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SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

DRAFT CHARTER

Articles 16 - 23 and 37

Revised text and Notes (subject to final approval  
by Commission A).

ARTICLE 16

FREEDOM OF TRANSIT.

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

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

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Paragraph 1:

Note I:

The Delegate for Chile declared that he maintained, for the time being, the view that Article 16 should be confined to goods only, in which case the words "and also vessels and other means of transport" should be deleted.

Note II:

The Preparatory Committee considered that the wording of this paragraph is intended to cover transit from one point to another in a given country across the territory of another country.

3. Any Member may require that traffic in transit through its territory be entered at the proper customs house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by Members on traffic in transit to or from other Member countries shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, regulations, and formalities in connection with transit, each Member shall accord to traffic in transit to or from any other Member country treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.

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Paragraph 5:

With regard to transport charges, the Preparatory Committee understood that the principle of paragraph 5 refers to like products being transported on the same route under like conditions.

6. Each Member shall accord to products which have been in transit through any other Member country treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through such other Member country. Any Member shall, however, be free to maintain its requirements of direct consignment (expédition directe) existing on the day of the signature of this Charter, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty, or has relation to the country's prescribed method of valuation for duty purposes.

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Paragraph 6:

The Preparatory Committee was in favour of the retention of this paragraph as adopted by the Drafting Committee, subject to a reservation recorded by the French Delegate when Article 14 was discussed.

ARTICLE 17

ANTI-DUMPING AND COUNTERVAILING DUTIES

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

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Note I : The Delegate for CUBA maintained for the time being his criticism of the way of approach to the problem of dumping by Article 17 which confines itself to restricting the rights of Members affected by dumping, whilst not condemning those practising it; he would prefer to introduce the Article by an express statement of condemnation.

Note II : It was the understanding of the Preparatory Committee that the obligations set forth in Article 17 would, as in the case of all other obligations under Chapter V, be subject to the provisions of Article 34.

Paragraph 1 :

The Preparatory Committee was of the opinion that hidden dumping by associated houses (that is, the sale by the importers at a price below that corresponding to the price invoiced by the exporter with which the importer is associated, and also below the price in the exporting country) would constitute a form of price dumping.

2. No countervailing duty shall be levied on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise.

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

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Paragraph 2.

It was the understanding of the Preparatory Committee that multiple currency practices may in certain circumstances constitute a subsidy to exports which could be met by countervailing duties under paragraph 2 or may constitute a form of dumping by means of a partial depreciation of a country's currency which could be met by action under paragraph 1 of this Article. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

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

5. No Member shall levy any anti-dumping or countervailing duty or charge on the importation of any product of another Member country unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to prevent or materially retard the establishment of a domestic industry. The Organization is authorised to waive the requirements of this paragraph so as to permit a Member to levy an anti-dumping duty or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in another Member country exporting the product concerned to the importing Member country. It is recognized that the importation of products exported under a stabilization system determined to have conformed to the conditions prescribed in paragraph 3 of Article 30 would not result in material injury under the terms of this paragraph.

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Paragraph 5 :

Note I : The Delegations of Belgium, Czechoslovakia, France, Luxemburg and the Netherlands expressed the fear that abuses might be committed under cover of the provisions of paragraph 5 regarding the threat of injury, of which a State might take advantage on the pretext that it intended to establish some new domestic industry in the more or less distant future. The Committee considered that, if such abuses were committed, the general provisions of the Charter would be adequate to deal with them.

Note II : The reference to paragraph 3 of Article 30 was adopted provisionally pending the final wording of that provision as well as of paragraph 4 of Article 66.

6. No measures other than anti-dumping and counter-vailing duties or charges shall be applied by any Member for the purpose of offsetting dumping or subsidization.

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Paragraph 6 :

The Preparatory Committee was not unanimous on the addition of this paragraph. Its inclusion was supported by twelve delegations and opposed by four.

ARTICLE 18

VALUATION FOR CUSTOMS PURPOSES.

1. The Members shall work toward the standardization, in so far as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering such co-operation, the Organization may investigate and recommend to Members such bases and methods for determining the value of products as would appear best suited to the needs of commerce and most capable of general adoption.

2. The Members recognize the validity of the general principles of tariff valuations set forth in the following sub-paragraphs, and they undertake to give effect to such principles, in respect of all products subject to duties, charges or restrictions on importation and exportation based upon or regulated in any manner by value, at the earliest practicable date. Moreover, they shall, upon a request by another Member, review the operation of any of their laws or regulations relating to value for duty purposes in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

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Paragraph 2:

The Preparatory Committee considered the desirability of replacing the words "at the earliest practicable date" by a definite date or, alternatively, by a provision for a specified limited period to be fixed later. The Committee appreciated that it would not be possible for all Members to give effect to these principles by a fixed time, but it was nevertheless understood that a majority of the Members would give effect to them at the time the Charter enters into force.

(a) (1) The value for duty purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

(ii) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (a) comparable quantities, or (b) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

(iii) When the actual value is not ascertainable in accordance with (a) (ii), the value for duty purposes should be based on the nearest ascertainable equivalent of such value.

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For Notes see next page.

Sub-paragraph 2(a):

Note I:

The Preparatory Committee considered that it would be in conformity with Article 18 to presume that "actual value" may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount or other reduction from the ordinary competitive price.

Note II:

The Preparatory Committee deleted the words "between independent buyer and seller" which appeared after "course of trade" in the report of the Sub-Committee on the understanding that the phrase "under fully competitive conditions" should be held to cover the same concept. The Delegates for India and the United Kingdom reserved their positions on this point.

Note III:

The Preparatory Committee considered that the prescribed standard of "fully competitive conditions" would permit Members to exclude from consideration distributors' prices which involve special discounts limited to exclusive agents.

Note IV:

The Preparatory Committee considered that the wording of (i) and (ii) would permit a Member to assess duty uniformly either (a) on the basis of a particular exporter's prices of the imported merchandise, or (b) on the basis of the general price level of like merchandise.

Note V:

The Delegate of Chile reserved his position for the time being.

(b) The value for duty purposes of any imported product should not include the amount of any internal tax applicable within the country of origin or export, from which the imported product has been or will be relieved by means of refund or made exempt.

(c) (i) Except as otherwise provided in sub-paragraph (c), where it is necessary for the purposes of sub-paragraph (a) for a Member to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used should be based on the par values of the currencies involved as established pursuant to the Articles of Agreement of the International Monetary Fund or by special exchange agreements entered into pursuant to Article 29 of the Charter.

(ii) Where no such par value has been established, the conversion rate shall reflect effectively the current value of such currency in commercial transactions.

(iii) The Organization, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by Members of any foreign currency in respect of which multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any Member may apply such rules in respect of such currencies for the purposes of paragraph 2(a) of this Article as an alternative to the use of par values. Until such rules are adopted by the Organization, any Member may employ in respect of any such foreign currency rules of conversion for the purposes of paragraph 2(a) which are designed to reflect effectively the value of such currency in commercial transactions.

(iv) Nothing in sub-paragraph (c) shall be construed to require any Member to alter the method of converting currencies for Customs purposes which is applicable in its territory on the day of the signature of this Charter in such a manner as to increase generally the amounts of duty payable.

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Sub-paragraph 2(c):

The Preparatory Committee decided that the following should appear in its Report as a comment on (iv):  
"The alteration of a currency which is recognised by a change in its established par value shall not be considered a change in the method of converting currencies."

3. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

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Paragraph 3:

At the request of the Representative of the International Monetary Fund the Preparatory Committee considered whether there was any provision in Article 19 which could be interpreted as prohibiting a Member from employing multiple currency practices, or equivalent thereof, for balance of payments purposes when the action of such member is taken in accordance with the recommendations or approval of the International Monetary Fund. The Committee was of the opinion that, while Article 19 does not cover the use of multiple rates of exchange as such, paragraphs 1 and 5 would condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; it was clear, however, that if a Member is using multiple currency exchange fees for balance of payments reasons with the approval of the Fund, the provisions of paragraph 3 would fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date.

ARTICLE 19

FORMALITIES CONNECTED WITH IMPORTATION AND  
EXPORTATION

1. The Members recognize that fees and charges, other than duties, imposed by governmental authorities on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. They also recognize the need for reducing the number and diversity of such fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements.
2. The Organization is authorized to study and recommend to Members specific measures for the simplification and standardization of customs formalities and techniques and for the elimination of unnecessary customs requirements.
3. Members shall give effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they shall, upon request by another Member, review the operation of any of their laws and regulations in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.
4. Members shall not collect or otherwise enforce substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

5. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to :

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

ARTICLE 20

MARKS OF ORIGIN

1. The Members agree that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum.
2. Each Member shall accord to the products of each other Member country treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.
3. Whenever administratively practicable, Members should permit required marks of origin to be imposed at the time of importation.
4. The laws and regulations of Members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.
5. Members agree to work in co-operation through the Organization towards the early elimination of unnecessary requirements as to marks of origin. The Organization is authorized to study and recommend to Members measures directed to this end, including the adoption of schedules of general categories of products in respect of which marking requirements operate to restrict trade in a degree disproportionate to any proper purpose to be served, and which shall not in any case be required to be marked to indicate their origin.

Paragraph 5:

The Preparatory Committee thought it desirable that the discussion of this paragraph at meetings of the Working Party on the Technical Articles, as well as at the Drafting Committee and at its First Session, should be considered by the Organization when studying the problem of "the early elimination of unnecessary requirements as to marks of origin". Also the Committee wished to emphasize the importance of the word "early" in this paragraph.

6. As a general rule no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

7. The Members shall co-operate with each other and through the Organization with a view to preventing the use of trade names in such a manner as to misrepresent the true origin of a product, to the detriment of the distinctive regional or geographical names of products of a Member country, which are protected by the legislation of such country.

Each Member shall accord full and sympathetic consideration to such requests or representations as may be made by any other Member regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other Member.

The Organization may recommend a conference of interested Members on this subject.

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Paragraph 7:

The Delegate for Chile reserved his position as to the version of this paragraph pending receipt of further instructions.

ARTICLE 21.

PUBLICATION AND ADMINISTRATION OF TRADE  
REGULATIONS - ADVANCE NOTICE OF RESTRICTIVE  
REGULATIONS.

1. Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Member, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation or insurance, or affecting their warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable traders and governments to become acquainted with them. Agreements in force between the government or a governmental agency of any Member country and the government or governmental agency of any other country affecting international trade policy shall also be published. Copies of such laws, regulations, decisions, rulings and agreements shall be communicated promptly to the Organization. This paragraph shall not require any Member to disclose confidential information which would impede law enforcement, or otherwise be contrary to the public interests or would prejudice the legitimate business interests of particular enterprises, public or private.

2. No measure of general application taken by any Member effecting an advance in a rate of import duty or other charge under an established and uniform practice or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of the payments therefor, shall be enforced before such measure has been legally published.

3.(a) Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Moreover, Members shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decision shall be implemented by and shall govern the practice of such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers, provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(b) The provisions of sub-paragraph (a) of this paragraph shall not require the elimination or substitution of procedures in force in a Member country on the day of the signature of this Charter which in fact provide for an objective review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any Member employing such procedures shall, upon request, furnish the Organization with full information thereon in order that the Organization may determine whether such procedures conform to the requirements of this sub-paragraph.

ARTICLE 22.

INFORMATION, STATISTICS AND TRADE TERMINOLOGY.

1. The Members shall communicate to the Organization or to such agency as may be designated for the purpose by the Organization as promptly and in as much detail as is reasonably practicable:
  - (a) Statistics of their external trade in goods (including imports, exports and, where applicable, re-exports, transit and transshipment and goods in warehouse or in bond);
  - (b) Statistics of governmental revenue from import and export duties and other taxes on goods moving in international trade and, in so far as readily ascertainable, of subsidy payments affecting such trade.
2. So far as possible, the statistics referred to in (a) and (b) of paragraph 1 shall be related to tariff classifications and be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value, or by amounts of exchange made available.
3. The Members shall publish regularly and as promptly as possible the statistics referred to in paragraph 1 of this Article.
4. The Members shall give careful consideration to any recommendations which the Organization may make to them with a view to improvement of the statistical information furnished under paragraph 1 of this Article.
5. The Members shall make available to the Organization, at its request and in so far as reasonably practicable, such other statistical information as the Organization may deem necessary

to enable it to fulfil its functions, provided that such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information.

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

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

ARTICLE 23

BOYCOTTS

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

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Article 23:

The Delegates for Lebanon-Syria reserved their position on this Article.

ARTICLE 37

GENERAL EXCEPTIONS TO CHAPTER V

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

- I. (a) Necessary to protect public morals;
- (b) Necessary to protect human, animal or plant life or health;

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Note I:

The Delegate for India maintained his suggestion that a Member should be allowed temporarily to discriminate against the trade of another Member when this is the only effective measure open to it to retaliate against discrimination practised by that Member in matters outside the purview of the Organization, pending a settlement of the issue through the United Nations.

Note II:

The Delegate for the Netherlands proposed that the following sub-paragraph should be inserted in Part I: "Necessary to protect the rights of the grower who improves plants of commercial use by selection or other scientific method."

Part I sub-paragraphs (a) and (b):

The Delegate for Norway re-stated the view put forward by his Delegation that the taxation and the price policy of its State liquor and wine monopoly was covered by sub-paragraphs (a) and (b), and said that he wished to maintain this note pending a decision on the wording of paragraph 4 of Article 32.

- (c) Relating to the importation or exportation of gold or silver;
- (d) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as those relating to customs enforcement, the enforcement of monopolies operated under Section E of this Chapter, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) Relating to the products of prison labour;
- (f) Imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; or
- (h) Undertaken in pursuance of obligations under inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VII.

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Sub-paragraphs (c) and (d):

It was noted by the Commission that these sub-paragraphs may require further consideration after decisions are reached on Articles 25 - 29.

Sub-paragraph (d):

The Commission considered that the reference to Section E of Chapter V will require review after the adoption of the final text of that Section.

Sub-paragraph (g):

The Delegate for India maintained provisionally his suggestion that the words following upon "natural resources" should be deleted.

- II. (a) Essential to the equitable distribution among the several consuming countries of products in short supply, whether such products are owned by private interests or by the Government of any Member;
- (b) Essential to the control of prices by a Member country undergoing shortages subsequent to the war; or
- (c) Essential to the orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member, or of industries developed in any Member country owing to the exigencies of the war which it would be uneconomic to maintain in normal conditions; provided that such measures shall not be instituted by any Member after the day on which this Charter enters into force except after consultation with other interested Members with a view to appropriate international action.

Measures instituted or maintained under Part II which are inconsistent with the other provisions of Chapter V shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than 1 January 1951, provided that this period may, with the concurrence of the Organization, be extended in respect of the application of any particular measure to any particular product by any particular Member for such further periods as the Organization may specify.