

United Nations
**ECONOMIC
AND
SOCIAL COUNCIL**

Nations Unies
**CONSEIL
ECONOMIQUE
ET SOCIAL**

RESTRICTED
E/PC/T/C.6/97
22 February 1947
ORIGINAL: ENGLISH

DRAFT REPORT OF THE
DRAFTING COMMITTEE OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

CHAPTER V

GENERAL COMMERCIAL POLICY

The Articles covered by this draft Report and the documents used in establishing the Charter texts (given on left-hand pages) are indicated below. It should be observed, however, that the texts embody certain changes decided upon by the Legal Drafting Sub-Committee and not recorded in documents distributed at the time the Report was drafted.

<u>Articles</u>	<u>Document</u>
14	E/PC/T/C.6/W.72
15 - 23	E/PC/T/C.6/55/Rev.1
24, 25	E/PC/T/C.6/W.72
25:2(f)	E/PC/T/C.6/90
26 - 31	E/PC/T/C.6/W.81
27:2(b) - (d)	E/PC/T/C.6/55/Rev.1
31:3	E/PC/T/C.6/W.94
32	E/PC/T/C.6/W.86
34, 35	E/PC/T/C.6/W.66
37	E/PC/T/C.6/55/Rev.1
38	E/PC/T/C.6/W.66

The comments given opposite to the respective Charter texts specify the changes introduced by the Drafting Committee in the Charter as adopted at the First Session of the Preparatory Committee only if these changes are of particular importance or when it was considered desirable to indicate the reasons for the changes made.

Delegates are requested to supply in writing to the Secretariat by Monday morning, February 24, any observations they may wish to make on this document.

CHARTER

CHAPTER V

GENERAL COMMERCIAL POLICY

Section A. - General Commercial Provisions, Most-Favoured-Nations Treatment, Tariffs and Tariff Preferences etc.

Article 14

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation or exportation and with respect to all matters in regard to which national treatment is provided for in Article 15, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country, shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries respectively.

COMMENTARY

CHAPTER V

GENERAL COMMERCIAL POLICY

Section A

Article 14

General Most-Favoured Nation Treatment

General Comment

14

The delegate for Australia maintained his suggestion made at the First Session of the Preparatory Committee that Articles 14 and 24 "should be interpreted in such a way that, so long as a preference remained accordable in one part of a preferential system specified in paragraph 2 of Article 8, that part of the preferential system according the preferences should be at liberty to extend the same, or a lesser measure of preference to any other part of the same preferential system which at present did not enjoy it."

14:1

CHARTER

2. The provisions of paragraph (1) shall not be construed to require the elimination of any preferences in respect of customs duties or other charges imposed on importation, which do not exceed the preferences remaining in force after the negotiations contemplated in Article 24 and which fall within the following descriptions:

(a) Preferences in force exclusively

- (i) between two or more territories which on 1 July 1939 were connected by common sovereignty or relations of protection or suzerainty; or
- (ii) between two or more of the territories listed in Annexure A to this Charter.

Each Member to which provision (i) applies shall provide a list of such territories which shall be incorporated in an annexure to this Charter.

(b) Preferences in force exclusively between the United States of America and the Republic of Cuba.

(c) Preferences in force on 1 July 1946 exclusively between neighbouring countries.

COMMENTARY

Specific Comments

14:2

1. The provision limiting the use of preferences in the cases specified in paragraph 2 was considered inequitable by the delegate for China who wished to reserve the right of his Government to resort to preferences in the future.
2. The delegate for Chile, while accepting in principle paragraph 2, was not in full agreement with the provision as drafted. He wished to reserve the right to raise the question of providing for more liberal use of preferences among Latin American countries, at the Second Session of the Preparatory Committee or at the World Trade Conference.

CHARTER

Article 15

National Treatment on Internal Taxation and Regulation

1. The Members agree that neither internal taxes nor other internal charges nor internal laws, regulations or requirements should be used to afford protection directly or indirectly for any national product.
2. The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin.

COMMENTARY

Article 15

National Treatment on Internal Taxation and Regulation

15:1

15:2

The delegates for Norway and India wished to maintain the objections against this paragraph raised by them at the First Session of the Preparatory Committee. (The delegate for India had commented that there should be no objection against discriminatory internal taxes levied only for the purpose of raising revenue; and the delegate for Norway had reserved his country's right to vary charges levied on an imported product when the variations were required for the maintenance of a uniform price of the product in the domestic market).

CHARTER

3. The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, transportation, distribution or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used, Provided that any such requirement in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, which period may be extended in respect of any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter. Requirements permitted to be maintained under the foregoing proviso shall be subject to negotiation in the manner provided for in respect of tariffs under Article 24.

COMMENTARY

- 15:3
1. The delegates for Brazil, the Netherlands and the Union of South Africa maintained the reservations their delegations had made at the First Session as to the requirements on mixing, processing, etc. considered in this paragraph. The delegate for Cuba joined in this reservation.
 2. The delegate for Czechoslovakia suggested that the following second proviso be added at the end of the penultimate sentence of this paragraph: "or provided that reasonable new requirements may be established in respect of any product if the Organization concurs that the requirement is less restrictive of international trade than other measures permissible under this Charter."
 3. The same delegate reserved his position on the last sentence of this paragraph.

CHARTER

CHARTER

4. The provisions of paragraphs 1 and 3 of this Article shall not be construed to prevent the application of internal laws, regulations or requirements, other than taxes, relating to the distribution or exhibition of cinematograph films. Any laws, regulations or requirements so applied shall, however, be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24.

COMMENTARY

- 15:4
1. The second sentence of this paragraph provides that laws, regulations and requirements relating to the distribution and exhibition of such films will be subject to negotiation in the same manner as those considered under paragraph 3. It was the understanding of the Committee that the provisions contained in this sentence would only imply that there should be willingness to negotiate for liberalization or elimination of the laws, regulations and requirements in question but that there would not have to be a standstill in the adoption of legislative or other measures affecting the distribution or exhibition of cinematograph films as long as these measures were not bound by the trade agreements.
 2. The delegate for Czechoslovakia reserved his position for the time being on the second sentence of this paragraph.
 3. The delegate for New Zealand made a statement to the effect that the New Zealand film hire tax which is in reality a delayed customs duty levied at the point where the real value has become apparent, should neither be regarded as being covered by the terms "internal laws" or "regulations" or "requirements" whenever such words appear in Article 15, nor as an internal tax. The film hire tax, he pointed out, which is not associated with any form of film quota, but which contains a preference element, could thus be the subject of negotiations of the kind provided for in Article 24 with respect to tariffs. New Zealand, he declared, did not produce cinematographic films other than educational and newsreels, and such films were exempt from tax. British films of all types were subject to tax at a rate lower than that applied to foreign films.

CHARTER

5. The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale or for use in the production of goods for sale.

Article 16

Freedom of Transit

COMMENTARY

15:5

The words in square brackets at the end of this paragraph were added for later consideration in connection with a similar addition to paragraph 2 of Article 31.

Comment referring to the whole of Article 15

1. The delegate for Brazil maintained his suggestion at the First Session that a new paragraph should be added, providing for date of entry into force of this Article or for period of notice before it becomes effective.
2. The delegate for Cuba reserved his position on Article 15 concerning measures necessary for the protection of infant industries in countries at an early stage of economic development.

Article 16

Freedom of Transit

16

General Comment

1. The original text of this Article referred in general to persons, goods and means of transport. The text recommended by the Drafting Committee refers to goods and means of transport only, since the transit of persons was considered not to be within the scope of the Charter and since traffic of persons is subject to immigration laws and may properly be the concern of an international agency other than the Trade Organization.
2. The delegate for India objected to the deletion of the word "persons".
3. The delegate for Chile declared that he would prefer that the provisions of Article 16 be confined to goods only (that is, to exclude means of transport).

CHARTER

1. Goods (including baggage) and also vessels and other means of transport shall be deemed to be in transit across the territory of a Member when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit". The provisions of this Article shall not apply to the operation of aircraft in transit.

2. There shall be freedom of transit through the Member countries via the routes most convenient for international transit for traffic in transit to or from other Member countries. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, or vessels or other means of transport.

COMMENTARY

Specific Comments

16:1

1. The delegates for Australia and Belgium were of the opinion that no exemption should be made for the operation of aircraft in transit and accordingly suggested deletion of the last sentence.

2. It was noted that there is no apparent inconsistency between this Article and the Barcelona Convention of 20 April 1921 (Convention and Statute on Freedom of Transit). Should the question of a new transit convention be raised, the Committee felt that the International Trade Organization might wish to co-operate.

3. Attention was also paid to the existence of other treaties and conventions to which members of the Preparatory Committee are parties, that relate to matters covered by the Charter. It was felt that the Members would have to consider, before signing the Charter, if and to what extent their obligations under such treaties or conventions were in conflict with the new obligations which they would have to assume.

16:2

1. The last sentence (in both the alternatives) is based on the text of Article 2 of the Barcelona Statute (annexed to the Barcelona Convention of 20 April 1921).

2. The delegate for India suggested that the first sentence should read as follows:

"There shall be freedom of transit through Member countries for the products of other Member countries via such routes as may be open to traffic in products of like kind and quality of national origin."

CHARTER

3. Any Member may require that traffic in transit through its territory be entered at the proper customhouse, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
4. All charges and regulations imposed by Members on traffic to or from other Member countries shall be reasonable, having regard to the conditions of the traffic.
5. With respect to all charges, rules, and formalities in connection with transit, each Member shall accord to traffic in transit to or from any other Member country treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
6. Each Member shall accord to products which have been in transit through any other Member country treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through such other Member country. Any Member shall, however, be free to maintain its requirements of direct consignment (expédition directe) existing on the day of the signature of this Charter, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty, or has relation to the country's prescribed method of valuation for duty purposes.

COMMENTARY

16:3

16:4

16:5

16:6

CHARTER

Article 17

Anti-Dumping and Countervailing Duties

1. No anti-dumping duty or charge shall be imposed on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of the product exported from one country to another is less than (a) the comparable for the like product to buyers in the domestic market of the exporting country, or, in the absence of such domestic price, either (b) the highest comparable price at which the like product is sold for export to any third country in the ordinary course of commerce, or (c) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit; with due allowance in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

COMMENTARY

Article 17

Anti-Dumping and Countervailing Duties

17:1

1. It was understood that paragraph 1 refers only to price dumping and that the term "anti-dumping duty", as used therein, refers only to an additional duty imposed for the purpose of offsetting such dumping.

2. The delegate for the United Kingdom suggested that the word "landed" be inserted before "price of the product exported" in the definition of the margin of dumping (second sentence).

3. The delegate for Australia, Czechoslovakia, the Netherlands and the Union of South Africa suggested that the words "by more than five per cent" be inserted in the same definition after "another is less".

4. The delegates for certain countries (Belgium, Luxembourg, Czechoslovakia, France, New Zealand and the Netherlands) favoured the authorization of measures other than anti-dumping duties to offset price-dumping.

5. The delegate for Brazil reserved his position on this paragraph, being of the opinion that heavier than counter-balancing duties or quantitative restrictions should be allowed in cases of aggravated or sporadic dumping.

CHARTER

2. No countervailing duty shall be imposed on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation. The term 'countervailing duty' shall be understood to mean an additional duty imposed for the purpose of off-setting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise.

3. No product of any Member country imported into any other Member country shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund of such duties or taxes.

4. No product of any Member country imported into any other Member country shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

5. No Member shall impose any anti-dumping or countervailing duty or charge on the importation of any product of other Member countries unless it determines that the effect of the dumping or subsidization, as the case may be, is such as materially to injure or threaten to injure an established domestic industry, or is such as to prevent the establishment of a domestic industry.

COMMENTARY

17:2 1. The delegate for China suggested the following addition to this paragraph:

"In the event of preferential treatment being accorded by a country to certain countries to the exclusion of other Member countries, no countervailing duty shall be imposed upon the products imported from such other Member countries against subsidies which are granted by the latter to such products as compensation for covering the preferential margin."

2. The delegate for Brazil suggested that quantitative restrictions or other punitive measures should be permissible in order to cope with the import of subsidized products.

17:3

17:4

17:5 The delegate for Brazil suggested the deletion of this paragraph.

CHAPTER
CHARTER

6. Nothing in this Article shall preclude Members to a regulatory commodity agreement conforming to the principles of Chapter VII from incorporating in such agreement provisions prohibiting, as between themselves, the use of anti-dumping duties in cases in which dumping, within the meaning of paragraph 1 of this Article, may be permitted under the terms of such an agreement.

COMMENTARY

17:6

Suggested new paragraph under Article 17

The delegate for Australia, supported by those for New Zealand and the Union of South Africa, suggested inclusion in Article 17 of the following paragraph:

7. "Any Member maintaining restrictions on forms of dumping other than 'price dumping', e.g., freight dumping or dumping by means of depreciation of currency, shall only impose such dumping duties where it has determined after enquiry that the method and extent of dumping against which action is taken is such as to injure or threaten to injure an established domestic industry."

While not adopting the proposed text, the Committee decided to forward it for consideration at the Second Session of the Preparatory Committee.

CHARTER

Article 18

Tariff Valuation

1. Members undertake to work toward the standardization, insofar as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering such co-operation, the Organization is authorized to investigate and recommend to Members such bases and methods for determining the value of products as would appear best suited to the needs of commerce and most capable of general adoption.
2. The Members recognize the validity of the general principle of tariff valuation set forth in the following sub-paragraphs, and they undertake to give effect to such principles, in respect of all products subject to duties, charges or restrictions based upon or regulated in any manner by value, at the earliest practicable date. Moreover, they undertake, upon a request by another Member, to review the operation of any of their laws or regulations relating to value for duty purposes in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

COMMENTARY

Article 18

Tariff Valuation

18:1

18:2

1. The delegates for certain countries (Belgium, Luxembourg, Czechoslovakia, and the Netherlands) wished to provide for a definite early date for the entry into force of the provisions of paragraph 2. The delegate for China suggested that the entry into force should be preceded by a transitional period.
2. The delegate for the Netherlands suggested that the procedures should be more exactly indicated. The Committee considered, however, that these suggestions were too detailed for inclusion in this paragraph. One of these suggestions (concerning the trial of value litigation) was considered in connection with Article 21 paragraph 2.

CHARTER

(Paragraph 18:2(a) has not yet been dealt with by the
Committee. See Note by Secretariat opposite)

COMMENTARY

Note by Secretariat on Article 18:2(a):

Since paragraph 2(a) has not been finally dealt with by the Technical Sub-Committee, the following alternative texts are supplied for consideration by the Drafting Committee. Alternative A represents the text in the United States Draft Charter; Alternatives B and C have been supplied by certain delegations which have reconsidered the text set forth in document E/PC/T/C.6/W.76 and in an addendum giving two Canadian versions circulated as a "white paper".

Alternative A

The value for duty purposes of imported products should be based on the actual value of the kind of imported merchandise on which duty is assessed, or the nearest ascertainable equivalent of such value, and should not be based on the value of products of national origin or on arbitrary or fictitious valuations.

Alternative B

The value for duty of imported products should be based on their actual value as represented by the price at which, at a legally determined time and place, and in the ordinary course of trade between independent buyer and seller, like goods are sold or offered for sale in quantities and under conditions comparable to those under which the imported goods are sold or offered for sale, or the nearest ascertainable equivalent of such value. The value should not be based on the value of products of national origin or on arbitrary or fictitious valuations.

Alternative C

Where an actual price of imported products is not accepted as the basis for determining their value for duty purposes, the their assessed value should not be based on the value of products of national origin or on arbitrary or spurious valuations, but should satisfy clearly defined and stable conditions which conform with commercial usage.

CHARTER

(b) The value for duty purposes of any imported product should

not include the amount of any [customs duty or] internal tax, applicable within the country of origin or export from which the imported product has been relieved by means of refund or made exempt.

(c) In converting the value of any imported product from one

currency to another for the purpose of assessing duty, the rate of exchange to be used should be fixed in accordance with prescribed standards to reflect effectively the current value of each currency in commercial transactions.

(d) The bases and methods for determining the value of products

subject to duties charges, or restrictions based upon or regulated by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the amount of duty likely to be imposed.

COMMENTARY

18:2 (b)

1. The Committee decided to leave for later decision the question of including in this paragraph the words "customs duty or" enclosed in square brackets in the opposite text.

2. The delegate for China reserved his position on this sub-paragraph.

18:2 (c)

1. The delegate for the United States reserved the right to recommend insertion of the words "or rates" after "rate", or otherwise to provide for the conversion of currencies in the cases of dual or multiple rates.

2. The delegate for China reserved his position on this paragraph.

18:2 (d)

CHARTER

Article 19

Customs Formalities

1. The Members recognize the principle that subsidiary fees and charges imposed on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. They also recognize the need for reducing the number and diversity of such subsidiary fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements.
2. Members undertake to give effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they undertake, upon request by another Member, to review the operation of any of their customs laws and regulations in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.
3. Except in cases of serious negligence, greater than nominal penalties over and above the duty properly payable should not be imposed by any Member in connection with the importation of any product of any other Member country because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established.

COMMENTARY

Article 19

Customs Formalities

19:1

19:2

19:3

CHARTER

4. The provisions of this Article shall extend to fees, charges, formalities and requirements relating to all customs matters, including:

- (a) Consular transactions, such as consular invoices and certificates;
- (b) Quantitative restrictions;
- (c) Licensing;
- (d) Exchange regulations;
- (e) Statistical services;
- (f) Documents, documentation and certification;
- (g) Analysis and inspection; and
- (h) Quarantine, sanitation and fumigation.

Article 20

Marks of Origin

1. The Members agree that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum.
2. Each Member shall accord to the products of each other Member country treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.
3. Whenever administratively practicable, Members should permit required marks of origin to be imposed at the time of importation.

COMMENTARY

Article 20

Marks of Origin

20:1

20:2

20:3

At the London Session, certain delegates had objected to the text of the corresponding paragraph in the United States Draft Charter which started: "Whenever administratively possible Members shall" The present text in which the words "practicable" and "should" are substituted for "possible" and "shall," represents a compromise acceptable to the majority of members of the Committee. The delegates for Canada, Czechoslovakia and the United States stated that they would have preferred to leave in the word "shall."

The delegate for the United Kingdom reserved his position on this paragraph which in his view should be deleted.

MARKING

CHARTER

4. The laws and regulations of the Members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.
5. Members agree to work in co-operation through the Organization toward the early elimination of unnecessary marking-of-origin requirements. The Organization is authorized to investigate and recommend to Members measures directed to this end, including the adoption of schedules of general categories of products which shall not in any case be required to be marked to indicate their origin. With a view to furthering this work, the Organization is authorized to investigate and recommend to Members description of categories of products in respect of which marking requirements operate to restrict trade in a degree disproportionate to any proper purpose to be served.
6. As a general rule, no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking has been unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

COMMENTARY

20:4

20:5

20:6

1. In order to meet objections against the original text raised by certain delegates, the obligation that would be incurred by Members was rendered less exacting by addition of the words "As a general rule" at the beginning of the Article, and by substituting the words "deceptive marks have been affixed for "false marks have been intentionally affixed"
2. The question raised by certain delegates concerning the right of each country to prohibit the import, export and transit of foreign goods falsely marked as being produced in the country in question was considered to be covered primarily by the words "deceptive practices", in Article 37, sub-paragraph (g).
3. The delegate for the United Kingdom reserved his position on this paragraph.

CHARTER

7. The interest of Members in protecting the regional and geographical marks of origin of their distinctive products is recognized and shall be given consideration by the Organization which is authorized to recommend a conference of interested Members on the subject.

COMMENTARY

20:7

1. The delegates for certain countries (Belgium, Luxemburg, Czechoslovakia, France and the Netherlands), while accepting paragraph 7 as given above, did not consider it going far enough and were in favour of replacing it by the following text:

"Members agree to grant to trade names and marks of origin and quality that are recognized and protected by other Members, the same protection as is afforded by their domestic legislation to their own marks and trade names or origin and quality, provided that these marks and trade names relate to like products. They shall, for this purpose, transmit to the Organization a list of such marks and trade names as are protected by their domestic legislation and for which they wish to secure protection in importing countries.

They undertake further to take part in any conference called by the Organization to secure effective international protection for marks of origin."

The delegate for France pointed out that if this text were adopted, the nature of the national legislation by which such protection is given, would not have to be changed; in fact, if a country had no law protecting its domestic trade names and marks, it would not have to grant any protection to the trade names and marks of imported products.

2. The delegate for Chile reserved his position on paragraph 7 since he considered that further time was required for studying the matter which ought to be taken up at a later date.

CHARTER

Article 21

Publication and Administration of Trade Regulations
Advance Notice of Restrictive Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Member, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, or distribution, transportation or insurance, or affecting their warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable traders and Governments to become acquainted with them. Agreements in force between the government or a governmental agency of any Member country and the government or governmental agency of any other country affecting international trade policy shall also be published. Copies of such laws, regulations, decisions, rulings and agreements shall be communicated promptly to the Organization. This paragraph shall not require any Member to disclose confidential information which would impede law enforcement, or otherwise be contrary to the public interest "or would prejudice the legitimate business interests of particular enterprises, public or private."
2. Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Moreover, Members undertake to maintain, or to institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of of the agencies entrusted with administrative enforcement.

COMMENTARY

Article 21Publication and Administration of Trade Regulations
Advance Notice of Restrictive Regulations

21:1

The Committee felt that it might be useful if the Preparatory Committee were to suggest the absorption by the Organization of certain existing international agencies such as the Brussels Tariff Bureau, and arrangements for collecting, analyzing and publishing laws, regulations and decisions concerning foreign trade and for the periodical collection, in detailed studies, of information concerning the comparative regulations of Member States on any given point. Attention was drawn in this connection to the provision of paragraph 4 of Article 81 of the Draft Charter.

21:2

1. It is understood that the "judicial, arbitral or administrative tribunals" referred to in this paragraph need not be especially established to deal exclusively with customs matters.
2. A reservation was made on this paragraph by the delegates for New Zealand and the Union of South Africa who were of the opinion that appeals against administrative decisions might be made to the competent Minister and that it should be necessary to provide for independent tribunals or procedure.

CHAPTER

3. No administrative ruling of any Member effecting an advance in a rate of import duty or other charge under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports or on the transfer of payments therefor, shall, as a general rule and within the limits of administrative practicability, be applied to products of any other Member countries already enroute at the time of publication thereof in accordance with paragraph 1 of this Article, Provided, that if any Member customarily exempts from such new or increased obligation products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the date of such publication, such practice shall be considered full compliance with this paragraph. The provisions of this paragraph shall not apply to anti-dumping or countervailing duties.

Article 22

Information, Statistics and Trade Terminology

1. Members undertake to communicate to the Organization as promptly and in as much detail as is reasonably practicable:
 - (a) Statistics of their external trade in goods (including, imports, exports, re-exports, transit and trans-shipment and, where applicable, goods in warehouse or in bond);
 - (b) Statistics of governmental revenue from import and export duties and other taxes on goods moving in international trade and, in so far as readily ascertainable, of subsidy payments affecting such trade.So far as possible, the statistics referred to in (a) and (b) shall be related to tariff classifications

COMMENTARY

21:3

The delegates for Brazil, Czechoslovakia, France, Norway, the Union of South Africa and the United Kingdom reserved their position provisionally on this paragraph.

Article 22

22:1

Information, Statistics and Trade Terminology

The delegate for Canada, supported by the delegate for the Netherlands, with a view to the possible centralization of the statistical services of the United Nations, suggested that the following words be added after "Organization" in the first sentence: "or to such agency as may be designated for the purpose by the Organization."

CHARTER

and be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value, or by amounts of exchange made available.

2. Members agree to publish regularly and as promptly as possible the statistics referred to in paragraph 1 of this Article.

3. Members undertake to give careful consideration to any recommendations which the Organization may make to them with a view to improvement of the statistical information furnished under paragraph 1 of this Article.

4. Members agree to make available to the Organization at its request and in so far as reasonably practicable, such other statistical information as the Organization may deem necessary to enable it to fulfill its functions, provided that such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information.

5. The Organization shall act as a centre for the collection, exchange and publication of statistical information of the kind referred to in paragraph 1 of this Article. The Organization may, in collaboration with the Economic and Social Council of the United Nations and its Commissions, and with any other interested international organization, engage in studies with a view to bringing about improvements in the methods of collecting, analyzing and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications.

COMMENTARY

22:2 _____

22:3 _____

22:4 _____

22:5 _____

CHARTER

6. The Organization may also, in co-operation with the other organizations referred to in paragraph 5 of this Article, study the question of adopting standards, nomenclatures, terms and forms to be used in international trade and in the official documents and statistics of Members relevant thereto, and may promote the general acceptance by Members of such standards, nomenclatures, terms and forms as may be recommended.

Article 23

Boycotts

No Member shall encourage, support or participate in boycotts or other campaigns which are designed to discourage, directly or indirectly, the consumption within its territory of products of any specific Member country or countries on grounds of origin, or the sale of products for consumption within other Member countries on grounds of destination.

COMMENTARY

22:6

This paragraph corresponds generally to paragraph 7 in Article 16 of the United States Draft Charter. It will be observed, however, that unlike the last-mentioned paragraph, the text now recommended does not refer to the adoption of standards, nomenclature, terms and forms or to a procedure according to which adopted standards, etc, would become automatically effective upon notice given by the Organization. In view of this fact, paragraph 8 of Article 66, as adopted at the First Session, containing rules for the adoption by the Conference of standards, etc. was deleted. It was noted that the procedure laid down in paragraph 5 of Article 66 of the Draft Charter, as revised at the same Session, might be employed to assist in promoting international agreements for this purpose.

Article 23

23.

Boycotts

1. The words "any specific Member country or countries" were substituted for the expression "other Member countries" where this first appears in the original text of this Article since it was considered that the ban on boycotts should not apply to campaigns in support of the use or consumption of products of national origin or manufacture and not directed against the products of any specific country.
2. The delegate for India reserved his position on this Article (Cf. General Comments under Article 37).
3. The delegate for Lebanon reiterated his view that boycotts may be justified on political or moral grounds.

CHARTER

SECTION B. TARIFF AND TARIFF PREFERENCES

Article 24

Reduction of Tariffs and Elimination of Preferences

1. Each Member, other than a Member subject to the provisions of Article 33, shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Member or Members directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of import tariff preferences. These negotiations shall proceed in accordance with the following rules:

(a) Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification or termination of existing international obligations except by agreement between the contracting parties, or failing that, by termination of such obligations in accordance with their terms.

(b) All negotiated reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of preference, and no margin of preference shall be increased.

(c) The binding or consolidation of low tariffs or of tariff-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

COMMENTARY

Article 24

Reduction of Tariffs and Elimination of Preferences

24:1b

1. The delegates for Australia, New Zealand and the Union of South Africa announced that they maintained their views expressed at the First Session concerning Paragraph 1(b) - namely, that the rule contained in this paragraph should not operate automatically, but that members should be free to negotiate for a reduction in the preferential rate as well as in the most-favoured-nation rate, provided that the margin between the two negotiated rates is smaller than that existing on a (prior) date to be agreed upon (see Report of the First Session, page 10, (c), (i)). The delegate for India now concurred in this view.

2. Each Member participating in negotiations pursuant to paragraph 1 shall keep the Organization informed of the progress thereof and shall transmit to the Organization a copy of the agreement or agreements incorporating the results of such negotiations.

COMMENTARY

2. The delegate for India reserved his position regarding sub-paragraph (b) of paragraph 1 and suggested the following alternative text:

"Margins of preference on any product shall in no case be increased and no new preferences shall be introduced." The delegates for Australia and New Zealand supported this text.

CHARTER

3. If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1, such Member may refer the matter to the Organization, which shall make an investigation and make appropriate recommendations to the Members concerned. The Organization, if it finds that a Member has, without sufficient justification, having regard to the provisions of the Charter as a whole, failed to negotiate with such complaining Member in accordance with the requirements of paragraph 1, may determine that the complaining Member, or in exceptional cases the Members of the Organization generally, shall, notwithstanding the provisions of Article 14, be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member, or the Members of the Organization generally as the case may be, may have negotiated pursuant to paragraph 1. If such benefits are in fact withheld so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. The provisions of this paragraph shall operate in accordance with the provisions of Article 67.

COMMENTARY

- 24:3 1. The delegates for Brazil and Chile reserved their positions regarding paragraph 3 and suggested insertion of the words "and particularly with regard to Members' legitimate need for protection" after the phrase "having regard to the provisions of the Charter as a whole".
2. The delegate for Chile requested that the Committee should consider defining the expression "without sufficient justification" in the same sentence. It was agreed that it would be difficult to make a general definition of this term the interpretation of which would have to be decided by the Organization on the merits of each case.

Suggested new paragraph

The delegate for the United Kingdom proposed that the following new paragraph be added to Article 24:

"If any Member Country which has negotiated a consolidation of any of its tariff rates in pursuance of this Article should, at any time while such consolidation remains in effect, alter its method of tariff valuation or its tariff classification in such a way as to increase the duty payable upon any product which, at the time of negotiation of the tariff consolidation, was understood to be covered thereby, then the other Member or Members at whose request such consolidation was negotiated, shall be entitled to call for further negotiations forthwith with a view to reaching a satisfactory adjustment of the matter; and the Member which has altered its method of valuation or its tariff classification shall enter into such further negotiations as requested."

The Committee does not suggest insertion of such a paragraph in the text of the Charter. The questions raised have, however, been dealt with in Article VIII (footnote and paragraph 2) of the Draft General Agreement on Tariffs and Trade prepared by the Drafting Committee.

CHARTER

Section G: Quantitative Restrictions and Exchange Control

Article 25

General Elimination of Quantitative Restrictions.

1. Except as otherwise provided in this Charter, no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country.

2. The provisions of paragraph 1 shall not extend to the following:

(a) Prohibitions or restrictions on imports or exports instituted or maintained during the early post-war transitional period, which are essential to:

- (i) the equitable distribution among the several consuming countries of products in short supply, whether such products are owned by private interests or by the government of any Member;
- (ii) the maintenance of war-time price control by a Member country undergoing shortages subsequent to the war;
- (iii) the orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member or of industries developed in any Member country owing to the exigencies of the war, which it would be

COMMITTEE
COMMENTARY

Section C

Article 25

General Elimination of Quantitative Restrictions.

25:1

25:2(a)

uneconomic to maintain in normal conditions provided that prohibitions or restrictions for this purpose may not be instituted by any Member after the day on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action.

Import and export prohibitions and restrictions instituted or maintained under sub-paragraph (a) shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than 1 July 1949 provided that this period may, with the concurrence of the Organization, be extended in respect of any product for further periods not to exceed six months each.

(b) Export prohibitions or restrictions temporarily applied to relieve critical shortages of foodstuffs or other essential products in the exporting Member country.

(c) Import and export prohibitions or restrictions necessary to the application of standards for the classification and grading of commodities in international trade. If, in the opinion of the Organization, the standards adopted by a Member under this sub-paragraph are likely to have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards provided that it shall not request the revision of standards internationally agreed under paragraph 6 of Article 22.

(d) Exports or import quotas applied under regulatory inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VII.

COMMENTARY

The following text is extremely faint and largely illegible. It appears to be a series of paragraphs or a list of items, possibly related to the commentary on the preceding text. The text is too light to transcribe accurately.

25:2 (b)

The following text is extremely faint and largely illegible. It appears to be a series of paragraphs or a list of items, possibly related to the commentary on the preceding text. The text is too light to transcribe accurately.

25:2 (c)

The following text is extremely faint and largely illegible. It appears to be a series of paragraphs or a list of items, possibly related to the commentary on the preceding text. The text is too light to transcribe accurately.

25:2 (d)

The following text is extremely faint and largely illegible. It appears to be a series of paragraphs or a list of items, possibly related to the commentary on the preceding text. The text is too light to transcribe accurately.

CHARTER

(e) Import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or (ii) to remove a temporary surplus of the like domestic product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level. Any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of the restrictions. In determining this proportion the Member shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned. The Member shall consult with any other Members which are interested in the trade in question and which wish to initiate such consultations.

COMMENTARY

- 25:2 (e) 1. The Committee considered the proviso with reference to goods en route which had been inserted in square brackets in sub-paragraph 2 (f) as adopted at the London Session, with the indication that it should be retained "only if the matter is not fully covered in Article 21". The Committee decided to delete the proviso in question as well as the preceding few lines (concerning public notice of import restrictions pursuant to sub-paragraph 2(e) and to amend Article 27 so as to include provisions concerning public notice and goods en route (cf. Article 27 below). The remainder of the previous sub-paragraph 2 (f) was merged with sub-paragraph 2 (c).
2. The delegate for Belgium-Luxembourg proposed the following addition to the same sub-paragraph:

"Restrictions imposed under this exception should be strictly limited to the periods during which the aforesaid circumstances occur, and should not be imposed on seasonal commodities at a time when like domestic products are not available."

CHARTER

The Charter of the United Nations is a treaty that sets out the purposes and principles of the United Nations and the powers and functions of its various organs. It was signed in 1945 and entered into force in 1948. The Charter is the legal basis for the United Nations and its work. It defines the role of the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat. It also sets out the principles of international law that the United Nations is committed to promoting and maintaining.

COMMENTARY

25:2 (e)

3. The delegate for Chile maintained the proposal, made by the delegation of his country at the First Session, that the same sub-paragraph should not be confined to agricultural and fisheries products.

4. The delegate for China reserved his position regarding this sub-paragraph and suggested the following text:

"Import prohibitions or restrictions on any agricultural or other essential products imported in any form necessary to the enforcement of governmental measures which operate to regulate production, distribution, or consumption of like domestic products with a view to maintaining a dynamic equilibrium between the diverse economic activities of a country while in the process of its industrialization."

Since this text does not include the last three sentences of the sub-paragraph, the delegate for China also reserved his position concerning the relevant provision in paragraph 4 of Article 27.

5. The delegate for India suggested that the words "or to support the prices of such products" be added after "produced" in the same sub-paragraph, and that the two sentences from "Any restrictions" to "the product concerned" in sub-paragraph 2 (f) be deleted. The object of these changes, he pointed out, was to give governments the power to render effective schemes for the regulation of agricultural production that they might wish to establish. No other delegate supported the suggested changes, however, and certain delegates pointed out that, if adopted, the changes would provide a loophole for unwarranted restrictions. The Committee decided to report the suggested

CHAPTER

The following text is extremely faint and largely illegible. It appears to be a list of items or a detailed report, possibly containing names, dates, and specific details. The text is organized into several paragraphs and possibly numbered sections, but the individual words and phrases are too light to transcribe accurately. The overall structure suggests a formal document or a list of entries.

charges for consideration by the Preparatory Committee at its second session.

6. The delegate for Norway was unable to express an opinion on the reservation which the delegation of his country had made at the First Session with a view to confining sub-paragraph 2 (e) to agricultural products.

7. The delegate for the United Kingdom suggested that the words "or of a directly competitive product which may be marketed or produced" be added after the words "produced" in sub-paragraph 2 (e) (i) of paragraph 2.

~~CHAPTER-~~

(f) Import and export prohibitions or restrictions on private trade for the purpose of establishing a new, or maintaining an existing monopoly of trade for a state-trading enterprise operated under Articles 31, 32 and 33.

Article 26

Restrictions to Safeguard the Balance of Payments.

1. Members may need to use import restrictions as a means of safeguarding their external financial position and as a step toward the restoration of equilibrium in their balance of payments on a sound and lasting basis, particularly in view of their increased demand for imports needed to carry out their domestic employment, reconstruction, development or social policies. Accordingly, notwithstanding the provisions of Article 25, any Member may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard its balance of payments and monetary reserves.

COMMENTARY

25:2 (f)

26:1

Article 26

Restrictions to Safeguard the Balance of Payments

The words "in their balance of payments" are inserted after "equilibrium" for greater clarity.

CHARTER

2. The use of import restrictions under paragraph 1 shall be subject to the following requirements:

(a) No Member shall institute [or maintain] restrictions or intensify existing restrictions except to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in the level of its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. Due regard should be paid in each case to any special factors which may be affecting the level of the Member's reserves, to any commitments or other circumstances which may be affecting its need for reserves, and to any special credits or other resources which may be available to protect its reserves.

(b) Members shall eliminate the restrictions when conditions would no longer justify their institution [or maintenance] under sub-paragraph (a), and shall relax them progressively as such conditions are approached;

(c) Members shall not apply the restrictions in such a manner as to exclude completely imports of any class of goods.

COMMENTARY

26:2 (a) Note by the Secretariat. The words "or maintain" were enclosed in square brackets by the Legal Drafting Sub-Committee for consideration by the Drafting Committee.

26:2 (b) 1. The words "or maintenance" were enclosed in square brackets by the Legal Drafting Sub-Committee for consideration by the Drafting Committee.

2. The delegate for France reserved his position on this sub-paragraph.

26:2 (c) The delegates for Chile and Czechoslovakia stated that they would have preferred the wording of this sub-paragraph as adopted at the London Session. ("Not to carry the imposition of new import restrictions under sub-paragraph (a) to a point at which it involves the complete exclusion of imports of any class of goods.")

CHARTER

3. (a) Any Member which is not applying restrictions under paragraphs 1 and 2 but which is considering the need for their institution, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the institution of such restrictions) consult with the Organization as to the nature of its balance-of-payments difficulties, the various corrective measures which may be available, and the possible effects of such measures on the economies of other Members. The Organization shall invite the International Monetary Fund to participate in the consultations. No Member shall be required during such discussions to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt.

- (b) The Organization may at any time invite any Member applying import restrictions under paragraphs 1 and 2 to consult with it about the form or extent of the restrictions, and shall invite a Member substantially intensifying such restrictions to consult accordingly within thirty days. Members thus invited shall participate in such discussions. In the conduct of such discussions the Organization shall consult the International Monetary Fund and any other appropriate inter-governmental organizations, in particular with regard to the alternative methods available to the Member in question of meeting its balance-of-payments difficulties. The Organization shall, not later than two years from the day on which this Charter enters into force, review all restrictions existing

COMMENTARY

26:3 (a) The word "immediately" was substituted for "as soon as possible. The delegate for the United Kingdom stated that he preferred the expression "as soon as possible".

26:3 (b) The last sentence of this paragraph was modified so as to exempt the Organization from the obligation to report on restrictions which were in existence on the date the Charter came into operation but were lifted before the review was made.

on that day and still applied under paragraphs 1 and 2 at the time of the review.

(c) 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 paragraphs 1 and 2 to maintain, intensify or institute, or for the maintenance, intensification or institution of restrictions under specified future conditions. The Organization shall invite the International Monetary Fund to participate in the consultations. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or institution of restrictions by the Member in question insofar as the general extent, degree and duration of the restrictions are concerned. To the extent to which such approval has been given, the action of the Member applying restrictions shall not be open to challenge under sub-paragraph (d), on the ground that such action is inconsistent with the provisions of paragraphs 1 and 2.

(d) Any Member, which considers that any other Member is applying import restrictions under paragraphs 1 and 2 in a manner inconsistent with the provisions of those paragraphs or of Articles 27 and 28, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organization. The Member applying the restrictions shall then participate in discussions of the reasons for its action. The Organization if it is satisfied that there is a prima facie case that the complaining Member's interests are adversely affected, may after consultation with the International Monetary Fund

26:3 (c) The delegate for Australia pointed out that, although under the last sentence of this sub-paragraph a restriction imposed by a Member after prior approval was not subject to challenge under sub-paragraph (d), the provisions of sub-paragraph (a) would still be applicable. He did not consider this satisfactory and suggested that sub-paragraph (c) be modified so as to eliminate the application of sub-paragraph (a) in cases when prior approval of the restriction concerned had been obtained. While the Committee did not find itself called upon to suggest such a change, it thought it appropriate to draw the attention of the Preparatory Committee to the suggestion made.

- 26:3 (d)
1. The words "and, if it considers it desirable, after submitting observations to the parties with the aim of achieving a satisfactory settlement of the matter in question" were inserted in the middle of this sub-paragraph, with a view to enabling the Organization to attempt bringing about conciliation between Members before recommending the withdrawal or modification of restrictions.
 2. In the last sentence of this sub-paragraph, the word "approve" was substituted for "specify" after it had been pointed out that it would be difficult for the Organization to determine from which

on any matter falling within the competence of the Fund, and, if it considers it desirable, after submitting observations to the parties with the aim of achieving a satisfactory settlement of the matter in question, recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the provisions of paragraphs 1 and 2 or of Articles 27 or 28 or in a manner which unnecessarily damages the interests of another Member. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Member shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

obligations the Member in question should be released.

3. The delegate for Belgium, supported by those for Canada and the United States, suggested the following addition to sub-paragraph 3-(d):

"The Organization may initiate proceedings, analogous to the foregoing, on its own motion if it considers that any Member is applying import restrictions under paragraphs 1 and 2 in a manner inconsistent with the provisions of paragraph 1 or 2, or of Article 27".

4. The delegate for the United States suggested that the expression "under paragraphs 1 and 2" be amended to "under paragraphs 1, 2 and 4". While not adopting this modification, the Committee agreed that the sub-paragraph as worded should be interpreted as covering the restrictions referred to under paragraph 4.

(e) The Organization, in reaching its determination under sub-paragraph (d) shall not recommend the withdrawal or general relaxation of restrictions on the ground that the existing or prospective balance-of-payments difficulties of the Member in question could be avoided by a change in that Member's domestic employment, reconstruction, development or social policies. In carrying out such domestic policies, however, Members shall pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis.

4. In applying the restrictions on imports under this Article, a Member may select imports for restriction on the grounds of essentiality in such a way as to promote its domestic employment, reconstruction, development or social policies and programmes. In so doing the Member shall avoid all unnecessary damage to the commercial interests of other Members.

5. If there is 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 seek consultation with the International Monetary Fund. The Organization may then, in collaboration throughout with the Fund, initiate discussions to consider whether other measures might not 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.

COMMENTARY

26:3 (e)

26:4

Note by the Secretariat. The Legal Drafting Sub-Committee did not change the text of the Report of the First Session and referred back to the Drafting Committee the decision on the following two alternatives as it was uncertain what exactly had been referred to it.

- A. "the essentiality of other imports to"
- B. "essentiality in such a way as to give priority to imports required by".

If the Sub-Committee had to consider the choice between the two texts, it preferred alternative B. However, the Sub-Committee felt that if the words "imports required" should be retained or deleted, it involved a matter of substance.

26:5

6. Members recognize that in the early years of the Organization all of them will be confronted, in varying degrees with problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this Article or under Article 28, take full account of the difficulties of post-war adjustment.

7. Throughout this Section the phrase "import restrictions" includes the restriction of imports by state-trading enterprises to an extent greater than that which would be permissible under Article 32.

Article 27

Non-Discriminatory Administration of Quantitative Restrictions.

1. No prohibition or restriction shall be applied by any Member on the importation of any product of any other Member country or on the exportation of any product destined for any other Member country, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. Members shall observe the following provisions in applying import restrictions:

(a) The Administration of such restrictions should be carried out in such a way as to result in a distribution of trade which approaches as closely as possible to the share which the various Member countries might be expected to obtain as the result of international competition in the absence of such restrictions.

(b) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given

26:6 The Committee decided to reverse the order of paragraphs 6 and 7 of the London text. This paragraph accordingly corresponds to Article 7 of that text.

26:7 The proviso enclosed in square brackets in the London version of this paragraph was deleted since it was considered covered by paragraph 1 of Article 35, as now drafted.

27:1

27:2 Paragraph 2 was redrafted in a manner thought to render the provisions clearer and more consequential. Sub-paragraph (a), (a) setting out a general principle of administering import restrictions, represents an addition to the text adopted at the First Session. (b)

of their amount in accordance with sub-paragraph 3 (b) of this Article.

(c) In cases in which quotas are not practicable, the restrictions may be applied by means of import licenses or permits without a quota.

(d) Import licenses or permits, whether or not issued in connection with quotas shall not (save for purposes of operating quotas allocated in accordance with sub-paragraph (e) of this paragraph) require or provide that the license or permit be utilized for the importation of the product concerned from a particular country or source.

(e) In cases in which a quota is allocated among supplying countries, the shares of the various supplying Member countries should in principle be determined in accordance with commercial considerations such as price, quality and customary sources of supply. For the purpose of appraising such commercial considerations, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Member countries having a substantial interest in supplying the product, shares based upon the proportions supplied by such Member countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

3. (a) In cases where import licenses are issued in connection with import restrictions, the Member applying the restriction

27:2 (c)

27:2 (d)

27:2 (e)

The present draft of Article 27, Paragraph 2 excludes sub-paragraph 2 (e) of the text adopted at the First Session, reading:

"(e) No conditions or formalities shall be imposed, which would prevent any Member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate."

27:3 (a)

shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licenses granted over a past recent period and the distribution of such licenses among supplying countries, Provided, however, that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

(b) In the case of import restrictions involving the fixing of quotas (whether or not allocated among supplying countries) or made effective through import licenses or other measures, the Member applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period, or of any change in such quantity or value.

(c) Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry, Provided that they may be counted, so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary against the quantities permitted to be imported in the next following period or periods, and Provided further that if any Member customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered in full compliance with this sub-paragraph.

(d) In the case of quotas allocated among supplying countries, the Member applying the restriction shall promptly inform all other Members having an interest in supplying the

- 27:3 (b) The words "or made effective through import licenses or other measures" were inserted in order to ascertain that this sub-paragraph should adequately cover the provision concerning public notice (on import restrictions pursuant to sub-paragraph 2 (e) of Article 25) deleted from the version adopted at the First Session of sub-paragraph 2 (f) of Article 25 (cf. above).
- 27:3 (c) This sub-paragraph was inserted to replace the provision concerning goods en route, included in square brackets in sub-paragraph 2 (f) of Article 25 as worded at the First Session of the Preparatory Committee (cf. above). The second proviso was added to bring this sub-paragraph into harmony with the provision concerning publication of certain administrative rulings contained in paragraph 3 of Article 21.
- 27:3 (d) The words "and shall give public notice thereof" were added to this sub-paragraph, which corresponds to sub-paragraph 3 (c) of the text adopted at the First Session.

product concerned of the shares in the quota, by quantity or value, currently allocated to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (e) of this Article or under paragraph 2 (e) of Article 25, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restriction, Provided that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization, consult promptly with the other Member or the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.

5. The provisions of this Article shall apply to any tariff quota established or maintained by any Member and, insofar as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or requirements under paragraphs 3 and 4 of Article 15.

27:4 The delegate for China reserved his position on this paragraph.

27:5 This paragraph was amended so as to provide for the extension of the principles of Article 27, insofar as applicable, to export restrictions.

CHAPTER

Article 28

Exceptions to the Rule of Non-Discrimination

1. The provisions of this Section shall not preclude
 - (a) restrictions with equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund;
 - (b) prohibitions or restrictions in accordance with paragraphs 2 (a) (i) or 2 (d) of Article 25;
 - (c) conditions attaching to exports which are necessary to ensure that an exporting Member country receives for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting Member country;
 - (d) restrictions in accordance with Article 26 which either
 - (i) are applied against imports from other countries, but not as between themselves, by a group of territories having a common quota in the International Monetary Fund, Provided that such restrictions are in all other respects consistent with Article 27, or
 - (ii) assist in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 27, a country whose economy has been disrupted by war;
 - (e) restrictions in accordance with Article 26 which both
 - (i) provide a Member with additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraph 2 of

COMMENTARY

Article 28

Exceptions to the Rule of Non-Discrimination

28:1 (a)

28:1 (b)

28:1 (c)

28:1 (d) (e) For greater clarity, sub-paragraphs (d) (iii) and (iv) of the text adopted at the London Session were arranged as (i) and (ii) of a new sub-paragraph (e).

Article 26, if its restrictions were consistent with Article 27, and

- (ii) have equivalent effect to exchange restrictions, which are permitted to that Member under the Articles of Agreement of the International Monetary Fund or under the terms of any special exchange agreement, which may have been made between the Member and the Organization under Article 29, Provided that a Member which is not applying restrictions on payments and transfers for current international transactions, may apply import restrictions under (i) of this sub-paragraph in special circumstances and only with the prior approval of the Organization in agreement with the International Monetary Fund.

2. If the Organization finds, after consultation with the International Monetary Fund on matters within the competence of the Fund, that import restrictions or exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided under this Article or in a manner which discriminates unnecessarily against the trade of another Member country, the Member shall within sixty days remove the discrimination or modify it as specified by the Organization, Provided that a Member may, if it so desires, consult with the Organization to obtain its prior approval for such discrimination, under the procedure set forth in paragraph 3 (c) of Article 26, and to the extent that such approval is given, the discrimination shall not be open to challenge under this paragraph.

28:2

3. When three-quarters of the Members of the Organization have accepted the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund, but in any event before 31 December 1951, the Organization shall review the operation of this Article, in consultation with the International Monetary Fund, with a view to the earliest possible elimination of any discrimination, under paragraphs 1 (e) (i) and (ii) of this Article, which restrict the expansion of world trade.

Article 29

Exchange Arrangements

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organization.
2. Members shall not seek by exchange action to frustrate the purposes of the Organization and shall not seek by trade action to frustrate the purposes of the International Monetary Fund.
3. In order to avoid the imposition of trade restrictions and discriminations through exchange techniques and in order to avoid the danger of conflicting jurisdiction between the Organization and the International Monetary Fund in exchange matters, Members of the Organization shall also undertake membership of the International Monetary Fund, Provided that any country, which is not a member of the International Monetary Fund may become a Member of the Organization if upon accepting this Charter it undertakes to enter, within a time to be determined by the Organization after consultation with the International Monetary

28:3 Certain delegates objected to the last few words of this
paragraph ("which restrict the expansion of world trade").

29:1 _____

29:2 _____

29:3 This paragraph was redrafted so as to permit a country which
is not a member of the International Monetary Fund to become a
Member of the Organization if it undertakes to enter, within a
time to be determined by the Organization after consultation with
the Fund, into a special exchange agreement.

Fund, into a special exchange agreement with the Organization which would become part of its obligations under this Charter, and Provided further that a member of the Organization, which ceases to be a member of the International Monetary Fund, shall forthwith enter into a special exchange agreement with the Organization, which shall then become part of its obligations under this Charter.

4. A Member which has made such an agreement undertakes to furnish the Organization with the information which it may require, within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund, in order to carry out its functions relating to such agreement.

5. A special exchange agreement between a Member and the Organization under paragraph 3 of this Article must provide to the satisfaction of the Organization, collaborating throughout with the International Monetary Fund, that the purposes common to the Organization and the Fund will not be frustrated as a result of action in exchange matters by the Member in question.

6. The Organization shall seek and accept the opinion of the International Monetary Fund as to whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement and shall act in collaboration with the International Monetary Fund on all questions which may arise in the working of a special exchange agreement under this Article.

CHARTER

Section D. Subsidies

Article 30

General Undertaking Regarding Subsidies - Elimination of Export Subsidies - Exceptions

1. If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into its territory, the Member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the estimated effect of the subsidization on the quantity of the affected product or products, imported into or exported from the territory of the Member country and as to the conditions making the subsidization necessary. In any case in which it is determined that serious prejudice to the interest of any other Member is caused or threatened by any such subsidization, the Member granting the subsidization shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.
2. (a) No Member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain any other system, which results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in the conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability, Provided that this shall not

COMMENTARY

Section D.

30:1 1. As is suggested in the Report of the First Session
(page 16, Section D:1(d)(iv)), the Committee considered
the initial words "Except as provided in paragraphs 2 and 4
of this Article". They were found superfluous and accordingly
deleted.

2. Certain other changes, chiefly of a formal nature, were
made in the first sentence of this paragraph. It will be
observed that the provision in this sentence as now drafted
applies to cases in which the subsidy operates, "directly
or indirectly", to increase exports or reduce imports of any
product and can thus not be interpreted as being confined to
subsidies operating directly to affect trade in the product
under consideration. Similarly, in the same sentence the
words "anticipated effect" were changed to "estimated effect"
in order to remove the possible impression that the effect of
a subsidy on trade could be accurately predicted.

30:2 1. The initial words of paragraph 2, referring to paragraph 4,
were deleted as superfluous, and the paragraph was divided into
two sub-paragraphs (a) and (b).

2. The concluding words of sub-paragraph (a) were modified
for greater clarity. The deletion of the words "would be
considered as a case under paragraph (1)" was designed in
part to render it clear that paragraph 2 covers a special
case but is not an alternative to paragraph 1, which refers
to subsidies affecting both exports and imports of the
subsidizing country. The delegate for Cuba reserved his
position regarding the exclusion of these words.

prevent any Member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically, from remitting such duties or taxes which have accrued, or from using the proceeds of such duties or taxes to make payments to domestic producers;

(b) Members shall give effect to the provisions of this paragraph at the earliest practicable date, but in any event not later than three years from the day on which this Charter enters into force. If any Member considers itself unable to make the provisions of this paragraph effective in respect of any specified product or products upon the expiration of such period, such Member shall, at least three months before the expiration of such period, give to the Organization notice in writing requesting a specific extension of the period and accompanied by a complete analysis of the system in question and the facts justifying it. It shall then be determined whether the extension requested should be made.

COMMENTARY

30:2 3. At the First Session the delegate for China had made a reservation (cf. Report of the First Session, page 16, Section D, 1 (d) (ix)) with a view to modifying paragraph 2 so that subsidies to promote exports of "special commodities" would be permitted in certain countries until they had attained equilibrium in their balance of payments. The delegate for the same country in the Drafting Committee expressed his willingness to withdraw the reservation if satisfied that the subsidies in question were permissible under other provisions of the Charter.

CHARTER

3. A system for the stabilization of the domestic price or of returns to domestic producers of a primary product, which results over a period in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, may be determined not to involve a subsidy on exportation under the terms of paragraph 2 of this article if it has also resulted over a period in the sale of the product for export at a price higher than the comparable price charged for the like product to domestic buyers, and if the system is so operated, either because of the effective limitation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interest of other Members.

4. (a) In any case of subsidization of a primary commodity, if a Member considers that its interests are seriously prejudiced by the subsidy or if the Member granting the subsidy considers itself unable to comply with the provisions of paragraph 2 of this article within the time limit laid down therein, the difficulty may be determined to be a special difficulty of the kind referred to in Chapter VII, and in that event, the procedure laid down in that Chapter shall be followed;
- (b) If it is determined that the measures provided for in Chapter VII have not succeeded, or do not promise to succeed, within a reasonable period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 of this Article shall cease to apply in

COMMENTARY

30:3 At the First Session (Report, page 16, Section D, 1 (d)
(xi), the delegate for New Zealand had raised the question
whether the domestic price to be considered in this paragraph
should not be that paid to domestic producers. The Committee
acted on a suggestion by the delegate for the same country by
adding the words "or of returns to domestic producers" after
"domestic price" in the first line.

- 30:4
1. The reference to paragraph 1 in the middle of sub-paragraph
(b) was deleted since it was considered that in cases such as
those dealt with here the obligation of the subsidizing
Member to notify the Organization and discuss with the
Members concerned should not be relinquished.
 2. The delegate for Canada reserved his position on
sub-paragraph (b) which he feared might provide an escape
for subsidizing countries taking such an attitude that no
agreement could be reached, in which case they would be free
to act as they wished. He did not consider the provisions
of paragraph 5 an adequate safeguard against abuse.

respect of such product as from the effective date
of such determination and shall not be reapplied in
respect of such product until a date determined in
accordance with procedures approved by the Organization.

3. The delegate for Chile wished to have recorded his view that paragraph 2 "should not be interpreted so as to prevent countries far removed from world markets, to sell their products at current world market prices even though these may be lower than the prices charged in the domestic market, such action not being the result of a direct or indirect subsidy or of the establishment of any other system".

CHARTER

5. Notwithstanding the provisions of paragraph 2 and 4 (b) of this article, 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, account being taken insofar as practicable of any special factors which may have affected or may be affecting the trade in that product. The selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member granting the subsidy: Provided that such Member shall, upon the request of any other Member having an important interest in the trade in that product, or upon the request of the Organization, consult promptly with the other Member or with the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.

6. Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with paragraph 6 of Article 66.

Section E. State Trading

Article 31

Non-Discriminatory Administration of State-Trading Enterprises

1. If any Member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute or produce any

COMMENTARY

30:5 1. In the Report of the First Session, this paragraph appeared as a sub-paragraph of paragraph 4, which was concerned wholly with primary commodities. After the change in the text just referred to, it was found appropriate to present it as paragraph 5.

2. The Committee decided to delete the word "primary" before "product" in the first sentence of this paragraph. The word had been added at the First Session to the text of the United States Draft Charter, but its inclusion had been questioned on account of the border cases presented by products not being primary commodities in a narrow sense.

3. The delegate for China reserved his opinion on this paragraph, holding it that the share of the export of any product - whether or not supported by the use of subsidies or similar measures - should not be limited to its share in world trade during any previous representative period, except when it was proved that such export forms part of a burdensome world surplus.

30:6 _____

Section E

31:1 1. The square brackets enclosing the words "distribute or produce" in the first sentence according to the text adopted at the First Session were deleted.

2. The delegate for Czechoslovakia objected to the inclusion of these words.

product, the commerce of other Members shall be accorded treatment no less favourable than that accorded to the commerce of any country other than that in which the enterprise is located in respect of the purchase or sale by such enterprise of any product. To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as price, quality, marketability, transportation and other terms of purchase or sale and also any differential customs treatment maintained consistently with the other provisions of this Charter.

3. The words "and exercise effective control over the trading operations of such enterprise" entered in square brackets in the same sentence were deleted in connection with an amendment to paragraph 3 referred to below.

4. Finally, the last sentence in the text adopted at the First Session (stating the obligation of Members maintaining State enterprises or granting exclusive or special privileges to enterprises to supply information in connection with consultation) was deleted as a result of the insertion of a similar provision in paragraph 1 of Article 35.

5. It was agreed that the charging by a state enterprise of different prices for its sales of a product in different markets, domestic or foreign, is not precluded by the provisions of Article 31, provided that such different prices are charged for commercial reasons.

CHARTER

2. The provisions of paragraph 1 relating to purchases or imports by state enterprises shall apply to purchases or imports of products for re-sale [or for use in the production of goods for sale.] With respect to purchases of imports by state enterprises of products for governmental use and not for re-sale [or for use in the production of goods for sale.] Members shall accord to the commerce of other Members fair and equitable treatment, having full regard to all relevant circumstances.

3. This Article shall apply to any enterprise, organ or agency in which there is effective control by a Member government

Alternative A:

or over whose trading operations a Member government exercises effective control by virtue of the special or exclusive privileges granted to the enterprise.

Alternative B:

or over whose trading operations a government is, under the arrangements providing for the special or exclusive privileges granted to the enterprise, legally entitled to exercise effective control.

COMMENTARY

31:2

The words "or for use in the production of goods for sale" were added in square brackets, in this paragraph as well as in paragraph 5 of Article 15, for consideration at a later stage.

The delegates for Chile and New Zealand reserved their position with regard to the insertion of the words in question.

31:3

1. The text of this paragraph contains two alternatives presented for consideration at the Second Session of the Preparatory Committee.

2.

The delegates for Chile and Czechoslovakia reserved their position on this paragraph, stating that they preferred the text adopted at the First Session of the Preparatory Committee. The delegate for New Zealand also reserved his position, but stated that he preferred Alternative A to Alternative B.

CHARTER

Article 32

Expansion of Trade by State Monopolies of Individual Products

1. If any Member, other than a Member subject to the provisions of Article 33, establishes, maintains or authorizes, formally or in fact, an effective monopoly of the importation or exportation of any product, such Member shall, upon the request of any other Member or Members having an interest in trade with that Member in the product concerned, enter into negotiations with such Member or Members in the manner provided for in respect of tariffs under Article 24, with regard to

(a) in the case of an export monopoly arrangements designed to limit or reduce the protection afforded through the operation of the monopoly to domestic users of the monopolized product or to assure exports of the monopolized product in adequate quantities at reasonable prices; or

(b) in the case of an import monopoly, the maximum margin by which the price for an imported product charged by the monopoly in the home market may exceed the landed cost, before payment of any duty, of such product purchased by the monopoly from suppliers in the territories of Members, after due allowance for internal taxes, transportation, distribution and other expenses incident to purchase, sale or further processing, and for a reasonable margin of profit. For the purpose of applying this margin regard may be had to average landed costs and selling prices of the monopoly over recent periods.

COMMENTARY

Article 32

Expansion of Trade by State Monopolies of Individual Products

The text of Article 32 given opposite is that drafted by the Ad-Hoc Sub-Committee consisting of delegates for Canada, Chile, Czechoslovakia, New Zealand, United Kingdom and the United States.

At the First Session of the Preparatory Committee, the delegate for Norway reserved his position generally on this Article. In the initial discussion on this Article in the Drafting Committee, the delegate for China pointed out that in his opinion Article 32 (as drafted at the First Session) was acceptable on the condition that "no restraint whatsoever should be placed on the freedom of action on the part of a Member government engaging in state trading in the event of a failure of negotiations under this Article."

CHARTER

2. Any Member newly establishing any import monopoly in respect of any product shall not create a margin as defined in paragraph 1 (b) greater than that represented by the maximum rate of import duty which may have been negotiated in regard to that product pursuant to Article 24.

3. With regard to any monopolized product in respect of which a maximum margin has been established pursuant to paragraph 1 (b) or paragraph 2 of this Article, the monopoly shall, as far as administratively practicable, and subject to the other provisions of this Charter, import from Members and offer for sale at prices charged within such maximum margin such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at that time.

4. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated solely for revenue purposes.

COMMENTARY

CHARTER

Article 33

Expansion of Trade by Complete State Monopolies of Import Trade

Any Member establishing or maintaining a complete or substantially complete monopoly of its import trade shall promote the expansion of its foreign trade with the other Members in consonance with the purposes of this Charter. To this end such Member shall negotiate with the other Members an arrangement under which, in conjunction with the granting of tariff concessions by such other Members, and in consideration of the other benefits of this Chapter, it shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon. This purchase arrangement shall be subject to periodic adjustment.

COMMENTARY

33

At the London Session it was decided that Article 33 should be left for consideration at a later stage. The Drafting Committee did not feel itself called upon to consider this Article. It is reproduced opposite as given in the United States Draft Charter.

CHARTER

Section F. Emergency Provisions - Consultation

Article 34

Emergency Action on Imports of Particular Products

1. If, as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products (or, in the case of a product which is the subject of a concession with respect to a preference, is being imported under such conditions as to cause or threaten serious injury to producers in a territory which receives or received such preference) the Member shall be free to suspend the obligation in respect of such product in whole or in part, or to withdraw or modify the concession to the extent and for such time as may be necessary to prevent such injury.
2. Before any Member shall take action pursuant to the provisions of paragraph 1, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical and exceptional circumstances such action may be taken provisionally without prior consultation, provided that consultation shall be effected immediately following upon the taking of such action.

COMMENTARY

Article 34

Emergency Action on Imports of Particular Products

34:1

The words "is being imported under such conditions as to cause or threaten serious injury" were added to the words enclosed in brackets. The words "The Member shall be free to suspend the obligation in respect of such products in whole or in part, or to withdraw the concession" were substituted for "the Member shall be free to withdraw the concession, or suspend the obligation, in respect of such product, in whole or in part, or to modify the concession".

34:2

1. It was decided to divide paragraph 2, as adopted at the First Session, into two paragraphs, the second of which (now given as No. 3) refers to the situation arising in cases when the stipulated consultation does not lead to agreement among the Members concerned.
2. The delegates for Canada and Chile maintained the doubt their delegations had expressed at the First Session regarding the undesirability of permitting action under Article 34 without prior consultation even in emergency circumstances (Report of the First Session, page 10, Section A:3(b) (iii)). The delegate for Canada maintained the proposal his delegation had made at the First Session that if action without prior consultation was permitted to a Member, immediate counter-action by other affected Members should also be permitted without the delay involved in obtaining the permission of the International Trade Organization to take such action.

CHARTER

3. If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action, shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than sixty days after such action is taken, to suspend, upon the expiration of thirty days from the date on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, of such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In cases of abuse the Organization may authorize an affected Member to suspend obligation or concessions in addition to those which may be substantially equivalent to the action originally taken.

COMMENTARY

34:3

1. The Committee considered it desirable that the retaliatory action permissible under this paragraph should not be unnecessarily delayed; accordingly, it has suggested the shortening from sixty to thirty days of the period to be observed from the date on which written notice of the suspension of obligations or concessions is received by the Organization.
2. One delegate, while not objecting to the substance of this change, doubted whether it was within the competence of the Drafting Committee.

CHARTER

Article 35

Consultation - Nullification or Impairment

1. Each Member will accord sympathetic consideration to, and will afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange regulations, subsidies, state-trading operations, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally all matters affecting the operation of this Chapter; and will, in the course of such consultation, provide the other Member with such information as will, without prejudicing the legitimate business interests of particular private or state trading enterprises, enable a full and fair appraisal of the situation which is the subject of such representations.
2. If any Member should consider that any other Member is applying any measure, whether or not it conflicts with the terms of this Charter, or that any situation exists which has the effect of nullifying or impairing any object of this Charter, the Member or Members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter. If no such adjustment can be effected, the matter may be referred to the Organization, which shall, after investigation, and, if necessary after consultation with the Economic and Social Council of the United Nations and any appropriate inter-governmental organizations, make appropriate recommendations to the Members concerned. The Organization, if it considers

COMMENTARY

Article 35:

Consultation - Nullification or Impairment

- 35:1
1. The examples of matters that may be subject to representations, enumerated in the first place of this paragraph, were added to by inclusion of the words "anti-dumping and countervailing duties" and "subsidies".
 2. The delegate for Brazil reserved his position for the time being regarding the insertion of "anti-dumping and countervailing duties".
 3. The later part of the paragraph (from "and will, in the course of ...") was included in this paragraph at the same time as references in other articles to the obligation of Members to supply information concerning the operation of state trading enterprises were deleted.
 4. The delegate for Czechoslovakia wished to substitute the words "particular business enterprises, whether state trading, monopoly or private" for "particular private or state business enterprises."

35:2

The words "is applying" and "exists" in the first sentence of this paragraph were substituted for "has adopted" and "has arisen" respectively, and certain changes of a formal nature were made.

CHARTER

the case serious enough to justify such action, may authorize a Member or Members to suspend the application to any other Member or Members of such specified obligations or concessions under this Chapter, as may be appropriate in the circumstances. If such obligations or concessions are in fact suspended, any affected Member shall then be free, not later than sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the Organization.

SECTION G. RELATIONS WITH NON-MEMBERS

Article 36

Contractual Relations with Non-Members

Treatment of the Trade of Non-Members

(See Comment opposite)

COMMENTARY

36.

At its First Session, the Preparatory Committee decided to leave Article 36 for consideration at a later stage. The Drafting Committee accordingly did not discuss this article.

The text of this Article, as given in the United States Draft Charter, is reproduced below for reference:

1. No Member shall seek exclusive or preferential advantages for its trade in the territory of any non-Member which would result, directly or indirectly, in discrimination in that territory against the trade of any other Member.
2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member shall be contractually entitled to any of the benefits of this Charter.
3. With regard to countries which, although eligible for membership, have not become Members or have withdrawn from the Organization, no Member shall, except with the concurrence of the Organization, apply to the trade of such countries the tariff reductions effected by such Member pursuant to Article 18. This paragraph shall become effective upon the expiration of one year from the date on which the Organization is established: Provided, That this period may be extended by the Organization for further periods not to exceed six months each.
4. Members undertake to review any international obligations they may have which would prevent them from giving full effect to paragraphs 1 and 2 of this Article and, if necessary for that purpose, to terminate such obligations either by agreement or in accordance with their terms.

CHARTER

Article 37

General Exceptions to Chapter V

COMMENTARY

Article 37

General Exceptions to Chapter V

1. Article 32 of the United States Draft Charter (corresponding to Article 37 of the present text) contains one item reading:

"(1) imposed in accordance with a determination or recommendation of the Organization formulated under paragraphs 2, 6 or 7 of Article 55" (that is, the present Article 66).

The Committee considered that the articles referred to in Article 66 covered adequately the exception considered under item (1) quoted above and was hence of the opinion that this item should not be included in Article 37. The delegate for the Netherlands, however, felt that deletion of this item would involve that the determination and recommendations under Article 66, paragraphs (6) and (7), would still have to conform to the provisions of Chapter V, unless they were waived by a two-third majority under the provisions of Article 66, paragraph (2). The proposed change would thus in his opinion involve a material deviation from the general opinion at the London Conference and from the draft text before deletion.

2. The delegate for Canada felt that Article 37 should contain a provision permitting a Member to prohibit the importation of any commodity, the production of which is prohibited domestically.

COMMENTARY

37. (General comments, continued)

3. As it seemed to be generally agreed that electric power should be classified as a service and not as a good, the delegates for Canada and Chile did not find it necessary to reserve the right for their countries to prohibit the export of electric power.

4. The delegate for China maintained a suggestion by the delegation of this country at the First Session of the Preparatory Committee to the effect that a new paragraph should permit measures "temporarily imposed to prevent, arrest or relieve conditions of social disturbance, natural calamity or other national emergencies, provided that such measures are withdrawn as soon as the said conditions cease to exist." It was pointed out that paragraph 2 (b) of Article 25 covers this suggestion to a large extent.

5. The delegate for India suggested that a Member should be allowed temporarily to discriminate against the trade of another Member when this is the only effective measure open to it to retaliate against any discrimination practiced by that Member in matters outside the purview of the International Trade Organization, pending a settlement of the issue through the United Nations. (Cf. The reversion by the same Delegate regarding Article 23, Boycotts).

CHARTER

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of measures

- (a) necessary to protect public morals;
- (b) for the purpose of protecting human, animal or plant life or health, if corresponding domestic safeguards under similar conditions exist in the importing country;
- (c) relating to fissionable materials;
- (d) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;
- (e) in time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member;
- (f) relating to the importation or exportation of gold or silver;
- (g) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as, e.g. those relating to customs enforcement, deceptive practices, and the protection of patents, trade marks and copyrights;

COMMENTARY

37 (a) and (b) The delegate for Norway pointed out that his country's restrictions on the importation, production and sale of alcoholic beverages had as its chief object the promotion of temperance. He therefore considered that the taxation and the price policy of its state liquor and wine monopoly was covered by items (a) and (b) of Article 37.

- (b) 1. The delegates for Chile, Czechoslovakia, France, New Zealand and the United States preferred the following version of item (b):

"necessary to protect human, animal or plant life or health."

2. The majority of the Members of the Legal Drafting Committee were of the opinion that the words "under similar conditions" should be deleted.

- (c) The delegate for Australia reserved his position on item (c).

(d) _____

(e) _____

- (f) The delegate for India raised the question whether this item should refer to silver which is an ordinary commodity in world trade.

(g) _____

CHARTER

- (h) relating to the products of prison labour;
- (i) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (j) relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restrictions on domestic production or consumption;
- (k) undertaken in pursuance of obligations under the United Nations Charter for the maintenance or restoration of international peace and security."

37 (h)

(i)

(j)

1. At the First Session, the delegate for India suggested

~~deletion from~~ deletion from "if such measures" to the end of the paragraph.

2. The delegates for Brazil and New Zealand maintained their support given at that Session to the suggestion by the delegate for India.

3. The delegate for New Zealand maintained his proposal that the words "or other" be added before "resources".

(k)

CHARTER

Section I - Territorial Application

Article 38

Territorial Application of Chapter V - Frontier Traffic -
Customs Unions

1. The provisions of Chapter V shall apply to the customs territories of Members. If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as though it were a separate Member for the purpose of interpreting the provisions of Chapter V.
2. The provisions of Chapter V shall not be construed to prevent
 - (a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or
 - (b) the formation of a customs union provided that the duties and other regulations of commerce imposed by any such union in respect of trade with Members shall not on the whole be higher or more stringent than the average level of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union.
3. Any Member proposing to enter into a customs union shall consult with the Organization and shall make available to it such information regarding the proposed union as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

COMMENTARY

Section I

Article 38

Territorial Application of Chapter V - Frontier Traffic -
Customs Unions

38:1

38:2

The delegate for Chile suggested that sub-paragraph (b) should begin with the words "the formation, including its initial transitional stage, of a union" etc. This amendment was supported by the delegate for Lebanon. During the discussion reference was made to the fact that the wording adopted at the London Session permits of measures which in fact represent a transition towards a customs union.

38:3

The delegate for Australia drew attention to a suggestion made by the delegation for his country at the First Session* and asked that this paragraph should be worded so as to allow continuation of his country's special arrangements with certain neighbouring islands

* Document E/PC/T/CII/29

4. The Members recognize that there may in exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Any such exception shall conform to the criteria and procedure which may be established by the Organization under paragraph (2) of Article 66.

5. For the purpose of this Article a customs territory shall be understood to mean any territory within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such territory. A "customs union" shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the Members of the union to the trade of territories not included in the union.

38:4

The delegates for Brazil and Lebanon maintained reservations made by the delegations of their countries at the First Session in favour of special treatment of regional preferences (Report of the First Session, page 11, Section A, 5 (c)). The delegate for Lebanon objected to application of Article 66 in the case here considered since in practice this might imply that a two-third majority would be required for approving regional preferences. The delegate for Chile joined in the reservation in question.

38:5
