

APPENDIX

.....

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FOR THE INTERNATIONAL TRADE ORGANIZATION

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HAVANA CHARTER

CHAPTER I

PURPOSE AND OBJECTIVES

ARTICLE 1

Recognizing the determination of the United Nations to create conditions of stability and well-being which are necessary for peaceful and friendly relations among nations,

THE PARTIES to this Charter undertake in the fields of trade and employment to co-operate with one another and with the United Nations

FOR THE PURPOSE OF

Realizing the aims set forth in the Charter of the United Nations, particularly the attainment of the higher standards of living, full employment and conditions of economic and social progress and development, envisaged in Article 55 of that Charter.

To this end they pledge themselves, individually and collectively, to promote national and international action designed to attain the following objectives:

1. To assure a large and steadily growing volume of real income and effective demand, to increase the production, consumption and exchange of goods, and thus to contribute to a balanced and expanding world economy.

2. To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.

3. To further the enjoyment by all countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development.

4. To promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce.

5. To enable countries, by increasing the opportunities for their trade and economic development, to abstain from measures which would disrupt world commerce, reduce productive employment or retard economic progress.

6. To facilitate through the promotion of mutual understanding, consultation and co-operation the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy.

ACCORDINGLY they hereby establish the INTERNATIONAL TRADE ORGANIZATION through which they shall co-operate as Members to achieve the purpose and the objectives set forth in this Article.

CHAPTER II

EMPLOYMENT AND ECONOMIC ACTIVITY

ARTICLE 2

Importance of Employment, Production and Demand in Relation to the Purpose of this Charter

1. The Members recognize that the avoidance of unemployment or underemployment, through the achievement and maintenance in each country of useful employment opportunities for those able and willing to work and of a large and steadily growing volume of production and effective demand for goods and services, is not of domestic concern alone, but is also a necessary condition for the achievement of the general purpose and the objectives set forth in Article 1, including the expansion of international trade, and thus for the well-being of all other countries.

2. The Members recognize that, while the avoidance of unemployment or underemployment must depend primarily on internal measures taken by individual countries, such measures should be supplemented by concerted action under the sponsorship of the Economic and Social Council of the United Nations in collaboration with the appropriate inter-governmental organizations, each of these bodies acting within its respective sphere and consistently with the terms and purposes of its basic instrument.

3. The Members recognize that the regular exchange of information and views among Members is indispensable for successful co-operation in the field of employment and economic activity and should be facilitated by the Organization.

ARTICLE 3

Maintenance of Domestic Employment

1. Each Member shall take action designed to achieve and maintain full and productive employment and large and steadily growing demand within its own territory through measures appropriate to its political, economic and social institutions.

2. Measures to sustain employment, production and demand shall be consistent with the other objectives and provisions of this Charter. Members shall seek to avoid measures which would have the effect of creating balance-of-payments difficulties for other countries.

ARTICLE 4

Removal of Maladjustments within the Balance of Payments

1. In the event that a persistent maladjustment within a Member's balance of payments is a major factor in a situation in which other Members are involved in balance-of-payments difficulties which handicap them in carrying

out the provisions of Article 3 without resort to trade restrictions, the Member shall make its full contribution, while appropriate action shall be taken by the other Members concerned, towards correcting the situation.

2. Action in accordance with this Article shall be taken with due regard to the desirability of employing methods which expand rather than contract international trade.

ARTICLE 5

Exchange of Information and Consultation

1. The Members and the Organization shall participate in arrangements made or sponsored by the Economic and Social Council of the United Nations, including arrangements with appropriate inter-governmental organizations:

- (a) for the systematic collection, analysis and exchange of information on domestic employment problems, trends and policies, including as far as possible information relating to national income, demand and the balance of payments;
- (b) for studies, relevant to the purpose and objectives set forth in Article 1, concerning international aspects of population and employment problems;
- (c) for consultation with a view to concerted action on the part of governments and inter-governmental organizations in order to promote employment and economic activity.

2. The Organization shall, if it considers that the urgency of the situation so requires, initiate consultations among Members with a view to their taking appropriate measures against the international spread of a decline in employment, production or demand.

ARTICLE 6

Safeguards for Members Subject to External Inflationary or Deflationary Pressure

The Organization shall have regard, in the exercise of its functions under other Articles of this Charter, to the need of Members to take action within the provisions of this Charter to safeguard their economies against inflationary or deflationary pressure from abroad. In case of deflationary pressure special consideration shall be given to the consequences for any Member of a serious or abrupt decline in the effective demand of other countries.

ARTICLE 7

Fair Labour Standards

1. The Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions

as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.

2. Members which are also members of the International Labour Organisation shall co-operate with that organization in giving effect to this undertaking.

3. In all matters relating to labour standards that may be referred to the Organization in accordance with the provisions of Articles 94 or 95, it shall consult and co-operate with the International Labour Organisation.

CHAPTER III

ECONOMIC DEVELOPMENT AND RECONSTRUCTION

ARTICLE 8

Importance of Economic Development and Reconstruction in Relation to the Purpose of this Charter

The Members recognize that the productive use of the world's human and material resources is of concern to and will benefit all countries, and that the industrial and general economic development of all countries, particularly of those in which resources are as yet relatively undeveloped, as well as the reconstruction of those countries whose economies have been devastated by war, will improve opportunities for employment, enhance the productivity of labour, increase the demand for goods and services, contribute to economic balance, expand international trade and raise levels of real income.

ARTICLE 9

Development of Domestic Resources and Productivity

Members shall within their respective territories take action designed progressively to develop, and where necessary to reconstruct, industrial and other economic resources and to raise standards of productivity through measures not inconsistent with the other provisions of this Charter.

ARTICLE 10

Co-operation for Economic Development and Reconstruction

1. Members shall co-operate with one another, with the Economic and Social Council of the United Nations, with the Organization and with other appropriate inter-governmental organizations, in facilitating and promoting industrial and general economic development, as well as the reconstruction of those countries whose economies have been devastated by war.

2. With a view to facilitating and promoting industrial and general economic development and consequently higher standards of living, especially of

those countries which are still relatively undeveloped, as well as the reconstruction of those countries whose economies have been devastated by war, and subject to any arrangements which may be entered into between the Organization and the Economic and Social Council of the United Nations and appropriate inter-governmental organizations, the Organization shall, within its powers and resources, at the request of any Member:

- (a) (i) study the Member's natural resources and potentialities for industrial and general economic development, and assist in the formulation of plans for such development;
 - (ii) furnish the Member with appropriate advice concerning its plans for economic development or reconstruction and the financing and carrying out of its programmes for economic development or reconstruction; or
- (b) assist the Member to procure such advice or study.

These services shall be provided on terms to be agreed and in such collaboration with appropriate regional or other inter-governmental organizations as will use fully the competence of each of them. The Organization shall also, upon the same conditions, aid Members in procuring appropriate technical assistance.

3. With a view to facilitating and promoting industrial and general economic development, especially of those countries which are still relatively undeveloped, as well as the reconstruction of those countries whose economies have been devastated by war, the Organization shall co-operate with the Economic and Social Council of the United Nations and appropriate inter-governmental organizations on all phases, within their special competence, of such development and reconstruction, and, in particular, in respect of finance, equipment, technical assistance and managerial skills.

ARTICLE 11

Means of Promoting Economic Development and Reconstruction

1. Progressive industrial and general economic development, as well as reconstruction, requires among other things adequate supplies of capital funds, materials, modern equipment and technology and technical and managerial skills. Accordingly, in order to stimulate and assist in the provision and exchange of these facilities:

- (a) Members shall co-operate, in accordance with Article 10, in providing or arranging for the provision of such facilities within the limits of their power, and Members shall not impose unreasonable or unjustifiable impediments that would prevent other Members from obtaining on equitable terms any such facilities for their economic development or, in the case of Member countries whose economies have been devastated by war, for their reconstruction;
- (b) no Member shall take unreasonable or unjustifiable action within its

territory injurious to the rights or interests of nationals of other Members in the enterprise, skills, capital, arts or technology which they have supplied.

2. The Organization may, in such collaboration with other inter-governmental organizations as may be appropriate:

- (a) make recommendations for and promote bilateral or multilateral agreements on measures designed:
 - (i) to assure just and equitable treatment for the enterprise, skills, capital, arts and technology brought from one Member country to another;
 - (ii) to avoid international double taxation in order to stimulate foreign private investments;
 - (iii) to enlarge to the greatest possible extent the benefits to Members from the fulfilment of the obligations under this Article;
- (b) make recommendations and promote agreements designed to facilitate an equitable distribution of skills, arts, technology, materials and equipment, with due regard to the needs of all Members;
- (c) formulate and promote the adoption of a general agreement or statement of principles regarding the conduct, practices and treatment of foreign investment.

ARTICLE 12

International Investment for Economic Development and Reconstruction

1. The Members recognize that:

- (a) international investment, both public and private, can be of great value in promoting economic development and reconstruction, and consequent social progress;
- (b) the international flow of capital will be stimulated to the extent that Members afford nationals of other countries opportunities for investment and security for existing and future investments;
- (c) without prejudice to existing international agreements to which Members are parties, a Member has the right:
 - (i) to take any appropriate safeguards necessary to ensure that foreign investment is not used as a basis for interference in its internal affairs or national policies;
 - (ii) to determine whether and to what extent and upon what terms it will allow future foreign investment;
 - (iii) to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments;
 - (iv) to prescribe and give effect to other reasonable requirements with respect to existing and future investments;
- (d) the interests of Members whose nationals are in a position to provide capital for international investment and of Members who desire to

obtain the use of such capital to promote their economic development or reconstruction may be promoted if such Members enter into bilateral or multilateral agreements relating to the opportunities and security for investment which the Members are prepared to offer and any limitations which they are prepared to accept of the rights referred to in sub-paragraph (c).

2. Members therefore undertake:

- (a) subject to the provisions of paragraph 1 (c) and to any agreements entered into under paragraph 1 (d),
 - (i) to provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments, and
 - (ii) to give due regard to the desirability of avoiding discrimination as between foreign investments;
- (b) upon the request of any Member and without prejudice to existing international agreements to which Members are parties, to enter into consultation or to participate in negotiations directed to the conclusion, if mutually acceptable, of an agreement of the kind referred to in paragraph 1 (d).

3. Members shall promote co-operation between national and foreign enterprises or investors for the purpose of fostering economic development or reconstruction in cases where such co-operation appears to the Members concerned to be appropriate.

ARTICLE 13

Governmental Assistance to Economic Development and Reconstruction

1. The Members recognize that special governmental assistance may be required to promote the establishment, development or reconstruction of particular industries or branches of agriculture, and that in appropriate circumstances the grant of such assistance in the form of protective measures is justified. At the same time they recognize that an unwise use of such measures would impose undue burdens on their own economies and unwarranted restrictions on international trade, and might increase unnecessarily the difficulties of adjustment for the economies of other countries.

2. The Organization and the Members concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

—A—

3. If a Member, in the interest of its economic development or reconstruction, or for the purpose of increasing a most-favoured-nation rate of duty in connection with the establishment of a new preferential agreement in accordance with the provisions of Article 15, considers it desirable to adopt any non-discriminatory measure affecting imports which would conflict with an obligation which the Member has assumed in respect of any product through

negotiations with any other Member or Members pursuant to Chapter IV but which would not conflict with that Chapter, such Member

- (a) shall enter into direct negotiations with all the other Members which have contractual rights. The Members shall be free to proceed in accordance with the terms of any agreement resulting from such negotiations, provided that the Organization is informed thereof; or
- (b) shall initially or may, in the event of failure to reach agreement under sub-paragraph (a), apply to the Organization. The Organization shall determine, from among Members which have contractual rights, the Member or Members materially affected by the proposed measure and shall sponsor negotiations between such Member or Members and the applicant Member with a view to obtaining expeditious and substantial agreement. The Organization shall establish and communicate to the Members concerned a time schedule for such negotiations, following as far as practicable any time schedule which may have been proposed by the applicant Member. The Members shall commence and proceed continuously with such negotiations in accordance with the time schedule established by the Organization. At the request of a Member, the Organization may, where it concurs in principle with the proposed measure, assist in the negotiations. Upon substantial agreement being reached, the applicant Member may be released by the Organization from the obligation referred to in this paragraph, subject to such limitations as may have been agreed upon in the negotiations between the Members concerned.

4. (a) If as a result of action initiated under paragraph 3, there should be an increase in imports of any product concerned, including products which can be directly substituted therefor, which if continued would be so great as to jeopardize the establishment, development or reconstruction of the industry, or branch of agriculture concerned, and if no preventive measures consistent with the provisions of this Charter can be found which seem likely to prove effective, the applicant Member may, after informing, and when practicable consulting with, the Organization, adopt such other measures as the situation may require, provided that such measures do not restrict imports more than necessary to offset the increase in imports referred to in this sub-paragraph; except in unusual circumstances, such measures shall not reduce imports below the level obtaining in the most recent representative period preceding the date on which the Member initiated action under paragraph 3.

(b) The Organization shall determine, as soon as practicable, whether any such measure should be continued, discontinued or modified. It shall in any case be terminated as soon as the Organization determines that the negotiations are completed or discontinued.

(c) It is recognized that the contractual relationships referred to in paragraph 3 involve reciprocal advantages, and therefore any Member which has a contractual right in respect of the product to which such action relates, and

whose trade is materially affected by the action, may suspend the application to the trade of the applicant Member of substantially equivalent obligations or concessions under or pursuant to Chapter IV, provided that the Member concerned has consulted the Organization before taking such action and the Organization does not disapprove.

—B—

5. In the case of any non-discriminatory measure affecting imports which would conflict with Chapter IV and which would apply to any product in respect of which the Member has assumed an obligation through negotiations with any other Member or Members pursuant to Chapter IV, the provisions of sub-paragraph (b) of paragraph 3 shall apply; *Provided* that before granting a release the Organization shall afford adequate opportunity for all Members which it determines to be materially affected to express their views. The provisions of paragraph 4 shall also be applicable in this case.

—C—

6. If a Member in the interest of its economic development or reconstruction considers it desirable to adopt any non-discriminatory measure affecting imports which would conflict with Chapter IV, but which would not apply to any product in respect of which the Member has assumed an obligation through negotiations with any other Member or Members pursuant to Chapter IV, such Member shall notify the Organization and shall transmit to the Organization a written statement of the considerations in support of the adoption, for a specified period, of the proposed measure.

7. (a) On application by such Member the Organization shall concur in the proposed measure and grant the necessary release for a specified period if, having particular regard to the applicant Member's need for economic development or reconstruction, it is established that the measure

- (i) is designed to protect a particular industry, established between January 1, 1939 and the date of this Charter, which was protected during that period of its development by abnormal conditions arising out of the war; or
- (ii) is designed to promote the establishment or development of a particular industry for the processing of an indigenous primary commodity, when the external sales of such commodity have been materially reduced as a result of new or increased restrictions imposed abroad; or
- (iii) is necessary, in view of the possibilities and resources of the applicant Member to promote the establishment or development of a particular industry for the processing of an indigenous primary commodity, or for the processing of a by-product of such industry, which would otherwise be wasted, in order to achieve a fuller and more economic use of the applicant Member's natural resources and manpower and, in the long

run, to raise the standard of living within the territory of the applicant Member, and is unlikely to have a harmful effect, in the long run, on international trade; or

- (iv) is unlikely to be more restrictive of international trade than any other practicable and reasonable measure permitted under this Charter, which could be imposed without undue difficulty, and is the one most suitable for the purpose having regard to the economics of the industry or branch of agriculture concerned and to the applicant Member's need for economic development or reconstruction.

The foregoing provisions of this sub-paragraph are subject to the following conditions:

- (1) any proposal by the applicant Member to apply any such measure, with or without modification, after the end of the initial period, shall not be subject to the provisions of this paragraph; and
 - (2) the Organization shall not concur in any measure under the provisions of (i), (ii) or (iii) above which is likely to cause serious prejudice to exports of a primary commodity on which the economy of another Member country is largely dependent.
- (b) The applicant Member shall apply any measure permitted under sub-paragraph (a) in such a way as to avoid unnecessary damage to the commercial or economic interests of any other Member, including interests under the provisions of Articles 3 and 9.

8. If the proposed measure does not fall within the provisions of paragraph 7, the Member

- (a) may enter into direct consultations with the Member or Members which, in its judgment, would be materially affected by the measure. At the same time, the Member shall inform the Organization of such consultations in order to afford it an opportunity to determine whether all materially affected members are included within the consultations. Upon complete or substantial agreement being reached, the Member interested in taking the measure shall apply to the Organization. The Organization shall promptly examine the application to ascertain whether the interests of all the materially affected Members have been duly taken into account. If the Organization reaches this conclusion, with or without further consultations between the Members concerned, it shall release the applicant Member from its obligations under the relevant provision of Chapter IV, subject to such limitations as the Organization may impose; or
- (b) may initially, or in the event of failure to reach complete or substantial agreement under sub-paragraph (a), apply to the Organization. The Organization shall promptly transmit the statement submitted under paragraph 6 to the Member or Members which are determined by the Organization to be materially affected by the proposed measure. Such Member or Members shall, within the time limits prescribed by

the Organization, inform it whether, in the light of the anticipated effects of the proposed measure on the economy of such Member country or countries, there is any objection to the proposed measure. The Organization shall,

- (i) if there is no objection to the proposed measure on the part of the affected Member or Members, immediately release the applicant Member from its obligations under the relevant provision of Chapter IV; or
- (ii) if there is objection, promptly examine the proposed measure, having regard to the provisions of this Charter, to the considerations presented by the applicant Member and its need for economic development or reconstruction, to the views of the Member or Members determined to be materially affected, and to the effect which the proposed measure, with or without modification, is likely to have, immediately and in the long run, on international trade, and, in the long run, on the standard of living within the territory of the applicant Member. If, as a result of such examination, the Organization concurs in the proposed measure, with or without modification, it shall release the applicant Member from its obligations under the relevant provision of Chapter IV, subject to such limitations as it may impose.

9. If, in anticipation of the concurrence of the Organization in the adoption of a measure referred to in paragraph 6, there should be an increase or threatened increase in the imports of any product concerned, including products which can be directly substituted therefor, so substantial as to jeopardize the establishment, development or reconstruction of the industry or branch of agriculture concerned, and if no preventive measures consistent with this Charter can be found which seem likely to prove effective, the applicant Member may, after informing, and when practicable consulting with, the Organization, adopt such other measures as the situation may require, pending a decision by the Organization on the Member's application; *Provided* that such measures do not reduce imports below the level obtaining in the most recent representative period preceding the date on which notification was given under paragraph 6.

10. The Organization shall, at the earliest opportunity but ordinarily within fifteen days after receipt of an application under the provisions of paragraph 7 or sub-paragraphs (a) or (b) of paragraph 8, advise the applicant Member of the date by which it will be notified whether or not it is released from the relevant obligation. This shall be the earliest practicable date and not later than ninety days after receipt of such application; *Provided* that, if unforeseen difficulties arise before the date set, the period may be extended after consultation with the applicant Member. If the applicant Member is not so notified by the date set, it may, after informing the Organization, institute the proposed measure.

ARTICLE 14

Transitional Measures

1. Any Member may maintain any non-discriminatory protective measure affecting imports which has been imposed for the establishment, development or reconstruction of a particular industry or branch of agriculture and which is not otherwise permitted by this Charter, provided that notification has been given of such measure and of each product to which it relates:

- (a) in the case of a Member signatory to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, not later than October 10, 1947, in respect of measures in force on September 1, 1947, subject to decisions made under paragraph 6 of Article XVIII of the General Agreement on Tariffs and Trade; except that if in special circumstances the CONTRACTING PARTIES to that Agreement agree to dates other than those specified in this sub-paragraph, such other dates shall apply.
- (b) in the case of any other Member, not later than the day on which it deposits its instrument of acceptance of this Charter, in respect of measures in force on that day or on the day of the entry into force of the Charter, whichever is the earlier;

and provided further that notification has been given under sub-paragraph (a) to the other signatories to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment and under sub-paragraph (b) to the Organization, or, if the Charter has not entered into force on the day of such notification, to the signatories to the Final Act of the United Nations Conference on Trade and Employment.

2. Any Member maintaining any such measure, other than a measure approved by the CONTRACTING PARTIES to the General Agreement under paragraph 6 of Article XVIII of that Agreement, shall, within one month of becoming a Member of the Organization, submit to it a statement of the considerations in support of the maintenance of the measure and the period for which it wishes to maintain it. The Organization shall, as soon as possible, but in any case within twelve months of such Member becoming a Member of the Organization, examine and give a decision concerning the measure as if it had been submitted to the Organization for its concurrence under Article 13.

3. Any measure, approved in accordance with the provisions of Article XVIII of the General Agreement, and which is in effect at the time this Charter enters into force, may remain in effect thereafter, subject to the conditions of any such approval and, if the Organization so decides, to review by the Organization.

4. This Article shall not apply to any measure relating to a product in respect of which the Member has assumed an obligation through negotiations pursuant to Chapter IV.

5. In cases where the Organization decides that a measure should be modified or withdrawn by a specified date, it shall have regard to the possible need of a Member for a period of time in which to make such modification or withdrawal.

ARTICLE 15

Preferential Agreements for Economic Development and Reconstruction

1. The Members recognize that special circumstances, including the need for economic development or reconstruction, may justify new preferential agreements between two or more countries in the interest of the programmes of economic development or reconstruction of one or more of them.

2. Any Member contemplating the conclusion of such an agreement shall communicate its intention to the Organization and provide it with the relevant information to enable it to examine the proposed agreement. The Organization shall promptly communicate such information to all Members.

3. The Organization shall examine the proposal and, by a two-thirds majority of the Members present and voting, may grant, subject to such conditions as it may impose, an exception to the provisions of Article 16 to permit the proposed agreement to become effective.

4. Notwithstanding the provisions of paragraph 3, the Organization shall authorize, in accordance with the provisions of paragraphs 5 and 6, the necessary departure from the provisions of Article 16 in respect of a proposed agreement between Members for the establishment of tariff preferences which it determines to fulfil the following conditions and requirements:

- (a) the territories of the parties to the agreement are contiguous one with another, or all parties belong to the same economic region;
- (b) any preference provided for in the agreement is necessary to ensure a sound and adequate market for a particular industry or branch of agriculture which is being, or is to be, created or reconstructed or substantially developed or substantially modernized;
- (c) the parties to the agreement undertake to grant free entry for the products of the industry or branch of agriculture referred to in sub-paragraph (b) or to apply customs duties to such products sufficiently low to ensure that the objectives set forth in that sub-paragraph will be achieved;
- (d) any compensation granted to the other parties by the party receiving preferential treatment shall, if it is a preferential concession, conform with the provisions of this paragraph;
- (e) the agreement contains provisions permitting, on terms and conditions to be determined by negotiation with the parties to the agreement, the adherence of other Members, which are able to qualify as parties to the agreement under the provisions of this paragraph, in the interest of their programmes of economic development or reconstruction. The provisions of Chapter VIII may be invoked by such a Member in this

respect only on the ground that it has been unjustifiably excluded from participation in such an agreement;

- (f) the agreement contains provisions for its termination within a period necessary for the fulfilment of its purposes but, in any case, not later than at the end of ten years; any renewal shall be subject to the approval of the Organization and no renewal shall be for a longer period than five years.

5. When the Organization, upon the application of a Member and in accordance with the provisions of paragraph 6, approves a margin of preference as an exception to Article 16 in respect of the products covered by the proposed agreement, it may, as a condition of its approval, require a reduction in an unbound most-favoured-nation rate of duty proposed by the Member in respect of any product so covered, if in the light of the representations of any affected Member it considers that rate excessive.

6. (a) If the Organization finds that the proposed agreement fulfils the conditions and requirements set forth in paragraph 4 and that the conclusion of the agreement is not likely to cause substantial injury to the external trade of a Member country not party to the agreement, it shall within two months authorize the parties to the agreement to depart from the provisions of Article 16, as regards the products covered by the agreement. If the Organization does not give a ruling within the specified period, its authorization shall be regarded as having been automatically granted.

(b) If the Organization finds that the proposed agreement, while fulfilling the conditions and requirements set forth in paragraph 4, is likely to cause substantial injury to the external trade of a Member country not party to the agreement, it shall inform interested Members of its findings and shall require the Members contemplating the conclusion of the agreement to enter into negotiations with that Member. When agreement is reached in the negotiations, the Organization shall authorize the Members contemplating the conclusion of the preferential agreement to depart from the provisions of Article 16 as regards the products covered by the preferential agreement. If, at the end of two months from the date on which the Organization suggested such negotiations, the negotiations have not been completed and the Organization considers that the injured Member is unreasonably preventing the conclusion of the negotiations, it shall authorize the necessary departure from the provisions of Article 16 and at the same time shall fix a fair compensation to be granted by the parties to the agreement to the injured Member or, if this is not possible or reasonable, prescribe such modification of the agreement as will give such Member fair treatment. The provisions of Chapter VIII may be invoked by such Member only if it does not accept the decision of the Organization regarding such compensation.

(c) If the Organization finds that the proposed agreement, while fulfilling the conditions and requirements set forth in paragraph 4, is likely to jeopardize the economic position of a Member in world trade, it shall not authorize any

departure from the provisions of Article 16 unless the parties to the agreement have reached a mutually satisfactory understanding with that Member.

(*d*) If the Organization finds that the prospective parties to a regional preferential agreement have, prior to November 21, 1947, obtained from countries representing at least two-thirds of their import trade the right to depart from most-favoured-nation treatment in the cases envisaged in the agreement, the Organization shall, without prejudice to the conditions governing the recognition of such right, grant the authorization provided for in paragraph 5 and in sub-paragraph (*a*) of this paragraph, provided that the conditions and requirements set out in sub-paragraphs (*a*), (*e*) and (*f*) of paragraph 4 are fulfilled. Nevertheless, if the Organization finds that the external trade of one or more Member countries, which have not recognized this right to depart from most-favoured-nation treatment, is threatened with substantial injury, it shall invite the parties to the agreement to enter into negotiations with the injured Member, and the provisions of sub-paragraph (*b*) of this paragraph shall apply.

CHAPTER IV

COMMERCIAL POLICY

SECTION A—TARIFFS, PREFERENCES, AND INTERNAL TAXATION AND REGULATION

ARTICLE 16

General Most-favoured-nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters within the scope of paragraphs 2 and 4 of Article 18, any advantage, favour, privilege or immunity granted by any Member to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for all other Member countries.

2. The provisions of paragraph 1 shall not require the elimination, except as provided in Article 17, of any preferences in respect of import duties or charges which do not exceed the margins provided for in paragraph 4 and which fall within the following descriptions:

- (*a*) preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

- (b) preferences in force exclusively between two or more territories which on July 1, 1939 were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C, D and E;
- (c) preferences in force exclusively between the United States of America and the Republic of Cuba;
- (d) preferences in force exclusively between the Republic of the Philippines and the United States of America, including the dependent territories of the latter;
- (e) preferences in force exclusively between neighbouring countries listed in Annexes F, G, H, I and J.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences fulfil the applicable requirements of Article 15.

4. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 shall not exceed (a) the maximum margin provided for under the General Agreement on Tariffs and Trade or any subsequent operative agreement resulting from negotiations under Article 17, or (b) if not provided for under such agreements, the margin existing either on April 10, 1947, or on any earlier date established for a Member as a basis for negotiating the General Agreement on Tariffs and Trade, at the option of such Member.

5. The imposition of a margin of tariff preference not in excess of the amount necessary to compensate for the elimination of a margin of preference in an internal tax existing on April 10, 1947, exclusively between two or more of the territories in respect of which preferential import duties or charges are permitted under paragraph 2, shall not be deemed to be contrary to the provisions of this Article, it being understood that any such margin of tariff preference shall be subject to the provisions of Article 17.

ARTICLE 17

Reduction of Tariffs and Elimination of Preferences

1. Each Member shall, upon the request of any other Member or Members, and subject to procedural arrangements established by the Organization, enter into and carry out with such other Member or Members negotiations directed to the substantial reduction of the general levels of tariffs and other charges on imports and exports, and to the elimination of the preferences referred to in paragraph 2 of Article 16, on a reciprocal and mutually advantageous basis.

2. The negotiations provided for in paragraph 1 shall proceed in accordance with the following rules:

- (a) Such negotiations shall be conducted on a selective product-by-product basis which will afford adequate opportunity to take into account the

needs of individual countries and individual industries. Members shall be free not to grant concessions on particular products and, in the granting of a concession, they may reduce the duty, bind it at its then existing level, or undertake not to raise it above a specified higher level.

- (b) No Member shall be required to grant unilateral concessions, or to grant concessions to other Members without receiving adequate concessions in return. Account shall be taken of the value to any Member of obtaining in its own right and by direct obligation the indirect concessions which it would otherwise enjoy only by virtue of Article 16.
- (c) In negotiations relating to any specific product with respect to which a preference applies,
 - (i) when a reduction is negotiated only in the most-favoured-nation rate, such reduction shall operate automatically to reduce or eliminate the margin of preference applicable to that product;
 - (ii) when a reduction is negotiated only in the preferential rate, the most-favoured-nation rate shall automatically be reduced to the extent of such reduction;
 - (iii) when it is agreed that reductions will be negotiated in both the most-favoured-nation rate and the preferential rate, the reduction in each shall be that agreed by the parties to the negotiations;
 - (iv) no margin of preference shall be increased.
- (d) The binding against increase of low duties or of duty-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high duties or the elimination of tariff preferences.
- (e) Prior international obligations shall not be invoked to frustrate the requirement under paragraph 1 to negotiate with respect to preferences, it being understood that agreements which result from such negotiations and which conflict with such obligations shall not require the modification or termination of such obligations except (i) with the consent of the parties to such obligations, or, in the absence of such consent, (ii) by modification or termination of such obligations in accordance with their terms.

3. The negotiations leading to the General Agreement on Tariffs and Trade, concluded at Geneva on October 30, 1947, shall be deemed to be negotiations pursuant to this Article. The concessions agreed upon as a result of all other negotiations completed by a Member pursuant to this Article shall be incorporated in the General Agreement on terms to be agreed with the parties thereto. If any Member enters into any agreement relating to tariffs or preferences which is not concluded pursuant to this Article, the negotiations leading to such agreement shall nevertheless conform to the requirements of paragraph 2 (c).

4. (a) The provisions of Article 16 shall not prevent the operation of

paragraph 5 (b) of Article XXV of the General Agreement on Tariffs and Trade, as amended at the First Session of the CONTRACTING PARTIES.

(b) If a Member has failed to become a contracting party to the General Agreement within two years from the entry into force of this Charter with respect to such Member, the provisions of Article 16 shall cease to require, at the end of that period, the application to the trade of such Member country of the concessions granted, in the appropriate Schedule annexed to the General Agreement, by another Member which has requested the first Member to negotiate with a view to becoming a contracting party to the General Agreement but has not successfully concluded negotiations; *Provided* that the Organization may, by a majority of the votes cast, require the continued application of such concessions to the trade of any Member country which has been unreasonably prevented from becoming a contracting party to the General Agreement pursuant to negotiations in accordance with the provisions of this Article.

(c) If a Member which is a contracting party to the General Agreement proposes to withhold tariff concessions from the trade of a Member country which is not a contracting party, it shall give notice in writing to the Organization and to the affected Member. The latter Member may request the Organization to require the continuance of such concessions, and if such a request has been made the tariff concessions shall not be withheld pending a decision by the Organization under the provisions of sub-paragraph (b) of this paragraph.

(d) In any determination whether a Member has been unreasonably prevented from becoming a contracting party to the General Agreement, and in any determination under the provisions of Chapter VIII whether a Member has failed without sufficient justification to fulfil its obligations under paragraph 1 of this Article, the Organization shall have regard to all relevant circumstances, including the developmental, reconstruction and other needs, and the general fiscal structures, of the Member countries concerned and to the provisions of the Charter as a whole.

(e) If such concessions are in fact withheld, so as to result in the application to the trade of a Member country of duties higher than would otherwise have been applicable, such Member shall then be free, within sixty days after such action becomes effective, to give written notice of withdrawal from the Organization. The withdrawal shall become effective upon the expiration of sixty days from the day on which such notice is received by the Director-General.

ARTICLE 18

National Treatment on Internal Taxation and Regulation

1. The Members recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal

quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of any Member country imported into any other Member country shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no Member shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2 but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the Member imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No Member shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Member shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in any Member country on July 1, 1939, April 10, 1947 or on the date of this Charter, at the option of that Member; *Provided* that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be subject to negotiation and shall accordingly be treated as a customs duty for the purposes of Article 17.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. (a) The provisions of this Article shall not apply to laws, regulations

or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The Members recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of Member countries supplying imported products. Accordingly, Members applying such measures shall take account of the interests of exporting Member countries with a view to avoiding to the fullest practicable extent such prejudicial effects.

ARTICLE 19

Special Provisions Relating to Cinematograph Films

The provisions of Article 18 shall not prevent any Member from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films. Any such regulations shall take the form of screen quotas which shall conform to the following conditions and requirements:

- (a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof.
- (b) With the exception of screen time reserved for films of national origin under a screen quota, screen time, including screen time released by administrative action from time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply.
- (c) Notwithstanding the provisions of sub-paragraph (b) any Member may maintain screen quotas conforming to the requirements of sub-paragraph (a) which reserve a minimum proportion of screen time for films of a specified origin other than that of the Member imposing such screen quotas; *Provided* that such minimum proportion of screen time shall not be increased above the level in effect on April 10, 1947.
- (d) Screen quotas shall be subject to negotiation and shall accordingly be treated as customs duties for the purposes of Article 17.

SECTION B—QUANTITATIVE RESTRICTIONS AND RELATED EXCHANGE MATTERS

ARTICLE 20

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country.

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

- (a) export prohibitions or restrictions applied for the period necessary to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting Member country;
- (b) import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade; if, in the opinion of the Organization, the standards or regulations adopted by a Member under this sub-paragraph have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards or regulations; *Provided* that it shall not request the revision of standards internationally agreed pursuant to recommendations made under paragraph 7 of Article 39;
- (c) import restrictions on any agricultural or fisheries product, imported in any form, necessary to the enforcement of governmental measures which operate effectively:
 - (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic agricultural or fisheries product for which the imported product can be directly substituted; or
 - (ii) to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic agricultural or fisheries product for which the imported product can be directly substituted, by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level; or
 - (iii) to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

3. With regard to import restrictions applied under the provisions of paragraph 2 (c):

- (a) such restrictions shall be applied only so long as the governmental

measures referred to in paragraph 2 (c) are in force, and, when applied to the import of products of which domestic supplies are available during only a part of the year, shall not be applied in such a way as to prevent their import in quantities sufficient to satisfy demand for current consumption purposes during those periods of the year when like domestic products, or domestic products for which the imported product can be directly substituted, are not available;

- (b) any Member intending to introduce restrictions on the importation of any product shall, in order to avoid unnecessary damage to the interests of exporting countries, give notice in writing as far in advance as practicable to the Organization and to Members having a substantial interest in supplying that product, in order to afford such Members adequate opportunity for consultation in accordance with the provisions of paragraphs 2 (d) and 4 of Article 22, before the restrictions enter into force. At the request of the importing Member concerned, the notification and any information disclosed during the consultation shall be kept strictly confidential;
- (c) any Member applying such restrictions shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value;
- (d) any restrictions applied under paragraph 2 (c) (i) shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the Member applying the restrictions shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned.

4. Throughout this Section the terms "import restrictions" and "export restrictions" include restrictions made effective through state-trading operations.

ARTICLE 21

Restrictions to Safeguard the Balance of Payments

1. The Members recognize that:
 - (a) it is primarily the responsibility of each Member to safeguard its external financial position and to achieve and maintain stable equilibrium in its balance of payments;
 - (b) an adverse balance of payments of one Member country may have important effects on the trade and balance of payments of other Member countries, if it results in, or may lead to, the imposition by the Member of restrictions affecting international trade;
 - (c) the balance of payments of each Member country is of concern to other Members, and therefore it is desirable that the Organization

should promote consultations among Members and, where possible, agreed action consistent with this Charter for the purpose of correcting a maladjustment in the balance of payments; and

- (d) action taken to restore stable equilibrium in the balance of payments should, so far as the Member or Members concerned find possible, employ methods which expand rather than contract international trade.

2. Notwithstanding the provisions of paragraph 1 of Article 20, any Member, in order to safeguard its external financial position and balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

3. (a) No Member shall institute, maintain or intensify import restrictions under this Article except to the extent necessary

- (i) to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or
- (ii) in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the Member's reserves or need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(b) A Member applying restrictions under sub-paragraph (a) shall progressively relax and ultimately eliminate them, in accordance with the provisions of that sub-paragraph, as its external financial position improves. This provision shall not be interpreted to mean that a Member is required to relax or remove such restrictions if that relaxation or removal would thereupon produce conditions justifying the intensification or institution, respectively, of restrictions under sub-paragraph (a).

(c) Members undertake:

- (i) not to apply restrictions so as to prevent unreasonably the importation of any description of merchandise in minimum commercial quantities the exclusion of which would impair regular channels of trade, or restrictions which would prevent the importation of commercial samples or prevent the importation of such minimum quantities of a product as may be necessary to obtain and maintain patent, trade mark, copyright or similar rights under industrial or intellectual property laws;
- (ii) to apply restrictions under this Article in such a way as to avoid unnecessary damage to the commercial or economic interests of any other Member, including interests under Articles 3 and 9.

4. (a) The Members recognize that in the early years of the Organization all of them will be confronted in varying degrees with problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this Article or under Article 23, take

full account of the difficulties of post-war adjustment and of the need which a Member may have to use import restrictions as a step towards the restoration of equilibrium in its balance of payments on a sound and lasting basis.

(b) The Members recognize that, as a result of domestic policies directed toward the fulfilment of a Member's obligations under Article 3 relating to the achievement and maintenance of full and productive employment and large and steadily growing demand, or its obligations under Article 9 relating to the reconstruction or development of industrial and other economic resources and to the raising of standards of productivity, such a Member may find that demands for foreign exchange on account of imports and other current payments are absorbing the foreign exchange resources currently available to it in such a manner as to exercise pressure on its monetary reserves which would justify the institution or maintenance of restrictions under paragraph 3 of this Article. Accordingly,

- (i) no Member shall be required to withdraw or modify restrictions which it is applying under this Article on the ground that a change in such policies would render these restrictions unnecessary;
- (ii) any Member applying import restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of such policies.

(c) Members undertake, in carrying out their domestic policies, to pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources.

5. (a) Any Member which is not applying restrictions under this Article, but is considering the need to do so, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately after doing so), consult with the Organization as to the nature of its balance-of-payments difficulties, alternative corrective measures which may be available, and the possible effect of such measures on the economies of other Members. No Member shall be required in the course of consultations under this sub-paragraph to indicate in advance the choice or timing of any particular measure which it may ultimately determine to adopt.

(b) The Organization may at any time invite any Member which is applying import restrictions under this Article to enter into such consultations with it, and shall invite any Member substantially intensifying such restrictions to consult within thirty days. A Member thus invited shall participate in the consultations. The Organization may invite any other Member to take part in the consultations. Not later than two years from the day on which this Charter enters into force, the Organization shall review all restrictions existing on that day and still applied under this Article at the time of the review.

(c) Any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes, under this Article, to maintain, intensify or institute, or for the maintenance, intensification or institution of restrictions under specified future conditions. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or institution of restrictions by the Member in question in so far as the general extent, degree of intensity and duration of the restrictions are concerned. To the extent to which such approval has been given, the requirements of sub-paragraph (a) of this paragraph shall be deemed to have been fulfilled, and the action of the Member applying the restrictions shall not be open to challenge under sub-paragraph (d) of this paragraph on the ground that such action is inconsistent with the provisions of sub-paragraphs (a) and (b) of paragraph 3.

(d) Any Member which considers that another Member is applying restrictions under this Article inconsistently with the provisions of paragraphs 3 or 4 of this Article or with those of Article 22 (subject to the provisions of Article 23) may bring the matter to the Organization for discussion; and the Member applying the restriction shall participate in the discussion. If, on the basis of the case presented by the Member initiating the procedure, it appears to the Organization that the trade of that Member is adversely affected, the Organization shall submit its views to the parties with the aim of achieving a settlement of the matter in question which is satisfactory to the parties and to the Organization. If no such settlement is reached and if the Organization determines that the restrictions are being applied inconsistently with the provisions of paragraphs 3 or 4 of this Article or with those of Article 22 (subject to the provisions of Article 23), the Organization shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, the Organization may release any Member from specified obligations or concessions under or pursuant to this Charter towards the Member applying the restrictions.

(e) In consultations between a Member and the Organization under this paragraph there shall be full and free discussion as to the various causes and the nature of the Member's balance-of-payments difficulties. It is recognized that premature disclosure of the prospective application, withdrawal or modification of any restrictions under this Article might stimulate speculative trade and financial movements which would tend to defeat the purposes of this Article. Accordingly, the Organization shall make provision for the observance of the utmost secrecy in the conduct of any consultation.

6. If there is a 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 initiate discussions to consider whether other measures might be taken, either by those Members whose balances of payments are under pressure or by those Members whose

balances of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental organization, to remove the underlying causes of the disequilibrium. In the invitation of the Organization, Members shall participate in such discussions.

ARTICLE 22

Non-discriminatory Administration of Quantitative Restrictions

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

2. In applying import restrictions to any product, Members shall aim at a distribution of trade in such product approaching as closely as possible to the shares which the various Member countries might be expected to obtain in the absence of such restrictions, and to this end shall observe the following provisions:

- (a) wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b);
- (b) in cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;
- (c) Members shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;
- (d) in cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Member countries having a substantial interest in supplying the product shares of the total quantity or value of imports of the product based upon the proportions supplied by such Member countries during a previous representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any Member country from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

3. (a) In the case of import restrictions involving the granting of import licences, the Member applying the restrictions shall provide, upon the request

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

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

(c) In the case of quotas allocated among supplying countries, the Member applying the restrictions shall promptly inform all other Members having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

(d) If the Organization finds, upon the request of a Member, that the interests of that Member would be seriously prejudiced by giving, in regard to certain products, the public notice required under sub-paragraphs (b) and (c) of this paragraph, by reason of the fact that a large part of its imports of such products is supplied by non-Member countries, the Organization shall release the Member from compliance with the obligations in question to the extent and for such time as it finds necessary to prevent such prejudice. Any request made by a Member pursuant to this sub-paragraph shall be acted upon promptly by the Organization.

4. With regard to restrictions applied in accordance with the provisions of paragraph 2 (d) of this Article or under the provisions of paragraph 2 (c) of Article 20, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restrictions; *Provided* that such Member shall, upon the request of any other Member having a substantial interest in supplying that product, or upon the request of the Organization, consult promptly with the other Member or the Organization regarding the need for an adjustment of the proportion determined or of the base period selected, or for the re-appraisal of the special factors involved, or for the

elimination of conditions, formalities or any other provisions established unilaterally with regard to the allocation of an adequate quota or its unrestricted utilization.

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any Member and, in so far as applicable, the principles of this Article shall also extend to export restrictions.

ARTICLE 23

Exceptions to the Rule of Non-discrimination

1. (a) The Members recognize that the aftermath of the war has brought difficult problems of economic adjustment which do not permit the immediate full achievement of non-discriminatory administration of quantitative restrictions and therefore require the exceptional transitional period arrangements set forth in this paragraph.

(b) A Member which applies restrictions under Article 21 may, in the use of such restrictions, deviate from the provisions of Article 22 in a manner having equivalent effect to restrictions on payments and transfers for current international transactions which that Member may at that time apply under Article XIV of the Articles of Agreement of the International Monetary Fund, or under an analogous provision of a special exchange agreement entered into pursuant to paragraph 6 of Article 24.

(c) A Member which is applying restrictions under Article 21 and which on March 1, 1948 was applying import restrictions to safeguard its balance of payments in a manner which deviated from the rules of non-discrimination set forth in Article 22 may, to the extent that such deviation would not have been authorized on that date by sub-paragraph (b), continue so to deviate, and may adapt such deviation to changing circumstances.

(d) Any Member which before July 1, 1948 has signed the Protocol of Provisional Application agreed upon at Geneva on October 30, 1947, and which by such signature has provisionally accepted the principles of paragraph 1 of Article 23 of the Draft Charter submitted to the United Nations Conference on Trade and Employment by the Preparatory Committee, may elect, by written notice to the Interim Commission of the International Trade Organization or to the Organization before January 1, 1949, to be governed by the provisions of Annex K of this Charter, which embodies such principles, in lieu of the provisions of sub-paragraphs (b) and (c) of this paragraph. The provisions of sub-paragraphs (b) and (c) shall not be applicable to Members which have so elected to be governed by the provisions of Annex K; and conversely, the provisions of Annex K shall not be applicable to Members which have not so elected.

(e) The policies applied in the use of import restrictions under sub-paragraphs (b) and (c) or under Annex K in the post-war transitional period shall be designed to promote the maximum development of multilateral trade possible during that period and to expedite the attainment of a balance-of-

payments position which will no longer require resort to the provisions of Article 21 or to transitional exchange arrangements.

(*f*) A Member may deviate from the provisions of Article 22, pursuant to sub-paragraphs (*b*) or (*c*) of this paragraph or pursuant to Annex K, only so long as it is availing itself of the post-war transitional period arrangements under Article XIV of the Articles of Agreement of the International Monetary Fund, or of an analogous provision of a special exchange agreement entered into under paragraph 6 of Article 24.

(*g*) Not later than March 1, 1950 (three years after the date on which the International Monetary Fund began operations) and in each year thereafter, the Organization shall report on any action still being taken by Members under sub-paragraphs (*b*) and (*c*) of this paragraph or under Annex K. In March 1952, and in each year thereafter, any Member still entitled to take action under the provisions of sub-paragraph (*c*) or of Annex K shall consult the Organization as to any deviations from Article 22 still in force pursuant to such provisions and as to its continued resort to such provisions. After March 1, 1952 any action under Annex K going beyond the maintenance in force of deviations on which such consultation has taken place and which the Organization has not found unjustifiable, or their adaptation to changing circumstances, shall be subject to any limitations of a general character which the Organization may prescribe in the light of the Member's circumstances.

(*h*) The Organization may, if it deems such action necessary in exceptional circumstances, make representations to any Member entitled to take action under the provisions of sub-paragraph (*c*) that conditions are favourable for the termination of any particular deviation from the provisions of Article 22, or for the general abandonment of deviations, under the provisions of that sub-paragraph. After March 1, 1952, the Organization may make such representations, in exceptional circumstances, to any Member entitled to take action under Annex K. The Member shall be given a suitable time to reply to such representations. If the Organization finds that the Member persists in unjustifiable deviation from the provisions of Article 22, the Member shall, within sixty days, limit or terminate such deviations as the Organization may specify.

2. Whether or not its transitional period arrangements have terminated pursuant to paragraph 1 (*f*), a Member which is applying import restrictions under Article 21 may, with the consent of the Organization, temporarily deviate from the provisions of Article 22 in respect of a small part of its external trade where the benefits to the Member or Members concerned substantially outweigh any injury which may result to the trade of other Members.

3. The provisions of Article 22 shall not preclude restrictions in accordance with the provisions of Article 21 which either

(*a*) are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the In-

ternational Monetary Fund, on condition that such restrictions are in all other respects consistent with the provisions of Article 22, or

(b) assist, in the period until December 31, 1951, by measures not involving substantial departure from the provisions of Article 22, another country whose economy has been disrupted by war.

4. A Member applying import restrictions under Article 21 shall not be precluded by this Section from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article 22.

5. A Member shall not be precluded by this Section from applying quantitative restrictions

(a) having equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund; or

(b) under the preferential arrangements provided for in Annex A of this Charter, pending the outcome of the negotiations referred to therein.

ARTICLE 24

Relationship with the International Monetary Fund and Exchange Arrangements

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a coordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the Organization.

2. In all cases in which the Organization is called upon to consider or deal with problems concerning monetary reserves, balance of payments or foreign exchange arrangements, the Organization shall consult fully with the Fund. In such consultation, the Organization shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balance of payments, and shall accept the determination of the Fund whether action by a Member with respect to exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement entered into between that Member and the Organization pursuant to paragraph 6 of this Article. When the Organization is examining a situation in the light of the relevant considerations under all the pertinent provisions of Article 21 for the purpose of reaching its final decision in cases involving the criteria set forth in paragraph 3 (a) of that Article, it shall accept the determination of the Fund as to what constitutes a serious decline in the Member's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.

3. The Organization shall seek agreement with the Fund regarding pro-

cedures for consultation under paragraph 2 of this Article. Any such agreement, other than informal arrangements of a temporary or administrative character, shall be subject to confirmation by the Conference.

4. Members shall not, by exchange action, frustrate the intent of the provisions of this Section, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.

5. If the Organization considers, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a manner inconsistent with the provisions of this Section with respect to quantitative restrictions, it shall report thereon to the Fund.

6. (a) Any Member of the Organization which is not a member of the Fund shall, within a time to be determined by the Organization after consultation with the Fund, become a member of the Fund or, failing that, enter into a special exchange agreement with the Organization. A Member of the Organization which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the Organization. Any special exchange agreement entered into by a Member under this sub-paragraph shall thereupon become part of its obligations under this Charter.

(b) Any such agreement shall provide to the satisfaction of the Organization that the objectives of this Charter will not be frustrated as a result of action with respect to exchange matters by the Member in question.

(c) Any such agreement shall not impose obligations on the Member with respect to exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

(d) No Member shall be required to enter into any such agreement so long as it uses solely the currency of another Member and so long as neither the Member nor the country whose currency is being used maintains exchange restrictions. Nevertheless, if the Organization at any time considers that the absence of a special exchange agreement may be permitting action which tends to frustrate the purposes of any of the provisions of this Charter, it may require the Member to enter into a special exchange agreement in accordance with the provisions of this paragraph. A Member of the Organization which is not a member of the Fund and which has not entered into a special exchange agreement may be required at any time to consult with the Organization on any exchange problem.

7. A Member which is not a member of the Fund, whether or not it has entered into a special exchange agreement, shall furnish such information within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the Organization may require in order to carry out its functions under this Charter.

8. Nothing in this Section shall preclude:

(a) the use by a Member of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Mone-

- tary Fund or with that Member's special exchange agreement with the organization, or
- (b) the use by a Member of restrictions or controls on imports or exports, the sole effect of which, in addition to the effects permitted under Articles 20, 21, 22 and 23, is to make effective such exchange controls or exchange restrictions.

SECTION C—SUBSIDIES

ARTICLE 25

Subsidies in General

If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to maintain or increase exports of any product from, or to reduce, or prevent an increase in, imports of any product into, its territory, the Member shall notify the Organization in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which a Member considers that serious prejudice to its interests is caused or threatened by any such subsidization, the Member granting the subsidy shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.

ARTICLE 26

Additional Provisions on Export Subsidies

1. No Member shall grant, directly or indirectly, any subsidy on the export of any product, or establish or maintain any other system, which subsidy or system results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in the conditions and terms of sale, for difference in taxation, and for other differences affecting price comparability.

2. The exemption of exported products from duties or taxes imposed in respect of like products when consumed domestically, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be in conflict with the provisions of paragraph 1. The use of the proceeds of such duties or taxes to make payments to domestic producers in general of those products shall be considered as a case under Article 25.

3. Members shall give effect to the provisions of paragraph 1 at the earliest practicable date but not later than two years from the day on which this Charter enters into force. If any Member considers itself unable to do so in respect of any particular product or products, it shall, at least three months

before the expiration of such period, give notice in writing to the Organization, requesting a specific extension of the period. Such notice shall be accompanied by a full analysis of the system in question and the circumstances justifying it. The Organization shall then determine whether the extension requested should be made and, if so, on what terms.

4. Notwithstanding the provisions of paragraph 1, any Member may subsidize the exports of any product to the extent and for such time as may be necessary to offset a subsidy granted by a non-Member affecting the Member's exports of the product. However, the Member shall, upon the request of the Organization or of any other Member which considers that its interests are seriously prejudiced by such action, consult with the Organization or with that Member, as appropriate, with a view to reaching a satisfactory adjustment of the matter.

ARTICLE 27

Special Treatment of Primary Commodities

1. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be considered not to involve a subsidy on export within the meaning of paragraph 1 of Article 26, if the Organization determines that

- (a) the system has also resulted, or is so designed as to result, in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market; and
- (b) the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other Members.

2. Any Member granting a subsidy in respect of a primary commodity shall co-operate at all times in efforts to negotiate agreements, under the procedures set forth in Chapter VI, with regard to that commodity.

3. In any case involving a primary commodity, if a Member considers that its interests would be seriously prejudiced by compliance with the provisions of Article 26, or if a Member considers that its interests are seriously prejudiced by the granting of any form of subsidy, the procedures set forth in Chapter VI may be followed. The Member which considers that its interests are thus seriously prejudiced shall, however, be exempt provisionally from the requirements of paragraphs 1 and 3 of Article 26 in respect of that commodity, but shall be subject to the provisions of Article 28.

4. No Member shall grant a new subsidy or increase an existing subsidy affecting the export of a primary commodity, during a commodity conference called for the purpose of negotiating an inter-governmental control agreement

for the commodity concerned unless the Organization concurs, in which case such new or additional subsidy shall be subject to the provisions of Article 28.

5. If the measures provided for in Chapter VI have not succeeded, or do not promise to succeed, within a reasonable period of time, or if the conclusion of a commodity agreement is not an appropriate solution, any Member which considers that its interests are seriously prejudiced shall not be subject to the requirements of paragraphs 1 and 3 of Article 26 in respect of that commodity, but shall be subject to the provisions of Article 28.

ARTICLE 28

Undertaking Regarding Stimulation of Exports of Primary Commodities

1. Any Member granting any form of subsidy, which operates directly or indirectly to maintain or increase the export of any primary commodity from its territory, shall not apply the subsidy in such a way as to have the effect of maintaining or acquiring for that Member more than an equitable share of world trade in that commodity.

2. As required under the provisions of Article 25, the Member granting such subsidy shall promptly notify the Organization of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected commodity exported from its territory, and of the circumstances making the subsidization necessary. The Member shall promptly consult with any other Member which considers that serious prejudice to its interests is caused or threatened by the subsidization.

3. If, within a reasonable period of time, no agreement is reached in such consultation, the Organization shall determine what constitutes an equitable share of world trade in the commodity concerned and the Member granting the subsidy shall conform to this determination.

4. In making the determination referred to in paragraph 3, the Organization shall take into account any factors which may have affected or may be affecting world trade in the commodity concerned, and shall have particular regard to:

- (a) the Member country's share of world trade in the commodity during a previous representative period;
- (b) whether the Member country's share of world trade in the commodity is so small that the effect of the subsidy on such trade is likely to be of minor significance;
- (c) the degree of importance of the external trade in the commodity to the economy of the Member country granting, and to the economies of the Member countries materially affected by, the subsidy;
- (d) the existence of price stabilization systems conforming to the provisions of paragraph 1 of Article 27;
- (e) the desirability of facilitating the gradual expansion of production for export in those areas able to satisfy world market requirements of the commodity concerned in the most effective and economic manner, and

therefore of limiting any subsidies or other measures which make that expansion difficult.

SECTION D—STATE TRADING AND RELATED MATTERS

ARTICLE 29

Non-discriminatory Treatment

1. (a) Each Member undertakes that if it establishes or maintains a state enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases and sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Charter for governmental measures affecting imports or exports by private traders.

(b) The provisions of sub-paragraph (a) shall be understood to require that such enterprises shall, having due regard to the other provisions of this Charter, make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other Member countries adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) No Member shall prevent any enterprise (whether or not an enterprise described in sub-paragraph (a)) under its jurisdiction from acting in accordance with the principles of sub-paragraphs (a) and (b).

2. The provisions of paragraph 1 shall not apply to imports of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale. With respect to such imports, and with respect to the laws, regulations and requirements referred to in paragraph 8 (a) of Article 18, each Member shall accord to the trade of the other Members fair and equitable treatment.

ARTICLE 30

Marketing Organizations

If a Member establishes or maintains a marketing board, commission or similar organization, the Member shall be subject:

- (a) with respect to purchases or sales by any such organization, to the provisions of paragraph 1 of Article 29;
- (b) with respect to any regulations of any such organization governing the operations of private enterprises, to the other relevant provisions of this Charter.

ARTICLE 31

Expansion of Trade

1. If a Member establishes, maintains or authorizes, formally or in effect, a monopoly of the importation or exportation of any product, the Member shall, upon the request of any other Member or Members having a substantial interest in trade with it in the product concerned, negotiate with such other

Member or Members in the manner provided for under Article 17 in respect of tariffs, and subject to all the provisions of this Charter with respect to such tariff negotiations, with the object of achieving:

- (a) in the case of an export monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic users of the monopolized product, or designed to assure exports of the monopolized product in adequate quantities at reasonable prices;
- (b) in the case of an import monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic producers of the monopolized product, or designed to relax any limitation on imports which is comparable with a limitation made subject to negotiation under other provisions of this Chapter.

2. In order to satisfy the requirements of paragraph 1 (b), the Member establishing, maintaining or authorizing a monopoly shall negotiate:

- (a) for the establishment of the maximum import duty that may be applied in respect of the product concerned; or
- (b) for any other mutually satisfactory arrangement consistent with the provisions of this Charter, if it is evident to the negotiating parties that to negotiate a maximum import duty under sub-paragraph (a) of this paragraph is impracticable or would be ineffective for the achievement of the objectives of paragraph 1; any Member entering into negotiations under this sub-paragraph shall afford to other interested Members an opportunity for consultation.

3. In any case in which a maximum import duty is not negotiated under paragraph 2 (a), the Member establishing, maintaining or authorizing the import monopoly shall make public, or notify the Organization of, the maximum import duty which it will apply in respect of the product concerned.

4. The import duty negotiated under paragraph 2, or made public or notified to the Organization under paragraph 3, shall represent the maximum margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes conforming to the provisions of Article 18, transportation, distribution and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) may exceed the landed cost; *Provided* that regard may be had to average landed costs and selling prices over recent periods; and *Provided further* that, where the product concerned is a primary commodity which is the subject of a domestic price stabilization arrangement, provision may be made for adjustment to take account of wide fluctuations or variations in world prices, subject where a maximum duty has been negotiated to agreement between the countries parties to the negotiations.

5. With regard to any product to which the provisions of this Article apply, the monopoly shall, wherever this principle can be effectively applied and

subject to the other provisions of this Charter, import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at that time.

6. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for social, cultural, humanitarian or revenue purposes.

7. This Article shall not limit the use by Members of any form of assistance to domestic producers permitted by other provisions of this Charter.

ARTICLE 32

Liquidation of Non-commercial Stocks

1. If a Member holding stocks of any primary commodity accumulated for non-commercial purposes should liquidate such stocks, it shall carry out the liquidation, as far as practicable, in a manner that will avoid serious disturbance to world markets for the commodity concerned.

2. Such Member shall:

- (a) give not less than four months public notice of its intention to liquidate such stocks; or
- (b) give not less than four months prior notice to the Organization of such intention.

3. Such Member shall, at the request of any Member which considers itself substantially interested, consult as to the best means of avoiding substantial injury to the economic interests of producers and consumers of the primary commodity in question. In cases where the interests of several Members might be substantially affected, the Organization may participate in the consultations, and the Member holding the stocks shall give due consideration to its recommendations.

4. The provisions of paragraphs 2 and 3 shall not apply to routine disposal of supplies necessary for the rotation of stocks to avoid deterioration.

SECTION E—GENERAL COMMERCIAL PROVISIONS

ARTICLE 33

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 country, when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the Member country across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit."

2. There shall be freedom of transit through each Member country, 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, of vessels or of other means of transport.

3. Any Member may require that traffic in transit through its territory be entered at the proper custom 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 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.

6. The Organization may undertake studies, make recommendations and promote international agreement relating to the simplification of customs regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article. Members shall co-operate with each other directly and through the Organization to this end.

7. Each Member shall accord to goods which have been in transit through any other Member country treatment no less favourable than that which would have been accorded to such goods 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 existing on the date 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 Member's prescribed method of valuation for customs purposes.

8. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

ARTICLE 34

Anti-dumping and Countervailing Duties

1. The Members recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in a Member country or materially retards the establishment of a domestic industry. For the purposes of this Article, a

product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a Member may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

3. 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 export of any merchandise.

4. 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 destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. 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.

6. No Member shall levy any anti-dumping or countervailing duty 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 retard materially the establishment of a domestic industry. The Organization may waive the requirements of this paragraph so as to permit a Member to levy an anti-dumping 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.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the Members substantially interested in the commodity concerned that:

- (a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and
- (b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other Members.

ARTICLE 35

Valuation for Customs Purposes

1. The Members shall work toward the standardization, as 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 co-operation to this end, the Organization may study and recommend to Members such bases and methods for determining value for customs purposes 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 valuation set forth in paragraphs 3, 4 and 5, and they undertake to give effect, at the earliest practicable date, to these principles in respect of all products subject to duties or other charges or restrictions on importation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another Member directly affected, review in the light of these principles the operation of any of their laws or regulations relating to value for customs purposes. The Organization may request from Members reports on steps taken by them in pursuance of the provisions of this Article.

3. (a) The value for customs 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.

(b) "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 (i) comparable

quantities, or (ii) 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.

(c) When the actual value is not ascertainable in accordance with subparagraph (b), the value for customs purposes should be based on the nearest ascertainable equivalent of such value.

4. The value for customs 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 exempted or has been or will be relieved by means of refund.

5. (a) Except as otherwise provided in this paragraph, where it is necessary for the purposes of paragraph 3 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 shall 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 24 of this Charter.

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

(c) 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 foreign currencies for the purposes of paragraph 3 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 3 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

6. Nothing in this Article 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 date of this Charter, if such alteration would have the effect of increasing generally the amounts of duty payable.

7. 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.

ARTICLE 36

Formalities Connected with Importation and Exportation

1. The Members recognize that all fees and charges of whatever character (other than import and export duties and other than taxes within the purview

of Article 18) 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. The Members 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 Members shall take action in accordance with the principles and objectives of paragraph 1 at the earliest practicable date. Moreover, they shall, upon request by another Member directly affected, review the operation of any of their laws and regulations in the light of these principles. The Organization may request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

3. The provisions of paragraphs 1 and 2 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 those relating to 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.

4. The Organization may 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, including those relating to advertising matter and samples for use only in taking orders for merchandise.

5. No Member shall impose 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.

6. The Members recognize that tariff descriptions based on distinctive regional or geographical names should not be used in such a manner as to discriminate against products of Member countries. Accordingly, the Members shall co-operate with each other directly and through the Organization with a view to eliminating at the earliest practicable date practices which are inconsistent with this principle.

ARTICLE 37
Marks of Origin

1. The Members recognize 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 it is administratively practicable to do so, Members should permit required marks of origin to be affixed 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. The Members agree to work in co-operation through the Organization towards the early elimination of unnecessary marking requirements. The Organization may 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 to an extent disproportionate to any proper purpose to be served, and which shall not in any case be required to be marked to indicate their origin.

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 directly and through the Organization with a view to preventing the use of trade names in such 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.

ARTICLE 38

Publication and Administration of Trade 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, insurance, warehousing, inspection, exhibition, processing, mixing or other use shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or governmental agency of any Member country and the government or governmental agency of any other country shall also be published. Copies of such laws, regulations, decisions, rulings and agreements shall be communicated promptly to the Organization. The provisions of this paragraph shall not require any Member to divulge confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

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

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. Suitable facilities shall be afforded for traders directly affected by any of those matters to consult with the appropriate governmental authorities.

(b) Each Member 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 decisions 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.

(c) The provisions of sub-paragraph (b) shall not require the elimination or substitution of procedures in force in a Member country on the date of this Charter which in fact provide for an objective and impartial 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 39

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 (imports, exports and, where applicable, re-exports, transit and trans-shipment 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 paragraph 1 shall be related to tariff classifications and shall 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 amounts of exchange made available.

3. The Members shall publish regularly and as promptly as possible the statistics referred to in paragraph 1.

4. The Members shall give careful consideration to any recommendations which the Organization may make to them with a view to improving the statistical information furnished under paragraph 1.

5. The Members shall make available to the Organization, at its request and in so far as is 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 it.

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. The Organization, in collaboration with the Economic and Social Council of the United Nations, and with any other organization deemed appropriate, may engage in studies with a view to improving 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, in co-operation with the other organizations referred to in paragraph 6, may also 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 relating thereto, and may recommend the general acceptance by Members of such standards, nomenclatures, terms and forms.

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SECTION F—SPECIAL PROVISIONS

ARTICLE 40

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a Member under or pursuant to this Chapter, including tariff concessions, any product is being imported into the territory of that Member in such relatively increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the Member shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product which is the subject of a concession with respect to a preference is being imported into the territory of a Member in the circumstances set forth in sub-paragraph (a), so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a Member which receives or received such preference, the importing Member shall be free, if that other Member so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any Member shall take action pursuant to the provisions of paragraph 1, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in regard to a concession relating to a preference, the notice shall name the Member which has requested the action. In circumstances of special urgency, where delay would cause damage which it would be difficult to repair, action under paragraph 1 may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, or, in the case envisaged in paragraph 1 (b), to the trade of the Member requesting such action, of such substantially equivalent obligations or concessions under or pursuant to this Chapter the suspension of which the Organization does not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a), where action is taken without prior consultation under paragraph 2 and causes or threatens serious injury in the territory of a Member to the domestic producers of products affected by the action, that Member shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such obligations or concessions as may be necessary to prevent or remedy the injury.

4. Nothing in this Article shall be construed

(a) to require any Member, in connection with the withdrawal or modification by such Member of any concession negotiated pursuant to Article 17, to consult with or obtain the agreement of Members other than those Members which are contracting parties to the General Agreement on Tariffs and Trade, or

(b) to authorize any Member which is not a contracting party to that Agreement, to withdraw from or suspend obligations under this Charter by reason of the withdrawal or modification of such concession.

ARTICLE 41

Consultation

Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange regulations, internal price regulations, subsidies, transit regulations and practices, state trading, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally with respect to all matters affecting the operation of this Chapter.

ARTICLE 42

Territorial Application of Chapter IV

1. The provisions of Chapter IV shall apply to the metropolitan customs territories of the Members and to any other customs territories in respect of which this Charter has been accepted in accordance with the provisions of Article 104. Each such customs territory shall, exclusively for the purposes of the territorial application of Chapter IV, be treated as though it were a Member; *Provided* that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Charter has been accepted by a single Member.

2. For the purposes of this Chapter a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part of the trade of such territory with other territories.

*A Charter for World Trade*ARTICLE 43
Frontier Traffic

The provisions of this Chapter shall not be construed to prevent:

- (a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic;
- (b) advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

ARTICLE 44
Customs Unions and Free-Trade Areas

1. Members recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or free-trade area should be to facilitate trade between the parties and not to raise barriers to the trade of other Member countries with such parties.

2. Accordingly, the provisions of this Chapter shall not prevent, as between the territories of Members, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:

- (a) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with Member countries not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
 - (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of Member countries not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and
 - (c) any interim agreement referred to in sub-paragraphs (a) or (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.
3. (a) Any Member deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or

area, shall promptly notify the Organization and shall make available to it such information regarding the proposed union or area as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

(b) If, after having studied the plan and schedule provided for in an interim agreement referred to in paragraph 2 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the Organization finds that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the Organization shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(c) Any substantial change in the plan or schedule referred to in paragraph 2 (c) shall be communicated to the Organization, which may request the Members concerned to consult with it if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

4. For the purposes of this Charter:

(a) a customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 45) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 5, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(b) a free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Section B of Chapter IV and under Article 45) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

5. The preferences referred to in paragraph 2 of Article 16 shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with Members affected. This procedure of negotiations with affected Members shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 4 (a) (i) and paragraph 4 (b).

6. The Organization may, by a two-thirds majority of the Members present

and voting, approve proposals which do not fully comply with the requirements of the preceding paragraphs, provided that such proposals lead to the formation of a customs union or of a free-trade area in the sense of this Article.

ARTICLE 45

General Exceptions to Chapter IV

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

- (a) (i) necessary to protect public morals;
 - (ii) necessary to the enforcement of laws and regulations relating to public safety;
 - (iii) necessary to protect human, animal or plant life or health;
 - (iv) relating to the importation or exportation of gold or silver;
 - (v) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to customs enforcement, the enforcement of monopolies operated under Section D of this Chapter, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
 - (vi) relating to the products of prison labour;
 - (vii) imposed for the protection of national treasures of artistic, historic or archaeological value;
 - (viii) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
 - (ix) taken in pursuance of inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VI;
 - (x) taken in pursuance of any inter-governmental agreement which relates solely to the conservation of fisheries resources, migratory birds or wild animals and which is subject to the requirements of paragraph 1 (d) of Article 70; or
 - (xi) involving restrictions on exports of domestic materials necessary to assure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; *Provided* that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry and shall not depart from the provisions of this Chapter relating to non-discrimination;
- (b) (i) essential to the acquisition or distribution of products in general

or local short supply; *Provided* that any such measures shall be consistent with any general inter-governmental arrangements directed to an equitable international distribution of such products or, in the absence of such arrangements, with the principle that all Members are entitled to an equitable share of the international supply of such products;

- (ii) essential to the control of prices by a Member country experiencing shortages subsequent to the Second World War; or
- (iii) essential to the orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member country, or of industries developed in any Member country owing to the exigencies of the Second World War which it would be uneconomic to maintain in normal conditions; *Provided* that such measures shall not be instituted by any Member except after consultation with other interested Members with a view to appropriate international action.

2. Measures instituted or maintained under paragraph 1 (*b*) which are inconsistent with the other provisions of this Chapter shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than at a date to be specified by the Organization; *Provided* that such date may be deferred for a further period or periods, with the concurrence of the Organization, either generally or in relation to particular measures taken by Members in respect of particular products.

CHAPTER V

RESTRICTIVE BUSINESS PRACTICES

ARTICLE 46

General Policy towards Restrictive Business Practices

1. Each Member shall take appropriate measures and shall co-operate with the Organization to prevent, on the part of private or public commercial enterprises, business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control, whenever such practices have harmful effects on the expansion of production or trade and interfere with the achievement of any of the other objectives set forth in Article 1.

2. In order that the Organization may decide in a particular instance whether a practice has or is about to have the effect indicated in paragraph 1, the Members agree, without limiting paragraph 1, that complaints regarding any of the practices listed in paragraph 3 shall be subject to investigation in

accordance with the procedure regarding complaints provided for in Articles 48 and 50, whenever

- (a) such a complaint is presented to the Organization, and
- (b) the practice is engaged in, or made effective, by one or more private or public commercial enterprises or by any combination, agreement or other arrangement between any such enterprises, and
- (c) such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products.

3. The practices referred to in paragraph 2 are the following:

- (a) fixing prices, terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;
- (b) excluding enterprises from, or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;
- (c) discriminating against particular enterprises;
- (d) limiting production or fixing production quotas;
- (e) preventing by agreement the development or application of technology or invention whether patented or unpatented;
- (f) extending the use of rights under patents, trade marks or copyrights granted by any Member to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production, use or sale which are likewise not the subjects of such grants;
- (g) any similar practices which the Organization may declare, by a majority of two-thirds of the Members present and voting, to be restrictive business practices.

ARTICLE 47

Consultation Procedure

Any affected Member which considers that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect indicated in paragraph 1 of Article 46 may consult other Members directly or request the Organization to arrange for consultation with particular Members with a view to reaching mutually satisfactory conclusions. If requested by the Member and if it considers such action to be justified, the Organization shall arrange for and assist in such consultation. Action under this Article shall be without prejudice to the procedure provided for in Article 48.

ARTICLE 48

Investigation Procedure

1. In accordance with paragraphs 2 and 3 of Article 46, any affected Member on its own behalf or any Member on behalf of any affected person,

enterprise or organization within that Member's jurisdiction, may present a written complaint to the Organization that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect indicated in paragraph 1 of Article 46; *Provided* that in the case of complaints against a public commercial enterprise acting independently of any other enterprise, such complaints may be presented only by a Member on its own behalf and only after the Member has resorted to the procedure of Article 47.

2. The Organization shall prescribe the minimum information to be included in complaints under this Article. This information shall give substantial indication of the nature and harmful effects of the practices.

3. The Organization shall consider each complaint presented in accordance with paragraph 1. If the Organization deems it appropriate, it shall request Members concerned to furnish supplementary information, for example, information from commercial enterprises within their jurisdiction. After reviewing the relevant information, the Organization shall decide whether an investigation is justified.

4. If the Organization decides that an investigation is justified, it shall inform all Members of the complaint, request any Member to furnish such additional information relevant to the complaint as the Organization may deem necessary, and shall conduct or arrange for hearings on the complaint. Any Member, and any person, enterprise or organization on whose behalf the complaint has been made, as well as the commercial enterprises alleged to have engaged in the practice complained of, shall be afforded reasonable opportunity to be heard.

5. The Organization shall review all information available and decide whether the conditions specified in paragraphs 2 and 3 of Article 46 are present and the practice in question has had, has or is about to have the effect indicated in paragraph 1 of that Article.

6. The Organization shall inform all Members of its decision and the reasons therefor.

7. If the Organization decides that in any particular case the conditions specified in paragraphs 2 and 3 of Article 46 are present and that the practice in question has had, has or is about to have the effect indicated in paragraph 1 of that Article, it shall request each Member concerned to take every possible remedial action, and may also recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures.

8. The Organization may request any Member concerned to report fully on the remedial action it has taken in any particular case.

9. As soon as possible after its proceedings in respect of any complaint under this Article have been provisionally or finally closed, the Organization shall prepare and publish a report showing fully the decisions reached, the reasons therefor and any measures recommended to the Members concerned.

The Organization shall not, if a Member so requests, disclose confidential information furnished by that Member, which if disclosed would substantially damage the legitimate business interests of a commercial enterprise.

10. The Organization shall report to all Members and make public the remedial action which has been taken by the Members concerned in any particular case.

ARTICLE 49

Studies Relating to Restrictive Business Practices

1. The Organization is authorized:

- (a) to conduct studies, either on its own initiative or at the request of any Member or of any organ of the United Nations or of any other inter-governmental organization, relating to
 - (i) general aspects of restrictive business practices affecting international trade;
 - (ii) conventions, laws and procedures concerning, for example, incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development of technology in so far as they are relevant to restrictive business practices affecting international trade; and
 - (iii) the registration of restrictive business agreements and other arrangements affecting international trade; and
- (b) to request information from Members in connection with such studies.

2. The Organization is authorized:

- (a) to make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter; and
- (b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade.

ARTICLE 50

Obligations of Members

1. Each Member shall take all possible measures by legislation or otherwise, in accordance with its constitution or system of law and economic organization, to ensure, within its jurisdiction, that private and public commercial enterprises do not engage in practices which are as specified in paragraphs 2 and 3 of Article 46 and have the effect indicated in paragraph 1 of that Article, and it shall assist the Organization in preventing these practices.

2. Each Member shall make adequate arrangements for presenting complaints, conducting investigations and preparing information and reports requested by the Organization.

3. Each Member shall furnish to the Organization, as promptly and as fully as possible, such information as is requested by the Organization for its

consideration and investigation of complaints and for its conduct of studies under this Chapter; *Provided* that any Member on notification to the Organization, may withhold information which the Member considers is not essential to the Organization in conducting an adequate investigation and which, if disclosed, would substantially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld and the reason why it considers it not essential.

4. Each Member shall take full account of each request, decision and recommendation of the Organization under Article 48 and, in accordance with its constitution or system of law and economic organization, take in the particular case the action it considers appropriate having regard to its obligations under this Chapter.

5. Each Member shall report fully any action taken, independently or in concert with other Members, to comply with the requests and carry out the recommendations of the Organization and, when no action has been taken, inform the Organization of the reasons therefor and discuss the matter further with the Organization if it so requests.

6. Each Member shall, at the request of the Organization, take part in consultations and conferences provided for in this Chapter with a view to reaching mutually satisfactory conclusions.

ARTICLE 51

Co-operative Remedial Arrangements

1. Members may co-operate with each other for the purpose of making more effective within their respective jurisdictions any remedial measures taken in furtherance of the objectives of this Chapter and consistent with their obligations under other provisions of this Charter.

2. Members shall keep the Organization informed of any decision to participate in any such co-operative action and of any measures taken.

ARTICLE 52

Domestic Measures against Restrictive Business Practices

No act or omission to act on the part of the Organization shall preclude any Member from enforcing any national statute or decree directed towards preventing monopoly or restraint of trade.

ARTICLE 53

Special Procedures with Respect to Services

1. The Members recognize that certain services, such as transportation, telecommunications, insurance and the commercial services of banks, are substantial elements of international trade and that any restrictive business practices by enterprises engaged in these activities in international trade may

have harmful effects similar to those indicated in paragraph 1 of Article 46. Such practices shall be dealt with in accordance with the following paragraphs of this Article.

2. If any Member considers that there exist restrictive business practices in relation to a service referred to in paragraph 1 which have or are about to have such harmful effects, and that its interests are thereby seriously prejudiced, the Member may submit a written statement explaining the situation to the Member or Members whose private or public enterprises are engaged in the services in question. The Member or Members concerned shall give sympathetic consideration to the statement and to such proposals as may be made and shall afford adequate opportunities for consultation, with a view to effecting a satisfactory adjustment.

3. If no adjustment can be effected in accordance with the provisions of paragraph 2, and if the matter is referred to the Organization, it shall be transferred to the appropriate inter-governmental organization, if one exists, with such observations as the Organization may wish to make. If no such inter-governmental organization exists, and if Members so request, the Organization may, in accordance with the provisions of paragraph 1 (c) of Article 72, make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it comes within the scope of this Charter.

4. The Organization shall, in accordance with paragraph 1 of Article 87, co-operate with other inter-governmental organizations in connection with restrictive business practices affecting any field coming within the scope of this Charter and those organizations shall be entitled to consult the Organization, to seek advice, and to ask that a study of a particular problem be made.

ARTICLE 54

Interpretation and Definition

1. The provisions of this Chapter shall be construed with due regard for the rights and obligations of Members set forth elsewhere in this Charter and shall not therefore be so interpreted as to prevent the adoption and enforcement of any measures in so far as they are specifically permitted under other Chapters of this Charter. The Organization may, however, make recommendations to Members or to any appropriate inter-governmental organization concerning any features of these measures which may have the effect indicated in paragraph 1 of Article 46.

2. For the purposes of this Chapter

(a) the term "business practice" shall not be so construed as to include an individual contract between two parties as seller and buyer, lessor and lessee, or principal and agent, provided that such contract is not used to restrain competition, limit access to markets or foster monopolistic control;

- (b) the term “public commercial enterprises” means
 - (i) agencies of governments in so far as they are engaged in trade, and
 - (ii) trading enterprises mainly or wholly owned by public authority, provided the Member concerned declares that for the purposes of this Chapter it has effective control over or assumes responsibility for the enterprises;
- (c) the term “private commercial enterprises” means all commercial enterprises other than public commercial enterprises;
- (d) the terms “decide” and “decision” as used in Articles 46, 48 (except in paragraphs 3 and 4) and 50 do not determine the obligations of Members, but mean only that the Organization reaches a conclusion.

CHAPTER VI

INTER-GOVERNMENTAL COMMODITY AGREEMENTS

SECTION A—INTRODUCTORY CONSIDERATIONS

ARTICLE 55

Difficulties Relating to Primary Commodities

The Members recognize that the conditions under which some primary commodities are produced, exchanged and consumed are such that international trade in these commodities may be affected by special difficulties such as the tendency towards persistent disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuations in prices. These special difficulties may have serious adverse effects on the interests of producers and consumers, as well as widespread repercussions jeopardizing the general policy of economic expansion. The Members recognize that such difficulties may, at times, necessitate special treatment of the international trade in such commodities through inter-governmental agreement.

ARTICLE 56

Primary and Related Commodities

1. For the purposes of this Charter, the term “primary commodity” means any product of farm, forest or fishery or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

2. The term shall also, for the purposes of this Chapter, cover a group of commodities, of which one is a primary commodity as defined in paragraph 1 and the others are commodities, which are so closely related, as regards conditions of production or utilization, to the other commodities in the group, that it is appropriate to deal with them in a single agreement.

3. If, in exceptional circumstances, the Organization finds that the conditions set forth in Article 62 exist in the case of a commodity which does not fall precisely under paragraphs 1 or 2 of this Article, the Organization may decide that the provisions of this Chapter, together with any other requirements it may establish, shall apply to inter-governmental agreements regarding that commodity.

ARTICLE 57

Objectives of Inter-governmental Commodity Agreements

The Members recognize that inter-governmental commodity agreements are appropriate for the achievement of the following objectives:

- (a) to prevent or alleviate the serious economic difficulties which may arise when adjustments between production and consumption cannot be effected by normal market forces alone as rapidly as the circumstances require;
- (b) to provide, during the period which may be necessary, a framework for the consideration and development of measures which have as their purpose economic adjustments designed to promote the expansion of consumption or a shift of resources and man-power out of over-expanded industries into new and productive occupations, including as far as possible in appropriate cases, the development of secondary industries based upon domestic production of primary commodities;
- (c) to prevent or moderate pronounced fluctuations in the price of a primary commodity with a view to achieving a reasonable degree of stability on a basis of such prices as are fair to consumers and provide a reasonable return to producers, having regard to the desirability of securing long-term equilibrium between the forces of supply and demand;
- (d) to maintain and develop the natural resources of the world and protect them from unnecessary exhaustion;
- (e) to provide for the expansion of the production of a primary commodity where this can be accomplished with advantage to consumers and producers, including in appropriate cases the distribution of basic foods at special prices;
- (f) to assure the equitable distribution of a primary commodity in short supply.

SECTION B—INTER-GOVERNMENTAL COMMODITY AGREEMENTS IN GENERAL

ARTICLE 58

Commodity Studies

1. Any Member which considers itself substantially interested in the production or consumption of, or trade in, a particular primary commodity, and which considers that international trade in that commodity is, or is likely to

be, affected by special difficulties, shall be entitled to ask that a study of the commodity be made.

2. Unless the Organization decides that the case put forward in support of the request does not warrant such action, it shall promptly invite each Member to appoint representatives to a study group for the commodity, if the Member considers itself substantially interested in the production or consumption of, or trade in, the commodity. Non-Members may also be invited.

3. The study group shall promptly investigate the production, consumption and trade situation in regard to the commodity, and shall report to the participating governments and to the Organization its findings and its recommendations as to how best to deal with any special difficulties which exist or may be expected to arise. The Organization shall promptly transmit to the Members these findings and recommendations.

ARTICLE 59

Commodity Conferences

1. The Organization shall promptly convene an inter-governmental conference to discuss measures designed to meet the special difficulties which exist or are expected to arise concerning a particular primary commodity:

- (a) on the basis of the recommendations of a study group, or
- (b) at the request of Members whose interests represent a significant part of world production or consumption of, or trade in, that commodity, or
- (c) at the request of Members which consider that their economies are dependent to an important extent on that commodity, unless the Organization considers that no useful purpose could be achieved by convening the conference, or
- (d) on its own initiative, on the basis of information agreed to be adequate by the Members substantially interested in the production or consumption of, or trade in, that commodity.

2. Each Member which considers itself substantially interested in the production or consumption of, or trade in, the commodity concerned, shall be invited to participate in such a conference. Non-Members may also be invited to participate.

ARTICLE 60

General Principles Governing Commodity Agreements

1. The Members shall observe the following principles in the conclusion and operation of all types of inter-governmental commodity agreements:

- (a) Such agreements shall be open to participation, initially by any Member on terms no less favourable than those accorded to any other country, and thereafter in accordance with such procedure and upon such terms as may be established in the agreement, subject to approval by the Organization.

- (b) Non-Members may be invited by the Organization to participate in such agreements and the provisions of sub-paragraph (a) applying to Members shall also apply to any non-Member so invited.
 - (c) Under such agreements there shall be equitable treatment as between participating countries and non-participating Members, and the treatment accorded by participating countries to non-participating Members shall be no less favourable than that accorded to any non-participating non-Member, due consideration being given in each case to policies adopted by non-participants in relation to obligations assumed and advantages conferred under the agreement.
 - (d) Such agreements shall include provision for adequate participation of countries substantially interested in the importation or consumption of the commodity as well as those substantially interested in its exportation or production.
 - (e) Full publicity shall be given to any inter-governmental commodity agreement proposed or concluded, to the statements of considerations and objectives advanced by the proposing Members, to the nature and development of measures adopted to correct the underlying situation which gave rise to the agreement and, periodically, to the operation of the agreement.
2. The Members, including Members not parties to a particular commodity agreement, shall give favourable consideration to any recommendation made under the agreement for expanding consumption of the commodity in question.

ARTICLE 61

Types of Agreements

1. For the purposes of this Chapter, there are two types of inter-governmental commodity agreements:
 - (a) commodity control agreements as defined in this Article; and
 - (b) other inter-governmental commodity agreements.
2. Subject to the provisions of paragraph 5, a commodity control agreement is an inter-governmental agreement which involves:
 - (a) the regulation of production or the quantitative control of exports or imports of a primary commodity and which has the purpose or might have the effect of reducing, or preventing an increase in, the production of, or trade in, that commodity; or
 - (b) the regulation of prices.
3. The Organization shall, at the request of a Member, a study group or a commodity conference, decide whether an existing or proposed inter-governmental agreement is a commodity control agreement within the meaning of paragraph 2.
4. (a) Commodity control agreements shall be subject to all the provisions of this Chapter.

(b) Other inter-governmental commodity agreements shall be subject to the provisions of this Chapter other than those of Section C. If, however, the Organization decides that an agreement which involves the regulation of production or the quantitative control of exports or imports is not a commodity control agreement within the meaning of paragraph 2, it shall prescribe the provisions of Section C, if any, to which that agreement shall conform.

5. An existing or proposed inter-governmental agreement the purpose of which is to secure the co-ordinated expansion of aggregate world production and consumption of a primary commodity may be treated by the Organization as not being a commodity control agreement, even though the agreement provides for the future application of price provisions, provided that

- (a) at the time the agreement is entered into, a commodity conference finds that the conditions contemplated are in accordance with the provisions of Article 62, and
- (b) from the date on which the price provisions become operative, the agreement shall conform to all the provisions of Section C, except that no further finding will be required under Article 62.

6. Members shall enter into any new commodity control agreement only through a conference called in accordance with the provisions of Article 59 and after an appropriate finding has been made under Article 62. If, in an exceptional case, there has been unreasonable delay in the convening or in the proceedings of the study group or of the commodity conference, Members which consider themselves substantially interested in the production or consumption of, or trade in, a particular primary commodity, may proceed by direct negotiation to the conclusion of an agreement, provided that the situation is one contemplated in Article 62 (a) or (b) and that the agreement conforms to the other provisions of this Chapter.

SECTION C—INTER-GOVERNMENTAL COMMODITY CONTROL AGREEMENTS

ARTICLE 62

Circumstances Governing the Use of Commodity Control Agreements

The Members agree that commodity control agreements may be entered into only when a finding has been made through a commodity conference or through the Organization by consultation and general agreement among Members substantially interested in the commodity, that:

- (a) a burdensome surplus of a primary commodity has developed or is expected to develop, which, in the absence of specific governmental action, would cause serious hardship to producers among whom are small producers who account for a substantial portion of the total output, and that these conditions could not be corrected by normal market forces in time to prevent such hardship, because, characteristi-

cally in the case of the primary commodity concerned, a substantial reduction in price does not readily lead to a significant increase in consumption or to a significant decrease in production; or

- (b) widespread unemployment or under-employment in connection with a primary commodity, arising out of difficulties of the kind referred to in Article 55, has developed or is expected to develop, which, in the absence of specific governmental action, would not be corrected by normal market forces in time to prevent widespread and undue hardship to workers because, characteristically in the case of the industry concerned, a substantial reduction in price does not readily lead to a significant increase in consumption but to a reduction of employment, and because areas in which the commodity is produced in substantial quantity do not afford alternative employment opportunities for the workers involved.

ARTICLE 63

Additional Principles Governing Commodity Control Agreements

The Members shall observe the following principles governing the conclusion and operation of commodity control agreements, in addition to those stated in Article 60:

- (a) Such agreements shall be designed to assure the availability of supplies adequate at all times for world demand at prices which are in keeping with the provisions of Article 57 (c), and, when practicable, shall provide for measures designed to expand world consumption of the commodity.
- (b) Under such agreements, participating countries which are mainly interested in imports of the commodity concerned shall, in decisions on substantive matters, have together a number of votes equal to that of those mainly interested in obtaining export markets for the commodity. Any participating country, which is interested in the commodity but which does not fall precisely under either of the above classes, shall have an appropriate voice within such classes.
- (c) Such agreements shall make appropriate provision to afford increasing opportunities for satisfying national consumption and world market requirements from sources from which such requirements can be supplied in the most effective and economic manner, due regard being had to the need for preventing serious economic and social dislocation and to the position of producing areas suffering from abnormal disabilities.
- (d) Participating countries shall formulate and adopt programmes of internal economic adjustment believed to be adequate to ensure as much progress as practicable within the duration of the agreement towards solution of the commodity problem involved.

ARTICLE 64

Administration of Commodity Control Agreements

1. Each commodity control agreement shall provide for the establishment of a governing body, herein referred to as a Commodity Council, which shall operate in conformity with the provisions of this Article.

2. Each participating country shall be entitled to have one representative on the Commodity Council. The voting power of the representatives shall be determined in conformity with the provisions of Article 63 (*b*).

3. The Organization shall be entitled to appoint a non-voting representative to each Commodity Council and may invite any competent inter-governmental organization to nominate a non-voting representative for appointment to a Commodity Council.

4. Each Commodity Council shall appoint a non-voting chairman who, if the Council so requests, may be nominated by the Organization.

5. The Secretariat of each Commodity Council shall be appointed by the Council after consultation with the Organization.

6. Each Commodity Council shall adopt appropriate rules of procedure and regulations regarding its activities. The Organization may at any time require their amendment if it considers that they are inconsistent with the provisions of this Chapter.

7. Each Commodity Council shall make periodic reports to the Organization on the operation of the agreement which it administers. It shall also make such special reports as the Organization may require or as the Council itself considers to be of value to the Organization.

8. The expenses of a Commodity Council shall be borne by the participating countries.

9. When an agreement is terminated, the Organization shall take charge of the archives and statistical material of the Commodity Council.

ARTICLE 65

Initial Term, Renewal and Review of Commodity Control Agreements

1. Commodity control agreements shall be concluded for a period of not more than five years. Any renewal of a commodity control agreement, including agreements referred to in paragraph 1 of Article 68, shall be for a period not exceeding five years. The provisions of such renewed agreements shall conform to the provisions of this Chapter.

2. The Organization shall prepare and publish periodically, at intervals not greater than three years, a review of the operation of each agreement in the light of the principles set forth in this Chapter.

3. Each commodity control agreement shall provide that, if the Organization finds that its operation has failed substantially to conform to the principles laid down in this Chapter, participating countries shall either revise the agreement to conform to the principles or terminate it.

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4. Commodity control agreements shall include provisions relating to withdrawal of any party.

ARTICLE 66

Settlement of Disputes

Each commodity control agreement shall provide that:

- (a) any question or difference concerning the interpretation of the provisions of the agreement or arising out of its operation shall be discussed originally by the Commodity Council; and
- (b) if the question or difference cannot be resolved by the Council in accordance with the terms of the agreement, it shall be referred by the Council to the Organization, which shall apply the procedure set forth in Chapter VIII with appropriate adjustments to cover the case of non-Members.

SECTION D—MISCELLANEOUS PROVISIONS

ARTICLE 67

Relations with Inter-governmental Organizations

With the object of ensuring appropriate co-operation in matters relating to inter-governmental commodity agreements, any inter-governmental organization which is deemed to be competent by the Organization, such as the Food and Agriculture Organization, shall be entitled:

- (a) to attend any study group or commodity conference;
- (b) to ask that a study of a primary commodity be made;
- (c) to submit to the Organization any relevant study of a primary commodity, and to recommend to the Organization that further study of the commodity be made or that a commodity conference be convened.

ARTICLE 68

Obligations of Members Regarding Existing and Proposed Commodity Agreements

1. Members shall transmit to the Organization the full text of each inter-governmental commodity agreement in which they are participating at the time they become Members of the Organization, together with appropriate information regarding the formulation, provisions and operation of any such agreement. If, after review, the Organization finds that any such agreement is inconsistent with the provisions of this Chapter, it shall communicate such finding to the Members concerned in order to secure promptly the adjustment of the agreement to bring it into conformity with the provisions of this Chapter.

2. Members shall transmit to the Organization appropriate information regarding any negotiations for the conclusion of an inter-governmental commodity agreement in which they are participating at the time they become

Members of the Organization. If, after review, the Organization finds that any such negotiations are inconsistent with the provisions of this Chapter, it shall communicate such finding to the Members concerned in order to secure prompt action with regard to their participation in such negotiations. The Organization may waive the requirement of a study group or a commodity conference, if it finds it unnecessary in the light of the negotiations.

ARTICLE 69

Territorial Application

For the purposes of this Chapter, the terms "Member" and "non-Member" shall include the dependent territories of a Member and non-Member of the Organization respectively. If a Member or non-Member and its dependent territories form a group, of which one or more units are mainly interested in the export of a commodity and one or more in the import of the commodity, there may be either joint representation for all the territories within the group or, where the Member or non-Member so wishes, separate representation for the territories mainly interested in exportation and separate representation for the territories mainly interested in importation.

ARTICLE 70

Exceptions to Chapter VI

1. The provisions of this Chapter shall not apply:
 - (a) to any bilateral inter-governmental agreement relating to the purchase and sale of a commodity falling under Section D of Chapter IV;
 - (b) to any inter-governmental commodity agreement involving no more than one exporting country and no more than one importing country and not covered by sub-paragraph (a) above; *Provided* that if, upon complaint by a non-participating Member, the Organization finds that the interests of that Member are seriously prejudiced by the agreement, the agreement shall become subject to such provisions of this Chapter as the Organization may prescribe;
 - (c) to those provisions of any inter-governmental commodity agreement which are necessary for the protection of public morals or of human, animal or plant life or health, provided that such agreement is not used to accomplish results inconsistent with the objectives of Chapter V or Chapter VI;
 - (d) to any inter-governmental agreement relating solely to the conservation of fisheries resources, migratory birds or wild animals, provided that such agreement is not used to accomplish results inconsistent with the objectives of this Chapter or the purpose and objectives set forth in Article 1 and is given full publicity in accordance with the provisions of paragraph 1 (e) of Article 60; if the Organization finds, upon complaint by a non-participating Member, that the interests of that Member are seriously prejudiced by the agreement, the agreement shall

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become subject to such provisions of this Chapter as the Organization may prescribe.

2. The provisions of Articles 58 and 59 and of Section C of this Chapter shall not apply to inter-governmental commodity agreements found by the Organization to relate solely to the equitable distribution of commodities in short supply.

3. The provisions of Section C of this Chapter shall not apply to commodity control agreements found by the Organization to relate solely to the conservation of exhaustible natural resources.

CHAPTER VII

THE INTERNATIONAL TRADE ORGANIZATION

SECTION A—STRUCTURE AND FUNCTIONS

ARTICLE 71

Membership

1. The original Members of the Organization shall be:

- (a) those States invited to the United Nations Conference on Trade and Employment whose governments accept this Charter, in accordance with the provisions of paragraph 1 of Article 103, by September 30, 1949 or, if the Charter shall not have entered into force by that date, those States whose governments agree to bring the Charter into force in accordance with the provisions of paragraph 2 (b) of Article 103;
- (b) those separate customs territories invited to the United Nations Conference on Trade and Employment on whose behalf the competent Member accepts this Charter, in accordance with the provisions of Article 104, by September 30, 1949 or, if the Charter shall not have entered into force by that date, such separate customs territories which agree to bring the Charter into force in accordance with the provisions of paragraph 2 (b) of Article 103 and on whose behalf the competent Member accepts the Charter in accordance with the provisions of Article 104. If any of these customs territories shall have become fully responsible for the formal conduct of its diplomatic relations by the time it wishes to deposit an instrument of acceptance, it shall proceed in the manner set forth in sub-paragraph (a) of this paragraph.

2. Any other State whose membership has been approved by the Conference shall become a Member of the Organization upon its acceptance, in accordance with the provisions of paragraph 1 of Article 103, of the Charter as amended up to the date of such acceptance.

3. Any separate customs territory not invited to the United Nations Con-

ference on Trade and Employment, proposed by the competent Member having responsibility for the formal conduct of its diplomatic relations and which is autonomous in the conduct of its external commercial relations and of the other matters provided for in this Charter and whose admission is approved by the Conference, shall become a Member upon acceptance of the Charter on its behalf by the competent Member in accordance with the provisions of Article 104 or, in the case of a territory in respect of which the Charter has already been accepted under that Article, upon such approval by the Conference after it has acquired such autonomy.

4. The Conference shall determine, by a two-thirds majority of the Members present and voting, the conditions upon which, in each individual case, membership rights and obligations shall be extended to:

- (a) the Free Territory of Trieste;
- (b) any Trust Territory administered by the United Nations; and
- (c) any other special regime established by the United Nations.

5. The Conference, on application by the competent authorities, shall determine the conditions upon which rights and obligations under this Charter shall apply to such authorities in respect of territories under military occupation and shall determine the extent of such rights and obligations.

ARTICLE 72

Functions

1. The Organization shall perform the functions attributed to it elsewhere in this Charter. In addition, the Organization shall have the following functions:

- (a) to collect, analyze and publish information relating to international trade, including information relating to commercial policy, business practices, commodity problems and industrial and general economic development;
- (b) to encourage and facilitate consultation among Members on all questions relating to the provisions of this Charter;
- (c) to undertake studies, and, having due regard to the objectives of this Charter and the constitutional and legal systems of Members, make recommendations, and promote bilateral or multilateral agreements concerning measures designed
 - (i) to assure just and equitable treatment for foreign nationals and enterprises;
 - (ii) to expand the volume and to improve the bases of international trade, including measures designed to facilitate commercial arbitration and the avoidance of double taxation;
 - (iii) to carry out, on a regional or other basis, having due regard to the activities of existing regional or other inter-governmental organizations, the functions specified in paragraph 2 of Article 10;
 - (iv) to promote and encourage establishments for the technical train-

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ing that is necessary for progressive industrial and economic development; and,

- (v) generally, to achieve any of the objectives set forth in Article 1;
- (d) in collaboration with the Economic and Social Council of the United Nations and with such inter-governmental organizations as may be appropriate, to undertake studies on the relationship between world prices of primary commodities and manufactured products, to consider and, where appropriate, to recommend international agreements on, measures designed to reduce progressively any unwarranted disparity in those prices;
- (e) generally, to consult with and make recommendations to the Members and, as necessary, furnish advice and assistance to them regarding any matter relating to the operation of this Charter, and to take any other action necessary and appropriate to carry out the provisions of the Charter;
- (f) to co-operate with the United Nations and other inter-governmental organizations in furthering the achievement of the economic and social objectives of the United Nations and the maintenance or restoration of international peace and security.

2. In the exercise of its functions the Organization shall have due regard to the economic circumstances of Members, to the factors affecting these circumstances and to the consequences of its determinations upon the interests of the Member or Members concerned.

ARTICLE 73

Structure

The Organization shall have a Conference, an Executive Board, Commissions as established under Article 82, and such other organs as may be required. There shall also be a Director-General and Staff.

SECTION B—THE CONFERENCE

ARTICLE 74

Composition

1. The Conference shall consist of all the Members of the Organization.
2. Each Member shall have one representative in the Conference and may appoint alternates and advisers to its representative.

ARTICLE 75

Voting

1. Each Member shall have one vote in the Conference.
2. Except as otherwise provided in this Charter, decisions of the Conference shall be taken by a majority of the Members present and voting; *Provided* that the rules of procedure of the Conference may permit a Member

to request a second vote if the number of votes cast is less than half the number of the Members, in which case the decision reached on the second vote shall be final whether or not the total of the votes cast comprises more than half the number of the Members.

ARTICLE 76

Sessions, Rules of Procedure and Officers

1. The Conference shall meet at the seat of the Organization in regular annual session and in such special sessions as may be convoked by the Director-General at the request of the Executive Board or of one-third of the Members. In exceptional circumstances, the Executive Board may decide that the Conference shall be held at a place other than the seat of the Organization.

2. The Conference shall establish rules of procedure which may include rules appropriate for the carrying out of its functions during the intervals between its sessions. It shall annually elect its President and other officers.

ARTICLE 77

Powers and Duties

1. The powers and duties attributed to the Organization by this Charter and the final authority to determine the policies of the Organization shall be vested in the Conference.

2. The Conference may, by a vote of a majority of the Members, assign to the Executive Board any power or duty of the Organization except such specific powers and duties as are expressly conferred or imposed upon the Conference by this Charter.

3. In exceptional circumstances not elsewhere provided for in this Charter, the Conference may waive an obligation imposed upon a Member by the Charter; *Provided* that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Members. The Conference may also by such a vote define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations.

4. The Conference may prepare or sponsor agreements with respect to any matter within the scope of this Charter and, by a two-thirds majority of the Members present and voting, recommend such agreements for acceptance. Each Member shall within a period specified by the Conference, notify the Director-General of its acceptance or non-acceptance. In the case of non-acceptance, a statement of the reasons therefor shall be forwarded with the notification.

5. The Conference may make recommendations to inter-governmental organizations on any subject within the scope of this Charter.

6. The Conference shall approve the budget of the Organization and shall apportion the expenditures of the Organization among the Members in

accordance with a scale of contributions to be fixed from time to time by the Conference following such principles as may be applied by the United Nations. If a maximum limit is established on the contribution of a single Member with respect to the budget of the United Nations, such limit shall also be applied with respect to contributions to the Organization.

7. The Conference shall determine the seat of the Organization and shall establish such branch offices as it may consider desirable.

SECTION C—THE EXECUTIVE BOARD

ARTICLE 78

Composition of the Executive Board

1. The Executive Board shall consist of eighteen Members of the Organization selected by the Conference.

2. (a) The Executive Board shall be representative of the broad geographical areas to which the Members of the Organization belong.

(b) A customs union, as defined in paragraph 4 of Article 44, shall be considered eligible for selection as a member of the Executive Board on the same basis as a single Member of the Organization if all of the members of the customs union are Members of the Organization and if all its members desire to be represented as a unit.

(c) In selecting the members of the Executive Board, the Conference shall have regard to the objective of ensuring that the Board includes Members of chief economic importance, in the determination of which particular regard shall be paid to their shares in international trade, and that it is representative of the different types of economies or degrees of economic development to be found within the membership of the Organization.

3. (a) At intervals of three years the Conference shall determine, by a two-thirds majority of the Members present and voting, the eight Members of chief economic importance, in the determination of which particular regard shall be paid to their shares in international trade. The Members so determined shall be declared members of the Executive Board.

(b) The other members of the Executive Board shall be elected by the Conference by a two-thirds majority of the Members present and voting.

(c) If on two consecutive ballots no member is elected, the remainder of the election shall be decided by a majority of the Members present and voting.

4. Subject to the provisions of Annex L, the term of office of a member of the Executive Board shall be three years, and any vacancy in the membership of the Board may be filled by the Conference for the unexpired term of the vacancy.

5. The Conference shall establish rules for giving effect to this Article.

ARTICLE 79

Voting

1. Each member of the Executive Board shall have one vote.
2. Decisions of the Executive Board shall be made by a majority of the votes cast.

ARTICLE 80

Sessions, Rules of Procedure and Officers

1. The Executive Board shall adopt rules of procedure, which shall include rules for the convening of its sessions, and which may include rules appropriate for the carrying out of its functions during the intervals between its sessions. The rules of procedure shall be subject to confirmation by the Conference.

2. The Executive Board shall annually elect its Chairman and other officers, who shall be eligible for re-election.

3. The Chairman of the Executive Board shall be entitled *ex officio* to participate, without the right to vote, in the deliberations of the Conference.

4. Any Member of the Organization which is not a member of the Executive Board shall be invited to participate in the discussion by the Board of any matter of particular and substantial concern to that Member and shall, for the purpose of such discussion, have all the rights of a member of the Board, except the right to vote.

ARTICLE 81

Powers and Duties

1. The Executive Board shall be responsible for the execution of the policies of the Organization and shall exercise the powers and perform the duties assigned to it by the Conference. It shall supervise the activities of the Commissions and shall take such action upon their recommendations as it may deem appropriate.

2. The Executive Board may make recommendations to the Conference, or to inter-governmental organizations, on any subject within the scope of this Charter.

SECTION D—THE COMMISSIONS

ARTICLE 82

Establishment and Functions

The Conference shall establish such Commissions as may be required for the performance of the functions of the Organization. The Commissions shall have such functions as the Conference may decide. They shall report to the Executive Board and shall perform such tasks as the Board may assign to them. They shall consult each other as necessary for the exercise of their functions.

ARTICLE 83

Composition and Rules of Procedure

1. The Commissions shall be composed of persons whose appointment, unless the Conference decides otherwise, shall be made by the Executive Board. In all cases, these persons shall be qualified by training and experience to carry out the functions of the Commission to which they are appointed.

2. The number of members, which for each Commission shall normally not exceed seven, and the conditions of service of such members shall be determined in accordance with regulations prescribed by the Conference.

3. Each Commission shall elect a Chairman. It shall adopt rules of procedure which shall be subject to approval by the Executive Board.

4. The rules of procedure of the Conference and of the Executive Board shall provide as appropriate for the participation in their deliberations, without the right to vote, of the chairmen of Commissions.

5. The Organization shall arrange for representatives of the United Nations and of other inter-governmental organizations which are considered by the Organization to have a special competence in the field of activity of any of the Commissions, to participate in the work of such Commission.

SECTION E—THE DIRECTOR-GENERAL AND STAFF

ARTICLE 84

The Director-General

1. The chief administrative officer of the Organization shall be the Director-General. He shall be appointed by the Conference upon the recommendation of the Executive Board, and shall be subject to the general supervision of the Board. The powers, duties, conditions of service and terms of office of the Director-General shall conform to regulations approved by the Conference.

2. The Director-General or his representative shall be entitled to participate, without the right to vote, in all meetings of any organ of the Organization.

3. The Director-General shall present to the Conference an annual report on the work of the Organization, and the annual budget estimates and financial statements of the Organization.

ARTICLE 85

The Staff

1. The Director-General, having first consulted with and having obtained the agreement of the Executive Board, shall have authority to appoint Deputy Directors-General in accordance with regulations approved by the Conference. The Director-General shall also appoint such additional members of the Staff as may be required and shall fix the duties and conditions of service of the members of the Staff, in accordance with regulations approved by the Conference.

2. The selection of the members of the Staff, including the appointment of the Deputy Directors-General, shall as far as possible be made on a wide geographical basis and with due regard to the various types of economy represented by Member countries. The paramount consideration in the selection of candidates and in determining the conditions of service of the Staff shall be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity.

3. The regulations concerning the conditions of service of members of the Staff, such as those governing qualifications, salary, tenure and retirement, shall be fixed, so far as practicable, in conformity with those for members of the Secretariat of the United Nations and of specialized agencies.

SECTION F—OTHER ORGANIZATIONAL PROVISIONS

ARTICLE 86

Relations with the United Nations

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement approved by the Conference.

2. Any such agreement shall, subject to the provisions of this Charter, provide for effective co-operation and the avoidance of unnecessary duplication in the activities of these organizations, and for co-operation in furthering the maintenance or restoration of international peace and security.

3. The Members recognize that the Organization should not attempt to take action which would involve passing judgment in any way on essentially political matters. Accordingly, and in order to avoid conflict of responsibility between the United Nations and the Organization with respect to such matters, any measure taken by a Member directly in connection with a political matter brought before the United Nations in accordance with the provisions of Chapters IV or VI of the United Nations Charter shall be deemed to fall within the scope of the United Nations, and shall not be subject to the provisions of this Charter.

4. No action, taken by a member in pursuance of its obligations under the United Nations Charter for the maintenance or restoration of international peace and security, shall be deemed to conflict with the provisions of this Charter.

ARTICLE 87

Relations with Other Organizations

1. The Organization shall make arrangements with other inter-governmental organizations, which have related responsibilities, to provide for effective co-operation and the avoidance of unnecessary duplication in the activities of these organizations. The Organization may for this purpose arrange for

joint committees, reciprocal representation at meetings and establish such other working relationships as may be necessary.

2. The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of this Charter.

3. Whenever the Conference and the competent authorities of any inter-governmental organization whose purposes and functions lie within the scope of this Charter deem it desirable

- (a) to incorporate such inter-governmental organization into the Organization, or
- (b) to transfer all or part of its functions and resources to the Organization, or

(c) to bring it under the supervision or authority of the Organization, the Director-General, subject to the approval of the Conference, may enter into an appropriate agreement. The Members shall, in conformity with their international obligations, take the action necessary to give effect to any such agreement.

ARTICLE 88

International Character of the Responsibilities of the Director-General, Staff and Members of Commissions

1. The responsibilities of the Director-General and of the members of the Staff shall be exclusively international in character. In the discharge of their duties, they shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials.

2. The provisions of paragraph 1 shall also apply to the members of the Commissions.

3. The Members shall respect the international character of the responsibilities of these persons and shall not seek to influence them in the discharge of their duties.

ARTICLE 89

International Legal Status of the Organization

The Organization shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.

ARTICLE 90

Status of the Organization in the Territory of Members

1. The Organization shall enjoy in the territory of each of its Members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

2. The representatives of Members and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for

the independent exercise of their functions in connection with the Organization.

3. When the Organization has been brought into relationship with the United Nations as provided for in paragraph 1 of Article 86, the legal capacity of the Organization and the privileges and immunities provided for in the preceding paragraphs shall be defined by the General Convention on Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations, as from time to time amended, and as supplemented by an annex relating to the International Trade Organization.

ARTICLE 91

Contributions

Each Member shall contribute promptly to the Organization its share of the expenditure of the Organization as apportioned by the Conference. A Member which is in arrears in the payment of its contributions shall have no vote in the organs of the Organization, if the amount of its arrears equals or exceeds the amount of the contributions due from it in respect of the preceding two complete years. The Conference may, nevertheless, permit such a Member to vote, if it is satisfied that the failure to pay is due to circumstances beyond the control of the Member.

CHAPTER VIII

SETTLEMENT OF DIFFERENCES

ARTICLE 92

Reliance on the Procedures of the Charter

1. The Members undertake that they will not have recourse, in relation to other Members and to the Organization, to any procedure other than the procedures envisaged in this Charter for complaints and the settlement of differences arising out of its operation.

2. The Members also undertake, without prejudice to any other international agreement, that they will not have recourse to unilateral economic measures of any kind contrary to the provisions of this Charter.

ARTICLE 93

Consultation and Arbitration

1. If any Member considers that any benefit accruing to it directly or indirectly, implicitly or explicitly, under any of the provisions of this Charter other than Article 1, is being nullified or impaired as a result of

- (a) a breach by a Member of an obligation under this Charter by action or failure to act, or
- (b) the application by a Member of a measure not conflicting with the provisions of this Charter, or

(c) the existence of any other situation the Member may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to such other Member or Members as it considers to be concerned, and the Members receiving them shall give sympathetic consideration thereto.

2. The Members concerned may submit the matter arising under paragraph 1 to arbitration upon terms agreed between them; *Provided* that the decision of the arbitrator shall not be binding for any purpose upon the Organization or upon any Member other than the Members participating in the arbitration.

3. The Members concerned shall inform the Organization generally of the progress and outcome of any discussion, consultation or arbitration undertaken under this Charter.

ARTICLE 94

Reference to the Executive Board

1. Any matter arising under sub-paragraphs (a) or (b) of paragraph 1 of Article 93 which is not satisfactorily settled and any matter which arises under paragraph 1 (c) of Article 93 may be referred by any Member concerned to the Executive Board.

2. The Executive Board shall promptly investigate the matter and shall decide whether any nullification or impairment within the terms of paragraph 1 of Article 93 in fact exists. It shall then take such of the following steps as may be appropriate:

- (a) decide that the matter does not call for any action;
- (b) recommend further consultation to the Members concerned;
- (c) refer the matter to arbitration upon such terms as may be agreed between the Executive Board and the Members concerned;
- (d) in any matter arising under paragraph 1 (a) of Article 93, request the Member concerned to take such action as may be necessary for the Member to conform to the provisions of this Charter;
- (e) in any matter arising under sub-paragraph (b) or (c) of paragraph 1 of Article 93, make such recommendations to Members as will best assist the Members concerned and contribute to a satisfactory adjustment.

3. If the Executive Board considers that action under sub-paragraphs (d) and (e) of paragraph 2 is not likely to be effective in time to prevent serious injury, and that any nullification or impairment found to exist within the terms of paragraph 1 of Article 93 is sufficiently serious to justify such action, it may, subject to the provisions of paragraph 1 of Article 95, release the Member or Members affected from obligations or the grant of concessions to any other Member or Members under or pursuant to this Charter, to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired.

4. The Executive Board may, in the course of its investigation, consult with such Members or inter-governmental organizations upon such matters within the scope of this Charter as it deems appropriate. It may also consult any appropriate commission of the Organization on any matter arising under this Chapter.

5. The Executive Board may bring any matter, referred to it under this Article, before the Conference at any time during its consideration of the matter.

ARTICLE 95

Reference to the Conference

1. The Executive Board shall, if requested to do so within thirty days by a Member concerned, refer to the Conference for review any action, decision or recommendation by the Executive Board under paragraphs 2 or 3 of Article 94. Unless such review has been asked for by a Member concerned, Members shall be entitled to act in accordance with any action, decision or recommendation of the Executive Board under paragraphs 2 or 3 of Article 94. The Conference shall confirm, modify or reverse such action, decision or recommendation referred to it under this paragraph.

2. Where a matter arising under this Chapter has been brought before the Conference by the Executive Board, the Conference shall follow the procedure set out in paragraph 2 of Article 94 for the Executive Board.

3. If the Conference considers that any nullification or impairment found to exist within the terms of paragraph 1 (*a*) of Article 93 is sufficiently serious to justify such action, it may release the Member or Members affected from obligations or the grant of concessions to any other Member or Members under or pursuant to this Charter, to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired. If the Conference considers that any nullification or impairment found to exist within the terms of sub-paragraphs (*b*) or (*c*) of paragraph 1 of Article 93 is sufficiently serious to justify such action, it may similarly release a Member or Members to the extent and upon such conditions as will best assist the Members concerned and contribute to a satisfactory adjustment.

4. When any Member or Members, in accordance with the provisions of paragraph 3, suspend the performance of any obligation or the grant of any concession to another Member, the latter Member shall be free, not later than sixty days after such action is taken, or if an opinion has been requested from the International Court of Justice pursuant to the provisions of Article 96, after such opinion has been delivered, to give written notice of its withdrawal from the Organization. Such withdrawal shall become effective upon the expiration of sixty days from the day on which such notice is received by the Director-General.

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ARTICLE 96

Reference to the International Court of Justice

1. The Organization may, in accordance with arrangements made pursuant to paragraph 2 of Article 96 of the Charter of the United Nations, request from the International Court of Justice advisory opinions on legal questions arising within the scope of the activities of the Organization.

2. Any decision of the Conference under this Charter shall, at the instance of any Member whose interests are prejudiced by the decision, be subject to review by the International Court of Justice by means of a request, in appropriate form, for an advisory opinion pursuant to the Statute of the Court.

3. The request for an opinion shall be accompanied by a statement of the question upon which the opinion is required and by all documents likely to throw light upon the question. This statement shall be furnished by the Organization in accordance with the Statute of the Court and after consultation with the Members substantially interested.

4. Pending the delivery of the opinion of the Court, the decision of the Conference shall have full force and effect; *Provided* that the Conference shall suspend the operation of any such decision pending the delivery of the opinion where, in the view of the Conference, damage difficult to repair would otherwise be caused to a Member concerned.

5. The Organization shall consider itself bound by the opinion of the Court on any question referred by it to the Court. In so far as it does not accord with the opinion of the Court, the decision in question shall be modified.

ARTICLE 97

Miscellaneous Provisions

1. Nothing in this Chapter shall be construed to exclude other procedures provided for in this Charter for consultation and the settlement of differences arising out of its operation. The Organization may regard discussion, consultation or investigation undertaken under any other provisions of this Charter as fulfilling, either in whole or in part, any similar procedural requirement in this Chapter.

2. The Conference and the Executive Board shall establish such rules of procedure as may be necessary to carry out the provisions of this Chapter.

CHAPTER IX

GENERAL PROVISIONS

ARTICLE 98

Relations with Non-Members

1. Nothing in this Charter shall preclude any Member from maintaining economic relations with non-Members.

2. The Members recognize that it would be inconsistent with the purpose of this Charter for a Member to seek any arrangements with non-Members for the purpose of obtaining for the trade of its country preferential treatment as compared with the treatment accorded to the trade of other Member countries, or so to conduct its trade with non-Member countries as to result in injury to other Member countries. Accordingly,

- (a) no Member shall enter into any new arrangement with a non-Member which precludes the non-Member from according to other Member countries any benefit provided for by such arrangement;
- (b) subject to the provisions of Chapter IV, no Member shall accord to the trade of any non-Member country treatment which, being more favourable than that which it accords to the trade of any other Member country, would injure the economic interests of a Member country.

3. Notwithstanding the provisions of paragraph 2, Members may enter into agreements with non-Members in accordance with the provisions of paragraph 3 of Article 15 or of paragraph 6 of Article 44.

4. Nothing in this Charter shall be interpreted to require a Member to accord to non-Member countries treatment as favourable as that which it accords to Member countries under the provisions of the Charter, and failure to accord such treatment shall not be regarded as inconsistent with the terms or the spirit of the Charter.

5. The Executive Board shall make periodic studies of general problems arising out of the commercial relations between Member and non-Member countries and, with a view to promoting the purpose of the Charter, may make recommendations to the Conference with respect to such relations. Any recommendation involving alterations in the provisions of this Article shall be dealt with in accordance with the provisions of Article 100.

ARTICLE 99

General Exceptions

1. Nothing in this Charter shall be construed

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a member from taking, either singly or with other States, any action which it considers necessary for the protection of its essential security interests, where such action
 - (i) relates to fissionable materials or to the materials from which they are derived, or
 - (ii) relates to the traffic in arms, ammunition or implements of war, or to traffic in other goods and materials carried on directly or indirectly for the purpose of supplying a military establishment of the Member or of any other country, or
 - (iii) is taken in time of war or other emergency in international relations; or

- (c) to prevent a Member from entering into or carrying out any inter-governmental agreement (or other agreement on behalf of a government for the purpose specified in this sub-paragraph) made by or for a military establishment for the purpose of meeting essential requirements of the national security of one or more of the participating countries; or
 - (d) to prevent action taken in accordance with the provisions of Annex M to this Charter.
2. Nothing in this Charter shall be construed to override
- (a) any of the provisions of peace treaties or permanent settlements resulting from the Second World War which are or shall be in force and which are or shall be registered with the United Nations, or
 - (b) any of the provisions of instruments creating Trust Territories or any other special regimes established by the United Nations.

ARTICLE 100

Amendments

1. Any amendment to this Charter which does not alter the obligations of Members shall become effective upon approval by the Conference by a two-thirds majority of the Members.

2. Any amendment which alters the obligations of Members shall, after receiving the approval of the Conference by a two-thirds majority of the Members present and voting, become effective for the Members accepting the amendment upon the ninetieth day after two-thirds of the Members have notified the Director-General of their acceptance, and thereafter for each remaining Member upon acceptance by it. The Conference may, in its decision approving an amendment under this paragraph and by one and the same vote, determine that the amendment is of such a nature that the Members which do not accept it within a specified period after the amendment becomes effective shall be suspended from membership in the Organization; *Provided* that the Conference may, at any time, by a two-thirds majority of the Members present and voting, determine the conditions under which such suspension shall not apply with respect to any such Member.

3. A Member not accepting an amendment under paragraph 2 shall be free to withdraw from the Organization at any time after the amendment has become effective; *Provided*, that the Director-General has received from such Member sixty days' written notice of withdrawal; and *provided further* that the withdrawal of any Member suspended under the provisions of paragraph 2 shall become effective upon the receipt by the Director-General of written notice of withdrawal.

4. The Conference shall, by a two-thirds majority of the Members present and voting, determine whether an amendment falls under paragraph 1 or paragraph 2, and shall establish rules with respect to the reinstatement of Members suspended under the provisions of paragraph 2, and any other rules required for carrying out the provisions of this Article.

5. The provisions of Chapter VIII may be amended within the limits and in accordance with the procedure set forth in Annex N.

ARTICLE 101

Review of the Charter

1. The Conference shall carry out a general review of the provisions of this Charter at a special session to be convened in conjunction with the regular annual session nearest the end of the fifth year after the entry into force of the Charter.

2. At least one year before the special session referred to in paragraph 1, the Director-General shall invite the Members to submit any amendments or observations which they may wish to propose and shall circulate them for consideration by the Members.

3. Amendments resulting from such review shall become effective in accordance with the procedure set forth in Article 100.

ARTICLE 102

Withdrawal and Termination

1. Without prejudice to any special provision in this Charter relating to withdrawal, any Member may withdraw from the Organization, either in respect of itself or of a separate customs territory on behalf of which it has accepted the Charter in accordance with the provisions of Article 104, at any time after three years from the day of the entry into force of the Charter.

2. A withdrawal under paragraph 1 shall become effective upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General. The Director-General shall immediately notify all the Members of any notice of withdrawal which he may receive under this or other provisions of the Charter.

3. This Charter may be terminated at any time by agreement of three-fourths of the Members.

ARTICLE 103

Entry into Force and Registration

1. The government of each State accepting this Charter shall deposit an instrument of acceptance with the Secretary-General of the United Nations, who will inform all governments represented at the United Nations Conference on Trade and Employment and all Members of the United Nations not so represented of the date of deposit of each instrument of acceptance and of the day on which the Charter enters into force. Subject to the provisions of Annex O, after the entry into force of the Charter in accordance with the provisions of paragraph 2, each instrument of acceptance so deposited shall take effect on the sixtieth day following the day on which it is deposited.

2. (a) This Charter shall enter into force

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- (i) on the sixtieth day following the day on which a majority of the governments signing the Final Act of the United Nations Conference on Trade and Employment have deposited instruments of acceptance in accordance with the provisions of paragraph 1; or
- (ii) if, at the end of one year from the date of signature of the said Final Act, it has not entered into force in accordance with the provisions of sub-paragraph (a) (i), then on the sixtieth day following the day on which the number of governments represented at the United Nations Conference on Trade and Employment which have deposited instruments of acceptance in accordance with the provisions of paragraph 1 shall reach twenty; *Provided* that if twenty such governments have deposited acceptances more than sixty days before the end of such year, it shall not enter into force until the end of that year.

(b) If this Charter shall not have entered into force by September 30, 1949, the Secretary-General of the United Nations shall invite those governments which have deposited instruments of acceptance to enter into consultation to determine whether and on what conditions they desire to bring the Charter into force.

3. Until September 30, 1949, no State or separate customs territory, on behalf of which the said Final Act has been signed, shall be deemed to be a non-Member for the purposes of Article 98.

4. The Secretary-General of the United Nations is authorized to register this Charter as soon as it enters into force.

ARTICLE 104

Territorial Application

1. Each government accepting this Charter does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Organization at the time of its own acceptance.

2. Any Member may at any time accept this Charter, in accordance with the provisions of paragraph 1 of Article 103, on behalf of any separate customs territory excepted under the provisions of paragraph 1.

3. Each Member shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Charter by the regional and local governments and authorities within its territory.

ARTICLE 105

Annexes

The Annexes to this Charter form an integral part thereof.

ARTICLE 106

*Deposit and Authenticity of Texts
Title and Date of the Charter*

1. The original texts of this Charter in the official languages of the United Nations shall be deposited with the Secretary-General of the United Nations, who will furnish certified copies of the texts to all interested governments. Subject to the provisions of the Statute of the International Court of Justice, such texts shall be equally authoritative for the purposes of the interpretation of the Charter, and any discrepancy between texts shall be settled by the Conference.

2. The date of this Charter shall be March 24, 1948.

3. This Charter for an International Trade Organization shall be known as the Havana Charter.

ANNEX A

LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (a) OF ARTICLE 16

United Kingdom of Great Britain and Northern Ireland, Dependent territories of the United Kingdom of Great Britain and Northern Ireland, Canada, Commonwealth of Australia, Dependent territories of the Commonwealth of Australia, New Zealand, Dependent territories of New Zealand, Union of South Africa including South West Africa, Ireland, India (as at April 10, 1947), Newfoundland, Southern Rhodesia, Burma, Ceylon.

Certain of the territories listed above have two or more preferential rates in force for certain products. Any such territory may, by agreement with the other Members which are principal suppliers of such products at the most-favoured-nation rate, substitute for such preferential rates a single preferential rate which shall not on the whole be less favourable to suppliers at the most-favoured-nation rate than the preferences in force prior to such substitution.

The preferential arrangements referred to in paragraph 5 (b) of Article 23 are those existing in the United Kingdom on April 10, 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork, and bacon. Without prejudice to any action taken under paragraph 1 (a) (ix) of Article 45, negotiations shall be entered into when practicable among the countries substantially concerned or involved, in the manner provided for in Article 17, for the elimination of these arrangements or their replacement by tariff preferences. If after such negotiations have taken place a tariff preference is created or an existing tariff preference is increased to replace these arrangements such action shall not be considered to contravene the provisions of Article 16 or Article 17.

The film hire tax in force in New Zealand on April 10, 1947 shall, for the

purpose of this Charter, be treated as a customs duty falling under Articles 16 and 17. The renters' film quota in force in New Zealand on April 10, 1947, shall for the purposes of this Charter be treated as a screen quota falling under Article 19.

The Dominions of India and Pakistan have not been mentioned separately in the above list since they had not come into existence as such on the base date of April 10, 1947.

ANNEX B

LIST OF TERRITORIES OF THE FRENCH UNION
REFERRED TO IN PARAGRAPH 2 (b) OF ARTICLE 16

France, French Equatorial Africa (Treaty Basin of the Congo* and other territories), French West Africa, Cameroons under French Mandate,* French Somali Coast and Dependencies, French Establishments in India,* French Establishments in Oceania, French Establishments in the Condominium of the New Hebrides,* Guadeloupe and Dependencies, French Guiana, Indo-China, Madagascar and Dependencies, Morocco (French zone),* Martinique, New Caledonia and Dependencies, Reunion, Saint-Pierre and Miquelon, Togo under French Mandate,* Tunisia.

ANNEX C

LIST OF TERRITORIES OF THE CUSTOMS UNION OF BELGIUM
LUXEMBOURG AND THE NETHERLANDS
REFERRED TO IN PARAGRAPH 2 (b) OF ARTICLE 16

The Economic Union of Belgium and Luxembourg, Belgian Congo, Ruanda Urundi, The Netherlands, Netherlands Indies, Surinam, Curaçao.
(For imports into the metropolitan territories of the Customs Union.)

ANNEX D

LIST OF TERRITORIES OF THE UNITED STATES OF AMERICA
REFERRED TO IN PARAGRAPH 2 (b) OF ARTICLE 16

United States of America (customs territory), Dependent territories of the United States of America.

ANNEX E

LIST OF PORTUGUESE TERRITORIES
REFERRED TO IN PARAGRAPH 2 (b) OF ARTICLE 16

Portugal and the Archipelagoes of Madeira and the Azores, Archipelago of Cape Verde, Guinea, St. Tome and Principe and Dependencies, S. Joao Batista de Ajuda, Cabinda, Angola, Mozambique, State of India and Dependencies, Macao and Dependencies, Timor and Dependencies.

* For imports into Metropolitan France and territories of the French Union.

ANNEX F

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS
BETWEEN CHILE AND NEIGHBOURING COUNTRIES REFERRED
TO IN PARAGRAPH 2 (*e*) OF ARTICLE 16

Preferences in force exclusively between, on the one hand, Chile and, on the other hand, 1. Argentina, 2. Bolivia, 3. Peru, respectively.

ANNEX G

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS
BETWEEN THE SYRO-LEBANESE CUSTOMS UNION AND NEIGHBOURING
COUNTRIES REFERRED TO IN PARAGRAPH 2 (*e*) OF ARTICLE 16

Preferences in force exclusively between, on the one hand, The Syro-Lebanese Customs Union and, on the other hand, 1. Palestine, 2. Transjordan, respectively.

ANNEX H

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS AMONG
COLOMBIA, ECUADOR AND VENEZUELA REFERRED TO
IN PARAGRAPH 2 (*e*) OF ARTICLE 16

Preferences in force exclusively between two or more of the following countries; Colombia, Ecuador, Venezuela.

Notwithstanding the provisions of Article 16, Venezuela may provisionally maintain the special surcharges which on November 21, 1947, were levied on products imported via certain territories: *Provided* that such surcharges shall not be increased above the level in effect on that date and shall be eliminated not later than five years from the date of this Charter.

ANNEX I

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS AMONG
THE REPUBLICS OF CENTRAL AMERICA REFERRED TO IN
PARAGRAPH 2 (*e*) OF ARTICLE 16

Preferences in force exclusively between two or more of the following countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua.

ANNEX J

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS BETWEEN
ARGENTINA AND NEIGHBOURING COUNTRIES REFERRED TO IN
PARAGRAPH 2 (*e*) OF ARTICLE 16

Preferences in force exclusively between, on the one hand, Argentina and, on the other hand, 1. Bolivia, 2. Chile, 3. Paraguay, respectively.

ANNEX K

EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION

(Applicable to Members who so elect, in accordance with paragraph 1 (*d*) of Article 23, in lieu of paragraphs 1 (*b*) and 1 (*c*) of Article 23.)

1. (*a*) A Member applying import restrictions under Article 21 may relax such restrictions in a manner which departs from the provisions of Article 22 to the extent necessary to obtain additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraphs 3 (*a*) and 3 (*b*) of Article 21 if its restrictions were fully consistent with the provisions of Article 22; *Provided* that

- (i) levels of delivered prices for products so imported are not established substantially higher than those ruling for comparable goods regularly available from other Member countries, and that any excess of such price levels for products so imported is progressively reduced over a reasonable period;
- (ii) the Member taking such action does not do so as part of any arrangement by which the gold or convertible currency which the Member currently receives directly or indirectly from its exports to other Members not party to the arrangement is appreciably reduced below the level it could otherwise have been reasonably expected to attain;
- (iii) such action does not cause unnecessary damage to the commercial or economic interests of any other Member, including interests under Articles 3 and 9.

(*b*) And Member taking action under this paragraph shall observe the principles of sub-paragraph (*a*). A Member shall desist from transactions which prove to be inconsistent with that sub-paragraph but the Member shall not be required to satisfy itself, when it is not practicable to do so, that the requirements of that sub-paragraph are fulfilled in respect of individual transactions.

2. Any Member taking action under paragraph 1 of this Annex shall keep the Organization regularly informed regarding such action and shall provide such available relevant information as the Organization may request.

3. If at any time the Organization finds that import restrictions are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided for under paragraph 1 of this Annex, the Member shall, within sixty days, remove the discrimination or modify it as specified by the Organization; *Provided* that any action under paragraph 1 of this Annex, to the extent that it has been approved by the Organization at the request of a Member under a procedure analogous to that of paragraph 5 (*c*) of Article 21, shall not be open to challenge under this paragraph or under paragraph 5 (*d*) of Article 21 on the ground that it is inconsistent with the provisions of Article 22.

ANNEX L

RELATING TO ARTICLE 78

Selection of the Members of the First Executive Board

To facilitate the work of the Conference at its first session, the following rules shall apply with respect to the selection of the members of the first Executive Board under the provisions of Article 78:

1. Six seats on the Board shall be filled under sub-paragraphs (a) and (b) of paragraph 3 of Article 78 by Member countries of the Western Hemisphere.* If five or more countries of the Western Hemisphere, eligible for election under paragraph 3 (b) of Article 78, have not become Members of the Organization at the time of the election, only three seats shall be filled under paragraph 3 (b). If ten or more of the countries of the Western Hemisphere, eligible for election under paragraph 3 (b), have not become Members of the Organization at the time of the election, only two seats shall be filled under paragraph 3 (b). The seat or seats thus unoccupied shall not be filled unless the Conference otherwise decides by a two-thirds majority of the Members present and voting.

2. In order to ensure a selection in accordance with the provisions of paragraph 3 (a) of Article 78, the following countries and customs unions shall be deemed to fulfil the conditions set out therein:

- (a) the two countries in the Western Hemisphere and the three countries or customs unions in Europe with the largest external trade, which participated in the Havana Conference; and
- (b) in view of their potential importance in international trade, the three countries with the largest population in the world.

Should any of these countries, including any country participating in a customs union, not be a Member of the Organization at the time of the election, the Conference shall review the situation; however, the unoccupied seat or seats shall not be filled, unless the Conference otherwise decides by a two-thirds majority of the Members present and voting.

3. In the election of members of the Executive Board under the provisions of paragraph 3 (b) of Article 78, the Conference shall have due regard to the provisions of paragraph 2 of that Article and to the fact that certain relationships existing among a geographical group of countries may in certain cases give such a group a distinctive and unified character.

4. The members selected under paragraph 3 (a) of Article 78 shall serve for a term of three years. Of the members elected under paragraph 3 (b), half, as determined by lot, shall serve for a term of two years, and the other half for a term of four years. However, if an uneven number of Members has been elected, the Conference shall determine the number to serve for two and for four years respectively.

* That is, North, Central and South America.

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ANNEX M

REFERRED TO IN PARAGRAPH 1 (d) OF ARTICLE 99

Special Provisions regarding India and Pakistan

In view of the special circumstances arising out of the establishment as independent States of India and Pakistan, which have long constituted an economic unit, the provisions of this Charter shall not prevent the two countries from entering into special interim agreements with respect to the trade between them, pending the establishment of their reciprocal trade relations on a definitive basis. When these relations have been established, measures adopted by these countries in order to carry out definitive agreements with respect to their reciprocal trade relations, may depart from particular provisions of the Charter, provided that such measures are in general consistent with the objectives of the Charter.

ANNEX N

REFERRED TO IN PARAGRAPH 5 OF ARTICLE 100

Special Amendment of Chapter VIII

Any amendment to the provisions of Chapter VIII which may be recommended by the Interim Commission for the International Trade Organization after consultation with the International Court of Justice and which relates to review by the Court of matters which arise out of the Charter but which are not already covered in Chapter VIII, shall become effective upon approval by the Conference, at its first regular session, by a vote of a majority of the Members; *Provided* that such amendment shall not provide for review by the Court of any economic or financial fact as established by or through the Organization; and *Provided further* that such amendment shall not affect the obligation of Members to accept the advisory opinion of the Court as binding on the Organization upon the points covered by such opinion; and *Provided further* that, if such amendment alters the obligations of Members, any member which does not accept the amendment may withdraw from the Organization upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the Director-General.

ANNEX O

REFERRED TO IN PARAGRAPH 1 OF ARTICLE 103

Acceptances within Sixty Days of the First Regular Session

For the purpose of the first regular session of the Conference, any government which has deposited an instrument of acceptance in accordance with the provisions of paragraph 1 of Article 103 prior to the first day of the session, shall have the same right to participate in the Conference as a Member.

ANNEX P

INTERPRETATIVE NOTES

AD ARTICLE 13

Paragraphs 7 (a) (ii) and (iii)

The word "processing," as used in these subparagraphs, means the transformation of a primary commodity or of a by-product of such transformation into semi-finished or finished goods but does not refer to highly developed industrial processes.

AD ARTICLE 15

Paragraph 1

The special circumstances referred to in paragraph 1 are those set forth in Article 15.

Paragraph 4 (a)

The Organization need not interpret the term "economic region" to require close geographical proximity if it is satisfied that a sufficient degree of economic integration exists between the countries concerned.

Paragraph 6 (d)

The words "the prospective parties to a regional preferential agreement have, prior to November 21, 1947, obtained from countries representing at least two-thirds of their import trade the right to depart from most-favoured-nation treatment in the cases envisaged in the agreement" cover rights to conclude preferential agreements which may have been recognized in respect of mandated territories which became independent prior to November 21, 1947, in so far as these rights have not been specifically denounced before that date.

AD ARTICLE 16

Note 1

The term "margin of preference" means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates. As examples:

1. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were 24 per cent ad valorem, the margin of preference would be 12 per cent ad valorem, and not one-third of the most-favoured-nation rate.
2. If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent ad valorem.
3. If the most-favoured-nation rate were 2 francs per kilogram and the preferential rate 1.50 francs per kilogram, the margin of preference would be 0.50 francs per kilogram.

Note 2

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to the binding of margins of preference under paragraph 4:

- (i) the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on April 10, 1947; and
- (ii) the classification of a particular product under a tariff item other than that under which importations of that product were classified on April 10, 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item.

AD ARTICLE 17

An internal tax (other than a general tax uniformly applicable to a considerable number of products) which is applied to a product not produced domestically in substantial quantities shall be treated as a customs duty under Article 17 in any case in which a tariff concession on the product would not be of substantial value unless accompanied by a binding or a reduction of the tax.

Paragraph 2 (d)

In the event of the devaluation of a Member's currency, or of a rise in prices, the effects of such devaluation or rise in prices would be a matter for consideration during negotiations in order to determine, first, the change, if any, in the protective incidence of the specific duties of the Member concerned and, secondly, whether the binding of such specific duties represents in fact a concession equivalent in value to the substantial reduction of high duties or the elimination of tariff preferences.

AD ARTICLE 18

Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article 18.

Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments and authorities within the territory of a Member is subject to the provisions of paragraph 3 of Article 104. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal

taxes which, although technically inconsistent with the letter of Article 18, are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article 18, the term "reasonable measures" would permit a Member to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties.

Paragraph 2

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and on the other hand, a directly competitive or substitutable product which was not similarly taxed.

Paragraph 5

Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.

AD ARTICLE 20

Paragraph 2 (a)

In the case of products which are basic to diet in the exporting country and which are subject to alternate annual shortages and surpluses, the provisions of paragraph 2 (a) do not preclude such export prohibitions or restrictions as are necessary to maintain from year to year domestic stocks sufficient to avoid critical shortages.

Paragraph 2 (c)

The expression "agricultural and fisheries product, imported in any form" means the product in the form in which it is originally sold by its producer and such processed forms of the product as are so closely related to the original product as regards utilization that their unrestricted importation would make the restriction on the original product ineffective.

Paragraph 3 (b)

The provisions for prior consultation would not prevent a Member which had given other Members a reasonable period of time for such consultation from introducing the restrictions at the date intended. It is recognized that, with regard to import restrictions applied under paragraph 2 (c) (ii), the period of advance notice provided would in some cases necessarily be relatively short.

Paragraph 3 (d)

The term "special factors" in paragraph 3 (*d*) includes among other factors changes in relative productive efficiency as between domestic and foreign producers which may have occurred since the representative period.

AD ARTICLE 21

With regard to the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulation of their foreign trade, it was considered that the text of Article 21, together with the provision for export controls in certain parts of this Charter, for example, in Article 45, fully meet the position of these economies.

AD ARTICLE 22

Paragraph 2 (d) and 4

The term "special factors" as used in Article 22 includes among other factors the following changes, as between the various foreign producers, which may have occurred since the representative period:

1. changes in relative productive efficiency;
2. the existence of new or additional ability to export; and
3. reduced ability to export.

Paragraph 3

The first sentence of paragraph 3 (*b*) is to be understood as requiring the Member in all cases to give, not later than the beginning of the relevant period, public notice of any quota fixed for a specified future period, but as permitting a Member, which for urgent balance-of-payments reasons is under the necessity of changing the quota within the course of a specified period, to select the time of its giving public notice of the change. This in no way affects the obligation of a Member under the provisions of paragraph 3 (*a*), where applicable.

AD ARTICLE 23

Paragraph 1 (g)

The provisions of paragraph 1 (*g*) shall not authorize the Organization to require that the procedure of consultation be followed for individual transactions unless the transaction is of so large a scope as to constitute an act of general policy. In that event, the Organization shall, if the Member so requests, consider the transaction, not individually, but in relation to the Member's policy regarding imports of the product in question taken as a whole.

Paragraph 2

One of the situations contemplated in paragraph 2 is that of a Member holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

AD ARTICLE 24

Paragraph 8

For example, a Member which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the Fund would not thereby be deemed to contravene the provisions of Articles 20 or 22. Another example would be that of a Member which specifies on an import license the country from which the goods may be imported for the purpose, not of introducing any additional element of discrimination in its import licensing system, but of enforcing permissible exchange controls.

AD ARTICLE 29

Paragraph 1

Note 1

Different prices for sales and purchases of products in different markets are not precluded by the provisions of Article 29, provided that such different prices are charged or paid for commercial reasons, having regard to differing conditions, including supply and demand, in such markets.

Note 2

Sub-paragraphs (a) and (b) of paragraph 1 shall not be construed as applying to the trading activities of enterprises to which a Member has granted licenses or other special privileges

(a) solely to ensure standards of quality and efficiency in the conduct of its external trade; or

(b) for the exploitation of its natural resources;

provided that the Member does not thereby establish or exercise effective control or direction of the trading activities of the enterprises in question, or create a monopoly whose trading activities are subject to effective governmental control or direction.

AD ARTICLE 31

Paragraphs 2 and 4

The maximum import duty referred to in paragraphs 2 and 4 would cover the margin which has been negotiated or which has been published or notified to the Organization, whether or not collected, wholly or in part, at the custom house as an ordinary customs duty.

Paragraph 4

With reference to the second proviso, the method and degree of adjustment to be permitted in the case of a primary commodity which is the subject of a domestic price stabilization arrangement should normally be a matter for agreement at the time of the negotiations under paragraph 2 (a).

AD ARTICLE 33

Paragraph 1

The assembly of vehicles and mobile machinery arriving in a knocked-down condition or the disassembly (or disassembly and subsequent reassembly) of bulky articles shall not be held to render the passage of such goods outside the scope of "traffic in transit," provided that any such operation is undertaken solely for convenience of transport.

Paragraphs 3, 4 and 5

The word "charges" as used in the English text of paragraphs 3, 4 and 5 shall not be deemed to include transportation charges.

Paragraph 6

If, as a result of negotiations in accordance with paragraph 6, a Member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs of Article 33, such special facilities may be limited to the land-locked country concerned unless the Organization finds, on the complaint of any other Member, that the withholding of the special facilities from the complaining Member contravenes the most-favoured-nation provisions of this Charter.

AD ARTICLE 34

Paragraph 1

Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

*Paragraphs 2 and 3**Note 1*

As in many other cases in customs administration, a Member may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

Note 2

Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

AD ARTICLE 35

*Paragraph 3**Note 1*

It would be in conformity with Article 35 to presume that "actual value" may be represented by the invoice price (or in the case of government contracts in respect of primary products, the contract price), plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discount, or any reduction from the ordinary competitive price.

Note 2

If on the date of this Charter a Member has in force a system under which ad valorem duties are levied on the basis of fixed values, the provisions of paragraph 3 of Article 35 shall not apply:

1. in the case of values not subject to periodical revision in regard to a particular product, as long as the value established for that product remains unchanged;
2. in the case of values subject to periodical revision, on condition that the revision is based on the average "actual value" established by reference to an immediately preceding period of not more than twelve months and that such revision is made at any time at the request of the parties concerned or of Members. The revision shall apply to the importation or importations in respect of which the specific request for revision was made, and the revised value so established shall remain in force pending further revision.

Note 3

It would be in conformity with paragraph 3 (*b*) for a Member to construe the phrase "in the ordinary course of trade," read in conjunction with "under fully competitive conditions," as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.

Note 4

The prescribed standard of "fully competitive conditions" permits Members to exclude from consideration distributors' prices which involve special discounts limited to exclusive agents.

Note 5

The wording of sub-paragraphs (*a*) and (*b*) permits a Member to assess duty uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

Paragraph 5

If compliance with the provisions of paragraph 5 would result in decreases in amounts of duty payable on products with respect to which the rates of

duty have been bound by an international agreement, the term "at the earliest practicable date" in paragraph 2 allows the Member concerned a reasonable time to obtain adjustment of the agreement.

AD ARTICLE 36

Paragraph 3

While Article 36 does not cover the use of multiple rates of exchange as such, paragraphs 1 and 3 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a Member is using multiple currency exchange fees for balance-of-payment reasons not inconsistently with the Articles of Agreement of the International Monetary Fund, the provisions of paragraph 2 fully safeguard its position since that paragraph merely requires that the fees be eliminated at the earliest practicable date.

AD ARTICLE 40

It is understood that any suspension, withdrawal or modification under paragraphs 1 (a), 1 (b) and 3 (b) must not discriminate against imports from any Member country, and that such action should avoid, to the fullest extent possible, injury to other supplying Member countries.

AD ARTICLE 41

The provisions for consultation require Members, subject to the exceptions specifically set forth in this Charter, to supply to other Members, upon request, such information as will enable a full and fair appraisal of the matters which are the subject of such consultation, including the operation of sanitary laws and regulations for the protection of human, animal or plant life or health, and other matters affecting the application of Chapter IV.

AD ARTICLE 44

Paragraph 5

It is understood that the provisions of Article 16 would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and the most-favoured-nation rate.

AD ARTICLE 53

The provisions of this Article shall not apply to matters relating to shipping services which are subject to the Convention of the Inter-governmental Maritime Consultative Organization.

AD ARTICLE 86

Paragraph 3

Note 1

If any Member raises the question whether a measure is in fact taken directly in connection with a political matter brought before the United Nations in accordance with the provisions of Chapters IV or VI of the United Nations Charter, the responsibility for making a determination on the question shall rest with the Organization. If, however, political issues beyond the competence of the Organization are involved in making such a determination, the question shall be deemed to fall within the scope of the United Nations.

Note 2

If a Member which has no direct political concern in a matter brought before the United Nations considers that a measure taken directly in connection therewith and falling within the scope of paragraph 3 of Article 86 constitutes a nullification or impairment within the terms of paragraph 1 of Article 93, it shall seek redress only by recourse to the procedures set forth in Chapter VIII of this Charter.

AD ARTICLE 98

Nothing in this Article shall be construed to prejudice or prevent the operation of the provisions of paragraph 1 of Article 60 regarding the treatment to be accorded to non-participating countries under the terms of a commodity control agreement which conforms to the requirements of Chapter VI.

AD ARTICLE 104

Note 1

In the case of a condominium, where the codomini are Members of the Organization, they may, if they so desire and agree, jointly accept this Charter in respect of the condominium.

Note 2

Nothing in this Article shall be construed as prejudicing the rights which may have been or may be invoked by States in connection with territorial questions or disputes concerning territorial sovereignty.

AD ANNEX K

It is understood that the fact that a Member is operating under the provisions of paragraph 1 (b) (i) of Article 45 does not preclude that Member from operation under this Annex, but that the provisions of Article 23 (including this Annex) do not in any way limit the rights of Members under paragraph 1 (b) (i) of Article 45.

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