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April 14th, 1947.

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.
REPORT FROM THE INTERNATIONAL CHAMBER OF COMMERCE.

There is circulated herewith the text of a letter received by the Executive Secretary from the International Chamber of Commerce, together with the text of the Report mentioned therein.

Hotel Richmond,
Geneva

11 April, 1947

Sir,

On behalf of the International Chamber of Commerce, I have the honour to submit herewith for consideration by the Second Session of the Preparatory Committee the English and French texts of a Report entitled "Trade and Employment, a Review by the International Chamber of Commerce of the Draft Charter of the International Trade Organization of the United Nations".

Based on investigations and discussions in the I.C.C.'s member countries, this report is the joint work of a number of the Chamber's international committees of business leaders and experts and has been approved unanimously by its Executive Committee.

The representatives of the I.C.C. in attendance at this meeting will be glad to have an opportunity at the proper time of discussing and amplifying its views before the Working Committee of the Preparatory Committee.

T R A D E and E M P L O Y M E N T

A Review

by the International Chamber of Commerce
of the Draft Charter of the
International Trade Organization of the
United Nations
approved by the I.C.C.'s Executive Committee

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T R A D E and E M P L O Y M E N T

A REVIEW

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I - I n t r o d u c t i o n

1. The International Chamber of Commerce again assures the Economic and Social Council of the United Nations of the whole-hearted support of the business world in its efforts to draw up a world Charter for trade and employment. The Conference it has called for this purpose must succeed, for its success will be a vital factor in the establishment of an enduring peace. By placing the world economy on firm foundations and by binding the nations together in a common endeavor to improve living conditions in every country, the Economic and Social Council will make a decisive step towards eliminating one of the most potent sources of conflict, if not of war itself. Failure would be nothing less than a disaster. It would inevitably precipitate a new wave of economic warfare which would in turn increase political friction and widen existing rifts. The stakes are high. Success is within reach if the nations show enough good-will, determination and courage to face squarely the difficult problems of world-wide economic cooperation.

2. The I.C.C. approves the linking of trade with employment in the subject-matter of the United Nations Conference, provided that the term Employment is really intended to cover all the principal components of economic prosperity, namely, the employment of manpower, the utilization of natural resources and the development of productivity, all leading to a steady growth of living standards throughout the world. The aim is the establishment of a prosperous world economy. The freeing of channels of trade between nations from the most obnoxious restrictions is evidently a most important means to the attainment of that objective. It is equally obvious, however, that the freeing of international trade is not sufficient by itself in a world plagued with recurring economic depressions. It is very necessary, therefore, to achieve a high degree of international cooperation for the attenuation of cyclical fluctuations of economic activity.

3. The project is now on the way towards realization, the first session of the Preparatory Committee of the Conference having taken place in London in October and November, 1946 and the second session being planned for this April in Geneva. The first session produced a Draft Charter for the future International Trade Organization (hereafter referred to as ITO) on the basis of a draft presented by the United States Government prior to the London Conference. This projected Charter has been further revised by a Drafting Committee, which met in New York in January and February, 1947. The I.C.C. wishes to express to the Preparatory Committee and the Drafting Committee its keen appreciation of the untiring efforts with which they have applied themselves to the difficult task of reconciling conflicts of doctrine and of interests which inevitably appear in the elaboration of such a document. In the criticisms and suggestions that follow, the I.C.C. has been solely animated by its desire to assist the Preparatory Committee in further improving the draft of the Charter.

4. The International Chamber of Commerce welcomes the suggestion presented by the Drafting Committee to the effect that a General Agreement on commercial policy and trade restrictions should be adopted by the Geneva Conference in advance of the adoption of the complete Charter itself. The Drafting Committee has submitted the text of such a General Agreement. However, some general comments on the approach taken by the Drafting Committee are in order right at the outset, as they help to place the Charter in its proper perspective.

5. In its Resolution of June 1946, the Council of the International Chamber of Commerce stressed the need for the Conference to begin by drawing up a statement of basic principles underlying the future world economy. It was the view of the Chamber then, and is now, that the details of an International Trade Organization cannot be reasonably settled if the ultimate objectives, in other words the shape of the world at peace they are striving to construct, are left in doubt. Having set its goal, the Conference could then survey the immediate problems of the transition period leading towards settled peace-time conditions. The Proposal of the Drafting Committee goes some way towards meeting the I.C.C.'s request, but not far enough. The "Draft General Agreement" prepared by that Committee is essentially a selection of articles from the Charter itself. Such a selection falls far short of being a statement of basic principles, nor does it convey any clear notion of the kind of world towards which the authors of the Charter wish to move. The I.C.C. recommends, therefore, that the Preparatory Committee for the Trade and Employment Conference should, at its second session, accept the principle of the Drafting Committee's Suggestion, but that it should draw up a different document, shorter, broader and more clear-cut than the "Draft General Agreement" submitted to it.

6. This brings us face to face with a most important problem with which the United Nations Conference on Trade and Employment will have to concern itself at some stage of its work. In the present condition of the world there is a considerable gap between that which is ultimately desirable and that which is immediately possible. Countries faced with very serious day-to-day difficulties are inevitably forced to adopt restrictions and controls which are entirely undesirable as permanent features of national policy in international economic relations. There is real danger lest such emergency devices should be perpetuated by the sheer force of inertia. That is why it is essential that those who are responsible for the planning and execution of day to day policies should have the ultimate goals clearly in mind at all times. To lose sight of these goals is to jeopardize their attainment. It is not enough to take the attitude: "We want to achieve a certain set of objectives, but under the impact of pressing current problems we are obliged to take measures leading in the opposite direction". As will be shown presently, the Charter of the ITO treats special difficulties of individual countries and various emergency situations as qualifying permanently the rules which are to govern, in the long run, the conduct of international economic relations. This approach is not exempt from serious inconveniences and even danger. It is true that there are times and places where certain rules may have to be suspended; this must not be construed however, as being a limitation of the validity of the rule. By surrounding a rule with too many escape clauses and exceptions the rule itself is liable to lose all meaning.

7. In other parts of this document criticisms will be offered of many of the escape clauses and exceptions which are included in the Draft Charter of the ITO. The I.C.C. is fully aware of and sympathetic to the difficulties experienced by a great many countries in the world, in most of which it has branches and members. It cannot emphasize too strongly, however, its conviction that the whole task of world economic reconstruction may be compromised if emergency situations and the controls and regulations to which they give rise should be perpetuated instead of being liquidated at the earliest possible time. The I.C.C. regrets that measures designed to meet a great variety of particular situations, including measures which are the outcome of national programs of industrialization, should have been brought into the Charter in the form of limitations on the validity of the general rules and principles established in that document. Any exceptions provided for in the Charter should be limited in number, strictly defined, and subject to a time-limit. There should also be provision for conciliation and arbitration in the case of disputes arising out of such exceptions.

8. The International Trade Organization will provide the world with a most important framework, within which to pursue the objectives of freer trade and more stable and expanding economic activity. The real test of the Charter will be whether it changes existing practice and policy or whether it leaves them

intact. What is needed is a sort of "International Discipline" which will require member countries to select national economic goals and methods of reaching them which will contribute to the betterment of international economic relations and of the condition of other countries. The Charter must, therefore, avoid placing too much emphasis on emergency action to which countries may have to resort in time of exceptional difficulty. Its object is not to safeguard complete freedom of national action, but to limit it in the interests of the integrated world economy it seeks to achieve. The formulation of a clear-cut, short and forceful statement of long-range objectives in the realm of international trade is, therefore, a matter of utmost importance. Such a statement should be accompanied by a pronouncement dealing with the relationship of present emergencies to the ultimate objectives, giving general directives for the handling of these emergencies in a way that would not endanger the state of world economy.

II. Comments on the Draft Charter.

Chapter I - Purposes

1. The opening chapter of the Charter defining the purposes of the Organization should be, in the opinion of the International Chamber of Commerce, the backbone of the whole Charter. It should contain a definite statement of the long-run objectives untrammelled by any reservations, as well as a description of the basic functions of the Organization. The International Chamber of Commerce learnt with regret the decision of the Preparatory Committee to postpone "any discussion of this subject until the structure of the Organization can be seen as a whole". The I.C.C. feels that the structure of the Organization should be a consequence of the objectives to be sought and not vice-versa. Indeed, it fails to see how it is possible to design adequately the overall structure of an organization of which the purposes are left in blank.
2. The Drafting Committee, which met in January-February 1947, partly filled this gap by drawing up a single article on purposes. This article is far from being the clear statement of objectives of the International Trade Organization the I.C.C. hoped to see put at the head of the Charter. The draft article, as now submitted, consists largely of generalities and covers so wide a field that it inevitably overlaps with the purposes of many other bodies and agencies of the United Nations, including the Economic and Social Council itself, which all aim at general prosperity.
3. A statement of purposes of the new Organization should make entirely clear the distinctive nature of its tasks and functions. There is no need for the ITO unless it can do what no other organization can do. To state what this need is and how it is to be satisfied by the new agency to be established, is the primary function of Chapter I of the Charter. It may be doubted whether

the establishment of a new agency can be defended on the grounds that it will "Realize the objectives set fourth in the Charter of the United Nations", since that is evidently the purpose of each and every agency operating within the United Nations, and the ITO can only seek the attainment of those over-all, broad objectives that are not adequately covered by any of the already established organizations. Similarly, "The expansion of the production, exchange and consumption of goods, ... the achievement and maintenance in all countries of high and steadily rising levels of effective demand and real income, and the development of the economic resources of the world" cannot be regarded as precise enough directives under which a new agency like the ITO could operate. The words quoted describe the sum total of all efforts leading towards fuller economic life. The tasks of the ITO must, of necessity, be more circumscribed and more precise.

4. If the I.C.C. places so much emphasis on the need for a complete redrafting of this Chapter, it is because it considers that a clear and unqualified declaration of objectives is the most important part of the Charter itself, without which everything else is a house build on sand. In the I.C.C.'s opinion, a clear and unqualified declaration of objectives should be one of the main achievements of the Trade and Employment Conference.

Chapter II - Membership

No comment.

Chapter III - Employment, Effective Demand and Economic Activity *)

1. Two general notions underlie Chapter III, as drafted in London and redrafted in New York. Both strike the I.C.C. as very important and worth striving for, but they are cloaked in a terminology which appears to be ambiguous and likely to lead to unnecessary controversy on what are as yet unsettled points of economic theory. They are the notions of "full employment" and "effective demand". The I.C.C. considers it undesirable that such ambiguous and debatable terms should be used in the Charter of the International Trade Organization of the United Nations.

2. While the inclusion of the words "and economic activity" in the latest version of the chapter heading is a token of recognition of the fact that employment is only one of many aspects, though a vitally important one, of economic activity, this fact is not sufficiently acknowledged in the body of this chapter. The I.C.C. realizes that governments have an important part to play in the whole field of employment and economic activity, but it feels that, as drafted, this Chapter gives the impression that the achievement and maintenance of effective demand and employment are exclusively a government responsibility. This is undoubtedly so in countries the economic life of which is totally planned and conducted by governmental agencies, but is far from true in the case of countries, the economy of which is operated primarily, or to a considerable extent, by private enterprise and in which the mechanism of the free market plays an important role. In its resolution on Maximum Employment in a Free Society, the I.C.C. states that:

"The task of maintaining productive employment stably at its highest possible level calls for cordial and continuous cooperation between government, business, agriculture and labour, effectuated wherever possible by appropriate institutional arrangements. It is not a task that can be accomplished by simple devices, nor by any section of society acting on its own."

In the same resolution it is further stated that:

"Government, acting for the people, should assume its inescapable responsibility for creating a favorable climate for a dynamic free economy under which people are encouraged to create for themselves the fullest possible productive employment and maximum production."

*) The Drafting Committee has removed Article 5 of the London document from Chapter III and inserted it in Chapter IV as Article 10. This entails the renumbering of several articles so that Articles 6, 7, and 8 of the London text become Articles 5, 6, and 7 of the Drafting Committee's version. In the following discussion, the numbering of the Drafting Committee will be adopted.

The I.C.C. would welcome the introduction into the final draft of Chapter III of a clause recognizing the fact that in most countries the maintenance of employment at high and stable levels is the responsibility not exclusively of governments, but of all sections of society acting in cooperation.

3. The I.C.C. considers that the link between international trade and employment is to be found in the fact that national economies, whose structure is based upon an international division of labor, cannot maintain themselves in a condition of continued employment if they should be suddenly deprived of part or of all of their foreign markets and sources of supply. Trade increases the variety of resources that are available to the people living in any particular part of the globe and, as a result of regional specialization and by the development of mass production methods for world markets, tends to increase the total quantity of available goods and to lower their prices to the consumer. All this leads to rising standards of living throughout the world, but involves a certain reduction of the national economic independence of individual countries. It follows that the maintenance of employment in any one country depends, within the framework of reasonably unimpeded world trade, upon economic developments in other countries. The I.C.C. is of the opinion that the problem of maintaining high levels of economic activity and employment is primarily a matter of international concern and that national policies of individual countries (a) should be internationally harmonized and (b) should be supplemented by appropriate international agreements implemented by appropriate agencies, such as the International Bank for Reconstruction and Development. It is suggested that the final draft of Chapter III should include an explicit statement to the effect that the maintenance of economic activity and employment in any particular country is a matter not solely of domestic, but also of international concern and requires, to be effectively dealt with, not solely domestic, but also international action.

4. The original United States Proposals and the Suggested Charter presented to the London Conference contain an important provision which has not been incorporated into the later texts of the Chapter. This provision (Article 5) of the Suggested Charter reads as follows:

"In seeking to maintain or expand employment, no Member shall adopt measures which would have the effect of creating unemployment in other countries or which are incompatible with undertakings designed to promote an expanding volume of international trade and investment."

Instead of that provision, we find, in the Drafting Committee's document, a stipulation that the domestic measures, upon which the achievement and maintenance of effective demand and employment must, it is claimed, primarily depend, "should be assisted

by the regular exchange of information and views among members, and, so far as possible, should be supplemented by international action sponsored by the Economic and Social Council of the United Nations". While the second part of the quotation goes some way towards meeting the line of argument presented in the previous paragraph of the present report, the first part is a very inadequate substitute for the omitted article of the earlier documents. As the draft of Chapter III now stands, no adequate recognition is given to the fact that national policies aimed at the maintenance of economic activity and employment may greatly disturb international economic relations and endanger the well-being of other countries. It is essential, in the I.C.C.'s opinion, that the Charter of the ITO should accept limitations on the freedom of national economic action whenever that freedom is used in a way which places in jeopardy the prosperous growth of international trade and good economic relations between nations.

5. Reference has already been made to the lack of clarity and the controversial implications of the term "effective demand". In a free economy, effective demand of the whole population of the country is an aggregate resulting from individual and group decisions. It is debatable whether, within the framework of a free economy, that aggregate can be decisively and quickly influenced by government action. It is also debatable whether economic depressions result from the inadequacy of effective demand or from structural maladjustments which developed in the economic system at a time when effective demand was high and growing. One may ask whether the decline in the aggregate demand is a cause or a consequence of the breakdown of economic activity. These and many other questions are the object of much theoretical research and give rise to important debates among economists. They involve an area of our knowledge which certainly falls under the heading of "Unsettled Questions". The I.C.C. does not propose to take a stand at this time on such questions, but it is firmly convinced that a document such as the Charter of the ITO should not be so worded as to imply the adoption by its authors and, eventually, by the members of the Organization, of a particular bias on these controversial questions of economic doctrine. The I.C.C. suggests, therefore that the term "effective demand" should be replaced throughout the document by the words "economic activity", and that it should be dropped entirely from the title of Chapter III.

COMMENTS ON INDIVIDUAL ARTICLES

Article 3, Importance of Employment in Relation to the Purposes of This Charter

The I.C.C. suggests that Article 3 should be entirely rewritten in line with the general comments that precede. As rewritten, the article might read approximately as follows:

"1. Members recognize that the achievement and stable maintenance of maximum employment opportunities throughout the world are of supreme economic, social and political importance. They recognize also that the volume and productivity of employment in each country are vitally affected by the volume and pattern of international trade. The members agree, therefore, that, in striving in their respective countries for the maintenance of economic activity and employment at high levels, they will give recognition to the fact that the pursuit of maximum employment is both a national and a universal objective which requires international harmonization of national policies."

"2. In particular, no Member, in pursuing the goal of maximum employment within its territory, will adopt measures which would have the effect of creating unemployment in other member countries or which will interfere with the expansion of international trade and investment. Members who carry out the provisions of Chapter V of this Charter and who live up to the commitments of Members of the International Monetary Fund in respect to exchange control will be presumed to fulfil this requirement."

"3. Members agree to establish a regular exchange of information for the purpose of assisting the achievement and maintenance of high levels of economic activity and employment. They also agree that national policies, internationally harmonized, should, as far as possible, be supplemented by international action sponsored by the Economic and Social Council of the United Nations and carried out in collaboration with the appropriate intergovernmental organizations, acting within their respective spheres and consistently with the terms and purposes of their basic instruments."

Article 4. Maintenance of Domestic Employment.

1. The I.C.C. suggests that the first paragraph of this article should be rewritten so as to avoid giving the impression that government action is sufficient to achieve and maintain maximum employment and high levels of economic activity.

2. In line with the general comments made before, it suggests that the phrase "full and productive employment and high and stable levels of effective demand", which appears in the first paragraph of this article, should be changed to "maximum production, employment and high and stable levels of economic activity".

3. The provision in the second paragraph of Article 4 "each member shall seek to avoid creating balance of payments difficulties for other members" strikes the I.C.C. as being too limitative and ambiguous. It is not clear just when a country creates balance of payments difficulties for another country;

these difficulties can appear as the result either of domestic developments in the affected country or of foreign developments, or both. No country ever creates outright balance of payments difficulties for another country; but steps it takes to restrict its imports or promote its exports by "illegitimate methods" (such as subsidies, dumping or exchange manipulations) may result in balance of payments difficulties elsewhere. The I.C.C. is of the opinion that the essential thought that needs to be emphasized finds expression in paragraph 2 of the suggested redraft for Article 3. In view of that redraft, the I.C.C. suggests that the second paragraph of Article 4 should be entirely dropped from the final text of the Charter.

4. The I.C.C. recommends the redrafting of Article 4 along approximately the following lines:

"Members, recognizing that the methods required to promote and maintain high productive employment differ from country to country according to the relative preponderance of private enterprise and government control, shall take action designed to promote and maintain high and productive employment and high and stable levels of economic activity within their own jurisdictions, through measures appropriate to their policies and economic institutions and compatible with the other purposes of the Organization."

Article 5, Fair Labor Standards *)

1. While in full agreement with the purposes of this article, the I.C.C. is of the opinion that in order to simplify the functions of the ITO and to avoid over-lapping with the work of the International Labour Office, it should be omitted from the Charter.

2. One aspect of the question which is, however, directly related to the objectives of the ITO has reference to the competitiveness in world markets of goods produced by populations whose standards of living fail to reflect advances achieved in the productivity of labor. The competition of "cheap labor" is an argument frequently used by advocates of high and rising tariffs and it is an argument which has no validity except under circumstances where a substantial gap is allowed to develop between productivity and labor standards.

3. The I.C.C. recommends, therefore, that Article 5 *) should be replaced by another article properly belonging in Chapter IV, in which the obligation of developing countries to allow the standard of living of their population to parallel the growth of productivity of labor would be stressed.

Article 6, The Removal of Maladjustments in the Balance of Payments **)

1. The I.C.C. is of the opinion that this article should be

*) Article 6 of the London Draft of the Charter

**) Article 7 of the London Draft of the Charter

substantially modified. In its present form, it contains implicitly several debatable points of economic theory and its full implications are by no means clear. The notion of a "fundamental disequilibrium" in the balance of payments of a country appears, to be sure, in the Charter of the International Monetary Fund, but it is far from being a clear and unequivocal concept. Indeed, there is growing controversy around the interpretation which should be given to this term. In view of that, the effect of such a fundamental disequilibrium in the balance of payments in one country upon balance of payments difficulties of other countries is very hard to ascertain. Reference has already been made in discussing Article 4 to the undesirability of bringing the concept of balance of payments into the provisions of this Chapter. It is debatable to what extent persistent balance of payments difficulties are a handicap for a country in maintaining employment. Finally, it must be noted that countries belonging to the International Monetary Fund are under obligation to eliminate persistent disequilibria in balance of payments. It may be useful to provide in the Charter of the ITO for a similar obligation on the part of members of the ITO, in the event that some of them shall not be members of the International Monetary Fund. A recommendation to that effect fits best into the subject-matter of Article 26 of the Charter.

2. In view of all these observations, the I.C.C. recommends that Article 6 should be re-drafted as follows:

"Members, realizing the need for close cooperation between the International Trade Organization and the International Monetary Fund, agree to use the instrumentalities of the International Monetary Fund when faced with prospective or actual disequilibrium in their balances of payments. Special reference is herewith made to Article VII, Section 1 of the Bretton Woods Agreement on the International Monetary Fund, which gives the Fund wide discretion in handling situations which arise when a persistent surplus in the balance of payments of any country threatens to cause balance of payments difficulties for other countries."

The I.C.C. wishes to emphasize that action taken under this article should be initiated before the economic situation of the various countries becomes seriously impaired.

Article 7. Safeguards for Members subject to External Deflationary Pressures *)

1. In the opinion of the Chamber, Article 7 reflects an implicitly adopted theory regarding the international propagation of economic depressions. As previously indicated, the I.C.C. opposes the introduction into the Charter of provisions which can only be defended on the basis of the acceptance of

*) Article 6 of the London Draft

a particular controverted economic doctrine. Furthermore, "the need of members to take action within the provisions of this Charter to safeguard their economies against deflationary pressures in the event of a serious or abrupt decline in the effective demand of other countries" might be interpreted as allowing a country to adopt all kinds of methods to insulate itself from the world economy. Taken in conjunction with Article 26 (which is critically examined in a later part of this report) the quoted passage of Article 7 may justify every attempt to eliminate quantitative trade restrictions, to lower other trade barriers and, generally, to promote a smoother international flow of trade.

2. The Chamber recommends, therefore, that Article 7 should be deleted from the Charter.

Article 8, Consultation and Exchange of Information on Matters relating to Matters of Employment **)

No comment.

**) Article 9 of the London Draft

Chapter IV - Economic Development

1. The more economically developed the various countries of the world are, the greater the volume of trade among them, and the more beneficial the effects of that trade upon the standards of living in every country. In addition, the economic growth of the less developed areas of the world requires importation of foreign equipment, technical knowledge and skill and additional raw materials. It is quite fitting, therefore, that a mention of economic development should be made in the Charter of the ITO.

2. There is a second connection between economic development and foreign trade, which is even more intimately linked with the objectives of the ITO. One of the most powerful arguments that have been advanced over the past century and a half in favor of tariffs was derived from the thesis that new or infant industries require, for their future growth, the establishment of tariffs to protect them during their formative years against international competition on the part of well-established older industries. This argument, if properly used, in no way implies that new industries should be subsidized by tariffs indefinitely. It applies uniquely to their formative years. It now appears in a document, the main purpose of which is to provide a framework for a gradual liberalization of international commerce. In the I.C.C.'s opinion the whole question should be carefully reconsidered by the Preparatory Committee, lest concern with national economic development should render Chapter IV of the Charter a vehicle of restrictive trade policy in flagrant contradiction with the objectives of the Charter in the field of commercial policy (Chapter V).

3. It is noteworthy that Chapter II of the Report of the First Session of the Preparatory Committee, which contains a commentary on Chapter IV of the Charter, is entitled "Industrial Development" and not, as Chapter IV itself, "Economic Development". The I.C.C. views with uneasiness this tendency to identify "industrial" and "economic" development. The two terms are by no means synonymous. Economic development, in favor of which no effort should be stinted, is by far the wider conception of the two, involving as it does the fullest possible utilization of all the resources of the world, whether industrial, mining, agricultural, fishing, or forestry. The aim of economic development is to increase the productivity of labor and the utilization of natural resources; the development of industries is an important factor in this increase, but it is neither a unique factor nor one that must always be present in a developing country. Many cases are known where the development behind high tariffs of high-cost industries tended to make the economic condition of the developing countries in the long run more precarious rather than more prosperous. The I.C.C. warns against the grave maladjustments that may be created in the world by an insistence on the industrial development of all areas without reference to the international distribution of resources and materials, and urges the Second Preparatory Session to devote further attention to these aspects of the development problem.

4. Some of the most vital problems of economic development are thus left untouched in the Draft Charter. If it is to be comprehensive, the final form of this chapter should cover the following points:

- a.- The conditions of economic development--economic, social and political.
- b.- The validity of governmental intervention to promote economic development by making these conditions as favorable as possible; it should be noted that governmental intervention may take the form of direct ventures in the field of economic development, or of the creation of a climate favorable to private initiative and enterprise.
- c.- The impact of the economic development of one country upon the economic situation of other countries.

5. Furthermore, the Charter should contain special recommendations about:

- a.- The action to be taken by the governments of more developed economies to promote international cooperation for the purposes of this chapter.
- b.- The action to be taken by the governments of the less developed countries to promote international cooperation favorable to their development.
- c.- The selection by the governments of the less developed countries of such methods of action, favorable to their own economic development, which would not be detrimental to the prosperity of world trade and would not expose the more developed economies to sudden and major maladjustments.

COMMENTS ON INDIVIDUAL ARTICLES

Article 9, Importance of Economic Development in relation to the Purposes of this Charter^{a)}

The International Chamber of Commerce has the following observations to make:

1. Emphasis should primarily be placed upon the connection between economic development and standards of living. It is doubtful whether industrialization really does "improve opportunities for employment" considering that unemployment is much more frequently a feature of industrialized than of less developed countries.

2. It is doubtful whether economic development by itself contributes, even in the long run, to economic stability, since the problem of economic instability is mainly experienced, in a spectacular way, by countries having attained high levels of economic development. What can be said (though not necessarily in this article of the Charter) is that the impulse the nations of the world wish to give to economic development makes it more necessary than ever to devote careful attention to national and international measures aimed at moderating cyclical fluctuations.

^{a)} Article 8 of the London Draft

3. The last part of Article 9 which reads "...thus strengthening the ties of international understanding and accord", could usefully be rewritten, because the term "thus" implies a causal relationship which is by no means self-evident. Should, for instance, under-developed countries endeavor to achieve industrialization by interference with foreign trade, discrimination, and other methods which it is the purpose of the ITO to reduce or to eliminate, the effect would be, on the contrary, very prejudicial to the "ties of international understanding and accord."

4. The I.C.C. recommends that Article 9 should recognize the connection that may exist between economic development and economic nationalism, and establish the principle that economic development should be carried out by methods which are compatible with the general objectives of the ITO.

Article 10, Development of Domestic Resources and Productivity^{xx})

1. The I.C.C. suggests that the final draft of this Chapter should make it clear that the action of member governments should involve not only measures taken directly for the economic development of their countries, but action for the creation of a climate favorable to the activity of private initiative and enterprise.

2. The following wording is suggested:

"Members, recognizing that the standards of living of the people depend basically on their productivity, and recognizing that all countries have a common interest in raising standards of living, agree to take action designed progressively to develop economic resources and to promote high standards of productivity, particularly by creating a climate favorable to private initiative and enterprise."

Article 11, Plans for Economic Development

No comment.

Article 12, Means of Economic Development

1. In connection with the first sentence of this article, the I.C.C. wishes to emphasize the need for greater freedom of capital movements and of manpower (not only of trained workers) than is at present available.

2. The term "unreasonable", which appears in the first and second paragraphs of this article, may nullify the other provisions of this article, since there may not be agreement between the countries imposing impediments and the other countries as to what is the criterion of unreasonableness. The I.C.C., therefore, welcome the provision for complaints to be submitted in this connection to the ITO. The procedure of conciliation may, however, be very slow, and in the meantime injurious action resulting from divergent interpretations of the term "unreasonable" may have already had their full effect. The I.C.C. is of the opinion therefore, that the Article should be rewritten so as to eliminate its present ambiguity and that the procedure of conciliation and arbitration should be brought into line with the suggestions contained in Part III, B of the present report.

xx) Formerly Article 5 of the London Draft

Article 13, Governmental Assistance to Economic Development

The International Chamber of Commerce views with grave apprehension the introduction of Article 13 into the Charter. In its present form, it gives complete freedom of action to all countries to adopt whatever measures of protection they wish for the establishment or reconstruction of particular industries. Nor is any time-limit set. This destroys the whole fabric of the Charter. The I.C.C., therefore, urges that this Article be rewritten with a view to bringing it into line with what is one of the main objectives of the Charter, namely the gradual freeing of international trade from restrictive measures.

Additional Suggestions relating to Chapter IV.

1. The I.C.C. wishes to emphasize the need for some provision in Chapter IV which would make it entirely clear that the provisions in Chapter V on Commercial Policy over-rule the provisions of Chapter IV on Economic Development; that is to say, that economic development cannot be considered as an exception to the principles of commercial policy established in Chapter V. In the absence of a statement to that effect, and in view of the detailed comments which precede, the I.C.C. feels that Chapter IV may provide a dangerous avenue of escape from the provisions of Chapter V.

2. It would also be helpful if Chapter IV could provide specifically for advance information to be made available to all members of the ITO in regard to broad programs of industrial growth and general development of other members, so that they might take appropriate action to facilitate adjustments to these programs.

Chapter V - General Commercial Policy

1. This Chapter represents, in the I.C.C.'s opinion, the heart of the Charter. Since it is the primary function of the I.T.O. to seek to improve commercial relations and help in the establishment of conditions favorable to a prosperous flow of international trade, commercial policies of the member states should be its foremost concern. If the I.T.O. is to be a useful instrument and if its Charter is to be a meaningful document, its provisions must be such as to affect significantly the conduct of the members of the organization. The present draft of Chapter V stands, in the opinion of the I.C.C., in great need of strengthening. It has, at present, the tendency to allow far too many exceptions from the general rules it seeks to establish. In their understandable concern with difficulties and emergencies currently experienced by many countries, the authors of the Charter have adopted too lenient a course in respect to exceptions and escape clauses.
2. In addition to being made stronger, Chapter V ought to be made shorter and clearer. In their desire to provide against any conceivable contingency, not only have the authors of the draft heaped exceptions upon exceptions, but the document has become very involved and the contours of the main provisions blurred.
3. It is the understanding of the I.C.C. that the Charter aims at the effective reduction of tariffs and preferences, and at the elimination, as rapidly as possible, of quantitative trade restrictions and discriminations. The I.C.C.'s whole-hearted approval of the establishment of an international trade organization is based upon that understanding. It notes with regret, therefore, that the objectives are not likely to be attainable through the instrumentalities of Chapter V of the Charter as it now stands. If these objectives are to be reached, a far less tolerant attitude will have to be adopted in respect to quantitative trade restrictions and tariff preferences. The Charter is more satisfactory as regards tariff reduction, though provisions relative to economic development are unduly tolerant of the introduction of new tariffs.
4. If members who want to pursue a course of commercial policy which stands in contradiction to the main objectives of the Charter should be able to do so by virtue of this or that escape clause, the I.T.O. will prove entirely ineffectual as an instrument of international economic cooperation.
5. The I.C.C. realizes, of course, that emergency situations exist and that their existence must be taken account of in the course of the transitional period. It warns, however, against an attitude, the effect of which might be to perpetuate the maledjustments instead of liquidating them and to transform exceptions into rules. It considers that, taken in conjunction with Article 25 of the Charter, the provisions of the Bretton Woods Agreements on the International Monetary Fund are a sufficient safeguard against balance of payment difficulties. As will be noted presently, Chapter V of the Charter refers

explicitly to the International Monetary Fund; nevertheless, not only does it duplicate the "exceptions" provided under the Bretton Woods Agreements for dealing with fundamental disequilibria in balances of payments, but it adds new ones. In the opinion of the I.C.C., this duplication and these additions should be eliminated from the final draft of the Charter.

6. It has been suggested, and the I.C.C. refers this suggestion to the earnest attention of the Preparatory Committee, that all exceptions relating to temporary emergency situations should be removed from the body of the Charter and assembled in a separate Protocol.

7. By devoting much attention to tariffs, by insisting upon non-discrimination, by emphasizing the importance of Most-Favoured-Nation treatment, and by taking an essentially negative attitude towards quantitative trade restrictions, the Charter seems to address itself primarily to countries the foreign trade of which is mainly a private activity and in which governments limit themselves very largely to the establishment of broad lines of commercial policy. A Charter formulated in this manner cannot apply, prima facie, to all countries, on account of special problems arising whenever governments appear in the markets as buyers and sellers on their own account, often monopolistic buyers and sellers. Further complications in the applicability of the basic rules of the Charter arise from the fact that the entire foreign trade of certain countries is placed under strict state control, the government assuming the position of the sole foreign trader of the entire country. Actually, a clear distinction must be made between countries having complete monopolies of foreign trade and those where foreign trade remains essentially a private pursuit but the government establishes trading agencies for particular products or purposes.

8. The original United States Proposals for Expansion of World Trade and Employment and the Suggested Charter for an International Trade Organization proposed by the United States government to the London Session of the Preparatory Committee recognized the existence of these special problems resulting from state trading. So do the London Draft of the Charter and the document of the Drafting Committee. Nevertheless, both the Preparatory Committee and the Drafting Committee have left aside the question of complete state monopoly of foreign trade and the connected problem of relations of members of the I.T.O. with non-members. These are both crucial problems with which the Second Session of the Preparatory Committee will have to concern itself.

9. Among the special problems presented by state trading none is more important than that of discrimination. Discrimination by the government of one country against the government and the population of another has always been an important source of international friction and of ill-will among nations. It is hard to see how discrimination can be avoided when all purchases or all sales of some important commodity, or, indeed, when the whole foreign trade of a country are administered by a government agency. Government agencies may tend to perpetuate a certain organization and structure

of foreign trade by sheer inertia and in order to simplify what might easily become a very cumbersome network of administrative regulations. If this is done, any sources of supply or new outlets may be effectively discriminated against. In addition, there arise many difficult problems of allocation of imports among foreign sellers and of exports among foreign buyers. Here again, some degree at least of discriminatory treatment appears as almost inevitable. There are also delicate problems of allocation of a relatively scarce commodity between the home market and foreign markets.

10. It is a recognized principle that governments engaging in foreign trade ought to be guided in their decisions by purely commercial considerations, that is to say by considerations of comparative price and comparative quality of the commodities they buy, and of comparative price for the commodities they sell. They should in no way be influenced in their trade activities by political considerations. This means, for instance, that they should never discriminate against a country with which they may happen to have strained political relations, nor in favour of countries whose political goodwill they are eager to win. Now it will be readily seen that it is easiest for governments to adhere to these principles when they appear as non-monopolistic traders in sporadic commercial deals and when they can easily, therefore, conduct themselves like private merchants whose sole interest lies in the price and the quality of the goods which they buy or sell. It is more difficult to detach economic from extra-economic considerations when directing a State monopoly of some important commodity. The difficulty grows very much and may be wellnigh insurmountable when a government establishes a complete state monopoly of the country's foreign trade.

11. Economic relations between nations are an element of international relations in general, and as such they involve considerations of power. When trade is carried out solely by private agents and the governments are limited to broad regulatory activities, subject to the principle of non-discriminatory treatment, it is much easier to divorce economic relations from power considerations. But when international economic relations are actually carried out by the state, it is not very likely that individual governments will always be able to resist the temptation of drawing into the political game the important component of national power which is represented by economic resources. The temptation is very great indeed, and once yielded to, it is likely to have a profoundly disturbing effect on international economic relations. It is in the nature of comprehensive state trading that this should be so, regardless of what particular state adopts that form of economic organization. This is why the problem of state trading monopolies must receive the most careful attention at the time of establishing an inclusive International Trade Organization.

12. It is clear that the emergence of state trading calls for entirely different rules and undertakings from those applicable to a system in which trade is privately operated and government regulations merely limit the activities of private traders. It may even be doubted whether it is feasible to group into one and the same organization countries whose foreign trade remains in

private hands, and countries which conduct their foreign trade by means of governmental agencies. It is the opinion of the I.C.C. that the burden of proof that such a grouping is possible should rest with countries having established state trading monopolies. It is up to these countries to propose ways and means by which they plan to conform to the general commitments of the Charter in the realm of commercial policy. As they now stand, the provisions of the Charter on state trade are, in the opinion of the I.C.C., entirely inadequate. Two courses are open to the Preparatory Committee; one consists in completely redrafting that section after receiving suggestions from countries which have state trading monopolies, and the other the elimination of that section altogether, leaving countries which have complete state monopolies of foreign trade outside the I.T.O. until such time as special agreements can be negotiated with them.

13. As regards particular state trading enterprises operating within economies, the foreign trade of which remains predominantly in private hands, it is an extremely sound rule that they should be influenced in their operations solely by commercial considerations and that they should avoid discriminatory practices. Since, however, the translation of these principles into practice presents many difficulties and since these rules may be easily violated here and there by state trading agencies, it is essential that the machinery of the I.T.O. should provide ample facilities for arbitration of complaints which a member may have in respect to the behaviour of state trading enterprises of another member. This machinery should make it possible for complaints to be lodged not only in matters affecting the direct relations between two members of the I.T.O. but also complaints resulting from the behaviour of one of the members in the territory of a third or fourth member. Only in this manner will it be possible to handle complaints resulting from unfair methods of competition which private traders of one country might encounter from the state trading enterprises of another country in a third market.

COMMENTS ON INDIVIDUAL ARTICLES

Section A : General Commercial Provisions - Most-Favoured-Nation Treatment

1. The International Chamber of Commerce is aware that in present circumstances the scope of the Most-Favoured-Nation Clause is severely limited by the wide-spread use of quantitative restrictions. The principle is so important, however, that it warmly welcomes the prominent place given to non-discriminatory treatment in the present version of the Charter.

2. With respect to paragraph 1 of this article, the International Chamber of Commerce wishes to draw the attention of the Preparatory Committee to the important work carried out during the inter-war years by the Economic Committee of the League of Nations, and in particular to the general formula of the Most-Favoured-Nation Clause submitted in the recommendations of the Economic Committee dated February 16, 1933. That formula, which provides a very good definition of Most-Favoured-Nation Treatment and might profitably be adapted for insertion in Article 14 of the Charter, reads as follows : -

"The High Contracting Parties agree to grant each other unconditional and unrestricted most-favoured-nation treatment in all matters concerning Customs duties and subsidiary duties of every kind and in the method of levying duties, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the Customs.

"Accordingly, natural or manufactured products having their origin in either of the contracting countries shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules and formalities other or more burdensome than those to which the like products having their origin in any third country are or may hereafter be subject.

"Similarly, natural or manufactured products exported from the territories of either Contracting Party and consigned to the territories of the other Party shall in no case be subject, in regard to the above-mentioned matters, to any duties, taxes or charges other or higher, or to any rules and formalities other or more burdensome than those to which the like products when consigned to the territories of any other country are or may hereafter be subject.

"All the advantages, favours, privileges and immunities which have been or may hereafter be granted by either Contracting Party in regard to the above-mentioned matters, to natural or manufactured products originating in any other country or consigned to the territories of any other country shall be accorded immediately and without compensation to the like products originating from the other Contracting Party or to products consigned to the territories of that Party.

"Nevertheless, the advantages now accorded or which may hereafter be accorded to other adjacent countries in order to facilitate frontier traffic, and advantages resulting from a Customs union already concluded or hereafter to be concluded by either Contracting Party, shall be excepted from the operation of this article."

3. Two important questions arise concerning Most-Favoured-Nation treatment: a) How far under the Charter does that treatment admit of preferential agreements among groups of countries belonging to the I.T.O. b) Can members of the I.T.O. grant that treatment to non-members, or is it to be confined solely to relations among members of the I.T.O?

4. As regards the first of these questions, the International Chamber of Commerce is in general agreement with paragraph 2 of the present article with the understanding that, in accordance with article 24, paragraph 1 (b), no preference will be increased and that existing preferences will be reduced by the process of tariff reductions. The I.C.C. further considers that members of the I.T.O. should undertake not to enter into any new preferential agreements. This undertaking does not, of course, extend to the establishment of customs unions: on that subject, the I.C.C. agrees with the provisions of article 35, paragraph 3.

5. In the opinion of the I.C.C., provision should be made in the Charter for an additional exception to most-favoured-nation treatment in favour of multilateral agreements, whether regional or otherwise, concluded for the purpose of relaxing trade barriers and open to the adhesion of any State willing to grant equivalent concessions. As will be pointed out in the discussion of article 36, the Charter of the I.T.O. is a case in point, for it is essential that future bilateral trade agreements between a member and a non-member of the I.T.O. should include an exception to Most-favoured-nation treatment with regard to concessions granted by members to members under the Charter.

6. As regards the extension of most-favoured-nation treatment to non-members of the I.T.O., this question falls under the scope of Section G (article 36) concerned with Relations with Non-Members, and will be discussed at that point.

Article 15: National Treatment of Internal Taxation and Regulation.

No comments on paragraphs 1 to 4. As regards paragraph 5, according to which "The provisions of this article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale", the I.C.C. wishes to warn against the danger that this clause in its present form might be interpreted as applying to the entire import trade of States having foreign trade monopolies.

Article 16: Freedom of Transit.

No comment.

Article 17: Anti-Dumping and Countervailing Duties.

The International Chamber of Commerce is in agreement with this article, but wishes to make the following suggestions :-

- a) - Paragraph 1 of the article should be clarified in further redraft so as to define more precisely the notion of dumping and to establish which of the three price differentials indicated as representing the "Margin of dumping" should have precedence over the others.

- b) - Should this article be expanded to include a reference to so-called "exchange" dumping, it should be made clear that exchange depreciation is never to be considered a source of dumping if it has received the previous approval of the International Monetary Fund.

Article 18 : Tariff Valuation

The importance to trade of simplifying and unifying existing valuation systems is so great that the International Chamber of Commerce warmly welcomes the undertaking in paragraph 1 to "work towards the standardization of definitions of value" But from the point of view of the merchant engaged in international trade, neither the original four sub-paragraphs of article 2 as set out in the Suggested Charter, which the Drafting Committee has reproduced, nor the alternative versions of sub-paragraph (a) are entirely satisfactory. The only purpose of drawing up a set of international rules on this question is to supply the customs officer with a simple rule-of-thumb method for assessing duties and to reduce to a minimum uncertainty and vexatious delays and disputes for the trader. The Charter in its present form falls short of both objectives. It obliges the Customs officer to ascertain and check facts that should not, normally, fall within his competence, thus opening the door to disputes, and fails to give the trader an easy method of knowing in advance on what basis his goods will be assessed.

The I.C.O. therefore suggests two possible ways of dealing with the problem in the Charter. The first would be to conserve paragraph 1 and strike out altogether the second paragraph with its sub-paragraphs, thus leaving it to the I.T.O. to work out a satisfactory standard system of valuation after a full investigation of the requirements of both Customs and trader. The second would be to word the sub-paragraphs of paragraph 2 in terms somewhat as follows :-

(a) The value for duty purposes of imported products shall be based on the actual price paid or payable by the importer or, where the goods are not purchased by the importer, the price paid by the purchaser in the country of export, in each case as shown on the commercial or consular invoice, unless the Customs have good reason to suspect that the invoice value is less than the real market value of the goods. In the latter case, and unless adequate evidence can be produced by the importer to show that the invoice value of the goods represents their real market value, as well as in cases where no invoice exists, the Customs shall be free to assess the goods either on the basis of the re-selling price in the country of import or of the value in the markets of the country of import of similar imported or domestic products.

(b) (This paragraph is no longer necessary).

(c) (now b) In converting the value of any imported product from one currency to another for the purpose of assessing duty, the rate of exchange to be used shall be the official rate resulting from the parity fixed by the International Monetary Fund.

(d) (now c) (Sub-paragraph (d) in the Suggested Charter).

With regard to the working out by the I.T.O. under paragraph 1 of more detailed standards for the valuation of goods, the I.C.C. will continue its own investigation in that direction, and in the meantime again draws attention to the recommendations issued by its Committee on Customs Technique in 1939 which are reproduced in an Appendix to its Brochure No.101 already submitted to the London Meeting of the Preparatory Committee (pages 28-30).

Article 19 : Customs Formalities

The I.C.C. strongly supports the provisions of this Article and urges the importance of early action, even in advance of the adoption of the Charter, to implement it. It suggests, however, that it would be still further strengthened by adding a clause under which the members of the I.T.O. would undertake to apply immediately at least the provisions of the 1923 Convention for the Simplification of Customs Formalities.

The following additional points, which are of great importance to trade, should be included in the Charter under this heading : -

(1) The abolition of consular invoices, sometimes called customs invoices, and certificates of origin as separate documents. The information required on consular invoices and certificates of origin can and should be obtained from extra copies of the recommended commercial invoice and the usual packing list.

(2) The abolition of consular visas and commercial association certifications for invoices. Such visas and certifications apparently perform no real purpose. The expenses involved in making out consular invoices include not only filling out the forms, but the time of someone visiting consulates to leave invoices for visaing and the time for a second visit to pick up the invoices after they are visaed and, in many cases, long delays in both visits. These hidden expenses and delays are unnecessary and constitute burdens on international trade.

(3) The elimination of the requirement by some governments that certain forms be filled out for aiding them in the compilation of export and import statistics. This information can and should be obtained by governments from extra copies of the commercial invoice and packing list.

(4) The adoption of standardized weight markings on packages and related documents.

Article 20 : Marks of Origin

The I.C.C. is in full agreement with this article, but would suggest the following additions : -

(a) Marks of origin should not be required in the case of : -

- 1) Goods bearing a national trade mark sufficiently well known as to leave no doubt as to their origin ;

- ii) Packing, sacks, wrapping, etc..., when the mark of origin is already required for the contents ;
 - iii) Goods intended for the personal use of the importer and not for sale.
- (b) The addition to the name of the country of origin of the words "made in" or any similar expression should not be compulsory.

The I.C.C. is at the disposal of the I.T.O. to assist it in drawing up more detailed rules for the simplification of marks of origin requirements, by making a full investigation of the requirements of the industrial and trading community throughout the world.

Article 21 : Publication, etc...

The I.C.C. is in full agreement with the terms of this article. Its application by all countries would be of great value to those engaged in international trade.

Article 22 : Information, etc...

The I.C.C. feels that this article, with which it is in agreement, would be improved by the addition of a clause approving, at least as a basis of discussion, the Draft Uniform Customs Nomenclature of the League of Nations.

Article 23 : Boycott

No comment.

Section B : Tariffs and Tariff Preferences

Article 24 : Reduction of Tariffs and Elimination of Preferences

1. The I.C.C. is in general agreement with the provisions of this article. It notes with regret, however, that paragraph 1 does not impose on members an obligation to reduce tariffs but merely to enter, upon the request of other member countries, into "negotiations directed to the substantial reduction of tariffs and other charges on imports and exports...." The I.C.C. suggests that this text would be strengthened in the final draft of the Charter by a definite undertaking to reduce tariffs through negotiations conducted with the help of the I.T.O., and by substituting "effective" for "substantial".
2. The I.C.C. notes with approval that tariff reductions negotiated under this article and generalized by means of most-favoured-nation treatment, are to be used for reducing or eliminating margins of preference. It also notes with approval the commitment not to increase any margins of preference.
3. The I.C.C., opposed as it is to any system of retaliation and counter-retaliation in commercial relations, would prefer to see paragraph 3 of this article replaced by a reference to the conciliation and arbitration machinery to be provided for in a new Chapter of the Charter (see Section III, B, below).

Section C : Quantitative Restrictions and Exchange Control

Article 25 : General Elimination of Quantitative Restrictions

1. The International Chamber of Commerce is in general agreement with the provisions of this article. It suggests, however, that the final text of the article should begin with a strong statement opposing quantitative restrictions. The clause "Except as otherwise provided in this Charter", appearing as it does at the very beginning of the article, not only weakens substantially the text that follows but creates, at first glance, a great deal of uncertainty as to its scope.
2. The I.C.C. would favour, therefore, a stronger wording of paragraph 1, comprising a general undertaking by members of the I.T.O. not to apply quantitative trade restrictions. The I.C.C. is aware, of course, that the use of these restrictions is strongly entrenched in many countries and that post-war circumstances make it impossible to eliminate them overnight. It accepts, therefore, paragraph 2 (a) noting that the restrictions "instituted or maintained during the early post-war transitional period" are to be removed "as soon as the conditions giving rise to them have ceased."
3. In view of its proposal that article 26 of the Charter be deleted, the I.C.C. urges that the time-limit set at July 1st, 1949, in paragraph 2 (a) be replaced by "... not later than a date to be subsequently determined by the I.T.O." .
4. The I.C.C. finds paragraph 2 (e) of this article obscure, inasmuch as it establishes criteria which, in the I.C.C.'s opinion, are not likely to prove applicable in practice. It doubts too the soundness of the notion of a "representative period" which is used in the later part of this paragraph. It is always dangerous, in a changing world, to consider any particular past period as being representative enough to give guidance to future policies.
5. Paragraph 2 (f) is concerned with essentially domestic problems and should find no room, therefore, in the Charter of the I.T.O., especially as it seems to favour the progress of state monopolies of foreign trade. The I.C.C. recommends, therefore, that it should be deleted from the Charter.

Article 26 : Restrictions to safeguard the Balance of Payments

1. This article forms a most important exception to article 25 and, indeed, represents in the opinion of the I.C.C. the principal "escape" provision of the Charter. It states that "any member may restrict the quantity or value of merchandise permitted to be imported, in so far as this is necessary to safeguard its balance of payments and monetary reserve." Even though paragraphs 2 and 3 of this article place certain limitations upon this right of members to use quantitative trade restrictions to protect their balance of payments, the I.C.C. is not satisfied that these limitations and the procedure designed to apply them are sufficient to counteract the dangerous implications of the general principle laid down in paragraph 1 of the present article.

2. The equilibrium of balances of payments, arrived at under a regime of stable exchange rates, presents, of course, great advantages for the maintenance of orderly processes of international trade and finance. The I.C.C. is impressed, however, by the contradiction in which the Charter would find itself should it encourage the maintenance of balance-of-payments equilibria by means which are irreconcilable with the growth of international trade. Past experience shows (a) that it is much easier for individual countries to maintain a state of balance in their international payments when world trade is expanding than when it is the object of crippling restrictions and restraints and (b) that the safeguarding of balance-of-payments equilibria by means of quantitative restrictions on trade and on payments tends to lead to a disintegration of international economic relations.

3. The I.C.C. fully realizes that in the next few years many countries will be faced with exceptional difficulties in their international payments; it is of the opinion, however, that the instrumentalities of the International Monetary Fund are sufficient to meet these emergencies, especially in view of the assistance in financing imports essential for rehabilitation made available by the International Bank for Reconstruction and Development. No additional instrumentalities need, therefore, be provided in the Charter of the I.T.O. beyond the provisions of article 25, 2 (a).

4. In view of the fact that the membership of the I.T.O. may include countries which will not be members of the International Monetary Fund, a provision should be included in the Charter of the I.T.O. which would extend to members of the I.T.O. the rights and obligations of members of the International Monetary Fund in regard to exchange control. In matters involving major balance-of-payments disequilibria, the I.T.O. should act after previous consultation with the International Monetary Fund and, whenever necessary, with its assistance.

5. In this connection, the I.C.C. considers that the provisions of paragraph 5 of the present article are entirely inadequate. According to that paragraph "If there is persistent and widespread application of import restrictions under this article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall seek consultation with the International Monetary Fund ..." If the I.T.O. were to wait for a "persistent and widespread application" of quantitative trade restrictions before consulting with the International Monetary Fund the chances are that world trade would disintegrate before any immediate action could be taken in cooperation with the latter agency. It should also be observed that it would not be the "general disequilibrium" per se which would be restricting international trade, but the quantitative restrictions on imports, which are nothing but a particular and, in the opinion of the I.C.C., a particularly undesirable, method of dealing with such a disequilibrium.

6. The International Chamber of Commerce is of the opinion that article 26 represents a dangerous loophole in the structure of the Charter which must be plugged if the major part of Chapter V is not to be stultified by future events. It recommends, therefore, that article 26 in its present form, should be eliminated from the Charter and that it should be replaced by an article along the lines suggested in paragraph 4 of these comments.

Article 27 : Non-Discriminatory Administration of Quantitative
Restrictions

1. The International Chamber of Commerce is impressed by the fact that this article seems to make a demand upon members of the I.T.O. which, with the best will in the world, they must find it impossible to fulfil. Discrimination is inherent in the concept of quantitative restrictions. Most-favoured-nation treatment, which is the most effective instrument of commercial policy for the elimination of discriminatory practices, is inapplicable to trade restrictions other than tariffs. As long as quantitative trade restrictions continue to exist, discrimination will go in their wake.
2. If this is made clear, the I.C.C. agrees, of course, that it is most useful to impress upon countries the desirability of limiting to the utmost the discriminations inherent in the mechanisms of quantitative trade restrictions. The I.C.C. suggests that the beginning of this article should be rewritten in line with the foregoing comments.
3. The I.C.C. recommends that the following rules should be added to article 27 :
 1. - When the importation of merchandise is already restricted by a quota, no increase in customs duties, nor import license tax, nor any additional charges of any kind should be levied on such merchandise, unless such additional charges form part of a general increase in tariffs.
 2. - Quotas for seasonal articles and products (the term "seasonal" being understood in the wide sense required by the complexity of international trade) should be rationally distributed over the year.
 3. - As far as possible no obstacle should be placed in the way of customs clearance of goods delayed in course of transit, particularly if the delay is due to circumstances outside the control of the shipper or importer ("force majeure"); in such cases, the Customs authorities should be allowed a certain latitude in interpreting the period of validity where no special administrative rules exist.
 4. - Treaties should as far as possible be concluded at regular intervals between the various countries with a view to establishing, for specific periods, the amounts of the quotas as well as the manner of their application.
 5. - Licenses, or portions of licenses, not utilized by the beneficiaries should be transferable by the competent administration to another importer from the same country.
 6. - It should be possible to carry over to the following period any portion of a quota not utilized by a given exporting country in the course of a specified period.

7. - With regard to the application of the previous rule, particular attention should be paid to merchandise such as machinery*) which by the very nature of the requirements they have to meet do not lend themselves to consignment at regular intervals.
8. - In countries where import licenses are granted on the basis of consignments during previous periods of reference, a procedure should be set up, subject to the necessary safeguards, with a view to enabling licenses to be granted to firms entering the market for the first time and thus preventing the system from becoming crystallized.
9. - Articles which are genuine accessories of a principal consignment as well as samples should be treated as outside the quota.
10. - In all matters connected with the establishment, suppression and administration of quotas, and particularly as regards the allocation of the quotas among the interests concerned, the official authorities should act in close cooperation and consultation with the private or semi-official organizations representing the agricultural, industrial or commercial interests of the importers.

Article 28 : Exceptions to the Rule of Non-Discrimination

In line with its discussion of article 26, the International Chamber of Commerce recommends that paragraphs 1 (d) and 1 (e) (i) be deleted.

Article 29 : Exchange Arrangements

No comment.

Section D : Subsidies

Article 30 : General Undertakings regarding Subsidies -
Elimination of Export Subsidies - Exceptions

1. The International Chamber of Commerce regrets that the Preparatory Committee has not seen fit to take a strong negative stand on the matter of export subsidies. In the opinion of the I.C.C. export subsidies are as undesirable interferences with the flow of international trade as the major import restrictions. They tend to divert trade into uneconomic channels, to disrupt the economies of other countries, to increase the instability of the world economy and, generally, to interfere with the attainment of the objectives sought by the I.T.C.

*) By "merchandise such as machinery" is meant capital or production goods in general, in other words goods required for purposes of production which are not regular articles of consumption.

2. - Measures ought to be included in the Charter of the I.T.O. which would prevent a competitive growth of export subsidies. New subsidies and increases of existing subsidies are clearly undesirable, while existing subsidies should gradually be scaled down. Article 30 should be entirely rewritten to take account of these considerations, due attention being paid to the provisions of article 25, 2 (a).

Section E : State Trading

Article 31 : Non-Discriminatory Administration of State Trading Enterprises

1. The principle that a state enterprise "shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations" is most excellent. It involves the tacit postulate that state enterprises engaging in foreign trade will be conducted in much the same way as private enterprises. In order to make this provision effective, it is necessary to design adequate machinery to handle complaints resulting from any breach of that commitment by some particular state enterprise.

2. Paragraph 2 of this article makes a distinction between purchases by state enterprises for resale and purchases by such enterprises for government use only (and not for resale). In respect to the latter it is stipulated that members of the I.T.O. should "agree to accord to the commerce of other members fair and equitable treatment, having full regard to all relevant circumstances." The distinction in the text between these two groups of transactions is very far from clear and it would seem to be without much justification. Attention is directed, in particular, to the evasive phrase : "having full regard to all relevant circumstances". In the opinion of the I.C.C., the Charter of the I.T.O. should be free from such ambiguous statements which are likely to lead, eventually, to divergencies of interpretation and even to friction. There seems to be no good reason why the second paragraph of article 31 should be in the Charter at all and the I.C.C. recommends that it be deleted.

Article 32 : Expansion of Trade by State Monopolies of Individual Products

This article, by attempting to establish principles for the price policies of State monopolies of individual products, enters into a very difficult and controversial field and establishes rules which will inevitably become the object of future controversy. The I.C.C. considers it preferable to limit the Charter's provisions concerning the behaviour of State monopolies of individual products to simple general rules, leaving the detailed interpretation and administration of those rules to the I.T.O. itself. The I.C.C. suggests, in addition that the Preparatory Committee might concern itself, in drawing up the final text of this article, with discriminatory practices which State monopolies of individual products might engage in, in the course of their business, and with machinery for the elimination of such practices.

Article 33 : Expansion of Trade by Complete Monopolies of
Import Trade

1. The emergence of complete monopolies of foreign trade is by far the most important development in the realm of international trade. Their existence is acknowledged in article 33 of the Charter, but the treatment given to this problem is far from adequate. It will be noted that the London Session of the Preparatory Committee has left in abeyance the discussion of article 33 which, for the moment, appears in the form given to it in the Suggested Charter presented to the London Conference by the United States. In its forthcoming Second Session, the Preparatory Committee will undoubtedly wish to devote much attention to this important article. In doing so, it might note that while the United States Proposals of November 1945 referred to "State monopolies of foreign trade", the Suggested Charter speaks of "State monopolies of import trade." This limitation of the scope of this article seems entirely unwarranted. When the State assumes a complete monopoly of import trade, it generally also controls the entirety of exports, and the two controls ought to be discussed jointly.
2. The article in question pays no attention to the important consequences of complete State monopolies of foreign trade in terms of discrimination, the adoption of non-commercial principles in the conduct of foreign trade, and the use of commercial bargaining power as an important element in the political power relations between countries. Neither is any attention devoted to the hazards for the future of multilateral trading resulting from the establishment of State monopolies of foreign trade as a whole. Such monopolies inevitably tend to practice commercial bilateralism, in preference to multilateral methods.
3. The I.C.C. has indicated in the Introduction to its comments on Chapter V of the Charter several most important issues arising out of the existence of complete State monopolies of foreign trade and has expressed the doubts it feels concerning the appropriateness of including in the I.T.O. membership countries which have adopted such complete monopolies of foreign trade. Should it be found in the future work on the Charter that complete State monopolies of foreign trade are, by their very nature, unable to live up to the commitments of the Charter, then article 33 should be left out of the Charter.
4. Article 33 provides for a quid pro quo which State monopolies of import trade should grant to other countries from which they have received tariff concessions, consisting of an undertaking "to import in the aggregate over a period products of the other members valued at not less than an amount to be agreed upon". The I.C.C. suggests that this very unclear provision is far from meeting the exigencies of a situation created by the establishment of State monopolies of foreign trade. This formula, in addition to being vague, is also unduly rigid and is likely to lead, therefore, to all manner of discriminatory treatment.
5. In the opinion of the I.C.C., article 33 does not meet all the difficult problems resulting from the existence of State trading monopolies. Should it be decided to keep such an article in the Charter, the I.C.C. urges that it should be carefully reconsidered and very substantially rewritten.

Section F : Emergency Provisions - Consultation

Article 34 : Emergency Action on Imports of Particular Articles

This article opens the door wide to arbitrary unilateral action which, if allowed to occur, is likely to jeopardise all the objectives of the I.T.O. The International Chamber of Commerce, therefore, recommends that the whole article be deleted from the Charter.

Article 35 : Consultation, Nullification or Impairment

For comments relating to this article, see Part III (B) of this Report.

Section G : Relations with Non-Members

Article 36 : Contractual Relations with Non-Members - Treatment of the Trade of Non-Members.

1. This article has not been dealt with either by the Preparatory Committee at its London Session or by the Drafting Committee in New York. The I.C.C. reserves its comments, therefore, until the Preparatory Committee shall have produced a draft. The I.C.C. recommends, however, that the treatment of the trade of non-members should be such as to give advantages to members of the I.T.O. which are withheld from non-members, thus putting a premium on membership. The I.C.C. considers that article 31 of the United States Suggested Charter provides a satisfactory basis for the drafting of the final text of this article.

2. Furthermore, as pointed out in connection with article 14 above, the I.C.C. is of the opinion that it is essential to include an additional clause providing that members of the I.T.O. should stipulate in their trade agreements with non-members that concessions granted by members to members under the Charter do not fall within the scope of the most-favoured-nation clause.

Section H : General Exceptions

Article 37 : General Exceptions to Chapter V

No comment.

Section I : Territorial Application

Article 38 : Territorial Application of Chapter V - Frontier Traffic - Customs Unions

No comment.

Chapter VI : Restrictive Business Practices

The International Chamber of Commerce is aware that there are profound differences of opinion throughout the world in regard to International Cartels. These differences are reflected within its own membership. There are those who consider that all business agreements that limit competition are harmful to both domestic and international trade, and that they should be prohibited. There are others who consider that a certain amount of voluntary restriction of competition, openly arrived at, may be of great assistance in the stabilization of markets and that it might be associated with improved procedures for the exchange of information, for the spreading of more advanced productive technique, and for concerted study of new possibilities of investment. As between the out-and-out opponents of agreements restraining competition, on the one hand, and those who distinguish between "good" and "bad" agreements of this kind, a fully satisfactory compromise is difficult if not impossible to arrive at. The International Chamber of Commerce is of the opinion that the present draft of Chapter VI is as good an attempt at steering an acceptable middle course between the opposing points of view as could be hoped for. It has no specific comments or suggestions to offer on articles 39 to 45 which compose Chapter VI.

Chapter VII : Inter-Governmental Commodity Agreements

1. The International Chamber of Commerce suggests that the final draft of this chapter should make a clearer case for giving a different treatment to inter-governmental agreements concerned with primary commodities than is afforded to Restrictive Business Practices which are the object of Chapter VI. One way of doing it would be to emphasize the non-restrictive character of the arrangements provided in Chapter VII. In the opinion of the I.C.C., this chapter should carry an explicit endorsement of the principle of an orderly expansion of world trade and should subordinate to that principle all the arrangements that might be concluded under the terms of this chapter. The I.C.C. further considers that international commodity arrangements should be viewed as emergency arrangements to deal with particular grave maladjustments between the supply and the demand for primary commodities and that they should not become a permanent feature of normal international economic relations. The I.C.C. is impressed by the possibility of major maladjustments developing under the cover of price maintenance schemes that might be the outcome of some commodity agreements. This contingency is one to which particular attention should be paid in the final draft of Chapter VII.

2. The International Chamber of Commerce continues to regard as unsound the notion that one standard of conduct is applicable to private agreements and another to similar agreements between governments. If it is true that inter-governmental arrangements relating to primary commodities are not necessarily in conflict with the objectives of the Charter, this is equally true of private agreements between producers for the same purposes subject to proper safeguards. When international agreement is necessary in order to restore or maintain a stable level of economic activity, it should normally be concluded between the producers directly concerned, unless they are too numerous and dispersed to make this possible. It should be made clear in the Charter that inter-governmental agreements are restricted to those primary products which, owing to the large number of producers involved, cannot be made the subject of private agreement alone.

Comments on Individual Articles

Section A : Inter-Governmental Commodity Agreements in General

Article 46 : Difficulties relating to Primary Commodities

The International Chamber of Commerce recommends that the final draft of this article should include a more precise definition of the term "some primary commodities", a notion underlying the whole of Chapter VII. The definition offered in article 60 is not satisfactory. If examples are given, reference might usefully be made to inelasticities of supply and demand which exist for certain commodities under certain conditions. This article should also define more explicitly the difference between the behaviour of markets for these primary commodities and to the behaviour of other markets, especially those for manufactured goods. As it now stands, the article is not explicit enough nor clear enough and this, in turn, weakens the rest of this Chapter.

Article 47 : Objectives of Inter-Governmental Commodity Arrangements

This article suffers very much from the above indicated shortcomings of the present draft of article 46. In addition, the following clarifications would be very helpful :

- 1^o - Paragraph (a) refers to "serious economic problems which may arise when production adjustments cannot be affected by the free play of market forces as rapidly as the circumstances require"; the underlined part of this sentence (italics are not in the text) is obscure and this affects the exact meaning of the clause.
- 2^o - Paragraph (b) as now worded is so broad that it might include almost any situation that arises in connection with economic growth and development; it should be either re-drafted or left out completely.
- 3^o - Paragraph (d), referring to the maintenance and development of the natural resources of the world and their protection from unnecessary exhaustion, seems also to be far too broad to justify specific commodity arrangements.

Article 48 : Special Commodity Studies,

Article 49 : Commodity Conferences,

Article 50 : Relations with Inter-Governmental Organizations

The International Chamber of Commerce draws attention to the slowness of the procedure outlined in these Articles. In cases of major disturbance, this procedure may prove too cumbersome to be effective. The I.C.C. suggests, therefore, that in addition to the provisions of articles 48 to 50, an emergency procedure should be set up to deal with situations requiring urgent action.

Article 51 : General Principles of Inter-Governmental Commodity Arrangements

1. The International Chamber of Commerce is in substantial agreement with the article. It regrets, however, that in formulating the general plans of inter-governmental commodity

arrangements no reference has been made to the over-riding need to encourage the orderly expansion of world trade. The present article should include a paragraph to stress that commodity agreements should be so designed that they do not exercise a restrictive influence on world trade generally.

2. Turning to more specific comments, it is suggested that paragraph (e) should allow for the participation of members interested in the commodity in other capacities than those listed in this paragraph, e.g. having nationals substantially engaged in marketing or distribution of the commodity.

Section B : Inter-Governmental Commodity Arrangements
involving the Regulation of Production, Trade
and Prices

Article 52 : Circumstances Governing the Use of Regulatory
Agreements

The International Chamber of Commerce considers that paragraph (c) of this article which permits regulatory agreements for commodities other than primary commodities whenever the Organization finds that "exceptional circumstances justify such action" should be deleted. It provides no guide or basis for determining what is an "exceptional circumstance" and may open the doors to restrictive inter-governmental agreements on manufactured products.

Article 53 : Additional Principles governing Regulatory
Agreements

No comment.

Article 54 : Administration of Regulatory Agreements

No comment.

Article 55 : Provision for Initial Terms, Review and Renewal
of Regulatory Agreements

1. The I.C.C. notes a certain inconsistency between the provisions of this article and the proposals for commodity arrangements as set out in article 46. In article 46 reference is made to "special difficulties" due to disequilibrium between production and consumption of primary commodities, thus implying that the problem is one that appears in the short period. Article 55, on the other hand, states that : "No regulatory agreements shall remain in force for more than five years, unless renewed, and no renewal shall be for a longer period than five years", thus indicating that agreements are to be enforced over extended periods of time. It may be that the contradiction is due to the vagueness of article 46 to which attention has been called before. Be that as it may, the I.C.C. suggests that it should be made clear in the present chapter that commodity agreements should be temporary emergency arrangements and not a permanent feature of international economic life.

2. The I.C.C. also notes that the present article does not make clear with whom the decision as to the success or failure of a regulatory agreement actually rests. It is desirable, in the opinion of the I.C.C., to establish some machinery enabling a signatory of such an agreement to appeal to the Commodity Council

if he considers that the agreement has failed to implement the principles of the Charter. The Commodity Council would thereupon decide whether the agreement should be amended and how.

3. It is further suggested that there should be included in this Chapter a provision for speedier amendment of non-regulatory agreements than would result from the calling of a Commodity Conference.

Article 56 : Settlement of Disputes

See Part III, B, of the present Report.

Section C : Miscellaneous Provisions

The International Chamber of Commerce has no specific comments on articles 57 to 60 which compose this section, with the exception of the comments it has already made on article 60 when discussing article 46.

Chapter VIII - Organization

The International Chamber of Commerce has for the time being no comments to submit on this Chapter of the Charter, with the exception of the comments bearing on article 86 which appear in Part III, B, of this Report.

III - ADDITIONAL SUGGESTIONS

A - Capital Movements

1. In December 1946, the Council of the International Chamber of Commerce adopted a Resolution drawing the urgent attention of governments and of the Preparatory Committee of the International Conference on Trade and Employment of the United Nations to the following three points :

- "1° - The future Charter of the International Trade Organization should include a section dealing with the question of international capital movements;
- 2° - Provision should be made in the Charter for the elaboration and adoption of a Code of Fair Practice in the field of foreign investment;
- 3° - Suitable machinery should be set up to implement these recommendations."

2. Whilst it appreciates the prompt action taken by the Economic and Employment Commission in referring the matter for study to its Sub-Commission on Economic Development, the I.C.C. would urge the inclusion in the Charter of the I.T.O. of a chapter on International Capital Movements. This chapter might be drafted along the following lines :

- "1° - Members recognize the importance of sustained international capital movements, both public and private, for the purpose of assisting the economic development of under-developed areas, stimulating the growth of productivity and standards of living throughout the world and, generally, facilitating the attainment of the objectives of the Organization.

- "2° - Members should therefore adopt policies favorable to international capital investments and should refrain from using, in a manner prejudicial to the objectives set forth in paragraph 1 above, the exchange controls which the Bretton Woods Agreements authorize members of the International Monetary Fund to maintain.
- "3° - The Organization shall cooperate closely with the International Bank for Reconstruction and Development and with the International Monetary Fund in order to create and maintain conditions favorable to a steady and prosperous growth of public and private foreign investments.
- "4° - In addition, the Organization shall undertake the elaboration of a Code of Fair Practice in the field of private foreign investment, such Code either to be incorporated in the Charter or be the subject of a separate international convention.
- "5° - The Organization shall set up suitable machinery for implementing this Code and for the arbitration of disputes to which its application may give rise".

B - Conciliation and Arbitration

The International Chamber of Commerce, noting with interest and approval that the last paragraph of the New York Drafting Committee's General Comments on Article 86 refers the subject of arbitration to the Second Session of the Preparatory Committee as a "substantive matter of the highest importance", urges the Second Session to give the most careful consideration to the problem of designing a uniform procedure for interpretation, conciliation and arbitration. The I.C.C. firmly believes that the projected Organization will prove to be unworkable, if this problem is not solved.

In the present version of the Charter, article 86 contains specific provisions for interpretation and for the settlement of disputes. In addition, a great variety of provisions is found scattered throughout the Charter to deal with disputes arising out of the provisions of the Charter on specific points. In the opinion of the I.C.C., in so far as special circumstances do not call for a special procedure, all provisions for interpretation, conciliation and arbitration should be removed from the body of the Charter and assembled in a distinct chapter or article. This would considerably simplify the terms of the Charter and facilitate the efficient operation of the Organization.

The International Chamber of Commerce suggests that the following points should be specifically covered by the new chapter or article :-

- 1° - As far as the interpretation of terms in the Charter capable of quasi-legal treatment is concerned, the I.C.C. believes that article 86 already provides an adequate procedure.
- 2° - As regards differences of a non-justiciable nature (in other words matters of fact or opinion arising out of the use of terms throughout the Charter, such as "unreasonable", "undue", "excessive", "harmful", etc...), the I.C.C. is of

the opinion that neither the optional intervention of the Organization provided for in many places in the Charter nor the system of rulings by the Executive Board envisaged in article 86 is a suitable method of approach. The I.C.C. suggests that a machinery of conciliation and arbitration should be set up comprising three distinct stages of action :

- a) - the Organization should be under an obligation to make recommendations to members in circumstances where it has reason to believe that differences or disputes of this kind are likely to arise;
- b) - when a complaint or a dispute actually occurs, the Organization should be under an obligation to provide its good offices for purposes of conciliation;
- c) - Members should undertake, in case conciliation fails, to submit disputes to an arbitration tribunal external to the Organization.