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A CHARTER FOR WORLD TRADE



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A CHARTER FOR WORLD TRADE

CLAIR WILCOX

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TO THE VETERANS OF
LONDON GENEVA HAVANA

FOREWORD

THE signing of the *Final Act* of the United Nations Conference on Trade and Employment at Havana, Cuba, on March 24, 1948, marked the culmination of an enterprise that had its beginnings in the declarations of policy that were made in the *Atlantic Charter* in 1941 and in Article VII of the lend-lease agreements in 1942. It marked the completion of three years of careful planning and almost two years of continuous negotiations. It marked the embodiment in a charter for world trade, produced by more than fifty nations, of the principles contained in the proposals that were published by the United States in 1945.

The Havana conference covered a wider range of problems than had ever been tackled by any other economic conference in the history of international affairs. It dealt with a subject matter that presented, in its combination of diversity, complexity, and political sensitivity, a problem so difficult that it might well have defied the negotiators' art. Yet it produced and wrote into a single document, not one agreement, but six—one on trade policy, one on cartels, one on commodity agreements, one on employment, one on economic development and international investment, and the constitution of a new United Nations agency in the field of international trade. The successful completion of any one of these agreements would have been a notable achievement. The completion of all six of them, in the troubled times in which we live, is little short of a miracle.

When the United States made its first proposals for a charter setting up an international trade organization, it faced a world in which the normal patterns of trade had been disrupted by the war. Production was cut down; business was dislocated; and the economic and political future was filled with uncertainty. In such a situation, we might have decided to postpone our proposals until

things got back to normal. But we knew, if we did so, that nations might set up a whole series of new restrictions that the world might never succeed in breaking down. So we went ahead. And the results already achieved have demonstrated that we chose the wiser course.

As the United States approached the problem of postwar trade policy, there were three courses it might have pursued. First, it might have concluded that the rest of the world was so committed to restrictionism that the attempt to clear the channels of trade was hopeless. It might have washed its hands of the whole job and tried to live to itself. But we must remember that we are part of an interdependent world. Prosperity and peace for us depend upon prosperity and peace for everybody else. Economic isolation is clearly impossible.

Second, the United States might have sought to lay down a simple set of idealistic principles to govern world trade and tried to persuade the other nations of the world to accept it. But trade is a complicated business and the times in which we live are full of difficulty. Other nations have their own problems and their own policies. No simple set of rules could be accepted. No rigid set of rules would work. If we are to be realistic, we must be practical. And if we are to be practical, we must deal with details. If we are to have a world trade charter, it must be a charter that will fit the facts.

Third, and last, we could have sought a realistic document, one that would meet the practical problems of the real world. Such a charter would set forth fundamental principles on which all nations could agree. But it would also make such detailed provisions as might be required to meet emergencies and to fit diverse national economies into a common pattern of world trade. This is the only kind of charter that would actually work. It is the only kind that would provide us with a real alternative to anarchy and chaos in the commerce of the world. It is the kind of a charter that the United States has always sought. And it is the kind that was completed at Havana in 1948.

This *Charter* sets up an International Trade Organization to support and strengthen the International Bank for Reconstruction and Development and the International Monetary Fund. But it does more than that. For the first time in history, it asks all nations to

commit themselves, in a single document, to a policy of non-discrimination in their customs charges and requirements and in their internal taxation and regulation. It asks them to reduce tariffs and other barriers to trade and it lays down detailed rules to insure that the freedom that is gained by reducing visible tariffs shall not be lost by building up invisible tariffs. It also lays down rules under which import and export quotas (the most serious of all forms of trade restriction) can be limited, controlled, and eventually abandoned.

The *Charter* makes the first attempt in history to apply uniform principles of fair dealing to the international trade of private enterprise and public enterprise. It makes the first attempt, through intergovernmental action, to eliminate the abuses arising from the operations of international monopolies and cartels. It spells out, for the first time, a code of principles to control the formation and operation of intergovernmental commodity agreements. It marks the first recognition, in an international instrument, of the interdependence of national programs for the stabilization of production and international programs for the liberation of trade. It recognizes the interdependence of international private investment and the economic development of backward areas and emphasizes the importance of such development to the well-being of all the peoples of the world.

The *Charter* is long and complicated and difficult. It is concerned with such technical matters as unconditional-most-favored nation treatment, disequilibrium in the balance of payments, non-discrimination in the administration of quantitative restrictions, and procedures to be followed in multilateral selective negotiations on tariffs and preferences. But we must not lose sight, in all of its detail, of the deeper problems that underlie these mysteries. For the questions with which the *Charter* is really concerned are whether there is to be economic peace or economic war, whether nations are to be drawn together or torn apart, whether men are to have work or to be idle, whether their families are to eat or go hungry, whether their children are to face the future with confidence or with fear.

Behind the *Charter's* many chapters and its scores of articles, there lies a simple truth. The world will be a better place to live in if nations, instead of taking unilateral action, without regard to the

interests of others, will adopt and follow common principles and enter into consultation when interests come into conflict. And this, throughout the entire range of trade relationships, is what the signatories of the *Charter* will agree to do. Each will surrender some part of its freedom to take action that might prove harmful to others and each will thus gain the assurance that others will not take action harmful to it. This may well prove to be the greatest step in history toward order and justice in economic relations among the members of the world community. The International Trade Organization will deal with questions that nations have always held to be of the greatest importance. It will seek solutions for problems that have all too often been a source of irritation and ill will. It will serve as a center where the peoples of the world, with their diversity of economic interests, can meet on common ground. The ITO will complete the structure of international economic cooperation. It will add strength to the United Nations.

The program that is embodied in the *Charter* provides a necessary sequel to the program for European recovery on which the United States is now embarked. The two are interdependent; neither can be wholly successful without the other; both are parts of a common policy. If we were not to ease the burdens of Europe in this emergency, our chances of reducing the barriers to trade would not be good. But the reverse of this statement is just as true. If we do not reduce the barriers to world trade and thus make possible a great expansion in the production, distribution, and consumption of goods throughout the world, there is little hope that the aid we are extending under the recovery program will accomplish its purpose or serve as anything more than a mere stopgap. The trade program must take over where the recovery program leaves off.

The negotiation of the trade charter is now an accomplished fact. But we were told, again and again, while it was under way, that it could not be done. The program was too ambitious. It would involve too many commitments. Circumstances and systems were too diverse. Fair dealing, in international trade, was old-fashioned and impractical. The disorganization caused by the war was too great. The problems of reconstruction were too pressing. Nations were too much preoccupied with immediate difficulties. They would not look to

the future. The future, in any case, was too uncertain. It could not be done. It has been done!

. The *Charter* will soon be under consideration by national legislatures throughout the world. It should come before the Congress of the United States in 1949. In the meantime, I hope that the American people will study it, criticize it, analyze it, and finally decide that they will give it their support.

To the process of popular understanding, public discussion, and eventual decision, this book should make a substantial contribution. The author served as Director of the Office of International Trade Policy in the Department of State during much of the time when the American proposals were being prepared. He represented the United States as chairman of its delegation at the conference in London and as vice chairman of its delegations at Geneva and Havana. He is well equipped to outline the history of the *Charter*, describe its provisions, and discuss its significance.

W. L. CLAYTON

CONTENTS

Foreword, by W. L. CLAYTON vii

Introduction xv

PART I THE BACKGROUND OF THE HAVANA CHARTER

Chapter 1 Thirty Years of Troubled Trade 3
2 American Trade Policy 14
3 Obstacles to Agreement 25
4 Negotiating the Charter 37

PART II ANALYSIS OF THE HAVANA CHARTER

Chapter 5 The Charter in a Nutshell 53
6 Tariffs and Preferences 63
7 Invisible Tariffs 74
8 Quantitative Restrictions 81
9 State Trading 94
10 Restrictive Business Practices 103
11 Intergovernmental Commodity Agreements 114
12 Subsidies 126
13 Industrial Stabilization and World Trade 131
14 Economic Development and International Investment 140
15 The International Trade Organization 153
16 Relations with Non-members 161

PART III APPRAISAL OF THE HAVANA CHARTER

Chapter 17 Commitments and Escapes 171
18 Some Criticisms Considered 186
19 Some Open Questions 201
20 What We Have at Stake 210

APPENDIX

A Reader's Guide to the Havana Charter 223
The Havana Charter for the International Trade Organization 227
Index 329

INTRODUCTION

TODAY many a thoughtful American is looking toward the future with profound misgivings. Nor is it surprising that this is so. We live in troubled times. We have emerged victorious from the most terrible war in history. But the world we live in is not, as yet, a world at peace. Its peoples are not one. They do not speak the same language. They do not attach the same meanings to the same words. They are divided in their beliefs and in their practices—with respect to economic and political organization, with respect to human rights, to freedom and democracy. They are still suspicious of one another, distrustful and afraid. They are still in arms and they still seek their ultimate security in military might. Whether these divergent views can soon be reconciled, these suspicions dispelled, and these arms laid away, no man can now say. The real test will come, again and again, when the nations are asked to take smaller risks for greater gains, to sacrifice smaller advantages for the greater good. And no one knows whether they will do it—or when.

In such an atmosphere, the task of rebuilding a stable world order appears to be impossibly difficult. But the obstacles before us, serious as they may be, should not be permitted to obscure the very great progress that has already been made. And that progress has been great. The American people have come, most of them, to realize the role that they must play in world affairs. They have displayed a readiness to assume the responsibility that goes with power. The record of the United States, during and since the war, is one for which we need offer few apologies. We have financed our allies, during the war, through the instrument of lend-lease; we have had the wisdom, once the war was over, to cancel the lend-lease account. We have contributed heavily to relief, resettlement, and rehabilitation. We have made grants and loans for reconstruction, unprece-

dented in magnitude and in the generosity of their terms. We have taken action to promote the development of backward areas, to stabilize currencies, and to reduce barriers to trade. We have taken the lead in binding the world together in a network of organizations for international cooperation: the United Nations and its specialized agencies in the fields of food and agriculture, money and banking, shipping, aviation, and communications, labor, health, resettlement, and cultural interchange. With other nations, we are developing the programs and organizing the institutions through which we can work together, side by side, to reconstruct a shattered world. For so much in the way of concrete achievement, in so short a time, there is no precedent in history. Much has been done; much remains to be done.

We, in America, have demonstrated our willingness fully to participate in political affairs; to lend and give for relief and reconstruction all around the world. But our determination to carry through, in economic matters, is still in doubt. Too many of us still fail to realize the implications of our national policies. Too many are reluctant to admit that our foreign relations, whether political or economic, are indivisible; that we cannot successfully cooperate in the one field if we fail to cooperate in the other.

One of our elder statesmen, once Secretary of State and later Secretary of War, has put our situation in the following words: "Americans must now understand," writes Mr. Stimson, "that the United States has become, for better or worse, a wholly committed member of the world community. This has not happened by conscious choice; but it is a plain fact, and our only choice is whether or not to face it. For more than a generation, the increasing interrelation of American life with the life of the world has out-paced our thinking and our policy; our refusal to catch up with reality during these years was the major source of our considerable share of the responsibility for the catastrophe of World War II.

"It is the first condition of effective foreign policy that this nation put away forever any thought that America can be an island to herself. No private program and no public policy, in any sector of our national life, can now escape from the compelling fact that if it is not framed with reference to the world, it is framed with perfect

futility. This would be true if there were no such thing as nuclear fission, and if all the land eastward from Poland to the Pacific were under water. Atomic energy and Soviet Russia are merely the two most conspicuous present demonstrations of what we have at stake in world affairs. The attitude of isolationism—political or economic—must die; in all its many forms, the vain hope that we can live alone must be abandoned." *

The logic of our position allows us no alternative. We must go on, in international cooperation, from politics to economics, from finance to trade. World organization for security is essential; but if it is to succeed, it must rest upon continuous international participation in economic affairs. The provision of relief, the stabilization of currencies, and the extension of credits are necessary and desirable; but if the peoples who now depend upon relief are soon to become self-supporting, if those who now must borrow are eventually to repay, if workers on farms and in factories are to enjoy the highest possible levels of real income, if standards of nutrition and health are to be raised, if cultural interchange is to bear fruit in daily life, the world must be freed, in large measure, of the barriers that now obstruct the flow of goods and services. If political and economic order is to be rebuilt, we must provide, in our trade relationships, the solid foundation upon which the superstructure of international cooperation is to stand.

* "The Challenge to Americans," *Foreign Affairs,* October 1947.

PART I

THE BACKGROUND OF THE HAVANA CHARTER

CHAPTER 1

THIRTY YEARS OF TROUBLED TRADE

THE barriers which obstruct the flow of trade have been raised higher and higher in the years since the outbreak of the First World War. Governments have interfered, increasingly, with the movement of goods and services across their borders. They have sought to curb imports by increasing customs formalities, by raising tariffs, by imposing quotas and embargoes, and by controlling the supplies of foreign exchange. They have sought to force exports by depreciating their currencies, by paying subsidies, and by bartering goods for goods. They have sought to gain at the expense of their rivals in trade by entering into exclusive deals and by setting up preferential systems which discriminate among their suppliers and their customers. At the same time, they have permitted private traders to seek higher profits through cartel arrangements that curtail output, raise prices, and divide up the markets of the world. And, upon occasion, nations themselves have entered into agreements designed to benefit producers by cutting output and boosting prices to the detriment of those outsiders who consume their goods.

The existence of these devices is well known; their consequences are less fully understood. When one nation raises its tariff and when it imposes quotas on imports, it prevents the producers of other nations from selling in its markets. When it depreciates its currency and when it subsidizes exports, it gives its own producers an artificial advantage over the producers of other nations in the markets of the world. When it enters into an exclusive arrangement with another nation, under which each of them agrees to discriminate against the goods produced by everybody else, it obtains a favored position

which bars the producers of other nations from the markets concerned. When a nation sets up, within its own sphere of influence, a preferential trading system which discriminates against the other nations of the world, it denies to producers outside the system an equal opportunity to sell their goods. When a nation blocks the conversion of its own money into foreign currencies and compels those who have sold to it to accept payment, on a quasi-barter basis, in its own goods, it forces its products into their markets and keeps other products out.

In all of these ways, nations prevent other nations from obtaining the foreign exchange which they must have if they are to import the materials and machines which are essential to their economic development. Moreover, when an industrial nation permits its manufacturers to enter into cartel agreements which restrict the output and raise the prices of manufactured goods, and when a raw-material-producing nation itself enters into arrangements which are designed permanently to restrict the output and raise the prices of raw materials, it makes these goods and these materials scarce and costly and, to that extent, denies them to the other peoples of the world. All of these measures operate to limit the purchasing power of the nations against which they are directed, and thus to make it more difficult for such nations to expand their industry and to raise the planes of living of their peoples.

THE FIRST WORLD WAR

During the century that preceded the First World War, goods moved with relative freedom between the nations of the world. The traders of one country sold to those of another and bought from those of a third. No effort was made to achieve a balance in the trade between any pair of states. Goods and services, loans and investments moved around the circle until accounts were canceled out. The money of one country could be converted freely into that of another; rates of exchange were stable; currencies were tied to gold; balances were settled in gold. In each country, prices and production were continually adjusted to conform to changes in world demand. Diplomacy was concerned almost exclusively with political relationships; economic agreements were confined to treaties of commerce

and navigation; national interference with trade was limited to tariffs for revenue and for the protection of domestic industries. A complicated network of economic relationships, resting on the general acceptance of common principles and procedures, was centered in the financial market of London, extended by the freedom of British trade, and supported by British dominance of the seas. A world-wide economy, built on the foundations of political and economic freedom, was preserved through a century of relative stability and peace.

The foundations of economic liberalism were shaken by the First World War. The economy of Europe was disorganized; productive facilities were destroyed; channels of trade were broken; heavy debts were incurred. Nationalism and protectionism were stimulated by the revision of boundaries and the creation of new states. Economic and political uncertainty weakened devotion to principles that were once unquestioned. Governments assumed increasing responsibility for the direction of economic life. England gave way to America as the world's great creditor; the center of economic power shifted from the United Kingdom to the United States. But America lacked England's dependence on foreign trade, her tradition of freedom in international commerce, her habituation to the requirements of economic leadership. She was unprepared to assume the responsibility that came to her unasked.

THE STORY OF THE TWENTIES

Efforts were made, during the decade that followed the war, to repair the structure of the world's economy. The removal of barriers to trade and the establishment of equal treatment for the commerce of all states were promised in one of President Wilson's Fourteen Points. Improvement of the legal basis of commercial relationships, elimination of quantitative restrictions, reduction of tariffs, and general adoption of the principle of non-discrimination were subsequently sought in a series of international conferences. But the League of Nations, in its Covenant, did no more than recognize the desirability of equitable treatment in world trade. And the economic conferences, most of them held under its auspices, were uniformly disappointing in their results.

A monetary and financial conference, held at Brussels in the autumn of 1920, recommended that exchange controls be abandoned and other impediments to trade removed. A conference of ministers, meeting in Genoa in May 1922, failed in its attempt to prepare an agreement reducing barriers to trade and contented itself with a series of pallid resolutions favoring the negotiation of commercial treaties, the improvement of customs administration, the stabilization of tariffs, and the progressive elimination of prohibitions on exports and imports. A diplomatic conference, held at Geneva in 1923, with the limited objective of simplifying customs formalities, succeeded in producing a convention that was ratified by thirty states and came into force in 1924.

A World Economic Conference, held at Geneva in May 1927, produced a comprehensive report outlining a detailed program for the reform of commercial policies and recommending the general reduction of tariffs, the adoption of a policy of non-discrimination, and the elimination of quantitative restrictions, export subsidies, differential internal taxes, and special privileges to state enterprises. But the conference, composed of technicians rather than diplomats, lacked power to draw up a convention committing governments; and when its delegations returned to their homes, they found little support in public opinion for the recommendations that they had made.

The League then planned a simultaneous attack on quantitative restrictions and tariffs, calling a diplomatic conference to meet in Geneva to consider the first of these questions in October 1927. This conference produced a convention that would have committed its signatories, within six months, to abolish all import and export prohibitions and restrictions. But this commitment was accompanied by a broad escape, permitting the use of quota systems "for the purpose of protecting, in extraordinary and abnormal circumstances, the vital interests of the country." The convention was to come into force when eighteen countries had ratified; the number of ratifications never went beyond seventeen. The related negotiations for the reduction of tariffs were not opened until the Great Depression had supervened.

Some progress was made, during the twenties, in negotiating commercial treaties, in obtaining adherence to the principle of non-

discrimination, in improving customs administration, and in removing certain prohibitions on trade. But this was overshadowed by the increase of tariffs in Europe, in Asia, in Latin America, and in the United States.

In this record of failure, our own country was not without responsibility. On the one hand, we insisted that our allies repay the loans that had enabled them to fight the war. On the other, we raised our tariff, thus obstructing payment in the only way in which it could be made. We refused to join the League of Nations. If we had pursued a different course—canceling the war debts, reducing our tariff, and cooperating fully in the reconstruction of the world economy—the efforts of the twenties might have borne more fruit.

THE GREAT DEPRESSION

The foundations of economic liberalism, badly shaken by the First World War, were all but demolished by the Great Depression. The gold standard disappeared; currencies were thrown into chaos; exchanges were subjected to national controls. There was a sharp contraction in the volume of the world's trade. The attention of governments turned inward; the issue of unemployment dominated domestic politics. Business recovery became the first objective of national policy; security of income and employment came to be valued above adaptability, efficiency, and progress in production. Governments assumed still further authority over economic life, controlling prices and output in the interest of domestic stability. Nations no longer permitted production to adjust itself to the requirements of a world economy; where national and international interests came into conflict, internationalism gave way. The world was unprepared to face adversity; each for himself and the devil take the hindmost became the general rule.

In February and March of 1930, the League of Nations held two conferences directed toward the conclusion of a tariff truce. The first of these meetings ended in failure; but at the second, eighteen countries, including the United Kingdom, Germany, France, and Italy, adopted a convention providing for a one-year truce, and twenty-three states signed a protocol which contemplated negotiations for the reduction of tariffs at a conference called to meet in

November of that year. The November conference was condemned to failure before it met.

In May 1930, the United States enacted the Hawley-Smoot tariff, raising duties to the highest level in its history. More than a thousand American economists protested this action, warning that it would "plainly invite other nations to compete with us in raising further barriers to trade," and all the major trading nations of the world informed our government that irrevocable damage would be done. The accuracy of these predictions was demonstrated in the next few months. Tariffs were raised in Canada, Cuba, France, Mexico, Italy, Spain, Australia, and New Zealand. Quantitative restrictions and exchange controls had been imposed by twenty-six countries by the end of 1931. The United Kingdom abandoned free trade and adopted a general tariff in February 1932. The nations of the British Commonwealth, meeting in Ottawa in the following summer, established the system of imperial preferences. As a part of this system, the mother country imposed new duties, raised others, and retained still others. The new arrangements became effective in October 1932.

THE STORY OF THE THIRTIES

A final effort to reach agreement for the reestablishment of order in international commerce was made in 1933. A Monetary and Economic Conference assembled in London in June of that year. The first problem that faced it was the stabilization of currencies. The pound and the dollar had been cut loose from gold; the relative values of different monies were unpredictable; sudden and violent changes created new hazards for international trade. Nations, accordingly, were unwilling to reduce trade barriers until monetary stability could be assured. But the United States, planning to stimulate domestic prices by devaluing the dollar, refused to commit itself. A message from President Roosevelt brought the conference to an end on July 3, 1933.

Intensive economic nationalism marked the rest of the decade. Exports were forced; imports were curtailed. All of the weapons of commercial warfare were brought into play: currencies were depreciated, exports subsidized, tariffs raised, exchanges controlled, quotas

imposed, and discrimination practiced through preferential systems and barter deals. Each nation sought to sell much and buy little. A vicious spiral of restrictionism produced a further deterioration in world trade.

Economic nationalism found its most complete expression in Nazi Germany under the leadership of Dr. Hjalmar Schacht. There the instruments of restriction and discrimination were perfected and put to work in the development of military power. The German trading area was cut loose, in large measure, from the markets of the world. Every foreign purchase and every foreign sale was subjected to totalitarian authority. Countries that sold to Germany were paid in marks that were useless elsewhere in the world. They were compelled, therefore, to buy from Germany. Weaker countries, supplying materials to build up the stock piles of the Reich, were forced to take their pay in high-priced goods and in goods for which they had no need. Dependent economies were exploited ruthlessly. The end of the road down which restrictionism leads was reached, under Hitler, by Nazi Germany.

The only light that relieved the gloom of the decade was afforded by two significant developments. The Reciprocal Trade Agreements Act was adopted by the United States in 1934 and some twenty agreements were concluded in the next five years. A Tripartite Agreement, stabilizing the rates of exchange of the dollar, the pound, and the franc was concluded by the United States, the United Kingdom, and France in 1936 and was later adhered to by Switzerland, Belgium, and the Netherlands. But these events were overshadowed by the threat of war.

THE SECOND WORLD WAR

Such was the unhappy story of international economic relationships in the years between the two world wars. The return of war, with its necessities and its compulsions, tightened the hold of governments on the world's trade. The channels of trade were broken by hostilities; where they were not broken, they were altered to meet the requirements of war. The United States, as other countries, engaged in economic warfare as a supplement to military warfare: we bought goods that we didn't need to keep our enemies from getting

them; we supplied goods to other countries to obtain from them the things we did need and to insure ourselves of their support; we denied goods to other countries to penalize them for not cooperating with us and to prevent them from aiding our enemies. The vast quantities of goods that moved across our borders were designed, in large part, for military use. International trade, throughout the world, became an instrument of war.

The Second World War was far more serious in its consequences than the First. It came upon a world already weakened by war and depression. It was fought, for six years, across two oceans and on three continents, with a destructiveness that had never before been known. Two important industrial countries—Germany and Japan—were knocked out of production. Elsewhere in Europe and in Asia, centers of industry were laid waste. Plant, machinery, and equipment were destroyed, stolen, or undermaintained. Transportation facilities were demolished and services disrupted. Stocks of materials were depleted. Fields went for years unfertilized. Workers were killed, displaced, deported; they suffered from malnutrition, exhaustion, and disease; strength, skill, and morale were impaired. The normal flow of goods and services was interrupted; markets were lost; producers were cut off from former sources of supply. Economic disorganization spelled financial instability, inflation, and chaos in exchange relationships. The future was clouded and enterprise found little ground for confidence.

The United States came to occupy a peculiar position in relation to the other countries of the world. As production abroad declined, during and after the war, production here rose. We increased the size of our productive plant by nearly half, our physical output of goods and services by more than half. The United States, at the war's end, accounted for a third of the world's production and for more than half of its output of manufactured goods. And these facts were reflected in its foreign trade.

THE IMBALANCE OF TRADE

The United States, in 1947, shipped a third of the world's exports and took only a tenth of its imports. Our exports of goods and services amounted to $19 billion. Our exports of goods, at more than

$15 billion, were three to four times the figures reached during the twenties and five times those recorded in the years before the war. Our total imports, however, ran at only $8 billion. And this means that our exports exceeded our imports by $11 billion a year.

Such figures are impressive in themselves; but it is not until they are broken down into their component parts that one begins to realize just what they involve. For this general lack of balance was reflected in our trade in every category of goods and services and with every other region in the world. In manufactured goods, we sold five times as much as we bought. In services, we sold three times what we bought. In foodstuffs, we sold a third more than we bought. And even in raw materials, our sales were almost equal to our purchases. Our exports of merchandise outran our imports for Europe by $4⅓ billion, for Latin America by $1¾ billion, for Canada by $1 billion, for Asia and the Far East by almost $1 billion, and for Africa and the Near East by over $½ billion. Cuba was the only important trading country from which we bought more than we sold. We were in the position of selling everything to everybody and buying too little of anything from anybody, of being creditor to all and debtor to none.

As a consequence, the other nations of the world were unable to earn the dollars with which to pay for the quantities of goods and services that we were supplying them. This situation was variously described as a dollar shortage, a dollar famine, and a dollar crisis. But the words describe the symptom rather than the cause of the disease. The cause was to be found in the economic consequences of the war. The dollar shortage was a production shortage; the dollar famine was a production famine; the dollar crisis was a production crisis.

We have here the basic cause of the imbalance that came to afflict the world's trade: on the one hand, an extraordinary demand for American goods—not only for the materials, machinery, and equipment that we alone could supply, but also for the food and fuel that other peoples would normally have been producing for themselves; on the other hand, an inability to produce and ship to us in payment the quantities of goods that we stood ready and willing to receive. The consequence was a drain on foreign reserves of gold

and dollars that would have spelled bankruptcy if it had not been controlled. And so it was necessary for other nations to tighten restrictions on imports so that scarce currencies, instead of being dissipated in the importation of non-essentials, might be conserved for the purchase of the most necessary goods. It would have been foolhardy, in the circumstances, to do anything else.

As in any epidemic, disease spread from centers of infection and healthy organisms were attacked. Countries that had not been devastated by war, where man power, plant, and equipment were unimpaired and production was in full swing, still had no assurance of immunity. In many cases, such countries had normally bought more from the United States than they had sold here and earned their dollars by selling elsewhere in the world. But now they found themselves selling on credit or taking money they could not convert. As a consequence, they, too, were forced to husband their reserves of gold and dollars in order to fend off insolvency. And the way they did it was to impose restrictions on their import trade. In a world where currencies are inconvertible and goods are bartered for goods, it is difficult for smaller countries to follow the rules of liberal trade. In a highly integrated world economy, none but the strongest can take a wholly independent line.

POSTWAR RESTRICTIONISM

These years have spawned a multitude of new controls. Almost every country outside of the United States now regulates exchanges, requiring exporters to surrender their earnings of foreign currencies to the government and forbidding importers to spend foreign currencies without permission of the government. Many countries impose direct controls on their foreign trade, some of them forbidding exporters to sell without a license and most of them forbidding importers to buy without a license. Several countries conduct some part of their foreign trade through state monopolies, thus exercising complete authority over sales and purchases. In Europe, particularly, trade is conducted through a network of short-term agreements between pairs of governments under which each party undertakes to license the exportation to the other of certain quantities of certain goods and both parties undertake to minimize transfers of

currencies by making payments through clearing accounts in their respective national banks. It is required, moreover, that purchases and sales in each of these arrangements shall balance. And this means, in effect, that the trade of Europe and a large part of the trade of the whole world has been thrown back from the civilized economy of money to the primitivism of barter. The regimentation of the world's commerce has become virtually complete.

This is the situation. What can be done about it? The first step—and the most obvious one—is the promotion of reconstruction and recovery in Western Europe, the center, before the war, of half of international trade. Restrictionism and discrimination are the fruits of financial instability and extreme scarcity. As the countries of Europe get back onto their feet, as production is resumed and goods once more become available in adequate supply, the need for these practices will disappear. The second step is the conclusion of agreements committing nations to return, as soon as possible, to liberal principles and the establishment of an institutional structure under which trade can flourish and individual enterprise, throughout the world, can take a new lease on life in more normal times. For it is only by subjecting them to international control that we can really be assured that restrictionism and discrimination, even though rendered unnecessary, will not, in fact, continue to clog the channels of world trade.

CHAPTER 2

AMERICAN TRADE POLICY

THE United States, during and since the war, has consistently worked for the reestablishment of conditions conducive to freer trade. It has maintained that barriers to the flow of information on economic activity and industrial technology, aside from military matters, should be removed; that barriers to travel and residence should be minimized; that impediments to the movement of private capital and the repayment of investors should be eliminated; and that measures which discriminate against foreign enterprises and investments, or among them, should be abandoned. It has sought to obtain assurance that currencies will be made convertible; that exchange rates will be stabilized; that exchange controls and quota systems, under normal conditions, will be abolished; that control of trade will be accomplished almost entirely through tariffs; that tariffs will be substantially reduced; that tariff preferences will eventually be eliminated; and that exchange control and quota systems, while they survive, will be administered without discrimination. It has urged that restrictive financial and trading practices, whether public or private, be subjected to international control. It has entered into agreements and initiated the establishment of organizations through which nations may cooperate to these ends.

The international trade policies that have been espoused by the United States are based upon six fundamental principles. First, the United States believes that the volume of international trade should be large—larger, certainly, than it was between the wars. Second, it believes that international purchases and sales should be made, at our end of the transaction, at least, by private enterprise. Third, it be-

lieves that trade should be multilateral rather than bilateral. Fourth, it believes that trade should be non-discriminatory. Fifth, it believes that prosperity and stability, both in industry and agriculture, are so intimately related to international trade that stabilization policies and trade policies must be consistent, each with the other. And sixth, it believes that continuous international consultation and cooperation are essential to the fulfillment of all these purposes.

BIG EXPORTS—BIG IMPORTS

The first principle is that the volume of international trade should be large. We, in the United States, want large exports and large imports and we want them for reasons that are grounded, in large part, in our own interests. This is not to imply that we must push exports as a means of maintaining employment. That, in strict logic, is not the case. It is the opportunity to work productively, not the opportunity to work at all, that is promoted by abundant trade. If, instead of seeking both quantity and quality in our employment, we were to content ourselves with quantity alone, we could doubtless have it with little or no foreign trade. If we were to accept the necessary controls, it is conceivable that we could keep everybody steadily at work in a closed economy. But it would require a drastic readjustment for us to do so; it would necessitate increasing regimentation; it would reduce the output of our labor; it would impair the well-being of our people.

We want large exports. We shall have them, in more than ample quantity, during the postwar reconstruction boom; we shall need them when the boom has ended. An important part of our agricultural activity has long been directed toward sales abroad. And now, as a result of the war, our heavy mass-production industries are also geared to a level of output which exceeds the normal, peacetime demands of the domestic market. The maintenance of the type of plant, technology, labor force, and management that they require is essential to the preservation of our economic health and even of our national security. It will be easier for us to maintain both the quantity and the quality of our employment, it will be easier for us to insure our security, if we keep our labor at work, in so far as possible, in the industries where it is most effectively employed. And

this means that we must sell substantial quantities of our output abroad.

We want large imports. The war has made great inroads on our natural resources; we have become and will increasingly become dependent upon foreign supplies of basic materials. The quantity and the variety of our demand for consumers' goods is capable of indefinite expansion. If we are to continue to lend and sell to others, if we are to receive interest and dividends on our loans and investments, we must be prepared to accept payment in the goods that our customers and our debtors are better able to provide. Nor is this to be regarded merely as a necessary evil. Our imports are essential to our industrial strength, to the richness and diversity of our daily living.

But abundant trade will not benefit the United States alone. Many nations, particularly the smaller ones, are more dependent on foreign commerce than are we. Wider markets are needed if they are to earn the foreign exchange that will enable them to pay for the imports that they require. Increased trade, with greater specialization and more active competition, should enhance the productivity of their labor, cut their costs of production, and enlarge the output of their industry. More goods should flow from less effort and levels of consumption should be heightened all around the world. Abundant trade is not an end in itself; it is a means to ends that should be held in common by all mankind.

PRIVATE ENTERPRISE

Our second principle is that the foreign trade of the United States should be carried on by private enterprise. Indeed, we should prefer this pattern, by and large, for international trade in general. We should prefer it because private operation, in our view, affords the best assurance that trade will be competitive, efficient, progressive, and non-discriminatory and, finally, that it will be non-political. Businessmen will ordinarily seek to buy in the cheapest market and sell in the dearest one; governments, if actuated by something other than economic motives, may deliberately buy where prices are high and sell where they are low. Private transactions are carried on at private risk; if they are displeasing to individuals, they need not involve the state. Public transactions must be effected by govern-

ments; if they give rise to dissatisfaction, they are all too likely to become the subject of diplomatic representations. International relations, in all conscience, are difficult enough without creating a situation in which any purchase and any sale may assume the character of an international incident.

We can determine how trade is to be conducted within our own borders; we cannot determine how it is to be conducted abroad. Nationalization has made great progress since the war. Some countries have taken over the entire operation of their economies, guiding production according to the requirements of a central plan. Others have committed substantial segments of their industry and trade to public ownership under varying patterns of control. We may not welcome this, but there is very little that we can do about it. Where American investors are expropriated, we can demand prompt and effective compensation. Where loans are requested, we can, if we choose, refuse to grant them. But Ruritania's organization of her internal economy is Ruritania's business and if she embraces—or tolerates—collectivism, the best that we can do is to accept her course as one of the facts of life.

Our problem here is difficult, but it is one to which a solution must be found. We do not wish to isolate ourselves from unlike economies, to permit the diversity of economic systems to divide the world into public-trading and private-trading blocs. Nor do we believe that the forms and methods of collectivism should be employed in carrying on the whole of the world's trade simply because they provide the most convenient method of dealing with the small fraction of that trade that is in public hands. The solution must be found, rather, in an arrangement which will enable the free-market economies and the controlled economies to trade with one another on a basis of fair dealing and mutual advantage. The rules that govern international commerce should be so drafted that they will apply to the two systems with equal justice and with equal force. They may differ in detail; they should not differ in principle.

BILATERALISM AND MULTILATERALISM

Our third principle is that international trade should be multilateral rather than bilateral. Bilaterialism in trade, of course, is akin to barter. Under this system you may sell for money, but you cannot

use your money to buy where you please. Your customer insists that you must buy from him if he is to buy from you. Imports are directly tied to exports and each country must balance its accounts, not only with the world as a whole, but separately with every other country with which it deals.

Particular transactions, to be sure, are always bilateral; one seller deals with one buyer. But under multilateralism the pattern of trade in general is many-sided. Sellers are not compelled to confine their sales to buyers who will deliver them equivalent values in other goods. Buyers are not required to find sellers who will accept payment in goods that the buyers have produced. Traders sell where they please, exchanging goods for money, and buy where they please, exchanging money for goods.

This arrangement is the rule in the domestic market; it has its counterpart in international trade. Thus, in years before the wars, each country sought to balance its accounts with the world as a whole, but not with every other country with which it dealt. The United States bought from Brazil twice what we sold her and from Malaya ten times as much as we sold her while, at the same time, we sold the River Plate countries twice and the United Kingdom three times as much as we bought from them. Asia and Latin America sold raw materials to us, bought manufactured goods from England. England, in turn, exported heavily to the tropics, imported heavily from the United States. This is the sort of trading pattern that we should like to have restored.

The case against bilateralism is a familiar one. By reducing the number and the size of the transactions that can be effected, it holds down the volume of world trade. By restricting the scope of available markets and sources of supply, it forces disadvantageous transactions and limits the possible economies of international specialization. By freezing trade into rigid patterns, it hinders accommodation to changing conditions. Bilateralism places the essential decisions as to the volume of trade, the direction of exports, and the sources of imports in the hands of the state. It substitutes the judgment of the bureaucrat for the judgment of the market place. It necessitates increasing regulation of domestic trade. It begets discrimination in international commerce. It enables states with larger bargaining

power to gain at the expense of weaker ones. It tends to shift the emphasis in commercial relations from economics to politics.

A multilateral trading system, on the contrary, makes for a larger volume of trade, for greater economy in production, and for readier adjustment to changing conditions. It permits the trader to follow market opportunities in a search for purely economic advantage. It establishes conditions that are conducive to the preservation of private enterprise. It permits the policy and encourages the practice of non-discrimination. It protects the weaker bargainer against the stronger one. It places its emphasis on economics, not on politics.

NON-DISCRIMINATION

Our fourth principle is that international trade should be non-discriminatory. This principle has been embodied in all of our commercial treaties, beginning with France in 1778 and Great Britain in 1794. It was commended by President Washington in his Farewell Address. The United States has always believed that every nation should afford equal treatment to the commerce of all friendly states. It believes that discrimination obstructs the expansion of trade, that it distorts normal relationships and prevents the most desirable division of labor, that it tends to perpetuate itself by canalizing trade and establishing vested interests and, finally, that it gives rise to international irritation and ill will. For all of these reasons, the United States has been opposed and is opposed to preferential tariff systems and the discriminatory administration of import quotas and exchange controls. Discrimination begets bilateralism as bilateralism begets discrimination. If we are to rid ourselves of either one of them, we must rid ourselves of both.

STABILIZATION POLICY AND TRADE POLICY

Our fifth principle is that prosperity and stability, both in industry and in agriculture, are so intimately related to international trade that stabilization policies and trade policies must be consistent, each with the other. It must be recognized that the reestablishment and the survival of liberal trade policies will depend upon the ability of nations to achieve and maintain high and stable levels of employment and upon their willingness to afford to the producers of staple

commodities some measure of protection against the sudden impact of violent change. It should be recognized, too, that the advantages of abundant trade cannot be realized if nations seek to solve their own employment problems by exporting unemployment to their neighbors or if they attempt, over long periods, to hold the production and prices of staple commodities at levels that cannot be sustained by world demand. Programs that are directed toward the objectives of prosperity and stability, on the one hand, and abundant trade, on the other, will not always be in conflict. But when they are, they must be compromised.

CONSULTATION AND COOPERATION

The sixth and final principle is that continuous international consultation and cooperation are essential to the reestablishment and preservation of abundance, private enterprise, multilateralism, nondiscrimination, and stability in the world's trade. The consequences of purely unilateral action in matters of trade policy were well described by President Truman in a speech at Baylor University on March 6, 1947. "One nation," said the President, "may take action in the interest (whether fancied or real) of its own producers without notifying other nations, or consulting them, or even considering how they may be hurt. It may cut down its purchases of another country's goods, by raising its tariff or imposing an embargo or a system of quotas on imports. And when it does this, some producer in the other country will find the door to his market suddenly slammed and bolted in his face. Or a nation may subsidize its exports, selling its goods abroad below their cost. And when it does this, a producer in some other country will find his market flooded with the goods that have been dumped. In either case, the producer gets angry, just as you or I would get angry if such a thing were done to us. Profits have disappeared; workers are dismissed. He feels that he has been wronged, without warning and without reason. He appeals to his government for action. His government retaliates, and another round of tariff boosts, embargoes, quotas, and subsidies is under way. This is economic war. And in such a conflict there can be no hope of victory."

The alternative to economic warfare is agreement to abide by common rules, to cooperate in the solution of common problems, to

enter into consultation where interests come into conflict, to submit disputes to peaceful settlement. But there can be no assurance that nations, in general, will follow this course, completely or consistently, unless there is international organization in the field of trade. An international trade organization, said Mr. Truman, "would apply to commercial relationships the same principles of fair dealing that the United Nations is applying to political affairs. Instead of retaining unlimited freedom to commit acts of economic aggression, its members would adopt a code of economic ethics and agree to live according to its rules. Instead of taking action that might be harmful to others, without warning and without consultation, countries would sit down around the table and talk things out. In any dispute, each party would present its case. The interests of all would be considered, and a reasonable solution would be found. In economics, as in politics, this is the way to peace."

THE AMERICAN PROPOSALS

This is the background of the American *Proposals for the Expansion of World Trade and Employment* which our government published on December 6, 1945, and submitted for consideration to the American people and to other governments of the world. These proposals were based upon the conviction that human energies can best be directed toward the improvement of standards of living if the world, instead of regimenting its trade, will seek to restore the greatest possible measure of economic freedom. They were designed to reverse the prewar trend toward economic isolationism and to resist the tendency to fasten the pattern of wartime controls upon a world at peace. Their provisions may be outlined in a few words.

It was proposed—

1. That devices by which governments have distorted the natural flow of private trade, whether through the restriction of imports or the artificial stimulation of exports, be modified or abandoned; that tariffs be substantially reduced and preferences eliminated; that internal taxes and regulations be imposed without discrimination; that common principles be adopted to govern tariff valuation and the application of antidumping and countervailing duties; that customs formalities be simplified; that full publicity be given to laws and regulations affecting trade; that import quotas be limited to really necessary cases and adminis-

tered without discrimination; that subsidies, in general, be the subject of international consultation and that subsidies on exports be confined to exceptional cases, under general rules.

2. That governments conducting public enterprises to buy and sell abroad agree to accord fair treatment to the commerce of all friendly states, making their sales and purchases on purely economic grounds.

3. That nations agree to act, individually and cooperatively to prevent private cartels and combines from restricting the trade of the world.

4. That any international agreement adopted to protect the many small producers of primary commodities, in the event of surplus production, against the impact of sudden and violent changes in world markets, be designed to facilitate correction of the causes of their difficulties, not to perpetuate them; that measures restricting exports or fixing prices, where they are unavoidable, be limited in duration; that they be so administered as to provide increasing opportunities to satisfy world requirements from the more economic sources; that they be attended, at every stage, by full publicity; and that consuming countries be given an equal voice with producing countries in their formulation and administration.

5. That all of these commitments be embodied in a world trade charter and carried out through an international trade organization, established under the charter, in appropriate relationship to the Economic and Social Council, as an integral part of the structure of the United Nations.

These were the proposals that related to trade. If they were to gain acceptance, assurance was also required that the nations of the world will seek, through measures that are not inconsistent with them, to achieve and maintain industrial stability. For this reason, it was proposed, finally, that each nation agree to take action, within its own jurisdiction, designed to provide regular and useful employment opportunities for those who are able, willing, and seeking to work; that no nation attempt to solve its domestic employment problem by measures that would contract world trade; and that all nations cooperate in an effort to stabilize production by exchanging information and participating in consultations with respect to antidepression policies.

"The purpose," in the words of the *Proposals,* "is to make real the principle of equal access to the markets and the raw materials of

the world, so that the varied gifts of many peoples may exert themselves more fully for the common good. The larger purpose is to contribute to the effective partnership of the United Nations, to the growth of international confidence and solidarity, and thus to the preservation of the peace."

THE GRASS ROOTS

These proposals were not prepared in haste: they were developed by a series of committees, drawn from the various departments and agencies of the government, that met continuously in Washington, under the chairmanship of the Department of State, from the spring of 1943 to the autumn of 1945. They were built upon experience: they carry forward policies that have been incorporated in our commercial treaties and in our trade agreements over many years; they further develop suggestions that were advanced at international economic conferences between the two world wars; they draw upon the lessons from history that were set forth by the Economic and Financial Committees of the League of Nations in their last reports.* The *Proposals,* however, are distinctively American: in substance, if not in detail, they parallel the comprehensive programs that have been presented by such bodies as the Committee on Economic Development, the Committee on International Economic Policy of the Carnegie Endowment for Peace, the National Foreign Trade Council, the National Planning Association, the Twentieth Century Fund, and the Special Committee on Postwar Economic Policy and Planning of the House of Representatives; † they follow the line of policy that has been recommended by every American scholar who has written on the sub-

* Economic and Financial Committees of the League of Nations, *Commercial Policy in the Postwar World* (Princeton, 1945).

† Committee on Economic Development, *International Trade, Foreign Investment and Domestic Employment* (New York, 1945); Committee on International Economic Policy, *World Trade and Employment* (New York, 1944); National Foreign Trade Council, *A Proposed Foreign Economic Policy for the United States* (New York, 1946); National Planning Association, *America's New Opportunities in World Trade* (Washington, 1944); Twentieth Century Fund, *Report of the Committee on Foreign Economic Relations* (New York, 1947); House Special Committee on Postwar Economic Policy and Planning, *Postwar Foreign Economic Policy of the United States* (Washington, 1945).

ject in recent years; * they embody principles that have been approved by major groups representing American business, labor, and agriculture, the women's organizations, and the churches, by the all but unanimous voice of the nation's press † and, according to every poll of public opinion that has been taken since the war, by the overwhelming majority of the American people.‡ The world that is pictured in these proposals is the kind of world that Americans want.

Public opinion, in the United States today, stands in sharp contrast to that prevailing in the years which followed the First World War. Then we made new loans to the rest of the world; now, again, we are making such loans. But then we sought to recover, with interest, the sums that we had advanced to our allies to finance the prosecution of the war. And, at the same time, we raised our tariff so fast and so far as to make it difficult, if not impossible, for any of these debts to be paid. Now, however, we have written off the wartime balance of the lend-lease account and we have taken the lead in reducing barriers to trade. We have come, at last, to recognize the requirements of our position as the world's greatest creditor. We have demonstrated that we can learn from history.

* See, e.g.: Percy W. Bidwell, *A Commercial Policy For the United Nations* (New York, 1945); Norman S. Buchanan and Friedrich A. Lutz, *Rebuilding the World Economy* (New York, 1947); J. B. Condliffe, *The Reconstruction of World Trade* (New York, 1940), and *Agenda for a Postwar World* (New York, 1942); Herbert Feis, *The Sinews of Peace* (New York, 1944); Alvin H. Hansen, *America's Role in the World Economy* (New York, 1945); Michael A. Heilperin, *The Trade of Nations* (New York, 1947); Calvin B. Hoover, *International Trade and Domestic Employment* (New York, 1945); Otto T. Mallery, *Economic Union and Durable Peace* (New York, 1943), and *More Than Conquerors* (New York, 1947); Oswald G. Villard, *Free Trade—Free World* (New York, 1947).

† Among the editors of country papers replying to a poll in January 1947, 9 per cent favored and 69 per cent opposed a return to high tariffs. Opposition to liberal trade policies, in the metropolitan press, is confined almost entirely to the Hearst papers, the *Chicago Tribune,* the *New York Sun,* the *Wall Street Journal,* and the *Daily Worker.*

‡ The American Institute of Public Opinion reported in May 1945 that 75 per cent of the people favored continuance of the trade-agreements program. The National Opinion Research Center reported in February 1947 that 73 per cent of the people favored and 10 per cent opposed reciprocal tariff cuts; that 83 per cent favored and 7 per cent opposed world trade organization. The Fortune Survey reported in March 1947 that 57 per cent favored lower tariffs and 19 per cent higher tariffs. The Gallup Poll reported in December 1947 that 63 per cent favored and 12 per cent opposed the Geneva tariff agreement and in May 1948 that 80 per cent favored and 8 per cent opposed renewal of the Trade Agreements Act.

CHAPTER 3

OBSTACLES TO AGREEMENT

AGREEMENT on economic policy in the Congress of the United States, in the legislatures of the several states, and even in city councils, is seldom easy to obtain. In international negotiations, the diversity of conditions and the conflicts of interest which obstruct such agreement are multiplied many times. Nations differ from one another in size, in population, in resources, in their degree of economic development, in the variety of their productive activities, in their dependence on foreign trade, in their ability to compete on world markets, in their forms of economic and political organization, in their ideology, in their military strength, their world outlook, and their political independence. Some are large, others small; some sparsely populated, others overcrowded; some with labor fully occupied, others suffering from chronic underemployment; some enjoying high standards of living, others always subsisting on the verge of starvation.

Some countries have resources which are rich and varied; others occupy lands that are barren, their natural wealth confined to a few products and limited in quantity. Some are highly industrialized; others dependent upon the production of foodstuffs and raw materials; others still at the stage of pastoral or nomadic life. Some are creditors; others are debtors. Some could live to themselves; others depend for their very existence on the flow of trade. Some export a great variety of products, others only one or two; some supply the world with primary commodities, others with highly fabricated goods; some are in a strong position to compete on world markets, others are not. Some countries entrust the guidance of production to

the market place; others rely, in greater or lesser degree, upon the action of the state. Some are in a position freely to choose those economic policies that they prefer; others must subordinate economic considerations to political necessity. But each of them possesses sovereign powers.

The task of obtaining international agreement on common rules to govern trade relationships would be difficult enough at any time. It is doubly difficult in the troubled world in which we live today. The preservation of the peace is not assured. The problems of postwar reconstruction are pressing. Negotiations must be carried on in an atmosphere of crisis. The war, instead of moderating the sentiment of nationalism, increased it. The belief has spread, among the undeveloped countries, that industrialization is best to be promoted by restricting trade. Elsewhere there is a deep distrust of the ability of industrial nations to avoid depressions, a willingness to sacrifice productivity to obtain security, and a conviction that defenses against the spread of unemployment must be preserved, and these attitudes, born of the Great Depression of the thirties, serve to reenforce pressures for restrictionism that were already strong. Collectivism is on the rise and, even where production has not been socialized, there is increased reliance on central planning and public control of economic life. Faith in individual initiative, devotion to competitive enterprise, and willingness to accept the judgment of free markets do not prevail throughout the modern world.

In their approach toward the problems of trade policy, the countries participating in international negotiations now fall into four major groups. In the first group, which includes the United States, Canada, Belgium, Holland, and the Scandinavian countries, there is a strong desire to reestablish a world trading system based on multilateralism and non-discrimination. In the second group, which includes Great Britain and France, recognition of the eventual desirability of multilateralism is overshadowed by preoccupation with the immediate necessities of reconstruction. In the third group, which includes most of the countries of Latin America, Asia, and the Middle East, the predominant concern is with the promotion of industrial development. The fourth group, which includes the countries of Eastern Europe, is committed to collectivism; its economic

interests are subordinated to the political purposes of the Soviet Union. Two other countries, once major factors in world trade, no longer count; for the time being, at least, Germany and Japan are down and out.

These were the obstacles that had to be overcome in negotiating the *Havana Charter*; these were the attitudes of the countries that participated in the negotiations. These obstacles and these attitudes will now be examined in greater detail.

THE ATMOSPHERE OF CRISIS

Uncertainty as to the prospects for peace necessarily obstructs the conclusion of effective agreements governing national policy in the field of trade. It reduces the attractiveness of foreign investment. It makes nations reluctant to depend increasingly on foreign markets and sources of supply. It subordinates considerations of economy to those of strategy. It discourages the demobilization of authoritarian controls. The fear of war argues against the reestablishment of multilateralism. And this fear prevails throughout the world today. There is a dangerous rift in world politics; there is doubt that the United Nations can preserve the peace. This situation in itself presents a serious obstacle to agreement on commercial policy.

Uncertainty, moreover, is not confined to politics: the economic future also is in doubt. In those countries that were devastated by the war, economic life has been disorganized: plant and man power have been impaired; investments and markets have been lost; debts have mounted; financial stability has been destroyed; costs and prices have risen; currencies have been thrown into chaos. There is a pronounced imbalance in the world's trade. Goods everywhere are in short supply. Even under the best of circumstances, the struggle to restore production, to halt inflation, to stabilize currencies, to establish new patterns of trade, and to restore balance in economic relationships will be long and hard. And fair weather, unfortunately, is not assured. The most pressing of economic problems, therefore, are those of reconstruction. In such a situation, questions of long-run commercial policy must necessarily be relegated to a secondary place.

After the American *Proposals* were published, the conditions of

world trade went from bad to worse. Great Britain, in accordance with the provisions of the *Anglo-American Financial Agreement,* relaxed her restrictions on the convertibility of sterling on July 15, 1947. The world-wide demand for goods that were available only in the dollar area provoked a run on the pound. Britain's dollar reserves and her American credit rapidly approached exhaustion. Convertibility, assumed thus prematurely, had to be abandoned on August 20, 1947. And this step had its repercussions all around the world. Not only did Britain reenforce restrictions on her imports, but countries selling to her and buying from the United States also imposed restrictions so that their dwindling supplies of dollars might be conserved. Disaster impended; the only hope for the economic future of Europe and indeed for that of the Western world was offered by the Marshall Plan. But the nature and the extent of American aid was yet uncertain. In an atmosphere verging on panic, the final preparations for the conference at Havana were carried on.

THE ATTITUDE OF GREAT BRITAIN

The task that confronts the United Kingdom is formidable in the extreme. If she is eventually to relax the restrictions that she now imposes on her imports, she must obtain relief from the remaining burden of her war-time debt and she must nearly double the prewar volume of her export trade. She must increase her exports in order to make up for the loss of purchasing power occasioned by the decline of earnings from foreign investments and shipping services and the disappearance of former markets, in order to service her large foreign debt, and in order to pay for the heavy imports that she will require to feed her people and reconstruct her industries. If she is to achieve the necessary volume of exports, she must stimulate inventiveness, increase efficiency, and develop salesmanship. She must produce new goods and better goods at lower costs and prices and sell them in competition on the markets of the world.

Britain has improved her foreign-exchange position, since the crisis of 1947, by the application of direct controls. She has drastically restricted domestic consumption. She has greatly expanded her industrial output and her foreign sales. But British industry has long lacked its former drive; its plants have grown obsolete; its sales

methods have become outmoded; it has feared to face competition; it has sought the shelter of market sharing and price fixing through domestic and international cartels. Many of the policies of the present government, moreover, have operated to impair the competitive position of British firms. In certain industries, the ever present threat of nationalization inhibits new investment, the enhancement of efficiency, and the reduction of costs. The immigration of badly needed labor has been restricted; working time has been curtailed; consumption has been subsidized; goods have been rationed and prices controlled; the incentive to work has been impaired. The government has gone forward, too, with social programs that, however laudable, exceed the resources now at its command. Projects for housing, medical care, and education, involving large-scale construction, serve both to increase imports and to check exports, thus impeding the restoration of balance in external trade. Britain's military commitments, at the same time, have remained far larger than her economy could well afford. For all of these reasons, her progress toward stability has been less rapid than might otherwise have been the case.

In this situation, British opinion on long-run trade policy has been sharply divided. According to one school of thought, the United Kingdom cannot expect to compete, on an equal basis, with the other nations of the world; her hope for exports lies in markets that are sheltered by preferences, bilateral agreements, and barter deals. Britain, accordingly, must employ the power implicit in her trading position to drive bargains that will accrue to her advantage when she trades with weaker states. Avoiding the risks of multilateralism, she must seek her salvation in the deliberate and systematic practice of discrimination. But this course, too, involves its risks, for it is based upon the assumption that Britain would be allowed to follow it alone; that other powerful traders, including the United States, would not retaliate. And this assumption might not prove to be correct.

Fortunately, belief in the long-run advantages of bilateralism is neither the prevailing nor the official view. It is recognized that Britain is peculiarly dependent on her external trade; that she must import essential goods and export non-essentials; that she would

suffer more than almost any other country if the commerce of the world were to be organized on the basis of systematic discrimination; that she stands to gain more than almost any other country from the opening of markets and the freeing of trade. Multilateralism is thus the long-run goal which Britain seeks.

But multilateralism is clearly regarded as a long-run goal. In the present imbalance of her trade, Britain is convinced that restrictionism and discrimination are necessities. And she pursues them, for the moment, without regard to their ultimate effects. Her officials are preoccupied, not with the policies that will be appropriate five years hence, but with those that will produce results in the next five months or in the next five weeks. And in the situation in which they find themselves, a certain myopia is not difficult to understand.

THE FETISH OF INDUSTRIALIZATION

There has been a resurgence of nationalism since the war: new states have been created; areas that were once dependent have attained equality of status; colonial peoples have been set free. In all these regions, moreover, there is a conviction that political independence must be reenforced by independence in economic life. In many relatively undeveloped countries, new industries were established during the war and the desire to preserve and expand them is strong. In backward areas throughout the world, there is an insistent demand that standards of living be improved and an irrational belief that this improvement is to be obtained only through a rapid industrialization of their economies. Almost everywhere it is the view that this industrialization cannot be achieved unless severe restrictions are imposed on foreign trade. There is a pronounced reluctance, therefore, to assume commitments that would limit the freedom of nations to impose such restrictions, and proposals looking in this direction are certain to be denounced as attempted infringements of national sovereignty.

"Economic development" is a slogan that always evokes a favorable response. Nobody is really opposed to economic development; every nation stands to gain from the enhancement of productivity and the expansion of purchasing power throughout the world. But the phrase is all too often used to give protective coloration to poli-

cies that may do more harm than good. Plans for the advancement of production in agriculture and the extractive industries arouse little real enthusiasm among the spokesmen for undeveloped areas; when they say "development" they mean "factories." Sound industrialization is certainly to be desired; but many countries seem to hold that manufacturing is a good thing in itself and that it is therefore unnecessary, in the selection and location of industries, to apply the test of comparative costs and ultimate competitive efficiency. Development is therefore held to justify protectionism and the two words have come to be used as if they were synonymous. The drive for industrialization thus brings powerful support to the opponents of freer trade.

INDIA AND LATIN AMERICA

In India, as in other undeveloped countries, the original American *Proposals* were regarded with deep suspicion. They were designed exclusively, it was said, to serve the present needs of the industrial powers. They offered no hope of reducing disparities in living standards between the nations of the world. They afforded no positive program for the development of backward areas. Their approach was wholly negative; they would deny to undeveloped nations freedom to use the very devices by which the industrial powers had established their preeminence. It was their apparent motivation to keep the one group in a position of dependence so that the ascendency of the other might be preserved. It was the basic policy of India, on the contrary, to promote rapid and large-scale industrialization, and the effectuation of this policy required the imposition of direct controls on foreign trade. Such controls should not be judged by themselves but by the purposes for which they were employed. And the purpose of economic development was clearly justified. In this fundamental conflict of interests between the developed and the undeveloped states, India should assume no obligations that would tie its hands. So ran the argument, and it should be noted that it appeared to be influenced less by the substance of the *Proposals* advanced by the United States than by the fact that the United Kingdom had accorded them its formal support.

The position of many of the countries of Latin America was

even more extreme. Wealth and income, they argued, should be redistributed between the richer and the poor states. Upon the rich, obligations should be imposed; upon the poor, privileges should be conferred. The former should recognize it as their duty to export capital for the development of backward areas; the latter should not be expected to commit themselves to insure the security of such capital, once it was obtained. The former should reduce barriers to imports; the latter should be left free to increase them. The former should sell manufactured goods below price ceilings; the latter should sell raw materials and foodstuffs above price floors. Immediate requirements should be given precedence over long-run policies, development over reconstruction, and the interests of regionalism over those of the world economy. Freedom of action, in the regulation of trade, must be preserved. The voluntary acceptance, by all states, of equal obligations with respect to commercial policy must be rejected as an impairment of sovereignty and a means by which the strong would dominate the weak. These views are not to be attributed to every state in Latin America, but they have been expressed with such frequency and such vigor as to color the approach to trade negotiations throughout the area.

THE FEAR OF DEPRESSION

One of the consequences of the depression of the thirties is the determination of many states to place stability above efficiency and security above progress in their hierarchy of values. Policy is directed toward the prevention of depression and measures adopted for this purpose are grouped under the label of "full employment." Depression, it is held, is not to be prevented unless the state itself assumes a large share of responsibility for the direction of economic activity. But the best laid plans for stabilization may be upset if exports drop or imports rise. Employment is more easily to be maintained in a closed economy. Emphasis upon employment thus obstructs agreement on measures that would expand trade. Stability argues for independence; freedom of trade creates interdependence; if both are to be sought, the conflict between them must be compromised.

In this situation, the major factor is the economic weight of the

United States. Our country produces half of the world's output of manufactured goods and uses half of its output of raw materials. When our industrial activity falls off, our demand for raw materials falls off proportionately and, since we can then obtain a larger share of them at home, our demand for imported materials falls off even more. Prices fall, production declines, and employment is curtailed. Depression in the United States is thus communicated to the countries from which we buy. They find themselves dragged up and down as we move through successive phases of the business cycle. And they come to the conclusion that close dependence on the American economy involves a heavy risk.

If the United States could assure the other nations of the world that it would not again be visited by deep and prolonged depression, one of the major obstacles to agreement on liberal commercial policies would be removed. But no such assurance can be given. We in the United States are confident that we shall not repeat the experience of the thirties. We have in our hands new knowledge, new resources, and new instruments of control. We shall certainly seek stability, but we cannot guarantee that we shall attain it. And so other nations, distrusting our determination and our capacity to do so, argue that they must retain the power to insulate themselves against us. They may go along with us in policy while times are good, but their defenses against the migration of depression must be preserved.

More articulate than any other country in advancing this thesis is the Commonwealth of Australia. At every opportunity—at the United Nations Conference in San Francisco, at the Conference on Food and Agriculture in Hot Springs, at the International Labor Conference in Philadelphia, at Bretton Woods, and at each of the meetings where the world trade *Charter* was prepared—Australia has focused attention on the international importance of employment policy. She has insisted that agreement to maintain employment is prerequisite to agreement on the reduction of barriers to trade and has urged that every nation commit itself, through domestic action, to preserve stability. And in every case she has obtained recognition for her point of view.

There is some impertinence, of course, in an argument that as-

sumes that the United States is both ignorant of the problem of stability and indifferent to it. There is weakness, too, in a policy which concentrates upon employment to the exclusion of considerations of productivity and real income. But it must be recognized that there is a factual basis for the Australian case. The prices of raw materials fall farther in depressions than those of manufactured goods, and the price of wool, throughout the business cycle, fluctuates more violently than the prices of other raw materials. Nine-tenths of Australia's exports to the United States consist of wool. When our mills are running, she enjoys prosperity. When they shut down, she is plunged into depression. She has a stake, therefore, in the maintenance of employment in the United States. And it is this that has caused her to emerge as the major spokesman for the dependent economies.

STATISM AND FREEDOM OF TRADE

In logic and in practice, freedom of international trade depends upon the preservation of freedom in domestic economic life. In both cases, production is guided by the free choice of consumers, expressed through market price, and governed by competition between independent enterprises in free markets. Freedom in the domestic economy fits into the pattern of multilateralism and non-discrimination in world trade. Regimentation in the domestic economy makes for bilateralism and discrimination. The two world wars and the Great Depression curtailed the scope of free markets and increased reliance on public authority throughout the world. Collectivism, public planning, and centralized control now govern an increasing fraction of the world's work. In different countries, in varying degrees, faith in private initiative and competitive enterprise has disappeared and statism has taken hold. Through inertia and through the pressure of vested interests, controls once established tend to persist and grow. The trend, outside of the United States and but a few other countries, is away from freedom and toward regimentation and it does not encourage agreement on the liberation of world trade.

The realization that the interests and objectives of many other nations differ so sharply from our own has come to many Americans

as something of a shock. In certain cases, the first reaction to this discovery has been a feeling that we might as well wash our hands of the effort to establish common trading principles and go it alone, relying solely on our economic strength. But this hasty conclusion can scarcely survive a second thought. For it should be obvious that our position, both in world economics and in world politics, makes such a course impossible. And it must be acknowledged that our own devotion to the principles of economic freedom has been less wholehearted than we like to think.

THE BEAM IN OUR OWN EYE

The United States has championed active competition in open markets, but it has taken pains to insure, in many cases, that competition will not be too active and that markets will not be opened too wide. The Buy-American Act of 1933 requires that purchases for public use be confined to goods produced or manufactured from materials originating in the United States. Credits extended by the Export-Import Bank may be used only to pay for the services of American individuals and firms and to finance the purchase of materials and equipment produced or manufactured in the United States. According to a resolution adopted by Congress in 1934, exports financed by such loans must be carried in vessels of American registry wherever such vessels are available. American bottoms are granted a monopoly of our coastwise trade. American competition in transoceanic shipping is subsidized.

We are accustomed to speak as if the practice of economic planning were anathema in the United States. But in a major segment of our economy this is not the case. We are no more willing than any other country to leave production in agriculture to the mercies of the market. The maintenance of farm prices at levels unrelated to those obtaining elsewhere in the world is a settled policy of our government. When supplies are ample, this means that we control production and marketing. Where we produce a surplus to sell abroad, we subsidize in order to compete. Where we produce less than we consume at home, we restrict imports so that they will not undercut the established price. The wisdom of our agricultural policy is not here in question, but the fact that it is inconsistent with our

belief in private enterprise and with our efforts to restore a freer trading system should be clear.

Measures that we may wish to employ in the interest of our national security may also come into conflict with our purpose of removing barriers to trade. We may seek to curb the military power of a potential enemy by checking exports of raw materials, capital goods, and industrial technology. We may seek to build up strategic industries by forbidding imports and requiring the use of domestic materials. We may seek to conserve or develop near-by sources of supply by discriminating in our purchases of strategic materials. Considerations of security are over-riding, but it must be recognized that they, too, may lead to the adoption of restrictive policies.

The American *Proposals* took the position that quantitative restrictions, export subsidies, and discriminatory internal taxes and regulations should be condemned in principle. The United States prohibits the exportation of tobacco seed. It has imposed quotas on the importation of cotton, wheat, coffee, sugar, and certain products originating in the Philippines. It has conferred authority upon the Secretary of Agriculture to impose quotas on other imports that may interfere with the maintenance of domestic prices. It has subsidized the exportation of cotton and wheat. It has imposed discriminatory internal taxes on certain fats and oils. It has required the mixing of synthetic materials with crude rubber in the manufacture of rubber goods.

All these things are pointed out to American negotiators whenever they seek a relaxation of foreign barriers to trade. And frequently there is a convincing display of moral indignation in the statement of the case. For Americans have no monopoly of self-righteousness. They may demonstrate, of course, that the record of the United States, in these matters, is cleaner than that of almost any other country in the world. But the pot does not persuade the kettle when he calls him black. Other nations are frankly skeptical that we, ourselves, will conform, in particular cases, or that we will adhere, for many years, to the principles that we now espouse. And in this skepticism we encounter another obstacle to our efforts to reduce the barriers to trade.

CHAPTER 4

NEGOTIATING THE CHARTER

THE establishment of an international trade organization was first proposed in a resolution introduced in the House of Representatives by Cordell Hull, then a member of Congress, during the First World War. The idea was further developed by Huston Thompson, then a member of the Federal Trade Commission, in an address before the American Society of International Law in 1919. It was advanced again in a report presented to the World Economic Conference by the International Chamber of Commerce in 1927. It appeared in one of the resolutions adopted by the Seventh International Conference of American States at Montevideo in 1933. It was brought forward once more by a committee of American experts reporting to a National Peace Conference in 1938. Similar proposals were made by the Postwar Committee of the National Association of Manufacturers in December 1943, by the American Federation of Labor in April 1944, and by an International Business Conference meeting at Rye, New York, in November 1944.

The negotiations that culminated in the completion of the *Havana Charter* date from the publication of the *Atlantic Charter* on August 12, 1941. In that document, the President of the United States and the Prime Minister of Great Britain declared it to be the intention of their governments to "endeavor, with due respect for their existing obligations, to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity." This statement of purpose was adopted by all of the United Nations. Four months after it was published, the United States entered the Second World War.

A *Mutual-Aid Agreement*, dealing with lend-lease relationships, was signed by the United States and the United Kingdom on February 23, 1942. In Article VII of that *Agreement*, the two governments expressed their determination that the terms of lend-lease settlement "shall not be such as to burden commerce between the two countries, but to promote mutually advantageous relations between them and the betterment of world-wide economic relations. To that end, they shall include provision for agreed action by the United States of America and the United Kingdom, open to participation by all other countries of like mind, directed to the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods, which are the material foundations of the liberty and welfare of all peoples; to the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers. . . ." This article was contained in similar agreements with thirteen other governments.

THE YEARS OF PREPARATION

During the next three years, plans were drawn up within the government of the United States and conversations were initiated with other governments looking toward the establishment of international organizations to deal with problems of food and agriculture, to stabilize currencies, to provide credits for reconstruction and development, and to reduce barriers to trade. As a part of this program, proposals relating to an international trade organization were developed by a series of interdepartmental and interagency committees meeting continuously in Washington from the spring of 1943 to the summer of 1945 under the general chairmanship, successively, of Myron C. Taylor, Dean Acheson, and William L. Clayton, then Assistant Secretaries of State. These proposals were explored in a number of meetings, known as the "Article VII conversations," with a group of British officials in the autumn of 1943, with Canadian officials in the early months of 1944, and with each group, in London and in Ottawa, during the summer of 1945. In the work of the interdepartmental committees and in the Article VII conversations, the substance of the American *Proposals* began to take shape.

The interdependence of the programs that were developed in each area of economic cooperation was clearly recognized. The United Nations Conference on Food and Agriculture, meeting in Hot Springs in May 1943, recommended that governments agree "to reduce barriers of every kind to international trade and to eliminate all forms of discriminatory restriction thereon as effectively and as rapidly as possible." The International Labor Conference, meeting in Philadelphia in May 1944, recognized "the great contribution which the international exchange of goods and services can make to higher living standards and to high levels of employment" and recommended vigorous action to promote the expansion of international trade. The United Nations Monetary and Financial Conference, meeting at Bretton Woods in July of the same year, included among the purposes of the International Monetary Fund and the International Bank for Reconstruction and Development, promotion of the expansion and balanced growth of international trade, and the Conference recommended to participating governments that "they seek, with a view to creating, in the field of international economic relations, conditions necessary for the attainment of the purposes of the Fund and of the broader primary objectives of economic policy, to reach agreement as soon as possible on ways and means whereby they may best reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations. . . ."

The final draft of the American *Proposals for the Expansion of World Trade and Employment* was completed in the course of the negotiations that led up to the *Anglo-American Financial Agreement* and the two documents were published on December 6, 1945. They were accompanied by an understanding on commercial policy, in which the United Kingdom expressed its "full agreement on all important points" in the *Proposals,* accepted them as a basis for international discussion, and promised to use its best endeavors to bring such discussions to a successful conclusion. In a series of notes exchanged with the United States between October 1945 and December 1946, the governments of Belgium, Greece, Poland, France, Turkey, Czechoslovakia, and the Netherlands endorsed the purposes of the *Proposals* and agreed to avoid action that would prejudice the outcome of the projected negotiations.

Copies of the *Proposals* were forwarded to every other country in the world. At the same time, the United States extended to fifteen other countries (the United Kingdom, the Soviet Union, France, and China; Canada, Australia, New Zealand, South Africa, and India; the Netherlands, Belgium, Luxembourg, and Czechoslovakia; Brazil and Cuba) invitations to participate in definitive negotiations for the reduction of tariffs and other barriers to trade. Action by the United States in these negotiations was to be taken within the limits of the authority conferred by Congress when it amended and renewed the Trade Agreements Act in 1945. The invitations extended by the United States were accepted by fourteen countries; the Soviet Union has never replied.

At the first meeting of the Economic and Social Council of the United Nations, held in London during the early months of 1946, the United States introduced a resolution providing for the calling of an International Conference on Trade and Employment and the appointment of a Preparatory Committee to elaborate its agenda. The subjects suggested for inclusion in the agenda, item by item, were those contained in the American *Proposals*. The resolution was adopted without a dissenting vote. The United States and the countries which it had invited to participate in tariff negotiations were appointed to the Preparatory Committee. To this group the Council added Norway, Chile, and Lebanon. The United States thereupon invited these three countries to join the tariff-negotiating group.

During the spring of 1946, the interdepartmental committees that had developed the American *Proposals* prepared a *Suggested Charter for an International Trade Organization*. This document was an elaboration of the *Proposals*; but, since it was purely an American draft, it did not in any way commit those countries that had endorsed the *Proposals*. The *Suggested Charter* was circulated to governments belonging to the Preparatory Committee and discussed with them in conversations held in their capitals during the summer of 1946. It was presented to the American people as a basis for public discussion in September of that year.

The first meeting of the Preparatory Committee was held in London from October 15 to November 26, 1946, with all of its members except the Soviet Union in attendance. Despite the initial reluctance

of Australia to go beyond exploratory conversations and the reluctance of the United Kingdom and France to give formal recognition to the *Suggested Charter,* the Committee adopted an agenda which duplicated the outline of the American draft and voted to accept the text of that draft as the basis for its deliberations.

THE ISSUES AT LONDON

The central issue at London was raised by the proposal of the United States to outlaw the use of quantitative restrictions as a matter of principle, permitting them only with international approval in exceptional cases and requiring that they be administered, in such cases, without discrimination. The principle was generally accepted; the extent and character of the exceptions, however, were a matter of debate. Easier escapes were advocated to enable nations to meet balance-of-payments difficulties, to maintain full employment, and to promote economic development. The balance-of-payments issue was the principal concern of the United Kingdom and France. Though technical in character, it was clear cut and it was finally compromised by a textual revision that retained the intention of the American draft. The employment issue and the industrialization issue were championed by Australia; here the attack upon the rule condemning import quotas was oblique.

The Australians argued that the American draft was negative rather than affirmative, consisting of prohibitions rather than positive measures to expand trade. With the support of the British, they sought to emphasize the fundamental importance of maintaining full employment. But neither government proposed any positive international measure directed toward this end. Instead, they argued that any member of the trade organization should be permitted to restrict imports in any way it chose whenever another member's demand for its products should decline sharply or whenever another member, over a long period of time, should buy and invest abroad far less than it sold. They were concerned, in short, with the possible consequences of an American depression or the persistence of imbalance in the trade of the United States. It was finally recognized, however, that financial difficulties would arise in either case and that the balance-of-payments provisions of the *Charter* would therefore

apply. The only affirmative provision with respect to the maintenance of employment adopted at London made it a matter of domestic policy; this was the proposal that had originally been made by the United States.

Australia also took the lead in presenting the case for industrialization, and here it was supported by India, China, Lebanon, Brazil, and Chile. But here, too, affirmative proposals were wanting. The real concern was that freedom to promote industrialization by imposing quotas on imports be retained. This appeared, for a time, to present an issue on which negotiations might break down. The controversy was resolved, however, when the United States proposed for inclusion in the *Charter* a new chapter on economic development, including an article under which a member of the trade organization might obtain permission, in a particular case, to employ an import quota in promoting the development of a new industry.

In the debates on restrictive business practices, the anticartel forces were led by Canada and the United States; their principal opponents were the United Kingdom, Belgium, and the Netherlands. The chapter that was finally adopted followed the outline contained in the American *Proposals.* The United States had inserted in the *Suggested Charter* a presumption that certain practices were restrictive in their effects; this was dropped. The chapter was strengthened, however, by including private monopolies and state-trading enterprises within its scope.

On commodity policy, the Committee was confronted with an effort made within the FAO to separate agricultural commodities from other commodities and commodity policy from trade policy by setting up a comprehensive buffer-stock, surplus-disposal, and relief operation under a World Food Board. It was the American position that a common policy should apply to agricultural and non-agricultural commodities and that commodity policy should be kept in relation with commercial policy under the international trade organization; this position was accorded general support. A British effort to obtain specific endorsement for buffer stocks was defeated. The chapter that finally emerged retained the safeguards proposed by the United States.

Save for the addition of a chapter on economic development, the

document completed at London followed the pattern of the American draft, incorporating the proposals made respecting commercial policy, cartels, commodities, employment, and an international trade organization without changes of major significance. On certain articles, dealing with indirect forms of protection, voting power in the organization, and relations with non-members, the Committee did not complete its work. It therefore appointed a Drafting Committee to prepare proposals on the first two of these matters and to edit the entire text. This Committee, meeting in Lake Success from January 20 to February 25, 1947, produced a third edition of the *Charter*, known as the "New York draft."

While the Preparatory Committee was meeting in London, the Acting Secretary of State, in accordance with procedures adopted under the Trade Agreements Act, gave notice of intention to enter into tariff negotiations with the members of the group. Upon the motion of the United States, the Committee agreed that these negotiations should be held at Geneva at the time of its second meeting in the spring and summer of 1947 and it approved a memorandum outlining the negotiating procedures that were to be employed.

PREPARATIONS FOR GENEVA

Public hearings on the tariff list were opened before the Interdepartmental Committee on Reciprocity Information in Washington on January 13, 1947. The statements presented in these hearings were then examined by the Interdepartmental Committee on Trade Agreements, together with studies made by the Tariff Commission and other relevant materials. On the basis of the recommendations made by this Committee, the President then set the limits within which the United States would be permitted to negotiate. At the same time, in accordance with proposals made by Senators Vandenberg and Millikin, the President issued an *Executive Order* requiring the inclusion of an escape clause in future trade agreements and establishing certain procedures to be followed in their negotiation and administration.

The London draft of the *Charter* was circulated widely throughout the United States and informal public hearings on the draft were held before the Executive Committee on Economic Foreign Policy

in Washington, New York, Boston, Chicago, New Orleans, Denver, and San Francisco during February and March of 1947. Some two hundred representatives of business, agricultural, labor, and civic organizations appeared at these hearings. The great majority of them expressed their general approval of the purposes of the *Charter* and their support for the project of establishing a trade organization. Many of them made specific suggestions for the improvement of the draft. Detailed analyses of the *Charter* were also made by the National Foreign Trade Council, the National Association of Manufacturers, the United States Chamber of Commerce, and the United States Associates of the International Chamber of Commerce, and their recommendations were discussed in a series of meetings with the Department of State. The New York draft of the *Charter* was the subject of thorough hearings before the Senate Committee on Finance under the chairmanship of Senator Millikin during March and April 1947; defects were pointed out and suggestions for improvement were made.

All of these recommendations and suggestions were brought together and studied by the Executive Committee and many of them were incorporated in the instructions which the American delegation carried to the second meeting of the Preparatory Committee. This meeting convened in Geneva on April 10, 1947.

THE ISSUES AT GENEVA

At Geneva, between early May and late August, the text of the *Charter* was reorganized, obscure passages were clarified, inconsistencies were removed, and the appearance of the document was generally improved. Almost without exception, the changes that had been suggested in the United States were accepted and the draft was amended accordingly. Of particular importance was the inclusion of two new articles, one limiting the freedom of nations to discriminate against foreign motion-picture films and the other dealing with the treatment of private foreign investment. The latter article, while unacceptable in substance, did serve to bring the subject of foreign investment within the scope of the *Charter*. On only one point did the United States suffer a reversal: at the instance of Canada, the Committee adopted an amendment forbidding the use

of export subsidies without the prior approval of the trade organization. On this point the position of the United States was formally reserved.

The major issues of the meeting again centered in the character of the two principal exceptions to the rule condemning import quotas: the articles dealing with balance-of-payments difficulties and with the promotion of economic development. The United Kingdom and France sought greater latitude for discrimination in the administration of quota systems and their desires were met, in part, by the substitution of a text permitting such discrimination if fixed criteria were satisfied. At the same time, the safeguards surrounding the balance-of-payments exception were strengthened, at the instance of the United States, by the adoption of an amendment requiring the trade organization, in deciding whether a member were in such financial difficulty that the exception could be used, to accept the determination of the International Monetary Fund. This amendment had particular significance because of the heavy vote accorded the United States in the decisions of the Fund.

Under the leadership of India, the battle for freedom to promote industrialization through the use of import quotas and other restrictive devices was resumed. This time, however, the attack was centered on provisions requiring undeveloped countries, before employing such devices, to obtain the prior approval of the organization. It was proposed, as an alternative, that freedom to impose restrictions in the name of economic development be restored and that the organization be given power subsequently to examine the measures adopted and to order their discontinuance. The difference on this issue was again compromised, this time by the adoption of amendments speeding up consideration of applications for exemption, preventing the postponement of decisions by obstructionist delays, and creating a presumption in favor of an affirmative decision where certain conditions were fulfilled. But the principle of prior approval was retained.

On three issues the Committee took no final stand. With respect to voting power in the trade organization, the composition of its executive board, and relations between members and non-members, it prepared alternative drafts for consideration by the world confer-

ence that was to meet at Havana in the fall. The Committee completed its work on the *Charter* on August 22, 1947.

THE "GATT"

Twenty-three countries participated in the tariff negotiations that accompanied the work on the *Charter* at Geneva. The Soviet Union again failed to appear. The eighteen other members of the Preparatory Committee were joined, in these negotiations, by Syria as a member of a customs union with Lebanon; by Burma, Ceylon, and Southern Rhodesia as autonomous customs territories within the British Commonwealth; and by Pakistan, whose independence was declared while the meetings were in progress. The bargaining proceeded on a product-by-product basis between pairs of countries and was confined to products for which one of the parties was the other's principal supplier. The concessions thus obtained, however, were generalized to every member of the group. Among twenty-three countries, more than 170 of these bilateral talks were possible. In some cases, however, the volume of trade was insignificant; 123 bilateral negotiations actually occurred. The United States was a party to twenty-two of them; 101 took place among the other members of the group. The simultaneous staging of these negotiations thus produced a round of concessions that otherwise would never have been made. Some fifty thousand items were considered in more than a thousand meetings held over a period of six months. The final results of the 123 negotiations were incorporated in a single document, the *General Agreement on Tariffs and Trade,* which was completed on October 30, 1947.

The parties to the *General Agreement* carried on three-quarters of the world's trade before the war; they handled a much larger fraction in 1947. The *Agreement* covered two-thirds of the trade among the members of the group. It provided for substantial reductions in duties on some products, the binding of low rates of duty on others, and the binding of free entry on still others. It reduced preferences affecting a large part of the trade of the British Commonwealth and eliminated preferences on a long list of products imported by the various countries of the Commonwealth. It was accompanied by an exchange of notes between Canada and the United Kingdom

in which each country released the other from its contractual obligations with respect to remaining preferences, thus removing an obstacle to their further elimination. The *GATT* provided, moreover, that no new preferences could be created and no existing preferences increased.

All of these concessions were safeguarded by general provisions designed to prevent participating countries from canceling them out by resorting to other forms of restriction or discrimination. These provisions, paralleling the rules of the *Charter,* covered restrictive methods of customs administration, discriminatory internal taxes and regulations, quota systems and exchange controls, and the operation of state-trading enterprises. They insured the application of the principle of most-favored-nation treatment to a major part of the world's trade.

The *General Agreement* was without precedent in history. It included more countries, covered more trade, involved more extensive action, and represented a wider consensus on commercial policy than any agreement that had ever been concluded in the past. It afforded a hopeful contrast to the record of failure that had characterized the years between the two world wars. The announcement of its provisions, on November 18, 1947, created an atmosphere that was favorable to the success of the United Nations Conference on Trade and Employment which opened in Havana on November 21st.

THE ISSUES AT HAVANA

Fifty-six nations sent delegations to Havana; others were represented by observers; the Soviet Union did not attend. The conference opened with a chorus of denunciation in which the representatives of thirty undeveloped nations presented variations on a single theme: the Geneva draft was one-sided; it served the interests of the great industrial powers; it held out no hope for the development of backward states. Some eight hundred amendments were presented, among them as many as two hundred that would have destroyed the very foundations of the enterprise. Almost every specific commitment in the document was challenged. Proposals were made for many broad escapes. Quantities of irrelevant material were introduced. There were attempts to confine the new trade organization

to purely advisory functions. There were provisions designed to make it difficult, if not impossible, to bring the *Charter* into force. With this beginning, the conference went to work.

On most matters, though the debates were vigorous, agreement without significant compromise was achieved. The articles relating to invisible tariffs, state trading, restrictive business practices, commodity agreements, and employment retained the principles set forth in the Geneva draft. The objectionable provisions of the article on foreign investment were dropped. The requirement of prior approval for export subsidies was removed. Criteria governing the gradual development of customs unions and free trade areas were elaborated in some detail. The issue concerning voting power in the trade organization was settled on the basis of one-country, one-vote; on certain questions, however, a two-thirds majority was required, and the finality of the International Monetary Fund's determination with respect to the use of the balance-of-payments escape clause was retained. Countries of major economic importance, including the United States, were given permanent seats on the organization's executive board. The problem of relations with non-members was settled by a formula which did not require members to penalize non-members but gave its sanction to the adoption of such a policy.

Greater freedom to discriminate in the administration of quota systems by countries in financial difficulties was again sought by the nations of Western Europe. This issue, which was bitterly contested over many weeks, was finally decided by affording countries adhering to the *GATT* the privilege of choosing, in effect, between the provisions of the London and Geneva drafts. The resulting article bears the marks of a hard-fought compromise. Latitude for discrimination is now confined, however, to a transition period that can be terminated by the International Monetary Fund.

The most violent controversies at the conference and the most protracted ones were those evoked by issues raised in the name of economic development. Under the leadership, this time, of several of the Latin American states, the undeveloped countries attacked the Geneva draft at several points. They challenged the commitment to negotiate for the reduction of tariffs. They objected to a provision which enabled parties to the *GATT* to determine whether this com-

mitment had been fulfilled. They sought freedom to set up new preferential systems, impose import quotas, and employ other restrictive devices without prior approval. And they proposed that a semi-autonomous economic development committee be established within the trade organization for the purpose of facilitating these escapes.

These issues were resolved, following a prolonged deadlock, by a series of compromises. The rules that had governed the tariff negotiations at Geneva were spelled out in the *Charter* and the commitment to negotiate was retained. Countries denied admission to the *GATT* were accorded the right to appeal this decision to the trade organization. Parties to the *GATT*, on the other hand, were permitted, after two years, to confine most-favored-nation treatment to its members, thus putting pressure on other countries to make the concessions that would enable them to join. The proposed committee on economic development was dropped. Provision was made for the promotion of economic development by the establishment of new preferences between members of the organization, but only if both of the countries involved should satisfy a number of criteria and if the organization should approve. Alternative methods of obtaining permission to use import quotas to develop new industries were elaborated in great detail and in two limited cases (industries established during the war and those fabricating raw materials deprived of markets by the action of other governments) permission was made automatic, but its duration was kept under control. The principle of prior approval was again preserved.

THE SIGNIFICANCE OF HAVANA

The *Final Act* of the Havana conference was signed by fifty-three countries on March 24, 1948. Argentina and Poland refused to sign; the transmission of Turkey's authorization was delayed. The *Final Act* authenticated the text of the *Havana Charter*. It did not commit governments to ratify.

The *Charter* is the most comprehensive international economic agreement in history. Its provisions cover most of the problems of commercial relations in minute detail. The commitments they contain are fundamental in importance; they are more extensive than those assumed in any previous agreement. As it stands today, the

Charter is the product of more than three years of careful preparation in the United States and almost eighteen months of continuous international negotiation. No such document has ever had fuller consideration or been written with greater care. The importance of its provisions and the vast amount of labor that has gone into them justify patient analysis and objective appraisal. It is to this task that we now turn.

PART II

ANALYSIS OF THE HAVANA CHARTER

CHAPTER 5

THE CHARTER IN A NUTSHELL

IT IS the central purpose of the *Havana Charter* to contribute to the improvement of living standards all around the world by promoting the expansion of international trade on a basis of multilateralism and non-discrimination, by fostering stability in production and employment, and by encouraging the economic development of backward areas. It will be the purpose of the International Trade Organization, which is established by the *Charter*, to substitute cooperation for conflict, in international commerce, in industrial stabilization, and in economic development, by providing a medium through which nations may regularly consult with one another concerning the international consequences of national policies.

The numerous provisions of the *Charter*, covering the whole range of trade relationships, are set forth in nine chapters and 106 articles. Some of these articles are confined to general statements of principle. Others contain definite commitments as to national policy; they have to do, primarily, with governmental barriers to trade—tariffs, import and export quotas, exchange controls, internal taxation and regulation, restrictive customs requirements, preferences and other forms of discrimination, state trading, and subsidies—and, secondarily, with such related matters as restrictive business practices in international trade, intergovernmental commodity agreements, international aspects of domestic stabilization policies, economic development, and international private investment. These articles are accompanied by others which contain qualifying provisions, enumerating general exceptions or making it possible for a signatory of the *Charter* to obtain a release from one of its obliga-

tions. In these cases, the pattern adopted, as suggested in the original American *Proposals*, is the enunciation of a general rule, the specification of exceptions to the general rule, narrowly limited and precisely defined, and the establishment of regulations and procedures whereby members of the Organization may avail themselves of these exceptions. Provision is made, in other articles, for the settlement of differences and for adjustments by which the balance of mutual advantage, if it is disturbed, may be regained. General principles are thus preserved; freedom to take action that would be harmful to others is limited; and restrictive measures are brought under international control. The remaining articles of the *Charter* outline the structure, the functions, and the procedures of the ITO.

GENERAL PRINCIPLES

The principles that are recognized, explicitly or implicitly, in the text of the *Charter*, are these—

That barriers to trade, other than tariffs, should be eliminated or minimized.

That tariffs should be reduced and preferences eliminated.

That trading areas should be widened by forming customs unions and free trade areas.

That, in general, member states should not discriminate among other member states.

That members should not be required, however, to extend equal treatment to non-members or to members who do not agree to reduce barriers to trade.

That state-trading operations should be governed by the principles that apply to private trade.

That subsidies should not be used to obtain more than a fair share of the world market.

That international trade should not be restrained by public or private monopolies or cartels.

That intergovernmental agreements with respect to trade in primary commodities should conform to established principles.

That the maintenance of industrial stability and fair labor standards are essential to the expansion of world trade.

That economic development and reconstruction will expand world trade and increase real income.

That international private investment, if afforded security, will promote economic development.

That the use of protective measures to promote economic development may be justified.

That members should consider the effect of their trade policies on others and consult with them upon request.

The obligations in which these principles are embodied and the qualifications by which they are accompanied may be briefly summarized.

TARIFFS AND PREFERENCES

Members of the ITO must carry out negotiations directed, through selective and mutually advantageous action, toward the substantial reduction of tariffs. But if, through unforeseen developments, a particular reduction should increase imports so sharply as to cause or threaten serious injury to domestic producers, a member may suspend its operation in whole or in part.

Reductions in tariffs will operate to reduce or eliminate margins of preference. Aside from the existing preferences that may survive negotiation, each member must grant every other member engaging in such negotiations equal treatment for its trade. No new preferences may be created; no existing preferences may be increased. Permission may be obtained, however, for new preferential arrangements that are required to promote economic development and for those which are incidental to the formation of a customs union or free trade area.

INVISIBLE TARIFFS

Members must not hamper trade by imposing discriminatory internal taxes or regulations or new measures requiring manufacturers to mix domestic materials with imported ones, by employing restrictive methods of customs administration, or by resorting to other hidden forms of protection. In the case of motion pictures, the only restriction allowed is a requirement that a certain fraction of screen time must be devoted to the exhibition of domestic films; such quotas are made negotiable and remaining screen time must be kept open to free competition. Members must afford freedom of transit to goods moving across their territories. They must confine anti-dumping and countervailing duties to cases of actual injury and limit them

in amount. They must publish, fully and promptly, all statistics, laws, regulations, decisions, rulings, and agreements affecting international trade.

IMPORT AND EXPORT QUOTAS

As a general rule, quantitative limitations on imports and exports are forbidden. But this rule is qualified by a number of necessary exceptions. Most of these are technical in character or temporary in duration. Two are more important. Import quotas on agricultural products may be used to supplement domestic production and marketing controls and surplus disposal programs if such quotas do not reduce the share of imports in the domestic market. And a member may employ import quotas to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves or, in the case of a member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. Under the latter provision, a member may select imports on the ground of essentiality. But it may not completely exclude any class of goods. It must avoid unnecessary damage to the interests of other members. It must seek to restore equilibrium in its balance of payments on a sound and lasting basis and to assure an economic employment of productive resources. It must consult with the ITO concerning the effect of its restrictions on other countries, the causes of its monetary difficulties, and the ways in which they may be overcome. It must relax its quotas as its monetary position improves and eliminate them entirely when its difficulties disappear.

Where quotas are permitted, they must be administered without discrimination. But there are also necessary exceptions to this rule. In the main, these exceptions are designed to make the provisions of the *Charter* consistent with the *Articles of Agreement* of the International Monetary Fund. The most important of them is limited in duration, for each country, to the length of its transition period in the Fund. Such a country must undertake, during this period, so to administer its restrictions as to promote the maximum possible development of multilateral trade. It must conform either to the rules of the Fund or to strict criteria laid down in the *Charter* and administered by the ITO. And it must consult the Fund or the ITO if it

wishes to discriminate after March 1, 1952, conform to such limitations as they may prescribe, and abandon any practices to which they may object.

EXCHANGE CONTROLS

Since quota systems and exchange controls may be used alternatively to restrict trade, it is important that the rules that govern these two devices be laid down and administered consistently, so that it will be impossible, by resorting to one of them, to escape from the rules that govern the other. Accordingly, the *Charter* provides that members shall not, by exchange action, frustrate the intent of the *Charter*, nor by trade action, the intent of the *Articles of Agreement* of the International Monetary Fund. Members of the ITO who do not belong to the Fund are required to join it or, failing this, to enter into a special exchange agreement with the ITO. Any such agreement would be established and administered in collaboration with the Fund.

STATE TRADING

The rules that regulate state-trading enterprises parallel those that govern public control of private trade. A member maintaining a state monopoly must declare the margin that it will add when it sells an imported product in its domestic market. It must negotiate with respect to the height of this margin in the same way in which members negotiate with respect to tariffs. It must satisfy the full domestic demand at the resulting price, imposing no other limit on the quantity it buys. It must act in a manner that is consistent with the general principle of most-favored-nation treatment, buying and selling on the basis of commercial considerations and affording the enterprises of other members adequate opportunity, in accordance with customary business practice, to compete for participation in its purchases and sales.

SUBSIDIES

If a member pays any subsidy that increases exports or reduces imports, it must inform the ITO and be prepared to discuss the possibility of limiting the subsidy at the request of any member who

may be harmed. Subsidies affecting exports of primary commodities may not be employed to obtain more than a fair share of world trade. Determination as to what constitutes a fair share of world trade is to be made initially by the member granting the subsidy, subject to consultation upon request with other members, and to modification upon appeal by the ITO. Other export subsidies, with minor exceptions, must be abandoned when the *Charter* has been in force for two years.

RESTRICTIVE BUSINESS PRACTICES

Each member agrees to take all possible measures, by legislation or otherwise, to ensure, within its jurisdiction, that commercial enterprises, whether private or public, do not engage in practices which restrain competition, limit access to markets, or foster monopolistic control in international trade, whenever such practices interfere with the expansion of production or trade or the achievement of any objective of the *Charter*. Upon complaint by a member, the ITO will make an investigation, hold hearings, and if it finds that the practices in question have such an effect, will request the members concerned to take every possible remedial action and may recommend remedial measures to be carried out in accordance with their respective laws and procedures.

COMMODITY AGREEMENTS

Members agree substantially to limit their present freedom to enter into intergovernmental commodity agreements. Such agreements will be confined, in general, to primary commodities. They must be open to participation, on equal terms, by any member of the ITO. And they must be accompanied, at every stage, by full publicity. Agreements which regulate production, exports, imports, or prices are confined, moreover, to commodities produced under strictly specified conditions and to periods of burdensome surplus and widespread distress. They must be limited in duration and subject to periodic review. They must afford consuming countries and producing countries an equal voice. They must assure the availability of adequate supplies. They must provide increasing opportunities for satisfying world requirements from economic sources. And

each country participating in such an agreement must adopt a program of economic adjustment designed to make a continuation of the agreement unnecessary. These rules do not prohibit commodity agreements; they do not promote them. They are designed to safeguard the interests of consumers, to force adjustment to changing conditions, and to facilitate the early restoration of free markets.

INDUSTRIAL STABILIZATION

Each member agrees to 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. The nature of the action to be taken by any member is for it alone to choose. No member is asked to guarantee that its efforts will succeed; the commitment is simply that such efforts will be made. This commitment was taken by the Congress of the United States when it passed the Employment Act of 1946. And full employment, as the term is used in the *Charter,* is defined in the words of that law.

Certain countries have been reluctant to enter into a freer trading system because they fear that such a system would make it more difficult for them to maintain their domestic employment programs. This might happen, for instance, if there were a persistent maladjustment in which one or more countries bought too little abroad and invested too little abroad in relation to their exports while others produced and sold too little abroad to balance their accounts. In such a situation, the *Charter* provides that all of the members concerned shall take action designed to correct the maladjustment. But the particular measures that are to be adopted by any member are for it alone to decide.

ECONOMIC DEVELOPMENT

Each member agrees to develop the resources of its own territory, to raise standards of productivity, and to cooperate with others, through international agencies, in promoting general economic development. Members who export facilities required for development agree to impose no unreasonable impediments to their exportation and members importing them agree to take no unreasonable action

injurious to the interests of those who provide them. Upon request, the ITO may advise any member concerning its plans and programs for development and aid the member in obtaining technical advice and assistance.

Each of the less developed countries will make its own decisions as to the industries it wishes to promote. Where public assistance is required, it will be free to subsidize new industries. And where it has not included a commodity in a trade agreement, it will be free to impose new tariffs or to raise existing ones. But in those cases in which a member desires to use some method of protection that it has promised not to use, that is, where it wishes to impose an import quota or a new mixing requirement, it must first obtain permission to do so. If the product in question is covered in a trade agreement, as most products are, consent must be obtained from other parties to the agreement. If the product is not covered in such an agreement, consent may be obtained directly from other members who would be affected or permission may be requested through the ITO. In two cases—industries established during the war and those processing native materials whose markets have been cut off by other countries —permission will be granted automatically for such a period as the Organization may specify. In all cases, it will be subject to limitations laid down in the *Charter* or imposed by the ITO. The *Charter* thus establishes a new principle in international affairs: that such restrictive measures as import quotas and mixing regulations are not to be employed, without international sanction, for the development of infant industries.

INTERNATIONAL INVESTMENT

The ITO has among its purposes encouragement of the international flow of private capital for productive investment. It is authorized to formulate and promote the adoption of agreements regarding the conduct, practices, and treatment of foreign investments. Members may enter into consultation regarding these matters and must participate in negotiations directed toward the conclusion of such agreements. They must provide adequate security for existing and future investments. They must not take unreasonable or unjustifiable action injurious to foreign investors; they must impose

no requirements as to the ownership of investments that are not just and no other requirements that are not reasonable. And if any member violates these rules, it may be deprived of concessions that have been granted it under trade agreements on the ground that a benefit promised to other members under the *Charter* has been nullified or impaired.

STRUCTURE OF THE ITO

The ITO will have, as the basis of its organization, a Conference of member states, each of them casting a single vote. Continuing administration of its affairs will be in the hands of an Executive Board of eighteen members, eight of whom will always represent the eight countries of chief economic importance, including the United States. Detailed operations will be delegated to a Director-General and a staff and to a small number of specialized commissions composed of technical experts. The Organization will be brought into relationship with the United Nations and, in financing its activities, the principles adopted by the United Nations will apply.

FUNCTIONS OF THE ITO

It will be the function of the ITO, through consultation among its members, to carry out the substantive provisions of the *Charter*. In addition to this, the agency will serve as an international center for information on matters affecting trade and as a source of advice and assistance to member governments. It will undertake to improve trade statistics. It will collect, analyze, and publish data on exports, imports, balances of payments, prices, subsidies, customs regulations, and national commercial policies; on treaties and other agreements affecting trade; on conventions, laws, and procedures relating to restrictive business practices; on commodity problems and the operation of commodity agreements. It will develop and recommend standards for the grading of commodities, for commercial terms, for documentation, for tariff valuation, and for the simplification of procedures that act as obstacles to trade. It may draft modern international conventions and standard provisions for commercial treaties and recommend the conclusion of new agreements or the modification or termination of old agreements on commercial policy, restric-

tive business practices, commodities, economic development, and international investment.

SETTLEMENT OF DIFFERENCES

Disputes arising between members of the Organization may be settled by direct consultation, by arbitration, or by the decision of the Executive Board. Members may appeal the rulings of the Board to the Conference and, on legal questions, the Organization or any of its members may request an advisory opinion from the International Court of Justice. The Organization will be bound by opinions rendered by the Court.

If the ITO determines, upon complaint, that a member has not lived up to its obligations under the *Charter*, it may release the complaining member or members from corresponding obligations so that the balance of interest between the parties to the dispute may be restored. The offending member may thus be faced with higher tariffs, quotas, or other restrictions on its trade. This prospective loss of benefits should serve as a powerful deterrent to non-compliance. But the ITO will have the power to place such limits on retaliation that it cannot degenerate into economic war.

RELATIONS WITH NON-MEMBERS

Members of the ITO must not seek preferential treatment from non-members or enter into arrangements with non-members which would prevent other members from obtaining equivalent benefits. They must not discriminate in favor of non-members and need not extend to them treatment as favorable as that which they accord to members. Any member, if it chooses, may thus, within the spirit of the *Charter,* confine most-favored-nation treatment to other members of the ITO. Such action, if taken by the major participants in world trade, would tend to make membership attractive and non-membership unattractive by confining benefits conferred by the *Charter* to countries that are willing to accept its obligations.

These, in summary, are the major provisions of the *Havana Charter.* In the chapters that follow, their substance, their qualifications, and their significance will be examined in greater detail.

CHAPTER 6

TARIFFS AND PREFERENCES

BEFORE negotiations were undertaken at Geneva in 1947, two methods of reducing tariffs through international agreement had been explored. The first called for simultaneous action by many countries, the second for separate negotiations between pairs of countries. The method of multilateral agreement held out the hope of speedy and widespread accomplishment. Unfortunately, this hope was never realized. No formula for simultaneous action could be agreed upon. Establishment of a maximum limit on all duties was held, by states whose tariffs were high, to discriminate in favor of those whose tariffs were low. Reduction of all duties by a fixed percentage was held, by states whose tariffs were low, to discriminate in favor of those whose tariffs were high. Negotiations conducted on a product-by-product basis were believed to be impossible unless confined to pairs of states. The multilateral method failed because of its inflexibility.

In the decade that followed the passage of the Reciprocal Trade Agreements Act, bilateral negotiations were carried on between the United States and twenty-nine other governments. This method of action proved to possess the great advantage of flexibility. Negotiations were conducted on a selective basis; flat cuts across the board were never made. Some rates were cut substantially, others moderately, and others not at all. This method, however, has two serious limitations. The process of bargaining for reductions in foreign tariffs, country by country, in successive negotiations, is necessarily slow. And in the meantime the tariffs of countries not included in such negotiations are unlikely to be cut. Bilateral negotiations, moreover, do not offer assurance of action by enough countries to induce

participants to accept binding commitments as to other aspects of commercial policy.

Where it was applied, the method produced results. Concessions were obtained on 55 per cent of the exports of the United States to the countries concerned. Three-fifths of the duties imposed on such exports were cut more than 25 per cent; one-fourth, more than 50 per cent. Duties were cut on 64 per cent of dutiable imports into the United States and bound against increase on another 5 per cent. The weighted average rate of duty on such imports was cut from 48 per cent to 32 per cent, a reduction of about one-third.* Concessions granted in these agreements were generalized through the operation of the most-favored-nation clause.

Procedures were developed, in this country, to safeguard the established interests of producing groups. Before negotiations began, an Interdepartmental Committee on Trade Agreements set up country committees to study all aspects of the trade with the other countries concerned and to outline the concessions that might be offered and those that might be asked; the Tariff Commission made a thorough study of the competitive strength of each industry involved. An interdepartmental Committee on Reciprocity Information then issued a notice of public hearings and the Secretary of State published a list of all the products on which concessions might be made. In the course of the following months, the Committee received written briefs from any industry that was concerned and held extensive hearings where representatives of such industries might appear to argue for or against particular tariff cuts. The Committee on Trade Agreements then analyzed the studies made by the Tariff Commission and the country committees, the statements presented to the CRI, and other relevant materials and, on the basis of all the evidence, made its recommendations to the President. The President's decisions established the limits beyond which the United States was not permitted to go in using tariff cuts at home to obtain tariff cuts abroad. It was not until this procedure was completed that negotiations with other countries could begin.

In formulating its program for trade expansion at the end of the Second World War, the United States drew on this experience. It

* U.S. Tariff Commission, *Operation of the Trade Agreements Program* (Washington, 1948).

sought action that would be rapid in tempo and broad in scope. It also sought to preserve the flexibility that had been obtained and to maintain the safeguards that had been developed under the operation of the Trade Agreements Act. For the first purpose, a multilateral agreement was needed. For the second, bilateral negotiations were required. In the American program, the two approaches were combined. A multilateral conference was planned for the reduction of barriers to trade. Rates of duty were to be reduced, at this conference, through simultaneous negotiations, on a selective basis, initially between pairs of states and in the final stages among all of the participants. The results of these negotiations, together with provisions of general applicability, were to be incorporated in a multilateral document.

This procedure, adopted at Geneva, led to the conclusion of the *General Agreement on Tariffs and Trade.* In this agreement, concessions were obtained by the United States on two-thirds of its exports to the twenty-two other countries in the group. Half of the duties imposed on such exports were cut by more than 25 per cent; one-third, by more than 35 per cent. Many preferences were eliminated and many of the remaining preferential margins were substantially reduced. The average rate of duty on all dutiable imports into the United States was cut from 32 per cent to 25 per cent, a reduction of one-fifth.*

The negotiations at Geneva included most of the major trading nations and covered the bulk of the world's trade. A major part of the contribution that the United States can offer for the restoration of multilateralism has now been made. There are still, however, some forty countries that remain outside the *General Agreement on Tariffs and Trade.* It is important that these countries, also, should reduce their tariffs and that they should accept the commitments embodied in the *GATT.* This is the purpose of the provisions of the *Charter* relating to tariffs and preferences.

NEGOTIATING THE TARIFF PROVISIONS

In its *Suggested Charter,* the United States proposed that each member of the ITO should be required to enter into negotiations directed toward the substantial reduction of tariffs and the elimina-

* *Op. cit.*

tion of preferences. It laid down two rules to govern these negotiations: prior commitments should not be permitted to stand in the way of action on preferences; reductions in duties should operate automatically to reduce or eliminate margins of preference. Save for such existing preferences as might survive negotiation, extension of equal treatment to all members of the Organization was to be required. To enforce the obligation to negotiate, it was proposed that an autonomous Tariff Committee, consisting of the parties to the *GATT,* be established within the ITO. This Committee would have been entitled to receive, from members of the Organization, complaints that other members had failed, within a reasonable time, to enter into the negotiations required or to offer concessions comparable in scope and effect to those already made by the parties to the *GATT.* If it found such a complaint to be justified, the Committee would have been empowered to waive the rule prohibiting discrimination and to authorize these parties to withhold from the offending member the tariff concessions that they had made to one another. Through the operation of this sanction, comparable concessions were to be obtained from the other members of the ITO. It was proposed, finally, that an escape clause be adopted to permit the modification or withdrawal of concessions whenever increasing imports should cause or threaten serious injury to domestic producers. Such a clause had been written into trade agreements by the United States; its inclusion in future agreements was required by an *Executive Order* issued by the President in 1947.

These proposals were accepted by the Preparatory Committee and, with no significant changes, were written into the drafts of the *Charter* adopted at London and Geneva. At the Havana conference, however, they were vigorously attacked. Certain countries of Latin America sought to eliminate or qualify the commitment to negotiate for the reduction of tariffs and so to amend the rules governing such negotiations as to favor countries in an early stage of economic development. It was proposed, for instance, that industrial countries and creditor countries be required to make concessions to undeveloped countries and debtor countries; that the necessity of maintaining protection in the latter countries be recognized; that increases in specific tariffs be authorized in the negotiations; and that countries

relying on tariffs for revenue be excused from making concessions or relieved of the obligation to negotiate. The Tariff Committee was attacked as a device designed to enable parties to the *GATT* unreasonably to exact disproportionate concessions from the other members of the ITO. It was proposed that this committee be stripped of its authority and an autonomous Economic Development Committee set up within the Organization to function as a counterweight. The last of these proposals raised one of the critical issues of the conference.

None of the proposals was accepted. The commitment to negotiate was retained with a minor change in wording to make it clear that the negotiations required were to involve selective action rather than horizontal cuts. The rules governing such negotiations were spelled out in greater detail; the present text carries out the intention of the American *Proposals,* outlines the procedure followed at Geneva, and conforms to the provisions of the Trade Agreements Act. In the final compromise, the Tariff Committee and the Economic Development Committee were both dropped. The function assigned to the Tariff Committee reverted to the parties to the *GATT*. Protection against arbitrary action was provided by granting other members the right to appeal from their decisions to the ITO. But the assurance of most-favored-nation treatment, provided in earlier drafts of the *Charter,* was no longer given to countries that fail to become parties to the *GATT*.

TARIFFS IN THE CHARTER

The *Charter* now requires each member of the ITO, upon request, to "enter into and carry out . . . negotiations directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and to the elimination of . . . preferences . . ." (17–1). Such negotiations are to 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." Particular products may be withheld from negotiation and particular duties may either be reduced or bound against increase. No member may be required "to grant concessions to other Members without receiving adequate concessions in re-

turn." The reductions made at Geneva are to be counted as concessions in future negotiations and the binding of low duties or of duty-free treatment is to be recognized, in principle, "as a concession equivalent in value to the reduction of high duties." Prior international obligations are not to be invoked to prevent the reduction or elimination of preferences. Reductions in tariffs are to operate automatically to reduce or eliminate margins of preference and no such margin is to be increased (17–2).

The commitment to negotiate is to be enforced by the parties to the *GATT*. For two years after another member joins the ITO, these parties must extend to it the tariff concessions that they have already made. During this period of grace, it will be afforded an opportunity to bargain its way into the *General Agreement*. But after the period has expired, most-favored-nation treatment will no longer be required. The parties to the *GATT* may then withhold such treatment from any member who fails to offer adequate concessions or refuses to negotiate. Such a member may then appeal this action to the ITO. If it has not entered into negotiations, it will be unable to make out a case. If it has negotiated, it must prove that the concessions it has offered are equivalent to those already made by the parties to the *GATT*. The burden of proof has thus been shifted, since the earlier versions of the *Charter,* from those who withhold most-favored-nation treatment to those who seek to obtain it. If a case can be established, the ITO may require the restoration of such treatment to the member who has complained. If its complaint is rejected, a member may withdraw from the Organization within sixty days (17–3).

The *Charter* retains the escape clause proposed by the United States. Whenever, as a result of unforeseen developments, imports of a product have so increased "as to cause or threaten serious injury to domestic producers," a member may modify or withdraw concessions made or obligations assumed with respect to that product "to the extent and for such time as may be necessary to prevent or remedy such injury." It may thus restore higher duties, impose quotas, or curtail imports in other ways. A member taking such action is required to consult with the other members affected, but it may proceed without their consent. In order to restore the balance

of an agreement which has thus been modified, parties deprived of concessions may withdraw equivalent concessions; the extent of such withdrawals is subject, however, to the approval of the ITO (40). In adopting this article, the Havana conference gave world-wide recognition to a provision developed exclusively by the United States in the administration of the Trade Agreements Act.

PREFERENCES

Under the terms of the American *Proposals,* tariffs and other restrictions affecting imports and exports were to be so designed and administered as to afford equal treatment to all the members of the ITO. No new preferences were to be created; no old preferences were to be increased. Existing preferences were subject to reduction or elimination through negotiation. But those surviving such negotiations were excepted from the most-favored-nation rule. The most important of these preferences were those among the members of the British Commonwealth and those between the United States and its territories, the Philippines, and Cuba.

During the negotiations, this list was extended, on the same principle, to include existing preferences among certain neighboring states in the Near East, Central America, and northern and southern South America. It was argued, however, that the distinction drawn in the *Charter* between old and new preferences was grossly unfair and amendments were introduced, at Havana, both to abolish old preferential systems and to establish new ones.

Peru proposed the abolition of preferences between Cuba and the United States; Haiti and the Dominican Republic proposed their extension to the neighboring island. One amendment would have exempted from the most-favored-nation rule all countries in the same economic region; another would have exempted countries with complementary economies. New preferential arrangements were proposed for each of the following groups: the countries of Central America, those of northern South America, those of southern South America, those formerly belonging to the Ottoman Empire, members of the Arab League, nine countries of the Near and Middle East, and all the countries of South East Asia.

The *reductio ad absurdum* of this movement was contained in a

Burmese note accompanying the last of these proposals: "The tendency of the countries represented in this conference being to favor groupings on a regional basis and the manifestation of such tendencies being such that the whole world except South East Asia has been covered in such regional groupings, it is felt that countries of South East Asia should not lose by default and should have the right to form such groups if they desire to do so."

All of these proposals were withdrawn or defeated. The general rules and the exceptions proposed by the United States were retained: new preferences are not to be created; old preferences are not to be increased; existing preferences are to be eliminated through negotiation; permission is given for existing preferences surviving such negotiations (16), for those required to facilitate frontier traffic, and for those extended to the Free Territory of Trieste (43). In two new articles, however, possible exceptions of greater importance were introduced. Under the first, members may seek the approval of the ITO for new preferential arrangements required to promote economic development. Conditions are laid down, criteria established, and procedures prescribed to limit the scope of this exception and prevent its abuse (15). These provisions are described in Chapter 14. Nominal recognition is also accorded to the creation of new preferences among former members of the Ottoman Empire, but no such preferences can be established unless all of the requirements of the foregoing article are fulfilled (16–3). The second article covers interim arrangements leading to the formation of customs unions and free trade areas.

CUSTOMS UNIONS AND FREE TRADE AREAS

Preferences have been opposed and customs unions favored, in principle, by the United States. This position may obviously be criticized as lacking in logical consistency. In preferential arrangements, discrimination against the outer world is partial; in customs unions, it is complete. But the distinction is none the less defensible. A customs union creates a wider trading area, removes obstacles to competition, makes possible a more economic allocation of resources, and thus operates to increase production and raise planes of living. A preferential system, on the other hand, retains internal barriers,

obstructs economy in production, and restrains the growth of income and demand. It is set up for the purpose of conferring a privilege on producers within the system and imposing a handicap on external competitors. A customs union is conducive to the expansion of trade on a basis of multilateralism and non-discrimination; a preferential system is not.

In the formation of a customs union, established interests may be threatened and substantial readjustments required. It is therefore desirable that the transition to such an arrangement be gradual rather than precipitate. For this purpose, duties within the union may be reduced, step by step, over a considerable period of time. While this process is going on, however, preferences will be established and increased. An exception to the general rule of non-discrimination will therefore be required. But such an exception may be dangerous. Progress toward the complete elimination of internal barriers may stop short of its appointed goal. And, if this happens, a preferential system will survive. If this outcome is to be avoided, the exception must be so framed as to insure its proper use.

An exception to permit the formation of customs unions was envisaged in the American *Proposals*. At Geneva, following upon the consideration of plans for the increasing economic unification of western Europe, in connection with the European Recovery Program, the terms of this exception were amplified and various safeguards were introduced. At Havana, proposals that would have weakened these safeguards were defeated or withdrawn. Only one important change was made: upon the motion of Lebanon and Syria, the exception was extended to cover arrangements in which, though common external tariffs and customs administrations are not established, internal restrictions are removed. To distinguish them from customs unions, such arrangements were designated as free trade areas.

The *Charter* now exempts, from the general rule of non-discrimination, customs unions, free trade areas, and interim arrangements required for their establishment. Members entering into such arrangements must proceed by reducing duties to insiders, not by raising duties to outsiders. They must move toward the ultimate elimination of restrictions on substantially all of their internal trade.

In the case of a customs union, they must move toward the establishment of a common tariff. In the case of any interim arrangement, they must present to the ITO a plan and schedule which provides for the completion of the customs union or free trade area within a reasonable period of time. If the ITO is convinced that the plan and schedule will, in fact, result in the completion of such an arrangement within a reasonable period, they may proceed with the project. Otherwise, they must modify or abandon their plans. If any change is subsequently contemplated in the program, they may be required to enter into consultation with the ITO. If any member of the group has previously accorded preferences to other countries, these may be modified or eliminated through negotiations with the governments concerned. An arrangement including countries not belonging to the Organization may not be entered into unless approved by a two-thirds vote (44).

THE CHARTER AND THE "GATT"

The *General Agreement on Tariffs and Trade* will formally enter into force when instruments of acceptance have been deposited with the United Nations by governments representing 85 per cent of the trade included within its scope. Under a *Protocol of Provisional Application*, however, the tariff rates contained in the *GATT* had been put into effect, provisionally, by June 30, 1948, by twenty-two countries; with the exception of Chile, by all the members of the Geneva group.

According to the terms of the *GATT*, each of these countries receives all the concessions made in that agreement as a matter of right. Any of them may extend these concessions to other countries; they are not required to do so; this policy has been followed, however, by the United States. The application of the *Protocol* may be suspended, on sixty days' notice, by any of its signatories. The *GATT* itself will run to January 1951, three years from the date of its provisional application by the United States. At any time thereafter, on sixty days' notice, any party may withdraw and the *Agreement* may be terminated if such withdrawals are important or widespread. Failing such action, its duration is indefinite. The operation of previous trade agreements between the United States and other parties

to the *GATT* has been suspended for the period during which the *GATT* is in effect.

In addition to its tariff schedules, the *General Agreement* contains provisions paralleling certain articles of the *Charter* relating to questions of commercial policy and required to protect the concessions it contains. In general, these provisions follow the wording of the Geneva draft; they were amended by the parties to the *GATT,* during 1948, to substitute the Havana articles relating to internal taxes and regulations, antidumping and countervailing duties, and exceptions for economic development, customs unions, and nondiscrimination in the administration of quota systems. The other Geneva articles are to be superseded by the comparable articles of the *Havana Charter* when that document enters into force. Until then, it is unlikely that the instruments of acceptance required to bring the *GATT* itself formally into force will be deposited. In the meantime, under the *Protocol,* its general provisions are to be made effective only to the extent not inconsistent with existing legislation. Provisions inconsistent with the laws of the United States will not become effective until Congress acts.

As envisaged by the two documents, the relations between the *GATT* and the *Charter* will be close. The commitment to negotiate, contained in the *Charter,* is to be enforced by the parties to the *GATT* and the results of such negotiations are to be embodied in the *GATT.* Enforcement of the general rules of commercial policy, however, will be taken over, on its establishment, by the ITO. In the meantime, this task is to be performed by the parties to the *GATT.*

Despite this close relationship, the two documents are legally separate. If the *Charter* should not be adopted, the *GATT* might be amended and maintained. In further negotiations, other countries might be brought within its scope. But the rules of commercial policy would not be rapidly extended, the problems of employment, economic development, international investment, restrictive business practices, and intergovernmental commodity agreements would not be covered, and the ITO would not be brought to life. If these things are to be accomplished, the *Charter* must be ratified.

CHAPTER 7

INVISIBLE TARIFFS

IMPORTS may be restricted by methods that are direct and open, such as tariffs and quotas. They may also be restricted by indirection through internal taxes that are imposed at higher rates on imported than on domestic goods, through regulations that make it more difficult to sell imported than domestic goods, or through laws that require the mixture of domestic with imported raw materials in the production of manufactured goods. And they may be restricted by concealment through the methods that are employed in the administration of tariff laws.

The duty that must be paid on an imported product may be raised by shifting the product from a classification that bears a lower rate to one that bears a higher rate. Where the amount of a duty depends upon the value of a product, it may also be increased by employing a method of valuation that will result in a higher value. Value may be arbitrary or fictitious; it may be established either by pricing imported goods or by pricing comparable domestic goods; it may be determined either at the point of exportation or at the point of importation; it may be fixed at prices that apply to quantities smaller than those actually imported; it may include taxes that the exporting country imposes on goods when they are consumed at home but not when they are sold abroad. The method of valuation may differ from product to product and from time to time; traders may thus find it difficult to determine applicable amounts of duty; goods may be tied up for long periods while their valuation is in dispute; trade is accordingly restrained. Values may be boosted in order to afford increased protection against foreign competition; they may be raised for the sole purpose of maximizing customs revenues; in either case,

the outcome is the same: imports are subjected to restrictions that are greater than those revealed by tariff rates.

Customs administration may interfere with trade in many other ways. Goods in transit through a country may be required to pay taxes that increase their cost; their movement may be unreasonably delayed. Anti-dumping duties may be imposed at levels higher than would be necessary to offset dumping by foreign sellers. Customs regulations may be so framed, by design or by accident, as to increase the costs of importers and delay the entry of imported goods. Incidental fees and charges may greatly exceed the value of the services for which they are imposed. Unnecessary forms and documents may be required. Inconvenient and expensive methods of applying marks of origin may be prescribed. Traders may be entangled in red tape, subjected to rules that are changed without prior notice, afforded no opportunity to consult with administrative officials, and provided with no means of appealing from the decisions that are handed down. The import trade may thus be rendered unattractive and the volume of imports accordingly curtailed.

In any of these ways, negotiated reductions in tariff rates may, in effect, be canceled and agreements that would otherwise have operated to expand trade may be set at nought. It is necessary, therefore, to bring such indirect and hidden methods of restriction under international control. The *Charter* provides, accordingly, that these devices will henceforth be governed by a common code of detailed rules. Standing alone, these rules are so comprehensive and so important as to constitute an international convention in themselves. In the context of the *Charter,* they are essential to the achievement of its broader purposes.

INTERNAL TAXATION AND REGULATION

The *Charter* establishes the basic principle that internal taxes and regulations should not be used as a method of providing protection against foreign competition. Members of the ITO must not impose heavier taxes on imported goods than on like domestic goods. They must not subject the sale of imported goods to regulations more burdensome than those applying to the sale of domestic goods. They must not require domestic processors to use a fixed amount or proportion of domestic raw materials (18).

The exceptions to these rules are few in number and clear in purpose. In conformity with the principle that import duties rather than differential taxes should be employed to protect domestic industries, a duty may be substituted for the discriminatory element in such a tax. Where such a substitution is prevented by the terms of a trade agreement, the tax may be continued until the agreement is modified; then it must be displaced (18–3). None of the rules applies to the governmental procurement of goods for public use or prevents the payment of domestic subsidies (18–8). Mixing regulations already in existence are allowed to stand (18–6). Playing time on motion picture screens may be reserved for domestic films (19).

Of these main exceptions, only the last two are important. Mixing regulations are highly effective as a method of restricting trade. But they are not as yet in wide use. The general rule laid down in the *Charter* will prevent their extension. The exception will permit the United States to maintain its requirement that manufacturers of rubber products use synthetic substitutes along with imported crude materials. The maintenance of synthetic production is essential to our national security; required use is believed to be the only way in which this production can be insured. In this case, the exception for existing mixing regulations would appear to be justifiable; in others it may be less so. In all cases, such regulations may not be made more restrictive and they are subject to possible liberalization in the course of trade negotiations. The *Charter* provides, further, that materials imported for mixing may not be allocated among sources of supply.

It was argued by certain delegations at Havana that wartime systems of price control had been so administered as to discriminate against producers of imported goods and it was therefore proposed that the *Charter* establish a cost-plus rule for import price controls. This proposal was rejected, but the *Charter* was amended to require members imposing such controls to "take account of the interests of exporting member countries with a view to avoiding to the fullest practicable extent such prejudicial effects" (18–9).

MOTION PICTURES

It has been estimated that imported motion picture films have been subjected to some seventeen different forms of discriminatory

taxation and regulation by countries outside the United States. Article 18 of the *Charter* will forbid discriminatory internal taxes and Article 19 will outlaw all forms of internal quantitative discrimination but one. Thus members of the ITO will be permitted to reserve a fixed share of playing time on domestic screens for films produced domestically. This authorization is based upon a recognition of the fact that motion picture production is as much entitled to protection against foreign competition as any other industry and that such protection, in this case, cannot be provided effectively by imposing duties on imported rolls of film. The screen quota, therefore, has been accepted as the counterpart of a tariff and every other method of protection (except customs duties) has been banned. The method of restriction, as in the case of tariffs, is thus made visible and negotiable.

The height of a domestic screen quota is made subject to reduction through trade negotiations. Playing time not included within such a quota must be kept open to free competition; quotas are not to be established for films produced abroad. The only exception to the latter rule, though drafted in general terms, was designed to permit Czechoslovakia to maintain an existing quota for Russian films (19–c). This quota had never been filled and there was little prospect that it could be filled.

The article concerning motion pictures is the only one in the *Charter* which safeguards the export markets of a particular industry. Since this country is by far the largest exporter of motion picture films, its principal benefits will accrue to the United States. When made effective, through ratification of the *Charter,* for all members of the ITO, it should afford a sound foundation for the continued operation of the American industry.

CUSTOMS ADMINISTRATION

Members of the ITO will work toward standardization of the methods of valuation that are used where customs duties are related to the value of imported goods. Pending the general adoption of such standards, the *Charter* establishes certain principles of valuation. The most important of these is the principle that value for customs purposes should be actual rather than arbitrary or fictitious and should be ascertained by pricing imported rather than domestic goods. The

precise definition of actual value is to be worked out in the future by the ITO; as a general principle, however, such value is to be taken as the price at which goods, either in the quantities contained in a particular shipment or in those customarily imported, are sold, under fully competitive conditions, in the ordinary course of trade. Taxes which exporting countries impose on internal consumption but not on exports are not to be included in customs valuations by importing countries. Where prices expressed in the currency of one country must be converted into that of another, the *Charter* prescribes the methods of conversion that shall be used. Each member of the ITO will undertake to give effect to these principles at the earliest practicable date. Upon the request of any other member, it will review the operation of its laws and regulations for fixing customs values. The Organization may formulate and recommend suitable methods of valuation and may request its members to report upon their progress toward conformity with the *Charter's* principles. It is recognized, finally, that methods of valuation should be stable and should be given sufficient publicity to enable traders to estimate the values on which duties are based (35).

Freedom of transit is assured for goods en route from one country to another across the territory of a third. Such traffic is to be permitted to move on the most convenient routes. It may not be burdened by customs or special transit duties, handicapped by unreasonable charges or regulations, or impeded by unnecessary delays. Discrimination based upon the ownership, origin, or destination of goods in transit or upon the ownership or national flag of carriers is banned (33). The principle of freedom of transit has particular significance for land-locked countries and, in the interest of such countries, members are further required to cooperate in simplifying regulations affecting traffic in transit and in assuring the equitable use of facilities required for such traffic (33–6). In addition to assuring freedom of transit through third countries, the *Charter* also forbids importing countries to discriminate against goods that have passed through a third country. But there is one exception to this rule: in accordance with the practice of certain countries of the British Commonwealth, regulations denying preferential rates of duty to goods that have not been shipped directly may be retained (33–7).

While condemning the practice of dumping, the *Charter* limits

the conditions under which anti-dumping and countervailing duties may be imposed and the extent to which they may be applied. It lays down the rule that no such duties may be imposed unless the dumping or subsidization involved is such as to cause or threaten material injury to an existing industry or to retard materially the establishment of a new industry. It prohibits the application of both types of duty in the same case of dumping or subsidization. Such duties are not to be imposed on the ground that taxes on domestic consumption have not been applied to exported goods or to be used to offset subsidies that are incidental to a price stabilization scheme, such as that in use in Australia, which involves the exportation of goods at prices that are sometimes higher and sometimes lower than those prevailing in world markets. The *Charter* defines dumping, prescribes a method of measuring the margin of dumping, and forbids members of the ITO to impose anti-dumping duties that exceed this margin. It also forbids them to impose countervailing duties at levels that are more than adequate to offset foreign bounties or subsidies. The *Charter* thus establishes the principle that anti-dumping and countervailing duties must be confined to the purpose of offsetting predatory price cutting and may not be used to prevent normal competition in international trade (34).

The Charter establishes the principles that customs formalities should be minimized, documentation requirements simplified, and incidental fees and charges reduced in number and limited to the value of the services for which they are imposed. Members of the ITO will undertake to give effect to these principles at the earliest practicable date and to review the operation of existing requirements upon request. The ITO may ask them to report upon their progress toward this objective and may recommend measures designed to simplify customs formalities and eliminate unnecessary customs requirements. The *Charter* condemns the use of tariff classifications based upon place names as a means of discriminating against the goods of any member country (36).

Where regulations that require the marking of imported goods are unnecessary, they will be dropped. Where they are retained, they must not prescribe methods of marking that would damage imported products, reduce their value, or increase their cost. They must permit compliance at a time and in a manner that involves the least

possible interference with the flow of trade. They must not be so applied as to discriminate among exporting countries. And they must not impose unreasonable penalties for failure to comply. Members will cooperate in protecting geographic trade names by preventing misrepresentation through deceptive labelling (37). This is already done, under the rules of the Federal Trade Commission, in the United States.

The *Charter* exempts from its provisions regulations adopted to protect human, animal, or plant life or health, in so far as they are necessary for this purpose. But it forbids the use of such measures "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member countries . . . or a disguised restriction on international trade . . ." (45–1). Here, as in the case of other measures affecting imports, each member must "accord sympathetic consideration to . . . such representations as may be made by any other Member" with respect to its regulations and must "afford adequate opportunity for consultation" where differences arise (41).

The *Charter* requires the prompt publication of all agreements, laws, administrative regulations, general rulings, and judicial decisions affecting international trade. It forbids the enforcement of new or increased restrictions before they have been made public. It requires the provision of suitable facilities for consultation with administrative authorities. It further requires the maintenance or institution of independent tribunals or procedures for the review and possible modification of administrative decisions relating to customs matters (38). Traders are thus assured of access to essential information and protection against arbitrary action.

Members must publish and report periodically to the ITO statistics of exports, imports, subsidy payments, and customs revenues. The Organization will collect, analyze, and publish trade statistics and may recommend methods by which such statistics may be improved. It may also make studies and recommendations concerning the possible standardization of tariff classifications and the adoption of common nomenclatures, terms, and forms used in international trade (39).

CHAPTER 8

QUANTITATIVE RESTRICTIONS

THE *Charter* does not condemn tariffs in principle; it permits old duties to be increased and new duties to be imposed; it calls only for the reduction, on a selective basis, of duties that may be too high. The *Charter* condemns quantitative restrictions; it permits their employment, of necessity, under specified conditions, but only on sufferance and as an exception to the general rules of policy. If domestic production is to be protected, the tariff as a method of restriction is to be preferred.

Tariffs permit the volume of trade to grow as costs and prices fall abroad and income and demand increase at home. They permit prices and production within each country to adapt themselves to the changing conditions of the world economy. They permit the direction of trade to shift with changes in comparative efficiency. They can be so devised and administered as to accord equal treatment to all other states. They leave the guidance of trade to private business, uninfluenced by considerations of international politics. Tariffs are the most liberal method that has been devised for the purpose of restricting trade. They are consistent with multilateralism, non-discrimination, and the preservation of private enterprise.

Quantitative restrictions, by contrast, impose rigid limits on the volume of trade. They insulate domestic prices and production against the changing requirements of the world economy. They freeze trade into established channels. They are likely to be discriminatory in purpose and effect. They give the guidance of trade to public officials; they cannot be divorced from politics. They require public allocation of imports and exports among private traders and

necessitate increasing regulation of domestic business. Quantitative restrictions are among the most effective methods that have been devised for the purpose of restricting trade. They make for bilateralism, discrimination, and the regimentation of private enterprise.

These were the major reasons, but not the only ones, for bringing quota systems under international control. Where a country is a party to a trade agreement, its freedom to impose quotas on imports of products covered in the agreement must be limited if the concessions made in its tariff are not to be nullified. Where a country is a member of the International Monetary Fund, its freedom to impose quotas on any imports must be limited if the rules adopted by the Fund to regulate the use of exchange controls are not to be evaded. As suggested in the American *Proposals,* however, the scope of the provisions contained in the *Charter* is broader than would be required for either of these purposes. The rules that govern the use of quota systems apply to all the imports and to all the exports of all the members of the ITO. It is because they are undesirable in themselves that such systems are to be controlled.

Quantitative restrictions present the major issue of commercial policy. Tariffs are thought to be old-fashioned; exchange controls are governed by the IMF; quota systems are the most effective method of protection that remains. Nations all over the world are experienced in their use. If uncontrolled, they promise to become universal and permanent. Freedom to employ them is not readily to be surrendered. The proposal that this freedom be limited evoked a debate that went on for many months. The toughest problem in the trade negotiations came to be known by its initials: Q.R. It would not be inaccurate to describe the meetings at London, Geneva, and Havana as the United Nations Conferences on Q.R.

THE NEGOTIATIONS ON Q.R.

It was proposed in the *Suggested Charter,* prepared by the United States, that members of the ITO adopt a general rule forbidding the use of Q.R. It was recognized that exceptions to this rule would be required to permit the use of quotas to support domestic agricultural programs, to safeguard balances of payments, and to meet certain problems that were less important or temporary in character. Where

Q.R. was to be permitted under these exceptions, it was proposed that a general rule be adopted to forbid discrimination in its use. Here, too, it was recognized that certain exceptions, paralleling those contained in the *Articles of Agreement* of the IMF, would be required. In both cases, the exceptions were so drafted as to limit their scope and provide safeguards against abuse. To prevent the use of exchange controls to evade the rules of the ITO and the use of Q.R. to evade the rules of the IMF, it was proposed, finally, that the two agencies should pursue a common policy.

These proposals would not have committed nations completely to eliminate Q.R. It was recognized that such a commitment was unobtainable. Exceptions to the general rule were dictated not only by political considerations, but also by economic necessity. Without them, the rule could not have been accepted or, if it were accepted, could not have been expected to work. The only choice that could be made was between a situation in which any nation, at any time, would have enjoyed complete freedom to impose Q.R. as extensively and intensively as it chose and agreement on a general rule that would condemn Q.R. in principle, confine it to those situations in which it was unavoidable, limit its duration, and prevent its abuse. The *Suggested Charter* chose the latter course.

This approach was accepted by the Preparatory Committee and adopted by the Havana conference. The general rule forbidding Q.R. was written into the *Charter* in the words proposed by the United States: "No prohibitions or restrictions other than duties, taxes, or other charges, whether made effective through quotas, import or export licenses, or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country" (20–1).

Q.R. was thus condemned in principle. But repeated efforts were made to widen the exceptions to the general rule. Most of these efforts were defeated; some of them ended in compromise. But compromise came slowly; its final terms were spelled out in elaborate detail. Where exceptions were permitted they were hedged about with conditions to be met, criteria to be satisfied, procedures to be followed, and limitations to be observed. The ITO was given larger

authority to determine the scope of such exceptions, to restrain their application, and to control their duration. As such safeguards were elaborated in successive drafts, the articles on Q.R. grew in length and in complexity. The resulting text is formidable in appearance. But it is through its very complications that Q.R. is to be subjected to international scrutiny and control.

Most of the exceptions now permitted by the *Charter* are technical or transitory in character; they do not involve significant departures from the general rule. Permission is given for export restrictions designed to relieve critical shortages of foodstuffs and other essential products (20–2), for those employed along with domestic measures for the conservation of exhaustible natural resources (45 viii), and for those imposed to check the exportation of a raw material when the price of a finished product is controlled (45 xi). Permission is given for export or import restrictions required to enforce the observance of standards for the classification or grading of commodities (20–2), for those established under approved intergovernmental commodity agreements (45 ix) and agreements for the conservation of fisheries resources and wildlife (45 x), and for those needed, during the postwar transition period, to effect an equitable distribution of products in short supply, to maintain price controls, or to facilitate an orderly liquidation of government surpluses and war industries (45*b*). Some of these exceptions will disappear as the consequences of the war are overcome. The others have a limited application; they are likely to be used only in rare instances.

Of greater importance are the three exceptions that remain. The first, proposed by the United States, permits members to employ Q.R. in the enforcement of domestic agricultural programs. The second, required to meet the situation in western Europe, permits members in balance-of-payments difficulties to impose quotas to protect their monetary reserves. The third, sought by all the undeveloped countries, permits the use of such restrictions, where approved in particular cases, or meeting specified criteria, for the protection of infant industries. The first two of these exceptions are discussed in the following sections of this chapter. The third is described in Chapter 14.

Q.R. TO ENFORCE AGRICULTURAL PROGRAMS

The exception for agriculture is necessitated by domestic programs which support the prices of agricultural products by restricting the quantities that may be produced or marketed. If such programs are to be effective, imports must also be controlled. Otherwise, contraction of output and sales at home would be offset by an expansion of imports from abroad. Prices would be held down; the program would fail.

When it asked for this exception in its *Suggested Charter*, the United States also proposed the inclusion of certain safeguards to afford assurance that it would not be abused. At the Havana conference, certain countries, particularly Peru and Mexico, urged the deletion of this escape. Their proposals were rejected; the safeguards were strengthened; the exception was retained.

The *Charter* permits the use of Q.R. where it is required for the enforcement of domestic production controls, marketing controls, or surplus-disposal programs (20–2c). It lays down two conditions to prevent abuse. First, imports and sales of the domestic product must be restricted proportionately; Q.R. may not be employed to change the relative positions of foreign and domestic producers in the domestic market, that is, it may not be used for protective purposes. Second, advance notice must be given to the ITO and to other members of the quantities that may be imported and an opportunity for consultation must be afforded to any member who may complain that the cut in imports is deeper than the foregoing requirements would permit. But the decision in such a case is to be made by the member imposing Q.R.; it need not seek the prior approval of the ITO (20–3).

Q.R. TO PROTECT MONETARY RESERVES

The exception that permits a member to employ Q.R. when necessary to safeguard its balance of international payments is a recognition of the hard fact that nations, like individuals, cannot long continue to buy things for which they cannot pay. If money is lacking, purchases must be cut accordingly. If bankruptcy is to be avoided, imports must be curtailed. It is not to protect producers

from foreign competition, but to protect reserves of gold and hard money from exhaustion that Q.R. is so widely used today. When trade, over long periods, is seriously out of balance, its use is unavoidable.

The articles that deal with the balance-of-payments problem are among the longest in the *Charter*. They are long because international exchange is a complicated business. The *Articles of Agreement* of the IMF, relating solely to the financial aspects of the subject, cover more than forty closely printed pages. And since the matters dealt with in the two documents are so closely related, it was necessary, in drafting the *Charter,* to adapt its provisions to the corresponding regulations of the Fund. The balance-of-payments articles of the *Charter* are long, too, because they seek to insure that Q.R. will be confined to cases of financial stringency, that it will be administered in accordance with agreed rules, and that these rules will be effectively enforced.

A member may employ Q.R., under these articles, only "to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves" (21–3a). In other words, it may not impose quotas unless unrestricted imports would reduce its holdings of gold and convertible currencies to levels inconsistent with continued financial stability. The existence of such a situation must be demonstrated to the satisfaction both of the IMF and the ITO. If the IMF should find that a decline in a member's monetary reserves is not serious, that such reserves are not low, or that a given rate of increase in such reserves is not reasonable, or if the ITO should find, on the basis of determinations made by the Fund, that the threat to such reserves is not imminent, the exception would not apply and Q.R. could not be imposed (24–2).

In some cases, imbalance in a nation's trade may be attributable, not to causes beyond its control, but to its domestic economic policies. A nation might thus put itself into a position that would compel both the IMF and the ITO to find that its monetary reserves were seriously endangered. It might do so inadvertently or deliberately. In neither case could the IMF or the ITO require it to adopt internal

measures that would balance its external accounts. Domestic policies remain within the sovereignty of member states; neither the IMF nor the ITO is authorized to intervene. It is thus possible that members may sometimes employ Q.R., even though they would be able to correct the conditions that necessitate its use. In these cases, as in others, however, rules are laid down to guard against abuse.

A member imposing Q.R. must "pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources" (21–4*c*). It may select imports for restriction on grounds of relative essentiality, but it must "admit any description of merchandise in minimum commercial quantities" and it must "avoid unnecessary damage to the commercial or economic interests of any other Member" (21–3*c*). And, finally, it is required progressively to relax and ultimately to eliminate its restrictions as its financial condition improves (21–3*b*). Under this provision, quotas should gradually be enlarged and eventually dropped. As the work of reconstruction goes forward, as trade is brought back into balance, and as currencies again become convertible, the spiral of restrictionism should be reversed.

For the enforcement of these provisions, detailed procedures are prescribed. A member considering the imposition of new restrictions is required to consult with the ITO as to the nature of its difficulties, alternative methods of correcting them, and the possible effects of these methods on other members. A member maintaining or intensifying existing restrictions may also be required to enter into such consultation. In this way, some other solution of the problem may be found.

Any member may complain that another member is employing Q.R. in a manner inconsistent with the provisions of the *Charter* or unnecessarily damaging to its trade. The ITO will then consider the complaint and, if it is found to be justified, and if an amicable settlement cannot be reached, will recommend the withdrawal or modification of the restrictions in question. If this recommendation is not followed, the Organization may authorize the complaining member to impose upon the trade of the offending member higher tariffs,

quotas, or other measures that the *Charter* would otherwise forbid. In this way, an effective penalty is brought to bear.

In order to avoid the imposition of such a penalty, a member may request the ITO to give prior approval to restrictions which it desires to maintain or to impose or to a statement of the circumstances under which such restrictions may be imposed. The Organization may grant such approval, specifying the extent, degree, and duration of the restrictions permitted. Thereafter, no other member may successfully challenge the legitimacy of restrictions falling within its scope (21–5).

Within two years of its institution, the ITO is required to call into question all restrictions then in use. And whenever imbalance in trade is such as to permit widespread and persistent use of the exception, it must initiate discussions directed toward agreement on other measures through which balance may be restored (21–6).

NON-DISCRIMINATION IN Q.R.

Where members are permitted to impose Q.R., another general rule requires that it be administered without discrimination among other states. If quotas are applied to imports from one country, they must be applied with equal severity to imports from all other countries. In so far as possible, each of them must be given the share of trade that it would have if no restrictions were imposed.

To this end, if it is practicable to do so, the member employing Q.R. must publish quotas stating the quantities of products that will be admitted. If these quotas are allocated among countries, the allocations must be fair. To insure their fairness, the member is preferably to reach an agreement with the other countries concerned. Where this is impracticable, it may base its allocations on the distribution of trade in an earlier period that is believed to be representative, taking due account of shifts in production and changes in relative efficiency. It must afford opportunities for consultation on such matters to the ITO or to any of its members. If quotas are not published, and importers are compelled to obtain licenses, such licenses may not require that goods be imported from a particular country. Full information must be given to other members, upon request, regarding the administration of any licensing system, the licenses

granted over recent periods, and their distribution among supplying countries (22).

Detailed as these rules may be, it is not to be expected that they can assure equality of treatment. A country that administers a quota system may discriminate in selecting the commodities that are to be controlled, in classifying those commodities, in adopting a base period to govern allocations, and in appraising the other factors that are involved. Discrimination is not to be avoided unless members act in good faith, living up to the spirit as well as the letter of the *Charter's* rules.

But even here exceptions are required. During the present period of reconstruction, currencies throughout the world are inconvertible, many countries find it difficult to make external payments, and many countries therefore use Q.R. In such a situation, enforcement of the rule of non-discrimination, instead of causing trade to expand, might force it to contract. Country A, possessing a relatively small supply of the hard currency of Country B and a relatively large supply of the soft currency of Country C, and finding it necessary to fix a small quota for imports from Country B, would be required to impose as strict a limitation on its purchases from Country C. Even though its supplies of the currency of Country C were ample, it would be unable to spend them for goods that Country C was ready to export. Trade that otherwise might have taken place would thus be stopped. If such a stoppage is to be prevented, Country A must be permitted to accord a larger quota to Country C. In other words, it must be permitted to discriminate.

But such discrimination has its dangers. It may be employed not to preserve financial stability, but to obtain a preferential market for a country's trade. Country A, for instance, may grant a larger quota to imports from Country C on the condition that it obtain a larger quota for exports to Country C. In this way, trade between the two countries may be balanced and each of them may secure protection, within the market of the other, against the competition of the outer world. Discrimination, though justified by financial necessity, may thus divert trade from normal channels, establish vested interests, and fasten bilateralism on the commerce of the world.

For these reasons, the framers of the *Charter* introduced another exception and set up an additional series of safeguards: first, they granted to such countries as might be permitted to use Q.R. to avoid international bankruptcy the further permission to discriminate in its administration; and second, they sought to insure that such discrimination would be limited in scope and in duration and that it would not be employed to obstruct the revival of multilateralism in world trade. The negotiations through which these provisions were fashioned were among the most protracted and the most bitterly contested at each of the conferences. Latitude for discrimination during the transition period was sought by the United Kingdom and by France. Rules to circumscribe discrimination were urged by the United States. The resulting text is a compromise between the views of these protagonists.

HOW DISCRIMINATION IS TO BE CONTROLLED

There are two methods by which permissible discrimination may be kept within bounds. The first sets as a limit the practices in effect on some base date. This has the advantage of being definite; it has the disadvantage of affording greater latitude to some countries than to others, even though their circumstances, at the moment, are the same. The second method limits discrimination by requiring adherence to fixed criteria. This has the advantage of treating all countries alike, but acceptable criteria are by no means easy to devise. The London draft of the *Charter* adopted the first method; the Geneva draft adopted the second. But at Havana neither could muster general support. The base date in the London draft operated to impose on the United Kingdom limitations that were more strict than those applied to the countries of western Europe. The criteria in the Geneva draft proved to be more severe than the western Europeans could accept. This knot was cut, in the final compromise, by permitting the parties to the Geneva trade agreement to elect between these two alternatives. Each of them must now remain within the limits established either by a base date or by fixed criteria. In the course of these negotiations, both alternatives were revised in detail, new requirements were added, and the duration of the exception provided at Geneva was curtailed. The prose

style of the resulting article leaves much to be desired. But through its clumsy wording discrimination will be disciplined.

The exception that is now provided will come to an end, for each country, at the expiration of its transition period under the rules of the IMF. When this period has been terminated for every member of the ITO, the article will become inoperative (23–1*f*).

For most countries, the scope of discrimination permissible in the administration of Q.R. will be that permitted in the administration of exchange controls under the rules of the IMF; restrictions in effect on the base date fixed by the Fund may thus be continued and adapted to changing circumstances unless the Fund rules otherwise (23–1*b*). Members may also continue and adapt restrictions in use on March 1, 1948; this provision resulted from a dispute between the Fund and France; it is not believed to have practical significance (23–1*c*). Parties to the Geneva trade agreement may elect to be governed, instead, by the following criteria: (1) Discrimination must be required to obtain additional imports. (2) Prices paid for such imports must not be substantially above the market level. (3) Any excess in such prices must be progressively reduced. (4) Exports salable for hard money must not be contractually committed through bilateral agreements with soft-money countries. (5) The discrimination permitted must not cause unnecessary damage to the commercial or economic interests of another member (Annex K). Countries operating under either option are required so to administer their controls as to promote the maximum possible development of multilateral trade and the attainment of balance in their international accounts (23–1*c*).

The rules governing most countries will be enforced, in effect, by the IMF; those governing the Geneva option will be enforced by the ITO. Beginning in March 1950, the Organization will make annual reports on all discriminatory restrictions still in force. Beginning in March 1952, members must consult the IMF or the ITO concerning the continued use of such restrictions; they must keep any new restrictions within such limits as these bodies may prescribe. Members electing the Geneva option must modify or discontinue any restriction that the ITO finds to be inconsistent with

its rules and must abandon any or all discriminations when the ITO finds that they are no longer required (23–1*g,h*).

Certain other exceptions must be mentioned. Some of them conform to the provisions of the *Articles of Agreement* of the IMF. Members with a common quota in the Fund, such as a mother country and its dependent colonies, may impose on outsiders Q.R. that they do not apply among themselves. Until the end of 1951, a member may discriminate in favor of another country whose economy has been disrupted by the war (23–3). It may employ import quotas whenever the IMF permits it to employ exchange controls to ration scarce currencies. Another exception, temporary in character, permits the United Kingdom to maintain preferential quotas on four or five products pending their elimination by negotiation or their replacement by tariff preferences (23–5). Another enables a member so to control its exports as to obtain convertible rather than inconvertible currencies (23–4). A final exception, unlimited in duration, authorizes the ITO to grant a member permission temporarily to impose discriminatory restrictions on a small part of its external trade (23–2). This provision, surviving the Fund's transition period, is designed to provide some flexibility for dealing with cases that may arise in an emergency.

EXCHANGE CONTROLS AND THE IMF

Since Q.R. and exchange controls may be employed alternatively to affect the flow of trade, it is important that the requirements that govern these two devices should be laid down and administered with such consistency that it will be impossible, by resorting to one of them, to escape from the rules that govern the other. The *Charter* therefore requires members of the Organization either to join the IMF or to enter into a special exchange agreement, embodying similar obligations, with the ITO (24–6). (The only exception to this requirement applies to Liberia, which uses American dollars and imposes no exchange controls.) The *Charter* further provides that members shall not, by exchange action, frustrate the intent of its rules governing Q.R. nor, by trade action, the intent of the *Articles of Agreement* of the Fund (23–4). This does not prevent them from imposing exchange controls permitted by the Fund or

from employing Q.R. for the purpose of enforcing such controls (23–3).

If the provisions of these articles are to be administered effectively, there must be close cooperation between the IMF and the ITO. The *Charter* accordingly envisages arrangements that will enable the two agencies to pursue a coordinated policy. It directs the Organization to consult the Fund with respect to all financial questions arising in the course of its activities (24–1, 3). It requires the Organization to accept the findings and determinations of the Fund on the financial aspects of any case in which a decision must be made (24–2).

The various consultations in which the IMF is expected to participate may well lead to the adoption of corrective measures more fundamental in character than exchange control or Q.R. Both of these devices are regarded as temporary expedients, designed to cope with the imbalance encountered during a period of emergency. If imbalance persists, however, recommendations calling for adjustments in the values of currencies and in domestic economic policies are likely to be made. Agreement on such measures should curtail the tenure of Q.R.

CHAPTER 9

STATE TRADING

STATES have not only regulated private trade; they have entered into trade themselves, in many ways and for many purposes. In some cases, purchases and sales are made by the state itself; in others, they are made by public agencies; in still others, an exclusive right to buy or sell abroad may be conferred upon a private enterprise. Foreign purchases and sales by governments are sometimes incidental to the normal performance of public functions or to the preservation of national security: governments buy equipment and supplies for their departments and agencies; they accumulate stockpiles of strategic materials; they dispose of surpluses remaining at the end of a war. In many countries, state monopolies have long served as sources of public revenue. More recently, states have resorted to public purchasing as a means of reducing the cost of certain imports. And where the economy of a country is collectivized, foreign trade is conducted according to the requirements of a central plan.

The economic characteristics of state-trading operations differ from case to case. Governments may buy or sell in competition with private traders and their share in the imports or exports of particular commodities may be large or small. States may monopolize all purchases or sales of particular commodities, leaving foreign trade in other goods in private hands; the percentage of total trade that is nationalized may be high or low. Where collectivism is complete, however, everything that enters or leaves a country is bought or sold by agencies of government. As the economic characteristics of

state-trading operations differ, there are corresponding differences in the problems which they present.

Where purchases are made for public use, governments will usually favor domestic over foreign sources of supply. Aside from this, unless such purchases form a large fraction of the imports of a commodity, the issues presented by these operations are not likely to be serious. Where purchases or sales are made, for any purpose, in competition with private traders, the damage done to liberal trading principles will probably be small. If the state cuts imports by buying less or cuts exports by selling less, private traders can increase them by buying or selling more. If it discriminates in favor of one country against another, private traders can offset this discrimination by doing less business with the first country and more with the second. Where private trade is handicapped by regulations and public trade supported by subsidies, such competition will be curbed. But it is more likely that the state-trading enterprise will be granted a complete monopoly. And it is here that the real problems of policy arise.

STATE-TRADING MONOPOLIES

The *Charter* seeks to promote the expansion of imports and to eliminate discrimination among sources of supply by requiring governments to relax restraints on private trade. But this method will prove ineffective in the case of any product that is purchased by a state monopoly. Where trade is in private hands, imports will grow as governments, in conformity with their commitments, reduce tariffs, remove quotas, and abandon exchange controls. But where trade is in public hands, these commitments will be meaningless. Tariffs may be reduced, quotas removed, and exchange controls abandoned, but the government may simply fail to buy. Where trade is private, moreover, greater equality of treatment will be afforded as governments fulfill their obligations to move away from tariff preferences and discriminatory internal taxes, quotas, and exchange controls. But where trade is public, these obligations, too, will be meaningless. The state-trading agency, in the course of its daily operations, can discriminate by buying more in one country and less in another, paying more here and less there. If restriction

and discrimination are intended, no elaborate apparatus of tariffs, preferences, quotas, and exchange controls is required.

Discrimination, in fact, is not to be avoided. Wherever one large buyer deals with many small sellers, the buyer will discriminate. He will pay low prices where supplies are easily obtainable and high prices where they are not. He will get more goods for less money by buying, in each area, at the lowest price that sellers will agree to take. The larger the volume of his purchases, the greater will be his power to maximize his gain. And this is true, not only of private enterprises, but also of agencies operated by the state.

The motive for discrimination may thus be economic rather than political. Where trade is private, however, discrimination for economic purposes is not practiced by governments; it is only discrimination for political purposes that is required by public policy. But where trade is public, whatever the motive for discrimination, its practice is carried on by public agencies. It would be unreasonable to forbid such agencies to discriminate, as do private enterprises, for economic gain. It is reasonable, in so far as discrimination through the regulation of private trading is forbidden, to ask that states, as traders, do not use their powers of discrimination to serve political, rather than economic, ends. The principle is simple; its application is difficult. In the case of public regulation of private trade, discrimination is political if it occurs at all. In the case of public trade, its character depends upon its motivation and motivation is not easy to discover or to prove.

Where domestic production is carried on by private enterprise and imports are handled by a public agency, state trading may be employed as a means of affording an artificial advantage to domestic industry. If the state imports raw materials, it may sell them to fabricators at a loss, thus enabling these concerns to undersell their foreign competitors in the market for manufactured goods. If it imports goods that are also produced at home, it may sell at prices so high that domestic producers find it easy to compete. Such a policy would be quite as effective as tariffs, quotas, or exchange controls in curtailing the local market for foreign goods.

Where a state monopolizes the business of exporting a commodity, there are similar effects. Its agreement to reduce export taxes and

remove export quotas would have no meaning, for it could restrict exports simply by failing to sell. Its agreement to avoid discrimination in the use of export controls could likewise be robbed of its significance by favoring one country over another in making sales. The influence that a state monopoly can exert upon world markets will depend, of course, upon its relative importance as a supplier of the goods concerned. If its sales are a small part of the total, it can do little harm to the economies of other states. But if they bulk large, it can sell at high prices where demand is strong and at low prices where demand is weak, push prices up by withholding supplies, and invade markets by selling at a loss. In these respects, the state, as a seller, would behave as does any private monopolist. Unlike a private monopolist, however, it might also employ discriminatory pricing as a means of exerting political pressure, punishing its enemies, or rewarding its friends.

Where all imports and all exports are in the hands of government, as is the case in Russia, rules that are designed to expand trade and insure equality of treatment on the part of other nations do not apply. Purchases and sales can be expanded or contracted almost at will; they can be shifted from one market to another without warning; all decisions as to the volume and direction of trade become a matter of public policy. As a method of obtaining economic advantage, discrimination becomes inevitable; as a method of exerting political pressure, it is always readily at hand. And more than this, officials who buy and those who sell will not be strangers; where there is power on one side of the market it will be used to force advantageous terms on the other; collectivism thus makes for bilateralism in international trade.

EXPANSION OF TRADE

These are the issues that faced the framers of the state-trading provisions of the *Charter*. As a matter of logic, it must be recognized that the fundamental problem is insoluble: complete collectivism does not fit into the pattern of free markets and multilateral trade. But state-trading operations, at least where they are conducted on a more modest scale, can be brought under the general principles of fair dealing in international commerce by subject-

ing them to rules paralleling those that limit the freedom of states to interfere with private trade. And this is what the *Charter* seeks to do.

The rules that govern state trading apply to any trading enterprise that is established or maintained by the state, whether it is located at home or abroad. They also apply to any private enterprise that has been granted exclusive trading privileges. They do not apply to purchases for public use, if they are not made for commercial resale or for use in the production of goods for sale; here fair and equitable treatment is all that is required (29). The rules, moreover, do not apply to the rotation or liquidation of stock piles of strategic materials. In this case, each member of the ITO will agree so to conduct these operations as to avoid serious disturbance to world markets, to give advance notice of its intention to liquidate its holdings and, upon request, to consult with other members as to how such liquidation can be accomplished without serious injury to their trade (32).

As is the case where trade is entirely private, the *Charter* requires countries with state-trading monopolies to take part in negotiations directed toward the reduction of barriers to trade. Countries in the former group will fulfill their obligation by reducing the margin of protection to domestic industry that is afforded by their tariffs. Those in the latter group will fulfill it by reducing the margin of protection that may be represented either by a customs duty or by the markup that they add to the cost of imported goods in determining their resale price. Just as any other member of the ITO must publish its maximum import duties, a state monopolizing the imports of a commodity must declare the maximum protective margin afforded by its markup over costs. And such a member must negotiate the height of the protection provided by the markup just as other members negotiate the height of a duty. As defined in the *Charter,* a duty and a markup imposed by a state-trading country are identical in amount; agreement to reduce either one will require a corresponding reduction in the other and therefore in the price at which protected goods are sold. In this matter, the formal obligations assumed by both groups of countries will be the same (31).

When a country where trade is private has reduced its tariff and

abandoned other methods of restriction, the only limit to the quantity of imports will be the amount that domestic consumers will choose to take at the resulting price. But in a country where trade is public, barriers might be reduced and imports not increased. The *Charter* therefore provides that the obligations assumed in the two cases shall be equivalent not only in character but also in effect. At the price resulting from the established markup, the state-trading country must "import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand." But this obligation is seriously qualified: the principle is limited to cases where it "can be effectively applied" and account must be taken of domestic rationing (31–5).

In some cases, the method of negotiating a markup may prove to be impracticable. Where an imported material is further processed or where it is mixed with other materials, as is tobacco, it may not be possible to determine the margin between cost and selling price. In such cases and in others, where the parties prefer it, negotiations may be directed toward any other arrangement, consistent with the provisions of the *Charter,* that is mutually satisfactory (31–2*b*). Although the nature of such negotiations is not specified, they might, for instance, place a limit on the amount by which prices paid to domestic producers could exceed those paid for competing foreign goods. Or they might result in a guarantee to import a certain quantity of some commodity without discrimination among sources of supply.

The provisions relating to the expansion of exports by a state monopoly are similarly flexible. Here negotiations must be directed toward "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" (31–1*b*).

NON-DISCRIMINATION

The parallelism between the provisions of the *Charter* that apply to public regulation of private trade and those that apply to the conduct of public trade is evident also in an article that brings state

trading under the general rule of non-discrimination. Here it is provided that each state-fostered enterprise, when it buys or sells abroad, shall "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." In order to prevent evasion of this requirement by agencies whose policies are said to be autonomous, the obligation to insure such conformity is placed upon the state itself. And members are also forbidden to prevent conformity on the part of private enterprise.

State traders will be held to have operated in accordance with the general principles of non-discrimination if they follow two rules. First, they must buy or sell abroad "solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation, and other conditions of purchase or sale." And second, they must "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" (29). These rules, it should be noted, will not prevent discrimination on purely economic grounds, since such commercial considerations as price, availability, and marketability may well justify a pattern of purchases or sales in which one country is favored over another. And opportunity to compete does not insure that all purchases and all sales will be made on the same terms. But the rules, in so far as they are observed, should afford some assurance that discrimination will not be practiced on other than economic grounds. And in this, again, the formal obligations that will be assumed by private-enterprise countries and by state-trading countries are identical.

In the case of state-trading countries, however, it cannot be contended that these obligations can be effectively enforced. The *Charter* does require members to supply one another with whatever information may be needed to permit a full and fair appraisal of matters covered in direct consultations (41) and to provide the ITO with such statistical information as it may deem necessary to enable it to fulfill its functions (39–5). But the information that is provided on state-trading operations is unlikely to enable the Organization to determine with certainty, in any case, whether discrimina-

tion is to be justified on economic grounds. Proof of violation would require an analysis of cost accounts. The disclosure of such accounts is not asked of private enterprises; it would doubtless be refused by the directors of state-trading agencies. And even if cost accounts were to be made available, they would be open to conflicting interpretations; the motive for discrimination would continue to be a matter of dispute. Where trade is conducted by governments, reliance for observance of the rules of non-discrimination must be placed on their good faith.

TRADE WITH RUSSIA

Where all of a nation's trade is handled by public agencies, another nation can best obtain assurance that these agencies will import more of its goods if the two governments conclude a bilateral agreement under which the purchase of minimum quantities of these goods is guaranteed. But such an agreement would permit and might even compel discrimination against the exports of other countries. The only way in which imports could be assured without discrimination would be through the conclusion of a multilateral agreement in which the minimum quantities of goods to be purchased from all sources would be guaranteed. This solution of the problem of trade relations between free and collectivist economies was suggested by the United States in its original *Proposals.* "Members having a complete state monopoly of foreign trade," said the *Proposals,* "should undertake to purchase annually . . . products valued at not less than an aggregate amount to be agreed upon. This global purchase arrangement should be subject to periodic adjustment in consultation with the Organization."

When the Soviet Union failed to attend the London meeting of the Preparatory Committee, consideration of this proposal was postponed. When it failed to appear at the Geneva meeting, the proposal was dropped. Its value would have been questionable in any case. A commitment that made no provision for the allocation of Russian purchases among the other participants to the negotiations would afford no real insurance against discrimination. A global commitment on a product-by-product basis would require the Soviet Union to disclose to other nations the content of its economic plans;

the *Charter* imposes no such obligation upon the private-enterprise economies. A commitment as to the aggregate value of all imports would give other countries no indication as to the market prospects for particular goods. If it did not require Russia to buy more than she had intended to buy, it would not operate to expand trade. If it did require her to buy more than she wanted, it would be both inequitable and unenforceable. When other nations reduce restrictions on imports, they create conditions under which more goods may be purchased. But they do not guarantee that such purchases will be made. The proposal was therefore abandoned without regret.

If the Soviet Union were to join the ITO, it could conceivably be fitted into the pattern of multilateral trade negotiations under the rules of the *Charter* as they stand. In bilateral discussions with the principal suppliers of each of its imports, it could agree either to reduce its markups and satisfy the demands of its consumers at the resulting prices, or to purchase, from all sources, minimum quantities of the goods concerned. And the principle of non-discrimination would apply. The rules of the *Charter* governing state-trading operations would be no weaker here than in any other case.

If a major part of the world's trade were in the hands of governments, many of the rules laid down by the *Charter* would be unworkable. A different approach toward the problems of international trade relationships would be required. But the great bulk of world trade is still in private hands; the problems presented by state trading are more serious in their logical implications than in their practical effects. If a definitive solution of these problems is sought, the *Charter* does not contain it. But it does afford a legal basis for requiring that they be submitted to international discussion as they arise in practice. And it establishes a medium through which state-trading policies can be kept under continuous review. Out of the process of debate and the accumulation of decisions, it should be possible to establish a body of precedents that will bring state trading under increasingly effective control. In the absence of the ITO, no mechanism to serve this purpose would exist.

CHAPTER 10

RESTRICTIVE BUSINESS PRACTICES

BEFORE the war there were few industrialized countries, outside of the United States, in which the production and sale of manufactured goods were effectively competitive. In Japan, where industrialism had been imposed upon a feudal society, the control of industry was in the hands of a few great families. In Germany, France, Italy, and elsewhere on the continent of Europe, the control of major industries was concentrated in giant combines and the production and distribution of manufactured goods were regimented by powerful cartels. Through these agencies European business fixed prices and terms of sale, divided productive activities, markets, and customers, limited production, assigned quotas in output and sales, and enforced its regulations by the imposition of penalties. In Great Britain, where the policy of freedom of trade had long impeded the progress of cartelization by compelling British businessmen to meet the competition of foreigners, the abandonment of that policy, following the First World War, provoked a rapid transition to a predominantly cartelized economy. British trade associations, on the eve of the Second World War, were busily engaged in fixing prices, buying up and retiring productive capacity, limiting output, assigning quotas, pooling earnings, and using these pools to reward those who restricted output and to penalize those who increased it.

The consequences of such cartelization are clear. By establishing prices at levels that are calculated to cover the costs of their least efficient members, cartels remove the incentive to introduce improvements and eliminate wastes. By assigning quotas on the basis

of present capacity or past output, they freeze production to existing locations and obstruct adjustments that might cut costs. In both of these ways they operate to maintain capacity in idleness, to curtail production, and to prevent consumption from reaching levels which it might otherwise attain. Instead of facilitating economic progress, they make for stagnation and decay.

These restraints within domestic markets have their counterparts in the restrictions that producers have imposed on international trade. In fact, the two are intimately related. For, unless high tariffs and shipping costs prevent it, monopolistic arrangements in domestic markets may be destroyed by competition from abroad. And, unless domestic markets are effectively controlled, international monopoly may be destroyed by competition at home.

The tightest form of control over world markets is that accomplished through the international combine. In this case, the holding company device is commonly employed to bring under common ownership and management a number of enterprises that have been incorporated to operate in different countries. A looser form of organization than the combine, the international cartel may be equally effective in eliminating competition in world trade. Price-fixing cartels have controlled the rates charged for international services and pegged the prices of goods sold in world markets. Territorial cartels have distributed exclusive sales areas among their participants. Quota cartels have curtailed production and exports and allocated output and export shares. Selling syndicates have handled foreign orders, fixed prices, and apportioned sales. Patent cartels have operated international patent pools, including in their licenses provisions which have enforced a parcellation of the markets of the world.

Like the domestic cartel, the international cartel operates to bar new enterprise, to obstruct technological improvement, to impair productive efficiency, to check consumption, and thus to hold down planes of living. Like the tariff, it operates to restrict trade. But, unlike the tariff, it is set up by businessmen, without public representation or responsibility, for private ends. It thus usurps the authority of governments and delivers the determination of foreign economic policy into private hands.

The effort to expand trade by reducing tariffs and eliminating quotas might well be defeated if no action were taken to prevent the erection of private tariff and quota systems by international cartels. The necessary action might either be taken through international agreement or left to the initiative of individual states. But unilateral action, even when taken by a government as powerful as that of the United States, has its limitations. It cannot protect domestic consumers against the consequences of cartel agreements in which domestic producers do not participate. It cannot obtain evidence concerning agreements made and administered abroad, even where domestic producers do participate. And if it does succeed in breaking up a cartel that is sponsored or supported by other governments, it may induce those governments, in one way or another, to retaliate. If action against restrictive business practices in international trade is to be effective, it must be taken by many states in accordance with a common understanding as to policy. If the tariff and quota provisions of the *Charter* were not to be evaded, it was therefore important that such an understanding be obtained.

APPROACHES TOWARD CARTEL POLICY

In its domestic market, the United States has adopted two contrasting policies in dealing with the problems of monopoly. In the case of industries "affected with a public interest," such as transportation and public utilities, it has permitted monopolies and set up administrative agencies to regulate their practices. In the case of other industries, it has sought to preserve competition by forbidding the establishment of monopolies and by breaking them up where they exist; it has maintained machinery for the enforcement of these measures and sought to induce compliance by providing for the imposition of penalties. Where action in international markets must be taken by an intergovernmental agency, it is impossible, under present conditions of political organization, to follow either of these policies.

The method of administrative regulation, even when applied to a single enterprise operating in a local market, is always difficult and often ineffective. Applied to many enterprises operating in world markets, it would encounter problems of baffling complexity. To be

effective, it would require powers that no nation is now prepared to surrender to an intergovernmental agency. Such regulation, therefore, is not feasible either economically or politically.

The method of anti-trust is also unavailable. Even in the United States, the meaning of "restraint of trade" has never been precise. In international negotiations, agreement upon definitions of practices that would be held illegal by all countries under all circumstances is not to be obtained. Nations differ in economic development and organization, in constitutional requirements, legal systems, and administrative procedures, and in their traditional attitudes toward competition and monopoly. Few of them have ever embraced the American philosophy of anti-trust. None of them is prepared to confer upon an intergovernmental agency the powers required to break up existing cartels or to prevent new cartels from being formed. Action to preserve competition in international trade must be taken by individual governments. And it must rest upon the voluntary cooperation of national states.

If world trade is not to be restricted by private agreements, a workable method of intergovernmental action must be found. Such a method was suggested in the American *Proposals* and elaborated in the draft of the *Charter* first prepared by the United States. Under this plan, governments would agree to take action, individually and collectively, to curb restrictive business practices in international trade. They would also agree to the enumeration of certain practices which might be held to be restrictive in their effects. These practices would be judged, not by their form, but by their influence on the volume of trade and industrial activity. Any member might complain that the practices followed, under a particular agreement, did, in fact, operate to restrict trade. The ITO would then investigate the charge and, if it were substantiated, would recommend remedial action to the governments concerned. A common policy was thus established; an instrument was provided to aid in its effectuation; enforcement was left to member states.

ISSUES IN THE CARTEL NEGOTIATIONS

There was no opposition at London, Geneva, or Havana to including in the *Charter* a chapter on restrictive business practices.

There was acceptance, in general, of the American approach. But there were sharp differences of opinion as to many of its details. On individual issues, Canada frequently sought tighter provisions than those proposed by the United States; the United Kingdom, Belgium, and the Netherlands usually sought looser ones. The undeveloped countries, as consumers of cartelized goods and services, generally gave their support to Canada and the United States. In some respects the resulting chapter is weaker, in others stronger than that contained in the original American draft.

One American proposal would have established a presumption as to the restrictive effects of certain practices and imposed the burden of proof on those accused of using them. It was argued, in opposition to this proposal, that it would be both unfair and incompatible with recognized principles of civil law to incorporate an *a priori* condemnation of such practices and it was insisted that reliance should be placed on the development over time of a body of standards growing out of specific findings of the ITO. This view prevailed and the proposal was dropped.

The American text would have required members to "take action" to carry out the recommendations made, in particular cases, by the ITO. It was objected that this requirement would impose unequal obligations on different governments. In the United States, for instance, the government might "take action" by submitting evidence to a grand jury or by seeking an injunction from a court. Neither the grand jury nor the court, however, could be required to accept the findings of the ITO. In certain other countries, on the contrary, business is not protected by "due process of law"; governments have power to intervene directly in industry; a commitment to "take action" would require them to carry out any recommendation that the ITO might make. It was agreed, accordingly, that each member should take full account of the Organization's specific recommendations in determining what it should do to carry out its general obligation in a particular case.

Under the American draft, private citizens or business entities could have carried complaints directly to the ITO. In criticism of this provision, it was said that governments cannot be asked to answer to complaints made, not by other governments, but by their

nationals. In the present text it is therefore provided that governments must take responsibility for the filing of complaints.

In other respects, however, the American proposals were improved upon. The *Suggested Charter* would have applied the procedure of complaint, investigation, and recommendation only to practices that might be proven to be restrictive by their past effects. It was pointed out that the procedure, if thus limited, might operate to cure past abuses but could not be used to prevent future ones. The text was therefore amended to permit the application of the procedure not only to practices that have had restrictive effects, but also to practices that are about to have such effects. Under the present wording, a complaint may be lodged against a cartel agreement as soon as it is made.

One of the points most vigorously disputed during the negotiations was the application of the provisions of the chapter to state-trading enterprises. Under the text adopted at London, a complaint regarding restrictive practices involving several concerns could be brought against both public and private commercial enterprises, but complaints regarding the restrictive practices of a single concern could be brought against private enterprises alone. At Geneva, public enterprises were brought within the scope of the latter category of complaints. At Havana, determined efforts were made by Mexico and Argentina to exempt state enterprises from some or all of the provisions of the chapter. These efforts, however, were unsuccessful; the coverage established at Geneva was retained.

Another controversy followed a proposal to extend the chapter's procedures to international transportation, communications, insurance, and commercial-banking services. This move was supported by many of the undeveloped countries and opposed by the principal maritime powers. The opposing views of these two groups were finally compromised by excluding from the chapter services that fall within the jurisdiction of other intergovernmental organizations and applying a simpler procedure in the case of any that may remain.

A final issue was raised by a British contention that, in any case involving restrictive business practices, a member should be required to exhaust the procedures of the chapter relating to such practices

before it could ask the ITO to release it from obligations toward another member on the ground that benefits promised it by that member under the *Charter* had been nullified or impaired. Since the nullification and impairment procedure is the means of applying the only sanction provided for the enforcement of the *Charter,* this contention threatened to weaken the whole structure by delaying its use. Fortunately, it was rejected; if commitments are violated, the procedure set up for the investigation of restrictive business practices cannot be interposed.

CARTELS IN THE CHARTER

Each member of the ITO will agree to "take appropriate measures . . . to prevent . . . 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" of the *Charter.* This commitment covers practices, within the member's jurisdiction, engaged in by one or more private or public commercial enterprises whenever such enterprises, individually or collectively, "possess effective control of trade among a number of countries in one or more products." It does not apply to practices outside the member's jurisdiction or to those confined to local markets; it does not apply to the practices of competitive enterprise; it is concerned with the problem of monopoly in international trade (46–1, 2).

To make this policy effective, two procedures are provided. Members affected by restrictive business practices carried on by enterprises located in other countries may ask the ITO to arrange for consultation with such countries in order that the situation may be remedied (47). Alternatively, or as a further resort, a member may submit a written complaint directly to the ITO. If a preliminary screening indicates that the complaint may have substance, the Organization will investigate. In such an investigation, it will collect further information from member governments and may hold hearings at which representatives of governments, business entities, and private citizens will be given an opportunity to appear. The Organization will then make a finding as to whether the practices

in question have had, or are about to have, harmful effects. If such effects are found, the ITO will notify all member governments, call upon them to take appropriate measures to prevent the continuance or recurrence of the practices, and, at its discretion, may recommend specific remedies. The Organization will publish the record of the case and, from time to time, report upon the action taken by member states. Where the practices of a single public enterprise are questioned, an attempt must be made to correct the situation through consultation before a complaint is formally submitted to the ITO (48).

The *Charter* enumerates the specific practices that will be subject to complaint. These include such practices as fixing prices or terms of purchase or sale; discriminating against particular enterprises or excluding them from markets; allocating markets, production, customers, sales, or purchases; curtailing output or fixing production quotas; agreeing to prevent the development or application of technology; and extending the use of rights acquired under patents, trade marks, and copyrights to products or activities which are not within the scope of such grants. This list is comprehensive; it cannot be extended without a two-thirds vote of the Organization's membership (46–3).

Two of the items in the list require further comment. Alleged suppression of technology is not to be investigated unless a conspiracy among potential competitors is involved. The practice is so described as to exclude deferment of application by a single enterprise. The ITO, moreover, is given no authority to pass upon the legal scope of patents, trade-marks, or copyrights. This determination, under the present wording, must be made under the laws of the countries that have made the grants. Both of these provisions were clarified at Geneva in response to suggestions made in hearings before the United States Senate Committee on Finance.

Each member of the ITO will be required to "take all possible measures, by legislation or otherwise," to carry out its general obligation to suppress restrictive business practices. It need not accept specific recommendations made in particular cases by the ITO. But it must take such recommendations into full account in determining, "in accordance with its constitution or system of law and economic

organization," what action it will take. If a member does not take the recommended action in a particular case, it must explain its inaction to the ITO and discuss the matter further if the Organization so requests (50).

This, in its major outline, is the method proposed to curb restrictive business practices. The *Charter* also provides that its procedures shall not be employed to prevent a member government from enforcing its own laws against monopoly and restraint of trade (52). In the case of international services, it requires members to afford opportunities for direct consultation, instructs the ITO wherever possible to refer complaints to other intergovernmental agencies, and authorizes it, where no such agency exists, to make recommendations and promote agreement on remedies (53). The Organization is also empowered to conduct studies, make recommendations, and arrange for conferences on all matters relating to restrictive business practices in international trade (49).

CRITICISM AND APPRAISAL

Criticism of the chapter comes from two extremes. It is said, on the one hand, that it goes too far, limiting the freedom of domestic business to participate in foreign market-sharing schemes and subjecting it to both international and national control. It is argued that Americans cannot hope to sell in certain countries unless they agree to accept the quotas offered and observe the terms laid down by national cartels. It is feared that the *Charter* might be so interpreted as to circumscribe the activities of export trade associations organized under the provisions of the Webb-Pomerene Act. And it is contended that it is unfair to permit enforcement of the anti-trust laws while a case is under investigation or where a clean bill of health has been given by the ITO.

It is said, on the other hand, that the *Charter* does not go far enough, since it merely creates a forum for international discussion instead of outlawing cartels *per se*. It is pointed out that restrictive practices are to be judged, not by their form, but by their effects; that action on a case-by-case basis will be slow; that recommendations, in individual cases, will be passed upon, not by a judicial body, but by political appointees representing member states; that these

recommendations may be ignored; and that enforcement is left to national governments.

The fears of the first group of critics appear to be unjustified. If American exporters are satisfied with the terms accorded them by cartels that operate exclusively within the market of another country, it is unlikely that their participation will give rise to a complaint. If they are dissatisfied, however, the *Charter* affords means of taking action to free external competition in such markets from control. International agreements to divide up the world market, assigning certain countries to each participant as its exclusive territory, will certainly be condemned. But it cannot be contended that American business must enter into such arrangements in order to sell abroad. It is true that Webb-Pomerene associations are permitted to limit competition among their members, but as long as they compete with foreign sellers their activities should not be subject to complaint. They have never been authorized by Congress to participate in international cartels. Such participation might well give rise both to prosecution under the anti-trust laws and to investigation by the ITO. Its legality, under American legislation, is a matter for determination by the courts. Action under the *Charter* will not prevent the United States from enforcing the Sherman Act. Here the *Charter* is neutral: it does not amend the anti-trust laws; it does not interpret them.

The criticisms of the second group are not to be denied. But more is asked than is to be obtained. The *Charter* will not destroy monopoly in world markets overnight; the anti-trust laws have not destroyed it in the United States in sixty years. Restrictive business practices are to be judged by their effects; a rule of reason has governed the interpretation of the Sherman Act. Nations are not committed to take the action recommended in a given case; in the light of past traditions and present policies, their general commitment is stronger than anyone had reason to expect. Enforcement is left to governments; this will be the case as long as sovereignty is retained by national states.

The chapter marks the first approach toward international agreement in this field. Viewed as a beginning, it has great significance. The principle of competition in international markets is given formal

recognition. A common policy toward monopoly is established. Major commitments to action are taken. A forum is set up where restrictive business practices can be questioned and condemned. An instrument is fashioned through which corrective measures can be devised. A process of education is set in motion. A method is provided for accumulating a body of knowledge and experience. A foundation is laid for a structure of international common law to govern business practices in foreign trade. For the effective enforcement of its provisions, the pressure of world opinion must be brought to bear.

The Committee on Cartels and Monopoly of the Twentieth Century Fund closes its appraisal of the chapter with these words: "If the United States rejects the Draft *Charter,* it will get, not a better agreement, but a looser one, or perhaps no agreement at all. The right course for the United States is to support the adoption of the *Charter,* to adhere to it, and to try to improve it." *

* *Cartels or Competition?* (New York, 1948), p. 424.

CHAPTER 11

INTERGOVERNMENTAL COMMODITY AGREEMENTS

In the case of manufactured goods, the *Charter* condemns the adoption, by private or public enterprises, of measures that operate to restrain international trade. In the case of primary commodities, under certain circumstances, it permits the adoption, through intergovernmental agreement, of measures that may have the same effect. The policies proposed in these two cases are obviously inconsistent. It should be noted, however, that a similar inconsistency has characterized the policies pursued, in its domestic market, by the United States. In manufacturing, restraint of trade has been forbidden by the Sherman Act. In agriculture, prices have been supported by Congressional enactment, and curtailment of production and marketing has been encouraged or required. Differential treatment of primary and fabricated products involves no innovation in public policy.

This differentiation is to be attributed, in large measure, to the peculiar conditions that characterize the production and sale of certain primary commodities. Income, in agriculture, and in mining, fluctuates more violently than in other industries. In agriculture this fluctuation is caused by a wide and rapid swing in prices; in mining, more often, by a pronounced expansion and contraction in output. In both fields, demand is relatively inelastic; it does not grow as prices fall. In agriculture, supply also is relatively inelastic; farmers keep on producing when prices fall. As a result, price acts clumsily in regulating agricultural output and production responds slowly to

changes in demand. Surpluses may thus accumulate, prices may be depressed, and large numbers of small producers may suffer serious hardship over long periods of time. In mining, on the other hand, production is often carried on in isolated regions where alternative opportunities for employment are not at hand. Contraction of output may thus result in widespread and persisting unemployment among workers in such communities.

In both of these cases, pressure will be brought to bear on national governments. And these governments will respond by adopting measures that are designed, in one way or another, to afford relief. Such measures, in the United States and in other countries, have restrained competition and regulated trade. But this is not their only consequence. World markets are affected and international relations are involved. When nations attempt to aid domestic producers by curtailing imports or forcing exports, the effects of these measures are felt abroad. Foreign producers suffer, resentment is created, and retaliation is likely to occur. As nationalistic measures grow in scope and in intensity, the volume of world trade is certain to decline. If a freer trading system is to be established, international agreement on commodity policy is required.

It would be futile to propose that nations agree to abandon all efforts to assist producers of primary commodities. There is not the remotest possibility that any nation would accept such a commitment. Even in the United States it would run counter to established policy. And in many another country the whole economy depends upon the exportation of one or two crops or minerals. The question that must be answered is not whether governments will act, but how. If each of them pursues an independent policy, there is little chance that multilateral trade can be restored. If all of them agree upon a common policy, the hopes for multilateralism will revive.

APPROACHES TOWARD COMMODITY POLICY

Governments have attempted, in the past, to stabilize the incomes of producers of primary commodities by entering into agreements through which exports, imports, stocks, production, and prices in world markets have been controlled. Under these agreements, exports and imports have been restricted through taxation, prohibi-

tion, the imposition of quotas, and the requirement of licenses. Subsidies have been paid and loans made to assist producers in withholding their supplies. Governments themselves have bought, stored, and held commodities. Limitations have been imposed upon acreage sown, livestock kept, and minerals developed and, at a later stage, upon crops gathered, livestock slaughtered, and mines worked. In cases where production could not easily be curtailed, portions of a crop have been destroyed. Under some agreements, prices have thus been influenced indirectly. Under others, minimum prices have been fixed.

Such agreements have been subject to serious abuse. Nominally they have been devised for the purpose of stabilizing prices. But the levels at which this stabilization has been attempted have almost invariably been higher than those that could be justified by conditions of demand and supply. Quotas have been allocated on the basis of past performance rather than prospective efficiency. Production has thus been frozen to uneconomic locations; high-cost production has been kept in operation, low-cost production prevented, and average costs increased. Little effort has been made to enhance efficiency, to expand consumption, or to promote the diversion of resources into more productive activities. In few cases have importing countries been accorded a voice in the negotiation or administration of an agreement or the interests of consumers taken into account.

It has often been suggested that the abuses experienced under commodity agreements could be avoided by setting up one or more international agencies to stabilize prices by operating buffer stocks. Under such a scheme, it is contended, violent short-run fluctuations would be prevented and gradual long-run adjustments permitted to occur. Trade and production could thus be freed from regulation and resources shifted in response to changes in demand. The buffer-stock agency would control the market by establishing a range of prices, buying when they fell below the minimum and selling when they rose above the maximum. Its own holdings would be kept small by moving its range of prices to the proper point; the bulk of world trade would be left in private hands. The agency would be established with capital supplied by governments; it would finance its

operations by private borrowing. In the long run, it would just break even; its profits and its losses, over time, would cancel out.

In theory, certainly, the plan is sound. In practice, however, it may be doubted that it could be carried out. The buffer-stock agency would be set up and controlled by governments; it would be subject to political pressures; and these pressures would be directed toward assuring producers the highest prices obtainable. Efforts would inevitably be made to set the minimum and maximum figures at levels that would not be justified. Attempts to reduce these figures would encounter determined resistance. The agency's prices, in all probability, would be set too high. As a result, production would be increased, consumption would be curtailed, and stocks would accumulate. Carrying charges would mount; losses would be incurred. From here on, the agency could avoid disaster in only one way. If it were to unload its holdings, prices would fall disastrously. If it were to destroy them or give them away, it would go bankrupt. But gradual liquidation and continued solvency might be possible if production were to be controlled. The scheme thus ends in promoting the very policy that it was designed to prevent. And here, as elsewhere, the consumer would bear the cost. This outcome might be avoided if freedom from political pressure could be assured. But such assurance is not to be obtained.

A third approach toward international commodity policy was contained in the *Proposals* and the *Suggested Charter* issued by the United States. This approach was designed to afford relief from the distress occasioned by burdensome surpluses of agricultural products and by widespread unemployment in isolated mining areas. It required that an attempt be made to remove such surpluses and to restore employment by devising methods of expanding consumption before consideration could be given to measures involving restriction of output or trade. It envisaged the conclusion of intergovernmental agreements for the regulation of trade in primary commodities. But these agreements were to be permitted only as exceptions to the general rules of commercial policy; they were to be limited in duration; and they were to differ radically in character from those that had been concluded in the past.

Such agreements were to facilitate the adaptation of production

to changes in demand. They were to serve as a stopgap, affording a measure of stability while this adaptation was under way. They were to permit production to contract where costs were high and to expand where costs were low. They were to cushion the shock of readjustment by providing a breathing period during which an orderly reallocation of resources could take place. They were to safeguard the interests of consumers by according to countries mainly interested in exports and to those mainly interested in imports an equal voice. They were to be negotiated and administered with full publicity.

These proposals were deliberately designed to prevent abuses of the sort that had accompanied commodity agreements in the past. They provided the foundation on which the sixth chapter of the *Charter* has been built.

ISSUES IN THE COMMODITY NEGOTIATIONS

The first issue to present itself in the negotiations at the London meeting was raised by the proposal that jurisdiction over agreements affecting agricultural commodities should be given to the FAO. If this proposal had been adopted, the policy applied in such cases might have come to differ sharply from that adopted for other industries and agreements might have been promoted and administered by an agency that had no responsibility for reducing barriers to trade. The United States therefore insisted that a common policy should govern agreements affecting all primary commodities and that this policy should be subordinated to the broader purpose of restoring a multilateral trading system by keeping such agreements within the jurisdiction of the ITO. This view prevailed. The FAO was given the right to participate, in an advisory capacity, in the negotiation and administration of agreements affecting agricultural products. Governments were invited, pending the adoption of the *Charter,* to make sure that agreements already in existence conformed to the recommended rules. And an interim committee was established by the United Nations to give advice on such agreements and to make periodic reports. One member of this committee represented the FAO; its chairman represented the Preparatory Committee (and, after the Havana conference, the Interim Committee) of the ITO.

A second issue was raised at London by a British proposal to exempt from the rules applying to restrictive agreements all plans for the operation of buffer stocks. It was contended that such rules should apply only to agreements that fixed prices directly and not to those that operated to fix them indirectly through purchases and sales. Agreements of the latter type, it was argued, are generally to be preferred. In reply, it was pointed out that buffer-stock operations are likely to be restrictive in their ultimate effects. And it was insisted that safeguards are required. This difference was resolved by including among the possible objectives of a commodity agreement the moderation of pronounced fluctuations in price. But agreements that involve the regulation of prices, even though the method of regulation is indirect, remain subject to all of the limitations that are prescribed.

The principal problem at Geneva was that presented by agreements adopted for purposes other than the prevention of hardship resulting from burdensome surpluses and widespread unemployment. It was recognized that agreements might properly be employed for the conservation of natural resources and for the distribution of commodities in short supply. It was clear, too, that such agreements might involve the restriction of production or trade. But it was apparent that some of the rules devised to deal with situations of burdensome surplus and widespread unemployment did not apply. It was also argued that agreements involving incidental regulation of trade might not be restrictive in purpose or effect. It was pointed out, for instance, that countries in the Northern and Southern hemispheres might agree that each would confine its exports of an agricultural product to certain seasons of the year. But such an agreement would not have the effect of controlling the volume of exports as a whole. It was also suggested that agreements adopted for the purpose of stimulating production in undeveloped areas might include a precautionary provision for the later establishment of a minimum price. But unless such a provision should come into effect, no restriction would be involved. These points were met in a reorganization of the chapter that was designed to apply to each type of agreement, at each stage of its operation, the rules that would properly be relevant. The resulting provisions are described below.

Another issue was raised by attempts so to extend the terms of the chapter as to permit the conclusion of agreements in the case of manufactured goods. In the draft adopted at London, the ITO was authorized to find, under exceptional circumstances, that such an agreement was justified. At Geneva, this possible escape was whittled down. Under the present draft, an agreement may be permitted if a product does not fall "precisely" within the definition of a primary commodity. But it must also satisfy numerous conditions that will seldom be found to exist in the case of manufactured goods. It was thought, however, that this wording might permit agreements affecting certain marginal products, such as butter and cheese, which come close to satisfying the definition but fail to do so "precisely," because they have been subjected to more than an initial stage of processing.

Efforts were made by various Latin American countries at Havana to obtain amendments exempting stabilization agreements from the *Charter's* rules, authorizing agreements with no consumer representation, and establishing formulas for the determination of a minimum price. Under one such formula, the price of a raw material would be fixed at the highest figure that could be justified by the price of the finished product in which it was used. Under another, the prices of primary products would be set at figures high enough to maintain purchasing power, in producing countries, at levels required to assure "proper" standards of living. Under a third, international parity would be provided by establishing a "fair relationship" between the prices of primary commodities and manufactured goods. Each of these proposals was defeated. No significant alterations were made in the Geneva draft. In the *Charter,* as it stands today, the fundamental principles proposed by the United States have been retained.

COMMODITY AGREEMENTS IN THE CHARTER

The *Charter* recognizes that "the conditions under which some primary commodities are produced, exchanged, and consumed . . . may, at times, necessitate special treatment of the international trade in such commodities through intergovernmental agreement" (55). For this purpose, it defines the term "primary commodity" to cover

products which have undergone the processing required to prepare them for sale and those which may be "so closely related, as regards conditions of production or utilization," that they must be included in a common agreement (56). It exempts from its provisions, under certain safeguards, conservation agreements relating to wild life and fisheries (70*d*).

Commodity agreements may be employed for a variety of purposes. At times when "adjustments between production and consumption cannot be effected by normal market forces alone as rapidly as circumstances require," they may afford temporary relief while nations make provision for "economic adjustments designed to promote the expansion of consumption or a shift of resources and manpower out of over-expanded industries into new and productive occupations." They may be used to achieve "a reasonable degree of stability on the 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." They may be used to expand production, to conserve natural resources, and to assure the equitable distribution of a commodity that is in short supply (57).

The procedure that must be followed in negotiating an agreement is prescribed in some detail. A member or another intergovernmental organization may request the ITO to set up a study group to investigate conditions affecting international trade in a primary commodity. Such a group will report its findings to the Organization and to its members. If, in its opinion, the situation requires such action, it may recommend that a conference be called for the purpose of preparing an intergovernmental commodity agreement (58). The ITO will summon such a conference on the basis of this recommendation and may do so at the request of members with important interests in a commodity, at the instance of another intergovernmental organization, or upon its own initiative. Members of the ITO who wish to do so and representatives of other intergovernmental organizations may participate in the proceedings of study groups and commodity conferences. Non-members may also be invited to attend (59). This procedure must normally be followed in the negotiation of all agreements save those relating to commodities in short supply. It is pro-

vided, however, that members may enter into direct negotiations if the procedure has been unreasonably delayed (61–6).

Certain requirements are established for all commodity agreements, whether restrictive or not in purpose or effect. They must be open initially to all members on equal terms. They must provide for adequate participation by countries whose interest is in the importation or consumption of a commodity. They must accord fair treatment to members who do not participate. Their negotiation and administration must be given full publicity (60).

To govern restrictive agreements, called "commodity control agreements," additional requirements are laid down. Such agreements are defined to include those which involve the regulation of prices or involve the regulation of output, exports, or imports and have the purpose or possible effect of restraining production or trade (61–2). Agreements of this type must be confined to commodities whose production and sale are characterized by a number of conditions that will be found to exist only in the case of certain agricultural staples or in that of minerals produced in isolated communities.

One or the other of two sets of conditions must be satisfied. In the first case, small producers must account for a substantial portion of the total output; a surplus must have developed or be expected to develop; this surplus must be so burdensome as to cause or threaten serious hardship; it must be impossible to prevent this hardship by relying on the normal operation of market forces; and this impossibility must be attributable to the fact that a substantial reduction in price would not readily lead either to a significant increase in consumption or to a significant decrease in production (62*a*). These conditions can be fulfilled, at times, by certain agricultural commodities. In the second case, unemployment must have developed or be expected to develop; this unemployment must be so widespread as to cause or threaten serious hardship; it must be impossible to prevent this hardship by relying on the normal operation of market forces; this impossibility must be attributable to three facts: first, a substantial reduction in price does not readily lead to a significant increase in consumption; second, it does lead to a decrease in production and therefore in employment; and third, there are no alter-

native opportunities for employment in the areas in which production has been carried on (62*b*). These conditions can be fulfilled, at times, by certain minerals produced in isolated communities. The decision as to whether such conditions are satisfied in a particular case is to be made either through a commodity conference or through the ITO by general agreement among members substantially interested in the commodity concerned.

Members of the ITO are forbidden to enter into a commodity control agreement unless these conditions are fulfilled. Such agreements cannot be concluded or renewed for more than five years at a time (65–1). They must give as many votes to countries interested mainly in imports as to those interested mainly in exports. They must assure the availability of adequate supplies at fair prices. They must provide, where practicable, for measures designed to increase consumption. They must permit production to expand in areas where it can be carried on with the greatest economy. And countries participating in such an agreement must formulate and adopt programs of internal economic adjustment designed to insure all practicable progress, during the life of the agreement, toward conditions that will obviate the necessity for its renewal (63).

These rules do not apply to agreements to conserve natural resources or to allocate commodities in short supply (70–2, 3). If an agreement to expand production provides for the regulation of prices at some time in the future, they will not apply until this provision takes effect (61–5). In other cases, the classification into which an agreement falls will be determined by the ITO. If it is found that an agreement which may involve some incidental regulation of output, exports, or imports is unlikely to restrain production or trade, the ITO need not classify it as a commodity control agreement, but it may still prescribe the rules to which it must conform (61–4). The Organization may also permit an agreement to be concluded in a case that does not fall "precisely" under the definition of a primary commodity, but it may do so only in the unlikely event that all of the conditions laid down for agricultural staples or minerals are satisfied (56–3).

Detailed provision is made for the administration of commodity control agreements by separate commodity councils (64), for the

periodic review of their operations by the ITO (65), and for the settlement of disputes (66). If any agreement existing at the time the *Charter* comes into force is found to be inconsistent with its rules, it must be modified (68). And if the ITO should find, at any time, that an agreement is not operating in accordance with these rules, it must be terminated or revised (65–3).

CRITICISM AND APPRAISAL

This chapter, like the preceding one, has drawn fire both from the right and from the left. Those who oppose all commodity agreements believe that it compromises with evil; that government cartels should be outlawed along with private cartels. Those who seek the creation of large numbers of such agreements complain that its requirements will make them too difficult to get. Between these two positions, the chapter occupies a middle ground. It neither prohibits commodity agreements nor promotes them. It attempts to prevent abuses of the sorts that have arisen in the past. It seeks to establish principles that are economically defensible and morally sound. It is designed to safeguard the interests of consumers, to force adjustment to changing conditions, and to facilitate the early restoration of free markets. It marks the first approach toward agreement on international policy in this field.

How the chapter will operate in practice remains to be seen. There is danger, of course, that lip service will be given to its principles and means devised for the evasion of its rules. There can be no assurance that members will fulfill their obligation to remove the need for restrictive measures by promoting adjustments within their own economies; such adjustments are distasteful; to promote or even to permit them requires more courage than governments have normally possessed. There can be no assurance that the interests of consumers will be represented effectively; countries that import a commodity in large quantities may also produce it in smaller quantities at home; when they sit on commodity councils, the demands of organized producers may well be more effective than those of unorganized consumers in determining their votes. There can be no assurance that commodity agreements will be limited, in fact, to those cases in which they would be justified; governments may agree that

a burdensome surplus or widespread unemployment is threatened at times when no such threat exists. There can be no assurance, finally, that restrictive agreements will always be subject to the rules that should apply; members of the ITO may decide, in particular cases, that agreements providing for the regulation of production or trade are not restrictive in purpose or in their possible effects.

The provisions of the chapter, in short, may be abused. But this does not argue against the effort to give them effect. In the words of the Committee on Cartels and Monopoly of the Twentieth Century Fund: "The chapter will be what the members of the ITO make it. Much depends on the United States. This country should strongly support ITO in its attempt to regulate commodity agreements and should do everything possible to strengthen its machinery." *

One further observation is pertinent. Few agreements can be expected to operate successfully and, consequently, few agreements can even be negotiated unless they are acceptable to all those governments that have important interests, either as importers or as exporters, in the commodity concerned. There are few, if any, commodities in which such an interest is not possessed by the United States. Where this country depends upon a few exporters for supplies, as it has with rubber and with tin, it must seek protection from monopolistic prices in enforcement of the *Charter's* rules. But where, as a major importer, it buys from many exporters, it has the power to break an agreement by refusing to cooperate in its enforcement. And where, as a major exporter, it competes with other exporters, it has the power to break an agreement by underselling the established price. In such cases, therefore, it would be futile to conclude an agreement unless the United States were willing to cooperate. In this *de facto* power of veto, protection against abuse is virtually complete.

* *Op. cit.*, pp. 449–450.

CHAPTER 12

SUBSIDIES

THE *Charter* does not forbid the use of subsidies for such purposes as the promotion of economic development, the diversification of industry, or the protection of national security. This method is to be preferred, in general, to the employment of devices that operate to restrict imports. Its cost is clear and taxation can distribute its burden equitably among those who benefit.

Any subsidy that affects the ability of domestic producers to compete with foreign producers, either at home or abroad, will exert an influence on the flow of trade. This will be true whether the subsidy is direct or indirect, whether it is open or concealed, and whether it operates to reduce imports or to increase exports from the levels that would otherwise obtain. The direct subsidization of exports, however, is particularly likely to interfere with the maintenance of good relations in international trade.

When a country subsidizes exports, it gives its own producers an advantage over producers located in the countries where its goods are sold and over those located elsewhere who also compete in these markets. Its action is certain to be regarded as an unfair method of competition and retaliation is likely to result. The countries in which it sells may seek to exclude its goods by imposing countervailing duties, by raising tariffs, or by establishing import quotas. The countries with which it competes may attempt to maintain their position by matching its subsidies or to better it by paying even higher ones. In either case, the subsidization of exports will arouse resentment and invite antagonistic policies.

Most nations resort to artificial measures of one kind or another

in the interest of domestic producers of agricultural commodities. The United States is no exception to the rule. If it chose to do so, it could increase the incomes of farmers by paying subsidies that would not affect the prices at which they sell. But it has chosen, instead, to support these prices at levels above those prevailing in the markets of the world. Such measures, of course, are inconsistent with the philosophy of free markets and private enterprise. They require that the domestic structure of prices and production be insulated against changes that occur abroad and obstruct their adaptation to the shifting conditions of supply and demand. But they represent an established policy of the United States. And, under this policy, commodities that bring higher prices at home cannot be sold abroad unless their exportation is subsidized. For this reason, the provisions of the *Charter* that deal with subsidies are of particular interest to the United States.

SUBSIDIES IN GENERAL

A member of the ITO who grants any subsidy that operates, directly or indirectly, to reduce imports or to increase exports must inform the Organization concerning the character of the subsidy, its extent, the reasons for its adoption, and its probable effects. If a subsidy threatens to injure the trade of another member, the country granting it may be called into consultation and must be prepared to consider the possibility that it might be modified. But beyond this its obligation does not go (25).

As a general rule, members undertake not to subsidize exports after the *Charter* has been in force for two years, a period which may be extended, upon request, by the ITO. Exemption of exports from taxes imposed on the domestic consumption of a commodity is not regarded as a subsidy. There are three exceptions to the general rule. Where a non-member grants a subsidy, a member may grant one to offset it (26). Where a member has a system of stabilizing domestic prices under which, as in Australia, those prices not only rise above but sometimes fall below the level at which it sells abroad, and if it does not so operate this system as unduly to stimulate exports or to injure other members, it may continue to pay the incidental subsidy. And finally, the wording adopted at Havana is so

broad that it will probably permit any country to subsidize the exportation of primary commodities (27).

SUBSIDIES FOR AGRICULTURAL EXPORTS

The occasion for subsidizing exports usually arises, not when demand is large, supply small, and prices high, but when demand is small, supply extremely large, and prices seriously depressed. In these circumstances, it was suggested by the American *Proposals,* members of the ITO, instead of competing in subsidization, should seek relief through the negotiation of intergovernmental commodity agreements. If, in a particular case, an agreement could not be reached, or if an agreement should fail to accomplish the purposes for which it was designed, then the rule against subsidizing exports should be suspended until members decided that it should be reapplied.

This suggestion was incorporated in the London draft of the *Charter.* But at Geneva it was substantially modified. If negotiations directed toward the conclusion of a commodity agreement should break down, or if such an agreement should end in failure, under the provisions of the Geneva draft, a member might seek permission to subsidize exports from the ITO. This permission would be granted for a limited period and subject to specified conditions, if the ITO should determine that the commodity to be subsidized was in burdensome surplus, that the subsidy would not operate unduly to stimulate exports, and that the interests of other members would not be seriously prejudiced; otherwise, it would be refused. The United States objected to this change on the ground that the requirement of prior approval for the direct subsidization of agricultural exports was discriminatory. In the case of subsidies operating indirectly to reduce imports or increase exports, as do those of many other countries, no such approval was required. The position of the American delegation on this issue was therefore reserved.

At the Havana conference, the tighter provisions of the Geneva draft were accordingly relaxed. Under the present terms of the *Charter,* members who are paying export subsidies must cooperate in the negotiation of commodity agreements. And while such negotiations are in progress, they cannot initiate or increase such sub-

sidies. But if negotiations do not succeed or promise to succeed, or if a commodity agreement is not thought to be appropriate, "any Member which considers that its interests are seriously prejudiced" by the rule against export subsidies will then be free to subsidize (27). The requirement of prior approval is thus abandoned. And the *Havana Charter* goes beyond the original American *Proposals* by permitting the inauguration of new subsidies, under these conditions, as well as the continuation of existing ones.

A FAIR SHARE OF THE MARKET

Export subsidies are a source of international irritation at any time. But they are particularly so when they are employed for the purpose of capturing an increasing share of the world's trade. It was accordingly suggested, in the American *Proposals,* that subsidization for this purpose should be banned. This suggestion was consistent with American practice: the United States has used subsidies to maintain its two-price system; it has not used them for the purpose of increasing its sales abroad. The principle that the exports subsidized by any country should not exceed its fair share of the world market was adopted by the Preparatory Committee and further developed at the Havana conference. And at Havana it was applied to all types of subsidies affecting trade.

A fair share of the market, according to the *Proposals,* would be the share prevailing in a previous representative period. To this the Preparatory Committee added the requirement that account be taken of special factors influencing the volume of trade. In the *Havana Charter,* these special factors are spelled out in more detail. Under its terms, consideration is to be given, not only to the situation existing in a previous representative period, but also to the importance of foreign trade in the commodity concerned to the country granting the subsidy and to countries materially affected by it, and to the desirability of expanding production in areas that are able to satisfy world requirements most economically and effectively.

In the London and Geneva drafts of the *Charter,* the representative period was to be selected initially by the country paying the subsidy, subject to consultation with other members at their request. Under the *Havana Charter,* an equitable share of the market is to

be determined in the same way. But if consultation fails, within a reasonable period of time, to result in an agreement, a final determination can be made by the ITO (28). The Havana conference thus broadened the escape for subsidies on agricultural exports, applied a common principle to all types of subsidies affecting exports, and, in case of disagreement as to the application of that principle, provided for appeal and final settlement.

Unless there should be a radical change in American policy, it is unlikely that our own determination as to the quantity of exports to be subsidized would ever be called into question by other countries or, if it were, that differences could not be settled without appealing to the ITO. Here, as elsewhere, the *Charter* accommodates itself to American agricultural policy. On this score, at least, it will be rejected by economic purists and accepted by political realists.

CHAPTER 13

INDUSTRIAL STABILIZATION AND WORLD TRADE

THE first objective of domestic economic policy, in the more advanced countries, is the achievement and maintenance of industrial stability. The first objective of international economic policy, under the *Articles of Agreement* of the International Monetary Fund and the *Charter* of the ITO, is the achievement and maintenance of greater freedom for world trade. These objectives may frequently come into conflict. Nations may seek stability through economic isolation. When hard times supervene, they are unlikely to rely upon the slow processes of deflation for the reestablishment of equilibrium. Declining employment, wages, costs, prices and rates of interest would eventually increase exports, reduce imports, and restore the balance of trade. But these processes take time, inflict hardship, and arouse political unrest. No government that wants to stay in office will permit them to run their course. Nations accordingly will undertake to maintain industrial activity, as foreign demand declines, by increasing exports through currency depreciation and subsidization and by curtailing imports through higher tariffs, quota systems, and exchange controls.

There is no hope that a multilateral trading system can be maintained in the face of widespread and protracted unemployment. Where the objectives of domestic stability and international freedom come into conflict, the former will be given priority. If nations are to take commitments to establish a freer trading system, this fact must be recognized. It would be futile to insist that stability must always give way to freedom. The best that can be hoped for is a

workable compromise. Stability could provide a firm foundation for freer trade. It should be sought; it cannot be guaranteed. International action must therefore be directed toward providing assurance that nations will cooperate in seeking stability through methods that will preserve the greatest possible measure of freedom in world trade.

Particular importance attaches, in the eyes of other countries, to the instability that has characterized the American economy. Our country is the center of the world's industrial activity. When our national output declines, our demand for imports falls more than proportionately. From 1937 to 1938, our output fell 11 per cent, our imports more than 36 per cent. Production, in other countries, rises and falls in response to fluctuations in American demand. When depression visits the United States, employment suffers all around the world. In agreement to afford greater freedom of trade, other nations therefore see the risk of greater instability. They consequently insist that commitments as to trade policy must be accompanied by a commitment to maintain industrial activity. And they are unwilling completely to surrender the possibility of recourse to devices that might protect them against the migration of hard times.

It is for these reasons that policies affecting employment as well as trade were included in the American *Proposals,* in the agenda of the conferences at London, Geneva, and Havana and in the *Charter* of the ITO. The two are inextricably intertwined.

ATTITUDES TOWARD "FULL EMPLOYMENT"

The approach toward this problem, both abroad and at home, is highly charged with politics. Industrial stability, as the goal of policy, is given expression in the slogan of "full employment." And by this token the issues that are at stake, instead of being illuminated, are obscured. There is no common understanding of the meaning of the term. Opinions differ as to when employment is really "full." Attention comes to be directed toward the employment of labor alone; the significance of other productive resources tends to be ignored. Employment seems to be regarded as an end in itself, not as a means to the production of useful goods and services. The importance of productive efficiency appears to be forgotten; the ultimate objective of maximizing income and raising levels of living to be

lost from sight. More light could be shed and less heat generated if the slogan of "full employment" could be dropped. But it is too deeply imbedded in popular psychology to be dislodged.

The identification of stabilization with "full employment" has had an unfortunate consequence in the United States. There is an apparent reluctance, among leaders of conservative opinion, to recognize that industrial stability must be a goal of policy or even to acknowledge that depression and unemployment may recur. This attitude arises from the fact that "full employment" has come to be synonymous with make-work policies. But there is no reason to assume that this is the only possible approach to the provision of stability. Production can be maintained and jobs provided by other means. It is the part of wisdom, instead of denying their necessity, to determine what those means shall be. The problem of instability is not to be avoided. Prevention of depression, in our country, is bound to be the purpose of any administration that desires to stay in power.

It is not only in the United States that "full employment" operates to close men's minds. The assumption is too readily made abroad that the instability inherent in multilateralism can be avoided through bilateral deals. Bilateralism offers no such assurance of stability. Where trade is confined to pairs of countries, one may still suffer a recession; its demand for the products of the other will accordingly be curtailed. Markets may be closed, moreover, at the whim of governments and trade shifted from country to country in the service of politics. In such a situation, vulnerability to depression, instead of being moderated, is intensified. It is only in isolation that avoidance of external influences can be complete. But stability, if thus attained, may be purchased at the cost of a level of living that is pitifully low.

Trade policies advocated in the name of "full employment" may be unwise. But they are deeply rooted in the politics of other nations and they must be reckoned with.

THE APPROACH TOWARD EMPLOYMENT POLICY

Many of the participants in the trade discussions asserted that greater emphasis should be given, in the *Charter,* to the objective of industrial stability. But none of them proposed that stabilization be sought through international action or that authority be delegated

to the ITO or to any other international agency to supervise domestic stabilization policies. A variety of such proposals might conceivably have been made. It might have been suggested, for instance, that stability should be promoted by the exchange, on a reciprocal basis, of minimum purchase guarantees, by the establishment of a gigantic buffer-stock agency to deal in primary commodities, or by the creation of a mammoth countercyclical international investment fund. It might have been argued that booms could be checked and slumps attenuated through the international coordination of domestic fiscal and monetary policies, the centralization of authority for the timing of national expenditures on public works, and the synchronization of the credit operations of central banks. No such proposals were actually made. Attention was directed, rather, toward the provision of escape clauses that would enable nations to combat unemployment by imposing restrictions on trade.

This objective was pursued in a variety of ways. According to one proposal, a member threatened with unemployment might ask the ITO to recommend measures by which employment might be maintained; pending the solution of its problem, it should be free to take any action it considered justified, even though inconsistent with the *Charter's* rules. Under a second proposal, one member might complain that another had prevented it from maintaining employment by falling into depression and permitting its demand for imports to decline; if the complaint were found to be justified, the complaining members might be released from concessions made in a trade agreement with the member suffering the depression and from obligations assumed toward it under the *Charter*. A third proposal was based upon the argument that one country, if it were a large factor in world trade, might exercise deflationary pressure on others by buying too little from abroad and investing too little abroad in relation to its exports. Under its terms, each member would commit itself, whenever receipts from exports exceeded payments for imports, to bring its accounts into balance by increasing its foreign purchases and investing more abroad.

This commitment, of course, would be of significance only in the case of a creditor country with a favorable balance of trade. Under present circumstances, it would have placed complete responsibility for the maintenance of international equilibrium on the

United States. It might well have required our government to take on functions that most Americans prefer to leave in private hands. If the commitment were not fulfilled, a member might complain that its interests were adversely affected and might thereupon obtain from the ITO a release from its obligations toward the guilty member, that is, the United States.

None of these proposals was accepted; none of them appears in the *Charter* as it stands. But they serve to illustrate the fact that it was not the achievement of stability through international action but the preservation of freedom to seek it through nationalistic measures that was in mind.

EMPLOYMENT IN THE CHARTER

The *Charter* recognizes the interrelationship of trade and stabilization policies. The avoidance of unemployment, it says, "is not of domestic concern alone, but is also a necessary condition for . . . the expansion of international trade" (2–1). In undertaking to maintain industrial activity, members "shall seek to avoid measures which would have the effect of creating balance-of-payments difficulties for other countries" (3–2). In undertaking to balance external payments and receipts, they shall have "due regard to the desirability of employing methods which expand rather than contract international trade" (4–2).

The objective of employment policy is expressed, in words taken from the American Employment Act of 1946, as the provision of "useful employment opportunities for those able and willing to work." In the London draft, the *Charter* appeared to seek work for work's sake, since it spoke only of the importance of employment and demand. At Geneva, the emphasis was shifted by adding the maintenance of "a large and steadily growing volume of production" as an equal objective of policy. And the goal to be sought is not said to be "full employment" alone, but employment that is both "full and productive." There is no endorsement, in this wording, of a program of make-work.

The only commitment in the *Charter* with respect to the maintenance of employment appears, in substance, in the words originally proposed by the United States. Each member of the ITO must "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" (3–1). The commitment is not to assure employment but only to take action designed to do so; the success of such action is not guaranteed. Each member will act within its own boundaries; avoidance of unemployment, says the *Charter,* "must depend primarily on internal measures taken by individual countries" (2–2). Each country may adopt such measures as it deems to be appropriate to its institutions; no power is conferred upon the ITO or on any of its members to question their propriety.

The functions of the Organization, in this field, are strictly limited. It is to facilitate the exchange of views among members. It is to cooperate with the Economic and Social Council of the United Nations and with other intergovernmental organizations in the collection, analysis, and exchange of information on domestic employment problems, trends, and policies. It is to participate in such consultations as they may arrange for the purpose of promoting employment and economic activity (5–1). The desirability of reducing instability through concerted action is recognized, but it is clearly indicated that this is a function of bodies other than the ITO, each of them "acting within its respective sphere and consistently with the terms and purposes of its basic instrument" (2–2). In the case of an emergency, the Organization itself may "initiate consultations among Members with a view to their taking appropriate measures against the international spread of a decline in employment, production, or demand" (5–2). Such measures, if agreed upon, would be the subject of a new accord. The *Charter* itself contains no commitment to international action and confers no new powers on any international agency.

PROTECTION FROM EXTERNAL INFLUENCES

At the insistence, primarily, of Australia and the United Kingdom, recognition has been given in the *Charter* to the influence of external factors upon the preservation of domestic stability. Members of the ITO are asked to pursue policies that will make it easier for other members to maintain employment. And the Organization is instructed to recognize that members may need to raise barriers against the migration of hard times.

In the London draft of the *Charter,* it was asserted, in effect, that a persisting excess of exports over imports in the trade of one country might involve other countries in persistent balance-of-payments difficulties which would handicap them in maintaining stability. The country with the favorable balance was therefore required to make its full contribution to action designed to correct the maladjustment. This formulation was clearly inadmissible. It applied exclusively to the United States. It carried the possible implication that instability in other countries was attributable solely to the policies of the United States. And it imposed an obligation on the United States alone.

At Geneva, the implication of sole responsibility was removed and the obligation was generalized. As it appears in the *Charter,* the provision now asserts that the persistence of a highly favorable balance in the trade of one member may be a major factor in a total situation in which other members find themselves involved in balance-of-payments difficulties; there may be other factors in the situation for which these members are themselves responsible. In such a case, it is still provided that the member with the favorable balance shall make its full contribution to the solution of the common problem. But it is now explicitly stated that members that are in difficulties must also take appropriate action to extricate themselves (4–1). The nature of the contribution to be made in the one case and the action to be taken in the other is not specified. In the words of the London report: "The particular measures that should be adopted . . . should, of course, be left to the government concerned to determine." The ITO is given no authority to intervene.

As it stands today, the article still highlights the pronounced imbalance in trade that exists between the United States and the other countries of the world. But this imbalance is an overwhelming fact that we must deal with and will deal with, in one way or another, whether the *Charter* is ratified or not. The article requires us to do no more than we should have done in any case. It is unlikely that we shall go on indefinitely selling without buying, making huge public loans, and giving goods away. Sooner or later, balance must be restored. If the fulfillment of our obligation should be called into question, the present wording of the article would afford us an opportunity to suggest the action that might appropriately be taken

by other countries to restore the balance of trade. Such an interchange might well be salutary in its effects. It should not be necessary to solve the problem by releasing other members from *Charter* obligations unless this solution were dictated by the facts.

It is recognized, in a subsequent article, that a serious or abrupt decline in foreign demand may exert deflationary pressure on a member's economy and it is asserted that members may need "to take action, within the provisions of this Charter, to safeguard their economies against inflationary or deflationary pressure from abroad." The Organization is therefore directed to take these facts into account "in the exercise of its functions under other articles" (6). This injunction may afford a basis for argument when an application for an exception, under some other provision of the *Charter,* is made. But it adds nothing in the way of substance: no new escape is provided; no new power of release is conferred.

If the United States should fall into depression, the decline in its demand for the products of other countries would unquestionably be serious and abrupt. Deflationary pressure would thereby be exerted on the economies of other states. The curtailment of their exports would almost certainly threaten their monetary reserves. And freedom to impose quantitative restrictions on imports, under the relevant provisions of the *Charter,* would then be obtained. This prospect is not attractive to the United States. But it would be illusory to hold that liberal trade commitments can be enforced when the world is suffering from depression. The willingness of nations to observe such commitments when times are good depends upon the possibility of obtaining release from them when times are bad. It is the flexibility afforded by such provisions that gives ground for hope that the pattern of multilateralism established by the *Charter* may survive the shocks of economic change.

FAIR LABOR STANDARDS

The inclusion in the *Charter* of provisions relating to industrial stability, expressed in terms of maintenance of the volume of employment, evoked a number of less relevant proposals having to do with the conditions of employment. It was proposed, for instance, that the *Charter* encourage the adoption of social-security legislation; that it spell out an obligation to provide equal pay for equal

work; that it effect an international coordination of national employment services; that it control the movement of migratory workers and guarantee them protection against discrimination; and that it require the gradual elimination of barriers to immigration. The only recognition accorded any of these proposals in the *Charter* is to be found in a clause which authorizes the ITO to cooperate with the Economic and Social Council and other intergovernmental organizations in studying the international aspects of population and employment problems (5). A proposal introduced at Havana by the United States calling for the condemnation of forced labor elicited no support.

There was an insistent demand from a number of Latin American countries that each member of the Organization be relieved of all obligations toward any other member whose labor standards were lower. Such a rule would have enabled all other nations to discriminate against the countries of the Orient and would have left the United States with no obligation toward any other country in the world. No reference to labor standards was contained in the American *Proposals*. An article dealing with the subject was written into the *Charter* in London and elaborated at Geneva and Havana. But the effort to employ it as an avenue of escape was not attended with success.

The article sets forth the propositions that unfair labor conditions, particularly in production for export, create difficulties in international trade; that all countries have a common interest in the achievement and maintenance of fair labor standards related to productivity; and that wages and working conditions should be improved as increases in productivity permit. It obligates each member to "take whatever action may be appropriate and feasible" to eliminate unfair labor conditions within its territory. And it asks those who are also members of the International Labor Organization to cooperate with that agency in giving effect to this undertaking. If one member questions whether another has fulfilled these obligations, the ITO is required to consult and cooperate with the ILO (7). It is unlikely that such a question could be raised concerning the labor standards existing in the United States. It is possible, however, that the article might apply some leverage for the improvement of standards in countries where they are low.

CHAPTER 14

ECONOMIC DEVELOPMENT AND INTERNATIONAL INVESTMENT

THREE-FOURTHS of the people in the world live in countries that are still in the early stages of industrial development. In most of these countries, the span of human life is short and the level of living is extremely low. The expectation of life in the United States is sixty-seven years; in Latin America and in India it is thirty-five. Purchasing power per capita, before the war, was $589 in the United States; among the 390,000,000 people of India it was $28; among the 480,000,000 of China it was $19. In all of the backward areas, there is an insistent demand for a better life. In almost all of them, there are ambitious plans for industrial development. Industrialization may be speeded or retarded as assistance is given or withheld by more highly developed states. But, sooner or later, it is bound to come.

The industrial countries, in their own interest, should assist in this development. In particular cases, the industrialization of backward areas may create new competition for established industries. Its total effect, however, will be substantially to increase demand for manufactured goods. Industrialization changes the composition of trade; it enlarges the volume of trade. As factories are built, machinery and equipment are required. As they come into operation, output grows, purchasing power expands, standards of living rise, and more consumers' goods are purchased from abroad. This has been the experience of the United States. Our own market for foreign goods grew as we industrialized; foreign markets for our goods have grown

as other countries have industrialized. Highly developed nations are our biggest customers. Three-fifths of our exports went to such nations before the war. Canada, with 12,000,000 people, to the north, afforded us a better market than the twenty Latin republics, with 120,000,000, to the south.

Opposition to industrialization would be bad business; it would also be bad politics. It is clear to every undeveloped country that there are two roads leading to industrial power. The one has been followed by the United States, the other by Soviet Russia. Traffic on the second of these roads might well grow heavy if obstacles were placed along the first. In contributing to the improvement of levels of living in backward areas, we serve our own interest in political stability.

American business has contributed heavily to industrialization abroad by exporting plant, equipment, and know-how, by providing managerial talent, and by lending capital funds. Upon request, the government of the United States has sent technical missions into other countries and has given them informational and advisory services. It has made extensive loans through the Export-Import Bank. It took the lead in establishing the International Bank for Reconstruction and Development and made the heaviest contribution to its funds.

In its first draft of the *Charter,* the United States did not propose that specific responsibility for the promotion of industrialization should be assigned to the ITO. It was assumed that this function fell within the jurisdiction of other intergovernmental agencies, such as the Economic Development Subcommission of the Economic and Social Council and the International Bank. It was believed, moreover, that the *Charter* would contribute indirectly to industrial development. It was designed to open markets and thus should make it easier to earn the funds required to finance new industries. It recognized that public assistance might be required to enable such industries to get on their feet. It permitted direct subsidization and the imposition, for this purpose, of new or increased tariffs. But it banned the use of import quotas and the establishment of new preferences. It thus raised the issue that was debated for months at London, Geneva, and Havana. For, in the opinion of the undeveloped countries, industrialization will be impeded unless these

devices can be employed. The desirability of industrial development was never questioned. The issue was not whether it should be promoted, but how.

PROPOSALS FOR ECONOMIC DEVELOPMENT

Some of the proposals advanced in the name of economic development must be seen to be believed. For example: Industrial countries shall undertake "to facilitate by all means in their power" the industrialization of backward areas. Members shall "make every effort necessary to ensure that the underdeveloped countries are able to obtain on equitable terms the facilities required for their economic development." Members shall "supply one another . . . with technical skills, production goods, and the necessary credits." A member "with a favorable balance of payments and plentiful supplies of capital shall take the necessary steps to facilitate the obtaining of long-and-short-term credits by countries which request them." Recognition should be accorded to the fact that funds must be provided on a non-remunerative basis. Satisfaction should be given to the desire of local enterprise to participate in the administration and management of the developments concerned. The right of governments to make diplomatic representations on behalf of private investors should be foresworn. And where loans are refused by the International Bank, new applications should be supported by the ITO.

Other proposals were designed to preserve the freedom of undeveloped countries to impose restrictions on imports. It was proposed at London, for instance, that industrialization and diversification should be accepted as a sufficient justification for the application of such restrictions; that they should be imposed on the basis of decisions made by national tribunals in accordance with such criteria as they might employ; and that industrial countries should recognize the necessity of contracting particular industries as these industries expand elsewhere. It was further proposed, at Havana, that countries "which have not reached an advanced stage of industrialization as a whole" as well as those "in an early stage of economic development" should be free to employ import quotas "for the sole purpose of protecting the growth of industries," when "no other form of protection is available or considered satisfactory." It

was suggested, too, that such freedom should be retained during a transition period that would end when half of a country's population was engaged in manufacturing. It was urged, finally, that an autonomous Economic Development Commission should be established within the ITO. This body would have been so constituted as to resist pressure for the reduction of tariffs and facilitate release from commitments as to commercial policy.

None of these proposals was accepted. They serve, however, to reveal an attitude that is widely shared. Enthusiasm for industrial development is accompanied by little interest in the conditions that must be satisfied if such development is really to be achieved. The basic importance of natural resources, of agriculture, and other extractive industries, and of power, transportation, and communications is lost from sight; attention is centered on manufacturing. The dependence of manufactures on raw materials, skilled labor, managerial talent, wide markets, and marketing facilities is forgotten; factories are wanted whether or not they can ultimately face competition on the basis of comparative costs. The fact that construction must be carried on by local labor, using local materials, is overlooked; it seems to be assumed that factories can be imported from abroad. The obstacles to industrialization inherent in social and religious patterns, in lack of health and education, and in political instability and corruption are never mentioned; the fact that increasing population may cancel increasing output is ignored. These things are fundamental; their correction will take time. The undeveloped countries seek industrialization by some quick and easy route. By obtaining large loans with no strings attached and by offering enterprisers a monopoly of local markets, they hope to build new factories overnight. They do not believe that they must creep before they walk.

On this subject, the only affirmative proposal to come from any undeveloped country was offered by Colombia. It provided, in considerable detail, for the creation, through bilateral treaties or regional conventions, of technical institutions to study, plan, promote, and assist in conservation, industrialization, education, and general economic development. The proposal, as a whole, was not accepted, but the *Charter* was so amended as to incorporate certain of its details.

ECONOMIC DEVELOPMENT IN THE CHARTER

Affirmative provisions dealing with economic development were first drafted at the London meeting of the Preparatory Committee. At Geneva and Havana they were modified in detail and extended to cover the reconstruction of devastated regions as well as the development of backward areas.

Each member of the ITO agrees to take action designed to develop industrial and other economic resources and to raise standards of productivity within its own territory (9). Each member is to cooperate with other members, with the Economic and Social Council, with the ITO, and with other intergovernmental organizations in facilitating and promoting economic development and in providing or arranging for the provision of adequate supplies of capital funds, materials, modern equipment, and technology (10–1). This does not mean that governments themselves are under any obligation to provide such facilities; the *Charter* merely says that members of intergovernmental organizations must cooperate, within the limits of their powers, in such activities as these organizations may be authorized to carry on. It is assumed that facilities for development are normally to be obtained from private sources and it is provided that no member may impose unreasonable or unjustifiable impediments that would prevent other members from thus obtaining such facilities on equitable terms.

The ITO itself, at the request of any member, is authorized to study the resources and potentialities of the member's economy, to assist in the formulation of its plans for economic development, to furnish advice concerning the financing and carrying out of such plans, or to assist the member in obtaining such advice. It is to provide these services, in so far as its powers and resources permit, on terms to be agreed with the members requesting them (10–2). It is also authorized to promote and encourage establishments for technical training (72*c*). And it may make recommendations and promote agreements to facilitate an equitable distribution of skills, arts, technology, materials, and equipment (11–2). No member, however, is committed either to accept its recommendations or to participate in such agreements.

The ITO is instructed to cooperate with the Economic and Social Council and with other intergovernmental organizations on all phases of economic development, particularly those relating to finance, equipment, technical assistance, and managerial skills. Its own activities in this field will be subject to such arrangements as it may work out with these bodies and are to be carried on in collaboration with them (10–3). The division of labor between the ITO, on the one hand, and such agencies as the Economic Development Subcommission and the International Bank, on the other, thus remains to be determined.

There is no implication in these provisions that the ITO will itself finance, construct, or operate developmental projects. The functions assigned to it are promotional and advisory. Within these limits, however, it should make an affirmative contribution to the development of backward areas.

INTERNATIONAL PRIVATE INVESTMENT

If industrialization is to be speeded, capital must be imported from abroad. If capital is to be obtained in ample volume, international private investment must be resumed. From the point of view of the undeveloped country, moreover, private investment has marked advantages: it is flexible; it is non-political; it may carry with it technical knowledge and managerial skill. Private funds, under present circumstances, are to be obtained predominantly from the United States. The belief apparently prevails, in many other countries, that Americans are under some compulsion to invest abroad. This is not the case. Ample investment opportunities exist at home. Foreign investment is voluntary; it cannot be coerced. Unless there is a reasonable prospect of profit and an assurance of security, it simply will not occur. In many undeveloped countries, though the prospect of profit is present, the assurance of security is not. Debts have been repudiated, property has been confiscated, and payments to foreign investors have been blocked. There is conspicuous reluctance to accept commitments that capital will be treated fairly, once it is obtained. Until such commitments are taken, a serious obstacle to economic development will remain.

The *Charter,* as first drafted by the United States, contained no

provisions to govern the treatment which nations should accord to foreign capital and enterprise. This subject was already covered in treaties of friendship, commerce, and navigation; a program of bilateral negotiations designed to extend and modernize this treaty structure was under way. It was feared, moreover, that investment provisions negotiated at a multilateral conference might express the lowest common denominator of protection to which any of the participants would be willing to agree. And such a watering down of the standards obtainable in commercial treaties would scarcely be acceptable to the United States.

When the chapter on economic development was written into the *Charter* at London, however, the inclusion of provisions relating to international investment was no longer to be avoided. The commitment to "impose no unreasonable impediments" to the provision of facilities for development was therefore paralleled by a commitment to "take no unreasonable action injurious to" business entities or persons supplying such facilities. In the opinion of the American business community, however, this provision proved to be inadequate. In response to suggestions made by such bodies as the National Foreign Trade Council and the National Association of Manufacturers, the inclusion of an additional article on international investment was therefore proposed by the American delegation at Geneva.

This proposal, as was expected, led to a prolonged debate. In the face of determined opposition, agreement to the incorporation of such an article was finally obtained. But the draft that emerged from the negotiations was an unsatisfactory compromise. The draft forbade discrimination against foreign capital and enterprise, but it made a number of undesirable exceptions to this rule. It required members to make just compensation for property taken into public ownership, but it recognized their right to block the transfer of such payments in accordance with their foreign exchange policies and the *Articles of Agreement* of the International Monetary Fund. These provisions, instead of promising to stimulate the flow of private capital, threatened to check it. At Havana, accordingly, the question was reopened and, after prolonged discussion, the article was thoroughly revised.

Encouragement of the international flow of capital for productive investment is now included among the stated purposes of the ITO (1–2). And recognition is given to the fact that international investment "can be of great value in promoting economic development" and that this process will be stimulated "to the extent that Members afford nationals of other countries opportunities for investment and security for existing and future investments."

These words are followed, however, by certain provisions that will arouse little enthusiasm in the United States. Members are required merely to "give due regard to the desirability of avoiding discrimination as between foreign investments." And it is recognized that any member, in so far as other agreements may permit, may "determine whether and to what extent and upon what terms it will allow future foreign investment"; that it may "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"; and that it may "prescribe and give effect on just terms to requirements as to the ownership of existing and future investments" and to "other reasonable requirements" with respect to such investments (12).

But the provisions do not end here. Members must "provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments" (12–2). No member may "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" (11–1). It should be noted, moreover, that requirements as to the ownership of foreign investments must be "just" and that other requirements affecting such investments must be "reasonable."

These words, of course, must be interpreted; provision is made for their interpretation. A complaint that a benefit promised by the *Charter* has been nullified or impaired through mistreatment of foreign investors may be brought before the ITO and, upon appeal, before the International Court of Justice. If it is established that a member has violated its obligations, concessions made in trade agreements and other benefits extended under the *Charter* may be

withdrawn (VIII). There is thus provided, for the first time, the right to bring before an international tribunal cases involving the treatment of American investments abroad. There is also provided, for the first time, a powerful sanction to insure that mistreatment will not occur. The proceedings at Havana, moreover, establish a legislative history that will aid in the interpretation of the text. The objectionable provisions of the Geneva draft were deleted. Attempts to confine the concept of security to the provisions of national legislation were rejected. An effort to exclude the investment commitments from the nullification and impairment procedure was dropped.

The investment provisions of the *Charter* are but a beginning. They contain minimum requirements applying to all the members of the ITO. It is explicitly recognized that the development of particular countries may be promoted through bilateral or multilateral agreements containing tighter commitments and written in more specific terms. Members are therefore required, upon request, to participate in negotiations directed toward the conclusion of such agreements (12–2). The ITO, moreover, is authorized to formulate and promote the adoption of an investment code and to recommend and promote agreements designed to stimulate investment by eliminating double taxation and to assure just and equitable treatment to foreign enterprise (11–2).

ESCAPES FOR INDUSTRIALIZATION

In the chapter of the *Charter* that deals with economic development, more than three-fourths of the space is devoted to an elaboration of methods by which undeveloped countries may obtain release from commitments assumed in trade agreements and under the *Charter* with respect to commercial policy. The provisions there set forth are so long, so detailed, and so technical that their true import is difficult to understand. But it is in this very complexity that the major compromise essential to agreement was obtained.

The compromise, in its simplest terms, is this: an undeveloped country, wishing to establish a new industry, may use any method that is not forbidden by its trade agreements or outlawed by the *Charter*; it may not use any method forbidden by a trade agreement unless it first obtains the consent of the other parties to the

agreement; it may not use any method outlawed by the *Charter* unless it first obtains the consent of the members who would be affected or secures permission from the ITO; its freedom to use such methods may then be subject to prescribed conditions and limited in time. It is for two reasons that this simple idea is spelled out at such length: first, because release is sought, by several different means, from obligations that differ in character and are contained in different instruments; and second, because protection against unwarranted release is provided, in each case, by laying down conditions that must be fulfilled and criteria that must be satisfied and by prescribing the procedures that must be followed in minute detail. It is because they are so carefully safeguarded that these provisions are so complex.

The possible exceptions for industrialization are prefaced by two propositions: First, members recognize that "in appropriate circumstances" the employment of protective measures for the promotion of economic development is justified. Second, they recognize that "an unwise use of such measures would impose undue burdens on their own economies and unwarranted restrictions on international trade" (13–1). The provisions that follow may be briefly summarized.

The obligations from which release may be sought, in particular cases, fall into four categories: (1) commitments contained in trade agreements binding duty-free treatment or tariff rates, (2) commitments contained in the *Charter* forbidding the restriction of imports by such devices as quota systems and mixing regulations where these commitments apply to products covered in trade agreements, (3) *Charter* commitments forbidding the use of such devices where they apply to products not covered in trade agreements, and (4) *Charter* commitments forbidding the establishment of new preferences.

In the first of these cases, release may be sought in one of two ways. An undeveloped country may enter into direct negotiations with the other parties to a trade agreement and obtain release through their consent, subject to such conditions as they may impose. Or it may ask the ITO to sponsor negotiations with all of those parties to the trade agreement who would be materially

affected. If substantial agreement is obtained, the ITO may then grant a release subject to such conditions as may be agreed upon (13–3). In the second case, the procedure is the same, the only difference being that the negotiations will not be confined to parties to the trade agreement but will include all countries materially affected among the members of the ITO (13–5). Protection against unwarranted release is thus afforded by the right of affected parties to withhold consent.

For two-thirds of the world's trade, covered in trade agreements, these are the only methods by which release from obligations can be obtained. For the remaining third, not subject to such agreements, the procedures are more detailed. Here permission to employ import quotas or mixing regulations may be sought in one of three ways. First, the undeveloped country may enter into direct negotiations with members that would be affected. If these negotiations lead to agreement, it must then apply to the ITO. And if the ITO is satisfied that all members materially affected have been consulted, it may grant a release, subject to such limitations as it may impose (13–8*a*). Second, the country may apply directly to the ITO. The ITO will then inform all members that would be materially affected. If none of them objects, it will grant the release. If there is an objection, however, the ITO will consider the case presented by the applicant, the views of other members, the probable effect of the proposed measure on international trade, and its effect on standards of living within the territory of the applicant. On the basis of these considerations, it may decide to grant a release, subject to such conditions as it may impose (13–8*b*). The two procedures are thus protected either by the right of members to refuse consent or by the discretion accorded to the ITO.

The third method, like the previous two, has to do only with applications for permission to impose such devices as import quotas and mixing regulations on products not covered by trade agreements. Here, however, there is a presumption in favor of release if certain criteria are satisfied or certain conditions fulfilled. (1) Release must be granted if the ITO is convinced that the measure proposed is the one most suitable for the purpose and is "unlikely to be more restrictive of international trade than any other practicable and

reasonable measure permitted" under the *Charter*. (2) It must be granted if the ITO finds that the industry to be protected will engage in the processing of an indigenous primary commodity or a by-product that would otherwise be wasted; that the measure proposed for its protection is necessary; that it will achieve a fuller and more economic use of resources and raise standards of living; and that it will not harm international trade. In both of these cases, the criteria laid down afford a wide measure of discretion to the ITO.

In two other cases, however, release will be virtually automatic. (3) Release must be granted if the industry to be protected was first established between 1939 and 1948. (4) It must be granted if the industry processes an indigenous primary commodity and if external sales of that commodity have been sharply curtailed by new or increased restrictions imposed abroad. These two cases are thus limited in extent. In the last three cases, moreover, release must be denied if it would seriously curtail the exports of a primary commodity on which the economy of another member depends. In all four cases, the ITO is authorized to place a limit on the time during which the measure in question can be employed. During this period, the member using the measure must "avoid unnecessary damage to the commercial or economic interests of any other Member" (13–7). If this commitment is violated, the nullification and impairment provisions of the *Charter* can be called into play. Permission to impose import quotas and mixing regulations, even in these cases, is limited in time and its abuse is subject to penalties.

Three other provisions of the chapter are relevant to these escapes. In order to prevent knowledge of impending restrictions from inducing a flood of imports, applications are to be handled in secrecy (13–2). For the same reason, subject to numerous safeguards, temporary restrictions on imports may be imposed (13–4, 9). And where import quotas and other prohibited devices, affecting products not covered in trade agreements, are already in effect, they may be continued until the ITO determines whether they must be abandoned or may be retained (14).

New preferences may be granted for the promotion of economic development. But, here again, the obstacles that must be surmounted are numerous and formidable. The ITO must find that the terri-

tories of the members entering into a preferential agreement are contiguous or within the same economic region. It must find that each preference obtained on each product by each of these members is necessary to promote the economic development of that country by assuring it a sound and adequate market for a new industry and that it is sufficient to accomplish this purpose. It may not approve the agreement if it is not open to adherence by other members, if it jeopardizes the position of another member in world trade, or if it is likely to inflict substantial injury on another member, unless the agreement is modified, or the other member consents to it, or is awarded fair compensation. In approving an agreement, the ITO may require that unbound duties charged to outsiders be reduced and may fix specific margins of preference for particular products. It may not approve such agreements for an initial period of more than ten years or renew them for periods of more than five years. New preferential arrangements involving non-members or otherwise departing from these requirements are forbidden unless approved by a two-thirds vote. If preferences are inaugurated which do not conform to these rules, concessions may be withheld or benefits withdrawn from the offenders on the ground that the provisions of the *Charter* have been nullified or impaired (15).

Such is the character of the industrialization escapes. In the opinion of the undeveloped countries, their provisions are onerous in the extreme. The rules controlling import quotas were characterized by one delegate at Havana as "completely inadequate and totally unjust." Those relating to preferences were said by another to be so restrictive that permission to set up new preferential arrangements is never to be obtained. It is to be doubted that the safeguards contained in these permissive exceptions will make them as ineffective as these critics would contend. But they do serve to establish a new principle in international economic affairs: devices such as import quotas, mixing regulations, and preferences are not to be employed, without international sanction, for the development of infant industries.

CHAPTER 15

THE INTERNATIONAL TRADE ORGANIZATION

THE ITO is designed to take its place beside the FAO, the ILO, the Bank, and the Fund among the specialized agencies of the United Nations. Like these other agencies, however, it will derive its powers, not from the United Nations, but from those governments that voluntarily accept its basic instrument. The body of the *Charter* consists, in effect, of a series of agreements among those governments upon substantive questions relating to international trade in the fields of employment, economic development, commercial policy, restrictive business practices, and commodity problems. Its first chapter creates the International Trade Organization through which they pledge themselves to cooperate as members in achieving the purposes of these agreements. The following chapters outline the functions of the Organization. The concluding chapters establish its structure and provide for the settlement of differences. The *Charter,* as a whole, sets forth the constitution of the ITO.

The functions assigned to the Organization are important and numerous. It will collect, analyze, and publish information, make studies and issue reports, recommend changes in laws and procedures, promote international agreements, and render technical assistance to governments. It will encourage and facilitate consultations, call conferences, and sponsor negotiations between member states. It will administer the provisions of the *Charter,* making determinations when interests come into conflict, acting on requests for releases from obligations, and laying down conditions to limit such releases as it may grant. It will receive complaints, settle disputes between members, and permit withdrawal of concessions in

cases of violation so that a balance of interests may be maintained.

All of these functions were suggested in the American *Proposals*. As they were given further application in the course of the negotiations, the prospective work load of the Organization was increased. New commitments were introduced; responsibility for their enforcement was assigned to the ITO. Compromises were effected; their terms involved administrative burdens for the ITO. Exceptions were to be considered; action on applications and prescription of limitations became the duty of the ITO. Differences were expected to arise; provision was made for their settlement by the ITO. Problems remained unsolved; further study was required of the ITO. As the *Charter* grew in scope and in detail, the tasks assigned to the Organization became more numerous and difficult. As the agency is now envisaged, its responsibility will be a heavy one.

THE STRUCTURE OF THE ITO

Countries invited to attend the Havana conference may become original members of the ITO. Other countries may join when a majority of the members approves. The right of membership may be extended to those dependent territories that possess full autonomy over their external commercial relationships. Provision is also made for the possible inclusion of the Free Territory of Trieste, trust territories, and other special regimes established by the United Nations, and territories that are now under military occupation (71).

Final authority for the determination of the Organization's policies will rest in a Conference composed of delegates from all the member states. In the deliberations of this body, each member will have one vote (VII B). Responsibility for the execution of policies is placed in an Executive Board consisting of representatives of eighteen member states. On this Board also each member will have one vote. Eight of the Board's eighteen seats will always be assigned to the eight members of chief economic importance (VII C). The formula that is provided for the determination of economic importance makes it clear that these seats will go, if they join, to the United States, the United Kingdom, Canada, France, the Benelux customs union, India, China, and the Soviet Union. Four of the

remaining seats will go, at the first election, to the countries of Latin America and one each to the countries of Scandinavia, to those of the Near and Middle East, and to the Arab states (Annex L).

The detailed work of the Organization will be carried on, under the supervision of the Executive Board, by a Director General and a staff (VII E). As the need arises the Conference may also establish specialized commissions to deal with problems arising in such fields as economic development, international investment, commercial policy, restrictive business practices, and commodity problems (VII D). As members of these commissions, the Executive Board will select technical experts who are not to serve as representatives of governments. These bodies may not be in continuous session; their members may devote only a portion of their time to this activity. The commissions will prepare reports and make recommendations to the Executive Board for such action as it may deem appropriate.

The relation of the ITO to the United Nations will be defined in an agreement similar to those entered into by other specialized agencies (86). Its relations with the Food and Agriculture Organization and the International Monetary Fund are prescribed in some detail; its relations with these and other intergovernmental organizations are to be subject to agreements that will insure effective cooperation and the avoidance of unnecessary duplication in their activities. The ITO may also absorb or bring under its supervision certain existing organizations such as the International Customs Tariff Bureau whose operations fall within its competence (87).

Contributions for the support of the Organization are to be apportioned among its members in accordance with such principles as may be followed in financing the United Nations. If a maximum limit is placed upon the share that a member may be asked to contribute to the budget of the United Nations, this limit must also be applied to its contribution to the ITO (77–6). This provision, of course, has particular significance for the United States.

THE WORK OF THE ITO

First of all, the ITO will be an international center for information on matters affecting trade. It will undertake to improve trade

statistics. It will collect, analyze, and publish data on exports, imports, balances of payments, subsidies, and customs revenues, on customs regulations and their administration, and on other aspects of national commercial policies. It will prepare and publish a periodic review of the operation of commodity agreements. It will report annually on quantitative restrictions that may be employed to safeguard balances of payments and on such discrimination as may be permitted in their use. As a source of information on all of these matters, it will be of inestimable value to the business community.

Second, the ITO will be a source of advice and assistance to member governments. It will develop common standards for the classification and grading of commodities, for tariff valuation, for customs nomenclature and documentation, and for the simplification of procedures that act as obstacles to trade. It will make studies of laws and regulations relating to restrictive business practices. It will draft modern international conventions and standard provisions for commercial treaties dealing with such matters as commercial arbitration, the avoidance of double taxation, the protection of foreign nationals, the treatment of international investments, and the conditions of doing business abroad. It may recommend the modification or termination of old agreements and promote the conclusion of new agreements in any of these fields. Upon request, the Organization may also furnish advice with respect to programs of economic development and assist members in obtaining such advice.

Third, the ITO will encourage and facilitate intergovernmental consultation on all matters affecting trade. If one country should complain that it has been injured by restrictions imposed by another, the Organization will invite both parties to enter into consultation and will lend its good offices to effect a settlement of the dispute. It will arrange for similar consultations with respect to restrictive business practices. It will convene study groups and summon conferences for the investigation and solution of problems affecting international trade in primary commodities. Upon request, it will sponsor negotiations directed toward possible modification of the terms of existing trade agreements. If pronounced imbalance persists in international trade, or if depression threatens to spread around the world, it will initiate consultations for the purpose of

formulating a program of corrective action. Any program developed through such consultations will not be one which is dictated by the Organization, but one to which its members may voluntarily agree.

Fourth, one of the most important functions of the ITO will be that of determining whether exceptions are to be granted, in individual cases, to the agreed rules that limit the freedom of nations to employ certain restrictive or discriminatory measures in controlling their trade. Such exceptions may be requested both for existing measures and for projected ones. They may involve the imposition of quotas or mixing regulations, the extension of preferences, the establishment of a customs union, or the control of international trade in primary commodities. They may have the purpose of promoting economic development, creating wider trading areas, safeguarding monetary reserves, or protecting small producers from the hardship caused by burdensome surpluses and widespread unemployment. The information required for action upon such requests will be collected by the Organization's staff. This information may be referred to a technical commission for study and advice. But such exceptions as are granted must be voted by governments belonging to the Executive Board of the Organization or to its Conference.

In passing on applications for exceptions, numerous determinations will be required. What countries have a substantial interest in the commodity concerned? What members would be materially affected by the action that is proposed? Have the conditions laid down in the *Charter* been fulfilled? Have the criteria that are prescribed been satisfied? Would denial of an application seriously prejudice the interests of the applicant? Would approval jeopardize the position of another member in world trade? In answering such questions as these, the Organization will function, in effect, as a court.

As a fifth function, the ITO has been granted wide powers to lay down conditions to govern a release. It may circumscribe its permission to impose an import quota or a mixing regulation for the development of an infant industry and may fix the time during which these devices may be used. It may prescribe the extent, intensity, and duration of such quotas as it may approve for the protection of a member's balance of payments. It may set limits within which such a member will be permitted to discriminate. It

may require that a plan looking toward the formation of a customs union be modified. It may condition its approval of new preferences on the reduction of duties to other countries, the establishment of certain margins, and the award of compensation to members who would suffer injury.

These powers may be exercised only when members apply for exemption from the *Charter's* rules. In most other cases, the ITO may request action; it may not prescribe it. There are but two exceptions to this general rule. If the Organization finds that a member is not conforming to the criteria that limit discrimination in the use of import quotas, it may order the member to discontinue such discrimination within sixty days (Annex K). And if it finds that conditions no longer justify discrimination, in a particular case or in the administration of a quota system as a whole, it may require its abandonment within sixty days (23–1*h*). It is only in this connection that authority to issue such an order is conferred.

In addition to the functions that fall within these categories, enforcement of the *Charter's* provisions gives the Organization certain other duties to perform. It will conduct investigations and hold hearings relating to restrictive business practices, recommend remedial action, and request members to report on such action as they may take. It will ask for similar reports on the progress made in establishing standards of customs valuation and simplifying customs formalities. It will determine whether procedures established to review the decisions of customs officials are adequate to afford protection against an arbitrary administration of customs laws. It will decide whether most-favored-nation treatment must be extended to a member on the ground that it has been unreasonably excluded from participation in the *General Agreement on Tariffs and Trade.* It will set limits on the withdrawal of tariff concessions from a member who has suspended similar concessions on the ground that domestic producers are threatened with serious injury. In general, it will determine whether nations have lived up to their obligations under the *Charter* and seek to insure that compliance is obtained.

These tasks are more numerous and more difficult than those assigned to any other intergovernmental agency. It is unlikely that they could be performed effectively if the Organization were to be

flooded with requests for action in its early years. At the outset, a measure of forbearance will be required. In the long run, however, the load of work should not be unmanageable; greater responsibilities have been assumed successfully by agencies of national governments The undertaking, in any case, is so important that solutions for problems of administration must be found.

THE SETTLEMENT OF DIFFERENCES

If a member considers that any benefit promised it by the *Charter* is being nullified or impaired as a result of action taken by another member, it must attempt to settle the difference through direct consultation. If they wish to do so, the parties to the dispute may submit it to arbitration on terms agreeable to them (93). If these procedures do not effect a settlement, the case may be taken to the Executive Board of the ITO.

The Executive Board, after investigating the matter, may dismiss the complaint, suggest further consultation, refer the case to arbitration, or make appropriate recommendations to the members concerned. If these steps are unavailing and if the Board finds the case to be serious and the complaint to be valid, it may release the complaining member from obligations assumed toward the other member under the *Charter* or from concessions made to it in a trade agreement. Any such release, however, must be limited in extent to that required to compensate the complaining member for its loss of benefits (94).

If either member so requests, the case must be referred to the Conference for review. The Conference may confirm, modify, or reverse the decision of the Executive Board. It may recommend further consultation, arbitration, or corrective action. And, in serious cases, it may release the complaining member, on a compensatory basis, from obligations toward the other member or concessions granted it (95).

Such a release is regarded as a method of restoring a balance of benefits and obligations that, for any reason, may have been disturbed. It is nowhere described as a penalty to be imposed on members who may violate their obligations or as a sanction to insure that these obligations will be observed. But even though it is not so regarded, it will operate in fact as a sanction and a penalty. The risk

that tariff concessions will be withdrawn and most-favored-nation treatment denied is one that is not lightly to be assumed.

On economic and financial questions arising in such cases, the ITO will have the final word. On legal questions, it may seek an advisory opinion from the International Court of Justice. It must ask for such an opinion if any member so requests. The Organization will be bound by any opinion rendered by the Court and, if necessary, will modify its own decisions accordingly (96). A basis is thus provided for the development of a body of international law to govern trade relationships.

MISCELLANEOUS PROVISIONS

The *Charter* is to enter into force if twenty of the countries represented at the Havana conference deposit instruments of acceptance with the United Nations before September 30, 1949. It may be brought into force at any later date by agreement among the governments that have deposited such instruments (103).

The *Charter* may be amended by a two-thirds vote of the members of the Conference. No amendment that changes the obligations of members will become effective for any member, however, until it has been accepted by that member or by two-thirds of the Organization's membership. The Conference may expel any member that declines to accept an amendment that has been thus approved or it may establish conditions under which such a member may remain within the ITO (100).

The provisions of the *Charter* must be reviewed by a special session of the Conference five years after it has entered into force (101). This requirement, modeled after one contained in the Charter of the United Nations, is designed to force a reexamination of these provisions when the period of postwar reconstruction shall have ended and conditions conducive to multilateralism shall have been restored.

Any member may withdraw from the Organization, on sixty days' notice, when the *Charter* has been in force for three years. The existence of the Organization may be terminated by a three-fourths vote of its membership (102).

CHAPTER 16

RELATIONS WITH NON-MEMBERS

IT was assumed, in drawing up the plans for an international trade organization, that membership should be universal. But it was recognized that some countries might delay adherence and that others might never join. Provisions governing the relations between members and non-members were therefore required.

It appeared to be necessary, in formulating a non-members rule, to provide that members of the organization should not accord to non-members treatment as favorable as that accorded to other members. Two considerations supported this view. First, it was thought to be desirable to attract the widest possible membership by offering inducements to those who would enter the organization and imposing penalties on those who would remain outside. This could be accomplished by confining the benefits promised under the provisions of the *Charter* to those who were prepared to assume its obligations, denying them to those who were unwilling to do so. By making adherence attractive and non-adherence unattractive, general observance of common rules of conduct might be obtained. Second, effective enforcement of the commitments contained in the *Charter* required the withdrawal of benefits from members who should violate its rules. But if these benefits were to be accorded to non-members, it might be more advantageous to remain outside of the organization than to join. For this reason, too, denial of equal treatment to non-members appeared to be required.

It was accordingly proposed by the United States: (1) That no member should seek to obtain from a non-member advantages that would result in discrimination against the trade of another member;

(2) that no member should be a party to a contract that would entitle a non-member to receive any of the benefits afforded by the *Charter*; (3) that each member should terminate any agreement that conflicted with these rules; and (4) that a year or more should be allowed to permit adherence to the Organization, but that, thereafter, unless the Organization should consent, members should not apply the tariff concessions agreed upon among themselves to the trade of other countries which, although eligible for membership, had failed to join or had withdrawn from the Organization. The last of these rules would have operated, in effect, to set up a preferential system among the members of the Organization. But the system would have been open to participation by all countries at all times, and when such participation became universal the requirement of discrimination against non-members would have lost its significance.

This proposal was not a novel one. It had been suggested, as a means of promoting the reduction of barriers to trade, by the Economic Committee of the League of Nations in 1929. It had been urged by the Commission of Enquiry for European Union in 1931. It had been included in the Ouchy Convention, designed to reduce tariffs between Belgium, Luxembourg, and the Netherlands, in 1932. It had been advanced again by the Preparatory Committee of the London Monetary and Economic Conference in 1933. And it had been written into the convention adopted by the Conference of American States at Montevideo in the same year. None of these proposals, however, had come into effect. The Ouchy Convention had failed when the United Kingdom refused to surrender her most-favored-nation rights. The Montevideo Convention had been ratified only by Cuba and the United States.

THE NON-MEMBERS ARTICLE

At the meetings of the Preparatory Committee in London and in Geneva, the formulation of provisions governing relations with non-members was impeded by the failure of the Soviet Union to attend. It was apparent that many of her neighbors feared that agreement to any rule involving discrimination between members and non-members might be regarded by Russia as an unfriendly act. At Lon-

don, accordingly, consideration of the problem was postponed. At Geneva, despite the obvious reluctance of certain delegations, it was finally agreed to forward to the Havana conference, without recommendation, three alternative texts. The first of these texts was drafted by Czechoslovakia, the second by the United Kingdom, and the third by the United States.

The Czech draft would have seriously weakened the obligations of membership. Under its provisions, a member having heavy trade with non-members would have been permitted to suspend the application of any provision of the *Charter,* required thereupon to afford other members an opportunity for consultation, and permitted, in the absence of agreement, to withdraw from the Organization. The American draft followed the lines of the proposals originally made by the United States. It would have necessitated the abrogation of agreements that required members to extend to non-members any of the benefits contained in the *Charter,* unless the Organization, in a particular case, should permit such an agreement to stand. It would have forbidden a member, one year after it joined the Organization, to extend to non-members tariff concessions granted to members, unless permission to extend this period should be requested and obtained. The British draft was similar in purpose and effect. It would have prohibited the extension to non-members of tariff concessions or *Charter* benefits, but would have authorized the ITO, in the case of new as well as old agreements with non-members, to grant specific exceptions to this rule.

The article adopted at Havana, while rejecting the position taken by Czechoslovakia, falls far short of the proposals made by the United Kingdom and the United States. It neither forbids the extension to non-members of tariff concessions and *Charter* benefits nor requires the abrogation of agreements under which such extension is guaranteed. In view of the probable non-participation not only of Russia but also of Argentina, few countries were prepared, at the time, to assume such obligations. Under the circumstances, it was clear that the Anglo-American proposals were not negotiable and they were not pressed.

The *Charter* forbids members of the ITO to participate in agreements under which they would accord preferential treatment to

goods imported from non-members, where such treatment would prove injurious to the economic interests of other members. It further forbids members to enter into agreements under which they would obtain advantages for goods exported to non-members, if such agreements preclude the extension of comparable advantages to other members. It permits members to deny equality of treatment to non-members; such a policy "shall not be regarded as inconsistent with the terms or the spirit of the *Charter.*" Trade relations between members and non-members are to be kept under review by the Executive Board of the Organization and the adoption of amendments that would strengthen these provisions may be recommended at any time (98).

The provisions are admittedly weak. But the denial of equal treatment to non-members, while permissive rather than mandatory, is given the sanction of international authority. If the United States, together with other major trading nations, were to confine tariff concessions to members of the ITO, there would still be a penalty for non-participation and an inducement for membership. And since membership is open, the adoption of such a policy could scarcely be regarded as an unfriendly act.

RELATIONS WITH RUSSIA

It was not to be expected that the *Charter* would commend itself strongly to the Soviet Union. It is a product of the philosophy of economic liberalism; this philosophy runs counter to Communist ideology. It seeks to open markets and expand trade; the Russians have little interest in foreign markets; they are import-minded; they sell only to pay for the things they buy; they see no advantage in the expansion of trade *per se*. The *Charter* would make for greater interdependence and a closer integration of the world economy; comprehensive economic planning makes for economic independence and national self-sufficiency. Under the *Charter,* trade would be freed increasingly from political controls; in the monolithic state, trade is an instrument of national policy. The *Charter* will operate to restore an environment that is congenial to the preservation of private enterprise; this is not an objective that Communism shares.

It cannot be maintained, however, that the *Charter* was designed

to injure the economic interests of the Soviet Union or that it would operate in any way to do so. Before the war, Russia practiced and preached multilateralism and non-discrimination. She conducted her foreign trade on the basis of multilateral principles, selling in one place and buying in another, converting the currencies obtained from exports into those required to pay for imports. At the meeting of the Commission of Enquiry for European Union in 1931 and again at the Monetary and Economic Conference in 1933, her delegates introduced a Protocol for Economic Non-Aggression, calling for the outlawry of all forms of discrimination. The *Charter* embodies these principles.

The benefits afforded by the *Charter* could be obtained by Russia at little cost. The reduction of barriers to exports, the assurance of equal treatment, the suppression of restrictive business practices, and the protection of national interests in intergovernmental commodity agreements should prove advantageous to the Soviet Union as they are to other states. Her own commitment to reduce tariffs and to abandon import quotas, having no effect on the volume of her trade, could be taken without sacrifice. The *Charter's* rules on state trading might be inconvenient; it could not be said that they are really onerous.

In certain respects, however, the requirements of the *Charter* are bound to be unwelcome. Publicity as to exports, imports, and trade agreements is expected; the Russians are addicted to secrecy; they have published no trade statistics for the last ten years. Freedom of national action is limited; economic planners prefer administrative flexibility. Members of the ITO are granted the right to call into question the policies and practices of other members and the Organization is authorized to settle trade disputes; this procedure would doubtless be regarded by the Russians as an unwarranted intrusion into their affairs. State-trading operations, says the *Charter,* should be conducted solely on the basis of commercial considerations; the impropriety of employing trade to serve political objectives is unlikely to be acknowledged by a Communist state.

Bilateralism and discrimination have been preached and practiced by the Soviet Union since the war. Russia now professes to find in the principle of equal treatment an effort by capitalist powers to enslave

the economies of weaker states. Her own relations with her satellites are governed by a series of agreements that bind them tightly to her economy. Through bilateral trade agreements, they have been forced to turn toward the Soviet Union as the market for most of their exports and the source of most of their imports. Through economic collaboration agreements, establishing joint holding companies in which Russia appropriates half of the ownership and appoints the managements, they have been compelled to surrender control of some of their major industries. If it is the purpose of these agreements to pave the way for the ultimate absorption of neighboring countries into a greater USSR, they are well designed to serve that end. Short of this, they will make it possible for the Soviet Union, through its greater strength, to exploit the surrounding peoples and, by requiring them to discriminate against outsiders, to maintain an exclusive trading bloc.

Neither in Communist ideology nor in the present foreign policy of the Soviet Union is there any ground for hope that Russia will become a member of the ITO. She has participated in few of the specialized agencies of international cooperation. Russia belongs to the World Health Organization, the Universal Postal Union, and the International Telecommunications Union; she has refused to join the United Nations Educational, Scientific, and Cultural Organization, the International Refugee Organization, the International Labor Organization, the Food and Agriculture Organization, the International Civil Aviation Organization, the International Bank for Reconstruction and Development, and the International Monetary Fund. She has declined to participate in the trade negotiations at London, Geneva, or Havana. She has consistently opposed the program of European economic reconstruction upon the success of which the *Charter* must stand or fall. Despite this record, if the Soviet Union were some day to conclude that its political objectives would be served by international economic cooperation, it might still join the ITO. The door has always been kept open. But the possibility that Russia will enter appears to be remote.

How will Russian non-adherence affect the operation of the *Charter?* Before the war, the Soviet Union accounted for one-seventieth of the world's trade. Her postwar share is unlikely to be large; some

trade that was once external is now internal; policy is directed toward economic self-sufficiency. Even though she rejects the *Charter's* rules for state trading, Russia is so small a factor in world markets that competition should suffice to hold her operations in line. It is possible that all of the nations in the Russian trading bloc will refuse to join, thus splitting the world of trade in two. While this would be unfortunate, it would not be fatal to the operation of the ITO. Before the war, the whole area accounted for less than one-thirteenth of the world's trade. Rules of fair dealing can be applied effectively to the other twelve-thirteenths. It is in its political implications, rather than its economic effects, that the Russian position is dangerous.

PART III

APPRAISAL OF THE HAVANA CHARTER

CHAPTER 17

COMMITMENTS AND ESCAPES

THE many international conferences that dealt with problems of commercial policy between the two world wars confined themselves, in the main, to adopting resolutions and making recommendations that had no binding force on governments. The *Havana Charter,* by contrast, contains a long series of specific commitments affecting national policies. Most of these commitments and many of the exceptions and possible exemptions which accompany them have been described in some detail in the foregoing chapters. But it would be well, at this stage, to review the total balance of commitments and escapes in order to appraise the frequent charge that commitments outweigh escapes for the United States while escapes outweigh commitments for every country other than the United States. Is the *Charter* really as hard on us and as easy on everybody else as some of its critics would have us believe?

COMMITMENTS AS TO COMMERCIAL POLICY

With respect to the reduction or elimination of restrictive or discriminatory measures imposed on international trade by governments, countries joining the ITO will commit themselves, save where specific exceptions are contained in the *Charter* or specific exemptions may be granted by the Organization, to do or to refrain from doing the following:

1. To enter into and carry out negotiations directed toward the substantial reduction of tariffs and the elimination of preferences (17).

2. To introduce no new preferences and to increase no old preferences (16).

3. To give effect, at the earliest practicable date, to common definitions and procedures for determining the value of imported goods when value is the base upon which customs duties are levied (35).

4. To reduce the number and diversity of other customs fees and charges and to limit them, in amount, to the value of services rendered (36).

5. To reduce and simplify import and export formalities and documentation requirements (36).

6. To eliminate unnecessary marking requirements and reduce the burden of complying with such requirements as are retained (37).

7. Not to impose on imported goods internal taxes higher than those imposed on like domestic goods (18).

8. Not to impose on the distribution or use of imported goods laws, regulations, or requirements more onerous than those imposed on the distribution or use of like domestic goods (18).

9. In all these matters, to accord to each other member country in the ITO treatment no less favorable than that accorded to any third country (16).

10. To prevent the use of trade names in such a manner as to misrepresent the true origin of a product (37).

11. To confine anti-dumping and countervailing duties to cases of actual injury and to limit them, in amount, to the margin of dumping or the value of the bounty or subsidy they are designed to offset (34).

12. To afford freedom of transit to goods moving across their territories, without discrimination as to ownership, origin, destination, or means of transportation (33).

13. Not to impose any new requirement that any specified amount or proportion of any product must be supplied from domestic sources and to include the reduction or elimination of existing mixing regulations in international trade negotiations (18).

14. Not to discriminate against the distribution or exhibition of imported motion-picture films by any means other than requiring that a certain amount of screen time be reserved for the exhibition of domestic films and to include the reduction or elimination of such screen quotas in international trade negotiations (19).

15. Not to allocate imported products affected by domestic mixing requirements or screen quotas among foreign sources of supply (18, 19).

16. In all cases other than those specifically excepted by the

Charter or exempted through approval by the ITO, to abandon the use of licenses, quotas, or other quantitative restrictions on exports or imports (20).

17. In those cases and at those times when quantitative restrictions may be used, so to administer them as to avoid discrimination between other member countries (22).

18. To join the International Monetary Fund or to enter into a special exchange agreement with the ITO (24).

19. Not to evade the *Charter's* rules on quantitative restrictions by using exchange controls and not to evade the Fund's rules on exchange controls by using quantitative restrictions (24).

20. In the case of a state monopoly of import trade, to enter into and carry out negotiations directed toward the limitation or reduction of any competitive advantage that may be afforded to domestic producers, the relaxation of restrictions on imports, and the satisfaction of the full domestic demand for the imported product (31).

21. In the case of a state monopoly of export trade, to enter into and carry out negotiations directed toward the limitation or reduction of any competitive advantage that may be afforded to domestic users of the monopolized product and toward assurance that the product will be exported in adequate quantities at reasonable prices (31).

22. In any state-trading operation, to act solely in accordance with commercial considerations and to afford the enterprises of other member countries adequate opportunity, in accordance with customary business practice, to compete for participation in sales or purchases (29).

23. To publish, fully and promptly, statistics, laws, regulations, judicial decisions, administrative rulings, and international agreements affecting world trade (38, 39).

24. To administer trade regulations uniformly and impartially and to afford traders suitable facilities for consultation with administrative authorities (38).

25. To maintain or establish independent tribunals or procedures for the prompt review and correction of administrative action (38).

In the main, these are commitments either to do things which the United States is already doing and intends to continue doing, or to refrain from doing things which the United States is not doing and does not desire or intend to do. At the same time, they are commitments to do things which many other countries are not doing and

would not otherwise undertake to do, or to refrain from doing things which many other countries are doing and, in the absence of these commitments, will certainly continue to do.

THE BALANCE OF OBLIGATIONS

In the United States, the commercial policy commitments in the *Charter* would require only minor adjustments in legislation and administration. We should have to modify our methods of customs valuation, in certain respects, and make some changes in our marking requirements. We should have to amend our tariff law so that the use of countervailing duties would depend, as does the use of anti-dumping duties, upon a finding of injury. We should have to discontinue our discriminatory internal tax on oleomargarine and abandon our prohibition against the exportation of tobacco seed. We should have to make certain changes in our trade arrangements with the Philippines, either eliminating a preference given the Philippines in our internal tax on coconut oil or converting it into a preference in our tariff, and either abandoning a number of absolute quotas on imports from the Philippines or converting them into tariff quotas beyond which higher rates of duty would apply. We might have to rely, in part, upon duties rather than import quotas to prevent a backflow of primary commodities where exportation had been subsidized. None of these changes would necessitate a serious departure from existing practice or a major redirection of established policy.

In most other countries, the adjustments required to bring legislation and administration into harmony with the commercial policy provisions of the *Charter* will be far more numerous and more important than those required in the United States. Our country has been committed since 1934, under the Reciprocal Trade Agreements Act, to negotiate for the reduction of tariffs and other barriers to trade; under the *Charter,* other countries will assume a similar commitment. The United States has adhered to the principle of unconditional most-favored-nation treatment since 1922; it has forbidden misrepresentation of the origin of goods as an unfair method of competition, under the Federal Trade Commission Act, since 1914; many other countries have never adopted such policies. The United States has made comparatively little use of preferences, discrimina-

tory internal taxes or regulations, quantitative restrictions, exchange controls, or state trading; many other countries are making extensive use of these devices. The United States is the predominant exporter of motion-picture films; all other countries are importers; their commitment to abandon discriminatory practices is of interest, primarily, to the American industry. The United States is already a member of the International Monetary Fund; the *Charter* will require nonmembers of the Fund to accept its obligations. The United States has always given publicity to trade statistics, regulations, and agreements; certain other countries shroud these matters in secrecy; under the *Charter,* publicity will be required. The United States has a Court of Customs Appeals; many other countries, lacking equivalent procedure, will be obliged to provide it. For most of the other members of the ITO, all around the world, the commercial policy commitments in the *Charter* will require major changes in practice and in policy.

COMMITMENTS AS TO CARTEL PRACTICES

With respect to the elimination of restrictive business practices by public or private commercial enterprises possessing monopoly power in international trade or conspiring to restrain international trade, each country joining the ITO will commit itself:

1. To "take appropriate measures . . . to prevent" such practices whenever they "have harmful effects on the expansion of production or trade" (46).
2. To "take all possible measures, by legislation or otherwise . . . to ensure, within its jurisdiction, that private and public commercial enterprises do not engage in practices" which have such effects (50).
3. To "take full account of each request, decision, and recommendation" made by the ITO and "take in the particular case the action it considers appropriate having regard to its obligations" under these articles (50).

These commitments are consistent with the policy embodied by the Congress of the United States in the Sherman Anti-trust Act of 1890 as interpreted, under the rule of reason, by the Supreme Court. For most other countries, however, they represent a radical departure from established policy.

COMMITMENTS AS TO COMMODITY AGREEMENTS

With respect to intergovernmental agreements to regulate the production, exportation, importation, or prices of primary commodities, countries joining the ITO will commit themselves:

1. Not to enter into any such agreement unless the industry in question displays a number of specific economic characteristics that are to be found in combination only in the cases of certain agricultural staples and of a few minerals that are produced in isolated regions (62).
2. Not to adhere to any such agreement unless its duration is limited to five years or less and to formulate and adopt, during the life of the agreement, a program of domestic economic adjustment designed to render its extension unnecessary (63, 65).
3. Not to adhere to any such agreement unless it contains specified provisions designed to safeguard the interests of consumers, including an equal vote for producer and consumer interests and full publicity (60, 63).
4. To modify or withdraw from any agreement that the ITO finds to be inconsistent with these requirements (65, 68).

These limitations upon the freedom of nations to enter into commodity agreements were included in the *Charter* upon the sole initiative of the United States. In their absence, other nations would continue to be free, as they now are free, to enter into such agreements in any field, for any period of time, without making any provision to safeguard the interests of consumers.

COMMITMENTS AS TO SUBSIDIES

With respect to subsidies affecting international trade, each country joining the ITO will commit itself:

1. Not to subsidize the exportation of any commodity other than a primary commodity (26).
2. Not to subsidize the exportation of any primary commodity to an extent that would maintain or acquire for itself more than an equitable share of world trade in that commodity (28).
3. Upon request, to discuss with the ITO or its members the possibility of limiting any subsidy that operates, directly or indirectly, to maintain or increase exports or to reduce or limit imports (25).

The limitation upon the freedom to subsidize primary commodities is admittedly weak. Many other countries would have preferred to make it much stronger. The United States was unwilling to do so.

COMMITMENTS AS TO LABOR AND EMPLOYMENT

With respect to the relationship between conditions of labor and competition in international trade, each country joining the ITO will commit itself to "take whatever action may be appropriate and feasible to eliminate" unfair conditions of labor within its territory (7). Since the United States already has the highest standards of labor on earth, this commitment imposes a far heavier obligation on other countries than it does upon our own.

With respect to the relationship between international trade policy and domestic programs for the stabilization of industrial activity, each country joining the ITO will commit itself to "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" (3). This commitment gives expression to a policy that would have been pursued by the United States if the *Charter* had never been written. It leaves us completely free, without regard to the opinion of the ITO or any of its members, to choose whatever form of action we prefer. And it does not require us to guarantee that the action taken will produce the effect for which it was designed.

If pronounced imbalance in international trade persists, a member continuing to have a heavy export balance commits itself to "make its full contribution, while appropriate action shall be taken by the other Members concerned, toward correcting the situation" (4). This is the only commitment in the *Charter* that points its finger toward the United States. It emphasizes the predominant position that we now occupy in international economic life. It recognizes an inescapable fact: that we cannot continue indefinitely to sell far more than we buy, while the rest of the world goes on buying far more than it sells. If this situation were to persist, we should be compelled, in one way or another, *Charter* or no *Charter,* to contribute to its correction. Under the *Charter,* the character of our contribu-

tion is for us alone to decide. And appropriate action by other countries is also required.

COMMITMENTS AS TO ECONOMIC DEVELOPMENT

With respect to economic development, countries joining the ITO will commit themselves:

1. To take action designed to develop their resources and to raise standards of productivity (9).
2. Not to impose "unreasonable or unjustifiable impediments" that would prevent other members from obtaining facilities for their development (11).
3. To cooperate with the ITO and with other intergovernmental organizations in promoting and facilitating economic development (10).

The United States stands to gain from the development of backward areas all around the world. It does not intend to place unreasonable obstacles in the way of enterprises which desire to export facilities for development. But it will assume no obligation, under the *Charter,* to insure that such facilities will be forthcoming.

COMMITMENTS AS TO INTERNATIONAL INVESTMENT

With respect to the treatment of private foreign investment, countries joining the ITO will commit themselves:

1. Not to take "unreasonable or unjustifiable action . . . injurious to the rights or interests of nationals of other Members in the enterprises, skills, capital, arts, or technology which they have supplied" (11).
2. To provide "adequate security for existing and future investments" (12).
3. To impose no requirements as to the ownership of investments that are not "just" and no other requirements with respect to investments that are not "reasonable" (12).
4. To "enter into consultation or to participate in negotiations directed toward the conclusion" of "bilateral or multilateral agreements relating to . . . opportunities and security for investment" (12).

The value of these commitments to American investors will depend, of course, upon the interpretation that is given to such words as "ade-

quate," "just," and "reasonable" by the ITO and by the International Court of Justice and upon the character of such detailed agreements as may be concluded under the commitment to negotiate.

CAN THESE COMMITMENTS BE ENFORCED?

If any one of these forty-five commitments is not kept, the United States or any other member of the ITO can complain, under the provisions of Chapter VIII of the *Charter,* that benefits promised it have been nullified or impaired and may be authorized, on a compensatory basis, to withhold or withdraw from the delinquent member tariff concessions or other benefits. If it chooses to do so, it may request an advisory opinion on any legal question from the International Court of Justice and such an opinion, when delivered, will be binding on the ITO.

THOSE ESCAPE CLAUSES

If the *Charter* were confined to statements giving recognition to abstract principles, there would be no need for the inclusion of escapes. But since it sets forth a long series of specific commitments, these are accompanied, of necessity, by a number of detailed exceptions and by provisions for possible exemptions from its general rules. It has been said, in criticism of the *Charter,* that these escapes are so numerous and so sweeping that little of value will remain. It is desirable, therefore, that they be enumerated and their importance assessed.

The exceptions and possible exceptions to the rules contained in the *Charter* fall into the following general categories: (1) definitions of jurisdiction which except matters covered in other parts of the *Charter,* by other international agreements, or by other intergovernmental organizations, (2) routine exceptions copied from previous commercial treaties and trade agreements, (3) temporary exceptions, limited to the postwar transition or to the duration of some other period of emergency, (4) exceptions permitting the retention of certain existing restrictions but making them subject to reduction or elimination through negotiation, (5) other exceptions of minor importance which are designed, in most cases, to permit a single

country to continue a particular measure which would otherwise be outlawed by the general rules of the *Charter,* and (6) four open escapes and four controlled escapes of major importance. Each of these categories will be examined in turn.

JURISDICTIONAL EXCEPTIONS

Exceptions which are, for the most part, little more than cross-references to other articles, agreements, or agencies are contained in the following articles and paragraphs of the *Charter*:

1. Commodity agreements are exempt from Chapter IV because they fall under Chapter VI (45*a*, ix) and state trading is exempt from Chapter VI because it falls under Chapter IV (70–1*a*).
2. Agreements relating to the conservation of fisheries, wildlife, and exhaustible natural resources and to the distribution of commodities in short supply are outside the *Charter* (45*a*-*x*, 70).
3. Complaints concerning restrictive practices in transport, communications, and other services will be transferred by ITO to the appropriate agencies (53).
4. The *Charter* will not override the provisions of peace treaties or settlements resulting from the Second World War (99).
5. Measures taken directly in connection with a political matter brought before the United Nations fall within the scope of the United Nations and are not subject to the ITO *Charter* (86–3).

The last of these provisions may be important, since it might exempt a boycott employed in the course of a political dispute from the general rule against quantitative restrictions. But it was the judgment of the delegates at Havana that the ITO should confine itself to economic matters, leaving to the United Nations the settlement of political differences.

ROUTINE EXCEPTIONS

Technical and routine exceptions to general rules, similar to those contained in all commercial treaties and trade agreements, are found in the following articles and paragraphs:

1. The rule against discriminatory internal regulations does not require railroads or other common carriers to revise their rate structures (18–4).

2. Quantitative restrictions may be used in enforcing the classification and grading of commodities (20–2*b*).

3. The commercial policy commitments do not apply to measures relating to the products of prison labor, the movement of gold or silver, or the protection of national treasures of artistic or historic value, or to measures required for public safety or necessary to the enforcement of domestic laws not inconsistent with the *Charter* (45*a*).

4. Neither the commercial policy commitments nor the commodity agreement commitments apply to measures necessary to protect public morals or human, animal or plant life or health (45*a*, 70–1*c*).

5. Members need not divulge confidential information which would impede law enforcement or prejudice the legitimate commercial interests of any enterprise (38–1, 50–3).

TEMPORARY EXCEPTIONS

Some of the temporary exceptions are limited to the postwar transition period; others to the time required to bring existing practices into conformity with the new rules; others to some future period of particular emergency:

1. The commercial policy commitments do not apply, during a transition period to be terminated by the ITO, to measures essential to the distribution of products in short supply, the control of prices, and the liquidation of war surpluses and industries (45*b*).

2. Some latitude for discrimination in the administration of import quotas is permitted a country in balance-of-payments difficulties during a transition period to be terminated by the International Monetary Fund (23).

3. Any subsidy on exports may be continued for two years (26–3) and a discriminatory internal tax may be retained until the completion of negotiations permitting its conversion into a customs duty (18–3).

4. Export restrictions may be employed for the period necessary to prevent or relieve critical shortages of foodstuffs or other essential goods (20–2*a*).

5. A country in balance-of-payments difficulty may temporarily discriminate in administering import quotas on a small part of its trade if the benefits derived substantially outweigh any injury that might be caused (23–2).

NEGOTIABLE EXCEPTIONS

Certain forms of restriction or discrimination, while not forbidden by the *Charter,* are to be included, as is the case with tariffs, in negotiations for the reduction of barriers to trade. This is true of existing mixing regulations (18–6), screen quotas (19*d*), and preferences surviving the negotiations that were held in Geneva in the summer of 1947 (16–2).

OTHER MINOR EXCEPTIONS

A half-dozen exceptions, though written in general terms, were included in the *Charter* at the insistence of a single country in order to permit the continuance or adoption of a particular measure that would otherwise be in violation of its general rules. These exceptions permit continuance of a foreign screen quota in Czechoslovakia (19*c*), a livestock control plan in Norway (20–2*c*–iii), a stabilization system in Australia (34–7, 37–1), certain restrictions on the exportation of raw materials in New Zealand (45*a*–xi), a direct-consignment requirement in Canada (33–7) and the institution of export controls in connection with domestic conservation measures in the United States (45*a*–viii). Of these, only the last one would have any material effect on the total volume of international trade.

The remaining exceptions of minor importance make possible the use of quotas to enforce permitted exchange controls (24–8*b*), the use of subsidies to offset subsidies paid by non-members of the ITO (26–4), and certain departures from the general rules governing commodity agreements, if approved by the Organization and all of the participants thereto (56–3, 61–6, 63*c*).

THE OPEN ESCAPES

Of the escape clauses that have real significance in relation to the commitments contained in the *Charter,* there are only eight. All of these are defined with precision and safeguarded in some detail by their terms. Four of them come into operation without any sort of finding or approval by the ITO or any other international agency. The other four do not come into operation unless a finding is made or approval obtained. The first four were included in the *Charter*

at the instance of the United States. The last four were included to meet the problem of countries in balance-of-payments difficulties and at the instance of countries whose economies are in the process of economic development.

The exceptions which the United States regarded as prerequisite to its acceptance of the *Charter* are these:

1. Tariff concessions may be suspended or withdrawn if increased imports cause or threaten serious injury to domestic producers (40).
2. Quotas may be imposed on imports of agricultural products when domestic prices are maintained at levels higher than world prices through measures which restrict domestic production or marketing (20–2*c*).
3. Exports of agricultural products may be subsidized (27–3, 5).
4. Measures adopted and agreements entered into for the protection of essential security interests are exempt, in general, from the provisions of the *Charter* (99–1).

These are not the provisions which the critics of the *Charter,* in the United States, have had in mind when they have complained that the document is riddled with escapes. The clauses toward which their attention is directed thus narrow down to four.

THE CONTROLLED ESCAPES

The serious escapes, from the point of view of American opinion, are those which make possible, in individual cases and for limited periods of time, departure from the *Charter's* rules against new preferences, mixing regulations and import quotas. It is the purpose of these escapes to enable countries that are in financial difficulties, as is now the case in western Europe, to protect their monetary reserves and reestablish equilibrium in their balances of payments; to facilitate the enlargement of markets through the gradual development of customs unions and free trade areas; and to assist relatively undeveloped countries in the establishment of new industries. The four escapes in question are these:

1. Import quotas may be imposed by a country that is found by the International Monetary Fund to be in balance-of-payments difficulty, during the period and to the extent necessary "to fore-

stall the imminent threat of, or to stop, a serious decline in its monetary reserves," or "to achieve a reasonable rate of increase in its reserves" (21).

2. Exceptions to the most-favored-nation rule may be granted by the ITO, under specified conditions, where they are incidental to the gradual establishment of a customs union or free trade area (44).

3. New preferences may be permitted by the ITO, for fixed periods, between two of its members, if they satisfy a number of specific criteria and are found to be necessary to promote the economic development of the countries concerned (15).

4. New non-discriminatory measures affecting imports (import quotas and mixing regulations) may be employed to promote economic development if various conditions are fulfilled, procedures followed, and permissions obtained (13).

These four articles are reprinted in the Appendix and are discussed in some detail in Chapters 6, 8, and 14 of this book. In text, they are long, technical, and difficult to understand. But this very fact demonstrates how carefully these possible exceptions are circumscribed. A wide-open escape could have been written in four words: "This does not apply." A controlled exception requires more type; and these exceptions are controlled. They set up a number of obstacles that must be surmounted: conditions to be fulfilled, criteria to be satisfied, procedures to be followed, and permissions to be obtained. Once this has been done, they impose a whole series of additional obligations that must be assumed. And finally, they provide in one way or another for the limitation of the period during which the exception may be enjoyed.

HOW SERIOUS ARE THE ESCAPES?

Any conclusion as to the possible seriousness of the major escape clauses must rest upon a judgment as to how they are likely to be administered. In the case of the balance-of-payments escape, the broadest of the four, the ITO must accept the determination of the International Monetary Fund and the interest of the United States will be safeguarded by the heavy weight of its vote in the Fund. In the cases of the economic-development escapes, the United States will have a permanent seat on the Executive Board of the ITO and half of the seats on the Board are likely to be held by industrial

powers. If issues are appealed to the Conference of the ITO, the undeveloped countries will unquestionably be in a position to outvote the industrial states. If they were to vote as a bloc on each application, the breach made by these exceptions would be wide. But they are unlikely to do so. Experience has shown that the economic interests of undeveloped countries differ sharply and that their votes are likely to be split. When a particular country applies for permission to impose a restriction on imports of a particular product, every exporter of the product is likely to vote against the application. And when any two countries apply for permission to establish new preferences, every country that would suffer is likely to vote in the negative. The risk of an unfavorable vote is one that the undeveloped as well as the developed countries will have to take.

There is some virtue in the fact that the important exceptions in the *Charter* are plainly labeled as exceptions to general principles whose validity every signatory of the document must recognize. Their legal status is that of releases granted from obligations that have been voluntarily assumed. They do not condone unauthorized departures from general rules; they do permit departures with international sanction, under international control.

It should be emphasized that the escapes provided in the *Charter* will not enable any country to do anything that it is not already free to do. It is true that the commitments in the *Charter,* when qualified by the escapes, have less value than they would have if they stood alone. But it is equally true that the commitments, together with the escapes, give far greater assurance as to the future direction of national commercial policies than would exist if the *Charter* were not approved.

The *Charter* offers to the United States an opportunity to obtain a considerable measure of influence with respect to future commercial policies all around the world. We can obtain this influence without taking any commitments that would be inconsistent with our own established policies. The question that we must answer is whether we shall throw this opportunity away because the measure of influence it offers is not as large as we had hoped, or retain the considerable measure of influence that we already have within our grasp.

CHAPTER 18

SOME CRITICISMS CONSIDERED

MOST of the criticisms of the *Charter* come from people who accept without question the objectives of multilateralism and non-discrimination and agree that some sort of an organization should be established in the field of international trade. But the criticism that is advanced with the greatest vehemence flatly rejects these purposes. It originates in Moscow and finds expression in every journal throughout the world that follows the Communist party line.

According to this criticism, the sponsors of the ITO are "professional crooks," "predatory Western capitalists," and "pretenders to world domination," working toward "economic expansionism," "imperialist aggrandizement," and "American hegemony," and brutally imposing "the mandates of Wall Street" on the other nations of the world. "The Americans," said Otto Kuusinen, president of the Karelo-Finnish Republic, writing in *Pravda* on February 19, 1947, "have worked out a broad plan creating a 'world trade and currency system' with the help of which powerful American capital can become complete master in the field of international trade and gradually take into its own hands control over the economy of most other nations." The monopolies of the United States, said *Trud,* the journal of the Soviet trade unions, on December 28, 1947, "are seeking to enslave, not only Europe, but the whole world." The *Charter* for the ITO, wrote L. Frei in a series of articles appearing in *Vneshnyaya Torgovlya,* the magazine of the Soviet Ministry of Foreign Trade, during 1948, "deprives member countries of their sovereign rights and binds them to the will of the United States"; it is designed "to

secure a monopolistic position for the United States on world commodity markets and is a weapon of the U.S.A. in its struggle for world domination." The reduction of barriers to trade and the abandonment of discrimination, he went on, "signify in fact the actual economic enslavement of states weakened by the war and their subjection to the domination of the rich monopolies and banks of the U.S.A." The International Monetary Fund, the International Bank, and the ITO, he asserted, "are based upon credits made available by the Americans" and these credits, in the words of Comrade Zhdanov, are granted as "payment for the loss by European States of their economic and then of their political independence." Said *Hoy,* the Communist daily in Havana, "The Charter of the ITO will be nothing other than another instrument in the hands of the United States to enslave the rest of the world." And this line was echoed by the representative of the Soviet Union in a violent attack on the *Charter* before the Economic and Social Council on August 11, 1948.

If the policies espoused by the United States were diametrically opposed to those embodied in the *Charter*: if we had proposed, for instance, that imports be excluded from our markets and that special privileges, denied to other countries, be granted to our own, these characterizations would fairly have applied. But greater freedom of trade opens the door of economic opportunity to all peoples, and the principle of non-discrimination protects the right of every nation to compete, on equal terms, with every other nation in the markets of the world, to sell more goods of better quality with superior service for less money, so that labor may be more productive and levels of living more nearly adequate in every corner of the globe. Equality of treatment assures to smaller states the right to buy and sell where they please, on terms as favorable as those afforded larger powers. Far from reducing them to slavery, it affords a guarantee of economic liberty. For real freedom is not to be found within the fond embraces of a single state.

TOO MUCH IDEALISM—TOO MUCH COMPROMISE

Two sweeping criticisms of the *Charter* have frequently been heard in the United States. According to the first, the *Charter* attempts to

apply the principles of impractical idealism to a world that is intensely practical and all too real. According to the second, the *Charter* has been so riddled with exceptions in the process of compromise that its ideals have lost whatever meaning they may once have had. Of course, these criticisms cannot both be true. If the *Charter* were impractical and idealistic, it would give no room to the compromises that are required to meet the practical problems of the real world. And if exceptions have been made to meet these problems, it can scarcely be said that the *Charter* remains an expression of impractical idealism.

As a matter of fact, neither of these criticisms is justified. In one sense the *Charter* is idealistic; in another sense it is not. It is idealistic in that it establishes objectives toward which all countries can agree to work. It draws on the experience of the past, but it does not direct itself to the problems of the past. It sets up goals for the future, but it does not limit itself to provisions that can work only in normal times. It is concerned with the actual problems of the workaday world. And in this sense its idealism is tempered with a realism that is clearly practical.

It is true that the *Charter* contains a great many exceptions. But these exceptions are carefully defined; many of them are temporary; all of them are limited in extent; and no nation will be able to use any of them unless it satisfies the conditions on which all nations have agreed. If it were not for the exceptions, the *Charter* would not be practical, and it is because it is practical that it can be expected to work.

It is true, too, that the *Charter* is a product of compromise. So is almost every law that was ever passed by Congress or by the legislature of any state. So is every treaty between any two powers. So are the Charter of the United Nations and the constitution of every international agency that has been established since the war. Compromise is a virtue, not a defect. It means that the *Charter* will not be imposed by force; that it will not be rejected because it is one-sided, but can be voluntarily accepted because it meets the needs of many states. Commitments taken under pressure are fulfilled with reluctance; those taken willingly are more likely to be observed.

TOO LONG, TOO TECHNICAL, TOO COMPLICATED

It is said that the *Charter* is too long and too complicated; that its language is too vague or too precise; that it is hard to read and difficult to understand. This difficulty has been well described by Herbert Feis*: "Its articles, sections and paragraphs interweave with one another in so many ways as to baffle memory. Some of the provisions of real substance are so greatly trimmed with appended ideas that the basic meaning is hard to discern. Language admitted into some articles for the purpose of enabling some national delegation to show back home that its point of view had been recognized is offset by other words intended to deprive the 'gift' language of importance. The weight and meaning of each part of the *Charter* is dependent on the conditions and exceptions contained in many others. Thus the pattern of obligation is so intricate and qualified that summary is hard and certain to prove a little wrong. Life exists at the heart of this most involved accord, but only the learned can communicate with it, and then only in code."

In this comment there is more than a little truth. The process of negotiating wording affecting national interests, in several different languages, with delegates from more than fifty countries, is unlikely to produce a masterpiece of literary style. The *Charter* is long and complicated. It contains nine chapters, more than a hundred articles, and several thousand words. It deals with many matters that are technical in character, relates one subject to another through numerous cross-references, and seeks precision in minute details. The *Charter* is probably shorter than some acts of Congress; it is certainly simpler than the income-tax law; but it is still long and complicated. It is complicated because the laws and regulations that govern international trade are complicated. It is complicated because it is realistic and practical. But the multitude of technical details in the document serves only to emphasize the character of the agreement that has been achieved.

TO MAKE TRADE FREER IS NEGATIVE

It was argued by many of the countries participating in the trade negotiations that the provisions of the *Charter* were purely negative.

* *International Organization,* February 1948, p. 42.

In their view, the stabilization of employment, the maintenance of commodity prices, and the promotion of industrial development, rather than the reduction of barriers to trade, should be the major objectives of international policy. And affirmative action was required if these objectives were to be attained. The *Charter,* however, consisted principally of prohibitions limiting the freedom of governments to restrict world trade. And prohibitions are not affirmative.

It is true that the *Charter* contains no guarantee that employment will be stabilized, prices maintained, or industrialization actually achieved. These objectives, in the main, must be sought by other means. Action for the stabilization of employment is left to national governments. Freedom to maintain prices through intergovernmental agreement is strictly limited; adjustment to changing markets remains a matter of domestic policy. Industrialization will be promoted by private capital and enterprise, assisted by other public agencies; the ITO will have no money to lend and no equipment to provide. Its main task will be that of reducing barriers to trade and eliminating discriminatory practices. It is true that this task is negative, in the same sense in which the work of a surgeon who removes a diseased appendix is negative. But for proposing an operation that is required to restore the body economic to full health, it is unnecessary to offer an apology. The *Charter* is designed to make provision for the expansion of world trade. And in this it is affirmative.

TOO MANY IMPORTS

It has been charged, in the United States, that the *Charter* would require this country to surrender its autonomy in tariff matters to the ITO and that its adoption would commit us to absolute free trade. This, of course, is not so. The ITO would have no authority whatsoever to fix any rate of duty or to require that it be raised or lowered or maintained. Its members would be committed to negotiate for the reciprocal reduction of tariffs. But each of them would retain complete control over the concessions that it might choose to make. There is no hope and no danger that such negotiations would result in the elimination of all protective barriers. The world can move toward freer trade without going all the way to free

trade. No nation has proposed and none is ready to adopt complete free trade.

Back of these charges, however groundless, there is the fear that tariff reductions will make it difficult for American industry to compete with foreign producers in the markets of the United States. But if there is fear of foreign competition in America, there is even greater fear of American competition abroad. And this fear is easier to understand. Among all our major competitors we find physical destruction, obsolescence, loss of man power, malnutrition, economic disorganization, and political uncertainty. In the United States we find the greatest productive plant on earth, well equipped and physically unimpaired, at the peak of technical efficiency, with ample supplies of highly skilled labor, with the world's highest wages and its lowest costs, producing for a mass market, directed by the genius of private enterprise. In the face of this comparison, it is difficult to believe that American industry, in general, cannot meet competition and survive.

The foreigner who would sell in the American market suffers two other handicaps. First, he must pay the costs of transportation, breakage, insurance, and consular fees. Second, he must surmount the tariff wall. Yet many a producer in this country complains that he would be ruined if that wall were lowered by an inch. In isolated instances, that may be true. But for American industry as a whole it certainly is not. It has never been shown that our industry has suffered from the tariff reductions that have been negotiated under the provisions of the Trade Agreements Act. But the fear that it may suffer at some time in the future is still expressed.

Producers fear imports because they have assumed that we cannot take more products from abroad unless we produce just that much less at home. They have directed their attention exclusively toward the size of their share in the domestic market, taking it for granted that the whole of the market cannot grow. But the size of the market is not forever fixed; it may be larger when we have a thriving foreign trade. And when this happens foreign producers and domestic producers may both increase their sales and the share of each in the domestic market may be maintained. But even if the share of the domestic producer were actually to decline, he might still be better

off than he was before. Simple arithmetic should demonstrate that a smaller share of a larger market may bring more business than a larger share of a smaller one. Ninety per cent of $100 million in sales is $90 million; 80 per cent of $150 million in sales is $120 million; with the size of the market increased by half, the domestic industry can see its share in the market decline by a tenth and its total sales increase by a third. A growing market provides increasing opportunities for everyone, not only for the foreign producer, but for the domestic producer as well.

In view of the great interests that are now at stake, in international economics and world politics, those who prophesy calamity would appear to be suffering from a curious sense of disproportion. They are in the position of one who thoughtlessly throws a million dollars down the drain while he worries that he may someday lose a dime. Surely there will be more advantage, for everyone in this country, in big markets than in little markets, in freedom than in regimentation, in economic peace than in economic war. And this is the advantage that the *Charter* is designed to gain.

TOO FEW IMPORTS

The real danger that faces us, according to other critics, is not that we shall import too much but that we shall import too little. If we are to maintain our export trade, imports should catch up with exports; if we are to accept payment on our loans, imports should exceed exports. And if this is to happen, it is argued, we must permit foreign goods to displace domestic goods in our market; our less efficient producers must shift to other products or other industries. But the sentiment of protectionism still abounds in the United States. In our negotiations under the provisions of the Trade Agreements Act, we have refused to make concessions that would necessitate adjustment to the requirements of a world economy and we have retained the right to withdraw concessions if the necessity for such adjustment were ever to arise. And even if this cautious policy were to be reversed, we could not hope to import in quantities large enough to rectify the imbalance in our trade.

This argument has more substance than the previous one. There is reason to hope, however, that time will demonstrate its fallacy.

It is unlikely that we shall find it necessary to import more than we export for many years to come. Given a reasonable prospect of economic and political stability, we should be able to accept payment for a large part of our exports in the form of ownership in enterprises located outside our borders, claims against foreign earnings, and services rendered to Americans traveling abroad. Our imports of goods will depend upon the scale of our industrial activity. If we avoid depression, income, employment, and demand will be maintained. As the output of our industry expands, we shall import increasing quantities of raw materials. As our own resources are depleted, we shall require more lead, zinc, copper, iron ore, bauxite, and other minerals from foreign sources of supply. As our population grows we shall consume more sugar, coffee, cocoa, tea, bananas, hides, and vegetable oils. As our standard of living rises, we shall buy more wines, jewels, laces, furs, perfumery, and other luxury goods. A surplus of imports may be expected to develop in the course of time.

INTERNATIONAL SOCIALISM, GLOBAL PLANNING

It is said, in criticism of the *Charter,* that it should have contained an explicit denunciation of collectivism and an affirmation of faith in private enterprise. It is argued, moreover, that the absence of such a statement can somehow be interpreted as constituting an endorsement of socialist philosophy. This is obvious nonsense. It is true that the *Charter* does not require that industry, in every country, be operated by private enterprise. Nor does it forbid governments to engage in foreign trade. This fact, however, cannot be taken as compromising the position of the United States. No other nation has sought to alter our belief that the operation of industry, in general, should be in private hands. But it must be recognized that there are many nations who do not share our view. General agreement on a single form of industrial ownership and operation is not to be obtained. Other countries cannot be forced to abandon socialism, and the United States certainly will not consent to abandon private enterprise. The only alternative, therefore, is to restore and maintain an international economic order that is conducive to the preservation of private enterprise within all those countries that

choose it for their own economies and, at all hazards, to prevent the emergence of an order in which it would become increasingly difficult for private enterprise to survive. It is more practical and more important to devote our energies to this undertaking than to a vain effort to obtain agreement on a statement of abstract principles. And it is the former, rather than the latter, that the framers of the *Charter* sought to do.

It is asserted, further, that the ITO will engage in global economic planning, allocating production and markets among the nations of the world and subjecting business, in every country, to the dictates of a socialist bureaucracy. Provisions requiring the removal of restrictions are thus labeled as restrictive, and measures looking toward the restoration of free markets are said to involve the creation of a planned economy. Nothing could be a greater perversion of the truth.

The *Charter* does not provide for global economic planning. It does not give the ITO any power whatsoever to determine what any country shall produce, or how much, or what it shall export, or how much, or to whom, or what it shall import, or how much, or from whom. It does permit governments to enter into agreements under which they may temporarily regulate trade in primary commodities. They possess this power, of course, at the present time. The *Charter* does not deprive them of it. What it does is strictly to limit the circumstances under which the power may be used and the manner in which it may be exercised. The *Charter* does not prohibit commodity agreements; it does not promote them. In fact, it would prevent agreements of the types that have existed in the past. Its rules are designed to safeguard the interests of consumers, to encourage adjustment to changing conditions, and to facilitate the early restoration of free markets. This is not a design for global planning; it is an effort to keep such planning within narrow bounds. The alternative, it should be remembered, is not a situation in which there would be no commodity agreements, but one in which there might be many such agreements to which no safeguards whatsoever would apply.

It should be emphasized that the whole purpose of the *Charter* is not to multiply restrictions, but to minimize them; not to increase

controls, but to reduce them. Instead of regimenting world trade, it seeks, through international agreement, to liberate trade from the forms of regimentation imposed on it by national governments.

SURRENDER OF SOVEREIGNTY TO A SUPERSTATE

Another argument, appearing in company with the previous one, asserts that the *Charter* would require the United States to surrender sovereignty over its domestic economic life, transferring to the ITO authority to determine its internal policies. This simply is not true. The ITO will not be a supranational government; it will have no powers—legislative, executive, or judicial—that would impinge upon the sovereignty of member states. The *Charter,* like any other international instrument, contains commitments that limit the freedom of action of the signatory powers. But these commitments are narrowly limited and carefully defined; they are to be assumed voluntarily. No nation need enter the ITO unless it believes that it would be to its advantage to do so, and no nation can be compelled to remain within the Organization if it feels that its interests would not be served. Voluntary agreement for mutual advantage has always been the method by which order has been established in international affairs. There seems to be no reason why this method should not be applied to international trade.

The ITO will have no power whatsoever to intervene in the domestic wage, employment, or development policies of member states. Each of its members will agree "to take whatever action may be appropriate and feasible" to eliminate unfair conditions of labor within its territory. Each of them will agree "to take action designed to achieve and maintain full and productive employment." And each will agree to "take action designed progressively to develop . . . industrial and other economic resources and to raise standards of productivity." But, in each case, the nature of the action to be taken by any member state is for it alone to choose. No power is conferred upon the ITO to tell a member what action for the elimination of unfair conditions of labor would be "appropriate and feasible." No state is asked to guarantee that its efforts to stabilize employment will succeed. And if they do not, the ITO is given no authority to say what steps it should have taken or to dictate the

steps that it should subsequently take. So, too, with economic development. Each of the less developed countries will make its own decisions as to the industries it wishes to promote. The ITO will have no right to decree that a particular industry should not be developed or that another should be promoted in its place. Whenever the statement is made that the Organization will possess dictatorial power of any sort over the internal economies of member nations, the answer can be given categorically that this is not the case.

ONE-SIDED OBLIGATIONS

It is frequently asserted that obligations, under the *Charter,* will be imposed exclusively upon the United States and freedom granted to all other nations to pursue whatever course they choose. This argument appears in three forms. According to the first, the provisions of the document itself will bind us hand and foot while opening escapes to everybody else. According to the second, these provisions may be fairly balanced, but we shall live up to them, while no other country can be trusted to keep its word. According to the third, nations may live up to the letter of the law, but they will outvote us whenever differences arise.

The first of these contentions was examined at some length in Chapter 17 and found to be erroneous. The second reveals a self-righteousness that will not endear us to our neighbors; it impugns the honor of every other country in the world. Only the third requires examination here.

In some of the procedures envisaged by the *Charter,* the question of voting power is irrelevant. Where members of the ITO are called into consultation, any action that may result will be taken, not on the basis of voting, but by common consent. Where negotiations are entered into, each participant will influence the content of the bargain and accept or reject it, on balance, according to his choice. It is only where the fulfillment of obligations is questioned or exceptions from obligations requested that the issue would be settled by a vote. Here, to be sure, a majority of the members of the Organization might decide that one of their number, whose fulfillment of an obligation had been questioned by the United States, was not guilty of violation; or a majority might decide, upon the complaint

of another member, that the United States had violated an obligation in a certain case. So, too, a majority might vote against an exception that we favored or for an exception that we opposed. But these possibilities need give no occasion for alarm. For it is unlikely, in practice, that the vote would invariably—or frequently—run against the interests of the United States.

In some cases, countries requesting exceptions must obtain the consent of other parties to trade agreements; such parties may veto their requests. In the case of the balance-of-payments exception, the most important in the *Charter,* the ITO is bound by determinations made by the International Monetary Fund, and the United States casts a weighted vote in the Fund. In certain other cases, decisions taken by the Organization require a two-thirds majority. But even where a simple majority suffices, it cannot be assumed that a majority of members would seek to form, and succeed in forming, a cohesive voting bloc. There is no single sharp division of interest that will appear in every case. The line-up of votes will be constantly shifting, from issue to issue and from time to time. The influence of a major power, moreover, cannot be limited to the weight accorded to its vote. The United States, at the Havana conference, obtained acceptance of three important provisions that were sought by it alone: the finality of determinations on financial matters by the IMF, the outlawry of numerous forms of discrimination against imported films, and the provision of greater freedom to subsidize exports of primary commodities. Neither in these cases nor in others was the assumption that other nations will combine to vote us down, at every opportunity, borne out in fact. It would be unreasonable to expect that the United States will win on every vote that will be taken in the ITO. It would be equally unreasonable to expect that it will always lose. On the balance of gains and losses, our country, as every other, will have to take a chance. If the balance should tip against us, we could withdraw from membership.

KILL IT—MAKE IT OVER—LET IT WAIT

Three different lines of attack are followed by those who oppose ratification of the *Charter* in the United States. One group contends that international agreement and organization are not needed; that

trade will go on without them; that American business can look out for itself. Another group professes to favor agreement and organization but insists that the proposed agreement should be revised and the proposed organization set up along different lines. A third group, also supporting agreement and organization in principle, contends that they are not urgent and might well be postponed.

According to the first of these groups, the United States should not concern itself with the restrictive and discriminatory practices of other nations and should take no commitments on its own account. If other countries wish to raise barriers against imports, they should be permitted to do so. If they wish to discriminate against American exports, that is their own business; it is no affair of ours. The world will always need our goods. Our industry is powerful; it can force its way into other markets, however surrounded with restrictions, on advantageous terms. If need be, our government can retaliate; we can fight fire with fire. So speak the economic isolationists who have opposed the *Charter* from the beginning and will continue to oppose it to the end. Their voice emerges from a fools' paradise, counseling a policy of drift. Fortunately, it is the voice of a small minority.

Those who follow the second line of attack argue that the *Charter* should be rewritten and the structure of the Organization overhauled. But there appears to be no agreement as to the changes that should be made. It is said, for instance, that all of the escape clauses should be eliminated; that general principles should be brought together at the beginning of the *Charter* and transition-period exceptions relegated to an appendix; that the date on which commitments would become binding should be postponed; that the *Charter* should be confined to statements of principle that would have no binding force; that the functions of the ITO should be purely advisory; that the ITO should offer no advice, but limit itself to codifying and publishing the provisions of existing treaties and agreements affecting international trade. For one or another of these purposes, it has been suggested that a conference to renegotiate the *Charter* should be called. It may be doubted, however, that this suggestion would be greeted with enthusiasm by any of the eighteen nations that devoted eighteen months to the negotia-

tion of the present draft or by the forty other nations that joined them for four months in the winter of 1947–1948. The *Havana Charter,* for better or for worse, is the only charter that can be considered or adopted by the nations of the world. Renegotiation is not within the realm of possibility.

According to the third group of critics, the *Charter,* while ultimately desirable, has lost its urgency. The one real task that now confronts us is the promotion of world recovery. And our decision to undertake this task insures that our exports will find a market for the next few years. During this period, the program of reconstruction should have priority. If it should fail, the chance of obtaining agreement on commercial policy will have been lost. If it should succeed, agreement can be reached, under happier circumstances, in more normal times.

It is true, of course, that many of the nations that were stricken by the war cannot participate, on equal terms, in the world's economy until their reconstruction is assured. It must be recognized, too, that restrictionism and discrimination can not be abandoned until the world has rectified the great imbalance that now afflicts its trade. But it does not follow that the problems of long-run policy can safely be postponed until a better day. If we do not now see to it that our long-run policies are right, we may find ourselves confronted, at the end of the recovery program, with restrictions hardened into a mold too tough to break. There would be little sense in making heavy contributions to reconstruction if we had small hope that conditions in the 1950's would be any better than they are today. We must know, as we work our way out of the chaos left by war, in what direction we are headed, and why.

It is argued, finally, that the *Charter* might safely be shelved, since the most important of its commitments are also contained in the *General Agreement on Tariffs and Trade.* There is danger, however, that the *General Agreement* would not survive the abandonment of the *Charter.* The *General Agreement* is in effect provisionally, not definitively; it can be denounced on short notice. The *Charter* and the *General Agreement,* while independent of one another, were conceived and negotiated as related parts of a common plan. If the United States were to renounce the one, many of

the contracting parties might withdraw from the other. If this were to happen, tariffs would rise, quota systems and exchange controls would be maintained and strengthened, bilateralism would persist, and discrimination would be intensified; in almost every country, outside of the United States, detailed administrative regulation of exports and imports, instead of being the exception, would become the general rule. And even if this were not to happen, much of the ground that has been gained in the *Charter* would be surrendered: the hard-won agreements on cartel and commodity policy would be sacrificed; the opportunity to establish an international trade organization would be lost.

It is obvious to everyone today that the structure of international trade relationships must be rebuilt. But time is short; our power as social architects is greater this year and next than it will be a few years hence. If we delay, our last opportunity to reconstruct world trade on the pattern of freedom may well be lost. The time for action is now.

CHAPTER 19

SOME OPEN QUESTIONS

THERE are those who appear to take the view that it should be possible for the United States, in any international negotiation, to obtain precisely what it seeks, yielding nothing to nations that are committed to opposing policies. In this view, American negotiators should follow the practice of laying down their demands on a take-it-or-leave-it basis. They should concede nothing; they should never compromise. In one way or another, they should compel all other nations to sign on the dotted line.

Such a view is incredibly naïve. Such a procedure simply would not work. And even if it were workable, it would be unwise. Other countries, too, have economic problems and political necessities, long-standing traditions and established policies, a sense of dignity and national pride. Refusal to compromise would be resented. Proposals that could not be modified in any way would be rejected. Commitments that were taken under duress would be reluctantly observed. If there is to be willing adherence, obligations must be voluntarily assumed. The method of international negotiation is necessarily that of persuasion and compromise. And this is the method that was followed, at London, Geneva, and Havana, in negotiating the *Charter* of the ITO.

Since it makes concessions to opposing points of view, the *Charter* is less than perfect from the point of view of the United States. It is not to be appraised exclusively in terms of black and white. In this document, as in any other, it is necessary to strike a balance by weighing the bad against the good. In this chapter, consideration will be given to the risks that will be incurred in accepting the *Charter;* in the next, to the risks that would be run in rejecting it.

SANCTION FOR MALPRACTICE?

It must be admitted that the agreement contained in the provisions of the *Charter* is, in some cases, more apparent than real, that underlying interests are still in conflict, and that different interpretations are likely to be placed on the same form of words. In a few instances, at least, fundamental differences, instead of being resolved, are covered up by wording that is ambiguous or meaningless. Thus a recognition of the desirability of promoting industries for the processing of domestic raw materials, that was sought by certain countries, appears illogically in a paragraph that says, in effect, that nations, during the limited life of a commodity agreement, should adopt measures designed to make its extension unnecessary (57*b*). In the same way, a proposal that the ITO be empowered to raise the prices of raw materials and reduce the prices of manufactured goods appears as a provision permitting it to make studies and recommendations (72*d*). And the contention that the ITO should be required to give preferred treatment to undeveloped nations is reduced to the statement that it "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" (72–2). Such provisions can do no damage in themselves, but they serve to illustrate the fact that underlying attitudes remain unchanged.

Since this is true, there is a risk that members of the Organization will attempt to exploit to the limit the exceptions permitted by the *Charter,* while giving lip service to its general rules. And if this should happen, there is danger that an accumulation of decisions granting such exceptions would come to be regarded as a codification of accepted practice, endorsed by world opinion and given status in international law. In these circumstances, restrictionism and discrimination might be preserved and sanctified and the basic principles of the *Charter* lost from sight.

Such a development is possible; but it is by no means inevitable. Unreasonable exemptions will be sought; they will also be opposed. The interests of nations, in general, will not be served by restrictive and discriminatory practices. The ITO will bring these practices

into the full light of publicity. It will serve as a continuous forum in which they can be challenged and condemned. The outcome of these deliberations cannot be predicted with any certainty. It will depend upon the attitudes with which the members of the ITO approach its work. The countries that join the Organization will make or break it. If they seek to realize the general principles contained in the *Charter,* they will make it. If they place too much emphasis on the possible exceptions to these general principles, they will break it.

PLANNING FOR INTERNATIONAL DEFICITS?

The most far-reaching exception in the *Charter* is the one that permits a country with a serious deficit in its balance of payments, impairing or threatening the adequacy of its monetary reserves, to impose quotas on its imports. This is a necessary exception, but it is also a dangerous one. Under the abnormal conditions created by the war, a deficit in a country's balance of payments may be a consequence, predominantly, of factors that are beyond its control. But even under such conditions this is not entirely true. And in normal circumstances it would be even less so. A government may decide to spend so heavily on industrialization or reconstruction, armament, housing, or social services that its demand for imports is substantially increased. It may encourage inflation by failing to tax, by printing money, by extending credit, or by permitting wages and prices to mount until its exports become so costly that they are substantially curtailed. In either way, or in both, domestic policy may create or maintain a balance-of-payments deficit. Such a deficit, in all likelihood, would be a by-product, rather than an objective, of domestic policy. But it is conceivable that it might be deliberately contrived. And in either case, since the International Monetary Fund and the ITO could not avoid a finding that monetary reserves were, in fact, endangered, the exception permitted by the *Charter* would come into play.

There is only one way in which nations could be deprived of the power to make themselves eligible to use import quotas by incurring external deficits. The ITO could be given authority to intervene in their internal economic policies. But this is what the *Charter* explic-

itly declines to do. According to its provisions, "The Members recognize that, as a result of domestic policies directed toward the fulfillment of a Member's obligations . . . relating to the achievement and maintenance of full and productive employment and large and steadily growing demand, or its obligations 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. . . . Accordingly, no Member shall be required to withdraw or modify restrictions which it is applying . . . on the ground that a change in such policies would render these restrictions unnecessary" (21–4*b*). Interference in the domestic affairs of nations is thus expressly prohibited and freedom to get into balance-of-payments difficulties is retained.

The same issue arose, in connection with currency depreciation and exchange controls, under the *Articles of Agreement* of the International Monetary Fund. And the Fund, as the ITO, was forbidden to require adjustments in "the domestic social or political policies" of its members. Here, as in the case of the ITO, the effect is to weaken the force of the agreement.

It must be recognized, however, that no nation is prepared to surrender sovereignty over internal economic policy. And this is true, in particular, of the United States. Neither the ITO nor the Fund could be given authority to influence domestic policies affecting the international position of other countries without being given similar authority to influence such policies in the United States. And it is certain that any such provision, even if it could have been accepted by other countries, would have been rejected by our own.

There is danger, therefore, that the balance-of-payments exception in the *Charter* will be broader than might otherwise have been the case. But it may be doubted that important trading nations will deliberately direct their policies toward the creation and maintenance of external deficits. Balance, both in domestic budgets and in international accounts, has its advantages. Sound policy in monetary

and fiscal matters, while it cannot be guaranteed, may well prevail. The test of the pudding will be in the eating.

INDUCEMENT TO STATE TRADING?

The most effective way to solve the problems created by state-trading operations abroad would be to adopt state trading at home, forcing the state monopolies in other countries to deal with similar monopolies in our own. To do this, however, would be to require private enterprise to surrender to socialism without a struggle. And no such surrender could be contemplated by the United States. An entirely different approach toward the problems of state trading was suggested in the original American *Proposals,* adopted at London and Geneva, and accepted at the Havana conference. The *Charter* accordingly attempts to fit state trading into the pattern of multilateralism and non-discrimination, subjecting it to the same principles that apply to the public regulation of private trade. State-trading countries must enter into negotiations directed toward the expansion of exports and imports; they must be guided by commercial considerations in selling and buying; they may not employ discrimination to serve political ends. They may not resort to restrictive business practices to prevent the expansion of trade. These are the most effective provisions that it was possible for anyone, in business or in government, to devise. They are sound in principle. But it cannot be contended that they will be easy to enforce.

It is a simple matter, in the case of a country whose trade is in private hands, to determine whether the government is permitting the demand of consumers for foreign goods to be more nearly satisfied. One has only to observe whether tariffs have been reduced, import quotas abandoned or enlarged, and exchange controls abolished or relaxed. But in the case of a state-trading country, no such determination can readily be made. A state monopoly will buy as much, or as little, as the government chooses. And no one can say with certainty how much more would have been imported if consumers had been free to make the choice. The *Charter* requires that domestic demand be fully satisfied at the established price. But it will be difficult for outsiders to estimate the extent of that demand.

A similar difficulty arises in connection with the rule of non-dis-

crimination. When a private-enterprise country discriminates, that fact is clearly revealed by the existence of preferential rates in its tariff, by the structure of its quota system, or by the administration of its exchange controls. But when a state-trading enterprise discriminates, the fact can be demonstrated only by a cost-accounting study of its books. And the results of such a study might well be open to dispute. It is too much to expect that state-trading operations will never be employed as instruments of national policy. Discrimination may often be motivated by political rather than economic purposes. But this fact is scarcely to be established without resort to the practice of psychiatry.

The state-trading provisions of the *Charter,* admittedly, are weak. And since control over other methods of regimenting trade is likely to be more effective, there is some risk that this inequality might serve as an inducement to the further monopolization of trade by governments. But this risk would appear to be more theoretical than real. Pressure for the restriction of imports, in any country, comes from private interests who seek relief from the necessity of facing foreign competition. These interests would not be served by a program of nationalization. They are unlikely to burn down the house to roast the pig. Socialism involves much more than freedom to interfere with foreign trade. In its acceptance or rejection, this factor will scarcely be determining.

The *Charter* marks the first attempt to subject the practices of state trading enterprises to international control. The ITO will serve as a medium through which these practices can be criticized, defended, and modified. It may well operate to moderate the violence that they would otherwise do to the principles of multilateral trade. And if it works, it may protect countries preferring private enterprise from being forced into nationalization in their own defense.

RECOVERY A FAILURE?

The chances for successful operation of the ITO are bound up with the success or failure of the European recovery program. And that program has been recognized to involve a calculated risk. It may prove to be a political impossibility for the nations of Europe to make the internal adjustments that would be required to balance

their budgets, check inflation, and stabilize their currencies. It may prove to be an economic impossibility for them to carry production to levels that will balance their accounts or to reduce costs and prices to a point that will enable them to compete on equal terms in the markets of the world. The year 1952 may find them still facing substantial international deficits and requiring external aid. Indeed, it has been suggested that pronounced imbalance in the world's trade may turn out to be chronic, enduring for a generation or more.

If this were to happen, and if the United States were not indefinitely to continue to finance Europe's deficits, the hopes for the restoration of a freer trading system would certainly be lost. The ITO would doubtless be destroyed as the United States turned to restrictionism and discrimination in an effort to cope with similar practices abroad. If it survived at all, it would concern itself, not with observance of the *Charter's* general rules, but with the elaboration of escapes.

The United States faced the risk of failure when it embarked upon the program of aid to Europe. We did not allow that risk to deter us from action; we should not allow it to influence our decision on the ITO. If the effort to reconstruct the world's economy should end in failure, the fate of the ITO would be but an incident. The whole structure of international cooperation might well be destroyed.

IS IT TOO LATE?

The risk of failure comes also from another source. The economic and political structure of many countries has undergone a fundamental change. Competition has given way to monopoly, private enterprise to socialism, and economic freedom to public control. Security of employment and income has come to be valued above efficiency and progress. Monetary and fiscal policies are dominated by national objectives. Domestic wages and prices are insulated against the movement of world markets. Adjustment to changing demands is everywhere resisted. The allocation of resources is frozen into a predetermined mold. Politics robs economic life of flexibility. Adaptation to the requirements of a world economy is not permitted to occur.

It is sometimes argued, by those who view these changes, that

liberal trading principles, being the product of eighteenth century minds and nineteenth century practice, are hopelessly outmoded; that a freer trading system can never be restored; that the tide is running so strongly toward collectivism, regimentation, and restrictionism that it is futile to attempt to turn it back. It follows, presumably, that we, too, should collectivize, regiment, and restrict, so that, in our trade with other nations, we may fight quotas with quotas, match discrimination with discrimination, and confront public trading monopolies abroad with a public trading monopoly in the United States.

Surely this is a counsel of despair. It asks us to accept the certainty of disaster today because there is a chance that we may come to disaster in the end. It is possible, of course, that the American *Proposals* came twenty-five years too late. But it is possible, too, that a new economy of freedom can be built. For this country to surrender its principles without a struggle, simply because the going may be rough, would be neither necessary nor wise.

"THE CHARTER IS NOT PERFECT"

One phrase ran through the final statements made by country after country, at London, Geneva, and Havana, as a continuous refrain: "Of course, the *Charter* is not perfect." And this opinion will be shared in the United States. But perfection, in international agreements, is neither to be expected nor attained. Invariably, nations have to settle on something that falls short of Utopia.

The *Charter* may be appraised, in the United States, from either of two points of view. It may be compared with an ideal American blueprint for international trade. Or it may be compared with the conditions that will inevitably exist in the world if it is not adopted. In the first comparison, the *Charter* will be found to be disappointing. In the second, it will be found to afford a means of averting chaos and restoring order in the world's economy.

The *Charter* is an affirmation that fair dealing in economic relationships is a matter of joint responsibility. It will substitute the method of consultation for that of conflict. It will subject restrictionism and discrimination to international supervision. Case by case, it will build up a body of accepted principles. Increasingly, as

its influence is established, it will bring the national policies that govern trade into conformity with the general rules of international law.

AND WHAT OF AMERICA?

If there are risks, in the *Charter,* for the United States, there are also risks for every other country that will join the ITO. Attention abroad is centered less on the issues that were discussed above than on the prospects for stability in the American economy and for continuity in American foreign policy. There is danger that we shall experience another great depression. There is danger that our foreign economic policy will some day be reversed. In the face of these dangers, other countries, as well as the United States, will have to weigh the relative risks of accepting or rejecting the *Charter* and decide, on balance, which chances are the wiser ones to take.

CHAPTER 20

WHAT WE HAVE AT STAKE

THE restoration of a freer trading system has repeatedly been promised to the people of the United States and the other peoples of the world: in the *Atlantic Charter,* in the lend-lease agreements, at Bretton Woods, in connection with postwar lending, and in the inauguration of the European recovery program. If the *Havana Charter* is ratified, this promise will be kept; if the *Charter* should be rejected, it would be violated. For the United States, ratification will carry certain risks, as we have seen. But rejection, too, would have its risks. And these risks are too serious to be ignored.

Our government has been engaged continuously, during and since the war, in promoting the conclusion of agreements, the adoption of programs, and the establishment of institutions for the reconstruction of the world economy. This undertaking was conceived and developed as a unit. Each of its parts fits into a common pattern; if any one of them were lacking, the pattern would be incomplete. Each part depends upon the others; the failure of one would spell the failure of the whole.

We have already invested several billions of dollars in this enterprise. We have committed ourselves to invest some billions more. We have contributed heavily to the International Bank and the International Monetary Fund, set up to "facilitate the expansion and balanced growth of international trade." We have made extensive loans to other countries on the condition, among others, that they join us in reducing barriers to trade. We have asked the nations participating in the European recovery program to cooperate in re-

ducing barriers and exchanging goods among themselves and with the other nations of the world. If we were now to turn away from this objective, our investments would be imperiled and one of the purposes for which we made them would be lost.

THE FUND AND THE BANK

It is the purpose of the International Monetary Fund, by contributing to the stabilization of currencies, to bring about the eventual elimination of exchange controls. But there would be little point in abolishing national regulation of the use of monies if freedom to license imports were retained. For any restriction that a nation was forbidden to accomplish by regulating its exchanges, it could effect with equal certainty by imposing a quota system on its trade. Unless quantitative restrictions, as well as exchange controls, are brought under international supervision, the purpose of the Fund can be circumvented with the greatest of ease. Unless the Fund is supported by the ITO, its possible contribution to the restoration of a freer trading system will be insignificant.

A nation that is short of foreign monies with which to pay for imports may be able to obtain them, for a time, by selling its own money to the Fund. It is the purpose of such a loan to tide the nation over until it can balance its accounts by selling more abroad. But exports cannot be increased unless markets are opened, and markets will not be opened unless nations reduce their barriers to trade. If imports are increasingly to be restricted, the Fund can not go on lending very long. If trade is not accorded greater freedom, the effort to stabilize currencies will eventually break down. The future of the Fund is thus dependent upon the establishment and operation of the ITO.

The International Bank is designed to make and to guarantee long-term loans for reconstruction and development. It was not set up to give money away. Borrowers are expected to pay interest and to retire their debts. But they will not meet these payments unless they can acquire exchange by making sales abroad. And their ability to do so will depend upon the character of the regulations that govern international trade. If trade is tightly to be restricted, the funds provided through the Bank will turn out to be not loans, but

gifts. The future of the Bank, as that of the Fund, is bound up with the prospects of the ITO.

THE EUROPEAN RECOVERY PROGRAM

The reduction of barriers to trade was pledged by the sixteen nations belonging to the Committee of European Economic Cooperation whose report, in response to the proposal made by Secretary Marshall at Harvard University, was published in September 1947. "To achieve the freer movement of goods, the participating countries are resolved," in the words of their report, "to abolish as soon as possible the abnormal restrictions which at present hamper their mutual trade" and "to aim, as between themselves and the rest of the world, at a sound and balanced multilateral trading system based on the principles which have guided the framers of the Draft *Charter* for an International Trade Organization." This objective was recognized as one of the major purposes of American assistance to Europe in the reports made by the President's Committee on Foreign Aid, the Council of Economic Advisers, and the Select Committee on Foreign Aid of the House of Representatives in November 1947. Cooperation in facilitating and stimulating the interchange of goods and reducing barriers to trade was established by Congress as prerequisite to American assistance under the terms of the Economic Cooperation Act of 1948 and was required by the agreements concluded with each of the participating countries in June of that year.

The nations of Europe would have been willing to accept our assistance if no such condition had been attached. Its inclusion in the agreements arises from our concern that the world move away from restrictionism toward freer trade. It is obvious that this transition cannot be effected overnight. The objective of multilateralism is one that cannot finally be reached until the work of reconstruction has been completed, trade brought back into balance, and the recovery program brought to an end. But, in the meantime, it can give direction to national policy.

The pledge in the aid agreements, however, is a general one. It can come to have meaning only as it is spelled out explicitly in commitments that will have binding force. This is what is done, in part, for some of the participating countries, in the *General Agree-*

ment on Tariffs and Trade. It is what is done, over a wider area, for all of them, in the *Charter.*

The aid agreements will have expired by the time that completion of the recovery program makes it possible to bring these commitments fully into force. Reliance for the subsequent fulfillment of their promise must be placed on the continuing obligations contained in the other instruments. Without the *Charter* and the ITO, there would be nothing to take over where the recovery program leaves off. Without them, that program might well become a mere handout and the Economic Cooperation Administration another agency for the distribution of relief.

WORLD LEADERSHIP

In considering our position on the *Charter,* we might ignore the promises and the investments of the past and look only toward the future. But even so, we should find that serious risks would be incurred if we were to refuse to ratify. Of these, the first would be the loss of our position of leadership in international economic policy.

In its origin, the program of economic reconstruction has been predominantly an American program. And this is true, in particular, of the part of that program that has to do with international trade. The United States prepared and published the original *Proposals for the Expansion of World Trade and Employment.* It obtained the agreement of the British, French, and other governments to the important points in these proposals. It issued the original invitations to negotiate for the reduction of tariffs and other barriers to trade. It introduced the resolution that was adopted at the first session of the Economic and Social Council providing for the United Nations Conference on Trade and Employment and setting up the Preparatory Committee. It wrote the *Suggested Charter for an International Trade Organization,* circulated it among the members of the Preparatory Committee, and discussed it with them during the summer of 1946. It was this American document that the Committee adopted as the basis for its deliberations in London in the fall of that year. It was this document that set the pattern for the *Charter* that was finally completed in Havana in the spring of 1948.

The ITO is recognized everywhere as an American project. Our country brought the rest of the world along on it, step by step, over a period of five years. If we were now to abandon it, as we abandoned the League of Nations a generation ago, there is small chance that the world would seriously consider another such program proposed by the United States for years to come.

Leadership in international affairs is not lightly to be tossed away. But there are those who look upon a concern for our international position as mere sentimentality and insist that every proposal be appraised from the standpoint of domestic interests alone. So it would be well to examine the *Charter* in cold blood and ask what risks would be involved in its rejection from the purely selfish point of view of the United States.

OUR FOREIGN TRADE

The most obvious of these risks is that we should ultimately suffer a sharp decline in the volume of our foreign trade. And this could turn the ink in our accounts from black to red. We cannot afford to let our exports drop back from the present level of $15 billions to the prewar level of $2 or $3 billions. We cannot afford to let our imports drop from $6 billions to $1 or $2 billions.

We need large exports. During the years of the recovery program, our export position will be a source of economic and political strength. But when that program has ended, it may well be a source of weakness. Before the war, we sent 2 per cent of our farm output abroad; during the war we greatly increased this output; now we send a tenth of it abroad. Our producers of cotton and tobacco, wheat and flour, oats and rye and barley, corn and hogs, canned and dried fruits and milk, salmon and sardines, among others, depend heavily on foreign markets. If they are not to be forced seriously to contract their operations, these markets must be preserved. Under the stimulus of war, we also expanded our industrial plant; and now that plant is geared, in many lines, to a level of output which greatly exceeds our normal demands. The producers of iron and steel products, trucks and passenger cars, sewing machines, refrigerators, radios, electrical equipment, office appliances, farm machinery, factory machinery, diesel engines, power

cranes and shovels, and many other goods, now sell extensively abroad. Foreign markets normally take less than a tenth of our total output, but in certain areas and for certain industries the fraction is much higher, and even a tenth may spell the difference between a profit and a loss. Millions of Americans—on farms, in factories, on the railroads, in export and import businesses, in shipping, aviation, banking, and insurance, in wholesale and retail establishments —depend on foreign trade for some portion of their livelihood. If millions of dollars invested in these industries are not to be lost, if thousands of laborers employed in these industries are not to be thrown out of work, the markets for their products must be maintained.

We need large imports. As our own resources are depleted, we shall require increasing quantities of raw materials from abroad. As our population grows and our standard of living rises, we can absorb increasing quantities of consumers' goods. We have loaned a good many billions of dollars to other countries. If we are going to collect the interest and the principal on these loans, we must permit the borrowers to pay their debts. We want to go on selling goods abroad. If we don't want to give these goods away or finance them by constantly increasing loans, we must allow their buyers to pay for them. And we must accept these payments in the only ways in which they can be made: by using foreign services and importing foreign goods.

We need our foreign trade. But if the program embodied in the *Charter* were to be rejected, the volume of that trade would almost certainly decline. Tariffs, instead of coming down, would go up. Preferences, rather than being narrowed, would be widened. Far more serious than this, however, is the fact that most other nations would impose quotas on imports and that many nations would so administer these quotas as to discriminate against goods coming from the United States.

Quotas are much more effective than tariffs as a barrier to trade, and discriminatory quotas are much more effective than preferences as a method of excluding particular goods. Under tariffs, the volume of trade is still determined by private buyers and private sellers. Goods can come in over a tariff wall if the duty is paid. But under

a quota system, the volume of trade is rigidly fixed. A country may say, for instance: "During the month of March, we will take 57 automobiles: 11 from France, 17 from England, and 29 from the United States." And that is all that comes in; not a single one above these numbers is admitted.

Adherence to such a system, on a permanent basis, by other nations, is the worst thing that could possibly happen to the trade of the United States. It would necessitate an extremely painful readjustment in our economy. Farmers would have to contract the acreage devoted to export crops. Manufacturers producing for export would have to close their plants and take their losses. Workers, thus displaced, would have to live on insurance benefits while they looked for other jobs. Foreign traders, bankers, and insurance companies would have to get along on less business. Our merchant marine, with smaller cargoes, would have to lay up many of its ships.

This is the disaster that the United States has been seeking to prevent. For, in the absence of the American trade program, the world would be headed straight toward the strangulation of its commerce through the imposition of detailed administrative controls. The resulting pattern would make the restrictionism of the thirties look like absolute free trade. Our country has been standing like the boy who thrust his thumb into the crack in the dike. If the flood should break through, we should probably survive it, but we should certainly suffer a serious loss. This is not a matter of sentiment; it is a matter of dollars and cents.

PRIVATE ENTERPRISE

The United States unquestionably prefers to adhere to its traditional system of employing tariffs as the means of controlling imports. This system is consistent with the preservation of private enterprise; the quota system is not. Quotas are fixed, not by private traders, but by public officials. And the movement of goods between any two countries, under a quota system, is determined by the figures on which their officials have agreed. If we, in the United States, are to be faced by quotas all around the world, we shall have to bargain our way into foreign markets, country by country, product by product, and month by month. And we shall certainly have to

set up a sizeable bureaucracy to carry on the continuous negotiations that would be involved. It is not unlikely that our officials, backed by the wealth and power of the United States, would be able, in many cases, to drive shrewd bargains and make advantageous deals. But, sooner or later, our government would find itself under pressure to increase its bargaining power by establishing an import quota system of its own. And if it were to yield to this pressure, it would shortly be in the business of allocating foreign goods among importers and foreign markets among exporters and telling every trader what he could buy or sell, and how much, and when, and where.

Since the end of the war, the United States has pursued the policy of removing controls and restoring freedom to private enterprise. But if we were forced to regiment our foreign commerce, this policy would have to be reversed. Export and import programs would have to be made out and approved in advance. Export and import allocations would have to be assigned to individual traders. Licenses would have to be obtained for individual transactions. The businessman, instead of buying and selling whatever he chose, at the time and the place and the price that he chose, would have to fight his way through a maze of controls. Private trade would be tied up tighter than it ever has been in time of peace. And if our foreign commerce were to be regimented so completely, one may well question how much real freedom of enterprise we could preserve at home.

Nor is the fate of private enterprise at stake in the United States alone. If the plans for the liberalization of world trade were to fail, their failure would hasten the spread of nationalization among the other countries of the world. If private enterprise is to survive abroad, it must be afforded an opportunity to live and grow. If that opportunity is denied, it will almost certainly be doomed. There may be those who would say that we should let the rest of the world stew in its own juice. But that is one thing we cannot afford to do. We cannot insulate ourselves against the movements that sweep around the globe. If every other major nation on earth were to go socialist, it would be difficult, if not impossible, to preserve real private enterprise in the United States.

OUR NATIONAL SECURITY

Our national security rests in part upon our military strength. It rests in part upon the structure of international cooperation that has been built up since the war. Our military strength requires ready access to scarce supplies of strategic materials. It requires access to markets wide enough to keep our heavy, mass-production industries in vigorous operation, their technology advancing, their labor skilled, their managements alert. The rules of the *Charter* would prevent the imposition of export quotas on strategic materials and the administration of export license systems in ways that might deliberately divert supplies from the United States to other powers. They would open up the markets that we require if we are fully to operate our strategic industries. American sponsorship of these rules was based upon the belief that we shall be weaker if we attempt to isolate ourselves from the other nations of the world and stronger if we bind their economies to ours with ties of trade.

So, too, with the agencies of international cooperation. If we, with others, will agree to bring our differences on economic matters to the council table, we may achieve a peaceful settlement. But if each of us insists on retaining freedom to take action without first considering how it would affect our neighbors, we shall provoke bad feeling, retaliation, and economic war. Nations cannot expect to achieve an enduring peace through agencies of political cooperation if anarchy is the rule in economic affairs. The world tried that once and it didn't work. The International Trade Organization is an indispensable part of the United Nations. To reject it would be to jeopardize every effort we have made to organize the world for peace.

ON BALANCE

In this matter of international trade policy there are now two alternatives—and only two—before the world. The one is a situation in which every country, acting in its own interest and without regard for the interests of others, will maintain and increasingly impose detailed administrative regulations on its foreign trade. The other is a situation in which all countries, acting in their common

interest, under the terms of the *Charter* and the *General Agreement on Tariffs and Trade,* will voluntarily agree to keep such detailed regulations within narrow bounds.

If the *Charter* and the *General Agreement* were to be rejected, it is certain that the world would be headed back toward the jungle of isolationism, economic warfare, and anarchy in trade relationships. If they are accepted, we shall be given an opportunity, through continuing cooperation, to bring order out of chaos, to achieve a measure of stability, and to maintain economic peace. In rejection, there is the certainty of disaster; in acceptance, the possibility of deliverance.

Nothing in this world is guaranteed. In any course of action, we must weigh the risks, strike a balance, and take a chance. In the case of the *Havana Charter,* the balance should be clear. On the one side, we have the risk that some of the exceptions in the *Charter* will be abused, the danger that some of its provisions cannot be enforced, the possibility that the recovery program will fail to restore balance in the world's trade, and the fear that the trend toward collectivism is so strong that it cannot be reversed. On the other side, we have at stake our investments in reconstruction, our leadership in international economic policy, our foreign trade, our system of private enterprise, our national security, and our hopes for world peace. It should not be difficult for us to determine where the balance of our interest lies.

In *An Address to the People of the State of New York,* John Jay had this to say concerning the pending ratification of the Constitution of the United States:

> "The men who formed this plan are Americans, who had long deserved and enjoyed our confidence, and who are as much interested in having good government as any of us are or can be. . . .
>
> "They tell us, very honestly, that this plan is the result of accommodation. They do not hold it up as the best of all possible ones, but only as the best which they could unite in and agree to.
>
> "Suppose this plan to be rejected; what measures would you propose for obtaining a better? Some will answer, 'Let us appoint another convention . . . they will be better informed than the

former one was, and consequently be better able to make and agree upon a more eligible one.'

"This reasoning . . . takes one thing for granted which appears very doubtful; for although the new convention might have more information . . . yet it does not from thence follow that they would be equally disposed to agree. The contrary of this position is most probable. . . .

"Let those who are sanguine in their expectations of a better plan from a new convention, also reflect on the delays and risks to which it would expose us. Let them consider whether we ought . . . to give other nations further time to perfect their restrictive systems of commerce, reconcile their own people to them, and to fence, and guard, and strengthen them by all those regulations and contrivances in which a jealous policy is ever fruitful.

"But if . . . the new convention, instead of producing a better plan, should give us only a history of their disputes, or should offer us one still less pleasing than the present, where would we be then?

"Consider, then, how weighty and how many considerations advise and persuade the people of America . . . to have confidence in themselves and in one another; and, since all cannot see with the same eyes, at least to give the proposed Constitution a fair trial, and to mend it as time, occasion, and experience may dictate." *

* Elliot, Jonathan, *Debates in the Several State Conventions on The Adoption of the Federal Constitution* (Philadelphia, 1891), v. 1, pp. 496–502.

APPENDIX

A READER'S GUIDE TO THE HAVANA CHARTER

	Articles and Paragraphs
I. RECOGNITIONS OF PRINCIPLES, EXPLICIT AND IMPLICIT	
1. Purpose and objectives	1
2. Barriers to trade, other than tariffs, should be eliminated or minimized	18(1), 20(1), 33–39
3. Tariffs should be reduced and preferences eliminated	17(1)
4. Trading areas should be widened by forming customs unions and free trade areas	44(1)
5. In general, member states should not discriminate among other member states	16(1), 22(1)
6. Members should not be required to extend equal treatment to non-members or to members who do not agree to reduce tariffs	98, 17(4)
7. State trading operations should be governed by the principles that apply to private trade	29(1), 31(1)
8. Subsidies should not be used to obtain more than a fair share of the world market	28(1)
9. International trade should not be restrained by public or private monopolies or cartels	46
10. Intergovernmental agreements with respect to trade in primary commodities should conform to established principles	55, 60, 63
11. The maintenance of industrial stability and fair labor standards are essential to the expansion of world trade	2, 7(1)
12. Economic development and reconstruction will expand world trade and increase real income	8(1)
13. International private investment, if afforded security, will promote economic development	12(1)
14. The use of protective measures to promote economic development may be justified	13(1)

		Articles and Paragraphs
	15. Members should consider the effect of their trade policies on others and consult with them upon request	41, 93(1)
II.	CENTRAL PROVISIONS: OBLIGATIONS RELATING TO GOVERNMENTAL BARRIERS TO TRADE	
	1. The rule of non-discrimination	16
	2. Rules governing negotiations for the reduction of tariffs and the elimination of preferences	17
	3. Rules governing internal taxation and regulation	18, 19
	4. Rules governing invisible barriers to trade	33–39
	5. Rules governing quantitative restrictions	20, 22, 24
	6. Rules governing state trading	29, 31
	7. Rules governing subsidies	25, 26, 28
	8. Rules governing relations with non-members	98
III.	COLLATERAL PROVISIONS: OBLIGATIONS WITH RESPECT TO RELATED MATTERS	
	1. Rules relating to restrictive business practices	46, 50
	2. Rules controlling intergovernmental commodity agreements	56–63
	3. Rules relating to industrial stabilization	3–7
	4. Rules relating to economic development and reconstruction.	9–11
	5. Rules relating to international private investment	11, 12
IV.	QUALIFYING PROVISIONS: RELEASE FROM OBLIGATIONS; EXCEPTIONS	
	1. Release for economic development	13–15
	2. Release to meet balance-of-payments difficulties	21, 23
	3. Release to subsidize primary commodities	27
	4. Release to prevent injury to domestic producers	40
	5. Release to form customs unions and free trade areas	44
	6. General exceptions	45, 70, 99
V.	ADMINISTRATIVE PROVISIONS: THE INTERNATIONAL TRADE ORGANIZATION	
	1. Structure and functions	71–86
	2. Investigation of restrictive business practices	47–49

	Articles and Paragraphs
3. Administration of commodity agreements	64–69
4. Consultation with respect to barriers to trade	41
5. Settlement of differences	92–97
6. Amendment, review, withdrawal, and termination.	100–102
VI. MINOR PROVISIONS: MISCELLANEOUS	
1. Marketing organizations; liquidation of stocks	30, 32
2. Territorial application; frontier traffic	42, 43
3. Restrictive business practices	51–54
4. Organizational provisions	87–91
5. Miscellaneous provisions	103–106

HAVANA CHARTER

FOR THE INTERNATIONAL TRADE ORGANIZATION

TABLE OF CONTENTS

		Page
CHAPTER 1—PURPOSE AND OBJECTIVES		
Article 1.		231
CHAPTER II—EMPLOYMENT AND ECONOMIC ACTIVITY		
Article 2.	Importance of Employment, Production and Demand in Relation to the Purpose of this Charter	232
Article 3.	Maintenance of Domestic Employment	232
Article 4.	Removal of Maladjustments within the Balance of Payments	232
Article 5.	Exchange of Information and Consultation	233
Article 6.	Safeguards for Members Subject to External Inflationary or Deflationary Pressure	233
Article 7.	Fair Labour Standards	233
CHAPTER III—ECONOMIC DEVELOPMENT AND RECONSTRUCTION		
Article 8.	Importance of Economic Development and Reconstruction in Relation to the Purpose of this Charter	234
Article 9.	Development of Domestic Resources and Productivity	234
Article 10.	Co-operation for Economic Development and Reconstruction	234
Article 11.	Means of Promoting Economic Development and Reconstruction	235
Article 12.	International Investment for Economic Development and Reconstruction	236
Article 13.	Governmental Assistance to Economic Development and Reconstruction	237
Article 14.	Transitional Measures	242
Article 15.	Preferential Agreements for Economic Development and Reconstruction	243
CHAPTER IV—COMMERCIAL POLICY		
Section A.	*Tariffs, Preferences, and Internal Taxation and Regulation*	
Article 16.	General Most-favoured-nation Treatment	245
Article 17.	Reduction of Tariffs and Elimination of Preferences	248
Article 18.	National Treatment on Internal Taxation and Regulation	248

		Page
Article 19.	Special Provisions Relating to Cinematograph Films	250
Section B.	*Quantitative Restrictions and Related Exchange Matters*	
Article 20.	General Elimination of Quantitative Restrictions	251
Article 21.	Restrictions to Safeguard the Balance of Payments...	252
Article 22.	Non-discriminatory Administration of Quantitative Restrictions	256
Article 23.	Exceptions to the Rule of Non-discrimination	258
Article 24.	Relationship with the International Monetary Fund and Exchange Arrangements	260
Section C.	*Subsidies*	
Article 25.	Subsidies in General	262
Article 26.	Additional Provisions on Export Subsidies	262
Article 27.	Special Treatment of Primary Commodities	263
Article 28.	Undertaking Regarding Stimulation of Exports of Primary Commodities	264
Section D.	*State Trading and Related Matters*	
Article 29.	Non-discriminatory Treatment	265
Article 30.	Marketing Organizations	265
Article 31.	Expansion of Trade	265
Article 32.	Liquidation of Non-commercial Stocks	267
Section E.	*General Commercial Provisions*	
Article 33.	Freedom of Transit	267
Article 34.	Anti-dumping and Countervailing Duties	268
Article 35.	Valuation for Customs Purposes	270
Article 36.	Formalities Connected with Importation and Exportation	271
Article 37.	Marks of Origin	273
Article 38.	Publication and Administration of Trade Regulations	273
Article 39.	Information, Statistics and Trade Terminology	275
Section F.	*Special Provisions*	
Article 40.	Emergency Action on Imports of Particular Products	276
Article 41.	Consultation	277
Article 42.	Territorial Application of Chapter IV	277
Article 43.	Frontier Traffic	278
Article 44.	Customs Unions and Free-Trade Areas	278
Article 45.	General Exceptions to Chapter IV.....	280
CHAPTER V—RESTRICTIVE BUSINESS PRACTICES		
Article 46.	General Policy Towards Restrictive Business Practices	281
Article 47.	Consultation Procedure	282
Article 48.	Investigation Procedure	282
Article 49.	Studies Relating to Restrictive Business Practices	284
Article 50.	Obligations of Members	284
Article 51.	Co-operative Remedial Arrangements	285

Page

Article 52. Domestic Measures Against Restrictive Business Practices 285
Article 53. Special Procedures with Respect to Services 285
Article 54. Interpretation and Definition 286

CHAPTER VI—INTER-GOVERNMENTAL COMMODITY AGREEMENTS

Section A. Introductory Considerations

Article 55. Difficulties Relating to Primary Commodities 287
Article 56. Primary and Related Commodities 287
Article 57. Objectives of Inter-governmental Commodity Agreements 288

Section B. Inter-governmental Commodity Agreements in General

Article 58. Commodity Studies 288
Article 59. Commodity Conferences 289
Article 60. General Principles Governing Commodity Agreements 289
Article 61. Types of Agreements 290

Section C. Inter-governmental Commodity Control Agreements

Article 62. Circumstances Governing the Use of Commodity Control Agreements 291
Article 63. Additional Principles governing Commodity Control Agreements 292
Article 64. Administration of Commodity Control Agreements.. 293
Article 65. Initial Term, Renewal and Review of Commodity Control Agreements 293
Article 66. Settlement of Disputes 294

Section D. Miscellaneous Provisions

Article 67. Relations with Inter-governmental Organizations.... 294
Article 68. Obligations of Members Regarding Existing and Proposed Commodity Agreements 294
Article 69. Territorial Application 295
Article 70. Exceptions to Chapter VI 295

CHAPTER VII—THE INTERNATIONAL TRADE ORGANIZATION

Section A. Structure and Functions

Article 71. Membership 296
Article 72. Functions 297
Article 73. Structure 298

Section B. The Conference

Article 74. Composition 298
Article 75. Voting 298
Article 76. Sessions, Rules of Procedure and Officers 299
Article 77. Powers and Duties 299

Section C. The Executive Board

Article 78. Composition of the Executive Board 300
Article 79. Voting 301

		Page
Article 80.	Sessions, Rules of Procedure and Officers	301
Article 81.	Powers and Duties	301
Section D.	*The Commissions*	
Article 82.	Establishment and Functions	301
Article 83.	Composition and Rules of Procedure	302
Section E.	*The Director-General and Staff*	
Article 84.	The Director-General	302
Article 85.	The Staff	302
Section F.	*Other Organizational Provisions*	
Article 86.	Relations with the United Nations	303
Article 87.	Relations with Other Organizations	303
Article 88.	International Character of the Responsibilities of the Director-General, Staff and Members of Commissions	304
Article 89.	International Legal Status of the Organization	304
Article 90.	Status of the Organization in the Territory of Members	304
Article 91.	Contributions	305
CHAPTER VIII—	SETTLEMENT OF DIFFERENCES	
Article 92.	Reliance on the Procedures of the Charter	305
Article 93.	Consultation and Arbitration	305
Article 94.	Reference to the Executive Board	306
Article 95.	Reference to the Conference	307
Article 96.	Reference to the International Court of Justice	308
Article 97.	Miscellaneous Provisions	308
CHAPTER IX—	GENERAL PROVISIONS	
Article 98.	Relations with Non-Members	308
Article 99.	General Exceptions	309
Article 100.	Amendments	310
Article 101.	Review of the Charter	311
Article 102.	Withdrawal and Termination	311
Article 103.	Entry into Force and Registration	311
Article 104.	Territorial Application	312
Article 105.	Annexes	312
Article 106.	Title and Date of the Charter; Deposit and Authenticity of Texts	313
Annexes A to J	*—Relating to Article* 16	313
Annex K	*—Relating to Article* 23	316
Annex L	*—Relating to Article* 78	317
Annex M	*—Relating to Article* 99	318
Annex N	*—Relating to Article* 100	318
Annex O	*—Relating to Article* 103	318
Annex P	*—Interpretative Notes*	319

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 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 intergovernmental 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 co-ordinated 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 acccept 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-

:edures for consultation under paragraph 2 of this Article. Any such agreenent, other than informal arrangements of a temporary or administrative :haracter, 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 he 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 Agreements 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 that 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 subparagraph.

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.

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.

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 intergovernmental 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 subtantially 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-govermental 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 intergovernmental 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.

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

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-

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, implicity 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.

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 intergovernmental 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

(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 teritory), 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.

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.

INDEX

Acheson, Dean, 38
Agricultural policy, 15, 35–36, 114, 126–127, 130, 214
Agricultural provisions, 42, 56, 85, 128–130, 176, 183, 251–252, 263–264; *see also* Intergovernmental commodity agreements
Amendments, 160, 310
American Federation of Labor, 37
Anti-dumping duties, 21, 55–56, 75, 78–79, 172, 174, 268–270, 324
Anti-trust laws, 112, 175, 285
Arab League, 69, 155
Arbitration, 62, 156, 159, 297, 305–306
Argentina, 108, 163, 315
Atlantic Charter, vii, 37, 210
Australia, 33–34, 40, 41, 42, 79, 127, 136, 313

Balance-of-payments, proposals, 82, 137–138; negotiations, 41, 45, 48; provisions, 56, 85–88, 137–138, 156–157, 183–184, 197, 232–233, 251–256, 322; criticism, 203–205
Banking, *see* Services
Belgium, 26, 39, 40, 42, 107, 154, 314
Bidwell, Percy W., 24*n*
Bilateralism, 12–13, 17–19, 29–30, 34, 133, 165–166
Boycotts, 180, 303, 327
Brazil, 40, 42
British Commonwealth, 8, 46–47, 69, 78, 313–314
Buchanan, Norman S., 24*n*
Buffer stocks, 42, 116–117, 119
Burma, 46, 70
Buy-American Act, 35

Canada, 11, 26, 38, 40, 42, 44, 47, 107, 141, 154, 182, 313
Cartels, 4, 103–106; *see also* Restrictive business practices
Central America, 69, 315
Ceylon, 46
Chicago Tribune, 24*n*
Chile, 40, 42, 72, 315
China, 40, 42, 140, 154
Cinematograph films, *see* Motion pictures
Clayton, W. L., 38
Collectivism, 17, 26, 34, 94, 97, 164, 193–194, 208
Colombia, 143, 315
Commitments, 171–179
Committee on Economic Development, 23
Committee on International Economic Policy, 23
Committee on Postwar Economic Policy (Colmer Committee), 23
Committee on Reciprocity Information, 43, 64
Commodity agreements, *see* Intergovernmental commodity agreements
Communications, *see* Services
Communism, *see* Collectivism, Criticisms
Compromise, 25–35, 188, 201, 219–220
Condliffe, J. B., 24*n*
Conferences, interwar, 5–8, 37, 162, 165, 171
Conservation, 121, 123, 180, 182, 280, 296
Consultation provisions, 156–157, 233, 237, 254–255, 257, 262–264, 276, 277, 282, 297, 305–306, 326
Countervailing duties, *see* Anti-dumping duties
Criticisms, x, 111–113, 124–125, 186–200
Cuba, 11, 40, 69, 246
Customs administration, 21, 47, 74–75, 77–80, 156, 158, 172–173, 245, 271–275, 326

Customs unions, 48, 70–72, 157–158, 184, 278–280, 326
Customs valuation, 74–75, 77–78, 156, 158, 172, 174, 270–271, 325
Czechoslovakia, 39, 40, 77, 163, 182

Daily Worker, 24*n*
Denmark, 26, 155
Department of State, 23, 44
Depression, 7, 26, 32–34, 132, 138
Discrimination, *see* Non-discrimination
Dollar shortage, 11
Dominican Republic, 69
Dumping, *see* Anti-dumping duties

Eastern Europe, 26, 166–167
Economic and Social Council, 40, 136, 139, 141, 144, 145, 187, 213, 232–235, 297
Economic development: pressure for, 26, 30–31, 47, 143; advantages of, 140–141; negotiations, 41–42, 45, 48–49, 141–143; provisions, ix, 59–60, 144–145, 156–157, 178, 184, 190, 195–196, 202, 231, 234–236
Economic Development Committee, 67, 143
Economic liberalism, 4–5, 7, 207–208
Economic planning, 34, 194–195
Employment, 7, 26, 132–133; *see also* Stability, industrial
Enforcement, 62, 87, 147–148, 159–160, 179, 248, 255, 259, 306–307
Entry into force, 160, 311–312
Escape clauses, *see* Exceptions
European Recovery Program, x, 13, 71, 166, 199, 206–207, 210, 212–213
Exceptions, 83–90, 148–152, 157–158, 179–185, 202–203, 237–245, 251–256, 258–260, 280–281, 295–296, 309–310, 316
Exchange controls, 57, 82, 92–93, 173, 182, 211, 261–262, 272, 323
Executive Board, 45, 48, 154, 159, 184, 300–301, 317
Executive Committee on Economic Foreign Policy, 43–44
Export-Import Bank, 35, 141

Feis, Herbert, 24*n*, 188
First World War, 5
Fisheries, 121, 180, 251, 280, 287, 295
Food and Agriculture Organization, 39, 42, 118, 155, 166, 294
France, 26, 39, 40, 41, 90, 91, 103, 154, 213, 314
Free trade areas, *see* Customs unions
Freedom of Transit, 78, 172, 267–268, 324
Frontier traffic, 278

General Agreement on Tariffs and Trade, 46–47, 49, 65, 68, 72–73, 158, 199–200, 219, 242, 246–248, 277
Geneva conference, *see* Preparatory Committee
Germany, 27, 103, 154, 297
Greece, 39

Haiti, 69
Hansen, Alvin H., 24*n*
Havana Charter, purpose, ix, xvii, 53, 231; pattern, 54, 153; principles, 54–55; significance, 49–50; Reader's Guide, 223–225; text, 231–327; *see also* Commitments, Exceptions, Criticisms
Havana conference, vii, 47–49, 82, 85, 90, 128–130, 139, 142, 146, 163, 197, 213
Hawley-Smoot Tariff, 8
Hearst press, 24*n*
Heilperin, Michael A., 24*n*
Hoover, Calvin B., 24*n*
Hull, Cordell, 37

Immigration, 139, 233
Import quotas, *see* Quantitative restrictions
India, 31, 40, 42, 45, 140, 154, 318
Industrialization, *see* Economic development
Insurance, *see* Services
Interdepartmental Committee on Trade Agreements, 43, 64
Intergovernmental commodity agreements, abuses, 4, 115–116; proposals, 22, 117–118; negotiations, 42, 48, 118–120; provisions, ix, 58–59, 120–124, 156–157, 176, 182, 194, 263–264, 287–296; criticisms, 124–125
Internal taxation and regulation, 21, 36, 47, 74–76, 172, 174, 181, 245, 248–250, 320–321

International Bank, viii, 39, 141, 142, 145, 166, 187, 210–212
International Chamber of Commerce, 37, 44
International Court of Justice, 62, 147, 160, 179, 308, 318
International Labor Organization, 39, 139, 166, 234
International Monetary Fund, viii, 39, 45, 48, 56, 57, 82, 83, 86, 87, 91–93, 131, 146, 155, 166, 173, 175, 184, 187, 197, 203–204, 210–212, 258–259, 260–262, 271, 323
International relations, 3–4, 20–21, 208–209, 213–214, 218–219, 231
Investment, ix, 44, 48, 60–61, 145–148, 156, 178–179, 231, 236–237
Invisible tariffs, ix, 48, 55–56, 74–80; *see also* Customs administration
Italy, 103
ITO, origin, 22; purpose, x, 53, 231; structure, 61, 154–155, 296–298, 303; finances, 299–300, 305; functions, 61–62, 153–159, 297–298

Japan, 27, 103, 154, 297

Labor standards, 139, 177, 195, 233–234
Latin America, 26, 31–32, 48, 120, 139, 140, 155
League of Nations, 5–8, 23, 162, 214
Lebanon, 40, 42, 46, 71, 315
Lend-lease agreements, vii, xv, 38, 210
Liberia, 92
Liquidation of stocks, 98, 201, 267
London conference, *see* Preparatory Committee
Lutz, Friedrich A., 24*n*

Mallery, Otto T., 24*n*
Market sharing, 110, 282
Marketing organizations, 265
Marking requirements, 79–80, 172, 273
Mexican escape clause, *see* Tariff provisions
Mexico, 85, 108
Middle East, 26, 69, 155
Millikin, Eugene D., 43, 44
Mining, 114–115, 122–123, 176; *see also* Intergovernmental commodity agreements
Mixing regulations, 36, 55, 60, 74–76, 157, 172, 182, 184, 249
Monopoly, *see* Restrictive business practices
Most-favored-nation treatment, 47, 62, 66–69, 161–162, 164, 172, 174, 245, 248, 309; *see also* Non-discrimination
Motion pictures, 44, 55, 76–77, 172, 175, 182, 250
Multilateralism, 4–5, 17–19, 34

National Association of Manufacturers, 37, 44, 146
National Foreign Trade Council, 23, 44, 146
National Planning Association, 23
National security, 36, 183, 218, 309–310
Nationalism, 26, 30
Nazi trade policy, 9
Near East, 69, 155
Netherlands, 26, 39, 40, 42, 107, 154, 314
New York Sun, 24*n*
New Zealand, 40, 182, 313–314
Non-discrimination, 19, 21–22, 187, 231; in tariffs, ix, 68, 69, 245–246, 248, 274; in internal taxation and regulation, ix, 248–249; in quantitative restrictions, 45, 48, 56, 83, 88–92, 156–158, 173, 181, 256–260, 316–317, 322, 327; in state trading, 57, 99–101, 173, 206, 265; in customs administration, 245, 268, 273; in commodity agreements, 289–290
Non-members, 45, 48, 62, 161–164, 308–309
Norway, 26, 40, 155, 182

Ottoman Empire, 69–70, 246

Pakistan, 46, 318
Patents, 110, 280, 282, 284
Peru, 69, 85
Philippines, 36, 69, 174, 246
Poland, 39
Preferences, proposals, 65–66, 69; negotiations, 46–47, 49, 69–70; provisions, 55, 67, 68, 70, 151–152, 157–158, 171–172, 182, 184, 243–247, 279, 313–315, 319–320

Preparatory Committee, appointment, 40; London meeting, 41–43, 66, 82, 90, 101, 118–119, 137, 139, 142, 162–163, 213; drafting committee, 43; Geneva meeting, 44–46, 66, 82, 90, 101, 119–120, 128, 135, 137, 139, 146, 163
Price control, 76, 181, 202, 250, 281, 298
Price fixing, 110, 122, 282, 290
Primary commodities, 114–116, 287; *see also* Intergovernmental commodity agreements
Private enterprise, 16–17, 164, 193–194, 216–217
Production control, 85, 110, 122, 282, 290
Proposals for Expansion of Trade, vii, 21–23, 38–40, 139, 213
Public opinion, 24, 44
Publicity, 80, 122, 156, 165, 173, 175, 176, 181, 273–275, 283–284, 290, 293

Quantitative restrictions, 36, 47, 81–93, 174, 215–216; proposals, 21, 82; negotiations, 41, 45, 49, 82–84, 90, 141–142; provisions, ix, 56–57, 60, 81, 83–92, 149–152, 156–158, 172–173, 181, 183, 184, 251–260, 272, 321–322, 327

Reciprocal Trade Agreements Act, 9, 63, 65, 69, 174, 193
Reconstruction, *see* Economic development, European Recovery Program
Renegotiation, 198–199
Restrictive business practices, proposals, 22, 106; negotiations, 42, 48, 106–109; provisions, ix, 58, 109–111, 156, 158, 175, 281–287; criticisms, 111–113; *see also* Cartels
Review of *Charter,* 160, 311

Sanitary regulations, 80, 272, 280
Second World War, 10
Senate Finance Committee, 44, 110
Services, 108, 180, 285–286, 326
Settlement of differences, 62, 159–160, 294, 305–308
Shipping, *see* Services
Short supply, products in, 251, 280–281, 288, 296
Socialism, *see* Collectivism
South Africa, 40
South America, 69
Southern Rhodesia, 46
Sovereignty, 25–26, 195–196, 204
Soviet Union, 27, 40, 41, 46, 47, 101–102, 154, 162, 164–167, 186–187
Stability, industrial, 15, 19–20, 32–34, 59, 131–134; proposals, 22; negotiations, 41–42, 48, 134–135; provisions, ix, 59, 135–138, 177, 190, 195, 232–233
State trading, provisions, ix, 47, 57, 97–101, 173, 265–267; proposals, 22, 101; negotiations, 48; criticisms, 102, 165, 205–206
Statistics, *see* Publicity
Stimson, Henry L., xvi–xvii
Stockpiles, *see* Liquidation of stocks
Subsidies, 3, 36, 126; proposals, 22, 128; negotiations, 44–45, 48, 128–129; provisions, 57–58, 127–129, 176, 181–183, 250, 262–265
Suggested Charter, 40–41, 42, 65, 82, 83, 85, 108, 213
Sweden, 26, 155
Syria, 46, 71, 315

Tariff Commission, 64
Tariff Committee, 66, 67
Tariff negotiations, 40, 43, 46, 63–65; *see also General Agreement on Tariffs and Trade*
Tariff provisions, ix, 55, 67–69, 158, 171, 190, 231, 246–248, 326; proposals, 21, 65–66; negotiations, 46–49, 66; escape clause, 68–69, 183, 276–277
Taxation, *see* Internal taxation and regulation
Taylor, Myron C., 38
Technology, exchange of, 144, 235–236; suppression of, 110, 282; training in, 297–298
Trade, barriers to, 3–4, 7–9, 12–13, 20–22; expansion of, 15–16; imbalance of, 10–12, 137–138, 177–178, 193
Trade Agreements Act, *see* Reciprocal Trade Agreements Act
Trade Agreements Committee, *see* Interdepartmental Committee on Trade Agreements

Trade names, 80, 172, 174, 272–273
Trade policy, interwar, 5, 8; Second World War, 9–10; postwar, x, xv–xvi, 14–24, 26, 35–36, 174–175
Trieste, 70, 154, 278, 297
Truman, Harry S., 20–21
Turkey, 39
Twentieth Century Fund, 23, 113, 125

United Kingdom, historic position, 5; postwar position, 26–30, 103; sponsorship of *Charter*, 37–39; in tariff negotiations, 40, 47; in *Charter* negotiations, 41, 42, 90, 107–109, 119, 136, 163
United Nations, 27, 153, 155, 180, 218, 298, 303, 327
United States, economic position, 10–11, 33; export interest, 15, 214–216; import interest, 16, 191–193, 215–216; world leadership, 213–214; *see also* Trade policy
U.S. Associates, *see* International Chamber of Commerce
U.S. Chamber of Commerce, 44

Vandenberg, Arthur H., 43
Villard, Oswald G., 24*n*
Voting provisions, 45, 48, 122, 154, 185, 196–197, 292, 298–299

Wall Street Journal, 24*n*
Webb-Pomerene Act, 111–112
Withdrawal, 160, 311
World Food Board, 42