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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

REPORT OF COMMITTEE II

GENERAL COMMERCIAL POLICY  
(RESTRICTIONS, REGULATIONS AND DISCRIMINATIONS)

PART I

INTRODUCTION

1. At its third executive session on 16 October 1946, the Preparatory Committee established a Committee to deal with general commercial policy (restrictions, regulations and discriminations). At its first meeting, this Committee, known as Committee II, elected Dr. H. C. Coombs (Australia) as Chairman and Dr. ... B. Speekenbrink (Netherlands) as Vice Chairman.

2. The Committee adopted a provisional agenda, corresponding to the subheadings under Chapter IV of the Charter for an International Trade Organization suggested by the Government of the United States.

The items of this agenda were first discussed in the main Committee, and in most cases subsequently referred to Sub-Committees which were requested to report their findings to the main Committee. The question concerning the relations with non-members, however, was dealt with in a different manner (see paragraph 13). In all, the main Committee held thirteen meetings, of which eight were devoted chiefly to the organization of its work and initial discussion of the various items on the above-mentioned agenda, one to consultation with the International Chamber of Commerce and the World Federation of Trade Unions, and four to consideration of the reports submitted by the Sub-Committees.

3. As has been pointed out in the report of Committee I, a Joint Committee of Committees I and II was set up to consider the question of international agreement relating to industrial development.

4. One of the Sub-Committees referred to above, namely, the Technical Sub-Committee, included delegates for all the countries represented on the Preparatory Committee. The questions referred to this Sub-Committee were discussed in full at its meetings. The

Sub-Committee attempted to reconcile differences of view; and insofar as this was not possible, the views of the countries concerned were recorded.

5. The other Sub-Committees were drafting Committees with limited representation. The items on the agenda referred to them were previously discussed in detail in the main Committee, and the function of the Sub-Committees was to suggest provisions which, in view of the comments or proposals made, might prove acceptable to the Preparatory Committee, or alternative provisions to be considered by that Committee.

6. Information concerning the questions referred to the various Sub-Committees and the arrangements they made for their work is given below.

7. The Sub-Committee on Procedure was originally set up to deal with questions related to the procedure to be followed by the Preparatory Committee in connection with the negotiations proposed in Article 18 of the United States Draft Charter.

This Sub-Committee was also charged with questions connected with:

General most-favoured-nation treatment  
Tariffs and tariff preferences  
Emergency provisions, consultation, nullification  
of impairment  
Territorial application

The Sub-Committee was composed of delegates for Canada, Chile, Cuba, France, India, the United Kingdom and the United States; in addition, the delegate for Brazil participated in its work. It held fifteen meetings under the chairmanship of Mr. Speekenbrink (Netherlands). Mr. Leddy (United States) functioned as Rapporteur.

8. The Technical Sub-Committee dealt with the following questions:

General Commercial Provisions:

National Treatment on Internal Taxation and Regulation  
Freedom of Transit  
Anti-dumping and Countervailing Duties  
Tariff Valuation

Customs Formalities  
Marks of Origin  
Publication and Administration of Trade Regulations -  
Advance Notice to Restrictive Regulations  
Information, Statistics and Trade Terminology  
Boycotts.

General Exceptions. (to the Chapter on General Commercial Policy)

The Sub-Committee met nine times under the chairmanship of Senor Videla (Chile). Six delegates of different nationality functioned as Rapporteurs. The final report of the Sub-Committee was submitted to the main Committee and approved as a working document.

9. Questions relating to quantitative restrictions and exchange control were referred to a Drafting Sub-Committee on Quantitative Restrictions and Exchange Control. The Sub-Committee included delegates for Australia, Brazil, France, India, the United Kingdom and the United States; in addition, the representative of the International Monetary Fund participated in the work. The Sub-Committee met six times under the chairmanship of Dr. H. C. Coombs (Australia). Mr. Meade (United Kingdom) and later Mr. Gunter (United States) functioned as Rapporteurs.

10. Questions relating to subsidies on primary products were referred to a Joint Sub-Committee of Committees II and IV, consisting of delegates for Australia, Brazil, Canada, the Netherlands, the United Kingdom and the United States. It met twice under the chairmanship of Mr. McCarthy (Australia). Mr. Schwenger (United States) functioned as Rapporteur.

11. Questions concerning subsidies on manufactured articles were referred to a Sub-Committee on which were represented delegates of India, the United Kingdom and the United States. This Sub-Committee met once informally.

12. Questions concerning state trading were referred to a Sub-Committee including delegates for China, Czechoslovakia, New Zealand, the United Kingdom and the United States. This Sub-Committee held six meetings under the chairmanship of Mr. Skoble (United Kingdom), and Mr. Johnson (New Zealand). As Rapporteurs functioned, Mr. Armstrong (United States) and later, Mr. Young (United Kingdom). This Sub-Committee was assisted in its work by a smaller Sub-Committee on marketing boards, comprising delegates for the Netherlands, the Union of South Africa, and the United States of America. The last mentioned Sub-Committee met informally.
13. The delegate for the United Kingdom was entrusted with the task of reporting to the Committee on the question concerning relations with non-members.
14. When dealing with questions concerning tariffs, tariff preferences and quantitative restrictions, Committee II considered a message received from the Joint Committee on Industrial Development. Matters concerning preferences in the form of quotas were considered first by delegates for the countries primarily concerned - Australia, Canada, New Zealand, the United Kingdom and the United States of America - who met informally and advised the main Committee.
15. The work of the Committee is reviewed in Part II of this report, in which the various items considered are arranged chiefly according to the repartition of work among the Sub-Committees referred to above.
16. The draft texts of the respective Articles of the Charter, as approved by the Committee, are reproduced in the Appendix in the order in which the Articles are dealt with in Part II. For reasons indicated in Section 2 of Part II, no approved text of the Articles considered by the Technical Sub-Committee is included. A statement on Multilateral Trade Agreement Negotiations (Procedures for Giving Effect to Certain Provisions of the Proposed Charter of the International Trade Organization by Means of a General Agreement on Tariffs and Trade Among the Members of the Preparatory Committee), as approved by Committee II, is given as an Annexure to this report.

PART II

REVIEW OF WORK

SECTION 1  
GENERAL MOST-FAVORED-NATION TREATMENT, TARIFFS AND  
TARIFF PREFERENCES ETC.

Most-favoured-nation treatment (Article 8)

1. The Committee was in agreement with the principles:
  - (a) that members of the International Trade Organization should grant each other general unconditional most-favoured-nation treatment in respect of all customs matters, and
  - (b) that existing preferences which are of long standing and which have important effects on the economies of the countries concerned should be excepted from the most-favoured-nation clause pending their elimination by negotiation pursuant to the provisions of Article 18.

The Committee compared the most-favoured-nation provisions set forth in the original draft of Article 8 with the standard most-favoured nation clause developed by the League of Nations for inclusion in bilateral agreements. It was concluded that there are no important differences of substance between the two versions and that the version incorporated in Article 8 is preferable because of its brevity.

The most-favoured-nation clause recommended by the Committee incorporates certain concepts (for example "the like product", "country of origin", etc.) which have been customarily included in commercial agreements in the past but which have never received a precise definition. The Committee was of the opinion that the matter of defining such concepts should be left for study by the International Trade Organization after its establishment.

2. The principal differences between the original text of article 8 and that recommended by the Committee, and the reasons for these differences, are as follows:

(a) Public Works contracts - governmental purchases of supplies

Under the original draft of paragraph 1 of article 8 the grant of most-favoured-nation treatment would have extended to:

- (i) the awarding of governmental contracts for public works and
- (ii) the purchase by governments of supplies for governmental use (i.e. not for resale). Under the revised draft recommended by the Committee these subjects would be removed from the scope of the most-favoured-nation clause.

With regard to (i), relating to the awarding of public works contracts, the Committee was of the opinion that this subject is more closely related to the question of the treatment of foreign nationals and corporations than to the treatment of the trade in goods. It is considered that Chapter IV should be confined to matters affecting trade and that questions relating to the treatment of nationals, etc., should be the subject of future agreements developed under the auspices of the International Trade Organization, as contemplated under paragraph 5 of article 50 of the Draft Charter. Under this paragraph of article 50, as well as under article 64, the International Trade Organization could recommend the adoption of special agreements dealing with public works contracts.

With regard to (ii), relating to governmental purchases of supplies for governmental use, this commitment was removed from the scope of the most-favoured-nation clause in the light of the fact that

a suitable clause dealing with such governmental purchases is recommended for inclusion in Article 26 (Non-discriminatory Administration of State Trading Enterprises).

In this connection, the Committee gave consideration to the provision in Article 9 of the Draft Charter for national, as distinct from most-favoured-nation, treatment in respect of governmental purchases of supplies for governmental use. Such a provision would require the elimination of the many "buy-national" laws under which national governments are required to give preference to domestic products in purchasing their administrative supplies. As it appears to the Committee that an attempt to reach agreement on such a commitment would lead to exceptions almost as broad as the commitment itself, the Committee recommends that this commitment be deleted from Article 9.

(b) Temporary exceptions from most-favoured-nation clause

Under the original draft of paragraph 2 of Article 8, certain long-standing preferences were temporarily excepted from the most-favoured-nation clause (i.e. they were excepted pending their elimination by negotiation under Article 18) provided that they were in effect in either 1939 or 1946 (whichever date resulted in the lower preferences). Also, under the original draft the preferences thus excepted were limited, roughly, to imperial or commonwealth preferences and Cuban-American preferences.

Under the revised draft of paragraph 2 of Article 8 recommended by the Sub-Committee, the preferences excepted, excepted from the most-favoured-nation clause would be those "remaining after the negotiations contemplated in Article 18" rather than those in effect on a particular date. Also, the categories of preferences thus excepted would be broadened to

include not only imperial and Cuban-American preferences but also preferences in force between neighbouring countries in 1946.

The following new paragraph should be added at the end of this page:

"One Delegation suggested that Articles 8 and 18 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."

The base dates in the original draft of paragraph 2 of Article 8 would have determined, in a precise way, those preferences to be eliminated under the most-favoured-nation clause and those preferences to be subject to negotiation under Article 18. Accordingly, the removal of the base dates from this paragraph will require that some other method be found of establishing a basis for negotiations with respect to preferences. Recommendations on this point are included in the report of the Committee relating to the proposed multilateral trade-agreement negotiations among members of the Preparatory Committee (see below).

Reduction of Tariffs and Elimination of Preferences (Article 18)

1. The Committee was in general agreement with the basic principles that members of the International Trade Organization should enter into reciprocal and mutually advantageous negotiations with each other directed to the substantial reduction of tariffs on imports and exports and to the elimination of import tariff preferences; that these negotiations should proceed in accordance with certain rules; and that members which unjustifiably fail to fulfil their obligations regarding tariffs and preferences should not be entitled to receive the benefits resulting from the fulfilment of these obligations by other members.

One delegation, while recognizing that the proposed negotiations are to be conducted on a reciprocal and mutually advantageous basis, and that the obligations undertaken pursuant to such negotiations would be subject to re-adjustment by the International Trade Organization in accordance with the principles and procedures set forth in the Chapter on Economic Development recommended by the Joint Committee on Economic Development, nevertheless questioned the application to countries in the early stages of economic development of the principle set forth above that tariffs should be reduced substantially.

Another delegation suggested that the rules governing the negotiations should take into account the relative levels of the tariffs of each country in the light of the situation of those countries which are in the early stages of industrial development. While suggesting this additional rule, this delegation indicated its willingness to raise with its government the question whether the principles and procedures recommended by the Joint Committee on Economic Development and referred to in the paragraph above do not adequately meet the requirements intended to be satisfied by the additional rule suggested.

## 2. Scope of negotiations

Under the original draft of paragraph 1 of Article 18 the proposed negotiations would have extended to tariffs on imports and exports and import tariff preferences. Under the revised draft the scope of the negotiations has been broadened to clearly cover charges on imports and exports other than tariffs. The additional charges in question are intended to mean charges analogous to tariffs; they are not, for example, intended to include non-discriminatory

internal taxes which are collected at the time of importation

The reference to negotiations regarding state-trading margins, which appeared in the original draft of paragraph 1, has been omitted from the revised draft. It was believed that undertakings to negotiate with respect to such margins, in the manner provided for in the case of tariffs and preferences, were adequately provided for in the revised draft of article 27 (Expansion of trade by state monopolies of individual products) which was recommended by Committee II.

3. Rules governing negotiations

Certain drafting changes were suggested with regard to the rules governing negotiations set forth in the original draft of paragraph 1:

(a) Sub-paragraph (a) as originally drafted provided that "Prior international commitments shall not be permitted to stand in the way of action with respect to tariff preferences". In the light of the discussions within the Committee it was agreed that the ~~intention~~ lying behind this provision could be more clearly expressed as follows: "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 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) Sub-paragraph (b) as originally drafted provided that negotiated reductions in most-favoured-nation tariffs should operate automatically to reduce or eliminate margins of preference in effect on 1 July 1939. In view of the impracticability of establishing a common base date for negotiating preferences, the revised draft recommended by the Committee

omits any reference to a base date to be used in applying this rule. Three delegations thought that the rule 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.

(c) An additional rule has been included, as sub-paragraph (c) of paragraph 1 of Article 18, which provides that during the negotiations 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.

The Committee also considered the question as to whether a rule should be included in Article 18 to the effect that the elimination of quantitative restrictions (as defined in Article 19) on the one hand, and the binding of preference-free treatment on the other hand, should be considered as concessions equal in value to the reduction of tariffs or the elimination of preferences. It was agreed that since preference-free treatment and quantitative restrictions were to be dealt with under general rules incorporated respectively in Article 8 (most-favoured-nation treatment) and Articles 19-22 (quantitative restrictions) they could not properly be included in the rules governing selective tariff negotiations. At the same time, it was recognized that, in accordance with the plan for conducting tariff negotiations among the members of the Preparatory Committee, those countries would not be called upon to subscribe to the most-favoured-nation and quantitative restrictions provisions until selective tariff negotiations had been completed and vice-versa. It was believed that this circumstance would assure that due weight will be given in the tariff

negotiations to the benefits to be derived from the elimination of quantitative restrictions and the general grant of most-favoured-nation treatment.

4. Withholding of tariff benefits from members of the organization which fail to carry out obligations for the reduction of tariffs and elimination of preferences

Several changes were made in the original draft of paragraph 3:

(a) The original draft provided that the International Trade Organization could authorize a member to withhold tariff reductions from another member which "failed to negotiate" as required by paragraph 1. Under the revised draft the Organization could authorize withholding for failure to negotiate "in accordance with the rules laid down in paragraph 1" (i.e. in subparagraphs (a), (b), and (c) of paragraph 1). Thus, for example, a country having low tariffs could not be accused under paragraph 3 of failure to negotiate adequately because of unwillingness to reduce its tariffs substantially. Also, under the revised draft, a country could bring a complaint before the Organization in the event that another country failed to consider reductions of high tariffs in return for bindings of low tariffs.

(b) Under the original draft of paragraph 3 the withholding of tariff benefits by members would have been restricted to tariff reductions effected pursuant to negotiations under paragraph 1. Under the revised draft, members would be authorized to withhold any tariff benefits, including bindings, granted pursuant to negotiations. The purpose of this change is to assure that low tariff countries (which may not have granted many tariff reductions) will not be placed in an unfavourable bargaining position in dealing with members of the Organization who may be reluctant to carry out the obligations of paragraph 1 of Article 18.

(c) Language has been included in paragraph 3 of article 18 which is designed to assure that the Organization, in determining whether a member has unjustifiably failed to negotiate adequately as required by paragraph 1, will take into account the situation of the member under the Charter as a whole, including the Chapter of the Charter relating to Economic Development.

Reference was made to the message submitted to Committee II by the Joint Committee on Industrial Development (E/FC/T/C.I & II/18) in which it was requested that a suitable provision be included in article 18 whereby the Organization "when considering the contribution which a member can make to a reduction in tariffs, take into account the height of the tariff of that member, and the need, if any, of that member to use protective measures in order to promote industrial and general economic developments". The changes in Article 18 described under (a) and (c), above, take into account these suggestions made by the Joint Committee.

Emergency Action in Respect of Imports of Particular  
Products (Article 29)

1. The Committee was in agreement with the principle that members of the Organization, in the event of unforeseen developments and of injurious effects on their trade caused or threatened because of the obligations laid down in Chapter IV (including tariff or preference concessions) should be permitted to withdraw or modify the obligations to the extent and for the time necessary to prevent the injurious effects. The Committee also agreed that this right should be subject to adequate safeguards and to the possibility of counter-action by other members in the event of the abuse of the right.

2. Three basic changes have been incorporated in the revised draft of Article 29:

(a) Language has been inserted in paragraph 1 of the Article which makes it clear that members invoking the Article may withdraw or modify concessions in respect of preferences as well as concessions in respect of tariffs and obligations regarding quantitative restrictions et cetera.

(b) A provision has been included under which members may, in critical and exceptional circumstances, modify or withdraw concessions under the Article, on a provisional basis, without prior consultation with the other interested members of the Organization, provided that consultation is entered into immediately following upon the taking of such action.

Two delegations questioned the desirability of permitting action under the Article without prior consultation even in emergency circumstances. One of these delegations also proposed that if action without prior consultation was permitted to a member, immediate counter-action by other affected members should also be permitted, without the delays involved in obtaining the permission of the International Trade Organization to take such action.

(c) Provision has been made to assure that, ordinarily, counter-action taken under Article 29 will not be disproportionate to the original action. At the same time, the Organization would be authorized to permit more severe counter-action in cases of abuse of the privileges granted by the Article.

Consultation-Nullification or Impairment (Article 30)

1. The Committee was in agreement that members of the International Trade Organization should stand ready to consult with one another

regarding any matter affecting the operation of the provisions of Chapter IV of the Charter relating to trade barriers. The Committee also agreed that any member should be entitled to request the Organization to set aside any obligations under Chapter IV, and the Organization should be authorized to set aside such obligations, in the event that any situation should arise, whether or not caused by an action of another member, which would nullify or impair any object of the Charter. If some member is adversely affected by the setting aside of obligations, it should be entitled to withdraw from the Organization on short notice.

2. Under the original draft of Article 30 a member could be authorized by the Organization to suspend the application to another member of obligations under Chapter IV only in the event that the second member was found to have taken some action (whether or not in conflict with Chapter IV) which nullified or impaired an object of Chapter IV.

Under the revised draft recommended by the Committee any action by a member, or the development of any situation, which impaired or nullified any object of the Charter (including any object set forth in Chapter III of the Charter relating to Employment) could be an occasion for the lodging of a complaint with the Organization. The Organization could make recommendations to the members concerned and, in serious cases, could release any member (and not merely the complaining member as in the original draft) from its obligations under Chapter IV. Members adversely affected by the suspension of obligations on the part of another member would, as in the original draft, be entitled to withdraw from the Organization on short notice.

Two types of cases will illustrate the kind of action which would be permitted under the revised draft of Article 30 but which

was precluded under the original draft of the Article:

(a) A member might seek, and obtain from the Organization, a release from its obligations under Chapter IV on the grounds that its economy was suffering from deflationary pressures caused by the lack of effective demand for its goods from abroad (possible impairment of the objects of Chapter III). In such cases it is contemplated that the Organization, before granting any such release, would consult with the Economic and Social Council or with other specialized international agencies to determine whether some other remedial action were not open to the country seeking the release.

(b) A member importing a particular product might be released from appropriate obligations under Chapter IV in order to adjust competitive conditions between two exporting countries (for example in cases in which one of the exporting countries was deliberately exploiting substandard labour contrary to the objectives of Chapter III). Also, the request for such a release might be made by one of the exporting countries (in the example above the exporting country suffering from unfair competition caused by substandard labour in the other exporting country) rather than by the importing country.

Territorial application of Chapter IV - Customs Unions -  
Frontier Traffic (Article 33)

1. The Committee was in agreement that the trade barrier provisions of the Charter should apply to each of the customs territories under the jurisdiction of the member countries; that an appropriate exception from these provisions should be made for advantages accorded to facilitate frontier traffic, for advantages incident to the formation of a customs union, and for new preferential arrangements

approved by the Organization under paragraph 2 of Article 55; and that suitable definitions of customs territories and customs unions should be included in Chapter IV.

2. In addition to certain drafting amendments, the following changes were recommended in article 33:

(a) The original draft of the article provided that Chapter IV should not prevent "the union for customs purposes of any customs territory and any other customs territory". Under the revised draft this exception would extend to "the formation of a union for customs purposes etc", thus permitting measures which in fact represent a transitional stage toward a customs union.

(b) A new paragraph has been added which

- (i) recognizes that new preferential arrangements (for example those of a regional character) may in exceptional circumstances be justified and
- (ii) makes it clear that the Organization would be authorized to approve such arrangements under paragraph 2 of Article 55 of the Charter.

Two delegations reserved their rights with regard to preferences of regional character. One of them stated that such preferences have an intrinsic value by themselves and should not be subject to the procedure as provided in paragraph 2 of Article 55.

Submission of Report on Procedures for Proposed Multilateral Trade Agreement Negotiations

Committee II has prepared for the consideration of the Preparatory Committee, in accordance with its assignment, a report setting forth recommended procedures to be followed in connection with the negotiations regarding tariffs and preferences to be conducted among the members of the Preparatory Committee pursuant

to article 18 of the Draft Charter and in accordance with the Committee's Resolution of \_\_\_\_\_.

This report, entitled "Multilateral Trade Agreement Negotiations: Procedures for Giving Effect to Certain Provisions of the Proposed ITO Charter by means of a General Agreement on Tariffs and Trade among the Members of the Preparatory Committee", is intended for adoption as part of the final report of the Preparatory Committee.

It was believed that the text of the Report will be largely self-explanatory. It may be noted, however, that the paragraph in the Report which points out the importance of avoiding new tariff measures which would tend to prejudice the proposed negotiations is not, of course, a legally binding obligation such as might prevent countries from introducing tariff changes regarded as urgent.

With regard to the proposal in the report that the tariff agreement among the members of the Preparatory Committee should be multilateral in form and in legal application, one delegation considered that bilateral tariff agreements or agreements limited to a small group of countries the benefits of which are generalized under the operation of the most-favoured-nation clause, would be preferable because they might be more easily revised when necessary.

SECTION 2  
GENERAL COMMERCIAL PROVISIONS  
(EXCEPT MOST-FAVoured-NATION TREATMENT)  
AND GENERAL EXCEPTIONS

A substantial degree of agreement among all Members participating on the Preparatory Committee was reached on questions of the principle underlying these provisions. However, as was to be expected, there were numerous differences of opinion, and a number of reservations were made on account of national variations in the practice of detailed administration.

Complete reconciliation of views was not possible to the extent that agreed text for these Articles could be prepared within the time at the disposal of the Committee. A greater degree of unanimity might have been possible if more time had been available. In addition, many of the Delegates' suggestions were merely drafting points and it was felt that these should be dealt with by the Drafting Committee which meets in New York in January 1947.

SECTION 3  
QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROL

General Elimination of Quantitative Restrictions (Article 19)

1. There was wide agreement with the proposal for a general rule against the use of import and export restrictions and prohibitions, the rule being subject to exceptions for the use of restrictions in specified circumstances and under specified conditions.
2. The work of the Committee was based on the assumption that the problem of ensuring adequate support for industrial development, which was the subject of study by the Joint Committee of Committees I and II, would be adequately covered in other Articles.
3. There was wide agreement for the view that during a post-war transitional period it should be permissible to use such restrictions for the equitable distribution of products in short supply, for the maintenance of war time price control by countries undergoing shortages as a result of the war, for the orderly liquidation of temporary surpluses of government owned stocks and of industries which were set up owing to the exigencies of war, but which it would be uneconomic to maintain in normal times. These last two exceptions would be subject to consultation with other interested Members; and all these exceptions would be limited to a specified post-war transitional period, which might, however, be subject to some extension in particular cases.
4. There was wide agreement for an exception to the general rule against export restrictions or prohibitions so as to enable a country to take temporary action to relieve critical shortages of foodstuffs or other essential products.

5. There was also wide agreement for an exceptional use of restrictions to apply standards of classification and grading of commodities in international commerce, subject to safeguards against their misuse for the purpose of giving disguised protection.

6. Consideration was given to the suggestion that there should be an exception permitting import restrictions on agricultural or fisheries products.

(a) to accompany measures restricting the domestic production or sale of like products and

(b) to remove a temporary domestic surplus by means which involved selling that surplus at prices below the current market price to certain groups of domestic consumers.

There was wide agreement for the view that a clause on these lines was desirable; but two Delegations proposed that the exception should not be confined to agricultural and fisheries products in order to give similar protection to agricultural or underdeveloped countries. One delegation, on the other hand, took the position that the exception should cover only agricultural products. There was wide agreement for the view that any supplies of the product which were en route at the time at which public notice was given of the restrictions should not be excluded, though they might be counted against any quotas in the importing country. It was generally agreed that this point should be covered in this Article unless it were already adequately met in Article 15. It was suggested that restrictions imposed under this exception should not be imposed on seasonal commodities at a time when similar domestic products were not available; and it was generally agreed that this suggestion might usefully be further considered at the next meeting of the Preparatory Committee. There was wide agreement for the view that

restrictions on imports imposed to match a restriction on domestic production should not be such as to reduce the proportion of imports to domestic production below the level which might otherwise have been expected to rule, it being necessary to judge the situation not only in the light of the position at a previous period but also in the light of any changes in conditions which might have occurred since that date. The view was, however, expressed that such a rule might weigh unduly on the domestic producers, since the exporters, in other countries might be able more readily to find alternative markets.

7. The suggestion was put forward by some Delegations that the exception in the case of agricultural products should be widened by permitting restrictions on imports without restrictions on home production so as to maintain domestic prices at a level sufficient to cover domestic costs of production or so as to enable a domestic surplus to be cleared. It was suggested that this could be accomplished by deleting the last three sentences of sub-paragraph 2(e) of Article 19. After discussion it was felt by other Delegations that such proposals would extend the scope of the exception to an undesirable degree.

8. Some Delegations put forward the suggestion that the wording of the exception in the case of agricultural products should be changed so that the words "for instance" would be inserted after the words "to remove a temporary surplus of the like domestic product". Other Delegations felt that this suggestion would permit an undesirable expansion of the exception and therefore opposed the suggestion.

9. There was general agreement for the use of restrictions or prohibitions on private trade in order to protect the position of State trading enterprises operated under other Articles and for the use of import or export quotas imposed under intergovernmental commodity agreements concluded under this Charter.

10. The suggestion was also made that it should be permissible to use import restrictions, under proper safeguards, as an anti-dumping measure in those cases of intermittent dumping in which import duties did not provide a suitable instrument of control. After consideration it was generally agreed that as far as the establishment of new industries are concerned, the position should be sufficiently covered by proposals of the Joint Committee of Committees I and II. In respect of the threat of intermittent dumping to established industries there was wide agreement with the view that the position was probably already adequately covered under Article 29; but one Delegation remained uncertain whether this was in fact the case.

11. It was suggested that export restrictions should be permitted for the preservation of scarce natural resources even if there were no restriction on domestic consumption, as would be required under Article 32 (j). While it was recognized that there might be cases in which such action would be unobjectionable, the view was widely expressed that such an exception, unless subject to sufficient safeguards, might unduly restrict access to raw materials. It was generally agreed that the point might usefully be further examined at the next meeting of the Preparatory Committee.

12. It was suggested by one Delegation that restrictions on exports should be permissible for the safeguard of living standards, for the facilitation of industrial development and for the stabilization of domestic prices so as to achieve a balanced development of the national economy, and that import restrictions should be permissible for the enforcement of governmental measures to regulate domestic production, distribution and consumption so as to maintain a dynamic equilibrium between the diverse economic activities of a nation in the process of industrialization. After discussion of these suggestions, there was

wide agreement in the Committee that these proposals were already adequately covered in the proposals of the Joint Committee of Committees I and II on industrial development and by the proposals made by the Committee in regard to the use of import restrictions under Article 20 to safeguard the balance of payments. These latter proposals are in line with a request received from the Joint Committee that provision "should be made to cover the position of a Member who, as a result of its plans for industrial development or reconstruction, anticipates that its accruing international monetary resources will be inadequate to finance the needed imports of, for example, capital goods, for the carrying out of such plans unless it imposes regulations in respect of certain classes of goods, for example, consumer goods."

13. Some delegations announced that, because they thought the procedure laid down in Article D, paragraphs 4(a) and (c) of the Draft Chapter on Industrial Development needed further examination, they might propose an addition to Article 19:2 to include another exception in the following terms: "Import restrictions for the purpose of economic development as a protective measure provided that they are less restrictive in their effect than other forms of protection and provided that they are in conformity with the criteria laid down for the purpose by the Organization." Other delegations considered that this point was sufficiently met in the Draft Charter relating to Industrial Development. Some of these indicated they might wish to reconsider their attitude to that Chapter, if such an addition were made.

14. The Committee considered the question of the treatment of certain existing preferential arrangements which were established under inter-

national agreements but not effected by the normal method of a difference in rates of duty. In these special circumstances they recommend that any such arrangements remaining after the negotiations contemplated for April 1947 should be dealt with by a provision in a protocol to the Charter or (pending the conclusion of the Charter) to the General Agreement on Tariffs and Trade to the effect that the member applying these arrangements shall be entitled to continue them or equivalent measures, pending either:

- (a) an arrangement under Chapter VI, if the member countries concerned desire that the product should be made the subject of such arrangement, or,
- (b) some other arrangement regarding the matter between the member countries concerned.

The Committee agreed further that only a very limited number of commodities fell under this heading and that the countries concerned should establish the facts about them so that this recommendation on the subject could be taken into account in the forthcoming negotiations.

It was further recognized that the concessions or lack of concessions in respect of the items concerned would, for purposes of assessing the results of the negotiations, stand on the same footing as concessions or lack of concessions in respect of particular tariff or preference items.

Restrictions to safeguard the Balance of Payments (Article 20)

1. There was general agreement for the view that it should be permissible for a country to restrict imports when such restriction was necessary to safeguard its external financial position, particularly in view of the fact that in many cases there will be domestic

employment, reconstruction, development or social policies which result in increases in the demand for imports. It was recognized that in many cases policies of internal reconstruction and development might be an essential factor in restoring equilibrium to a country's balance of payments on a sound and lasting basis.

2. Consideration was given to the best method of ensuring that such a safeguard should be available for the protection of a country's external financial position without giving freedom for the unnecessary use of import restrictions. There was wide agreement with the view that countries should undertake to observe certain principles in the use of such import restrictions, and that, since the fundamental objective was to safeguard a country's external financial position, these principles should be based upon movements in the country's monetary reserves. Import restriction, it was suggested, should only be newly imposed or intensified in so far as was necessary to stop or to forestall the imminent threat of a serious decline in monetary reserves or, in the case of a member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

3. There are, however, many factors to which due regard must be paid in interpreting any such rules. There may be special non-recurrent movements of funds affecting a country's reserves; a country may have special credits outside its monetary reserves which it might be expected to use to a proper extent and at a proper rate to meet a strain on its external position; a country which has high reserves may, nevertheless, have high future commitments or probable drains upon its resources to

meet in the near future. All such factors would have to be taken into account in interpreting movements in a country's reserves.

4. It was generally agreed that there should be an undertaking to remove or to relax restrictions on the same general principles, as a country's external financial position improved.

5. It was also generally agreed that, in order to avoid unnecessary damage to the commercial interest of other Members, import restrictions imposed to safeguard a Member's external financial position should not be carried to the point of total exclusion of any particular class of goods.

6. Consideration was given to the relations which should exist between Members and the Organization in order to ensure that Members should, on the one hand, not be able to abuse the application of import restrictions on these grounds, but should, on the other hand, have some certainty that they could apply them when necessary.

For these purposes, it was generally agreed that there would have to be arrangements for consultation between the Members and the Organization for complaint to the Organization, and ultimately for the Organization to recommend the withdrawal or modification of restrictions if these were being improperly applied.

7. In this whole process of consultation, review and recommendation, the Organization, it was recognized, would have to keep in the closest contact with the International Monetary Fund. The Fund is the specialized agency which deals with the financial aspects of balance of payments problems; and the use of import restrictions to safeguard the external financial position of members could only be properly considered by the Organization if, at every stage, it invited the Fund to participate in its consultations.

8. It was widely agreed that a first stage in this process should be consultation as to the nature of a country's 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. It was thought that a member which was considering the imposition of restrictions for the first time should as a general rule undertake such consultations before imposing the restrictions and, in cases in which previous consultation was impracticable, should undertake such consultations as soon as possible after imposing the restrictions. The Organization should, it was generally thought, be able to initiate consultations with any member which was already imposing restrictions on these grounds, and should, in any case, always initiate such consultations with any member which found it necessary substantially to intensify its restrictions. It was thought that the Organization should, within two years of its institution, review all restrictions existing at its institution and subsequently maintained on the grounds of safeguarding members' external financial positions.

9. Many members which may find it necessary to impose restrictions to safeguard their external financial position may wish to obtain some security that the restrictions which they are applying or intend to apply will not be challenged or that if their external position should become sufficiently difficult they would be able to impose restrictions

which would not be challenged. For this reason, it was generally agreed, a Member should have the right to obtain the previous approval of the Organization for restrictions which it was already applying or intending to apply, so that it could not be challenged by another Member when it applied them. It was generally considered that such previous approval should relate to the general extent, degree and duration of the restrictions and should not prevent another Member thereafter from bringing a complaint to the Organization that the restrictions were being applied in a manner which unnecessarily damaged its commercial interests.

10. Similarly, a Member might seek the previous approval of the Organization not in relation to any actual restriction which it was already applying or intending to apply but in relation to the contingent future conditions which, if they occurred, would justify it in applying restrictions. For example, it might be agreed between the Member and the Organization that the Member could not in any circumstances during an agreed period ahead be reasonably expected to allow its monetary reserves to fall below an agreed figure.

11. It was widely agreed that it should be open to any Member to bring a complaint to the Organization that another Member was applying restrictions when they were unnecessary to safeguard its external financial position or that it was doing so in a way which unnecessarily damaged the commercial interests of the complaining Member. In this case the Organization, if it were satisfied that the complaining Member had made out a prima facie case that its commercial interests were adversely affected, should consider the complaint. It should have power after consultation with the International Monetary Fund to recommend the withdrawal or modification of the restrictions; and if the Member in question failed to withdraw or modify them appropriately

such other Members of the Organization would be released from such obligations towards the Member in question as the Organization might specify. The Organization should, however, not be able to recommend the withdrawal or general relaxation of restrictions insofar as it had given previous approval for them; nor should it be able to do so on the grounds that the Members' external financial difficulty could be avoided by a change in the Members' domestic employment, reconstruction, development or social policies.

12. It was generally agreed that a Member imposing restrictions on balance of payments grounds should be permitted to select imports for restriction in such a way as to promote its domestic employment, reconstruction, development or social policies, in accordance with its own judgment as to the essentiality of the products concerned.

13. It was generally agreed that if there were a persistent and widespread application of restrictions on these grounds, there should be a procedure whereby the Organization in consultation with the International Monetary Fund should initiate discussions with the Members to consider whether other measures might not be taken by the countries with favourable or those with unfavourable balances of payments or by the Economic and Social Council or any appropriate intergovernmental specialized agencies to remove the underlying disequilibria.

14. It was generally agreed that the principles and procedures for restricting imports under private trade to safeguard a Member's external financial position should be applied *mutatis mutandis* to the restriction (to a greater extent than would otherwise be permissible) of imports by a State trading organization. It should, however, be provided that the disclosure of information

which would hamper the commercial operations of such a State trading organization would not be required.

15. There was general agreement for the view that in the early years after the war the Organization, in the functions proposed for it under this Article and under Article 22, should pay due regard to the difficulties of post-war adjustment with which the Members would be confronted in varying degrees.

16. The Committee had referred to it a request of the Joint Committee of Committees I and II "that in Article 20 provision should be made to cover the position of a Member who, as a result of its plans for industrial development or reconstruction, anticipates that its accruing international monetary resources will be inadequate to finance the needed imports of goods, for example, capital goods, for the carrying out of such plans unless it imposes regulations in respect of certain classes of goods, for example, consumer goods". This point is met in the draft text of Article 20 which is appended to this report. Under paragraph 2(a) a country could apply quantitative import restrictions to anticipate the imminent threat of a serious decline in its monetary reserves. Moreover, it is there suggested that in interpreting this principle due regard should be had to any commitments or other circumstances which may be affecting a country's needs for reserves. It follows that a country which was threatened with a serious decline in its reserves and which had heavy external payments to meet in the near future could protect its external financial position by import restrictions.

17. In paragraph 1 of the draft Article 20 it is recognized that "Members may need import restrictions as a means of safeguarding their external financial position . . . . particularly in view of

their increased demand for the imports needed to carry out their domestic..... development policies"; and in paragraph 3(e) of the draft Article 20 it is laid down that "the Organization ... shall not recommend the withdrawal or general relaxation of restrictions on the grounds that the existing or prospective balance of payments difficulties of the Member in question could be avoided by a change in the Member's domestic ..... development ..... policies". Thus it is clear that a Member could not be required to modify its domestic development plans on the grounds that they imposed a strain on its balance of payments and thus made control of imports necessary.

18. In paragraph 4 of draft Article 20 it is expressly laid down that "a Member may select imports for restriction on grounds of essentiality in such a way as to promote its domestic ... development .... policies", so that a Member could if necessary restrict the import of consumer goods without restricting the import of capital goods.

19. The Draft Article would, however, prevent a Member from applying restrictions if its foreign exchange resources were sufficient for it to finance all types of imports. In other words, the Member would be permitted under Article 20 to restrict only to the extent necessary to safeguard its monetary reserves. Up to this point it would have to admit imports of one class or another. Members would also be under an obligation not to apply any restrictions of a selective character in a manner which unnecessarily damaged the commercial interests of other Members.

20. Many of the problems which have been examined by the Committee in connection with this Article and with Articles 22 and 23 are necessarily of very direct concern to the International Monetary Fund and, to a less extent, to the International Bank for Reconstruction and Development. Trade restrictions applied to safeguard external financial resources will inevitably be of common interest to the International Trade Organization and to the International Monetary Fund. In particular, since it is generally agreed that trade restrictions should be avoided whenever possible, the question arises of the possibility of alternative means under the procedures of the Fund and the Bank for meeting a disequilibrium in balances of payments.

21. In considering these problems the Committee has been much helped by the benefit of the views of the observers from the Fund and the Bank. It is generally felt that it would be of great assistance to the work of the Preparatory Committee if the Fund and the Bank could be invited to study the Draft Articles 20, 22 and 23 appended to this report so as to be in a position to put their considered views on these issues before the next meeting of the Preparatory Committee.

22. One delegation suggested to the Committee that there should be amendments providing for (1) broadening the criteria under which restrictions could be imposed for balance-of-payments reasons, (2) eliminating the provision for complaints by Members against such restriction maintained by other Members, and (3) the use of quantitative restrictions as a means for creating favourable conditions for the industrial development of an economically undeveloped country. It was generally agreed that these proposals to some extent had been met in this Chapter and in the Chapter on Industrial Development, and that further changes would expand the use of quantitative restrictions too far.

Non-discriminatory Administration of  
Quantitative Restrictions (Article 21)

1. There was wide agreement with the proposal that there should be a general rule for non-discrimination in the use of quantitative restrictions, the necessary exceptions to this general rule being listed in the subsequent Article.

2. In applying the principle of non-discrimination to import restrictions it was generally agreed that the following represented a desirable set of principles which should also apply to tariff quotas:

(a) Wherever possible a global quota should be fixed in advance for the importation of the product in question;

(b) Where (a) is not practicable, restrictions might be applied by import licenses without a global quota;

(c) Whether issued within a global quota or without a global quota import licenses or permits should, in general, not tie the import to a particular source of supply;

(d) Where (c) is not practicable, the restrictions might take the form of a quota allocated among the various sources of supply. In this case the general principle should be to allocate the quotas on commercial principles such as price, quality and customary sources of supply. These commercial principles might be applied in principle in either of two ways:

(i) Agreement might be sought between the exporters which had a substantial interest in supplying the product.

(ii) Where (i) is not reasonably practicable, reference should be made to shares in a previous representative period, due account being taken of special factors which may have affected the trade in the product.

The Member should make the initial decisions about the shares

of the quotas under (ii) but should be prepared to enter into consultations about adjustments;

(e) No conditions should be imposed such as to prevent any Member country from making full use of its share in any quota, subject to importation being made within any prescribed period to which the quota may relate.

3. It was generally agreed that Members should undertake to supply adequate information about the administration of their import restrictions. In cases in which import licenses were used, information should be supplied at the request of any Member having a substantial interest in the trade about the administration of the licenses and about the licenses granted, but there should be no obligation to reveal the names of importing or supplying firms. Where quotas were fixed, public notice should be given in advance of the size of the quota; and where the quota is allocated among supplying countries all Members having an interest in supplying the product should be given prompt notice of the shares of the various countries in the quotas.

Exceptions from Rule of  
Non-discrimination (Article 22)

1. It was generally agreed that there must be the following exceptions from the general rule of non-discrimination in the application of quantitative restrictions:

(a) Members should not be precluded from the imposition of restrictions which have the equivalent effect of the exchange restrictions which a country could impose under Article VII Section 3(b) of the Articles of Agreement of the International Monetary Fund (scarce currencies clause).

(b) A group of territories which have a common quota in the International Monetary Fund should be able to impose restrictions

against imports from other countries in order to protect their common monetary reserves.

(c) Members should be able to assist, by measures not involving a substantial departure from the general rule of non-discrimination, a country whose economy has been disrupted by war; but this freedom should have a closing date, 31 December 1951.

(d) Some element of discrimination in import and export restrictions may be needed in order to carry out intergovernmental commodity agreements under the commodity policy provisions of the Charter or in order to apply the restrictions which have been suggested for the post-war transitional period to ensure an equitable distribution among consuming countries of products in short supply (see paragraphs 3 and 9 of the report on Article 19).

2. A more difficult problem arises in the treatment of inconvertible currencies. It is generally agreed that the objective is to establish multilateral trading over as wide an area as possible and that for this purpose it is desirable that currencies should become convertible as soon as is safely possible. But so long as some currencies remain inconvertible there is difficulty in reconciling the full application of the principle of non-discrimination with the courses of action which are imposed upon Members by their external financial situations. This difficulty is of course fully recognized, as far as exchange restrictions are concerned, in the provisions of Article XIV of the Articles of Agreement of the International Monetary Fund. The problem here is to make appropriate provision for this difficulty in the trade field.

3. The nature of the difficulty may be conveniently expressed by considering the position of country A which has a favourable balance of payments with country B which has an inconvertible currency.

This favourable balance can be settled only by:

- (a) Accumulation by A of inconvertible balances of B's currency or by a loan to B in A's currency, or
- (b) an increase in A's imports from B; or
- (c) a reduction of A's exports to B.

4. If A is unable or unwilling to make the appropriate loan under (a) and if the costs of B are too high to enable A to accept B's exports without infringing the rule of non-discrimination, the only possible reduction in A's exports to B. It has been argued that A can always avoid this difficulty by selling the exports which would otherwise have gone to B to countries with convertible currencies and there was general agreement that where the majority of countries had convertible currencies, this would normally be the case. It has been argued, on the other hand, that countries which normally conduct a large proportion of their trade with countries whose currencies are inconvertible, might be obliged to restrict their trade substantially because of the limited import capacity of countries with convertible currencies, and that consequently the additional purchase of imports from Country B, even on a discriminatory basis, might be less restrictive of world trade than the full application of non-discrimination. It was furthermore agreed that any provisions made to deal with this general problem should also cover the problem of balances of inconvertible currencies accumulated before the entry into force of the Charter.

5. It was agreed that in any case Members should be entitled to attach conditions to their exports such as would be necessary to ensure that an exporting country would receive for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting country and thus avoid the

danger of being, in effect, compelled to accumulate balances of inconvertible currency.

6: It was generally agreed that there must be some provision also to deal with the corresponding import problems, but it was felt that there were serious dangers in a wide exception from the rule of non-discrimination even during the post-war transitional period. If such a period were at all prolonged, it would permit the establishment of bilateral patterns of trade and discriminatory practices generally which would effectively prevent the development of multilateral trade which is a central objective of the Charter. It was argued that such arrangements would tend to become self-perpetuating and that their possibility would, in effect, delay the achievement of sound and lasting equilibrium in the balances of payments of the countries with inconvertible currencies and would thus postpone for an indefinite period their ability to make their currencies convertible. On the other hand, it was argued that if countries with inconvertible currencies had to face the full rigour of international competition, they would be forced to restrict their imports from all sources to a degree which would seriously impair their prospects of recovery, and it was further argued that the existence of some provision to enable countries with convertible currencies to apply discriminatory restrictions in special circumstances would encourage countries with inconvertible currencies to take the risk of accepting convertibility at an earlier stage than they would have otherwise been prepared to do.

7. It was generally agreed that a solution of the difficulty could be found by permitting discriminatory import restrictions under two conditions, both of which would have to be fulfilled.

(a) that the discrimination should increase the Member's total imports above the maximum level which would be possible in the

absence of the discrimination. The intensity of the import restrictions which a Member is permitted to impose under Article 20 is determined by the pressure upon its monetary reserves. This fixes the amount of imports which it can afford from countries with convertible currencies. The purpose of this condition is to ensure that a Member will purchase as much as it can afford from these sources, and that it would not be permitted to discriminate unless this would enable it to secure additional imports from countries with inconvertible currencies. It would thus be impossible for a Member to decrease its total imports from countries with convertible currencies by discriminatory restrictions.

(b) that the discrimination should either correspond to exchange restrictions permissible under the Articles of Agreement of the International Monetary Fund or should carry with it the approval of the Organization in agreement with the International Monetary Fund, which is the intergovernmental specialized agency which is competent in this field. The Member would not be entitled to impose discriminatory import regulations which did not have equivalent effect to exchange restrictions permitted to the Member under the Articles of Agreement of the International Monetary Fund, or under the terms of a special exchange agreement between the Member and the Organization (see paragraph 5 of the report on Article 23) if the Member were not imposing exchange restrictions it would be able to impose discriminatory import restrictions in special circumstances only with the prior approval of the Organization in agreement with the Fund.

8. In view of the advantages which may be expected to accrue to the trade of all countries from the other provisions of the

Charter, it was generally considered appropriate that the discriminatory element in any trade restrictions applied under this provision (or exchange restrictions having equivalent effect) should, from the outset, be liable to be withdrawn or modified if the Organization, after consultation with the International Monetary Fund, found that they were being applied inconsistently with the exceptions provided under this Article or in a manner which discriminated unnecessarily against the trade of another Member. It should, however, always be possible for a Member to seek the Organization's prior approval for its action and in this case it would not be open to challenge to the extent to which such approval was given; where the Member was not imposing exchange restrictions, this prior approval would be obligatory.

9. It was suggested to the Committee that if there were an abrupt or serious decline in effective demand by one or more Members, the imposition of non-discriminatory import restrictions under Article 20 by other Members might in some cases be more injurious to world trade than discriminatory restrictions, and that provision should be made in this Article for permitting such discriminations if the Organization considered that this general situation existed and warranted their application. After consideration, it was agreed that the Organization would have adequate powers under the revised Article 30, taking into account paragraph (F) of Chapter III on Employment Provisions, to meet this contingency.

10. A main objective of the Organization is to achieve the earliest possible elimination of all discriminations which restrict the expansion of world trade. The difficulties which the Article is designed to meet may be hoped to narrow very considerably as an increasing number of Members accept the obligations of Article VIII, Sections 2, 3 and 4 of the Articles of Agreement of the International

Monetary Fund. It is therefore generally agreed that the provisions sub-paragraphs 1(d) (iii) and (iv) of this Article should be reviewed when three-quarters of the Members of the Organization have made their currencies convertible, or in any event, not later than the end of 1951.

Exchange Arrangements (Article 23)

1. The problem of foreign exchange arrangements in relation to the Organization is a question of great importance, since commercial obligations can be fundamentally affected by such matters as exchange control, exchange depreciation, multiple exchange rates, etc. The International Monetary Fund is the specialized agency which has been instituted to deal with these matters, and it is desirable as far as possible to avoid overlapping functions between it and the Organization. Where trade matters and exchange matters inevitably overlap it is desirable that there should be the maximum consultation and co-operation between the Fund and Organization.
2. It was agreed that Members should undertake not to seek by exchange action to frustrate the purposes of this Charter, nor to seek by trade action to frustrate the purposes of the Articles of Agreement of the International Monetary Fund.
3. It was agreed that the problem would be much simplified if all Members of the Organization were also Members of the International Monetary Fund. The Committee came to no decision on the question of requiring common membership, however, as some of the delegations felt it may well be necessary to allow freely for independent Membership of the Organization and the Fund.
4. Consideration was therefore given to the question whether special provision should not be made for a country which wished to become a Member of the Organization without become a Member of the Fund. It was generally recognized that some such provision might

prove to be necessary, but it was thought that examination of this issue could usefully wait until the probable Membership of the Organization and of the Fund became clearer. Pending this further examination, the Draft Article 23 in the Appendix to this Report has been expressed in a way which implies that Members of the Organization would in general be expected to be members of the Fund, but that means could be provided for non-members of the Fund to join the Organization.

5. It was widely agreed that if the general principle were adopted that Members of the Organization should also be Members of the Fund, opportunity must nevertheless be left for a Member of the Organization to exercise the right which it would have under the Articles of Agreement of the International Monetary Fund to withdraw at short notice from the Fund - a right which would be compromised if a Member of the Organization were required to be a Member of the Fund, and were not free to withdraw from the Organization at short notice.

6. It was generally considered appropriate that any Member of the Organization which was not also a Member of the Fund should not have full freedom in exchange matters, since by exchange arrangements it might frustrate its trade obligations. There was a wide measure of agreement for the suggestion that such a Member should enter into a special agreement with the Organization in exchange matters which would provide that the purposes common to the Organization and the Fund would not be frustrated as a result of Action in exchange matters by the Member in question. In such cases the Organization would accept the opinion of the Fund whether action by the Member in question in exchange matters was permissible under the terms of the special exchange agreement; and the Member would undertake to provide the Organization with the information necessary for reaching such a decision.

SECTION 4  
SUBSIDIES

A. Subsidies on Primary Products

1. In general the intention of Article 25 of the United States Draft Charter is to give members whose interests are prejudiced by subsidization the right to a full international consideration of their case, to oblige subsidizing members to participate in such consideration and to provide for limiting subsidization so that its prejudicial effects may be reduced.
2. As concerns primary products, the Article recognizes that, when trade is distorted by the special difficulties referred to in Chapter VI, the procedures of that Chapter rather than those of this Article should apply.
3. In view of the fact that export subsidies are recognized as being more likely to distort trade than so-called "domestic" subsidies, the Article looks toward the early elimination of the former in most cases but merely to the limitation of the latter. Nevertheless, it is emphasized that the Article envisages gradual rather than sudden modifications of subsidies in cases where such modification calls for substantial economic and social adjustment in the affected member countries.
4. The points considered in revising the text of Article 25 of the Draft Charter are indicated below:
  - (a) Wherever the Charter has words such as "injury to the trade of a member", it was thought advisable to say "prejudice to the interest of a member". It was felt that this wording would in practice facilitate application.

(b) The word "limiting" in the last sentence of paragraph 1 (as shown in the appendix) is used in a broad sense to indicate maintaining the subsidization at as low a level as possible, and the gradual reduction in subsidization over a period of time where this is appropriate.

(c) One delegation suggested that the Interim Drafting Committee be requested to consider adding, after the words "imports of such product" in the first sentence of paragraph 1, the words "or of closely competitive products". Another delegation declared that it was not in a position to judge whether such a request should be made.

(d) It was suggested that the Drafting Committee consider whether it is necessary to retain the cross reference clauses beginning, "Except as provided" at the beginning of paragraph 1.

(e) The words added at the end of the second sentence of paragraph 2 are designed to make it clear that payments to producers from the proceeds of domestic taxes from which export products are exempted are looked upon as "domestic" rather than export subsidies. The added words, and the sentence to which they are attached, are essentially explanatory of part of the first sentence of paragraph 2.

(f) The substitution of the phrase "a complete analysis of the practices in question and the facts justifying them" for the words "an explanatory statement", in the fourth sentence of paragraph 2 is associated with a discussion of possible results of the determination mentioned in the following sentence. It was felt that under certain circumstances some export subsidies might be justified as being consistent with the objectives of the Charter.

(g) It was considered whether the words "the like product" in the first sentence of paragraph 2 could be construed in such a way as to permit escaping the provisions of this paragraph in cases when the exported product differs slightly from a product sold in the domestic market. It was decided, however, that this would be a case falling under the terms of Article 30 and thus that the measure, whether or not in conflict with the terms of Chapter IV of the Suggested Charter, would imply nullification or impairment of the Chapter. The subsidizing member would, therefore, be obliged to give sympathetic consideration to the views of other interested members and, assuming good faith, the problem could probably be solved. The implications of qualifying words, such as "the like or similar product", might be considered by the Drafting Committee.

(h) Certain delegations felt that the period of three years prescribed in the third sentence of paragraph 2 for giving effect to the provisions of that paragraph was unduly long. It was agreed that the question of shortening this period should be taken up at a later stage, after the countries had had the opportunity of considering the effect of such a shortening on their domestic legislation.

(i) One delegation reserved its position in regard to paragraph 2 in the following words: "The adoption or maintenance of subsidies or similar measures to promote the production or exportation of certain special commodities in a member country which has suffered from a chronic adverse balance of payments should be allowed until such a time as its equilibrium in the balance of payments will have been actually attained, when the question of such measures may be reconsidered through

consultation by the countries concerned." This delegation also suggested that paragraph 3 should be amended so that "the share of any such special export in world trade, whether or not acquired as a result of the use of subsidies or similar measures, should not be subject to limitation by its share in world trade during any previous representative period, except when it is proved to be part of a burdensome world surplus." Certain delegations, however, advised against these amendments because of the adverse effect which such subsidies would have upon the trade of other countries.

(j) The new paragraph 3 would render it possible for interested members, in consultation with the Organization, to operate a domestic stabilization scheme for a primary product if the stabilized domestic price is at times below the export price and if, through effective production controls or otherwise, the scheme operated so as not to prejudice the interest of members. Some delegations thought that this was implicit in paragraph 2 and that the explicit exemption under paragraph 2 might render it more difficult to apply paragraph 2 so as to cover other legitimate exceptions. Accordingly empty square brackets were added at the end of the new paragraph to indicate that suggestions may be forthcoming to cover other exceptional cases.

(k) One delegation raised the question of whether the comparison made in paragraph 3 should not be between the export price and the price paid to domestic producers, and requested that a later opportunity be given to the delegation to consider this matter.

(1) The new sub-paragraph (a) of the renumbered paragraph 4 indicates that the consultative procedure of Chapter VI with reference to primary products in the case of which special difficulties may arise may be applied when subsidies on such products call for determination by consultation under the terms of paragraph 1 or 2. In this connection and in relation to the provisions of the original paragraph 3 of the Draft Charter, it was suggested that the Drafting Committee considers Article 25 in connection with Chapter VI and with Article 55, paragraph 6, with a view to simplifying the texts in question. They are intended to provide:

(i) a uniform type of consultative procedure for dealing with primary commodities in the case of which special difficulties may arise either in the initial period of transition or thereafter, and

(ii) an adequate consultative procedure for dealing with non-primary products according to the general intentions of Article 25 expressed in the opening sentence of this report.

(m) One delegation announced that it would reserve its position regarding the provisions of sub-paragraphs (b) and (c) of (the renumbered) paragraph 4.

(n) One delegation expressed the opinion that the Interim Draft Committee should consider the provisions in Article 11 of the United States Charter in connection with Article 25. It felt specially that Article 11 should, in about the same way as paragraph 2 (a) of Article 19 does for quotas, provide for the legitimation of subsidies, if these were accepted after consultation by interested members.

B. Subsidies on Manufactured Goods

The question of subsidies on manufactured goods was submitted in the light of a document submitted by the United States Delegate at a meeting of the Drafting Sub-Committee on Industrial Development in connection with a proposal that the existing provisions of the United States Draft Charter be altered so as to provide leeway for the use of measures to assist developing industries under certain circumstances.

It is pointed out in the last-mentioned document that Article 25 of the Draft Charter "would permit, without serious qualification, the use of governmental subsidies for the purpose of establishing and expanding a manufacturing industry". The requirements laid down in Article 25 in respect of such subsidies, it is stated are moderate and few:

1. If the subsidy does not reduce imports no requirements are made.
2. If the subsidy does reduce imports the only requirement - subject to what is said below - is that it be reported to the International Trade Organization together with an indication concerning the probable effect of the subsidy and the reason why it is necessary.
3. Even if the subsidy should cause serious injury to international trade the only requirement is that the members granting it discuss with members whose interest is seriously prejudiced the possibility of limiting the subsidy. In view of these facts no change in the draft text of the Article on subsidies, as it appears in the Appendix to this report, was considered necessary.

One country drew attention to the fact that only the richer countries were able adequately to support their industries by means of subsidies.

SECTION 5  
STATE TRADING

Non-discriminatory Administration of  
State Trading Enterprises. (Article 26)

The provisions of Article 26 of the Draft Charter were, on the whole deemed acceptable to the Committee, subject to the modifications indicated below.

1. It was considered that this Article - in conformity with certain others in that Charter - should be modified so as to refer to goods only. Hence the words "or services" were deleted in the first paragraph.
2. In paragraph 1 of Article 26 the words "distribute or produce" in the first sentence have been placed in square brackets for the reason that certain delegations consider that it should be possible for a Member government to confer exclusive or special privileges upon certain types of enterprise, e.g., for carrying on certain types of manufacture, without at the same time exercising effective control over the trading operations of such enterprise. In order to make their point of view clear these Delegations wish to add in square brackets "and exercises effective control over the trading operations of such enterprise,". Other Delegations, however, consider that in such circumstances it would be proper that the government conferring the exclusive or special privileges should assume the responsibility of exercising effective control over operations affecting the external trade of such enterprise.
3. The illustrative examples of "commercial considerations" by which the State Trading enterprise of a member state should be guided in fulfilling its obligation of non-discriminatory administration, were supplemented to include "differential customs treatment".

4. Attention was paid to the nature of the "specific and detailed information" which the member maintaining a state enterprise was required to provide by the terms of the Draft Charter in order to make possible a determination whether the trading operations of the enterprise fulfilled the requirements of paragraph 1. It was argued that such enterprise should not be called upon to provide more information than a private enterprise trading under the same or similar conditions. Accordingly, the last sentence of paragraph 1 was amended so as to fall in line with the provisions of Article 30 of the Charter.

5. Since paragraph 1 of Article 8 of the Draft Charter had been amended by deletion of the provision relating to governmental contracts, it was felt necessary to insert a new paragraph in Article 26 dealing with the subject. A distinction was made as between governmental purchases for resale which are covered by this paragraph, and purchases for governmental use and not for resale. The discussion on this latter point was prompted by the consideration that in some countries purchases of industrial and other equipment of various types from abroad might well be effected through the medium of state enterprise and that, while it might be difficult in certain circumstances to observe the rule of "commercial considerations" for such purchases, it was at least necessary to provide that the rule of "fair and equitable treatment" should apply but that in applying it full regard should be given to all relevant circumstances. The question was raised whether purchases on the basis of the so-called "tied loans" would be considered to conform with this rule. The view was generally held that a country receiving a loan would be free to take this loan into account as a "commercial consideration" when purchasing its requirements abroad. The position of countries making such "tied loans" was another question.

6. Two changes were made in the definition of a state enterprise in the last paragraph of this Article. For greater clarity, the words "directly or indirectly" were deleted and the words "effective control" were substituted for the term "a substantial measure of control".

7. A small sub-committee composed of representatives of the Netherlands, the Union of South Africa and the United States considered the question of Marketing Boards. It was agreed that when such Boards buy or sell they would come under the provisions relating to state trading. Where they lay down regulations governing private trade their activities would be covered by the relevant Articles of the Draft Charter.

The report of the Sub-Committee on Marketing Boards was noted by the Sub-Committee on State Trading with the understanding that the term Marketing Boards was confined to Boards established by express governmental action.

Expansion of Trade by State Monopolies  
of Individual Products. (Article 27)

The principle underlying Article 27 of the Draft Charter, being the counterpart of paragraph 1 of Article 13 of that Charter, was considered generally acceptable. The changes which were recommended and which are listed below serve mainly two purposes - first, to provide a more accurate basis for the determination of the "negotiable margins" and secondly, to take into account the special nature of fiscal monopolies.

1. The references to Article 28 of the Draft Charter in the first sentence was provisionally removed (See Article 28 below).

2. The term "landed cost, before payment of any duty, of such products purchased by the monopoly from suppliers in Member states" was substituted for the wording of (a) of that Article reading "the price at which such product is offered for sale to the monopoly

by foreign suppliers," since it was considered that a mere offer did not provide a firm basis for the calculation of the margin. A similar change was made in (b) in respect of exports. Moreover, since in certain countries imports by state monopolies are subject to customs duty, it was considered appropriate to choose a definition which, while taking into account all costs up to the moment of entry, excluded duties and other charges (e.g. internal taxes, transportation and distribution). It was generally agreed, however, that it would be open to countries to negotiate, if they wished, a margin representing the difference between the total cost of a product, (i.e. including internal taxes, costs of distribution and transportation etc. and, where appropriate, profit) and the monopoly's first hand selling price in the home market.

3. It was considered that, when calculating the margin under (b) of Article 27, allowance should be made for a margin of profit; that margin, however, should not be so excessive as to restrict the volume of trade in the product concerned. Accordingly, the words "a reasonable margin of profit" were added.

4. It was considered appropriate that, in applying the margin determined by negotiation, landed costs and selling prices might be averaged over a recent period of years, and a sentence to that effect was added.

5. In view of the changes likely to be made by other Sub-Committees in the Articles of the Draft Charter (in particular in relation to quantitative restrictions and to "escape clauses") it was felt advisable to delete the reference to Chapter C of the Draft Charter and to substitute therefor the words "subject to the other provisions of this Charter". The sentence was further

modified so as to permit of account being taken, in the case of imports, of rationing of the product to consumers, and in the case of exports, of the quantities available for export.

6. Attention was paid to the special position of monopolies operated for revenue purposes. It was contended that their profits (and consequently the margins between their "landed costs" and selling prices) had to be regarded as a form of internal taxation. A new paragraph (2) was added to cover the case of such monopolies.

7. One delegation wished to reserve its position generally upon this Article.

Expansion of Trade by Complete State  
Monopolies of Import Trade. (Article 28)

Although Article 28 of the Draft Charter was not discussed as to substance, it was decided that it should remain provisionally as it appears in the Draft Charter.

SECTION 6  
RELATIONS WITH NON-MEMBERS

The Committee considered the relevant article of the United States Draft Charter which reads:

"Article 31 Contractual Relations With Non-Members - Treatment of Trade of Non-Members

"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 under 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."

The Committee decided to leave the question of relations with non-Members for further consideration at a later stage.

APPENDIX

DRAFT TEXTS OF ARTICLES

1. Most-favoured-nation Treatment,  
Tariffs and Tariff Preferences etc.

General Most-Favoured-Nation Treatment (Article 8)

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 affected by the provisions relating to national treatment in Article 9, any advantage, favour, privilege or immunity granted by any Member country 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.

2. The provisions of paragraph 1 of this Article shall not be construed to require the elimination of any preferences in respect of customs duties and other charges imposed on importation which do not exceed the preferences remaining after the negotiations contemplated in Article 18, and which fall within the descriptions set forth in (a), (b) or (c), below:

(a) Preferences in force exclusively

(i) between territories in respect of which there existed on 1 July 1939 common sovereignty or relations of protection or suzerainty, or

(ii) between the territories comprised in Annex X to this Charter\*.

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\* This Annex would relate to the countries of the British Commonwealth.

Each Member to which provision (i) applies shall provide a list of such territories, which lists shall be incorporated in an annex 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.

Reduction of Tariffs and Elimination of Preferences (Article 18)

1. Each Member, other than a Member subject to the provisions of Article 28, 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 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.

(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.

2. Each Member participating in negotiations pursuant to paragraph 1 of this Article 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.

3. If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization, which shall investigate the matter 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 of this Article, may determine that the complaining Member, or in exceptional cases the Members of the Organization generally, shall, notwithstanding the provisions of Article 8, 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 of this Article. 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 56.

Emergency Action on Imports of Particular Products (Article 29)

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 similar products (or, in the case of a product which is the subject of a concession with respect to the preference, to producers in a territory which receives or received such preference), 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 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 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization, and the other 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. 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 other affected Members shall then be free, not later than sixty days after such action is taken, to suspend, upon the expiration of sixty 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 recommend against. In serious cases the Organization may authorize an affected Member to suspend concessions

or obligations in addition to those which may be substantially equivalent to the action originally taken.

Consultation - Nullification or Impairment (Article 30)

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, quantitative and exchange regulations, 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.
2. If any Member should consider that any other Member has adopted any measure, whether or not it conflicts with the terms of this Charter, or that any situation has arisen, which has the effect of nullifying or impairing any object of this Charter, the 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 other appropriate international specialized agencies, make appropriate recommendations to the Members concerned. The Organization, if it considers 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 date on which written notice by the Organization of such withdrawal is received.

Territorial Application of Chapter IV - Customs Unions -  
Frontier Traffic (Article 33)

1. The provisions of Chapter IV shall apply to the customs territories of the Member countries. If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as a separate Member country for the purpose of interpreting the provisions of Chapter IV.

2. The provisions of Chapter IV shall not be construed to prevent

- (a) advantages accorded by any Member country to adjacent countries in order to facilitate frontier traffic; or
- (b) the formation of a union for customs purposes of any customs territory of any Member country and any other customs territory:

Provided, that the duties and other regulations of commerce imposed by any such union in respect of trade with other Member countries 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 any union described in paragraph 2 (b) of this Article shall consult with the Organization and shall make available to the Organization such information regarding the proposed union as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

4. The Members recognize that there may in exceptional circumstances be justification for new preferential arrangements

requiring an exception to the provisions of Chapter IV. Any such exception shall be subject to approval by the Organization pursuant to paragraph 2 of Article 55.

5. For the purpose of this Article a customs territory shall be understood to mean any area within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such area. A union of customs territories for customs purposes 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.

2. General Commercial Provisions  
(except Most-favoured-nation Treatment  
and General Exceptions

(See Introduction, paragraph 16, and Review of Work Section 2)

3. Quantitative Restrictions and Exchange Control

General Elimination of Quantitative Restrictions (Article 19)

1. Except as otherwise provided elsewhere in this Charter, no prohibition or restriction, other than duties, taxes or other charges, whether made effective through quotas, import licences or other measures, shall be imposed or maintained by any Member country, 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 of this Article shall not extend to the following:

(a) Prohibitions or restrictions on imports or exports imposed 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 country, or
- (ii) the maintenance of war-time price control by a country undergoing shortages subsequent to the war, or
- (iii) the orderly liquidation of temporary surpluses of stocks owned or controlled by the Government of any Member country or of industries developed in any Member country owing to the exigencies of the war which it would be uneconomic to maintain in normal conditions:

Provided, that restrictions under (iii) of this sub-paragraph may be imposed by any Member only after consultation with other interested Members with a view to appropriate international action. Import and export prohibitions and restrictions imposed or maintained under this sub-paragraph 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 imposed to relieve critical shortages of food-stuffs or other essential products in the exporting country.

(c) Import and export prohibitions or restrictions necessary to the application of standards for the classification and grading of commodities in international commerce. 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 16.

(d) Export or import quotas imposed under intergovernmental commodity agreements concluded in accordance with the provisions of Chapter VI.

(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 Member imposing restrictions on the importation of any product pursuant to this sub-paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified period and of any change in such quantity or value provided that any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded but may be counted, so far as practicable, against the quantity permitted to be imported in the period in question.

Moreover, any restrictions imposed under (i) of this sub-paragraph 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 interested in the trade in question, who wish to initiate such consultations.

(f) Import and export prohibitions or restrictions imposed 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 26, 27 and 28.

Note on Article 19

The words in square brackets in 2 (e) should be retained only if the matter is not fully covered in Article 15.

Restrictions to Safeguard the Balance of Payments. (Article 20).

1. Members may, need import restrictions as a means of safeguarding their external financial position and as a step towards the restoration of equilibrium on a sound and lasting basis, particularly in view of their increased demand for the imports needed to carry out their domestic employment, reconstruction, development or social policies. Accordingly, notwithstanding the provisions of Article 19, Members may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard their balance of payments and monetary reserves. The use of import restrictions under this paragraph shall conform to the conditions and requirements set out in paragraphs 2, 3 and 4 of this Article.

2. Members undertake to observe the following principles in the use of such restrictions:-

(a) To refrain from imposing new or intensifying existing restrictions except to the extent necessary (having due regard to any special factors which may be affecting the level of the Members' reserves, to any commitments or other circumstances which may be affecting its need for reserves, or to any special credits or other resources which may be available to protect its reserves)

(i) to stop or to forestall the imminent threat of a serious decline in the level of monetary reserves,  
or

(ii) in the case of a Member with very low monetary reserves to achieve a reasonable rate of increase in its reserves.

(b) To eliminate the restrictions when conditions would no longer justify the imposition of new restrictions under sub-paragraph 2(a) of this Article and to relax them progressively as such conditions are approached.

(c) Not to carry the imposition of new import restrictions or the intensification of existing restrictions under paragraph 2 (a) of this Article to the point at which it involves the complete exclusion of imports of any class of goods.

3. (a) Any Member which, while not imposing restrictions under paragraphs 1 and 2 of this Article, is considering the need for the imposition of restrictions, before imposing such restrictions (or, in conditions in which previous consultation is impracticable, as soon as possible after imposing such restrictions) shall 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 which is imposing import restrictions under paragraphs 1 and 2 of this Article to consult with it about the form and extent of the restrictions, and shall invite a Member substantially

intensifying such restrictions to consult accordingly within thirty days. Members agree to participate in such discussions when so invited. In the conduct of such discussions the Organization shall consult the International Monetary Fund and any other appropriate International specialized agencies, in particular in regard to the alternative methods available to the member in question of meeting its balance of payments difficulties. The Organization under this sub-paragraph shall, within two years of its institution, review all restrictions existing at its institution and subsequently maintained under paragraphs 1 and 2 of this Article.

(c) Any Member applying or intending to apply restrictions on imports under paragraphs 1 and 2 of this Article may, if it so desires, consult with the Organization with a view to obtaining the previous approval of the Organization for restrictions which it intends to maintain or to impose or for the maintenance or imposition in the future of restrictions under specified 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, imposition or intensification of import restrictions by the member in question insofar as the general extent, degree and duration of the restrictions are concerned; and to the extent to which such approval has been given, the action of the member imposing restrictions shall not be open to challenge under paragraph 3 (d) of this Article insofar as it relates to conformity with paragraphs 1 and 2

of this Article.

(d) Any Member which considers that any other Member is applying import restrictions under paragraphs 1 and 2 of this Article in a manner inconsistent with the provisions of paragraphs 1 and 2 of this Article or of Articles 21 or 22, or in a manner which unnecessarily damages its commercial interest, may bring the matter for discussion to the Organization; and the Member imposing the restrictions undertakes to discuss the reasons for its action. The Organization shall, if it is satisfied that there is prima facie case that the complaining Member's interests are adversely affected, consider the complaint. It may then, after consultation with the International Monetary Fund on any matter falling within the competence of the International Monetary Fund, 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 of this Article or Articles 21 or 22, or in a manner which unnecessarily damages the commercial interests of another Member. If restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions, as the Organization may specify.

(e) The Organization in reaching its decision under subparagraph 3(d) of this article shall not recommend the withdrawal or general relaxation of restrictions on the grounds 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. Members agree, however, that in carrying out such domestic policies they will pay due regard to the need to restore sound and lasting equilibrium in their balances of payments.

4. In giving effect to the restrictions on imports imposed 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; but the Member shall avoid all unnecessary damage to the commercial interest of other Member and will accept an invitation to consult with any other Member which considers its interests to be so damaged.

5. If there is persistent and widespread application of quantitative 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 International Monetary Fund, initiate discussions to consider whether other measures might not be taken, either by those countries whose balances of payments are under pressure or by those countries whose balances of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental agency or agencies + to remove the underlying causes of the disequilibrium.

Members agree that they will take part in such discussions.

6. Throughout this section the phrase "quantitative import restrictions" includes the restriction of imports by State trading Organizations to an extent greater than that which would be permissible under Article 27 of this Charter, [ provided that no Member shall be required to disclose information which would hamper the commercial operations of such a State trading Organization ].

7. Members recognize that in the early years of this Charter all Members will be confronted, in varying degrees, by 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 22, take full account of the difficulties of post-war adjustment which face the Members concerned.

#### Notes on Article 20

1. The phrase immediately before the asterisk in paragraph 5 is intended to cover the Economic and Social Council of the United Nations as well as the inter-governmental specialized agencies.
2. The words in square brackets in paragraph 6 should only be retained if the matter is not adequately covered in the Articles dealing with State trading organizations.

#### Non-Discriminatory Administration of Quantitative Restrictions (Article 21)

1. Subject to the provisions of Article 22, no prohibition or restriction shall be applied by any Member pursuant to this Section 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. In pursuance of the principle set forth in paragraph 1, Members undertake in applying import restrictions to observe the provisions contained in the following sub-paragraphs:-

(a) Wherever practicable, global quotas (whether allocated among supplying countries or not) should be fixed, and notice given of their amount in accordance with sub-paragraph 3 (b) of this Article.

(b) Where global quotas are not practicable, import restrictions may be applied by means of import licences without a global quota.

(c) Import licences or permits which may be issued in connection with import restrictions (whether or not within the limits of global quotas) shall not, save for purposes of operating quotas allocated in accordance with sub-paragraph 2(d), require or provide that the licence or permit be utilized for the importation of the product concerned from a particular country or source.

(d) In cases where these methods of licensing are found impracticable or unsuitable, the Member concerned may apply the restrictions in the form of a quota allocated among supplying countries. In that event, the shares of the various Member supplying countries should in principle be determined in accordance with commercial considerations,

such as e.g. 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 where this method is not reasonably practical, the Member concerned should allot to Member countries having a substantial interest in supplying the product, shares based upon the proportions of the total quantity or value of the product supplied by such Member countries during a previous representative period, due account being taken of any special factors which may have affected or be affecting the trade in the product.

(e) No conditions or formalities shall be imposed which would prevent any Member country 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.

3. (a) In cases where import licences are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information as to the administration of the restriction and as to the import licences granted over a past recent period and on the distribution of such licences among supplying countries; provided, however, that

there shall be no obligation to supply information as to the names of importing or supplying firms.

(b) In the case of import restrictions involving the fixing of quotas (whether or not allocated among supplying countries), 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, and of any change in such quantity or value.

(c) 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 product concerned, of the shares in the quota, by quantity or value, currently allocated to the various supplying countries.

4. With regard to restrictions imposed in accordance with sub-paragraph 2.(d) of this Article or under sub-paragraph 2 (e) of Article 19, 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 imposing 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 with 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.

Exceptions from the rule of non-discrimination (Article 22)

1. The provisions of this Section shall not preclude:
  - (a) restrictions with equivalent effect to exchange restrictions authorized under Article VII, Section 3 (b) of the Articles of Agreement of the International Monetary Fund;
  - (b) prohibitions or restrictions in accordance with subparagraphs 2 (a) (i) or 2 (d) of Article 19;
  - (c) conditions attaching to exports which are necessary to ensure that an exporting country receives for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting country;
  - (d) restrictions in accordance with Article 20 which either:
    - (i) are applied otherwise consistently with Article 21 against imports from other countries by a group of territories with common quota in the International Monetary Fund, or
    - (ii) assist in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 21, a country whose economy has been disrupted by war, or,
    - both (iii) provide a member with additional imports above the maximum total of imports which it could afford in the light of the conditions in paragraph 2 of Article 20 if its restrictions were consistent with Article 21,
    - and (iv) 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 23:

Provided that a member which is not imposing restrictions on payments and transfers for current international transactions may apply import restrictions under Section (iii) 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, the member shall within sixty days remove the discriminations or modify them as specified by the Organization:

Provided, that a member may, if it so desires, consult with the Organization to obtain its previous approval for discriminations, under the procedure set forth in Article 20, paragraph 3 (c), and to the extent that such approval is given, the discriminations shall not be open to challenge under this paragraph.

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 provisions of this Article, in consultation with the International Monetary Fund, with a view to the earliest possible elimination of discriminations under sub-paragraphs 1 (d) (iii) and (iv) of this

Article which restrict the expansion of world trade.

Exchange Arrangements (To replace Articles 23 and 24  
of the Draft Charter)

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Fund and the Organization 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 agree that they will not seek by exchange action to frustrate the purposes of this Charter, and that they will not seek by trade action to frustrate the purposes of the Articles of Agreement 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 willing to join the Organization but is unwilling to join the International Monetary Fund may become a member of the Organization if it enters 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 special exchange agreement between a member and the Organization under paragraph 3 of this Article must provide to the satisfaction of the Organization, in collaboration 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.

5. A member which has made a special exchange agreement under paragraph 3 of this Article undertakes to furnish the Organization with such information as it may require, within the general scope of Article VIII, Section 5, of the Articles of Agreement of the International Monetary Fund, in order to carry out its functions relating to this special exchange agreement.

6. The Organization shall seek and accept the opinion of the International Monetary Fund 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.

Note on Article 23

With respect to the words in square brackets in paragraph 3, reference should be made to paragraphs 3 and 4 of the report covering this Article.

4. Subsidies

General Undertaking Regarding Subsidies - Elimination  
of Export Subsidies - Exceptions (Article 25)

1. Except as provided in paragraphs 2 and 4 of this Article, if any member establishes or maintains any subsidy, including any form of income or price support, to the domestic producers of any product, which operates to increase the exports of such product from, or to reduce the imports of such product into, the territory

of the member, such member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the anticipated effect of the subsidization on the quantity of the product imported into and exported from the territory of the member, 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 member is caused or threatened by the operation of any such subsidization, the member granting such subsidization shall undertake to discuss with the other member or members concerned, or with the Organization, the possibility of limiting the subsidization.

2. Except as provided in paragraph 4 of this Article, 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 conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability. The preceding sentence shall not be construed to prevent any member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically or from remitting such duties or taxes which have accrued; the use of the proceeds of such duties or taxes to make payments to domestic producers would be considered as a case under paragraph 1 of this Article. 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 a notice in writing to that effect, accompanied by a complete analysis of the practices in question and the facts justifying them and an indication as to the extension of the period desired. It shall then be determined whether such period should be extended for the member desiring an extension in respect of the product or products concerned.

3. A system for the stabilization of the domestic price of a primary product, which sometimes results 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 by the Organization not to be a subsidy on exportation under the terms of paragraph 2 of this Article if it has at times resulted 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 unduly stimulate exports or otherwise seriously prejudice the interest of other members. [.....]

4. (a) In any case of subsidization of a primary commodity, whether falling under paragraph 1 or paragraph 2 of this Article, if a member considers that its interest is seriously prejudiced by the subsidy or if the member granting the subsidy considers

itself unable to comply with the provisions of paragraph 2 within the time limit laid down therein, the difficulty may be deemed to be a special difficulty of the kind referred to in Chapter VI, 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 subparagraph (a) of this paragraph 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 paragraphs 1 and 2 of this Article shall cease to apply in respect of such product as of the effective date of such determination and shall not be re-applied in respect of such product until a date determined in accordance with procedures approved by the Organization.

(c) Notwithstanding the provisions of paragraphs 2 and 4 (b) of this Article, no member shall grant any subsidy on the exportation of any primary 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.

5. Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with Article 55:6.

5. State Trading

Non-discriminatory Administration of State Trading Enterprise  
(Article 26)

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 product, ~~and exercises effective control over the trading operations of such enterprise~~ the commerce of the 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 enterprises 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, market-ability, transportation, and other terms of purchase or sale, and also differential customs treatment. The Member maintaining such State enterprise, or granting exclusive or special privileges to an enterprise shall make available such

information as may be appropriate in connection with the consultation provided for in Article 30.

2. The foregoing provisions of this Article relate to purchases by State enterprises for re-sale. With respect to purchases by State enterprises for governmental use and not for re-sale, Members agree to accord to the commerce of other Members fair and equitable treatment having full regard to all relevant circumstances.
3. For the purposes of this Article, a state enterprise shall be understood to be any enterprise over whose operations a Member government exercises effective control.

Expansion of Trade by State Monopolies of Individual Products  
(Article 27)

1. If any Member [other than a Member subject to the provisions of Article 28] establishes, maintains or authorizes, formally or in effect, a complete or substantially complete 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 18, with regard to:

- (a) 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 Member States, or

- (b) in the case of an export monopoly, the maximum margin by which the price for a product charged by the monopoly to purchasers in such Member States may exceed the price for

such product charged by the monopoly in the home market

after due allowance in either case for internal taxes, transportation, distribution and other expenses incident to purchase, sale or further processing, and a reasonable margin of profit.

For the purpose of applying these margins regard may be had, in respect of imports, to average landed costs and selling prices of the monopoly and, in respect of exports, to average prices charged by the monopoly for exports and sales in the home market respectively, over recent periods.

Members newly establishing any such monopoly in respect of any product shall not create a margin as defined above greater than that represented by the maximum rate of import or export duty which may have been negotiated in regard to that product pursuant to Article 18. With regard to any monopolized product in respect of which a maximum margin has been established pursuant to this Article, the monopoly shall as far as practicable and subject to the other provisions of this Charter -

- (i) import from member countries and offer for sale at prices charged within such maximum margins 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 of the product to consumers which may be in force at that time, and

(ii) in the case of an export monopoly, offer for sale to purchasers in Member countries at prices charged within such maximum margins quantities of the product to the fullest extent that they can be made available for exportation.

2. 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.

Expansion of Trade by Complete State Monopolies of Import Trade  
(Article 28)

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.<sup>7</sup>

6. Relations with Non-Members

Contractual Relations With Non-Members - Treatment of Trade of Non-Members (Article 31)

(See Section 6 of Review of Work).

ANNEXURE

MULTILATERAL TRADE-AGREEMENT NEGOTIATIONS

Procedures for Giving Effect to Certain Provisions of  
the Proposed ITO Charter by Means of a General  
Agreement on Tariffs and Trade Among the Members  
of the Preparatory Committee

## INTRODUCTION

The Preparatory Committee has agreed to recommend to the governments concerned that the Committee sponsor tariff and preference negotiations among its members to be held in Geneva in April of 1947. This agreement is set forth in the Committee's resolution of \_\_\_\_\_. Upon the completion of these negotiations the Preparatory Committee would be in a position to complete its formulation of the Draft Charter and approve and recommend it for the consideration of the general international conference on trade and employment; and the general international conference would be in a position to consider the Charter in the light of the assurance afforded as to the implementation of the tariff provisions.

### 1. PROPOSED NEGOTIATIONS AMONG MEMBERS OF PREPARATORY COMMITTEE

The results of the negotiations among the members of the Preparatory Committee will need to be fitted into the framework of the International Trade Organization after the Charter has been adopted. The negotiations must, therefore, proceed in accordance with the relevant provisions of the Charter as already provisionally formulated by the Preparatory Committee. In the light of these provisions, the comments and explanations which follow may be useful as a guide to the negotiations.

#### General Objectives

An ultimate objective of the Draft Charter, elaborated in Article 18, is to bring about the substantial reduction of tariffs and the elimination of tariff preferences. The negotiations among the members of the Preparatory Committee should therefore be directed to this end, and every effort should be made to achieve as much progress toward this goal as may be practicable in the circumstances, having regard to the provisions of the Draft Charter as a whole.

## 2. GENERAL NATURE OF NEGOTIATIONS

The Draft Charter, in Article 18, provides that tariff negotiations shall be on a "reciprocal" and "mutually advantageous" basis. This means that no country would be expected to grant concessions unilaterally, without action by others, or to grant concessions to others which are not adequately counterbalanced by concessions in return.

The proposed negotiations are also to be conducted on a selective, product by product basis which will afford an adequate opportunity for taking into account the circumstances surrounding each product on which a concession may be considered. Under this selective procedure a particular product may or may not be made the subject of a tariff concession by a particular country. If it is decided to grant a concession on the product, the concession may either take the form of a binding of the tariff against increase or a reduction of the tariff. If the tariff on the product is reduced, the reduction may be made in greater or lesser amount. Thus, in seeking to obtain the substantial reduction of tariffs as a general objective, there is ample flexibility under the selective procedure for taking into account the needs of individual countries and individual industries.

The same consideration and procedures would apply in the case of import tariff preferences, it being understood that, in accordance with the principles set forth in Article 8 of the Draft Charter relating to most-favoured-nation treatment, any preferences remaining after the negotiations may not be increased.

The various observations in this report regarding the negotiation of tariffs and tariff preferences should not be read as applying (mutatis mutandis) to the negotiation of state trading margins under Article 27 of the Draft Charter.

### 3. GENERAL RULES TO BE OBSERVED IN NEGOTIATIONS

Paragraph 1 of Article 18 of the Draft Charter as explained in the Report of Committee II, sets forth the following, self-explanatory, rules to be observed during the negotiations:

"(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 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.

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

### 4. MISCELLANEOUS RULES OF GUIDANCE

There are a number of additional questions which should be borne in mind in preparing for the proposed tariff negotiations among the members of the Preparatory Committee:

#### Base Date for Negotiations

Article 8 of the Draft Charter, as developed by the Preparatory Committee, would except from the most-favoured-nation provisions of the Charter preferences "which do not exceed the preferences remaining after ... negotiations." This means that all margins of preference remaining after negotiations would be bound against increase. Also, as explained above, Article 18 requires that reductions of most-favoured-nation rates of duties shall operate "automatically" to reduce or eliminate margins of preference.

In order to determine what residual preferences shall be bound against increase under Article 8, and in order to determine what preferences shall be reduced or eliminated automatically under Article 18, it is necessary to establish a date which will fix the height of

the preferences in effect prior to the negotiations.

It would be desirable for such purposes to fix a single date, common to all the countries participating in the negotiations. However, the discussions during the first session of the Preparatory Committee indicate that the establishment of a common date presents certain difficulties and may not be practicable. It is therefore suggested that immediately following the close of the first session of the Committee each member of the Committee concerned should inform the Secretariat of the United Nations as to the date which it proposes to use as the base date for negotiations with respect to preferences. The Secretariat will promptly inform the other members. The base date for negotiations established by any country granting preference should hold good for its negotiations on all products with all other countries members of the Preparatory Committee, and should not vary from country to country or from product to product.

Avoidance of New Tariff or other Restrictive Measures

It is important that members do not effect new tariff measures prior to the negotiations which would tend to prejudice the success of the negotiations in achieving progress toward the objectives set forth in Article 18, and they should not seek to improve their bargaining position by tariff or other restrictive measures, in preparation for the negotiations. Changes in the form of tariffs, or changes in tariffs owing to the depreciation or devaluation of the currency of the country maintaining the tariffs, which do not result in an increase of the protective incidence of the tariff, should not be considered as new tariff increases under this paragraph.

#### Principal Supplier Rule

It is generally agreed that the negotiations should proceed on the basis of the "principal supplier" rule, as defined in this paragraph. This means that each country would be expected to consider the granting of tariff or preference concessions only on products of which the other countries, members of the Preparatory Committee, are, or are likely to be, principal suppliers. In determining whether, on the basis of the "principal supplier" rule, a product is to be included in the negotiations, reference should be had not merely to whether a particular member of the Preparatory Committee is, or may become, a principal supplier, but to whether the members of the Committee, taken as a whole, supply, or are likely to supply, a principal part of the product in question. In other words, if a principal part of total imports of a particular product into a particular member country is supplied by the other members of the Preparatory Committee taken together, then the importing member should, as a general rule, be willing to include that product in the negotiations, even though no single other member of the Committee, taken by itself, supplies a principal part of the total imports of the product. In estimating the future prospects of a member, or the members taken together, to become a principal supplier of a product, consideration should be given to the probable disappearance of ex-enemy countries as suppliers of certain products and of the changes in the currents of trade created by the war.

#### Form of Tariff Schedules

It is contemplated that the tariff negotiations among the members of the Preparatory Committee would be multilateral, both in scope and in legal application.

Thus, there would result from the negotiations a total of sixteen<sup>x</sup> schedules of tariff concessions, each schedule setting forth a description of the products and of the maximum (concession) rates of duty thereon which would be applicable in respect of the imports into a particular country. In this way each member of the Committee would be contractually entitled, in its own right and independently of the most-favoured-nation clause, to each of the concessions in each of the schedules of the other members.

The multilateral form of the tariff schedules is designed to provide more stability than has existed in the past under bilateral tariff agreements, to assure certainty of broad action for the reduction of tariffs, and to give to countries a right to tariff concessions on particular products which such countries might wish to obtain, but could not obtain under bilateral agreements because of their relatively less important position as a supplier of the product concerned. The multilateral form also gives expression to the fact that each country stands to gain when another country grants tariff reductions on any product, even though primarily supplied by a third country. This point can be finally settled when the negotiations have proceeded sufficiently to enable all the varying factors to be taken into account.

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<sup>x</sup> If the principles indicated in Article 28 of the Draft Charter should prove acceptable to the USSR, these may in addition, be a schedule relating to an undertaking by the USSR to purchase annually products valued at not less than an aggregate amount to be agreed upon.

Status of Preferential Rates of Duty

The formulation by each member of the Preparatory Committee of a schedule of tariff concessions which would apply to all other members raises a question as to the method of relating to such schedules preferential rates of duty which have been negotiated as well as preferential rates on products for which most-favoured-nation rates have been negotiated. There appear to be two methods which might be followed:

1. Such preferential rates might be incorporated in the multilateral schedules, qualified by the requirement that they apply only to the products of the countries receiving preferred treatment.
2. Such preferential rates might be incorporated in separate schedules which would apply only to the preferred countries.

It should be left for the country concerned to determine which of the two methods indicated above it desires to follow. However, a single schedule containing both most-favoured-nation and preferential rates would seem to facilitate the work of both traders and governments.

5. PROCEDURES FOR CONDUCTING NEGOTIATIONS  
AMONG THE MEMBERS OF THE PREPARATORY COMMITTEE

It is believed that the tariff negotiations among the members of the Preparatory Committee can best be conducted in four stages:

1. First Stage. Each member should transmit to each other member from which it desires to obtain tariff concessions, as soon as possible and preferably not later than 31 December 1946, a preliminary list of concessions which it proposes to request of such other member. This list should set forth for each product concerned

(a) an indication of the existing rate of duty (where known)

(b) an indication of the requested rate of duty. Thirty copies of this list should be sent simultaneously to the Secretariat of the United Nations, which will transmit one copy to each of the other members of the Preparatory Committee.

In order to facilitate the negotiations, each member of the Preparatory Committee should transmit to the Secretariat of the United Nations, as soon as possible and preferably not later than 31 December 1946, thirty copies of its customs tariff showing the rates of duty currently applicable. The Secretariat will promptly transmit one copy to each of the other members of the Committee.

2. Second Stage. At the opening of the second session of the Preparatory Committee, each member should submit a schedule of the proposed concessions which it would be prepared to grant to all other members in the light of the concessions it would have requested from each of them.

3. Third Stage. Notwithstanding the multilateral character of the negotiations, it will usually be found that only two or three countries will be directly and primarily concerned in the concession on a particular product, and that the interest of other countries, although material, will be secondary. It is therefore proposed that the third stage of the negotiations will ordinarily consist of discussions on particular products between two, or possibly three or four countries. For the purpose of engaging in such negotiations, therefore, each country should to the extent practicable have separate groups of persons competent to negotiate with each of the other countries with which important negotiations are likely to be conducted.

The number of negotiating groups required by each country will of course tend to vary with the scope of its trade relations. In the case of large trading countries having important trade relations with most or all of the other members of the Committee, a large number of negotiating groups will be required. In the case of countries having less extensive trade relations, a smaller number of negotiating groups will be sufficient. In any event the timing of negotiations between particular groups will need to be scheduled, and in order that the United Nations Secretariat may have adequate notice to prepare for such scheduling, it would be desirable for each member of the Committee to notify the Secretariat, as far in advance as may be practicable, of the number of negotiating groups which the member proposes to send to the negotiating meeting, and of the country or countries to which each negotiating group relates.

4. Fourth stage. The progress of the negotiations should be subject to general review by the Committee as a whole periodically during the negotiations and also in the final stage. General review by the Committee as a whole will enable each member to assess the benefits which it is likely to receive from the series of negotiations in the light of its total contributions, and will offset the tendency toward limiting concessions which results from a comparison of benefits exchanged between two countries alone.

It is clear that the general review by the Committee as a whole cannot take the form of a detailed

examination by the Committee of each concession.

Rather, the Committee would review the general level of tariff reduction achieved, as indicated in summary reports. At the same time, each member should be entitled to receive, on request, detailed information as to the status of negotiations on particular products between other members in order that it may be in a position to assert an interest in such negotiations.

In order that the negotiations may proceed in an orderly fashion, it is desirable that a Steering Committee be established as soon as the various delegations have assembled at the meeting.

#### 6. RESULT OF THE NEGOTIATIONS

If the tariff negotiations proceed successfully along the lines set forth above, there should emerge from the negotiations a tariff schedule for each member, each schedule containing concessions granted to all of the other members in their own right. These schedules might be identified as follows:

<u>Name of Country</u>	<u>Schedule</u>
Australia	Schedule I
Belgo-Luxembourg-Netherlands Customs Union, Belgian Congo and Netherlands Overseas Territories	Schedule II
Brazil	Schedule III
Canada	Schedule IV
Chile	Schedule V
China	Schedule VI
Cuba	Schedule VII
Czechoslovakia	Schedule VIII
France and French Union	Schedule IX
India	Schedule X
New Zealand	Schedule XI
Norway	Schedule XII
Syro-Lebanese Customs Union	Schedule XIII
Union of South Africa	Schedule XIV
Union of Soviet Socialist Republics	Schedule XV +
United Kingdom and the overseas territories for which it has international responsibility.	Schedule XVI
United States	Schedule XVII

Note: Separate, or possibly sub-divided, schedules may be necessary in the case of certain countries in order to provide adequately for certain overseas territories.

#### GENERAL AGREEMENT ON TARIFFS AND TRADE

Once agreed upon, the tariff schedules resulting from the negotiations among the members of the Preparatory Committee cannot easily be held in abeyance pending action by the general international conference on trade and employment and the adoption of the Charter by national legislatures.

+ If the principles indicated in Article 28 of the Draft Charter should prove acceptable to the USSR, this schedule would relate, not to tariff concessions, but to an undertaking to purchase annually products valued at not less than an aggregate amount to be agreed upon.

It is therefore proposed that the tariff schedules be incorporated in an agreement among the members of the Preparatory Committee which would also contain, either by reference or by reproduction, those general provisions of Chapter IV of the Charter considered essential to safeguard the value of the tariff concessions and such other provisions as may be appropriate. The General Agreement should contain a provision under which the signatory governments could make any adjustments in the Agreement which may be desirable or necessary in the light of the action taken by the International Conference on Trade and Employment on the Draft Charter. A draft outline of the General Agreement on Tariffs and Trade is attached. The Drafting Committee provided for in the Resolution of the Preparatory Committee of \_\_\_\_\_ should be instructed to consider this outline and to prepare a more complete draft for the consideration of the Preparatory Committee as soon as possible after its meeting in April.

The General Agreement on Tariffs and Trade should be signed and made public at the close of the tariff negotiations. The Agreement should be legally independent of the Charter and should be brought into force as soon as possible after its signature and publication. Countries should be free to withdraw from the agreement, at the end of three years or thereafter on giving six months prior notice. This will provide an opportunity for a review of the agreement and any adjustment of the tariff schedules which may be considered desirable.

The agreement should conform in every way to the principles laid down in the Charter and should not contain any provision which would prevent the operation of any provision of the Charter.

The tariff concessions granted under the agreement should be provisionally generalized to the trade of other countries pending

the consideration by the International Conference on Trade and Employment of the question whether benefits granted under the Charter should be extended to countries which do not join the International Trade Organization and which therefore do not accept the obligations of Article 18.

7. CREATION OF PROVISIONAL AGENCY PENDING  
ESTABLISHMENT OF INTERNATIONAL TRADE ORGANIZATION

Certain of the provisions of the General Agreement on tariffs and trade, for example those incorporating Article 29 of the Charter (emergency action on imports of particular products) and Article 50 of the Charter (nullification or impairment), will require for their successful operation the existence of an international body. It is proposed, therefore, that the members of the Preparatory Committee which make effective the General Agreement on tariffs and trade should create a provisional international agency for this purpose. This provisional agency would go out of existence upon the establishment of the International Trade Organization.

8. RELATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE  
TO THE INTERNATIONAL TRADE ORGANIZATION AFTER THE ORGANIZATION  
IS ESTABLISHED

1. Interim Tariff Committee

The Draft Charter as now formulated provides in Article 56 that the countries which make effective the General Agreement on Tariffs and Trade shall constitute the original members of the Interim Tariff Committee to be set up within the International Trade Organization after the International Conference on Trade and Employment has met and the Organization has been established.

The Interim Tariff Committee would have the function of determining whether (with respect to any negotiations subsequent to those culminating in the General Agreement on Tariffs and Trade) any Member of the Organization has failed to live up to its obligations

regarding tariff negotiations and, under paragraph 3 of Article 18 of the Charter, of authorizing complaining Members to withhold tariff benefits from offending Members. The following points should be noted with regard to this function:

(a) A Member of the Organization may be admitted to membership in the Committee when the Member has completed tariff negotiations "comparable in scope or effect" to the negotiations already completed by the original members of the Committee.

Thus, what is achieved by way of tariff action in the General Agreement on Tariffs and Trade will become the standard to which Members of the Organization will be expected to conform in order to obtain membership on the Interim Tariff Committee. In applying this standard the Committee should have regard to the provisions of the Charter as a whole.

(b) Since it is agreed that the original members of the Interim Tariff Committee will have taken adequate steps toward fulfilment of the tariff obligations of the Charter in respect of negotiations among themselves (See Article III of the draft General Agreement on Tariffs and Trade), the Committee may not authorize one original member of the Committee to withhold tariff concessions from another original member of the Committee.\* This would be without prejudice, of course, to any decisions reached, under the auspices of the Organization, regarding a second series of tariff negotiations among the members of the Committee.

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\* It should be pointed out that the Organization, as distinct from the Committee, could authorize an original member of the Committee to withhold benefits from another original member of the Committee under certain other provisions of the Charter.

(c) members of the Interim Tariff Committee must, in negotiations with members of the Organization which are not members of the Committee, be prepared to consider concessions on products of interest to the latter which were not dealt with in the original negotiations. Refusal to negotiate on such products might warrant a legitimate complaint. Accordingly, the Committee could in such cases authorize a Member of the Organization which is not a member of the Committee to withhold tariff benefits from a member of the Committee. However, the extent to which a Member of the Organization which is not a member of the Committee might withhold tariff benefits from a member of the Committee would be limited only to tariff concessions which the former had already made pursuant to Article 18 and general tariff penalties could not be applied.

(d) The authority of the Committee would in all cases be limited to granting permission to a Member of the Organization to withhold tariff benefits from another Member; in no event could the Committee compel a Member to withhold benefits.

2. Procedure for Broadening Membership in Interim Tariff Committee through Additional Tariff Negotiations

Procedures must be developed for assuring, by negotiation, action for the reduction of tariffs and the elimination of preferences by Members of the Organization which are not parties to the General Agreement on Tariffs and Trade and hence would not be original members of the Interim Tariff Committee. The following alternative procedures are suggested for consideration:

(a) The original members of the Interim Tariff Committee would negotiate separate bilateral agreements with Members of the Organization which are not members of the Committee, and the latter would negotiate such agreements between themselves.

The Committee would judge as to when a particular country had completed enough such agreements to entitle it to membership in the Committee.

(b) A Member of the Organization which is not an original member of the Committee might offer to negotiate with the Committee a multilateral schedule of concessions similar in scope and legal application to the schedules appended to the General Agreement on Tariffs and Trade concluded among the original members of the Interim Tariff Committee; and the original members of the Committee would agree to amend the multilateral schedules appended to the General Agreement on Tariffs and Trade to the extent necessary to assure appropriate concessions on products of which the country not a member of the Committee was a principal supplier. Whatever procedure is adopted, due weight should be given in the negotiating process to concessions already made as a result of prior negotiations.

TENTATIVE AND PARTIAL DRAFT OUTLINE  
OF  
GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments in respect of which this Agreement is signed:

Having been named by the Economic and Social Council of the United Nations to prepare, for the consideration of the United Nations Conference on Trade and Employment, a Draft Charter for an International Trade Organization of the United Nations;

Having, as the Preparatory Committee for the Conference, recommended to the Conference the provisions of such a Charter, the text of which is set forth in the Report of the Preparatory Committee dated \_\_\_\_\_, 1947; and

Being desirous of furthering the objectives of the Conference by providing an example of concrete achievement capable of generalization to all countries on equitable terms;

Have, through their respective Plenipotentiaries, agreed as follows:

Article I

1. During the life of the Agreement each signatory Government shall make effective in respect of each other signatory government the provisions described below of the Draft Charter for an International Trade Organization of the United Nations recommended in the report of the Preparatory Committee dated \_\_\_\_\_, 1947:

[There would follow a list of the Articles to be included in the Agreement.]

2. Functions entrusted to the proposed International Trade Organization under any of the provisions of the Draft Charter incorporated in this Agreement by virtue of paragraph 1 of this Article shall, pending the establishment of the Organization, be carried out by a provisional international agency consisting of delegates appointed by the signatory governments.

Article II

With regard to Articles 18, 27 and 28 of the Draft Charter, which relate to negotiations for

1. The reduction of tariffs and the elimination of tariff preferences and,
2. Parallel action by state-trading enterprises, the signatory governments declare that they have, by virtue of Article III of this Agreement, taken this step towards fulfilment of the obligations of these Articles in respect of themselves and that they stand ready, in conformity with the spirit of these Articles, to undertake similar negotiations with such other governments as may desire to become members of the proposed International Trade Organization.

Article III

Each signatory government shall accord to the commerce of the customs territories of the other signatory governments the treatment provided for in the appropriate Schedule annexed to this Agreement and made an integral part thereof.

Article IV

(This Article would set forth the general exceptions provided for in Article 32 of the Draft Charter)

Article V

(This Article would reproduce the provisions of Article 33 of the Draft Charter relating to territorial application)

Article VI

(This Article would permit revision of the Agreement, by agreement among the signatories, if necessary or desirable in order to take account of changes in the Draft Charter effected by the International Conference on Trade and Employment)

Article VII

(This Article would provide for the entry into force of this Agreement, its duration, and its termination. The Agreement would remain initially in force for three years. If not terminated at the end of the three-year period (which would require six months' prior notice), it would remain in force thereafter, subject to termination on six months' notice.

NOTE: In addition, there would be a number of purely technical or legal provisions.

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