is the purpose of the ITO Charter.

Tariffs, Preferences and Internal Taxation and Regulations

Article 16, General Most-favoured Nation Treatment, states the principle of equal treatment which is fundamental to multilateral trade relations. This article provides, as it were, the pivot on which much of the doctrine of the draft Charter is balanced. According to the terms of the Article "any advantage, favour, privilege or immunity granted by any ITO member to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for all other member countries respectively." In other words, whatever benefit a member country extends to trade with any other member with regard to tariff rates, customs treatment and related matters must immediately be extended to its trade with all member countries. The effect of this provision would be to put all member countries on an even footing; they reciprocally pledge not to make exclusive concessions that benefit one member country only at the expense of another.

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Some countries, however, already have arrangements whereby they allow imports from certain sources to enter at rates of duty which are lower than their general, or most-favoured-nation rates. The difference between the lower, or preferential rate and most-favoured-nation rate is known as the "margin of preference" and is dealt with under Article 17.

Article 16 provides an exception to General Most-favoured Nation Treatment, for preferences remaining within certain preferential systems after negotiation. The margins of preference remaining are not thereafter to be increased. These preferential systems are listed in Annexes at the end of the draft Charter, and cover (a) the "British-Commonwealth-Colonial" territories, (b) the French Union, (c) the Belgian-Netherlands-Luxembourg, "Benelux" territories, (d) the United States and its dependent territories and Cuba and the Philippines, (e) Chile, Argentina, Bolivia and Peru respectively and (f) the Syro-Lebanese Customs Union and Palestine and Transjordan respectively.

After stating the principle of most-favoured-nation treatment, the Charter proceeds to deal in Article 17 with the practical obligations upon ITO members for the Reduction of Tariffs and Elimination of Preferences, which is one of the major objectives of the ITO. This Article must be read against the background of the tariff reduction negotiations (sponsored by the countries which were members of the ITO Preparatory Committee) which have been in progress at Geneva since April 1947. Article 17 does not set out detailed provisions governing the target level of duties or the amount by which they should be reduced. Rather it states the obligation of each member "upon the request of the ITO, to enter into and carry out with other members, as specified by the ITO, negotiations directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of preferences on a mutually advantageous basis. It will be noticed that in addition to tariffs and preferences, there is an obligation to reduce other charges on exports and imports; these might apply in the particular case of a duty on exports of raw materials for the purpose of encouraging their processing at home, thus in effect setting up a protected industry.

Article 17 provides that whenever a general tariff rate is reduced in the negotiations, this will automatically reduce or eliminate any margin of preference that exists on imports of this product. Further, when a preferential rate is reduced in the negotiations, the general tariff rate shall be reduced to the same extent.

Tariff levels vary from country to country, and a given country may have high protective tariffs on certain products and low tariffs, or no tariffs at all, on other products. Accordingly, under the ITO rules for /negotiation, the

negotiation, the binding of low tariffs or of duty free treatment will be considered as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

Article 17 concludes with a "punishment" clause. If any ITO member considers that any other member has failed to carry out its obligations to negotiate for the reduction of tariffs and elimination of preferences, it may refer the case to ITO. If ITO agrees that the member has failed to carry out negotiations within a reasonable time, ITO may authorize any member or members to withhold from the offender any of the tariff benefits previously negotiated with that member. If such benefits are in fact withheld the offending member is free to quit ITO on due notice.

"Most-favoured-nation treatment" assures equality among all trading countries. "National treatment" assures foreign goods treatment equal to that accorded to domestic products. Article 18, National Treatment on Internal Taxation and Regulation, provides that ITO member countries will grant "national treatment" to the products of other members with reference to taxation and domestic regulations. The products of any member country imported into any other member country will not be subject to higher taxes or other less favourable treatment than domestic products of the same sort. The importance of this stipulation is that it will prevent the use of such taxes or regulations to frustrate tariff reductions. "National treatment" will also be accorded on laws and regulations governing sale, purchase, transportation, distribution or use of imported products. There are similar provisions relating to the mixture, processing or use of products. These would prevent a member country from stipulating, for instance, that a given percentage of flour milled in its territory should consist of domestic wheat, and thus imposing a "hidden" form of protection. Again, members agree not to restrict mixing or processing by imposing restrictions such as higher taxation, on imported products in order to protect domestic production of competitive products. By putting a special tax on imported cotton, for instance, a country might be protecting its domestic rayon industry.

In the earlier drafts of the Charter, the special case of applying "national treatment" to the exhibition of cinematograph films was included in the scope of Article 18. A new article in the Geneva draft, Article 19, Special Provisions Relating to Cinematograph Films, permits, subject to certain conditions, an exception to most-favoured-nation treatment, by the use of screen quotas to protect national film industries. A member country may reserve minimum screen time for the showing of films of national origin. Screen time outside this reservation is to be allocated freely among sources of supply. Existing screen quotas imposing a minimum proportion of screen time for foreign films are permitted but

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may not be increased above the level in effect on 10 April 1947. All screen quotas are to be open to negotiation for limitation, or elimination, in the same way as the negotiations on other products described in Chapter 17.

Quantitative Restrictions

A tariff, however high, is not an absolute barrier to the movement of goods, since an exporting country by increasing its industrial efficiency and reducing its production costs may surmount a tariff wall. An import quota sets an absolute limit on the entry of the goods to which it relates.

It is a major feature of the ITO Charter that it prescribes a general ban on quotas and other quantitative import and export controls. The Charter recognizes that measures which restrict absolutely the quantity of goods that may be imported burden trade and create artificial prices and markets in the importing countries. They interfere with trade and the free choice of the consumer far more than tariffs, which are a type of tax on commodities. Furthermore, the allocation of shares in import quotas among supplying countries tends to produce discrimination. Similarly, export quotas shut off supplies from countries willing to purchase them and may also lead to discrimination.

At the same time, the Charter recognizes that in certain circumstances the use of quotas is justified. The situations in which quotas of certain types may be justified are set out in Articles 20 to 24 inclusive. The first of these deals with agricultural quotas.

Article 20 lays down the ITO principle of General Elimination of Quantitative Restrictions, and makes exceptions for (a) a country with a critical shortage of foodstuffs which may need to impose temporary export restrictions, (b) restrictions necessary for grading or classifying imports or exports. This would allow a country specializing in a high grade of a particular export commodity to restrict poor quality exports, (c) agricultural quotas, which have been established in many countries particularly since the depression of the nineteen thirties.

Restrictions on imports of agricultural items have been and are today largely intended to protect the home farmer from foreign competition and to enable him to sell his produce at a remunerative price. The draft Charter makes allowance for agricultural import quotas to be maintained in the following cases: (1) when there are existing government restrictions on the amount of domestic agricultural products allowed to be produced or marketed and (2) when there are government measures designed to remove a temporary surplus of the product concerned. The Charter lays down that any member imposing agricultural quotas, under the above exceptions, must publish the total quantity or value of the product /allowed to be

allowed to be imported during a given period. It is also laid down that existing agricultural quotas must not in effect reduce the proportion of total imports to domestic production below the proportion that might reasonably be expected in the absence of restrictions.

The second type of permissible quota, which the draft Charter allows for, arises from balance of payments difficulties. When a country has trouble over a period of time in earning enough current foreign exchange to pay for all its imports, and must use up its capital or borrow for current use, it is said to have a disequilibrium in its balance of payments; that is, the account of its transactions with the rest of the world. The country is living beyond its means and either draining its resources or spending borrowed funds. A country in such circumstances has to give priority to certain imports (e.g. essential imports such as foods) as against other less essential imports. This can be observed in the current practices of the United Kingdom and France, both of which are in serious balance of payments difficulties today. The bill for foreign products imported is reduced so that it can be met to a greater extent out of current earnings. Quotas have been widely used for this purpose and the Charter recognizes their validity in these exceptional circumstances, but, as with import quotas for agricultural products, sets out rules for their use.

Article 21, Restrictions to safeguard the balance of payments, recognizes that a member country in balance of payments difficulties may use quantitative restrictions to the extent necessary to "forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or, in the case of a country with very low monetary reserves, to achieve a reasonable rate of increase in its reserves". Countries which use quantitative restrictions for these purposes must progressively relax them as conditions improve and must eliminate them when they are no longer justifiable. The ITO Charter recognizes that all members are likely to be faced with a variety of economic problems in the years immediately following the war and that members may have to use import restrictions during this period to help restore their balance of payments situation.

It is also recognized that, in order to fulfil the basic economic aims of ITO (full employment, full production, reconstruction and development of industrial and other resources) - a member country may need to import a substantial amount of capital equipment. In such circumstances a country would be allowed to use quantitative restrictions to give priority to imports essentially needed to fulfil the above aims. This means that a country may budget the use of its limited foreign exchange so that it would be used, for example, for food or for machinery
/or for rehabilitation

or for rehabilitation supplies, rather than for, say, luxury goods. Restrictions on any class of imports must not, however, be raised to the point of total exclusion. Token imports are to be permitted so as to keep open trade channels, to preserve goodwill and trade names and so forth. Member countries applying these restrictions must avoid unnecessary damage to the commercial interests of other members.

The ITO is to be the forum for discussion of import restrictions designed to safeguard balance of payments.

Any member country considering the need for quantitative restrictions owing to balance of payments difficulties is to consult with ITO as to the nature of its difficulties, the available means for solving those difficulties and the effect of the proposed restrictions on the trade of other members. The ITO may require a member country maintaining existing restrictions for balance of payments purposes to consult with it, and if substantially intensifying, such restrictions, to consult within thirty days. Within two years from its establishment, ITO is to review all existing restrictions for balance of payments purposes.

If ITO has approved in advance a member country's use of restrictions for balance of payments reasons, insofar as the general extent, degree of intensity and duration of restrictions are concerned, the right to impose such restrictions may not be challenged by another member. But, if another member considers that the country is using the restrictions for other reasons than balance of payments difficulties and is thereby damaging its trade, the ITO is, if it considers the complaint justified, to negotiate a settlement. If this proves impossible, ITO is to recommend the member country using the restrictions to modify them. If the member country does not comply within sixty days, ITO may release any member country from its obligations under ITO towards the member country applying the restrictions.

It is recognized that trade or financial speculation might arise from premature disclosure about imposing or withdrawing import restrictions which are related to balance of payments difficulties. ITO is therefore instructed to conduct its relevant consultations in utmost secrecy. If there is widespread use of quantitative restrictions, which would indicate that a "general disequilibrium" is restricting international trade, ITO is to initiate discussions to see whether there are any alternative measures that might be taken by countries with either favourable or unfavourable balance of payments or by any other intergovernmental agency, to remove the underlying causes of the disequilibrium.

/Since the Charter

Since the Charter does provide exceptions to the general prohibition on the use of quantitative restrictions, there is need for general rules governing the administration of such restrictions as may be permitted. The basic rule provided in Article 22, Non-Discriminatory Administration of Quantitative Restrictions, is that restrictions should be administered so as to ensure fair treatment for the products of all member countries affected by them. In applying import restrictions to any product member countries should aim at a distribution of trade in that product approaching as closely as possible to the shares which other members might be expected to obtain if there were no restrictions. Wherever possible the amount of permitted quotas shall be fixed and made known. Where quotas are not practicable, import licences or permits without a quota may be used. If neither the quota nor import licence systems are feasible, the member may allocate shares of imports of a product amongst the various supplying countries, after obtaining agreement on the proportion to come from each main supplying country, or on the basis of a past representative period.

Members employing a system of import licences must supply adequate information about their administration of the restrictions to any member requesting it. In the case of quotas, the total amount permitted to be exported during a given period must be published. All other members who are interested as potential suppliers must be informed about quotas allocated amongst supplying countries.

It is recognized however in Article 23, exceptions to the Rule of Non-Discrimination that the rule of non-discrimination, as stated in Article 22, could not and should not be rigidly applied during periods of substantial and widespread disequilibrium in international trade and payments, provided that certain specified conditions relating to prices, currency and unnecessary damage to the trade of other members are observed, and provided that ITO is kept fully informed. Any member maintaining or proposing to institute discriminatory quantitative restrictions must seek ITO approval before 1 March 1952. After that date, ITO approval that circumstances justify the continuation of such restrictions must be sought. In 1952 and in each year following (while members continue to impose discriminatory restrictions) ITO is to decide whether the disequilibrium still exists and whether it justifies the exceptions permitted under this Article. When ITO determines that there is no longer a disequilibrium, member countries will no longer be allowed to impose discriminatory restrictions, which must cease within six months.

Departures from the rule of non-discrimination are also permitted:

(a) to enable a group of territories with a common quota in the

/International Monetary Fund

International Monetary Fund to protect their monetary reserves (b) to enable member countries until the end of 1951, to assist countries whose economies have been disrupted by war.

Exchange Controls

Exchange controls permit governments to limit the amount of foreign exchange which may be used for any purpose. They can, therefore, become powerful weapons for the control and direction of trade. When so used they are similar in effect to quantitative trade restrictions. In theory, exchange controls can direct trade by prescribing the amount that may be spent for particular imports, while quantitative restrictions regulate the actual import of goods, rather than the outgoing payments. In practice the two methods are often used in combination. Therefore if ITO ignored exchange arrangements there could be a serious gap in the Charter.

The International Monetary Fund is concerned with the stability of international exchange rates and the regulation of the use of exchange controls in current transactions. Insofar as they overlap, its objectives are essentially those of the ITO. Obviously, close co-operation between the ITO and the Fund on matters of common concern is essential.

Article 24, Exchange Arrangements provides the working basis between ITO and the Fund, in dealing with exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions within the orbit of ITO. ITO is to consult fully with the Fund on problems concerning monetary reserves, balance of payments or foreign exchange arrangements. Subject to an agreement to be worked out between ITO and the Fund, ITO is to accept the factual findings of the Fund in these matters and to accept the determination of the Fund in what constitutes a serious decline in or a reasonable rate of increase in a member's monetary reserves. Arrangements are laid down for dealing with the case of an ITO member which is not a member of the Fund and vice versa, and for the use by an ITO member of exchange controls in accordance with the Articles of Agreement of the International Monetary Fund. Members of ITO agree they will not use exchange action to frustrate the purposes of ITO and conversely will not use quantitative restrictions to frustrate the purposes of the Fund.

Subsidies

Government payments to producers, and other forms of subsidies by their effect on prices and production, may have a distinct bearing on international trade. The draft Charter distinguishes two main types of subsidy; those operating to increase exports or to reduce imports, and other types. Under Article 25, Subsidies in General, any member using the first of the above types of subsidy will give ITO full information about the extent, nature, estimated effect of and reason for the subsidy.

/If the trade

If the trade of any other member is threatened, the country using the subsidy agrees to discuss the possibility of limiting it.

Article 26, Additional Provisions on Export Subsidies, ITO members agree not to grant any subsidy on a product which would result in lowering the export price for that product below the prevailing domestic price. This - the abandonment of export subsidies as a general policy - is to take place as soon as possible, but in any event not later than two years after the ITO Charter comes into force. If a member is unable to drop export subsidies for any particular product within the time limit, it can ask the ITO for an extension. The final decision rests with ITO. The Article provides for the special case of a member country subsidizing exports to offset a subsidy by a non-member which is itself designed to affect the member country's exports of a particular product.

Some countries have adopted devices for the stabilization of the domestic prices of certain primary commodities so that the price at which the product is sold on the domestic market remains relatively constant, even though the price at which it is exported may fluctuate widely. Article 24, Special Treatment of Primary Commodities provides that ITO may decide that such a system does not constitute an export subsidy if it results in exports at higher prices than domestic prices and if it is operated so as not to stimulate exports or damage the interests of other members.

There is an exception to the rule against export subsidies relating to intergovernmental Commodity Agreements (Chapter VI) and in particular to excessive world surpluses of primary products, such as unprocessed agricultural products. In the past, countries have used export subsidies as a means of getting rid of such "burdensome" surpluses. If the measures proposed in Chapter VI for dealing with such surpluses fail or do not promise to succeed and the surplus continues, the member country having the surplus would be free to use subsidies to get rid of the surplus, and the ITO is to grant permission to use subsidies for this purpose for as long and within such limits as it may determine.

It is provided, however, in Article 28, Undertaking Regarding Stimulation of Exports, that a country shall not use export subsidies to gain a larger share of world trade in a particular product than it had in a previous representative period. A member country may choose its own representative period but must be willing to discuss its choice if requested by another member. Article 29, Procedure, confirms that all determinations concerning subsidies are to be made through the ITO by consultation of member countries substantially interested in the product concerned.

/State Trading

State Trading

Many governments today are participating directly in foreign trade. Some, have a complete government monopoly of foreign trade. Others have a monopoly of trade in a particular product. Certain countries, for instance, have long had a monopoly on such things as tobacco, salt and matches, largely for revenue purposes. Certain countries undertake to import, under government control, the whole amount of a given raw material, such as cotton, required for domestic manufacture. A government may also own an enterprise which engages in foreign trade side by side with normal privately owned trade.

Special problems arise from trying to fit these state trading techniques into the multilateral pattern, foreseen in the Charter. A state trading body can restrict or expand trade and can discriminate between countries without using quotas or exchange controls. It needs no export subsidies to sell more cheaply abroad than at home. State trading bodies tend to be more susceptible to political considerations in buying and selling than are private businesses.

The purposes of the section of the draft Charter on state trading - Articles 30 and 31 - is to establish rules for state trading activities that will produce, as nearly as possible, the same effect as the rules in other parts of the Charter applying to private trade and to lay down the principle that state trading enterprises shall be guided by commercial considerations in making their purchases and sales.

The key to the approach is given in Article 30, Non-discriminatory treatment, which provides that state trading enterprises should be conducted along normal commercial lines, buying and selling freely in accordance with customary business practice and allowing the enterprises of other member countries to compete for participation in their trade. The general rules of most-favoured-nation treatment and non-discrimination are to be applied. It may be noted that Article 30, in its phrasing, applies not only to state enterprises, but to the somewhat wider granting of "exclusive or special privileges formally or in effect to any enterprise". A footnote to the article makes it clear that Marketing Boards engaged in purchasing or selling are subject to the rules governing state trading.

Article 31, Expansion of trade, provides a formula to bring state trading enterprises within the scope of the negotiations for reduction of preferences envisaged in Article 17. By this means export monopolies and import monopolies on any particular product would become open to negotiation as regards the degree of protection they might give to domestic producers and to domestic consumers, respectively.

In the case of an import monopoly, the member country maintaining the monopoly is to negotiate for the establishment of a maximum import duty
/on the product

on the product concerned; or, if there is no negotiation, to publish the maximum duty to be applied. The price at which the product is sold in the home market is not to exceed the landed cost plus the maximum import duty, after allowance has been made for internal taxes, transportation, costs and a reasonable margin of profit.

A state trading enterprise could defeat one of the main purposes of the Charter by simply refusing to buy or sell. Therefore the Charter provides that any import monopoly must "import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand", allowance being made for any consumer rationing that may be in force.

It is recognized that some countries have established monopolies mainly for social, cultural, humanitarian or revenue purposes and ITO, in applying this article, is to have due regard for them.

General Commercial Provisions

Articles 32 to 39 inclusive have been called the "technical articles". Their general purpose is to fit into the framework of the Charter the normal processes involved in sending goods from one country to another. These are, in short, Transit (the route along which the goods are sent) customs administration, importing and exporting formalities, marks of origin, trade regulations and terminology. The section also deals with anti-dumping duties and boycotts.

The importance of this Section in relation to the Charter as a whole is that it deals with the possible misuse of normal formalities which might be employed to "cover" discrimination against the goods of particular countries or to slow up trade as a whole. Customs formalities and related practices have in fact been termed the "invisible tariff".

Article 32, Freedom of Transit is intended to assure the maximum freedom of transit for goods and the avoidance of unnecessary charges. Members are to grant most-favoured-nation treatment to goods of other members passing through their territories. There is to be no discrimination against imports which have passed through one member country rather than through another. Thus a country cannot penalize shipments by certain trade routes, whether to favour another route or to discriminate against the country through which the goods have passed.

Anti-dumping and Countervailing Duties are special charges added to the existing tariff rate when the importing country wishes to counteract the effects of dumping and of subsidies respectively. Article 33 sets out the conditions under which these measures may be applied so as to avoid their being used indiscriminately or for ulterior purposes.

Anti-dumping duties are to be limited to an amount equal to the margin of dumping on the product in question. The Article sets out three ways of measuring the margin - a point which has proved controversial in the past.

/Similarly,

Similarly, countervailing duties are to be limited to amounts equal to the ~~estimated~~ subsidy on production or export granted in the exporting or producing country. A member country will not make use of anti-dumping or countervailing duties on products of other members unless there is injury ~~or~~ threat of injury to an established domestic industry from the dumping or subsidization, or to the establishment of a domestic industry.

Article 34, Valuations for Customs Purposes. Article 35, Formalities Connected with Importation and Exportation. Article 36, Marks of Origin, Article 37, Publication and Administration of Trade Regulations, Article 38, Information, Statistics and Trade Terminology, are a series of technical provisions designed, as a whole, to simplify and codify a variety of normal trade practices, and to provide ITO with all the information that may be needed on laws, regulations, decisions, rulings and agreements affecting international trade policy, as well as essential statistical information and to be of general advantage to commercial interests.

Boycotts, which may or may not have a political purpose, are a psychological factor which can seriously interfere with trade.

Article 39, Boycotts, states that no member country will encourage, support or participate in boycotts designed to discourage the consumption of products of any other member countries.

Special Provisions

The draft Charter is intended to be fully comprehensive within the scope of world trade. It carries provisions to cover almost all types of existing ~~practices~~ practices and for such likely future developments as its drafters could foresee and could reduce to practical terms. But world trade conditions can change rapidly in such a way as to influence the intended effects of the Charter. Article 40, Emergency Action on Imports of Particular Products provides for a situation of this kind. If, as a result of unforeseen developments, a member country should find that unexpectedly large imports (resulting from a preference concession it has made) were causing or threatening serious damage to its domestic producers, the member can modify or withdraw its concession. Before the concession is modified or withdrawn, consultation is required with ITO and with members whose exports will be affected. But in critical circumstances, where delay would cause damage which it would be difficult to repair, action can precede consultation. If no agreement is reached, the member whose interests are being damaged, is free to take action, other interested members being allowed to withhold equivalent obligations or concessions under the Charter.

Article 41, Consultation provides that a member country must give adequate opportunity for consultations on matters raised by another member, /affecting customs

affecting customs regulations, anti-dumping and countervailing duties, exchange regulations, subsidies, state trading operations, sanitary laws and generally all matters concerning the operation of Chapter IV.

Article 42, Territorial Application of Chapter V makes it clear that the obligations of the Charter apply to countries which are separate customs territories, although they may have common sovereignty.

On the question of territories associated in a customs union, the provisions of Chapter V are not to be construed to prevent the formation of a union, provided that the union does not impose more restrictive duties, regulations or margins of preferences than those applied previously in the territories which make up the union. The ITO will study proposals for new customs unions and make recommendations. Such proposals must include a definite plan for bringing the customs union into existence within a reasonable length of time.

Article 43, General exceptions to Chapter IV excludes certain kinds of action from the provisions of the Chapter. (An article of this type is very often included in trade agreements). Protection of public morals, health, laws and regulations governing patents, trade marks and copyrights, national treasures are recognized as a matter for national action by members. The import and export of gold and silver, the products of prison labour and the conservation of natural resources, also fall in this category.

There is also a permitted exception for members which wish to adopt quantitative restrictions relating to the immediate postwar transitional period, for dealing with shortages, surpluses, upset prices and the like. Restrictions are also permitted to make possible an equitable distribution of scarce products in the immediate postwar period. Measures of this kind which are against the general purpose of the Charter, must be removed as soon as they have served their purpose and in any case not later than January, 1951, unless ITO authorizes an extension.

CHAPTER V

Restrictive Business Practices

Restrictions imposed by Governments are only one type of barrier to trade; there are also barriers imposed by commercial enterprises. There would be little point in reducing a tariff rate or eliminating quantitative restrictions imposed by Governments if their place were taken by arrangements between business agencies to restrict or distort trade in a way such that very much the same result would be attained. It is a well known fact that, in seeking to avoid competition, reduce risks, and generally to secure stable conditions for their trade, commercial enterprises, both private and public, sometimes enter into cartels or make similar types of arrangements to restrict production, allocate markets, fix prices and otherwise restrain trade. The effect of such action is to hinder the free flow of goods, to interfere with the efficient use of the world's economic resources and to negative the aims and objectives of the ITO Charter.

Chapter V declares the opposition of ITO members to such restrictive business practices in international trade and pledges each member country to take action against them whenever they have harmful effects on the objectives of ITO. The provisions of this Chapter, incidentally, provide a good example of the inter-dependence between one part of the Charter and another. Chapter IV dealt with the elimination of trade barriers imposed by Governments. The purpose of Chapter IV could be frustrated by the imposing of trade barriers by commercial enterprises, which are therefore brought within the scope of ITO.

The core of Chapter V is in Article 44, General Policy Towards Restrictive Business Practices. It declares that each Member country will take appropriate measures to prevent business practices, whether by private or public commercial enterprises, which restrain competition, limit access to markets, or foster monopolistic control, restrict production or trade, or interfere with the achievements of ITO objectives as set out in Article 1. The ITO is to investigate complaints concerning such commercial practices as price fixing, territorial exclusion, discrimination, production quotas, technological restrictions, misuse of patents, trademarks or copyrights.

The Procedure With Respect to Investigations and Consultations, to be followed by ITO is set out in Article 45. After receiving a complaint from a Member and initiating consultation, ITO is to decide whether an investigation is justified. If an investigation is held and ITO decides that the practice complained of is restrictive (under the criteria laid down in Article 44) ITO will instruct each Member concerned to take every possible remedial action. ITO is to publish a full account of the
/decisions

decisions reached and the reasons for them and the result of the remedial action.

It may be noted that ITO will not have police powers in the field of restrictive business practices. Its recommendations will be carried out by Members. Nor is the ITO empowered to interfere with the action of a Member country in enforcing its own laws against restrictive practices.

Article 46 authorizes ITO to conduct Studies Relative to Restrictive Business Practices. Under Article 47, Obligations of Members, each Member country must take all possible measures to ensure that private and public commercial enterprises do not engage in restrictive business practices and must be willing to provide ITO with all the information it may need for investigating complaints. Information may only be withheld if it would substantially damage the legitimate business interests of a commercial enterprise.

Article 48, Supplementary Enforcement Arrangements, states that members may co-operate with one another to enforce orders that one of them has issued against restrictive practices. If they do so, they must keep ITO informed. Article 49, Domestic Measures Against Restrictive Business Practices, confirms that nothing shall prevent any Member from enforcing its own laws directed towards preventing monopoly or restraint of trade.

Article 50, Procedure With Respect to Services, brings certain services such as Transportation, Telecommunications, Insurance and Banking, within the scope of ITO policy towards restrictive business practices. It provides that complaints may first be circulated amongst the members concerned. If no adjustment can be effected, and if the complaint is referred to the ITO, it should be transferred to the appropriate intergovernmental agency. If no such agency exists for dealing with the particular service involved in the complaint, ITO may be asked to make recommendations on the matter so far as it comes within the scope of the Charter.

Article 51, Exceptions to the Provisions of this Chapter, states that if commodity agreements between governments meet the requirements of Chapter VI they are not subject to the provisions of this Chapter. Similarly, bilateral agreements between governments concerning the buying or selling of commodities subject to state trading are exempt.

CHAPTER VI

Intergovernmental Commodity Agreements

Arrangements between governments as well as private business practices must be limited in their restrictive influence on trade if the objectives of ITO are to be achieved. Chapter VI provides safeguards for this purpose by limiting the use of intergovernmental arrangements to certain conditions in which they are justified and establishing principles to which they must conform.

Both large surpluses and acute shortages of certain basic agricultural products and other raw materials gave much trouble during the inter-war period. Prices fluctuated widely and wildly. This irregularity did much to harm the world's economic advancement. In an effort to achieve stability, producers with the aid of governments, organized groups to restrict production, hold up prices and regulate international marketing. Even when these schemes were effective, the interests of consuming countries were largely neglected.

Experience has shown that adequate consumption and nutrition standards cannot be achieved merely by increasing production; a satisfactory flow of goods from one country to another is also necessary. Independent action to remedy the difficulties of the producers of a particular commodity may have adverse repercussions on the international trade position of other countries. This Chapter of the Charter is therefore largely designed to prevent one country making arrangements to improve its individual position at the expense of others.

Chapter VI deals with the problem of regulating production, trade and prices in individual primary commodities when they are in burdensome surplus. A burdensome surplus may be said to exist when the supply of a commodity so much exceeds the demand for it that the price falls to a level which is relatively unrewarding to producers; small producers, in particular, may experience widespread distress. In such cases - and where there is no likelihood of an adjustment taking place in the near future - a solution may be sought in intergovernmental agreements.

The basis of the procedures established by ITO is that there should be careful examination of all aspects of a commodity problem before action is taken. Agreements of a restrictive nature are only to be used in certain unavoidable circumstances; the general need for increasing consumption of primary products is of first importance. Such agreements should aim to stabilize the prices of primary commodities at a level which will be fair both to efficient producers and to consumers. Guiding principles for the administering of agreements are laid down. However, no attempt is made to

/lay down

lay down the particular methods to be used in dealing with difficulties concerning specific commodities, since this is better left to be worked out amongst the countries specially concerned with the commodities in question.

Articles 52, 53 and 54 deal with Introductory Considerations of a general nature which are partially summarized in the above paragraphs. Article 52 sets out the Difficulties relating to Primary Commodities, the tendency towards persistent disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuation in prices. These difficulties may have serious, harmful effects on the interests both of producers and of consumers and they may result in jeopardizing the general economic expansion foreseen under the Charter. For these reasons ITO members recognize that certain types of intergovernmental agreement designed to limit or control production of primary products may be necessary.

Article 53 provides a definition of what is meant by Primary and Related Commodities, with reference to the purpose of this Chapter of the Charter.

The Objectives of Intergovernmental Commodity Agreements are set out in Article 54. ITO members recognize that Commodity Control Agreements may be used

- (a) to prevent or alleviate serious economic difficulties arising when the normal processes of buying and selling cannot cope with "adjustments between production and consumption", or in other words, overproduction or underconsumption;
- (b) to provide a breathing space for considering methods which might relieve the situation, such as increasing consumption of the product which is in surplus supply, or moving manpower out of the over-expanded industry into new, productive occupation.
- (c) to stabilize prices of a primary commodity on the basis of fairness to consumers and, at the same time, to efficient producers;
- (d) to develop the world's natural resources and to protect them from unnecessary exhaustion;
- (e) to help expand the production of a primary commodity which would be to the advantage of consumers and producers;
- (f) to ensure fair distribution of primary commodities which are in short supply.

One of the basic principles of this Chapter is that proper re-examination shall be made of the production, consumption and trade situation of any commodity before a conference is called for the purpose of

/considering

considering an international agreement. A conference without sufficient preparation is not likely to be successful.

The procedure for dealing with the special problems arising from the production of primary commodities is divided into three stages: study groups, commodity conferences and commodity arrangements or agreements. The administering of an agreement would constitute a fourth stage. Under Article 55, Commodity Studies, when a member country believes that serious difficulties exist or are likely to arise soon regarding a commodity in which it has an important producing, consuming or trade interest, it may ask ITO to make a study of the commodity. If ITO considers the member's request well founded, it will set up a Study Group for this purpose. The member countries principally interested in the commodity will be invited to appoint representatives to the Study Group. Non-members may also be invited. The Study Group is to report to the participating Governments and to ITO on how best to deal with the difficulties in question.

Although the aim is to prevent hasty action based on inadequate examination of the position, there is to be no unnecessary delay. ITO is therefore specifically directed to deal promptly with the findings and recommendations of a study group.

On the basis of the report of the Study Group, or on the request of Members concerned, or on its own initiative, ITO may, under Article 56, convene an Intergovernmental Commodity Conference, to discuss measures designed to meet the special difficulties. Non-members may be invited to participate in Commodity Conferences, as well as all Members substantially interested in the product in question.

If the Conference is unable to find suitable measures for dealing with the situation without resort to the regulation of production, trade or prices, an intergovernmental commodity agreement may be considered.

Article 57 sets out a number of General Principles governing Intergovernmental Commodity Agreements. ITO Members are given equal rights to participate in the initial negotiation of intergovernmental commodity agreements. ITO may invite non-Members to participate on the same basis as members. There is to be equitable treatment as between participating and non-participating Members. Countries that are largely dependent on imports for their supply of the commodity shall have an equal voice with the principal exporting countries. This wide participation prevents the formulation of agreements serving the interests of some countries at the expense of others. There is to be full publicity for any such agreement, whether proposed or concluded, and for the views of Members at all stages of negotiation and operation.

/In Article 58,

In Article 58, Types of Agreement, the Charter recognizes two types of intergovernmental commodity agreement:

- (a) those which have the purpose of controlling or regulating the production, export, import, or prices of the commodity in question, and
- (b) those which have the purpose of expanding world production and consumption of a primary commodity. This Chapter of the Charter is concerned only with the former, or "commodity control" type of agreement.

The Circumstances Governing the Use of Commodity Control Agreements, Article 59, are to be strictly limited. Commodity Control Agreements may only be employed when a burdensome surplus has developed or is expected to develop; when this surplus would cause serious hardship to producers among whom small producers are of substantial significance; when the normal process of buying and selling will not correct the situation in time, for the reason that - in the case of the primary commodity concerned - a fall in price will not lead to a worthwhile increase in consumption nor to a decrease in production; or when widespread unemployment has developed or is expected to develop, for the reason that - in the case of the industry concerned - not only will a fall in price fail to increase consumption, but the areas where the primary commodity is produced do not offer alternative employment opportunities.

One of the objectives of commodity control agreements is to reduce fluctuations in prices of primary commodities. Each Commodity Council is left free to adopt whatever measures it thinks necessary to achieve this objective; it might be done through regulation of production; exports or prices. Particular schemes, such as buffer stocks, may be applied in appropriate circumstances to provide a stabilizing element.

Certain Additional Principles Governing Commodity Control Agreements are set out in Article 60. Commodity Agreements must be planned so as to assure adequate supplies to fulfil world demand, at reasonable prices. When practicable, commodity agreements must help to expand world consumption of the commodity in question. The principle of equal voice as between importing and exporting countries participating in commodity agreements is established. Commodity agreements must provide for the satisfying of the requirements for a particular commodity, both in individual countries and in the world as a whole, by arranging for the commodity to be supplied in the most effective and economic manner. Countries participating in a commodity agreement must adopt national programmes which are considered adequate towards solving the commodity problem in question, within the duration of the agreement.

It is recognized that each commodity has its own problems. No attempt is made, therefore, to suggest the particular methods to be

/used to achieve

used to achieve the objectives of an agreement. Directly related commodities such as cane and beet sugar, or synthetic and natural rubber, may be considered together.

Articles 61, 62 and 63 provide rules for the administering of Commodity Control Agreements.

Article 61, Administration of Commodity Control Agreements, states that a separate Commodity Council is to be set up to administer each commodity control agreement. These Councils are to be virtually autonomous and largely independent of ITO in their structure and procedure, reporting as required to ITO their expenses being borne by the participating countries.

Under Article 62, Initial Term, Review and Renewal of Commodity Control Agreements, the life of a commodity agreement is limited to five years, subject to renewals for a maximum of five years. Not less than every three years ITO is to review every commodity agreement. If ITO decides that an agreement has failed substantially to carry out the general principles laid down in this Chapter, the countries participating in the agreement must either revise it or terminate it.

Settlement of Disputes, Article 63, arising out of a Commodity Agreement is to be primarily a matter for the Commodity Council. If this fails, the dispute will be referred to ITO.

It is important to avoid duplication and overlapping in the consideration of commodity problems. The Relations with Intergovernmental Organizations, such as FAO, are set down in Article 64. They are entitled to attend any study group or commodity conference, to ask that a study of a commodity should be made, and to give ITO any study of a commodity they have made with a view to further study or the convening of a commodity conference.

A special problem arises from the fact that there will be some international commodity agreements in effect at the time ITO is set up. Article 65, Obligations of Members regarding existing and proposed Commodity Agreements, provides that ITO members participating in existing agreements must send full information about them to ITO. ITO will study these existing agreements and will decide whether any of them are contrary to the principles of the Charter. If so, members will accept the decision of ITO as to the continuation of their participation in these agreements. A similar procedure will apply to any negotiations for the commodity agreements which ITO members are taking part in at the time when they join ITO.

Article 66 deals with the Territorial Application of Chapter VI and provides that where one or more territories belonging to a group which is dependent on an ITO member are particularly interested in a commodity, they may be separately represented.

/Article 67

Article 67 sets out Exceptions to Provisions Relating to Inter-governmental Commodity Arrangements. These exceptions comprise

- (a) agreements between two governments relating to the purchase and sale of a commodity which is subject to state trading arrangements,
- (b) agreements between a single exporting and a single importing country (outside the scope of state trading). ITO may, however, receive and deal with any complaint by a non-participating member about an agreement of this type, and
- (c) any parts of inter-governmental agreements dealing with morals and health so long as they are not used to get around the objectives of ITO. Commodity Agreements dealing only with fair distribution of commodities in short supply or with conservation of exhaustible resources are exempt from the main restrictions imposed in this Chapter of the Charter.

CHAPTER VII

The International Trade Organization

Chapter VII sets forth the structure of the ITO and describes how it is to operate in order to carry out the functions and undertakings placed upon it in the earlier chapters. The first essential is to determine which countries are to be eligible for membership and on what terms.

Article 68, Membership, lays down that the original members of the ITO are those states which, having attended the World Conference on Trade and Employment, agree to bring the Charter into force by the date specified.

(Article 98 states that the Charter will come into force 60 days after 20 Governments have accepted it). Any other state whose membership has been approved by the ITO Conference shall become a member upon accepting the obligations of membership. In addition, the following customs territories, though not responsible for the formal conduct of their diplomatic relations, are to be eligible to join ITO "on such terms as may be determined" (a) any separate customs territories invited to the World Conference on Trade and Employment (these are Burma, Ceylon and Southern Rhodesia) and (b) any separate customs territory not invited to the World Conference, which is "proposed by the competent member having responsibility for the formal conduct of its diplomatic relations". The ITO Conference is to determine the conditions on which membership is to be extended to Trust Territories administered by the United Nations and to the Free Territory of Trieste.

Essential to the work of ITO will be the collecting, publishing and analyzing of information about international trade, Article 69, Functions states that ITO is to have these functions, as well as the undertaking of studies of various specialized types, designed to help achieve the objectives of ITO, as set out in Article 1.

The Structure of ITO (Article 70) is to consist of a Conference, an Executive Board, a Tariff Committee, certain Commissions and such other organs as may be needed. There is to be a Director General and Staff.

The Conference Every state belonging to ITO will have a representative in the Conference (Article 71) which is the governing body of ITO. The method of Voting in the Conference (Article 72) has been left open by the Preparatory Committee for decision at the World Conference. Three alternatives are suggested (a) one vote to one country (b) two systems of so called "weighted" voting, based on economic factors, which include such criteria as volume of foreign trade, national income and foreign trade per head of population (c) a compromise between the system of "one state: one vote", and "weighted" voting which would require, on matters provided for in certain Articles of the Charter, voting on the "one state: one vote" system to be confirmed by a vote on a weighted system.

Article 73

Article 73. Sessions procedure and officers states that the Conference must meet annually and possibly more often if necessary. The Conference is responsible for establishing its rules of procedure and for electing its President and officers. The Powers and Duties (Article 74) imposed upon ITO by the Charter are to be vested in the Conference. In exceptional circumstances the Conference may waive an obligation imposed on a member by the Charter. But this action will require a two-thirds majority of the votes cast and the majority must comprise one half the ITO membership. The Conference is to approve the ITO budget and to fix the scale of contributions, following such principles as may be applied by the United Nations. No member is to contribute more than one third of the total. The Conference is to determine the location of ITO and of such branch offices as may be desirable.

The Executive Board on the composition of the Executive Board (Article 75). The Preparatory Committee has submitted three proposals to the World Conference on Trade and Employment. In brief, Alternative A proposes a fixed number of seats to be allocated to named States of major economic importance and the allocation of the remainder on a "regional" basis. Alternative B proposes the open election of all members, without any allocation of seats to named states. Alternative C proposes a fixed number of permanent seats and the open election of the remainder. Voting on the Executive Board (Article 76) is to be by simple majority. The Executive Board is to adopt its own rules for Sessions, Procedure and Officers (Article 77). ITO members which are not members of the Executive Board may be invited to participate in Board discussions without the right to vote. The Powers and Duties (Article 78) of the Executive Board include supervising the Commissions and making recommendations to the Conference or to intergovernmental agencies, on any subject within the scope of the Charter.

The Commissions The ITO Conference is to establish whatever commissions the ITO may require in order to perform its functions. Their Establishment and Functions are dealt with in Article 79, their composition and procedure in Article 80. Apart from the commissions which might deal with such matters as Commercial Policy, Commodities or Business Practices, there is to be a permanent Tariff Committee (Article 81) to deal with all matters arising out of Article 17, the reduction of Tariffs and elimination of Preferences. The voting procedures on the Tariff Committee are left for decision at the World Conference.

Article 82 and 83 deal with the Director General and the Staff, their duties, conditions of service and suitability for the work of ITO.

Article 84 provides for Relations with other Organizations. This is a matter of importance in that various intergovernmental agencies, such as the

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International Bank, the International Monetary Fund, the Food and Agriculture Organization, the International Labour Organization, and others, deal with matters having a direct bearing on the work of the ITO. ITO itself is to be related to the United Nations as one of the specialized agencies. ITO is to arrange with other agencies for effective cooperation and to avoid overlapping. ITO is to make arrangements to consult and cooperate with non-government organizations. In this Article, as throughout the Charter, emphasis is placed on cooperation with all other international bodies with a view to establishing mutually agreed policies, to preventing the overlapping of functions, and to obtaining the most efficient and economical use of funds and personnel.

Article 85 states the International Responsibilities of the Director General, Staff and Members of Commissions. In the discharge of their duties they shall not seek or receive instructions from any government, or from any authority outside ITO. Article 86 establishes the International Legal Status of the Organization; Article 87, the Status of the Organization in the territory of members.

Article 88, Contributions provides that a member in arrears with its contributions to ITO can, in certain circumstances, be deprived of its vote.

CHAPTER VIII

Settlement of Differences - Interpretation

It is inevitable that disputes will arise out of a Charter both comprehensive and complex, the scope of which may possibly affect the established trading and commercial practices of every country in the world. The Charter recognizes three general stages in the settlement of disputes. First, consultation between members; secondly, reference of the dispute to the ITO; thirdly, reference to the International Court of Justice.

(It is pointed out, in the draft Charter, that the Preparatory Committee gave only a limited time to the study of this section and that a full re-examination by the World Trade Conference will be desirable).

Article 89, Consultation between members defines the situations which can give rise to complaints resulting from, for instance, failure of a member to carry out its ITO obligations and lays down a procedure for consultation between members to help resolve the problem. If the matter is not settled satisfactorily within a reasonable time it may be referred to the Executive Board or directly to the Conference. Article 90, Reference to the Organization, deals with procedure by the Conference or by the Executive Board in making recommendations or providing a ruling. With the consent of the members concerned, the Executive Board may refer the matter to arbitration. If the Conference considers the complaint sufficiently serious, it may authorize members to suspend obligations or concessions under the Charter. The member so affected may then quit ITO on giving due notice.

Reference to the International Court of Justice (Article 91) allows the Conference or the Executive Board to request from the International Court advisory opinions on legal questions arising within the scope of ITO. The Court may, if requested by ITO, review any decision reached under Article 90. Any substantially interested member may require ITO to request such a review. The decision of ITO is to remain in effect while under review by the Court. The final opinion of the Court will be binding on the ITO.

Among the Miscellaneous Provisions in Article 92, is one which requires ITO members to use ITO procedures for dealing with complaints and settlement of difficulties.

CHAPTER IX

General Provisions

The relation to be established between ITO Members and non-member countries, as affecting their trade and commerce is obviously a vital element of the ITO Charter. Various questions arise in considering this problem. To what extent shall members be prevented from seeking preferential advantages with non-members, of a kind which would negative the intention of the Charter to reduce or abolish such preferences? If the trade of a member is substantially carried out with non-members, to what extent must the member be bound by the obligations of the Charter? To what extent is the ITO to have power to approve or disapprove trading agreements between members and non-members? Is the Charter to impose terms on the relations between members and non-members which would attract non-members to join ITO? These and other aspects of this problem are dealt with in three suggested drafts of Article 93, which the Preparatory Committee is submitting to the World Conference. To some extent, the provisions governing relations between members and non-members will depend on the number of countries which decide to become ITO members in the early days of the Organization.

Article 94, General Exceptions, absolves an ITO member from being required, under the Charter, to disclose information which it considers against its security interests. Members may also do whatever they think necessary to protect their security interests relating to atomic materials, arms traffic, and wartime or other international emergencies, and to maintain peace according to their obligations under the United Nations Charter.

Amendments, Article 95, to the Charter involving a change in the obligations of members will require a two-thirds vote of the Conference. But any such amendment will become effective only for the members accepting it. If the ITO feels that non-acceptance of such an amendment creates an intolerable situation, it can require the non-accepting members to withdraw from ITO (or it may, by two-thirds majority of the Conference, waive its insistence on withdrawal). There are similar provisions in the constitutions of other specialized agencies.

Under Article 96, there is to be a Review of the Charter every ten years. Withdrawal and Termination, Article 97, provides that any member may withdraw from ITO three years after the Charter comes into force, due notice being given. Three quarters of the members may terminate the Charter at any time.

Article 98, Entry into Force and Registration, states that ITO will come into existence sixty days after twenty governments represented at the World Conference have deposited their instruments of acceptance. Article 99

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defines the Territorial Application of the Charter. Article 100 deals
with the Deposit of Texts.
