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REPORT OF THE CANADIAN DELEGATION
TO THE UNITED NATIONS CONFERENCE
ON TRADE AND EMPLOYMENT AT HAVANA

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43-237-377

CANADIAN LEGATION

Berne, July 13, 1948.

No. 165

Sir,

Report of the Canadian Delegation to the United Nations Conference on Trade and Employment at Havana.

PART I.

I have the honour to report, as Chief of the Canadian Delegation to the United Nations Conference on Trade and Employment, that the Conference assembled at Havana, Cuba, on November 21st, 1947, and concluded its work on March 24th, 1948, with the signature of a Final Act by 53 out of the 56 states which participated in the Conference. Argentina, Poland and Turkey were the three countries which did not sign the Final Act. This Final Act authenticated the text of a Charter for an International Trade Organization. This Charter now awaits ratification by the legislatures of the different countries and will come into force sixty days after the twentieth government shall have deposited its instrument of ratification. It is anticipated that this will take place during 1949 and that the International Trade Organization will be set up towards the end of that year.

2. The Havana Conference took as its basic document a draft Charter that had been prepared by a Preparatory Committee of seventeen countries. These seventeen countries were Australia, Belgium-Luxembourg Economic Union, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Netherlands, New Zealand, Norway, Union of South Africa, United Kingdom and United States. This Preparatory Committee met first in London, England, during the months of October and November, 1946. On that occasion they drew up the draft of a Charter based upon a draft submitted by the Government of the United States of America, which in its turn had been the outcome of a set of principles agreed upon between the Governments of the United States and the United Kingdom and embodied in the form of "Proposals for Expansion of World Trade and Employment", published by the United States Government in December, 1945.

3. The London draft of the Charter was referred to a Drafting Committee, which met at Lake Success, New York, during the months of January and February, 1947, and produced a reviseddraft of a Charter. This New York draft was used as the basic document for the deliberations of the Second Session of the Preparatory Committee, which met in Geneva during the months of May, June, July and August, 1947. It was the draft of a Charter that emerged as a result of this Second Session of the Preparatory Committee that became the basic document of the Havana Conference.

The Right Honourable
The Secretary of State,
for External Affairs,
O t t a w a.

4. The Canadian Delegation to the United Nations Conference on Trade and Employment at Havana was composed as follows:-

Chief Delegate:- x Mr. L.D. Wilgress, Canadian Minister to Switzerland.

Delegates:- x Mr. F.A. McGregor, Chief Commissioner, Combines Investigation Act, Department of Justice.

Mr. C.P. Hebert, Counsellor Department of External Affairs.

Mr. W.F. Bull, Chief Export Division, Department of Trade and Commerce.

Mr. A. Brown, Assistant Chief Appraiser, Department of National Revenue.

Mr. Neil Perry, Department of Finance.

Advisers:- x Mr. A.E. Richards, Department of Agriculture.

x Mr. L.E. Couillard, Department of Trade and Commerce.

x Mr. S.S. Reisman, Department of Finance.

Secretaries:- Mr. R. Rosenthal, Department of Trade and Commerce.

Mr. Henry, Department of External Affairs.

(x indicates members of the Delegation who participated in the Second Session of the Preparatory Committee at Geneva.)

Mr. John Deutsch of the Department of Finance, who had taken the leading part in the work on the Charter of the Canadian Delegation at Geneva, visited Havana for ten days during the month of January and participated in the discussions on Subsidies as a member of the Canadian Delegation.

5. The members of the Canadian Delegation were assigned to cover the various committees and sub-committees of the Conference. There were six main committees, to each of which was allotted a section of the draft Charter, as follows:-

Committee I - Employment
Committee II- Economic Development
Committee III- Commercial Policy
Committee IV- Restrictive Business Practices
Committee V - Intergovernmental Commodity Agreements
Committee VI- Organization

Each of these committees in turn set up a number of sub-committees composed usually of from fifteen to eighteen countries. The sub-committees in their turn referred particularly knotty problems to working parties, which usually were composed of from five to eight countries. The ground to be covered by each of the six main committees varied greatly. Thus Committee I was able to finish its work in December and Committees IV and V in January while Committees II, III and VI were in session up to the very last days of the Conference.

6. To Mr. Hebert was assigned the chief responsibility for representing Canada on Committee I and to Mr. Reisman was assigned the Canadian representation on Committee II, except for the Article on Investment, which was handled by Mr. Perry. Mr. Reisman, before the Conference was over, became one of the recognised experts on the Charter.

7. Committee III had to deal with such a variety of topics that it was found necessary to allot the representation of Canada to a number of members of the Delegation. Thus Mr. Bull took charge of the Section of the Commercial Policy Chapter which deals with Tariffs, Preferences, and Internal Taxation and Regulations. He represented Canada on the important Sub-Committee dealing with Preferences. Mr. Reisman and Mr. Richards together handled the Section dealing with Quantitative Restrictions, Mr. Richards devoting particular attention to quotas on agricultural products. Mr. Perry was given responsibility for the important Section dealing with Balance of Payments Difficulties. Mr. Reisman took charge of the Section dealing with Subsidies, except during the period when Mr. Deutsch was in Havana. Mr. Richards covered the Section dealing with State Trading. The important technical articles concerned with questions of customs administration were assigned to Mr. Brown as his sole responsibility. He represented Canada on the Sub-Committee set up to consider these articles and his intimate knowledge of these technical problems soon made him a leading member of this Sub-Committee. The last Section of the Commercial Policy Chapter dealing with Special Provisions was handled jointly by Mr. Brown and Mr. Couillard.

8. On Committee IV Mr. McGregor was the Canadian delegate. He had taken an active part in the drafting of the Chapter on Restrictive Business Practices both at London and Geneva. Accordingly, he soon became one of the leading members of Committee IV and had a great deal to do with creating the co-operative spirit and friendly atmosphere that prevailed in that Committee. Canada can be considered as having made a major contribution to the Chapter on Restrictive Business Practices. Mr. Richards represented Canada effectively on Committee V, which dealt with the Chapter on Intergovernmental Commodity Agreements. Finally, Mr. Couillard, with only occasional help from other members of the Delegation, was the Canadian representative on the important Committee VI, which dealt with all questions pertaining to the setting up of the International Trade Organization.

9. Mr. McGregor, having completed his assignment, and Mr. Hebert, being wanted for other duties, were able to leave Havana in January. Mr. Bull, Mr. Brown and Mr. Rosenthal were able to get away in February. Mr. Richards left Havana at the beginning of March. Mr. Perry, Mr. Couillard, Mr. Reisman and Mr. Henry remained with me until the end of the Conference.

10. An excellent team spirit prevailed in the Canadian Delegation. Each member was keen to make the contribution of Canada to the framing of the Charter as effective as possible. The work was extremely arduous. The meetings were held in the Capitolio, the building of the Cuban Congress. The members of the Delegation seldom left the Capitolio until after eight in the evening. After that there were documents to read over after dinner, because seldom was it possible to read over all the documents during the course of the day. Work commenced each day at 9 a.m. with a Delegation meeting, at which were planned the tactics for the day, breaking up in time to be at the first Conference meeting at 10:30 a.m. Given the trying heat and

noise of Havana, it is a testimony of their keen interest that the members of the Canadian Delegation were able to keep up this pace for four months without interruption. No Chairman of a Delegation could have received more loyal support and co-operation from the other members of his team.

11. The Canadian Delegation contributed its fair share to the officers of the Conference. I was elected Chairman of Committee III - the Commercial Policy Committee. Mr. Couillard was elected Chairman of the important Sub-Committee dealing with Chapter VIII of the Charter - Settlement of Differences. This young Canadian, without any legal training, presided over with ability and distinction a Sub-Committee composed mostly of lawyers, including a member of the French Parliament. Finally, Mr. Perry was elected Chairman of the Working Party set up to deal with the intricate questions of exceptions to the rule of non-discrimination in the case of balance of payments difficulties. This became one of the most important subsidiary organs of the Conference. The questions with which they had to deal were so technical that they used an esoteric language unintelligible to the average man or, for that matter, to the majority of delegates attending the Conference. Since the main controversy in the Working Party developed between the United Kingdom and the United States, the position became very delicate for a Canadian Chairman. Mr. Perry acquitted himself with credit and won praise for his handling of the most difficult of all the working parties set up at the Conference.

12. Trouble arose at the very outset of the Conference over the question of the election of a President. Most of the countries who had participated in the work of the Preparatory Committee wished to nominate Mr. Max Suetens, the Chief Delegate of Belgium, who had presided so ably and so tactfully over both the London and Geneva sessions of the Preparatory Committee. This proposal evoked pronounced resistance from the Latin-American delegations, who maintained that according to the custom of inter-American conferences the President should be the Chief Delegate of the host country. The difficulty in this case was that Mr. Sergio Clark, the Chief of the Cuban Delegation, although very popular with all those who had known him at Geneva, had no particular qualifications to serve as President of the Conference. The compromise was reached of electing Mr. Clark as President and Mr. Suetens as First Vice-President with the understanding that the President would preside over the plenary sessions of the Conference and the First Vice-President over the meetings of the General Committee.

13. The General Committee was the steering committee of the Conference. It consisted of eighteen members, viz., the President, the First Vice-President, six other Vice-Presidents, the Chairmen of the six main committees, and four members at large. The last four were filled by representatives of the so-called great powers - China, France, the United Kingdom and the United States. As Chairman of Committee III, I was automatically a member of the General Committee. This Committee performed a useful function in planning the work of the Conference. There was resistance, however, whenever it was suggested that the General Committee should attempt to resolve difficulties of substance confronting the Conference. In such cases resort usually had to be had to a full meeting of Heads of Delegations, an organ of the Conference which had not been envisaged at the outset. The majority of delegations looked upon the General Committee as a packed body with over-representation of the developed countries. That is the reason why at a decisive stage of the Conference it was necessary to set up a Coordination Committee with membership different to that of the General Committee.

14. Throughout the discussions at Havana the Canadian Delegation adhered closely to instructions conforming to the policy formulated by the Government of Canada prior to the deliberations of the Preparatory Committee. This policy has been to support fully the setting up of an International Trade Organization upon the basis of the original United States "Proposals for Expansion of World Trade and Employment". Accordingly the Canadian Delegation consistently opposed efforts to weaken the rules designed to reduce trade barriers and to permit the restoration of international trade upon a multilateral basis as soon as possible. The successive stages in the elaboration of a Charter for the International Trade Organization did bring about a weakening of these rules. This arose through the progressive introduction of exceptional provisions or "escape clauses", necessary in order to secure the adherence to the Charter of as many different countries as possible. The Canadian Delegation, when finding that the inclusion of an exceptional provision was inevitable, directed its efforts to restricting the scope of the provision as much as possible. The result of all this has been that the Charter which finally emerged at Havana represents a bold compromise, flexible enough to take care of varying needs of different economic philosophies and of different stages of economic development, yet sufficiently true to the principles of multilateral trade to give rise to the hope that the Organization, when it is set up, will prove to be one of the most successful and most enduring of all the intergovernmental organizations established during the last few years.

15. At the First Session of the Preparatory Committee in London it became apparent that the chief division of opinion was between the highly industrialized countries and those countries aspiring to rapid industrialization. This latter group became known as "the under-developed countries". They stressed the need for freedom to use any measures that would promote more rapidly their economic development. In particular they wished freedom to use quantitative restrictions to attain this end. Concessions were made to this group at London in that a separate chapter was included in the draft Charter dealing with Economic Development and the Organization was required to authorize the use, for purposes of economic development, of quantitative restrictions, differential internal taxation, mixing regulations and other devices, when these were found likely to be less harmful to international trade than other measures.

16. Another feature of the London Session was the stress laid by Australia and other countries on the need for expansionist policies in regard to employment. This clearly reflected the new economic ideas associated with the name of Lord Keynes. It was maintained that the level of employment in important countries had a greater influence on world trade than any lowering or raising of trade barriers. It was pointed out, with a certain measure of justification, that the United States draft of a Charter was entirely negative. It contained a series of "donts" about what nations must not do in the way of maintaining barriers to trade, but little of a positive character about what nations should do to expand world trade. As a result, the chapter on Employment in the original United States draft of a Charter was expanded and recognition was accorded to the need of countries to take action to protect themselves against deflationary pressure in the event of a depression in one of the important industrial countries.

17. At the second Session of the Preparatory Committee, held in Geneva, the under-developed countries continued their

efforts to secure more latitude for themselves in using for their rapid economic development measures inconsistent with the basic principles of multilateral trade. These efforts concentrated on freedom to use for this purpose protective devices such as quantitative restrictions, differential internal taxation and mixing regulations and preferences between neighbouring states. At London, Australia had played the useful role of assuming leadership of the under-developed group and then when concessions to their point of view had been obtained, of persuading the group as a whole to accept the compromise. It was not possible for Australia to repeat this performance at Geneva. India showed a desire for more concessions and became the chief spokesman of the under-developed group, although in respect of preferences for purposes of economic development the chief proponents were Chile and the Lebanese-Syrian Customs Union. As a result of protracted discussions the compromise was reached of providing for protective measures for purposes of economic development with the prior approval of the Organization (Article 13) and for preferences for purposes of economic development also upon prior approval of the Organization (Article 15). The requirement of a two-thirds vote for the latter, however, was left in square brackets to be decided by the Havana Conference.

18. Another phase of the draft Charter which caused difficulties at Geneva was the provision for exceptions from the rule of non-discrimination in the case of countries applying quantitative restrictions for reasons of balance of payments difficulties. The exchange situation became more critical while the Preparatory Committee was meeting in Geneva. The United Kingdom in particular no longer found it possible to maintain the convertibility of its currency. In consequence that country, together with other European countries, sought to elaborate more precisely the exceptions from the rule of non-discrimination. The result was the redrafting of this Article of the draft Charter which became Article 23 of the Geneva draft. The provisions permitting the use of quantitative restrictions on a non-discriminatory basis for balance of payments reasons were also expanded at Geneva in that a country could not be required to change its domestic policies if the Organization considered that these policies were responsible for its balance of payments difficulties (Article 21).

19. Finally, the Preparatory Committee were unable to resolve certain questions and had to present the Havana Conference with the choice between a number of alternative solutions. These questions were: weighted voting versus one state-one vote; the composition of the Executive Board, and relations with non-Members of the Organization.

20. Concurrently with the Second Session of the Preparatory Committee, there took place at Geneva a series of multilateral tariff negotiations. Altogether there were negotiations between 127 pairs of countries represented on the Preparatory Committee. Of these negotiations 123 were concluded successfully. The results of these negotiations were embodied in the General Agreement on Tariffs and Trade, the text of which was authenicated by the Geneva Final Act signed on October 30th, 1947, by the representatives of 23 countries (the seventeen members of the Preparatory Committee plus Luxembourg, Syria, Pakistan, Burma, Ceylon and Southern Rhodesia). The General Agreement on Tariffs and Trade included those provisions of the Geneva draft of the Charter which directly relate to the importation of goods, i.e., most of the Commercial Policy Chapter of the draft Charter. It was provided, however, that nearly all of these provivions would be superseded by the Charter agreed upon at the United Nations Conference on Trade and Employment

(the Havana Conference) when that Charter entered into force. The General Agreement on Tariffs and Trade is now being applied provisionally by all of the signatories of the Geneva Final Act with the exception of Chile.

21. The same questions which had given rise to difficulties at Geneva confronted the Conference at Havana with its main problems. It had been hoped that, because the Preparatory Committee represented a cross-section of the different types of economies, agreement upon the basis of the Geneva draft of the Charter would be reached fairly speedily. It was hoped that a delegation such as that of India, which had accepted the Geneva draft subject to confirmation by the Indian Government, would use its influence with the delegations from the other under-developed countries to secure their acceptance of the compromise reached at Geneva. These hopes proved to be abortive. Just as Australia lost its leadership at Geneva because it had accepted the compromise reached at London, India was unable, and, as it turned out, unwilling, to assume the leadership of the under-developed group at Havana. The Indian Minister of Commerce came to Havana prepared to play this role, but, when he heard the speeches at the opening plenary meeting, he decided the best tactics for India would be to wait and see what further concessions would be granted to the Latin-American countries, all of whom were clamouring for more freedom for economic development.

22. The Latin-American countries dominated the first part of the Havana Conference. The fact that the Conference was being held in a Latin-American country gave them a great advantage. They were able to unite on the issue of the recognition of Spanish as one of the working languages of the Conference. They made full use of their numerical advantage. Except for the last four weeks of the Conference they were able to act as a solid bloc. This more than anything else threatened the success of the Conference which for three months was in jeopardy.

23. These three months proved that the Conference was held not only in the wrong place but also at the wrong time. The Latin-American countries had become disturbed over the implications for them of the Marshall Plan. They felt the fairy godmother of the North was deserting them in favour of Europe. Their acquaintance with socialist ideas had converted them to a form of international socialism in which the richer countries were under an obligation to the poorer countries to promote the economic development of these countries and to raise their standard of living up to that of the richer countries. Some of them even went so far as to deny the right of the richer countries to assist in the reconstruction of the European countries because these countries had once enjoyed prosperity at the expense of the under-developed countries.

24. The Latin-American countries had developed many new industries during the war. It became clear that they wished this process of rapid industrialization to continue. It also became evident that they feared the effect on their new industries of the revival of European competition. The concept of economic development became confused with the desire to use protective measures to support industries recently established. References were heard to the importance of some factory because it belonged to a relative of the President of the country. The Havana Conference was held on the eve of the Bogota Inter-American Conference, at which the Latin-American countries intended to press for "a Marshall Plan for the Americas". Thus much of what transpired at Havana was a dress rehearsal for Bogota.

25. Cutting across all these tendencies was the attitude of the Argentine Delegation, which was out to prevent the Conference from being a success. Their main theme was that the proposed International Trade Organization involved the creation of "a Super-State". The appeal to respect for State-sovereignty once again was being used to impede international co-operation. Professed socialists were being asked to be more nationalist than internationalist. Fortunately the Chief of the Argentine Delegation, Senator Molinari, impaired his effectiveness by an excess of demagogy. The other members of the Argentine Delegation, however, were distinguished by their erudition on technical questions. At first they appeared to have the full support of Chile, Uruguay and Bolivia, but at the end of the Conference Argentina was isolated.

26. The Brazilian Delegation endeavoured to dissociate themselves from the solid Latin-American bloc. As a member of the Preparatory Committee they had been co-operative at London and Geneva, but in general had grouped themselves with the under-developed countries. Their concern to maintain differential internal taxation and to protect their newly-established industries brought them closer to the other Latin-American countries than to the United States. Their efforts at conciliation were frustrated by the taunts of the other Latin-American countries that they were "a Yankee tool". They fulfilled a useful role, however, in the determined stand they took against the creation of new preferences.

27. The Mexican Delegation stood out from the other Latin-American delegations not only as regards the ability of their representatives, but also as regards their attitude towards quantitative restrictions. They were just as keen as the delegates from their sister republics on economic development and on protection of existing factories, but, because they had had little experience of quantitative restrictions and feared the administrative difficulties of such measures, they placed the emphasis more on tariff protection. They wanted freedom to impose higher tariffs rather than freedom to resort to other protective devices. It was the Mexican Delegation that introdiced the proposal for an Economic Development Committee as a counterweight to the Tariff Committee, provided for in the Geneva Draft of the Charter. This proposal caused a good deal of concern to the Canadian Delegation, who saw in it a means of converting the International Trade Organization into an instrument for promoting economic development rather than for expanding international trade. Eventually the proposals both for an Economic Development Committee and for a Tariff Committee were dropped as part of the final compromise which made possible agreement on a Charter.

28. Most of the other delegations from under-developed countries supported the Latin-American countries in their fight for more freedom to use exceptional measures for purposes of economic development. Each delegation, however, placed the emphasis on some phase of the problem of particular interest to its country. The Arab group of countries, for instance, were most concerned with the establishment of new preferences. They supported Chile, which was seeking international authority for its agreement with Argentina providing for new preferences contrary to the most-favoured-nation provisions of some of the existing treaties concluded by both countries. The New Zealand Delegation, ably led by the Right Honourable Walter Nash, sought to turn the Charter as much as possible into an international endorsement of the economic policies pursued by the New Zealand Government or rather by

Mr. Nash himself. China was chiefly concerned with freedom to continue differential internal taxation. Ceylon, represented by their High Commissioner in London, Mr. Corea, became the most outright defender of quantitative restrictions. Reflecting the views of the extreme-left government now in power in Ceylon, Mr. Corea could see nothing bad in "Q.R.s". India had the ablest delegation of all of the under-developed countries. They played a masterly game of waiting to see what developments would bring forth. In playing this game they gave support as and when most required to the general line of attack by the under-developed countries.

29. Those resisting the under-developed countries were handicapped by the need of each country to take into account its own special requirements. Thus the United States Delegation was handicapped by the need of insisting upon freedom to use quantitative restrictions for the protection of agriculture under certain conditions, and this without being subject to the prior approval of the Organization. They were further prejudiced by their inability to agree to the renunciation of the right to use export subsidies under all circumstances.

30. The United Kingdom at first had supported the United States wholeheartedly in the efforts to set up an International Trade Organization upon a sound basis. At the closing stages of the Geneva discussions, however, the United Kingdom became more lukewarm in their support. Partly this was the result of the attacks made at Geneva upon the system of Imperial preferences and partly the reflection of the increasing balance of payments difficulties experienced by the United Kingdom. At Havana the attitude of the United Kingdom Delegation seemed to be dominated by the desire to have nothing in the Charter that would impede their programme of agricultural protection nor their freedom to discriminate for balance of payments reasons. The ink was hardly dry on the rules drafted at Geneva, largely by the United Kingdom representative, for revised exceptions to the principle of non-discrimination (Article 23), when the United Kingdom commenced at Havana to seek what amounted to absolute freedom to discriminate during the transitional period. Their experience with the Anglo-American Financial Agreement made them chary of accepting too binding commitments in respect of non-discrimination. In this they were joined by France and the other countries of Europe, who disliked the interpretation placed upon the Geneva text of Article 23 by the United States representative. They wanted more flexible provisions governing the exceptions to the rule of non-discrimination.

31. Finally, a disturbing note was introduced into the Havana deliberations by Switzerland. Mr. Stucki, the Chief of the Swiss Delegation, claimed that their position was unique and consequently deserved special treatment. A country poor in natural resources and dependent economically upon the export of highly finished goods, Switzerland is surrounded by countries who, under the Charter, are free to impose quantitative restrictions and other measures for balance of payments reasons. Unless permitted to use similar measures to defend what are her vital interests, Switzerland would be unable to subscribe to the Charter. At first, in arguing this thesis, Mr. Stucki seemed to be careful not to associate himself with the Latin-American bloc. However, he intervened to defend quantitative restrictions during the course of a debate in which ninety-five speeches were delivered, most of them in favour of the free use of quantitative restrictions under conditions which would permit their use by every country except the United States.

32. Thus it appeared at Havana that only the Benelux countries and Canada stood for the full acceptance of the basic principles of multilateral trade. Even Canada was not absolutely pure because we too had our balance of payments difficulties and were zealous in protecting our own position as regards that section of the Charter. Among the Benelux countries there were times when the Netherlands was in disagreement with its Belgian partner on account of Dutch concern over special measures to protect agriculture. The hope that the larger number of under-developed countries represented at Havana would accept the Geneva compromise was in part vitiated by this lack of unity in the ranks of the Geneva countries. When it was pointed out to the under-developed countries that the Geneva draft provided for the use of quantitative restrictions and of preferences for purposes of economic development, but subject to the prior approval of the Organization, they were able to reply that prior approval was not a prerequisite for the use of quantitative restrictions for balance of payments reasons or for the protection of agriculture under certain conditions.

33. The situation during the first month at Havana looked so hopeless that the practice grew up of having informal meetings from time to time of the heads of leading delegations from countries genuinely interested in establishing the International Trade Organization upon a sound basis. At these meetings the general situation of the Conference was discussed. At one of the meetings, held early in December and presided over by Mr. Clayton of the United States, it was decided to give up the fight then ensuing upon the question of weighted voting versus one state-one vote. It was felt that it would clear the air and help to create a better atmosphere at the Conference if the inevitable concession to the majority was made then rather than allowing the deadlock over this question to continue indefinitely. Accordingly the United States, United Kingdom and Canadian Delegations, the three chief proponents of weighted voting, declared their acceptance of the principle of one state-one vote, subject to the later decision regarding the composition of the Executive Board of the Organization being satisfactory to these delegations, i.e., that provision be made for permanent seats on the Executive Board to be allocated to the countries of chief economic importance. Instead of this move clearing the air and helping to create a better atmosphere, it had the reverse effect. It made the majority more conscious of their numerical strength and encouraged them to hope for more concessions.

34. In view of this situation, I proposed at one of the informal meetings, held shortly before Christmas, that the Conference should be adjourned to be called together again after the Bogota Conference had clarified the situation of United States financial assistance to the economic development of Latin America. I took this position in accordance with instructions from Ottawa that rather than attempting to frame a Charter flexible enough to fit the lowest common denominator, the leading trading nations should build up from the basis of the General Agreement on Tariffs and Trade, concluded at Geneva on October 30, 1947, i.e., the selective rather than the universal approach. That Agreement contained a provision (Article XXV) for regular meetings of the Contracting Parties, in other words, for an embryo organization.

35. This proposal led to a searching discussion at informal meetings on the situation of the Conference. The United States Delegation telegraphed to Washington for instructions. However, it was decided to continue the Conference in the hope of hammering out a generally acceptable solution. It was felt that to adjourn the Conference would be to deal a fatal

blow at the whole conception of an International Trade Organization. It might never be possible to call the countries together again to discuss a Charter. Overshadowing everything was the Soviet Union and the political capital they might make out of a breakdown of the Havana Conference.

36. The selective approach, instead of the universal approach, also was rejected on political grounds. The Head of the French Delegation referred to the opposition in France to the General Agreement on Tariffs and Trade and affirmed that the only chance of securing French acceptance of that Agreement was to present it for ratification along with a Charter for the International Trade Organization approved by a large number of countries. Otherwise both the Communists and Socialists in France would make too much political capital out of the thesis that the General Agreement was an attempt by the United States to form an exclusive capitalist bloc. The Honourable J.J. Dedman, Chief of the Australian Delegation, also contended that Australia could not accept the General Agreement without a Charter. He had in mind particularly the Employment Chapter of the Charter, to which the Australians attach so much importance and which is not included in the General Agreement. Thus it was that no other approach than the universal one proved to be politically feasible. If there was to be a Charter at all, it had to be flexible enough to secure the adherence of as many countries as possible.

37. After the New Year the Conference continued to discuss the various sections of the Charter through the elaborate mechanism of the six main committees, numerous sub-committees and working parties. Progress was lamentably slow. The difficult problem of composition of the Executive Board was tackled and gave rise to endless debate and jockeying for position. The dangerous proposal for an Economic Development Committee commenced to meet with general acceptance in the form of a sub-committee of the Executive Board, to which status the Tariff Committee also was to be reduced. Resistance continued to be offered to the creation of new preferences, but the idea of "a Free Trade Area" as a new form of Customs Union, less rigid and therefore easier to attain than the old form of Customs Union, was thrown out and made an immediate appeal to the Arab group of States and to the Central American group. It served to make these two groups less insistent upon freedom to use quantitative restrictions for the purpose of economic development without prior approval of the Organization. On this latter question, however, the Conference continued to be deadlocked. In the meantime good progress was made with the less controversial parts of the Charter, such as the Chapter on Employment, the technical articles dealing with questions of customs administration and the Chapters on Restrictive Business Practices and Inter-governmental Commodity Agreements. On the organizational side, besides the composition of the Executive Board, difficulties still were being experienced in relation to the settlement of differences, relations with non-Members, boycotts for political purposes, and the treatment of areas under military occupation.

38. During the month of January considerable progress was made in the solution of the main issue that had been separating the Canadian and United States Delegations. This was the question of export subsidies. At London it had been agreed that export subsidies would not be permitted after a certain period, except in the case of a breakdown of negotiations for an intergovernmental commodity agreement. The Canadian Delegation had reserved its position on this exception,

because it was felt that it would give the United States too much bargaining power in the negotiations for commodity agreements. At Geneva the Canadian Delegation succeeded, in the face of United States opposition, in making this exception subject to the prior approval of the Organization. Now it was the turn of the United States to enter a reservation. In this they were inconsistent since they had been insisting on prior approval in the case of exceptional measures for purposes of economic development. They felt, however, that in the case of export subsidies the prior approval of the Organization would never be granted and that, as the Subsidy Section of the Charter provided for stabilisation schemes equivalent to export subsidies and for general production subsidies that tended to increase or to maintain exports, they could not defend at home the prohibition of the only price support action the United States could take in the event of a burdensome surplus. Thus it was that the whole issue had to be fought out again at Havana. The result was a compromise whereby all forms of subsidization were to be subject to review by the Organization and in the event of any such subsidization acquiring for a Member more than an equitable share of world trade in the commodity concerned, the Organization can require the Member to alter its subsidy.

39. This was the general situation in the Conference, when, early in February, the Latin-American bloc proposed the setting-up of a Coordination Committee to resolve the outstanding difficulties. This proposal, submitted in the form of a resolution signed by nearly all the Latin-American delegations, was discussed in a formal meeting of Heads of Delegations. It was obvious that the main idea behind this proposal was to have an opportunity for "horse trading", whereby the Latin-American countries would obtain some of their pet objectives in return for some concessions on their part to the numerically weaker, but much stronger economically, group of important trading nations. It was felt, however, that it would be poor tactics to refuse the request of the Latin-American countries. The proposal did offer the only hope of breaking the deadlock and terminating the Conference within a reasonable period of time. Accordingly, the Coordination Committee was set up and deliberated for three weeks. As a result of these deliberations there emerged the final compromise which made possible agreement on a Charter.

40. The most important part of this compromise related to the highly controversial question of the use of quantitative restrictions and other protective devices for purposes of economic development (Article 13). The principle of prior approval of the Organization was retained, but in four carefully defined cases the prior approval would be automatic in that it would have to be granted if the criteria were met. Of these four cases, however, only two were really automatic. These two commenced with the words "is designed", which being objective does not permit of much discretion on the part of the Organization. Of the other two cases, one commenced with the words "is necessary" and the other with the words "is unlikely". In both these cases the subjective element is present and a great deal will depend upon how the Organization interprets these particular words. The two cases commencing with the words "is designed" are (1) for the protection of industries established during the war, i.e., the so-called "war babies" and (2) for promoting industries processing a raw material the market for which has become curtailed through new or increased restrictions imposed abroad. In both these cases the automatic prior approval of the Organization will be for a specified period and in any application for renewal the

approval of the Organization will not be subject to the automatic provisions of Article 13.

41. Undoubtedly the concession of "the war-babies clause" had a great deal to do with securing the adherence of the Latin-American countries to the compromise. It had become evident that what many of them were most concerned about was the right to use quotas and other restrictive measures to protect their newly-established industries against the revival of European competition. Consequently this clause was chiefly at the expense of the European countries, a fact to which the United Kingdom Delegation were to call attention later on when they became hesitant about accepting the Charter that was emerging from the Conference.

42. The tussle over Article 13 led to a split in the ranks of the Latin-American countries. This split came over the issue that had been cutting across all the discussions on the Charter and dividing countries that were together on most other issues. It was the question of protection for agriculture versus protection for industry. Colombia, whose Chief Delegate, Mr. Lleras Restrepo, was a member of the Coordination Committee, wanted more freedom to use quantitative restrictions to protect agriculture as well as industry. This was stoutly resisted by Mexico and Peru, whose Chief Delegates were also on the Coordination Committee. They won out and although the Colombian delegate accepted the compromise, he did so reluctantly. As one of the leading figures of the Liberal Party of Colombia he felt his position at home would be prejudiced as a result of the compromise.

43. On preferences, it was not necessary to make concessions to the views of the majority. In fact Article 15 of the Havana Charter represents an improvement over Article 15 of the Geneva draft, having regard to the fact that the two-thirds voting requirement was left in square brackets in that draft. If this question had been put to a vote at the Havana Conference, it is certain that the two-thirds voting requirement would have been reduced to that of a simple majority. The Arab group of countries and the Central American group having been won over by the conception of a "Free Trade Area", which also was made part of the compromise, Chile became more or less isolated in the fight for new preferences for purposes of economic development.

44. In Article 15 of the Havana Charter the Organization is required to grant approval of new preferences either by a two-thirds vote or when they meet certain criteria designed to assure that they will serve the purpose of the development of particular industries. At a later stage of the conference, when they were becoming chary about accepting the Charter, the United Kingdom Delegation attacked Article 15 because its scope did not clearly permit new preferences with the colonies for purposes of economic development. They were met in part by an interpretative note defining "the same economic region" in such a way as it could be interpreted to include both the United Kingdom and certain of the colonies.

45. On this part of the compromise, Mr. W. Mueller, the aggressive Chief Delegate of Chile, was outmanoeuvred in the Coordination Committee. He did not realise until it was too late that the words "between Members" excluded from the scope of the compromise the preference agreement between Chile and Argentina unless Argentina became a Member of the Organi-

zation, which from the attitude of the Argentine Delegation could be seen to be highly unlikely. The Chilean Delegation later were able to some small extent to repair this mistake on their part when the question of relations with Non-Members was being discussed separately from the compromise by securing the right for approval, by a two-thirds vote of the Organization, of new preferences with non-Members.

46. Another part of the compromise agreed upon by the Coordination Committee was the decision to drop the proposals for the setting up both of an Economic Development Committee and of a Tariff Committee. The Canadian Delegation had taken an active part in proposing this solution of the problem presented by the Mexican proposal for an Economic Development Committee. The Tariff Committee had been intended to take over the functions performed at the meetings of the Contracting Parties to the General Agreement. It was felt that when the Charter came into force these functions could just as readily be performed by the Executive Board of the Organization.

47. As part of the compromise, the Contracting Parties agreed to amend, at their next meeting scheduled at Havana for the end of February, the General Agreement so as no longer to require unanimity in accepting the adhesion of new countries. This can now be done by a two-thirds vote and hence removed the Mexican objection to "a veto right". The Contracting Parties also agreed that they would endeavour to waive the right of complaint against supersession of Part II of the General Agreement by the corresponding provisions of the Charter, thereby meeting another Mexican objection to the tariff negotiations section of the Charter. They had argued that they otherwise would not know in advance the provisions of the General Agreement to which they were being asked to subscribe.

48. The last part of the compromise was that the Coordination Committee agreed to accept the solution of the vexed question of composition of the Executive Board then being worked out in main committee. This provides for a Board of eighteen countries or customs unions with permanent seats allocated to the eight Members of chief economic importance. It is specified that in determining the countries or customs unions of chief economic importance particular regard shall be paid to their shares in international trade. Moreover, an Annex to the Charter prescribes the rules to be followed in the first election to the Executive Board and one of these rules is that two of the permanent seats shall be allotted to the two countries in the Western Hemisphere with the largest external trade. These provisions assure the allocation to Canada of one of the permanent seats on the Executive Board.

49. For this satisfactory outcome, from the Canadian point of view, we are indebted to the unfailing support of Mr. C. Wilcox, the United States Deputy Chief Delegate and of Dr. Erik Colban, the Norwegian Chief Delegate and Chairman of Committee VI dealing with organization. At the informal meeting held early in December, at which it was decided to give up the fight for weighted voting, the question of the composition of the Executive Board was discussed. I outlined the reasons why Canada attached importance to permanent seats. I explained that, while Canada was recognised as an important industrial country, we could not be certain of election to the Executive Board because the majority of countries regarded us as closely associated with either the United Kingdom or the United States. The principle of geographical representation also worked against Canada in that North America always would

be represented by the United States. Those present at the informal meeting, except the Australian representative, saw the force of these arguments. Mr. Clayton and Mr. Wilcox declared, on behalf of the United States Delegation, that they would press for permanent seats, stating that "we want Canada on the Board". Dr. Colban, on behalf of the Norwegian Delegation, pledged his support for the same reason. This was a very courageous stand for Dr. Colban to take because at Geneva he had opposed the proposal for permanent seats, arguing that in any election the countries of chief economic importance would be sure to be elected. Australia opposed the proposal for permanent seats to the bitter end.

50. The Latin-American countries, after much haggling, were won over to the proposal for the composition of the Executive Board by the inclusion of an Annex to the Charter giving the formula for the first election in order to assure equitable geographical representation. This assured the election of four Latin-American countries to the Board, provided a sufficient number of such countries had become Members of the Organization. It was surprising, in view of their numerical strength, that the Latin-American countries attached so much importance to assuring the election of a certain proportion of their number to the Executive Board. An interesting sidelight on this struggle was the great anxiety of Brazil lest Argentina secure an advantage over that country in the formula for election to the Board. This led Brazil to ally herself with China and India in stressing that population should be a determining factor nearly equal in importance to the share of a country in international trade. Throughout the Havana discussions Dr. Wunsz King, the Chief Delegate of China, had directed his main efforts to securing the allocation of a permanent seat to China. He succeeded in this by having included in the formula for the first election the provision that three out of the eight permanent seats would be filled by the countries with the largest population.

51. With the acceptance at a formal meeting of Heads of Delegations of the final compromise worked out by the Coordination Committee, agreement was definitely reached on those part of the Charter respecting which the Latin-American countries had taken the most determined stand. During the last few weeks of the Conference there was no evidence of a Latin-American bloc. In fact, some of the Latin-American delegations, who had been causing the most trouble, became the leading advocates for an International Trade Organization. For example, Mr. Chalone, the able Chief Delegate of Uruguay, who in December had been the principal spokesman of the critics of the Geneva draft, used his eloquence during the last few weeks to praise the Charter that was emerging from the Havana Conference. The Argentine Delegation continued their stand in oppositnon to the setting-up of any organization with extensive powers, but they were securing less and less support. Bolivia remained associated with them until the end, but even Bolivia signed the Final Act.

52. The cleavage of opinion in the concluding stage of the Conference, therefore, was not between the developed and the under-developed countries. Instead, it was among the developed countries themselves. The questions remaining for solution required bridging the gap between the views of the United States Delegation on the one hand and those of the delegations from European countries on the other hand. The chief of these questions was that of exceptions from the rule of non-discriminatnon in the case of countries experiencing balance of payments difficulties. There also remained for solution

the difficult questions of the settlement of differences, relations with non-members, boycotts for political purposes, the treatment of areas under military occupation, and the problem of Switzerland.

53. A Sub-Committee, presided over by Mr. L.E. Couillard of Canada, succeeded after some twenty-five meetings in arriving at a satisfactory solution of the controversial question of the settlement of differences. Here the chief clash of views had been between the Anglo-Saxon or Common Law countries, who hesitated to permit references to the International Court of Justice of questions having an economic content, and France and the other countries of Western Europe, whose representatives were trained in the concepts of Roman Law. The Sub-Committee evolved a new text of Chapter VIII which represented a great improvement over the Geneva draft. It streamlined the various steps to be taken in the settlement of differences. The actual procedures to be followed for ensuring that advisory opinions of the Court on matters referred to it by the Organization should have binding effect were left to be confirmed by the Interim Commission after consultation with the Court.

54. Relations with non-Members were solved by the acceptance of week provisions which bore little resemblance to any of the three alternatives presented to the Conference by the Preparatory Committee. Argentina, for understandable reasons, Switzerland for similar reasons, and Sweden and Czechoslovakia on account of their relations with the Soviet Union, had been irreconcilably opposed to any strong provisions governing the relations with non-Members.

55. The question of boycotts for political purposes proved to be one of the most delicate of all questions dealt with by the Conference. The Arab countries wanted freedom to boycott goods originating with Zionist-sponsored producers, and India wanted the right to continue their embargo on trade with South Africa. By clever manipulation the issue was made to appear chiefly one between India and South Africa. While this saved the Conference from undesirable publicity, it placed Dr. Holloway, the Chief Delegate of South Africa, in a most invidious position. He acquitted himself admirably and with great dignity. He had to submit to being out-voted in favour of a formula which removed from the scope of the Charter measures taken pursuant to a political question referred to the United Nations.

56. On the question of the treatment of areas under military occupation, the United States Delegation were unable to persuade the European countries that the Conference should provide for the reciprocal exchange of most-favoured-nation treatment with the occupied areas of Germany and Japan. The United States Government was left with the alternative of dealing with this matter in the agreements with the European countries for Marshall Plan aid, but a reference to the areas under military occupation was included in the Article of the Charter dealing with membership.

57. The problem of Switzerland had been referred to a Sub-Committee of Committee III - the Commercial Policy Committee - and this Sub-Committee had struggled with the question for weeks. It was agreed that Switzerland, with a strong currency and surrounded by countries in balance of payments difficulties, was in a unique position. However, it was not clear how Switzerland could be released from sense of the obligations of the Charter without opening the door for other countries to take advantage of this exception. Uruguay and Venezuela were members of the Sub-Committee and made it clear that they had a direct interest in whatever solution was proposed for Switzerland.

Mr. Stucki, the Chief Delegate of Switzerland, did not assist matters by his uncompromising attitude. The United States member of the Sub-Committee showed himself to be equally uncompromising. Finally, it was proposed that the whole question should be referred to the Interim Commission for further study and this solution of the immediate difficulty was adopted. It had the advantage of giving Mr. Stucki no excuse to crusade against the Charter, which, in view of the influence of the greatly-respected Swiss press, would have had unfortunate repercussions on European opinion towards the Charter.

58. Thus it became clear during the early part of March that one question after another was being solved with the exception of that pertaining to the exceptions from the rule of non-discrimination in the case of countries experiencing balance of payments difficulties. This was the question to which the United Kingdom Delegation attached the most importance. They became apprehensive that at the end of the Conference the United Kingdom might be the only country unable to accept the Charter. As already indicated, they had become dissatisfied with the solutions proposed for dealing with quantitative restrictions for purposes of economic development and with new preferences. It was these considerations which led the United Kingdom Government to propose to the other countries of the British Commonwealth of Nations a postponement of the Conference. They did not pursue this idea in the absence of support from these other countries, but they did take up with the United States Government, through diplomatic channels and therefore outside the Conference, the questions which were causing them concern, particularly that of the exceptions to the rule of non-discrimination.

59. After preliminary debate in Committee III - the Commercial Policy Committee - the balance of payments questions had been referred to a Sub-Committee. This Sub-Committee in turn set up a Working Party of eight countries to consider the question of exceptions to the rule of non-discrimination. Mr. Neil Perry of Canada was elected Chairman of this Working Party, which for two months wrestled with this highly technical and difficult question. For a long period the Working Party was able to make no headway. An impasse had arisen over differences of interpretation of that part of the Geneva text of Article 23 which requires countries in balance of payments difficulties to give priority to exports for hard currency. Some of the European countries also disliked the provision precluding higher prices for goods imported from countries in whose favour the discrimination takes place. The United Kingdom was out frankly for full freedom to discriminate throughout all or nearly all of the transitional period.

60. After several weeks of frustration the United States decided to break the deadlock in the Working Party by proposing a return to the basis of their original draft of a Charter. This meant that, in place of the criteria set forth in the Geneva draft, the justification for exceptions to the rule of non-discrimination would be the condition that they had equivalent effect to exchange restrictions permitted by the International Monetary Fund. A new draft of Article 23 on this basis, submitted by the United States Delegation, also provided that discriminatory measures already in force could be continued and adapted to changing circumstances for the duration of the transitional period as determined by the Fund. At first this new draft pleased all members of the Working Party except Canada. The Canadian Delegation had to point out that the new basis was more unfavourable for Canada than that of Geneva. Moreover, Canada would be penalised through the fact that an effort had deliberately been made to avoid discrimination in

the Canadian import restrictions imposed on November 17, 1947. Accordingly, to meet Canada, it was proposed to permit any country then applying the General Agreement on Tariffs and Trade to continue to be governed by the provisions of that agreement in respect of exceptions to the rule of non-discrimination. This meant adding the Geneva criteria to the other justifications for discrimination, but only during the transitional period to be determined by the Fund.

61. When the Brazilian Delegation realised the full implications of the proposal made to meet Canada, they protested because Brazil had not yet been applying the General Agreement on Tariffs and Trade and consequently this particular provision would not be applicable in their case. The United States Delegation, seeing the impossibility of confining the application of the additional provision to a few countries, then decided to fall back upon the choice of two options, one based on their original draft of a Charter - which henceforth became known as "the Havana option" - and the other on the Geneva draft. It was on this basis that Article 23 of the Havana Charter came to be drafted. This was not before, however, a number of difficulties had been ironed out. These difficulties chiefly arose through the natural reluctance of the United Kingdom Government to assume new obligations in respect of non-discrimation which they might not be able to fulfill.

62. When the United States first made the proposal to return to the basis of their original draft of a Charter for exceptions to the rule of non-discrimination, the United Kingdom Delegation, along with the delegations from other European countries, were pleased with this solution. When, however, the proposal was referred to London it became apparent that the United Kingdom Government liked neither the original nor the Geneva basis. The United Kingdom expert was recalled from Havana to London for consultation and no longer was available for participation in the meetings of the Working Party. Direct consultations were then undertaken between London and Washington and it was some little time before the Working Party could proceed with formulating a solution on the basis of the two options. The United Kingdom Government feared that the non-discrimination provision in the Anglo-American Financial Agreement would be interpreted to disqualify the discriminations they then had in force if they exercised the Havana option, whereas from the beginning of the Conference they had maintained that the Geneva option did not give them sufficient freedom for the period of the next four years. They also objected to the dual jurisdiction under the Geneva option whereby the period for discrimination was to be determined by the International Monetary Fund and the scope of discrimination by the International Trade Organization.

63. Agreement on Article 23 eventually was reached by making, under the Geneva option, minor concessions of a technical character to the United Kingdom point of view and by postponing until March 1, 1952, any effective surveillance by the Organization over discriminations. Needless to say, the solution of this question of exceptions to the rule of non-discrimination was reached only in the very last days of the Conference.

64. One of the last acts of the Conference, prior to the signature of the Final Act, was to approve the setting up of an Interim Commission for the purpose of making the

necessary preparations for the holding of the first annual Conference (General Assembly) of the International Trade Organization. Certain unsolved questions, such as the relations with the International Court of Justice, the Swiss problem, and the avoiding of overlapping with other intergovernmental organizations concerned with economic development, also had been referred to the Interim Commission. Any country participating in the Conference was given the right of membership on the Interim Commission. All those countries who later signed the Final Act, with the exceptions of Bolivia, Ireland, Portugal and Switzerland, exercised this right. Mr. Max Suetens of Belgium was elected Chairman of the Interim Commission. Its sole task was to elect an Executive Committee of eighteen members composed on the same basis as that provided for the composition of the Executive Board of the Organization. Consequently, the election of the Executive Committee provided a useful test of the somewhat complicated formula agreed upon for the election of the first Executive Board. The formula survived this test with flying colours. Australia, Benelux, Brazil, Canada, China, Colombia, Czechoslovakia, Egypt, El Salvador, France, Greece, India, Italy, Mexico, Norway, the Philippines, the United Kingdom and the United States were elected members of the Executive Committee. The Interim Commission delegated all of its functions to the Executive Committee, which will report to the first annual Conference of the Organization. I was elected Chairman of the Executive Committee and the Vice-Chairmen are Mr. Jean Royer of France, Sir Raghavan Pillai of India, and Mr. Ramon Beteta of Mexico. The next meeting of the Executive Committee will take place on August 25, 1948, at Geneva.

65. This review of the difficult problems that confronted the Conference and of the manner in which they were solved will serve to explain why it was necessary to remain four months in Havana. The Charter that emerged as a result of these lengthy deliberations, while it represents some weakening from the Geneva draft, still maintains as the basic rules for the conduct of international trade those principles which must be respected if the world is to enjoy once more the benefits of multilateral trade. As we have seen, the concessions made at Havana in order to secure a Charter acceptable to the great majority of the countries participating in the Conference did not go very far beyond the concessions made at Geneva in order to smooth the way for the deliberations at Havana. If any harm had been done in the direction of watering down the rules embodied in the original United States proposals, this had been done at Geneva to an even greater extent than at Havana. Nor can we consider the additional concessions granted at Havana to be so serious as to represent "the straws that break the camel's back".

66. The Canadian Delegation, in considering the discharge of its responsibility of recommending to the Canadian Government the acceptance of the Charter emerging at Havana, had decided on the axiom that "no Charter is better than a bad Charter". They came to the conclusion that the Havana Charter is not a bad Charter. Its attainment can be regarded as a magnificent achievement when account is taken of the conditions prevailing at the time it was being framed. These conditions were much worse than those who conceived the original proposals had anticipated they would be, because recovery from the aftermath of war had proved to be slower than even the most pessimistic of prophets had predicted. The Charter is a good Charter in that it is flexible enough to take account of the varying needs of many different countries. It permits the setting up of an International Trade Organization whose eventual success may prove to be because of, rather than in spite of, what now

seem to be flaws in the Charter.

67. The setting up of an International Trade Organization is very necessary if we are to have some meeting place where representatives of governments can gather to consider complaints and to endeavour to remove the obstacles impeding the free flow of world trade. Very often at such a meeting place a country pursuing a selfish policy can be shown that such a policy is not in the long-term interest of the country itself. If we lived in a "laissez-faire world" there would be no need for an International Trade Organization. Because we do not live in such a world and because governments are interfering with trade, there is need for an intergovernmental organization to deal with the problems of international trade. The Charter makes possible the setting up of such an organization upon a sound basis. That is the reason why the Canadian Delegation to the United Nations Conference on Trade and Employment recommends to the Canadian Government the acceptance of the Havana Charter and its presentation to Parliament for ratification.

68. Part II of this report gives a complete analysis of the Havana Charter article by article. This will indicate in greater detail the deviations in that Charter from the Geneva draft. It will also afford more specific information regarding the attitude of the Canadian Delegation on the various issues that arose during the Havana Conference. This analysis had been prepared by those members of the Delegation who participated most actively in the debates on each of the articles of the Charter analysed. It is hoped that Part II, along with Part I, will provide all the information necessary to indicate the participation of the Canadian Delegation in the Conference and to enable an appraisal to be made of the scope of the Havana Charter.

I have the honour to be,
Sir,
Your obedient servant,

(Sgd.) L.D. Wilgress

Chief Delegate,
Canadian Delegation to the United Nations Conference on Trade and Employment.

Report of the Canadian Delegation to the
United Nations Conference on Trade and
Employment at Havana.

PART II

ANALYSIS OF THE HAVANA CHARTER - ARTICLE BY ARTICLE

CHAPTER I - PURPOSE AND OBJECTIVES

Article 1. This Article sets out the purpose and the objectives of the Organization and formally provides for the establishment of the International Trade Organization.

The purpose of the Organization is linked to the aims set forth in the Charter of the United Nations, particularly those aims envisaged in Article 55* of that Charter, namely, the attainment of higher standards of living, full employment and conditions of economic and social progress and development.

The Parties to the Charter for an International Trade Organization undertake to co-operate, in the fields of trade and employment, with one another and with the United Nations towards the attainment of that purpose.

The objectives of the International Trade Organization are grouped in six sub-paragraphs. Parties to the Charter 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 ....

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.

* One of the six articles in Chapter IX of the U.N. Charter which deals with international economic and social co-operation.

This statement of objectives is in fact a summary of the detailed provisions of the Charter; it therefore is intended to reflect in a "balanced" manner the scope of the activities of the Organization.

There were no serious controversies at Havana on Article 1 and consequently it emerged substantially the same as in the Geneva text. The greater part of the discussions centred around proposals to add to the text. Such proposals, which in fact constituted additional objectives, were successfully opposed on various grounds by the majority of delegations, including the Canadian Delegation. It was properly argued that such additions, although in some cases fundamentally sound, would lead to redundancy and confusion and would result in a distortion of the "balance" attained in the statement of objectives of the Charter in relation to its various fields of activity. It was generally recognized, therefore, that Members could not "pledge themselves" to such additional objectives.

The three main proposals of the type referred to above were:

1. A proposal by the delegation of France which in its original form would have been tantamount to a pledge on the part of the Members of the Organization to promote the maintenance, establishment and development of customs unions. This obviously could not be considered as one of the objectives of the Charter; the American Delegation was particularly strong in its opposition. The proposal was strenuously opposed by the delegation of Mexico but for another reason; the Mexican delegate reminded the Conference of the Nazi methods towards "economic integration".

Although the proposal was rejected as not being an objective of the Organization, it found its way, in modified form, into Paragraph 1 of Article 44 (see page of Report) dealing with Customs Unions and Free-Trade Areas, in the following terms:

> "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".

2. The delegation of Argentina proposed a new objective of the Organization which would have spelled out workers' rights under some ten sub-headings, including the right to receive training, to family protection, to defend professional interests, etc.

Although the principle of this proposal was unanimously agreed to, the Conference could not agree to make this an objective of a trade organization. Obviously, such detailed provisions more properly fell within the competence of the International Labour Organization.

3. A third proposal which was the subject of lengthy discussion was made by the delegation of Ecuador, as follows:

> "To support a general policy which takes into account the necessity of compensating the wide disparity which frequently exists between the prices of raw materials and the prices of manufactures so as to establish the necessary equity between those prices".

The delegation of the United States was particularly emphatic in rejecting this proposed objective which in fact, if accepted, would have "pledged" the Organization and its Members to support a general policy of control of international prices.

A similar provision, however, was added as a new sub-paragraph (d) to Article 72 - Functions (of the Organization), reading as follows:

> "...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".

It will be noted that besides not making this proposal an objective to which Members would pledge themselves, its insertion in Article 72 as a "function" of the Organization merely provides that the Organization shall "undertake studies, consider and, where appropriate, recommend international agreements...". This provision, therefore, does not require the Organization to assume the role of controller of international prices.

Article 1 was considered as an important Article from the public relations point of view. It was realized that the lay man could hardly be expected to read such a lengthy and technical document as the Charter in its entirety. This explains, in part, the importance which was attached to the fact that the Article must contain as clear and as balanced a summary as possible of the scope of the Organization.

Furthermore, the importance of the Article within the framework of the Charter itself is given real practical significance by the fact that reference is made to it in some six or seven cases in other parts of the Charter, such as:

Article 2, para. 1: wherein Members recognize that the avoidance of unemployment or underemployment is a necessary condition for the achievement of the general purpose and the objectives of Article 1;

Article 5, sub-para. 1 (b): whereby Members and the Organization shall participate in arrangements for "studies, relevant to the purpose and objectives set forth in Article 1, concerning international aspects of population and employment problems";

Article 8: which speaks of the "Importance of Economic Development and Reconstruction in Relation to the Purpose of this Charter";

Article 46, para. 1: Under the provisions of which Article 1 is made one of the criteria basic to the whole of Chapter V of the Charter dealing with Restrictive Business Practices (see below).

Article 70, para. 1 (d): which provides that the provisions of Chapter VI shall not apply "to any intergovernmental agreement relating solely to conservation....provided that such agreement is not used to accomplish results inconsistent with... the purpose and objectives set forth in Article 1...

Article 72, sub-para. (c) (v): which provides that the Organization shall have the following function "generally, to achieve any of the objectives set forth in Article 1";

Article 93, para. 1: contrary to those cases enumerated above, reference to Article 1 in Article 93 is made for the purpose of excluding the benefit accruing to a Member under the provisions of Article 1. (See page of report).

CHAPTER II - EMPLOYMENT AND ECONOMIC ACTIVITY

Article 2.- Importance of Employment, Production and Demand in relation to the Purpose of this Charter
Article 3 - Maintenance of Domestic Employment
Article 4 - Removal of Maladjustments within the Balance of Payments
Article 5 - Exchange of Information and Consultation
Article 6 - Safeguards for Members subject to External Inflationary or Deflationary Pressure
Article 7 - Fair Labour Standards

Chapter II recognizes the close relationship between the level of world trade and the state of employment, production and effective demand in the respective countries of Members. In this way it modifies the conceptual over-emphasis on the simple removal of barriers to trade as the principal means of ensuring high levels of the international movement of goods. It recognizes further that the state of employment, production and demand is an international concern, since extreme fluctuations in the economic activity of a country, particularly of an important industrial country like the United States, will be transmitted to other countries through the demand for imports. Chapter II is a reflection of the influence that the economic philosophy of the late Lord Keynes is having on economic thinking in general and on broad national and international economic policy. The popularity of this Chapter rests largely with the smaller countries and the countries producing primary commodities. They feel that instability in the large industrial countries was responsible for their economic ills of the past.

The Chapter contains a broad undertaking by member countries to take measures consistent with their social and political conditions to maintain full employment and increasing levels of effective demand. There is no commitment to achieve such conditions.

The main point of the chapter is a rather negative warning to the large industrial countries, and more particularly the United States, that it would be impossible to achieve and maintain a substantial reduction in barriers to trade, if extreme fluctuations in the demand for goods is permitted to develop. Teeth are put into that warning by recognizing that a country may require to take action to protect itself against extreme fluctuations in other countries.

<u>Article 2 - Importance of Employment, Production and Demand in Relation to the Purpose of this Charter.</u> This article establishes the basic principle of the chapter, namely, that the maintenance of high levels of employment, production and demand are necessary conditions to achieve the purposes of the Charter.

While it recognizes that the major responsibility for achieving full employment rests with the individual Members and on the domestic measures they take, it establishes that there is scope for concerted international action under the sponsorship of the Economic and Social Council acting in co-operation with other international organizations.

Article 3 - Maintenance of Domestic Employment. This article contains a positive undertaking by Members to take action designed to achieve full employment, and a high and growing level of demand within their territories by measures appropriate to their domestic institutions. The commitment is limited to taking action, not to achieve full employment.

Article 4 - Removal of Maladjustments within the Balance of Payments. Directs Members with a persistent favourable balance of trade, which is a major factor in the balance of payments difficulties of other countries, to take action to correct the disequilibrium. While the main responsibility is placed on Members enjoying a favourable balance, it calls upon the deficit countries to take appropriate action to extricate themselves from the difficulties. Emphasis is directed to expansionist measures in correcting the maladjustments.

Article 5 - Exchange of Information and Consultation. Calls upon Members to co-operate with one another, with the Economic and Social Council and other international organizations to promote full employment and high levels of demand. The I.T.O. is given the positive function of initiating consultations among Members in the event of a serious decline in employment, production or demand in order to prevent the international spread of deflation.

Article 6 - Safeguards for Members Subject to External Inflationary or Deflationary Pressure. Directs the Organization in the exercise of its functions to take into consideration the need of a Member to protect itself against economic fluctuations abroad, particularly a decline in the foreign demand for its exports. Specific provision for action under this Article is contained in the Balance of Payments Section.

Article 7 - Fair Labour Standards. Recognizes that unfair labour conditions, particularly in production for export, create difficulties in international trade. Members pledge themselves to take whatever action may be feasible and appropriate to eliminate unfair labour conditions and to co-operate with the International Labour Organizations in this regard.

The Chapter on Employment and Economic Activity gave rise to the least controversy in the Havana discussions. Several proposals to include provisions on the migration of labour and the treatment of migrant workers were dealt with by incorporating a reference to them in a Resolution on Employment.

There are some differences of interpretation as to the significance of the clause recognizing the need of a Member to take action to protect itself against fluctuations abroad. The Canadian Delegation regarded this clause as a broad statement of principles and that specific action could be taken only under the precise terms of other relevant provisions of the Charter. This viewpoint was widely supported, although several delegations, particularly the Australian Delegation, attached rather wider significance to it.

The broad principles contained in this Chapter have been clearly recognized and incorporated in Canadian Government policy in the now well-known White Paper on Employment and Income, 1945.

This Chapter is perhaps more significant for the "finger-pointing" it engages in rather than for the specific provisions, which are general and weak. In "pointing up" the responsibility of large creditor nations in the balance of payments difficulties of other countries it performs a useful function which under present circumstances can hardly be overstressed. In emphasizing the responsibility of the large industrial powers in maintaining a high level of imports, as a condition of international economic stability and barrier-free trade, it touches on the most significant feature behind the disastrous decline in Canadian trade during the Thirties.

CHAPTER III - ECONOMIC DEVELOPMENT AND RECONSTRUCTION

The Chapter on Economic Development and Reconstruction recognizes the principle that the progressive development of underdeveloped countries and regions, and the reconstruction of war-devastated countries is closely related to the purposes of the Charter of raising the level of trade and improving living conditions generally. It indicates the nature and extent of responsibility in achieving economic development and reconstruction as between the countries seeking development, the more advanced countries, the Organization and other international institutions and specialized agencies. It contains broad undertakings by all Members to co-operate in promoting development by positive action, in the knowledge that it is in the international interest to achieve economic development. It recognizes that economic development may require government assistance in the form of protective measures, but issues clear warning that such protective devices, unless used wisely, would operate against the best interests of the country imposing them, would impose unnecessary difficulties on other countries, and would impede the achievement of the objectives of the Charter.

More significantly, it includes two broad exceptions from the basic principles contained in the Chapter on Commercial Policy: (1) Notwithstanding the general ban on the use of quantitative restrictions, it permits the controlled use of quantitative trade restrictions for purposes of economic development; and (2) Notwithstanding the ban on discriminatory trade practices it permits the establishment of new preferential arrangements for purpose of economic development in certain closely circumscribed circumstances.

The Chapter on Economic Development proved to be the most controversial at the Havana Conference. It was argued that the precise provisions on Commercial Policy, directed to the elimination and reduction of trade barriers, would tend to freeze the current pattern of production and trade, protect the competitive position of the large industrial countries, and impede the development of the economically backward regions. While recognizing that the inclusion of a Chapter on development was a step in the right direction, it was argued that the chapter was weak in its positive provisions to promote development, and inadequate in the limited rights it granted to use quotas and preferences for development purposes. Not far beneath this sophisticated plea to encourage economic development was the desire to protect certain uneconomic industries that had sprung up during the war. In its extreme form, this position supported the uncontrolled use of quantitative restrictions and new preferential arrangements to protect established in-

dustry, and to sponsor uneconomic new industry, as an exclusive privilege of underdeveloped countries, while denying that right to the so-called developed countries. At the same time provisions were proposed which would require the "have" countries to make available the necessary capital, skill, material and know-how at the request of the "have-nots". The Organization was to be empowered to allocate in a "fair" manner available supplies of capital, equipment, skills and so on.

The Chapter on Economic Development and Reconstruction that emerged from the long difficult debates has some definite weaknesses and inadequacies. Nevertheless it is a far cry from the extreme proposals put forward and was the minimum compromise solution consistent with broad agreement. If the escape clauses are resorted to only in exceptional circumstances, as is intended, no great harm will be done. If, however, they become the operative provisions for a large group of countries, the basic principles will be undermined and the Charter itself will break down.

<u>Article 8</u>. This Article recognizes that the general economic development of underdeveloped countries and the reconstruction of war-devastated countries would be of advantage to all countries and would facilitate the achievement of the Charter objectives.

<u>Article 9</u>. This Article provides an undertaking by Members to take action designed to develop progressively and/or to reconstruct their economies through expansionist measures not inconsistent with the rules of the Charter.

<u>Article 10</u>. In this Article Members are directed to co-operate with one another, with the Organization, and with other international organizations in promoting economic development and reconstruction. The Organization is given the responsibility of assisting Members in their efforts to develop and reconstruct by helping to formulate plans; by furnishing advice on how to finance and carry out such plans; assist in procuring advice. The Organization is further directed to co-operate with other intergovernmental organizations in respect of all aspects of development and reconstruction with a view to facilitating development. Such help as the Organization may provide shall be within its powers and resources, on terms to be agreed with the Member seeking assistance, and in such collaboration with other international organizations and specialized agencies as to make full use of their special competence and avoid overlapping.

There was considerable pressure at Havana on the part of the underdeveloped countries to give the Organization more positive and direct obligations in the field of assisting economic development. This would have meant additional staff, organizational machinery, and financial burdens well beyond the original plan for the Organization. The Canadian Delegation opposed the extension of responsibility in this field, in the belief that economic development is largely a domestic

problem and that burdening the Organization with a more direct role would involve costs and administrative complications quite out of keeping with the benefits that could realistically be expected to accrue to Canada either directly or indirectly. The compromise reached did not extend the obligations of the Organization in the field of economic development. It would be too optimistic, however, to suggest that the last word has been heard. Although there were no substantive changes providing for additional functions in the Charter proper, the full consideration of this problem was postponed by means of a Resolution Relating to Economic Development and Reconstruction. The resolution directs the Interim Commission of the I.T.O. to examine the powers, responsibilities and activities of other international bodies in the field of economic development and reconstruction; the availability of technical surveys, studies and facilities to make such surveys and on the basis of this examination to report on the best means of enabling the Organization to carry out positive functions in the field of development and reconstruction. This report is to be submitted in time to permit the First Session of the Organization to take appropriate action.

Article 11. This Article recognizes that economic development or reconstruction requires capital, materials, modern equipment and technology. Members undertake to assist one another in the provision of these facilities within the limits of their power, and not to impose unreasonable or unjustifiable impediments in the way of other Members obtaining the necessary means for their development or reconstruction on equitable terms. It directs Members receiving such aid not to take unreasonable or unjustifiable action in respect of capital, arts, skills, etc., which other Members have supplied.

The Organization is further directed to co-operate with other international bodies in promoting an equitable distribution of skills, arts, technology, materials and equipment. It may seek to promote bilateral and multilateral agreements,

(1) to assure fair treatment of the means of development that have been provided by other Members

(2) to establish a code of laws governing international investment

(3) to avoid international double taxation which impedes foreign investments.

This statement of aims and directives are all worthwhile measures which should be encouraged. The Canadian Delegation supported their general inclusion in the Charter, but maintained consistently that the initial and main responsibility for their attainment falls outside the scope of the I.T.O. The Charter provisions now provide for an appropriate division of labour as between the various international organizations and specialized agencies. The actual scope of the I.T.O's jurisdiction in this field was not settled definitely and will likely form the subject for protracted discussions at the First Session after the Interim Commission submits its report.

Article 12 - International Investment for Economic Development and Reconstruction. In the course of the discussions on economic

development at the Geneva Session of the Preparatory Committee, some consideration had been given to the treatment of foreign investments by capital-importing members. Insofar as the opposing ideas of the main creditor and debtor countries could be reconciled at that time, Article 12 represented this compromise. The Geneva Draft, however, subsequently came in for extended criticism from the International Chamber of Commerce-- particularly paragraph 2-- and from those countries principally concerned with creditor aspects; these criticisms took the form of concrete amendments to the Article at the Havana Conference. Some two dozen amendments to the Article were referred to the sub-committee(1) for attention. The majority of these amendments were in effect submerged in the discussions which ensued over the amendments proposed by the United States.

Evidently stimulated by the views expressed by the International Chamber of Commerce, the United States Delegation criticized paragraph 2 of the Geneva Draft for its vagueness and ambiguities. The I.C.C. had previously contended that the provisions of this paragraph would create among potential investors a sense of even greater insecurity than at present.(2) In an effort to tighten the conditions imposed upon the debtor countries, the United States first proposed that paragraph 2 of the Geneva Draft should be replaced by the following words:

> "each member shall, upon the request of any other member, enter into and carry out with such other member negotiations directed to giving effect to the provisions of paragraph 1 of this Article".

Defending the exemptions set forth in paragraph 2 of the Geneva Draft, the delegations of Australia, British India and New Zealand, among others, took issue with the new United States suggestion. The proposed obligation to negotiate and to consummate a bilateral agreement upon the request of another member drew strong criticism. In contradiction, these countries contended that every member had the right: (1) to decide what foreign investments it would permit; (2) to decide when and where it would tolerate foreign investments: (3) to discriminate in favour of new or existing domestic or certain foreign investments - if necessary.

In an effort to placate this opposition, the United States Delegation submitted a further redraft of the Article, which involved reconstructing paragraph 1 of the Geneva Draft, dropping the second paragraph - over which the main controversy had arisen, moving the original paragraph 3 into second position, and adding a wholly new third paragraph.(3)

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(1) The following delegations were appointed members: Australia, Brazil (J.G.Torres, Chairman), Canada, Ceylon, Czechoslovakia, Egypt, India, Mexico, Netherlands, New Zealand, Sweden, United Kingdom, United States, Venezuela.

(2) International Chamber of Commerce: "A Charter for World Trade", Brochure No. 124, pages 12-13.

(3) The reconstructed first paragraph and the new third paragraph submitted by the United States were as follows:-
1. "The Members recognize that international investments[, both public and private,] can be of great value in promoting economic development and consequent social progress. They recognize that such development [would] will be facilitated if Members [were to] afford reasonable opportunities for investment upon equitable terms to the nationals of other Members and security for existing and future investments. They recognize also that Members have the right to prevent or limit the making of investments within their territories, or to establish appropriate safeguards with respect to such

The revised United States draft failed to allay the strong opposition in the sub-committee, and it was almost immediately withdrawn by that Delegation. The Australian Delegation then submitted a draft which left paragraph 3 of the Geneva Draft intact but replaced the first and second paragraphs with new phraseology derived in small measure from the previously withdrawn United States draft. After modifications had been made in it, this Australian draft emerged as the finished product of the sub-committee.

Underlying Article 12 of the Havana Charter is the simple proposition - fostered principally by the United States Delegation - that if conditions are made favourable in the borrowing countries, lenders will again be prepared to furnish a significant volume of private (and public) capital for foreign investment. In order to provide the required conditions, expectant borrowing countries must offer certain assurances, first to attract private capital, and second to guarantee stable and equitable treatment to the foreign investors when their capital resources have been committed.

In line with this conception of the problem, Article 12 is designed to assist in creating an environment favourable to the international flow of capital - generally the emphasis was on private capital. The suitable environment is to be created by the negotiation of bilateral and multilateral agreements which will set forth the mutually acceptable conditions under which the capital importing members will receive and treat capital investments from the capital exporting countries.

The Members are required to commit themselves - subject to important reservations described subsequently - to the following undertakings:-

1. To provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments (Paragraph 2(a)(i)).

2. To give due regard to the desirability of avoiding discrimination as between foreign investments. (Paragraph 2(a)(ii)).

3. Upon the request of any Member, and without prejudice to existing international agreements to which Members are parties (e.g. the IMF Articles of Agreement), to enter into consultation or negotiations directed toward a mutually acceptable agreement. (Paragraph 2(b)).

4. Members shall promote co-operation, when appropriate, between national and foreign investors for the purpose of encouraging development or reconstruction. (Paragraph 3).

In making these undertakings, however, the Member does not impair its right:

1. to ensure that foreign investments are not used for interference in the Member's internal affairs;

(3) - continued.
investment, including measures adequate to ensure that it is not used as a basis for interference in their internal affairs or national policies".
3. "Members undertake, for the purpose of carrying out the principles and subject to the limitations expressed in this Article:
(a) to provide reasonable opportunities for private investment and adequate security for existing and future investments; and
(b) upon the request of any Member to enter into consultations or to participate in negotiations directed toward agreements with respect to international private investments".

2. to determine the circumstances, if any, under which it will allow future investments;

3. to prescribe requirements governing ownership of either existing or future investments[4];

4. to prescribe other reasonable requirements with respect to existing and future investments.

In the light of these extensive reservations, the question may be asked just what does Article 12 accomplish. The attitude of some of the delegations in the concluding session of the main committee will indicate the general evaluation. For example: the International Chamber of Commerce submitted "that in practice the present draft will tend to discourage private investors from venturing their capital abroad". The Belgian Delegation, supported by Luxembourg, Switzerland, the United States, Sweden, and the Netherlands, contended that the Article gave wholly inadequate guarantees to those countries which had in the past supplied a large volume of funds for foreign investments (Belgium endeavoured unsuccessfully to have paragraph 3 removed as a sign of protest). The delegations of Australia, Ceylon, Chile, Cuba, India, Mexico, New Zealand, Venezuela and Uruguay, in general defended the article as it stood against the accusations of Belgium. In short, the Article emerged as a compromise statement which did not satisfy the leading protagonists and which, in effect, really left the whole problem to the realm of future bilateral agreements were presumably the bargaining position of the contracting Members would determine the situation in each individual case.

Throughout the discussions at the various committee stages, the Canadian Delegation - stressing Canada's favourable past record as a capital importer, and its more recent role as a small creditor - took the view that the broad question of international investment had not yet received the collective consideration it required, and that consequently Article 12, in its present form, must be considered immature.

Pointing out that the Article was not well integrated with the balance of payments Articles 21, 23 and 24, the Canadian Delegation observed that for balance of payments reasons Members were often just as loath to permit outward capital movements - whether of its own nationals or of the foreigner - as other Members were loath to accept foreign loans or to guarantee national treatment to foreign investments.

Although unable - because of the reluctance of the United States Delegation - to retain an explicit reference to the International Monetary Fund in the Article, the Canadian Delegation successfully pressed for the inclusion of the words "without prejudice to existing international agreements to which Members are parties". In the report of the sub-committee it is made clear that the Articles of Agreement of the International Monetary Fund are definitely included in this phrase. The purpose of the Delegation was to ensure that, if requested to enter bilateral negotiations, Canada would, if necessary, be able to defend any exchange restrictions on capital movements when they were enforced for balance of payments reasons (See Article VI, Articles of Agreement, International Monetary Fund).

(4) For example, a Member may prescribe that 51 per cent of the stock should be held by nationals, or that a certain proportion of the management and staff should be made up of nationals, etc.

Article 13 . This Article is the longest and most complicated Article in the Charter. Broadly speaking it contains an exception to the basic rule of the Charter which outlaws the use of quantitative restrictions for protective purposes. It provides the mechanism and establishes the conditions under which quantitative trade restrictions may be used for protective purpose to assist in the economic development or reconstruction of a particular branch of industry or agriculture.

The preamble recognizes that econonomic development or reconstruction may require governmental assistance in the form of protective measures. It issues clear warning, however, that an unwise use of protective measures would endanger their own economies and introduce difficulties for other Members.

The substantive provisions deal with three categories of cases which may arise if a Member desires to adopt prohibited measures for purposes of promoting economic development and reconstruction. Articles 13 and 14 deal with measures of a non-discriminatory nature imposed on the importation of goods and make no reference to exportation.

1. If a Member desires to adopt a measure which is inconsistent with a contractual obligation undertaken pursuant to the Charter, i.e., to raise a tariff rate which was bound in the tariff negotiations, it must obtain release from Members who have contractual rights in respect of the product in question. The Member seeking release may enter into direct negotiations with other Members enjoying contractual rights or do so through the Organization. In the latter case the procedure is somewhat easier by virtue of the fact that the organization selects from among Members with contractual rights only those which are materially affected. Substantial agreement must be reached with all materially affected Members enjoying contractual rights before release is granted to adopt the proposed measure.

2. If a Member desires to adopt a measure for purposes of economic development which is both inconsistent with a negotiated commitment, and with provisions of the Charter, i.e., to impose a quota on a product for which the tariff rate was bound pursuant to negotiations, it must proceed according to the procedure laid down under 1, that is, obtain release by negotiation with Members enjoying contractual rights. In addition, all other materially affected Members, though not enjoying contractual rights, must be given a fair hearing before release is granted.

In both sets of cases, if the development programme is jeopardized by a serious increase in imports during the process of negotiations, the Member is permitted unilaterally to adopt temporary restrictive measures to compensate and adjust for the abnormal flow of imports in order to maintain the level of imports prevailing before the application was made. Such temporary restrictions must be abandoned once negotiations are completed or discontinued. To prevent abuse, and because contractual rights are involved, a safeguard is included whereby Members whose contractual rights are impaired, may withdraw equivalent obligations of which the Organization does not disapprove.

3. If a Member desires to adopt a measure for purposes of its economic development, which is inconsistent with provisions of the Charter, i.e., to impose a quota on a product for which the tariff rate is unbound, it must make application to the Organization and submit its case in support of the measure. There are three procedures under which release may be obtained to adopt the proposed measure.

(a) If the case presented in support of the proposed measure conforms to any one of the following four criteria, the Organization is required to grant immediate release to adopt the measure for a specified period:

(1) The measure is designed to protect an industry established between January 1, 1939, and March 24, 1948, which was protected during that time by abnormal war conditions.

(2) The measure is designed to protect a newly-established or-developed industry which processes a domestic primary commodity when the exports of that commodity have fallen off sharply because of new or increased trade restrictions imposed abroad.

(3) The measure is <u>necessary</u> to promote an industry for the processing of a domestic primary commodity, considering all the circumstances of the Member; provided that such industry will, in the long run, enhance the standard of living of the Member, and not have harmfull effects on international trade.

(4) The measure is unlikely to be more restrictive of trade than a permissible measure which it is feasible for the Member to impose; and is more suitable considering all the circumstances of the case.

The first two criteria are factual and objective, so that approval in such cases would be automatic and immediate. The latter two criteria entail considerable elements of judgment on the part of the Organization. Hence these two criteria cannot be regarded as being automatic and their inclusion as automatic criteria is purely formal.

Release by the Organization to adopt a proposed measure under the established criteria is subject to the following conditions:

(1) Release is given for a specified period only;

(2) After the specified period an application to extend the measure shall not be subject to approval under the criteria, but shall fall under the general procedure.

(3) The Organization may not grant approval under the first three criteria to any measure which is likely to damage seriously the exports of a primary commodity on which a Member is heavily dependent.

(b) If release is not obtained under the "automatic" criteria, or if the proposed measure obviously doesn't conform to the criteria, the Organization will transmit the supporting statement to all materially affected Members. If there are no objections within a specified period release will be granted. If there are objections a detailed examination will be made by the Organization. On the basis of this examination release to adopt the measure may be granted; granted subject to modification; or refused. This procedure is subject to a ninety-day time limit in order to prevent forestalling. There is a proviso to extend the time limit in abnormal or difficult cases.

(c) The applicant Member may proceed by direct consultation with affected Members to obtain their concurrence. Safeguards are provided to ensure that all materially interested Members are consulted. This procedure would appear to be the most

difficult and cumbersome and will not likely be used to any appreciable extent.

To protect the applicant Member against a large increase, or threatened increase in imports which was serious enough to jeopardize the plan for development, provision is made for temporary emergency measures to restrict imports to the level prevailing prior to the application. No provision is made for compensatory action by other Members since the proposed measures under this category do not conflict with contractual obligations.

Article 14. This Article is closely related to Article 13 and must be considered along with it. It provides a transitional arrangement whereby measures adopted for economic development or reconstruction, which are inconsistent with the provisions of the Charter but not inconsistent with negotiated obligations, may be continued pending their examination by the Organization as if they had been submitted for approval under the provisions of Article 13. Such examination and decision will be made by the Organization within twelve months from the time a country becomes a Member of the Organization. The cut-off date for existing measures is October 10, 1947, in the cases of countries which are Parties to the General Agreement on Tariffs and Trade. For other countries, the cut-off date is the date of deposit of instruments of acceptance of the Charter, or the date the Charter enters into force, whichever is earlier.

In cases where the Organization requires the withdrawal or modification of the measure it may allow a suitable period of time for a country to fulfil the requirements in order to avoid undue hardship.

Articles 13 and 14 were the subject of the most serious and prolonged controversy at the Havana Conference. The underdeveloped countries, mainly the South American States, the Central American States, the Arab States, India, Pakistan and China, argued that tariffs and subsidies were often inadequate or inappropriate to protect new industries. The extremists proposed that a defined category of underdeveloped countries be permitted exclusive freedom to impose quantitative trade restrictions as they saw fit in order to implement their programmes of economic development. A more moderate, but equally unacceptable, proposal called for freedom to impose quantitative restrictions in the first instance subject to a posteriori examination by the Organization. A compromise was reached which retained the principle of prior approval by the Organization. Certain defined criteria were established, which, if fulfilled, made it mandatory on the Organization to grant release. This compromise came to be known as "prior automatic approval."

The Canadian Delegation maintained a consistent approach through all stages of the preparatory work and the Havana Conference in opposing the right of a country to use quantitative trade restrictions for protective purposes, except in limited and carefully circumscribed circumstances. The Geneva draft Charter went further in granting this right then the Canadian Delegation would have liked. The Havana Charter carried the escape clause somewhat further, but not as far as is sometimes supposed. The only effective widening of Article 13 occurred in the establishment of two criteria which if fulfilled called for automatic approval. Of these, the serious one is the criterion permitting the protection by quantitative restrictions of industries which were established during the war. Even here, however, this right is only for a limited period of time and subject to rather strict conditions.

There can be no doubt that the provisions of Articles 13 and 14 may easily become the most serious loophole in the Charter, in spite of the numerous safeguards and qualifying clauses. A great deal will depend on the courage with which the Organization handles initial applications, particularly those which will be examined in the first year of its life under the transitional arrangements contained in Article 14. If properly administered and carefully limited, this escape clause should not have serious consequences on the effective operation of the Charter. This may be all too difficult to achieve considering the voting arrangements in the Organization. The present compromise was the best arrangement that could be obtained consistent with broad general agreement. Concessions were made only as a last resort and in order to avoid the complete breakdown of the Conference.

Although Canada may certainly be classed as an underdeveloped country in respect of many industries, it has never been Canadian policy to protect new industries by means of quantitative restrictions. Unless there is a major shift in policy Canada will not resort to the escape clause contained in Article 13. Even if it should be desirable to make use of these provisions in limited special cases, our position vis-a-vis the United States would make it highly improbable. Accordingly, Articles 13 and 14 must be regarded strictly as one-way escape clauses which, if used, can be used only to the disadvantage of Canadian trade interests. It may prove to contain the seeds of serious obstacles in any future attempts to expand the export of Canadian manufactured goods.

Article 15. This Article contains an exception to the most-favoured-nation principle. It provides the mechanisms and states the conditions under which countries may obtain release to enter into new preferential arrangements for purposes of Economic Development and Reconstruction.

The preamble states that special circumstances may justify new preferential arrangements between two or more countries for purposes of economic development or reconstruction.

A Member desirous of entering into a preferential agreement is required to make application to the Organization and submit a supporting statement containing all the information necessary for a complete and detailed examination of the proposed agreement. Permission to preceed with the preferential arrangements may be obtained under the following two procedures.

1. A two-thirds majority vote of the Members present and voting may grant permission to depart from the most-favoured-nation principle and enter into the proposed agreement. Such permission may require appropriate modification of the agreement or impose other limiting conditions.

2. If the proposed agreement fulfills all the following conditions, it is mandatory on the Organization to grant permission to depart from the most-favoured-nation principle for the purpose of completing the agreement.

(1) The territories of the parties to the agreement are contiguous or all part of the same economic region.

(2) Any preference provided for is necessary to ensure a sound and adequate market for an industry which is being set up or being substantially developed.

(3) The parties to the agreement grant free entry or low

customs duties on the items subject to preferential treatment.

(4) Compensation for preferences received if it takes the form of a preference must also conform to all the criteria.

(5) The agreement must contain provisions permitting adherence of other Members who can qualify under the criteria on terms to be determined by negotiations with other parties to the agreement.

(6) The agreement must contain provision for its termination not later than at the end of ten years. The agreement may be renewed for five-year periods, subject to the approval of the Organization.

In addition to meeting the above criteria, the Organization, when approving a particular margin of preference, may require as a condition of its approval the reduction of an unbound most-favoured-nation rate of duty if it considers the rate excessive.

If all the criteria are met and the conclusion of the agreement does not threaten serious injury to another Member, the Organization is called upon to grant permission to proceed with the agreement within two months from the date of application.

If injury is likely to be caused to another Member, the Organization shall sponsor negotiations between the affected parties. On agreement being reached the necessary approval will be granted. If there is any forestalling and no agreement is reached within two months, the Organization shall prescribe fair compensation or modification of the preferential arrangement.

If the Organization finds that the economic position of a Member is likely to be jeopardized by the proposed agreement, it is directed not to grant release until a mutually satisfactory settlement is reached with that Member. In such cases there is no safeguard against possible forestalling.

A select category of cases is singled out for more favourable treatment than the general categories already covered. If a Member, party to a proposed preferential arrangement, has obtained before November 21, 1947, the right to depart from most-favoured-nation treatment from countries representing two-thirds of its import trade, the Organization is required to release the Members, providing criteria (1), (5) and (6) as outlined above are met. A safeguard is included to protect the interests of those Members which have not recognized the right to depart from most-favoured-nation treatment. Such a country, if threatened with substantial injury by the proposed arrangement, is entitled to negotiate for fair compensation. If negotiations are not successful within a prescribed time period, the Organization is directed to fix fair compensation or modification of the agreement. This clause is known as the "Ottoman Clause". It was included to meet the special needs of the Arab States and the Central American States.

With the exception of the controversy over quantitative trade restrictions, the debate on new preferential arrangements was the most bitter and prolonged at the Havana Conference. The compromise reached involved changes to Article 15, Article 16, and Article 44. Articles 16 and 44 will be discussed later in this report.

The Canadian Delegation held that the m.f.n. principle is fundamental to the Charter, and in accordance with that principle agreed to conform to the requirements and conditions imposed on established preferences, which called for negotiations for their gradual elimination. It would not be logical or reasonable to provide for the elimination of existing preferences if escapes were permitted for the creation of new preferences. Canada's record in the Geneva negotiations was referred to from time to time to support the position of the Canadian Delegation. The issue on the question of new preferences did not involve as clear-cut a division of views as the quantitative restriction issue. Mexico and several South American republics opposed new preferences. Nevertheless there was a clear majority of the States represented at Havana in support of fairly flexible permission to enter into preferential arrangements.

Because of the importance of this particular Article, it may be worthwhile to analyse the nature and the significance of the compromise in some detail. The Geneva Article governing new preferences for economic development contained a simple statement recognizing that special circumstances might justify such arrangements. Provision for a two-thirds majority requirement was tentative, and the actual decision was left over for the Havana Conference. The Havana compromise establishes a two-thirds majority requirement for the general case. In this sense the Article is now more restrictive of new preferences than the Geneva Article, since a two-thirds majority is the most rigid requirement in the Charter. The "Ottoman Clause" gives considerable freedom to the Arab states, and to Central America, since the criteria in their cases are almost purely formal. It was generally felt by those countries opposing new preferential arrangements that such arrangements by the Arab states and the Central American states would be rare and of limited scope. Laxity in their case permitted a much tighter article in respect of those countries where new preferential arrangements might be substantial and serious. The only other substantial change to the insertion of a set of criteria and conditions, which if fulfilled make it mandatory on the Organization to grant release. The general evaluation of this escape clause was:

(1) It would be exceedingly difficult to obtain release in order to enter into new preferential arrangements;

(2) The few agreements that could conform to the difficult criteria and conditions would be of limited significance;

(3) The safeguards are adequate to protect the interests of Members against injury or abuse.

The Canadian Delegation agreed to accept this compromise only as a last resort, and only when it became evident that broad agreement could not be reached without it. It was in conformity with the general view of the nuclear countries that the escape was a tight and difficult one, and even though it was an additional breach of the m.f.n. principle, would not prove to be too serious in practice.

Article 15 in no way effects existing preferential errangements to which Canada is party. It would permit new preferential arrangements between Canada and neighbouring countries on a limited group of commodities. Under present trade policy it is highly unlikely that Canada would resort to the provisions of Article 15. Accordingly Article 15 must be regarded as an escape from the m.f.n. principle which if resorted to might be used to the disadvantage of Canadian trade interests, particularly in South America. Broadly speaking, however, it can be regarded as a reasonable compromise, which does not involve serious threats to Canadian interests.

CHAPTER IV - COMMERCIAL POLICY

The Chapter on Commercial Policy is the heart of the Trade Charter. It prescribes the basic legal framework within which Members must conduct their commercial relations. It is in effect the code of laws governing the conduct of Members with respect to tariffs, preferences, internal taxation and regulation; quantitative restrictions; subsidies; state trading; and general and special commercial provisions. These matters are dealt with under six sections, A to F, as shown below.

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

Article 16 - General Most-favoured-nation Treatment
Article 17 - Reduction of Tariffs and Elimination of Preferences
Article 18 - National Treatment on Internal Taxation and Regulation
Article 19 - Special Provisions Relating to Cinematograph Films

Section A sets down three fundamental principles in relation to tariff matters:

1. Most-favoured-nation treatment.
2. Reduction of tariffs and elimination of preferences.
3. National treatment on internal taxation and regulation.

Article 16 - General Most-Favoured-Nation Treatment. This Article establishes the basic principle to most-favoured-nation treatment. Every member undertakes to accord to every other Member the most favourable treatment which it accords to any other country with respect to tariffs, internal taxation, and other regulations of commerce.

Existing preferences on imports, which are specifically enumerated in the Article or in annexes to the Article, are recognized as exceptions from the general most-favoured-nation principle. Such existing preferences are subject to negotiation for their elimination under the terms of Article 17. Margins of tariff preferences, on any product for which preferences are permitted, must not be higher than those margins incorporated into trade agreements pursuant to the tariff negotiations required in Article 17. In the absence of such agreements, the maximum margins of preference which may be retained are those existing on April 10, 1947, or such earlier date as may have been agreed upon as a basis for negotiating the General Agreement on Tariffs and Trade. Existing preferences which form a component part of an internal tax which was in effect on April 10, 1947, may be incorporated into a tariff preference.

Although there was considerable controversy at the Havana Conference in respect of existing preferential arrangements, there were no substantial changes. Existing preferences of those countries which were not represented at Geneva were given the same treatment as other existing preferences by including them in the Article or annexes. Certain Latin American and Middle Eastern countries seized on the provisions for main-

taining existing preferences as a powerful argument for permitting new preferential arrangements. This was countered by the argument that it would be most unreasonable to call for the elimination of existing preferences by process of negotiation, and the binding of existing margins of preferences, while at the same time permitting new preferences. Efforts to place new preferences on the same footing as existing preferences, or to provide a maximum time limit within which all preferences would have to be eliminated were successfully resisted. Under Article 16 Canada undertakes:

1. Not to create new preferences.
2. Not to increase existing margins of preference.
3. To negotiate on request, in accordance with the terms of Article 17, for eventual elimination of preferences.

Article 17 - Reduction of Tariffs and Elimination of Preferences. This Article requires that Members will negotiate on the request of any other Member, subject to procedures established by the Organization, for the substantial reduction of the general level of tariffs, and for the elimination of preferences. Such negotiations are to be conducted on a mutually advantageous basis, according to the following rules:

1. Negotiations shall be conducted on a selective, product-by-product basis. This rule was introduced to permit a country to reserve particular products from negotiations, if its special circumstances required it.

2. The binding of low tariffs, or the binding of free entry, shall be recognized in negotiations as equivalent to a substantial reduction of high tariffs or the elimination of tariff preferences.

3. In negotiations on products with respect to which a preference applies,

   (a) the reduction of the most-favoured-nation rate only shall operate automatically to reduce or eliminate the margin of preference;

   (b) the reduction of the preferential rate only shall operate automatically to reduce the most-favoured-nation rate to the same extent that the margin of preference is reduced;

   (c) the reduction of both the most-favoured-nation rate and preferential rate shall operate to reduce both rates to the extent agreed in the negotiations;

   (d) margins of preference must not be increased.

4. Existing international agreements shall not be permitted to stand in the way of negotiations for the elimination of preferences.

The Geneva tariff negotiations, the results of which were incorporated into the General Agreement on Tariffs and Trade, are to be regarded as negotiations under the terms of this Article. All concessions negotiated pursuant to this Article

are to be incorporated into the General Agreement on Tariffs and Trade on terms to be agreed with the parties to that Agreement.

A Member is given two years after the Charter enters into force to negotiate for the reduction of tariffs and the elimination of preferences. If it fails to become a Contracting Party of the General Agreement within two years it may lose its most-favoured-nation rights in respect of other Members which have requested to negotiate but have not successfully completed such negotiations. If a Member proposed to withhold most-favoured-nation treatment from any Member under these provisions, it must first notify the affected Member and the Organization. The affected Member may challenge the right to withhold most-favoured-nation treatment on the grounds that it has been unreasonably prevented from becoming a Contracting Party to the General Agreement. If so challenged, most-favoured-nation treatment may not be withheld pending a determination by the Organization as to whether the affected Member has been unreasonably prevented from becoming a Contracting Party to the General Agreement. Such determination is to be made by a simple majority of the votes cast in the Conference, after taking into consideration all relevant circumstances in which the affected Member finds himself, including fiscal, developmental and reconstruction needs. If, in fact, the Organization grants permission to withhold most-favoured-nation treatment, the affected Member is then free to withdraw from the Organization.

Article 17 was the subject of long controversy, deriving mainly from the closely-related question of whether there should be an autonomous Tariff Committee to administer the Article as provided for in the Geneva draft of the Charter. The existence of a relatively autonomous Tariff Committee gave rise to the objection on the part of the so-called under-developed countries that a select group of highly-developed countries were thus given a veto power over the terms of entry of new Members into the General Agreement. This controversy was further complicated by proposals to establish a similarly autonomous Economic Development Committee to offset and balance the influence of the Tariff Committee. The compromise finally reached eliminated both the Tariff Committee and the Economic Development Committee. This decision involved consequential changes in Article 17, with the result that the Article is now administered by the Executive Board. Determinations required under paragraph 4 are to be made by the Conference on the basis of simple majority of the Members voting. The nuclear countries, including Canada, felt that a Tariff Committee, with powers as provided for in the Geneva draft, was essential to protect the interests of those countries which had negotiated substantial tariff reductions and elimination of preference at Geneva. Since this position could be maintained only by accepting the establishment of an Economic Development Committee, the nuclear countries agreed that it would be preferable to eliminate both Committees, even though this meant some weakening of the control over subsequent tariff negotiations. Several countries, notably the United Kingdom, insisted that under the present provisions there is a danger that the so-called under-developed countries would be able, because of their voting strength in the Conference, to force the acceptance of rather "thin schedules of concessions", as payment for their membership in the General Agreement. It was widely believed, however, that this danger was over-estimated on the grounds that "block voting" would break down on specific issues, such as the concessions which a country must make before being accepted into the General Agree-

ment. Experience at the Havana Conference lent support to this view. It was generally found that although "block voting" tactics were evident on some broad issues, this technique broke down on specific issues.

Canada has, by virtue of its successful negotiations at Geneva, largely completed its obligations under the provisions of Article 17. In applying the concessions negotiated at Geneva under the Protocol of Provisional Application, Canada became a Contracting Party to the General Agreement on Tariffs and Trade. In the course of two years following the date on which the Charter comes into effect, Canada will be required to conduct negotiations with all the Member countries which did not participate in the Geneva tariff negotiations.

<u>Article 18 - National Treatment of Internal Taxation and Regulation</u>. The general purpose of this Article is to prohibit the use of internal taxes, charges, laws and regulations, as methods of affording protection to domestic production. The basic requirement is that of national treatment, i.e., treating imported products in no less favourable a manner than the treatment of domestic products as regards internal taxes, charges, laws, regulations, etc. To appreciate fully the importance of this Article it must be recognized that differential internal taxes and regulations, unless carefully controlled, can be used to impair or nullify the value of negotiated concessions. Paragraph 1 sets down the basic principle that internal taxes, laws, regulations, etc., must not be applied to imported or domestic products in such a way as to afford protection to domestic production.

Internal taxes or charges must not be higher on imported products than they are on the like domestic product. To guard against indirect protection there is a further proviso that internal taxes and charges must not be applied in a manner contrary to the general principles contained in paragraph 1. An interpretative note explains that the second proviso applies in cases where there is competition between the taxed product and a directly competitive product which is not similarly taxed.

Protective internal taxes and charges which are prohibited by the Article may of course be incorporated into a customs tariff in order to maintain the protective incidence of the tax or charge. If, however, the tariff on the commodity in question is bound against increase in an existing trade agreement, so that conversion of protective element in the tax into a tariff is not possible, provision is made for the retention of the otherwise prohibited tax until release can be obtained to increase the tariff.

Internal laws and regulations must not be more restrictive of imported products than they are of like domestic products. Differential transportation charges which are based solely on the economics of the transportation facilities are permitted. It is significant to note that this paragraph is not qualified by the general principles of paragraph 1 specifically, whereas paragraphs 3 and 5 which deal with internal taxes and internal quantitative regulations are so qualified.

Internal mixing regulations must not require that a certain proportion of the commodity or components is supplied from domestic sources. A further proviso requires that internal quantitative regulations, i.e., mixing regulations, must not be applied in a manner inconsistent with the general principles of paragraph 1. An interpretative note explains that the second proviso is included to guard against indirect protection which might occur if there is no substantial domestic production of the product subject to the internal mixing regulations.

Existing internal quantitative regulations are excepted from the requirements of the Article. These are made subject to negotiation according to the terms of Article 17 in the same way as tariffs. They may not be modified to the detriment of imports. In any event internal quantitative regulations must not discriminate as between foreign sources of supply.

Internal laws and regulations governing the purchase of commodities by Governments which are not used for commercial resale, or in the production of goods for commercial resale, are not subject to the provisions of the Article. Payment of subsidies to domestic producers exclusively is not to be regarded as contrary to the provisions of the Article, even though these subsidy payments may be derived from the proceeds of internal taxes.

A final provision recognizes that maximum price controls may prejudice the export interests of other Members. Accordingly, Members undertake to operate such controls in such a manner as to avoid wherever possible, prejudice to the interests of other Members.

The Havana text of Article 18 differs radically in form from the Geneva draft. In spite of serious controversy, prolonged debate and many efforts to water down the provisions of this Article, it has not been weakened in substance, and in some respects its provisions are now tighter. The Havana version differs substantially from the Geneva draft in only one respect. The Geneva draft provided that existing internal taxes, which afforded indirect protection to directly competitive products in cases where there was no substantial domestic production of a like product, could be maintained subject to negotiations for their elimination or reduction. The present Article now requires their outright elimination. The new form of the Article makes clearer the basic intention that internal taxes and regulations must not be used ordinarily as a means of protection. The details have been relegated to interpretative notes so that the precise obligations which Members undertake are more clearly defined.

During the Havana Conference the question arose as to whether the provisions of the Charter would require the elimination or modification in Canada of the internal law relating to oleomargarine. The relevant extract from the Dairy Product Act reads as follows:

> "No person shall manufacture, import into Canada, or offer, sell or have in his possession for sale, any oleomargarine, margarine, butterine or any substitute for butter manufactured wholly or in part from any fat other than that of milk or cream".

It was suggested that the provisions of Article 18 and Article 20, which would appear to require the modification of this law, do not require it. The legal authorities of the United States Delegation, after careful examination of the relevant provisions of the Charter, confirmed this interpretation. Although the following remarks are not intended as a legal interpretation of the relevant Articles the reasoning behind the interpretation would appear to be as follows:

Article 18, paragraph 4, states -

> "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".

Paragraph 2, dealing with internal taxes and charges, and paragraph 5, dealing with internal quantitative regulations, in addition to requiring national treatment, contain provisos and interpretative notes to guard against indirect protection to substitutable goods.

There is no such additional proviso in regard to internal laws and regulations. It would appear, therefore, that the only requirement of paragraph 4 in relation to internal laws and regulations is national treatment. The ban on oleomargarine fully complies with national treatment, and even though indirect protection to butter is involved, such protection is not specifically excluded.

This interpretative note says in effect that the prohibition of the import of oleomargarine required to enforce the law forbidding any person "to offer, sell or have in his possession for sale", is to be regarded as an internal law, subject to the provisions of Article 18, and not as an import prohibition, subject to the requirements of Article 20. There is nothing in Article 18 which would require the modification of the Dairy Products Act, since it complies fully with the national treatment requirement.

Insofar as the Dairy Products Act specifically and directly prohibits the import of oleomargarine, it can be argued that the provisions of Article 20 apply in any event. Article 45, which contains the general exceptions to the Chapter on Commercial Policy states:

> "Nothing in Chapter 4 shall be construed to prevent the adoption or enforcement by any Member of measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter".

The measure prohibiting the import of oleomargarine is clearly necessary to secure compliance with the law forbidding any person "to offer, sell or have in his possession for sale". It is therefore specifically excepted from the requirements of Article 20, paragraph 1.

It would appear that the provisions of Article 18, the interpretative note to Article 18, and Article 45, would permit the retention in Canada of the ban on oleomargarine.

Article 19 - Special Provisions Relating to Cinematograph Films. This Article excepts films from the provisions of Article 18. It provides that a Member may:

(1) allocate a proportion of screen time for films of national origin;

(2) discriminate, by allocating a proportion of screen time for films of specified origin to the extent that it did so discriminate on April 10, 1947.

Within these limits, screen time must not be allocated as between sources of foreign supply. Screen quotas are made subject to negotiations in the same way as tariffs and preferences under the provisions of Article 17.

The Canadian Delegation did not take an active part in drafting this Article. Several countries, mainly Czechoslovakia and Poland, believed that the Trade Charter ought not to include provisions dealing with cinematograph films. There were no changes whatsoever at Havana to the provisions of Article 19.

SECTION B - QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROLS

Article 20 - General Elimination of Quantitative Restrictions
Article 21 - Restrictions to safeguard Balance of Payments
Article 22 - Non-discriminatory Administration of Quantitative Restrictions
Article 23 - Exceptions to the Rule of Non-discrimination in the use of Quantitative Restrictions
Article 24 - Co-operation with the Monetary Fund in seeking Exchange Arrangements

Government measures which restrict by absolute quotas the quantities of commodities which are allowed to be imported into, or exported from, a country, are recognized as the most damaging form of restraint on international commerce. To the extent that they are used, Q.R.'s defeat the purpose of the Charter which aims to make the customs tariff in the form of a duty, tax or charge the only impediment to the free exchange and movement of goods among Members of the Organization.

Article 20 - General Elimination of Quantitative Restrictions. In paragraph 1, Members agree to the general elimination of quantitative restrictions on imports and exports and thereby undertake to support what has been regarded as the most important single principle contained in the Charter.

After setting out the general principle with respect to the elimination of quantitative restrictions, the Article then deals with circumstances under which exceptions can be made and, when resorted to, lays down definite rules as to how Q.R.'s may be employed.

Members recognized that it would be very difficult to apply the rule of "no Q.R.'s" without exception in the case of agricultural and fisheries products, the supply of which is dependent on the weather and on other uncontrollable factors. Because of the special difficulties associated with the production and marketing of agricultural and fisheries products, Members are permitted an escape from the general principle of "no Q.R.'s" when applied to the import of such products if associated with production control or a surplus disposal programme. Paragraph 2 also provides that the general undertaking by Members to eliminate quantitative restrictions shall not be applicable to temporary restrictions on exports of foodstuffs or other products when they are in critically short supply and to import and export restrictions used to protect commodity grades and standards.

At Havana considerable discussion took place on the provisions of this Article. A number of countries wanted to broaden the exceptions to allow the use of quantitative restrictions on imports or exports to stabilize their domestic price levels and

even out seasonal fluctuations in prices. These proposals did not receive the support of the Conference.

This Article is of immense importance to Canada, which is dependent to such a large extent on export markets. The Canadian Delegation, therefore, was concerned as to how other countries might use the escape clauses for the products of agriculture and fisheries, and endeavoured throughout all stages of conference proceedings to narrow its application and introduce safeguard against injury to Canada's export trade.

The Canadian Delegation took the position that there should be no weakening of the Geneva draft which, in its opinion, had opened the door so widely that agriculture was almost written out of the Charter. The Delegation pressed strongly for a strengthening of the whole Article and was able to achieve this in part, through changes in wording in a number of clauses. In particular, Canada pressed for the adoption of the principle of prior consultation before quantitative restrictions on imports are used. It was pointed out that the sudden imposition of import restrictions might have serious effects on the interest of exporting countries, and that to avoid this there should be provisions requiring Members intending to introduce such import restrictions to give as much advance notice as possible to exporting countries in order to afford adequate opportunity for consultation before the import restrictions were put into effect. The Conference agreed to have this principle written into the Article in a new clause.

The exception which permitted the use of import restrictions on any agricultural or fisheries product, if associated with production control or a surplus disposal programme, was of great concern to the Canadian Delegation, for, if used, it could impair or nullify important concessions obtained from Members in the General Agreement on Tariffs and Trade.

At Geneva, Canada obtained the maximum reduction in the duty on wheat entering the United States, i.e., from 42 cents per bushel to 21 cents per bushel, and the United States agreed that the quota restriction of 800,000 bushels annually would be inoperative under the Agreement. If the United States at some future date undertakes a programme of control of wheat acreage which operates effectively to restrict production, then the United States has the right under the Charter to re-impose an absolute quota on imports of wheat from Canada. However, the United States cannot now apply an arbitrary quota. The quota must be related to the quantity of wheat which Canada would reasonably be expected to export to the United States in the absence of restrictions on production and imports. This might be, for example, 10,000,000 bushels. Then, if the United States programme operates effectively to restrict production of wheat in the United States to, say, 80 percent of existing production, imports could be restricted in the same proportion, i.e., to 8,000,000 bushels. In determining this proportion, the United States is to have due regard to the proportion prevailing in a previous representative period and to any special factors which may have affected the trade in wheat between the two countries. Under special factors, it would be necessary for the United States to consider the drastic limitation on imports applicable from May 29, 1941 to January 1, 1948.

Another escape is provided for the Member which undertakes a surplus disposal programme in connection with any agricultural or fisheries product by making the surplus available to consumers free of charge or at less than current market

prices. This could operate to the disadvantage of Canada if, for instance, the United States put apples under a food stamp plan, or made them generally available free of charge in a school lunch programme. Under this clause the United States can prohibit the importation of apples for a temporary period.

Although Canada would have liked to have seen both of these escape clauses removed from the Article, this was not possible to achieve in view of the support which they received from other delegations. The Canadian Delegation did, however, obtain general support for the inclusion of a new clause at Havana which provides for consultation before quantitative restrictions are imposed. The new clause reads as follows:

> "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 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 these consultations shall be kept strictly confidential".

Paragraphs 2(d) and 4 of Article 22 refer to the allocation of quotas among supplying countries and the procedure which may be followed by supplying countries in seeking adjustment in their quotas.

Paragraph 4 of Article 20 contains the provision that exceptions as well as limitations in the use of import and export restrictions apply with equal force to State-trading operations.

<u>Article 21 - Restrictions to Safeguard the Balance of Payments.</u> In the discussions which preceded the Havana Conference, it was generally recognized that the blanket prohibition against the use of import or export restrictions laid down in Article 20 might have to be modified in the case of countries experiencing balance of payments difficulties. Since such a member might relieve the pressure on its gold and dollar reserves either by the use of foreign exchange controls (already sanctioned under international agreement through the Articles of Agreement of the International Monetary Fund) or accomplish the same effect by the use of quantitative restrictions on imports. Article 21, as formulated at the Geneva Conference, represented the measure of agreement which had been reached on this topic prior to the Havana Conference.

Criticism of the Geneva draft was implied in the amendments submitted at Havana to the Geneva draft. These fell into two broad opposing categories.(1) First, countries such as Belgium and Switzerland, fearing the probable impact

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(1) The following delegations were represented on the sub-committee: Argentina; Australia; Belgium; Brazil; Canada; Cuba; Czechoslovakia; France; Greece, India; Italy; Lebanon; Liberia; Norway - Chairman J. Melander, Philippines; United Kingdom; United States.

on their own economies, were anxious to circumscribe the use of import restrictions by those less-fortunate countries suffering from balance of payments difficulties. Belgium offered substantial amendments to Articles 21, 23 and 24, in an effort to compel a large amount of international consultation before any Member could embark upon a course of unilateral action. Of this ambitious attack on the Geneva draft only a few general statements of principle found their way into a new paragraph - almost a preamble - of the Havana Article 21.

Second, countries such as Australia, Ceylon, Venezuela, Uruguay and Argentina were generally anxious, though not all to the same degree - to relax the provisions of the Geneva draft wherever there were doubts as to the freedom a Member might have to take unilateral action. In the main, the efforts of these countries did not lead to substantial changes in the Geneva draft. Consequently, Article 21 emerged in the final Havana Charter substantially the same as it was in the Geneva draft. (1)

Irrespective of the causes creating the problem - e.g., domestic full employment policies, crop failures, etc. - a Member country which finds that its foreign exchange resources are being depleted by the payments for imports and other current transactions may restrict the quantity or value of merchandise permitted to be imported. And, in establishing the import restrictions under this Article, the Member has the right to discriminate against the importation of products deemed to be less essential. Action of this kind must, however, be necessary, either,

(1) To forestall the imminent threat (not otherwise defined) of, or to stop, a serious decline in its monetary reserves, or

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

It is provided further that the restrictions on imports shall not exclude minimum commercial quantities of regular imports, commercial samples, or merchandise necessary to retain patent or other property rights, nor inflict unnecessary damage to the economic interests of any other Member. As its external financial condition improves, the Member is also required to relax the import restrictions progressively and ultimately to eliminate them.

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(1) Minor amendments to the Geneva draft were:
(a) changes in paragraph 3(b), formerly 2(b);
(b) changes in paragraph 3(c) (i), formerly 3(c) (ii);
(c) changes in paragraph 4(b), formerly 3(b);
(d) deletion of introductory phrase of paragraph 4(b) (i); formerly 3(b) (i);
(e) sub-paragraphs (ii and (iii) of paragraph 3(c) of Geneva text were transferred to present paragraph 3(c) - formerly paragraph 2;
(f) an interpretative note appended to Article 31 of Geneva draft has been transferred to Article 21.

Surveillance on the part of the International Trade Organization under this Article varies with the circumstances. In the case of a Member which has already introduced (before joining the I.T.O.) import restrictions to solve its balance of payments difficulties, the Organization may (1) at any time invite the Member to consult with it, or (2) if the Member substantially intensifies any existing restrictions, may invite the Member to consult with it.

In the case of a Member which, on joining the I.T.O., does not have import restrictions in force for the purpose of this Article, the Charter requires such a Member to consult with the Organization either (a) before instituting such restrictions, or (2) in circumstances in which prior consultation is impracticable, immediately after instituting the restrictions.

In all cases, the Organization is required, not later than two years after the date of entry into force of the Charter, to review all restrictions then being applied under this Article. And if import restrictions applied under the provisions of this Article should become widespread, the I.T.O. is required (paragraph 6) to initiate discussions to consider whether other measures might be taken - by any of the affected Members, - to remove the underlying causes of the disequilibrium.

Although the Article does not empower the I.T.O. to initiate action in this matter, provision is made (paragraph 5(d)) for complaint procedure when initiated by any Member. If the complaint is substantiated, the I.T.O. may recommend the withdrawal or modification of the offending restrictions. In the event that this recommendation is not adopted within a sixty-day time period, the Organization may release any Member from obligations or concessions under the Charter toward the offending Member.

Throughout the discussions, the Canadian Delegation favoured the retention of the Geneva draft in substantial part - which corresponds to Article XII in the General Agreement on Tariffs and Trade. The amendments finally accepted to the Geneva text at Havana did not alter the main structure or content of the Geneva draft, and they were accordingly supported by the Delegation.

Article 22 - Non-discriminatory Administration of Quantitative Restrictions. Article 22 sets forth the working concepts of non-discrimination which are normally (but see Article 23) to be observed by a Member when - in accordance with the relevant provisions of the Charter - prohibitions or restrictions are placed upon either exports or imports. When applying restrictions, Members are required to "aim at a distribution of trade in such product as closely as possible to the shares which the various Member countries might be expected to obtain in the absence of such restrictions......". Accordingly, the Article imposes upon the Member the obligation to treat all Member countries alike by (1) establishing definite quotas when practicable (2) consulting with all interested Members when determining the quota allocations, (3) supplying to interested Members adequate information about import licenses or permits issued, or about quotas established. In the initial determination of quotas and their allocation, the Member may take the previous experience of some representative period as a guide; provision is made, however, for subsequent consultation at the request of the I.T.O. or of an affected Member regarding the need for an adjustment either of the base period selected or of the allocations.

Although a number of amendments were submitted at Havana to the Geneva draft, only minor changes were incorporated in

the final version of Article 22. (1) Very largely in response to the representations made by the Czechoslovakian Delegation a new sub-paragraph 3(d) was added to the Geneva text which empowered the Organization to relieve Member countries - importing largely from non-Member countries - from the normal obligations to give public notice regarding the establishment of, or changes in, quotas.(2)

Article 23 - Exceptions to the Rule of Non-discrimination. One of the most prolonged and difficult controversies of the Havana Conference centered on this article. At the heart of the controversy lay the provocative principle that, notwithstanding the rigid rules of non-discrimination set forth in Article 22, a Member of the International Trade Organization suffering from balance of payments difficulties might exercise preferential treatment when administering import restrictions under Article 21.

Interest in the exceptions to the rules of non-discrimination was general but it was particularly articulate in the case of those European countries which now employ bilateral trade practices. The principal opposition to any relaxation of the rules of non-discrimination came from the United States, which expected to bear the brunt of any discrimination tolerated by the International Trade Organization.

Article 23 had emerged from Geneva with four countries - Belgium, Czechoslovakia, Chile, and Norway - opposed in whole or in part to its provisions. Consequently, when the Havana Conference convened, these four countries, along with Argentina, France, Denmark, Mexico, Italy, Uruguay, Greece, Syria, Lebanon, and the United Kingdom, submitted amendments or maintained reservations against the Article. In the course of the initial stages of sub-committee work (3) it was possible, because of a general lack of support for the proposed changes, to remove some of these amendments from the Conference agenda. But when the Article finally reached the working party stage (4) an extensive list of amendments still remained for consideration.

During the first few weeks of deliberation in the working party, the United States - principal antagonist to any amendment - was a reluctant and somewhat obdurate participant. Discussion focused on the Geneva draft of the article, the interpretation to be placed upon it, and the amendments offered to it. After some weeks of minimum progress, the United States

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(1) The sub-committee included the following delegations: Ceylon, Chile, China, Colombia, Egypt, France, Ireland, Mexico, Netherlands, New Zealand, Peru, South Africa - Chairman, J.E.Holloway, Sweden, United Kingdom, United States.

(2) Other changes included: the deletion of the footnote to sub-paragraph 2d; a revised interpretative note re "Special Factors" to paragraph 4; a new interpretative note to paragraph 3(b); and as a consequence of the addition of paragraph 7 to Article 18, the last part of the last sentence of paragraph 5 was deleted.

(3) The sub-committee was composed of: Argentina, Australia, Belgium, Brazil, Canada, Cuba, Czechoslovakia, France, Greece, India, Italy, Lebanon, Liberia, Norway, - J. Melander, Chairman, Philippines, United Kingdom, and the United States.

(4) The working party included: Australia, Belgium, Canada - G. Neil Perry, Chairman, Czechoslavakia, France, Norway, United Kingdom United States, and, for one amendment, Greece.

Delegation evidently concluded that there was little likelihood of gaining universal support for the Geneva draft and suddenly presented a new draft. The text of this new draft was said by the Delegation to be substantially the same as the original 1945 United States proposals. This new draft, with various modifications, formed the basis for subsequent discussion in the working party and ultimately became the accepted version in the Havana Charter.

Criticism of the Geneva draft was indicated by the fact that the amendments referred to the working party touched upon nearly every provision of the Geneva draft. At one extreme there were amendments such as those of the Argentine, France and Greece; none of which were accepted. Argentina proposed to delete the article entirely from the Charter and to permit countries to discriminate freely until such time as a "general and sound balance in international trade and payment" had been achieved. France proposed to delay the entry into force of the provisions of paragraph 1 of Article 20 and Article 22 until January 1, 1949, or later if in the individual circumstances the Organization was prepared to extend this date for particular countries. In effect this French amendment simply involved the incorporation in the Charter of a clause which had been inserted at Geneva in the General Agreement on Tariffs and Trade (Article XIV, paragraph 6(a)). Greece submitted an amendment which would have exempted countries such as Greece - dependent upon one or two non-essential export products - entirely from the rules of non-discrimination. The other amendments were less embracing in their scope and were directed toward specific provisions of the Article.

Among the principal points under attack in the Geneva draft were the following:

(1) the general condition that a widespread disequilibrium must exist - presumably affecting many countries - before any one country could discriminate;

(2) the interpretation to be placed upon the two criteria dealing with (a) the level of delivered prices on the imports from the preferred countries, and (b) the effect of bilateral arrangements upon the gold or convertible currency otherwise available from exports to other (non-arrangement) countries;

(3) the status of import restrictions having an equivalent effect to exchange restrictions permitted under the International Monetary Fund.

In the Geneva draft a substantial and widespread disequilibrium had to exist in international trade and payments before a Member - otherwise authorized to employ import restrictions under Article 21 - could violate the rules of non-discrimination[1]. Czechoslovakia contended - with support from other European countries - that this condition was an unreasonable limitation upon individual members with balance of payments difficulties. A variety of ways to relax this provision was

(1) As a rough working interpretation of what was thought to have been intended by the phrase "substantial and widespread disequilibrium", the working party described such a condition as likely to be represented by the use by many countries of import restrictions under Article 21 and, concurrently, a general lack of transferability between the currencies of important trading nations.

explored. However, in the final compromise reached at Havana, all references to a substantial and widespread disequilibrium were deleted from the article.

With respect to the price criterion[1], Norway contended that it was the terms of trade (the relation between the prices received for exports as compared with the prices paid for imports) rather than the absolute level of delivered prices of the imports from the preferred countries which should receive scrutiny by the I.T.O. This contention did not gain much support in the working party and was finally dropped.

France took strong exception to a verbal interpretation offered by the United States delegate regarding the second criterion.[2] He had stated verbally - never in writing - that any trade arrangement which reduced the potential receipts of convertible exchange below the level otherwise attainable would constitute a violation of this criterion. Never clearly settled in the working party, the problem of interpreting this criterion still remains to be resolved by the I.T.O. During the discussion in the working party it was evident that the United States had in mind the potential <u>gross</u> receipts of gold or convertible currency and not the <u>net</u> receipts (and not the net changes in gold and convertible currency reserves) resulting from the arrangement. In effect, therefore, under the United States interpretation, a Member would be precluded from diverting exports which could be sold for hard currency to soft currency areas as part of a commercial arrangement.

Czechoslovakia contended that the Geneva draft of this article was less satisfactory than the earlier draft prepared in London. In particular, the status of import restrictions which had an equivalent effect to exchange restrictions - properly employed under the Articles of Agreement of the International Monetary Fund - was held to be obscure. Czechoslovakia held that import restrictions having the same purpose and effect of Fund-permitted exchange restrictions ought to be either permitted by or specifically exempted from the I.T.O. Charter. In the ensuing compromise, the United States Delegation accepted this argument and subsequently embodied the substantive part in their new draft.

The Basic Requirement of Article 23 in the Havana Charter is that discrimination may be practised <u>only</u> by a country which is in balance of payments difficulties; more precisely, discriminatory import restrictions are to be tolerated <u>only if the Member is entitled under Article 21 to impose import restrictions</u>. This is a universal requirement. The circumstances under which such a country may exercise discrimination in its import restrictions, however, vary according to the <u>time</u> and to the <u>administrative procedure</u> selected by the Member.

(1) The criterion reads as follows: "Provided that 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".

(2) This criterion states: "Provided that 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".

1. Temporary Discrimination at any Time.

With the consent of the Organization, a Member which is applying import restrictions under Article 21 may at any time temporarily employ discrimination in respect of a small part of its external trade; provided that the benefits to the Member concerned are greater than any injury caused to the trade of other Members. This provision was designed largely to enable countries finding themselves with blocked foreign balances, acquired as a result of current transactions, to utilize them.

2. Discrimination in Aid of War-torn Countries.

Until December 31, 1951, a Member may assist another country, whose economy has undergone war ravage, by the use of discriminatory import restrictions. But the measures must not involve a substantial departure from Article 22. This somewhat vague provisions was carried over from the Geneva draft.

3. Discrimination in the Postwar Transitional Period.

Any Member which is availing itself (and only for as long as it is availing itself) of the postwar transitional period arrangement under Article XIV of the Articles of Agreement of the International Monetary Fund - or of an analogous exchange agreement - may administer the import restrictions authorized under Article 21 in a discriminatory manner, provided:-

I (Under what is commonly known as the Havana Option)

A. the discriminatory restrictions have an equivalent effect to exchange restrictions on current transactions properly in force under Article XIV of the Fund; or

B. the discriminatory restrictions were in force on March 1, 1948, but were not specifically authorized under A, in which case they may be continued and changed to meet altering circumstances; or

II (Under what is commonly known as the Geneva Option)

the member - having signed the Protocol of Provisional Application of the General Agreement on Tariffs and Trade before July 1, 1948 - notifies the Interim Commission of the I.T.O. before January 1, 1949, that in place of the Havana option it elects to be governed by the provisions of Annex K.

Under this Annex, the Member may employ discriminatory import restrictions if, as a consequence of the arrangement, the Member receives imports greater in quantity than would have occurred in the absence of the discrimination. But (1) the Member must not pay prices for these additional imports which are substantially higher than those ruling in competitive sources, and (2) the level of gold and convertible currency receipts must not be reduced below the level it would otherwise have attained, and (3) the action must not cause unnecessary damage to the commercial interests of any other Member.

4. Other Provisions of Article 23.

Several provisions of the Geneva draft were embodied substantially without change in Article 23 as it finally emerged

in the Havana Charter. Among these were the following:-

Paragraph 3 (a):- Which makes it clear that when a group of countries with a common quota in the International Monetary Fund impose import restrictions against other countries, but not as among themselves, this action, although discriminatory, will not be considered a violation of Article 22, provided the restrictions are in all other respects consistent with that Article.

Paragraph 5 (a):- Temporary import restrictions of a discriminatory nature, imposed to restrict the use of scarce currencies under the authority of Article VII, Section 3(b), of the Articles of Agreement of the IM.F., are also exempted from the provisions of Articles 22 and 23.

Paragraph 5 (b):- Under this paragraph the special case of meat quotas created by the United Kingdom under the Ottawa Agreements of 1932 is exempted from the provisions of Articles 22 and 23 pending the negotiations, which may occur among the countries principally affected, in accordance with Article 17.

Largely at the behest of the United Kingdom Delegation, a new provision was added to the Article - paragraph 4 - which authorizes a Member using import restrictions under Article 21 to direct its exports so as to maximize its earnings of convertible foreign exchange. The device used by Canada of selling merchandise for United States funds, which is expressly sanctioned by Article 24 (footnote to paragraph 8), was not regarded as a wholly acceptable solution by the United Kingdom Delegation. The Canadian Delegation concluded that, to ensure the continued use of sterling as an international medium of exchange, the United Kingdom would prefer to designate the acceptable hard-currency-yielding export areas, rather than, as in the Canadian case, to designate the acceptable currency of payment.

The surveillance of the International Trade Organization- as may be seen from the accompanying table - varies according to the provisions of the article under which the Member imposes discriminatory import restrictions.

The article provides for very little administrative responsibility on the part of the Organization in two cases. There is first the case of discriminatory activity designed to assist a war-ravaged country. The Organization is not even required to report on this activity - which is permissible only until December 31, 1951. Second, there is the case of discriminatory action practises under Part A of the Havana Option (paragraph 1 (b)); in this case, the I.T.O. is required to report on the discriminatory activity taking place after March 1, 1950, but due largely to the sharp opposition of Czechoslovakia and France the question of greater I.T.O. surveillance was suppressed. The jurisdiction of the International Monetary Fund, it should be noted, covers only the propriety of any exchange restrictions. It is up to the individual Member apparently to decide when discriminatory import restrictions constitute an "equivalent effect to restrictions on payments and transfers". Some delegations - notably Belgium - contended that Article 21, paragraphs 5(b) and 5(d), implicitly gave the I.T.O. adequate authority for administrative surveillance. It was the feeling of the Canadian Delegation, however, that the points exclusively treated by Article 23 - discrimination - were not covered by Article 21.

Closer surveillance on the part of the Organization is provided for in the three remaining avenues of discrimination.

EXTENT OF I.T.O. SURVEILLANCE PROVIDED UNDER ARTICLE 23

Assuming that member is imposing import restrictions in accordance with Article 21	Temporary Discrimination at any time (Para. 2)	Discrimination in aid of war-torn countries (Para. 3(b)	Discrimination in Post-War Transitional Period		
			THE HAVANA OPTION		THE GENEVA OPTION
			A having equivalent effect to exchange restrictions (Para. 1 (b))	B import restrictions in force Mar. 1/48 (Para. 1(a))	(Annex K)
1. Is prior approval of I.T.O. required before a member may: a. discriminate?	yes	no	no	consultation after March, 1952	consultation from Mar. 1952.
b. alter existing dis crimination?	yes	no	no		after Mar.1,1952 subject to limitations imposed by I.T.O.
c. add new discrimination?	yes	no	no		
2. Is I.T.O. required to report on discriminatory action, not later than March 1, 1950?	no	no	yes	yes	yes
3. Does I.T.O. have other administrative responsibilities over discriminatory activities under Article 23?	no	no	no	no	yes: member is required to satisfy 2 criteria
4. Could I.T.O. under Article 23 require withdrawal of discrimination a. at any time?	no (but prior approval required provision	no	no	yes (in except. circumst.	no
b. after March 1, 1952?	no	not available	no	yes	yes: in except. circumst.
5. Who will determine expiration of the permitted period of discrimination?	Charter imposes no expiration other than temporary discrimination.	Charter sets Dec. 31, 1952.	Determined when member yields rights under Article XIV of I.M.F. or when expelled from I.M.F. membership.		

The prior approval of the I.T.O. is required in the case of countries who seek to "temporarily deviate from the provisions of Article 22 in respect of a small part of its external trade" under paragraph 2. Anticipating a very narrow interpretation from the United States delegate, members of the working party were loath to examine the intended meaning of the term "a small part of its external trade".

In March 1952, and thereafter, any Member entitled to discriminate under B of the Havana Option (paragraph 1(c)) or under the Geneva Option (Appendix K) is obliged to consult with the I.T.O. as to any discriminations in force and as to the continuation of discriminations generally. After March, 1952, any discrimination under the Geneva Option which goes beyond the deviations discussed with the I.T.O., or any adaptation of the discriminations to changing circumstances, will be subject to I.T.O. limitations.

In exceptional circumstances - not otherwise defined - the Organization at any time may make representations to a Member acting under B of the Havana Option, calling for the abandonment of any one or of all discriminatory restrictions on imports. It was contended by the United States Delegation and others that this surveillance was already present in the case of Part A of the Havana Option - see Section 4, Article XIV, Articles of Agreement of the International Monetary Fund. After March 1, 1952 - but not before, largely because of the opposition of the United Kingdom Delegation - in exceptional circumstances the Organization may make similar representations to any Member operating under the Geneva Option. As the Article is now worded, it would appear to be possible for the United Kingdom <u>to increase its discriminatory operations</u> under Appendix K during the short period between the expiration of the Anglo-American Financial Agreement (December, 1951) and March 1, 1952, without running counter to this surveillance.

As the final outline of the compromise settlement became clear in the discussions of the working party, the Canadian Delegation sought unsuccessfully to effect two important last-minute changes - other minor changes were accomplished. First, having concluded that the Geneva Option (Annex K) would likely prove to be more useful to Canada than the Havana Option (paragraphs 1 (b) and 1 (c)), because of the narrow privileges Canada may independently exercise under Article XIV of the I.M.F. Articles of Agreement, the Delegation endeavoured to have the provisions of sub-paragraph (c) made applicable to both options instead of to the Havana Option only. This would have had the certain effect of covering - beyond January 1, 1949 - the discriminatory import restrictions applied by Canada to automobiles on March 1, 1948. This attempt provoked the sharp opposition of Czechoslovakia and France - both of whom were particularly interested in the Havana Option - and although the United States Delegation evidently had some sympathy for the Canadian viewpoint, the overriding desire of that Delegation to accomplish a long-delayed compromise seemingly checked its support for this Canadian amendment.

<u>Action Required by Canada</u>. One of the Member countries which has already signed the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, Canada has until December 31st, 1948, to decide whether it will elect to be governed by Annex K - the Geneva Option - instead of sub-paragraphs 1 (b) and 1 (c) which will otherwise apply. If Canada does decide to elect the Geneva Option, it will be necessary to notify the Interim Commission or the Organization accordingly in writing <u>before</u> January 1, 1949.

<u>Article 24 - Relationship with the International Monetary Fund and Exchange Arrangements</u>. At earlier sessions of the Preparatory Committee the question of potential jurisdictional conflict between the International Trade Organization and the already-existing International Monetary Fund had received earnest consideration. The need for a coordinated policy, or a clearly drawn division of authority had been perceived. Article 24 in the Geneva draft - Article XV in the General Agreement - represented the synthesis of the various opposing views. There were still a few dissenting viewpoints, however, when the Geneva deliberations were concluded, and these objections were repeated at Havana.

Criticism of the Geneva draft was strongest from countries, such as New Zealand and Argentina, which were not members of the International Monetary Fund. In the main, these countries were anxious to retain a larger measure of independence for the International Trade Organization, in matters over which the Fund also had an interest, than the Geneva draft provided. The amendments put forward by this group of countries were generally not acceptable in their original form to the majority of the delegations present; mild compromise phrases were substituted in paragraph 2 for the passages most severely criticised by the dissenting countries. Other changes from the Geneva draft included the addition of a new sub-paragraph 6(d), which was expressly designed to meet the special situation of Liberia - a country which does not issue its own national currency. In addition, minor drafting and consequential changes were made but, considered as a whole, Article 24 emerged substantially unchanged from the Havana Conference.(1) Article 24 in the Havana Charter recognizes that exchange restrictions and trade restrictions are capable of being used for the same end-purposes of policy, but these devices are subject to separate international instruments. There was a danger, therefore, that countries which are members both of the Fund and of the Organization would be tempted to circumvent the jurisdiction of one or the other of these international agencies by straining the privileges of membership in the other. There was also the danger that collisions over policy questions might occur between the two agencies. Article 24 is designed basically to prevent these situations from developing. For example, paragraph 4 states: "Members shall not, by exchange action, frustrate the intent of the provisions of this Section, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund".

Acknowledging the full rights of the two agencies, the Article requires the Organization to consult fully with the Fund on problems concerning monetary reserves, balance of payments, or foreign exchange arrangements. In particular, problems arising from Article 21, such as, what constitutes a serious decline in the Members' monetary reserves; what is a very low level in monetary reserves; what is a reasonable rate of increase in monetary reserves, are to be examined by the Fund in the first instance. The Organization is bound by Article 24 to accept the determination of the Fund in these and other financial aspects of matters under consultation between the two agencies.

Clearly the determination in this case means both a statement of the facts and an interpretation of them. Many

(1) Articles 21 and 24 were referred by the sub-committee to the same working party which comprised the delegations of:
Australia, Belgium, Brazil, Cuba (Chairman, J.A. Guerra), India, United Kingdom, and United States.

delegations were concerned lest this arrangement would in effect seriously impair the independence of the I.T.O. On the other hand, it was recognized that any other arrangement would encroach upon the domain of the already-existing Fund. Although concerned with the greater voting strength of the United States in the Fund, many of the delegations were inclined to expect that the Fund's determination in this somewhat technical field would be the least capricious.

Countries which accept membership in the Organization but decline to join the Fund are obliged to enter into a <u>special exchange agreement</u> with the Organization. In effect, although the details were not discussed at Havana, all Members of the Organization must obligate themselves to observe rules of decorum in exchange matters. Sub-paragraph 6(c) requires that "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". Conversely, there would be little disposition among the majority of Fund Members in the Organization to see the special exchange obligations any less restrictive than they had themselves accepted under the Fund.

Largely with the support of the United States Delegation, the Liberian Delegate succeeded in exempting his country -not a Member of the I.M.F. - from this obligation to enter a special exchange agreement. Accordingly, sub-paragraph 6(d) relieves a Member from this obligation "so long as neither the Member nor the country whose currency is being used maintains exchange restrictions". In the sub-committee the Canadian Delegation, while prepared to accept the majority decision, seriously questioned the wisdom of treating the Liberian problem in this elaborate manner.(1)

Paragraph 8 - formerly 9 in the Geneva draft - as amended at Havana, expressly provides that nothing in Section B, which comprises Article 20 to 24, shall prevent a Member from using restrictions or controls om imports or exports, if the sole effect - "in addition to the effects permitted under Article 20, 21, 22 and 23 " - is to make effective exchange controls which are applied in accordance with the Fund Agreement (or special exchange agreement with the I.T.O.). There was a noticeable tendency in the working party dealing with the controversial Article 23 to interpret this provision broadly. Countries interested in the Havana Option under Article 23, having wide scope for exchange controls under Article XIV of the I.M.F. Articles of Agreement, expected to have extensive privileges in their use of import restrictions under this paragraph.

SECTION C - SUBSIDIES

The subsidy provisions are based on the principle that general production subsidies are a legitimate means of providing protection. There is no restriction on the use of production subsidies, which do not have the effect of limiting imports or expanding exports. There are certain broad conditions governing the use of production subsidies which affect

(1) Liberia does not issue a national currency and the U.S. dollar circulates freely as the medium of exchange for both domestic and international transactions.

international trade. These conditions are not mandatory restrictions on the use of production subsidies except in the case of primary commodities. Export subsidies, i.e., subsidies which result in prices for export below the domestic price are regarded as being more likely to distort trade in an unfair competitive manner and as such are prohibited. Exceptions are provided to permit export subsidies in certain circumstances, particularly for primary commodities.

Article 25. This Article requires that a Member granting any subsidy, which limits imports or increases or maintains exports, notify the Organization of all the particulars concerning the subsidy. If a Member judges that it is being injured by such a subsidy, the Member maintaining the subsidy is obliged to discuss the possibility of limiting it with the injured Member or with the Organization.

Article 26. This Article outlaws export subsidies or any other system which results in sales for export at prices lower than domestic prices, after adjusting for permissive differences affecting price comparability.

Exemption or remission of internal taxes on exported products which results in price differences between the domestic price and the export price of a particular product does not constitute an export subsidy.

Existing export subsidies must be eliminated as soon as possible but not later than two years after the Charter enters into force. In exceptional circumstances this period may be extended with the approval of the Organization.

Article 27. This Article provides an exception from the requirement to eliminate export subsidies, in the case of primary commodities.

Price stabilization systems which result in export prices being higher at certain times and lower at other times than domestic prices are not to be considered as forms of export subsidization, provided that the system of stabilization is operated in such a manner as not to stimulate exports unduly or cause harm to other Members.

If in respect of a primary commodity, a Member considers it a great hardship to abandon an export subsidy, or a Member considers that it is being injured by any subsidy, efforts may be made to solve the difficulty by means of an intergovernmental commodity arrangement. Members granting subsidies on a primary commodity pledge themselves to co-operate at all times in efforts to negotiate a commodity agreement for that commodity. Existing export subsidies may be continued provisionally, pending efforts to negotiate an agreement. New export subsidies may not be imposed, or old ones increased, during a commodity conference, except with the approval of the Organization.

If a commodity agreement is not concluded or if it is not an appropriate solution a Member may continue export subsidization on that commodity. Export subsidies on a primary commodity whenever in force, are subject to the conditions of Article 28.

Article 28. This Article contains a set of additional conditions governing any form of subsidy which has the effect of maintaining or increasing exports of a primary commodity. The basic principle, in the case of subsidization of a primary commodity, is that the subsidy must not be applied in such a way as to have

the effect of obtaining for that Member more than a fair share of world trade in that commodity. The subsidizing Member is required to consult with any other Member which considers that its interests may be seriously prejudiced by the subsidy. If the consultations do not produce a satisfactory understanding the Organization is called upon to determine what a fair share of world trade is in the case. Such a determination is binding on the subsidizing Member. A set of criteria are spelled out to aid the Organization in making its finding as to what constitutes a fair share.

(1) The share during a previous representative period.

(2) The importance to the subsidizing Member and to other affected Members of the export trade in the commodity in question.

(3) The existence of a price stabilization system of the type referred to in Article 27.

(4) The desirability of limiting subsidization, which makes the expansion of output, in areas able to supply the commodity most effectively and economically, more difficult.

(5) Whether the Members share of world trade in the commodity is so small as to be of limited significance.

The subsidy section was the subject of serious controversy in all phases of the preparatory work and at the Havana Conference. The two main protagonists in the disagreement were the United States and Canada, although the differences were kept under cover and a compromise was worked out largely inter se at the Havana Conference. The United States Delegation maintained that it was politically impossible to accept the requirement banning export subsidies insofar as this would upset their agricultural parity price system. At Havana, the United States Delegation proposed an amendment to exempt primary commodities from the provision banning export subsidies. The Canadian Delegation maintained consistent opposition to all measures which would exempt agricultural commodities from the benefits and safeguards of the Charter provisions. While recognizing that the special difficulties affecting the production and sale of primary commodities deserved special treatment, the Canadian Delegation maintained that any exception permitting export subsidies on primary commodities must be limited to exceptional cases and made subject to careful scrutiny and control by the Organization to prevent abuse. Developments at Havana indicated that the United States delegation were not exaggerating the special political difficulties which interference with the parity scheme involved. A compromise was reached, which although it gave greater initial freedom to maintain export subsidies on primary commodities, contained a new set of safeguards to prevent abuse and protect Members which may be adversely affected by the subsidization. The application of these safeguards was broadened to cover all types of subsidization affecting the exportation of a primary commodity.

The Canadian Delegation was particularly concerned with the United States policy of subsidizing the export of wheat when more normal conditions prevailed. The successful conclusion of the Wheat Agreement modifies the significance of the subsidy compromise from the Canadian point of view.

Canada at present maintains a price support system for agricultural commodities, which may at times involve a

general producer subsidy of the kind covered in Articles 25 and 28. The operations of the Wheat Board may also involve producer subsidies under some circumstances as it did during its early operations.

In respect of these operations where subsidies are actually being paid, if they influenced the level of exports or imports Canada would be required to notify the Organization of the extent and nature of the subsidization and of the estimated effect of the subsidization necessary. The requirement to consult affected Members and to refrain from using subsidies to obtain more than a fair share of exports of a particular commodity would also apply.

SECTION D - STATE TRADING AND RELATED MATTERS

If the government of a country engages in purchasing and selling commodities in a commercial way, or grants to any enterprise exclusive or special privileges to purchase and sell commodities which involve external trade, such operations are recognised in the Charter as state trading.

Before the war a number of countries, mainly in Europe, were engaged in state trading activities. During the war many private enterprise countries turned to state trading methods and entered into bilateral bulk purchasing and selling contracts. It is expected that bulk purchasing and selling by state monopolies in certain countries may continue for some time in the post-war period and may even remain as a permanent feature in international trade. Within certain limits the Charter gives recognition to this method of doing business.

In this Section certain rules of conduct regarding international trade are established to which Members undertake to adhere if they engage in state trading operations. The obligations place the state trading Member on a parallel with the private enterprise Member with respect to purchases and sales involving imports and exports and to the protection it affords to domestic producers.

This Section has a special interest for Canada, as the Canadian Wheat Board is probably one of the world's largest state trading enterprises. The Wheat Board, as well as other government commodity and marketing boards, are subject to the provisions in this Section.

Article 29 - Non-Discriminatory Treatment. In ratifying the Charter, Canada undertakes that the Canadian Wheat Board or any other enterprise to which the Canadian Government has granted exclusive or special privileges shall in its purchases or sales involving either imports or exports act in a manner consistent with the general principles of non-discriminatory treatment such as are prescribed in the Charter for governmental measures affecting imports or exports by private traders.

Any arrangement between the Canadian Wheat Board and the British Ministry of Food involving the purchase or sale of barley, for example, is to be transacted solely in accordance

with commercial considerations. This means that the British Ministry of Food could not enter into a private arrangement with the Canadian Government or the Canadian Wheat Board to buy largely at a special price or with the Meat Board to buy beef at a price higher than the world price and in their negotiations exclude other Members from competing for participation in the purchases or sales.

In deciding whether the contracts for barley or beef will be awarded to Canada, apart from price, the United Kingdom may give consideration to quality, dependability of supply, traditional market aspects, length of contract, and marketing conditions. In this way the principle of non-discrimination is applied to state trading operations with the further consideration that the State trading Member "shall afford the enterprises of the other Members adequate opportunity in accordance with customary business practices to compete for participation in such purchases or sales". Further, no Member through influence or pressure is to prevent any enterprise, whether privately owned or government sponsored, from acting in accordance with commercial considerations.

Interpretative note 2(b) makes it clear that licences or special privileges such as logging rights or mineral rights granted by the Canadian Government to private companies in the exploitation of natural resources are not regarded as special privileges which create a state enterprise unless the Canadian Government exercised effective control over the trading activities of the companies.

Article 30 - Marketing Organizations. Government marketing boards or organizations, such as the Agricultural and Fisheries Prices Support Boards, are subject to the provisions of this Section of the Commercial Policy Chapter and must not discriminate in their purchasing or selling operations wherever they affect international trade. Further, regulations made by government marketing boards which affect the operations of private enterprise must not be inconsistent with the provisions of the Charter. For example, a government measure could not permit the marketing organization to pack and sell domestically a smaller size or lower grade of apples than it permitted to be imported. It could not authorize the marketing board to arrange for a system of subsidization which would permit private enterprise to sell a commodity for export at a lower price than the domestic price.

Article 31 - Expansion of Trade. This Article provides that:

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

If the Canadian Wheat Board, for the purposes of maintaining or increasing our flour milling capacity, withholds wheat from the world market when it is in demand and sells the wheat to the milling trade at prices below that offered by foreign buyers, we would be protecting our domestic users of the monopolized product. Such action by the Wheat Board might be considered by other Members not to be in accordance with commercial considerations. Under the Charter Canada is obligated, at the request of any other Member interested in obtaining a substantial share of Canadian wheat, to enter into negotiations designed to limit or reduce this protection and

assure exports in adequate quantities at reasonable prices.

A number of European countries purchase their grain and many other commodities through state monopolies. In the pre-war days they were able to buy grain at a relatively low world price and sell it in their domestic markets at a considerably higher stabilized price. With the profits realized these countries subsidized producers and thus stimulated production. Such activities aggravated the situation for producing countries which were burdened with surplus grain. In some of the countries the state monopoly exercised control over imports by a monopoly fee which was variable in amount and additional to the customs duty. These operations gave greatly increased protection to domestic producers and made the customs tariffs meaningless.

On the import side the Members agreed that negotiations should be carried out with state trading countries to limit monopoly protection with respect to price margins and quantitative limitations in the same manner as customs tariffs or tariff quotas are negotiated for commodities, the importation of which are not subject to state control. A Member maintaining a monopoly is required to negotiate for the establishment of an import duty for any commodity which other Members are interested in selling to it in substantial amounts. If the negotiations for the establishment of a maximum import duty are not successful then the Member maintaining an import monopoly is required to make public or notify the Organization of the maximum import duty which it will apply to the product concerned. The maximum import duty is the difference between the landed cost and the selling price, exclusive of charges which would apply to the domestic product. In other words, it is the maximum protection which may be provided by the state trading country to domestic producers.

At Geneva, Canada negotiated trade agreements on wheat with three European countries which import wheat through state monopolies. These scheduled agreements embodied the principles contained in this article of the Charter.

The agreement with Benelux (Belgium, Netherlands and Luxemburg) provided that imported wheat would continue to be admitted free of customs duty and that the selling price in The Netherlands would not exceed the average landed cost of imported wheat by more than 4 florins per hundred kilograms. A corresponding margin was agreed to for wheat imported into Belgium and Luxemburg amounting to 66.08 francs per hundred kilograms. The maximum import duty in each case is equivalent to about 40 cents per bushel. The agreement also contained a mixing regulation which provides that not more than an average of 35 per cent per annum of domestic wheat shall be required to be mixed with imported wheat in the production of flour. A similar agreement was concluded with France. France agreed to reduce the import duty from 50 per cent ad valorem to 30 per cent and further agreed that the selling price would not exceed by more than 15 per cent the average landed cost duty-paid of imported wheat.

The Charter provides that where the product concerned is a primary commodity and 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. Provision for adjustment in the event of a collapse in world wheat prices was written in to both agreements. The agreements mean, however, that the domestic selling price of wheat in Benelux and France must follow world prices down on some graduated

scale and when prices reach lower levels they will have the intended effect of discouraging domestic production. In the case of Norway, an agreement was negotiated limiting the margin between the landed cost of wheat and the average price paid to producers.

In order that state monopolies will not restrict imports below the level of domestic demand, the Charter requires that the monopoly shall import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand.

Article 32 - Liquidation of Non-Commercial Stocks. This is a new article which was inserted in this Section of the Charter at Havana. It deals with the liquidation of non-commercial stocks of commodities procured by a government for national security purposes. It was agreed that any Member holding non-commercial stocks of any primary commodity should carry out any liquidation operations as far as practicable in a manner that would avoid serious disturbances to world markets for the commodity concerned. The Member is required to give not less than four months public notice or notify the Organization of its intention to liquidate such stocks. There is also provisions that the Member intending to liquidate such stocks will consult with any Member on request regarding the best means of avoiding injury to producers and consumers under any liquidation programme.

SECTION E - GENERAL COMMERCIAL PROVISIONS

These Articles are known as the "Technical Articles" and relate to the following subjects. They are important in international trade as measures by which protection can be increased or diminished, and are sometimes referred to as the "invisible tariff":

Article 33 - Freedom of Transit
Article 34 - Anti-dumping and Countervailing Duties
Article 35 - Valuation for Customs Purposes
Article 36 - Formalities connected with Importation and Exportation
Article 37 - Marks of Origin
Article 38 - Publication and Administration of Trade Regulations
Article 39 - Information, Statistics and Trade Terminology

None of these Articles underwent any change in substance at the Havana Conference as compared with the Geneva draft of a Charter used as the working document. Several clarifying interpretive notes were added to meet the wishes of different countries.

Of these Articles perhaps the most important as beneficial to Canadian exports is Article 35, in respect to the changes which may be expected in the United States law governing valuation for duty purposes. The existing law affects the incidence of the tariff rates to the detriment of Canadian exports to that country. This phase is dealt with more fully in the comments on Article 35.

Article 39 in the Geneva draft under the caption of "Boycotts" was dropped from the Charter. This Article prohibited governmental encouragement, support or participation in movements designed to discourage the domestic consumption of goods produced by another Member country.

The Article was originally intended to include campaigns urging use only of domestically produced products, such as "Buy Canadian", "Buy British", etc., and without this interpretation the Article was considered worthless in respect to international trade. Deletion was at the instance of the United States Delegation.

For easy relationship between the numbers of these Articles in the Charter and in the Geneva draft, it may be noted that Article 32 in the Geneva draft is No. 33 in the Havana text, No. 33 is No. 34, and so forth.

Article 33 - Freedom of Transit. This Article is designed to accord full freedom of transit of goods (including baggage) and also vessels and other means of transport through the territory of Members to complete expeditiously a continuous journey beginning and ending outside their territory. This Article aims at eliminating discrimination as between countries, and unreasonable and inequitable charges not commensurate with the administrative expense of regulations necessary to preclude contravention of customs laws, or with the cost of services rendered.

As the privilege of transit in bond of goods (including baggage) by rail, and the movement of ships with their cargoes, through Canadian territory has, for many years, been accorded, the only concession by Canada is in respect to the through movement of foreign trucks with laden goods over Canadian highways, to which there was never any statutory obstacle. This in practice applies only to traffic through Canada as a shorter route from one point to another in the United States, notably between Buffalo and Detroit through Ontario. Some questions may arise, however, as highways in Canada are under provincial jurisdiction. Possible non-observance by reason of jurisdiction other than federal is contemplated in the Charter by the overriding provision (Article 104) that "each Member shall take such reasonable measures as may be available to it to assure observance of the provisions of the Charter by the regional and local governments and authorities within its territory".

Article 33 contains a provision requiring equal treatment of imported goods whether or not passing in transit through a third country. Exception is made permitting direct shipment as a condition for securing preferential tariff rates. This enables the continuation of the long standing Canadian requirement of direct shipment as a condition of entitlement to British Preferential Tariff rates. This militates against shipment from British countries via United States ports with internal transportation through that country in favour of Canadian ports and railways.

The definition in this Article of "traffic in transit" includes trans-shipment, warehousing, breaking bulk, or change in mode of transport. The Canadian customs law requires valuation for duty purposes at not less than the fair home market value at the place of direct shipment to Canada, i.e., the place from where the goods begin their continuous journey destined for Canada. This excludes warehousing, breaking bulk, or remaining in an intermediate country for any purpose other than trans-shipment. In practice direct shipment for customs valuation purposes, where shipment is via an intermediate country, requires to be established by a through bill of lading from the country of export to a Canadian destination. The right to continue direct consignment as a condition for valuation purposes is specifically preserved in this Article.

Interpretative Notes were added at Havana to clarify

that the term "charges" in the Article did not include transportation charges, and to provide specifically for assembly, and disassembly and reassembly as being within the scope of traffic in transit, where these are undertaken solely for convenience of transport. This latter provision is for the benefit of countries lacking railway facilities.

While the concession made by Canada is of minor importance, the reciprocal treatment of shipments between points in Canada, via United States territory, for example, from Montreal to the Maritime Provinces via the State of Maine, will be of benefit, and Canadian exports may be benefited by the freedom of transit to destination in land-locked countries via other countries.

Article 34 - Anti-dumping and Countervailing Duties. This Article allows the imposition of an additional duty as an anti-dumping measure if a product of one Member is introduced into the commerce of another Member at less than its normal value, and if it causes or threatens material injury to an established domestic industry, or materially retards the establishment of a domestic industry. Anti-dumping duty is limited by the Article to the extent to which the goods were sold below the normal value. "Countervailing duty" is a term used in United States customs law as applying to an additional duty imposed in respect to an export subsidy paid by a foreign government, in contradistinction to anti-dumping duty imposed in respect to imports at less than the normal values by private traders.

The criteria of "normal value" is the price in the ordinary course of trade for the like product when destined for consumption in the country of export. In the absence of such domestic price, normal value may be taken as the highest price for the product for export to any third country, or the cost of production in the country of origin, plus a reasonable addition for selling cost and profit. The price in comparable quantity requires to be taken into consideration, and shall be exclusive of any duty or tax borne by the article when sold in the domestic market.

The Article as rewritten at Havana is merely a redrafting of the negative form of the Geneva text to the positive form with a recognition by Members that dumping at prices below the criteria basis is to be condemned. This change does not weaken the Article as drafted at Geneva, and if anything strengthens the Canadian position in ethically imposing dumping duty against lower than home market values on goods imported from abroad, particularly in view of exposure from proximity to the huge industrial and mass production potential of the United States.

The general rule for valuation under Canadian customs law for dumping duty purposes is practically the same as the criteria basis in Article 34, vis., the fair home market value in comparable quantity in the ordinary course of trade under similar conditions, exclusive of internal taxes, or the cost of production, plus a reasonable advance for selling cost and profit. As will be thus noted, little change is required in the Canadian anti-dumping law to conform to the provisions of the Charter. There is the difference, however, that the Charter provides for the imposition of dumping duty if the import price below the criteria basis injures or threatens to injure, or retard establishment of a domestic industry, whereas under the Canadian law the imposition of dumping duty in respect to goods of a class or kind produced in Canada is mandatory and automatic where import prices are less than the "normal value". Injury or threatened injury, or the retarding of establishment, however, while more in the realm of opinion

than factual, upon complaint of an exporting Member, might require to be substantiated.

The only additional interpretative note added at Havana provides for the permissible requirement of a cash deposit or posting of a bond as security for dumping duty pending determination of the facts in the case of suspected dumping. This is purely a matter of routine administration, but was inserted to meet the request of the Brazilian Delegation. The notes on hidden dumping by associated houses, and on multiple currency practices, were retained with some minor drafting changes.

The establishment by Article 34 of a uniform criteria as the basis upon which anti-dumping measures may be taken, and the prescribed limitations as to extent, will no doubt be of assistance in developing Canadian exports by the assurance, from known and uniform regulations of foreign countries, that fantastic penalties may not be imposed as in the past.

Article 35 - Valuation for Customs Purposes. Valuation is a prime factor in all import transactions at Customs where the duty is ad valorem in determining the basis upon which the tariff rate applies, and the amount of duty payable. Differences in valuation bases may affect materially the incidence of the tariff although the rates may be the same. Valuations may readily nullify the value of tariff concessions.

The Geneva draft of this Article (incorporated without change in substance in the Charter at Havana) was only derived and agreed upon after strenuous discussions, in which the Canadian Delegation took a leading part. Compromises were agreed upon to meet the views of the several countries having different primary bases, and variations therefrom. The two principal primary bases, in use by various countries, are viz.: home market values in the country of export, and c.i.f. values at the point of landing in the country of import. Each basis has varying qualifications, and in some instances is supplemented by departures from the basic rules which result in the restriction or total prohibition of imports by valuation at domestic prices of similar goods, or by purely arbitrary and fictitious values.

Article 35 establishes as the common denominator "actual value", which is defined as the value at which goods are sold in the ordinary course of trade under fully competitive conditions. Arbitrary and fictitious valuations are to be eliminated. When the quantity factor of imports is taken into consideration, and where value is so governed in a particular transaction, the price should be uniformly related to (1) "comparable quantities", or (2) "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". The factors of time and place for valuation, as now contained in the legislation of a country, are not disturbed by the Article. The differences in the bases of the various countries is recognized in the undertaking by Members to work towards standardization of definitions and procedures for determining value. "Actual value" excludes the amount of any internal tax applicable within the country of export.

Values expressed in terms of the currency of a country other than the country of import may require, for Customs purposes, to be converted into the latter's currency at an exchange rate. The Article provides for such conversion at the par values of the currencies involved as established pursuant to the Articles of Agreement of the International Monetary Fund (I.M.F.), or at rates established by special exchange agreements with the International Trade Organization as provided for in Article 24 of the Charter. The unstable position of the currencies

of many countries is recognized by the Charter in providing that the Organization - in agreement with the I.M.F. - shall formulate rules governing conversion by Members in those cases where multiple exchange rates are maintained consistently with the Articles of Agreement of the I.M.F. The underlying principle is that currency values shall "reflect effectively the value of a foreign currency in commercial transactions". Pending the adoption of such rules by the Organization, a Member may employ this principle of currency valuation.

The Geneva draft contained interpretative notes providing that "actual value" may be represented by the invoice price plus non-included charges for legitimate costs, or plus any reductions from the ordinary competitive price; also under the phrase" under fully competitive conditions" may exclude any transactions where buyer and seller are not independent, and also sales at distributor's prices which involve special discounts to exclusive agents. The notes also provide that a Member is permitted to assess duty uniformly either on the basis of the particular exporter's prices or on the basis of the general price level of like merchandise.

Two additional notes were added at Havana: one provides that where compliance with currency valuation requirements results in a lower duty being payable upon a product, the tariff rate of which is bound by Agreement, the term "at the earliest practicable date" in paragraph 2, allows a reasonable time for adjustment of the Agreement. The second note provides in respect to certain systems of fixed valuations existing at the time of the Charter; where such values were not subject to periodical revision, the existing values may be continued but without change; also that the provisions of the Article shall not apply in cases where values subject to periodical revision are based on the average actual value established by reference to an immediately preceding period of twelve months, and subject to revision upon request of parties concerned or of Members. The revised value upon such request shall remain in force pending further revision.

This second note was introduced at the instance of Chile and was supported by India. It was defeated in sub-committee, but although strongly resisted by the delegations of Canada and the United States, its inclusion was carried in Committee III. Although the note represents a weakening of the Article by admitting a special exception to meet a particular case, it does not impair the general application of the Article.

Article 35 will necessitate few changes in the Canadian customs law as its basic principle of valuation is already in conformity with the Charter requirement. The existing law provides as mandatory valuation at not less than cost of production plus a reasonable advance for selling cost and profit which overrides home market selling prices if these are lower. The cost plus basis may now only be used to derive equivalents of home market prices where these are non-existent by reason of goods in the condition as exported not being sold in the domestic market. A section of the Customs Act (41) vesting in the Minister arbitrary powers without recourse, for valuations in difficult cases by reason of unusual circumstances, and constituting him as the sole judge, is repugnant to the Charter and will require to be withdrawn.

Article 35, as drafted at Geneva and adopted at Havana, is a definite forward step in establishing principles for Customs valuations, with the removal of arbitrary and fictitious valuations as an invisible tariff and protective device.

While establishing principles which all signatory countries must follow, the chief importance for Canada is in respect

to the changes which may be expected in the United States law governing valuation for duty purposes. The present law requires valuation based on the price in "usual wholesale quantities", although an established price may exist for larger quantities which are exported to the United States from Canada. "Usual wholesale quantity" is represented by the quantity in which the greatest numerical number of sales are made. For example, a Canadian manufacturer has an established range of prices with, say, $1.00 per unit in quantities of 1000, to $1.25 per unit where purchase is in 10 to 25 units. If the greatest numerical number of sales is in the 10 to 25 unit bracket, which is quite probable, the value for duty would be $1.25 per unit, although 1000 units were shipped to the United States. This existing requirement of the law may be altered by a change to "comparable quantities" as required by the Article. In the event that the second option of "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", this also will require a change eliminating "usual wholesale quantities". The substitution of the second option quoted above would also result in more favourable treatment of imports from Canada. Another phrase in the law which has adversely affected Canadian exports to the United States is "freely offered for sale". This has been interpreted as "the price at which anyone can buy". It remains to be seen what interpretation the United States courts may place upon the phrase "sale under fully competitive conditions" from which the interpretative footnote allows the exclusion "from consideration distributors' prices which involve special discounts limited to exclusive agents". In many cases manufacturers grant exclusive territory to wholesalers to secure energetic sales promotion, and the wholesaler benefits by having the field for the particular manufacturer's product. There may be no special price consideration in the arrangement, but only the mutual advantage. It will be interesting to note the proposed changes in the United States law which will bear watching with a view to making representations before enactment by Congress.

Article 36 - Formalities connected with Importation and Exportation. This Article aims at the reduction of the number of fees and charges (other than import and export duties) imposed, and their limitation to the approximate cost of services rendered, in order that these may not represent an indirect protection to domestic products or a taxation on imports or exports for fiscal purposes. The following items are specifically mentioned as being included under the Article:

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

The Article prohibits the imposition of substantial penalties for minor breaches of Customs regulations. No greater penalty than necessary as a warning may be imposed for omissions or errors in Customs documentation which are easily rectifiable and obviously without fraudulent intent, or as a result of gross negligence.

The Geneva draft of this Article was adopted at Havana without change in substance and with only a clarifying drafting alteration in the first paragraph which amplifies "fees and charges, other than duties" in the Geneva draft to "all fees and charges of whatever character (other than import and export

duties and other than taxes within the purview of Article 18)." The one interpretative note to the Article in the Geneva draft regarding fees and charges in use in connection with multiple exchange rates was continued without change at Havana.

Canada is entirely innocent of exorbitant fees and charges, or severe penalties for omissions in customs documents without fraudulent intent.

The benefit to Canadian exports is obvious and needs no elaboration.

Article 37 - Marks of Origin. The requirement of marking imported goods with the country of origin may add a substantial percentage to the cost of goods where the article is of low unit value and is required to be individually marked. Where the marking requirement is of general application, with only specific exceptions, doubt arises as to whether an unspecified article is susceptible to being marked, or without injury, or whether marking of the inner, or perhaps the outer container, would satisfy the requirements. This doubt could perhaps only be clarified by a test importation. The added cost of marking or the clarification of the necessity for, and the manner of, marking may be an effective auxiliary to tariff protection.

By Article 37 Members recognize that difficulties and inconveniences should be reduced to a minimum, and to this end agree to co-operate with each other and through the Organization towards the elimination of unnecessary marking, and the adoption of schedules of general categories of goods, which marking operates to restrict trade disproportionately to any purpose served. No discrimination as between countries may be practices, requirements shall permit of marking without damaging materially reducing the value, or unreasonably increasing the cost of the imported article. An important provision is that where administratively practicable, marking may be affixed at the time of importation, and that as a general rule, no special duty or penalty shall be imposed for failure to mark prior to importation unless subsequent marking is unreasonably delayed, or the omission was intentional, or the marking deceptive.

No changes were made in the Geneva draft at Havana and no interpretative notes were appended at either conference.

Under Canadian law the marking requirement is not general, but the Governor in Council is empowered to order the marking of specified goods. Such orders have been relatively few and have been given the required publicity. The Canadian law requires marking prior to importation, and failure involved an additional duty of ten per cent, although marked subsequently under customs supervision. This additional duty imposition is repugnant to Article 37 and the Charter will require its removal.

With this exception the Charter provisions will necessitate no changes in the Canadian marking law. On the other hand, the required amelioriation of onerous requirements of other countries will, to some extent, lessen the difficulties to Canadian exporters with which up to now they have had to contend.

Article 38 - Publication and Administration of Trade Regulations. Article 38 provides for prompt and adequate publication of all laws, judicial decisions and administrative ruling of general application, pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions

of 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. No measure more burdensome shall become effective until officially made public.

The Article also provides that Members shall maintain or institute judicial, arbitral or administrative tribunals, independent of the agencies entrusted with administrative enforcement, for the prompt review and correction of administrative action relating to customs matters. Decisions shall be implemented and govern the practice unless an appeal is lodged with a court or tribunal of superior jurisdiction.

Article 37 was not altered at the Havana Conference. The Geneva draft had no interpretative notes and none was added at Havana.

This Article imposes no obligations upon Canada not already complied with, and the general benefit to international trade needs no elaboration.

Article 39 - Information, Statistics and Trade Terminology. Article 39 provides that Members shall communicate to the Organization as promptly as possible and in as much detail as is practicable statistics of their external trade in goods, and statistics of governmental revenue from import and export duties and other taxes on goods moving in international trade, and insofar as readily ascertainable, of subsidy payments affecting such trade. Insofar as possible the statistics 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.

The information required to be furnished would appear to be such as is necessary for the Organization to perform its functions, and to make studies for improving the methods of collecting, analyzing and publishing economic statistics, and promote international comparability.

No changes from the Geneva draft were made at the Havana Conference.

SECTION F - SPECIAL PROVISIONS

Article 40 - Emergency Action on Imports of Particular Products
Article 41 - Consultation
Article 42 - Territorial Application of Chapter IV
Article 43 - Frontier Traffic
Article 44 - Customs Unions and Free-Trade Areas
Article 45 - General Exceptions to Chapter IV

This Section of the Chapter on Commercial Policy is concerned with those various matters indicated above which do not properly fall within any of the other five Sections of the Chapter.

Article 40 - Emergency Action on Imports of Particular Products
This Article recognizes the possibility that as a result of unforeseen developments and of the effect of the obligations (such as the removal of a quantitative restriction) incurred by a Member under or pursuant to this Chapter, including tariff concessions, any product might be imported into the

territory of a Member in such relatively increased quantities and under such conditions that it may cause or threaten serious injury to domestic producers of like or directly competitive products. In such a case, a Member will 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 disregard the obligation in whole or in part or to withdraw or modify the tariff concession.

The "emergency escape clause" may also be invoked if conditions described above result from the reduction or elimination of a margin of preference. If, for example, Canadian producers are threatened with serious injury as a result of the elimination (or reduction) of a preference which Canada enjoyed in the United Kingdom prior to the Geneva negotiations, then the United Kingdom is free, at Canada's request, to re-establish the original margin of preference.

The text does not impose any limitation on the type of emergency action which may be taken by a Member in the circumstances described above. It would be possible for a Member, for example, to impose a quantitative restriction on imports of a particular product, if such a restriction were in fact necessary to prevent or remedy serious injury to domestic producers in the face of increased imports, even though a Q.R. had not been applied prior to the adoption of the obligations of the Charter. There would, however, have to be a relationship of cause and effect between (a) the increase in imports resulting in injury, and (b) the obligations assumed by Members under Chapter IV. Furthermore, any suspension, withdrawal or modification (under paragraphs 1(a), 1(b), and 3(b) must not discriminate against imports from any Member country, and such action should avoid, to the fullest extent possible, injury to other supplying Member countries.

In all cases where a Member considers it necessary to take such emergency action it must give notice in writing to the Organization and must afford other Members having a substantial interest as exporters of the product concerned an opportunity to consult. Such emergency action, however, can in circumstances of special emergency, be taken without prior consultation "where delay would cause damage which it would be difficult to repair". In such a case, consultation must be effected immediately thereafter.

But even if agreement between the interested parties is not reached, the country proposing to take action may nevertheless do so. Other affected Members are then free, after giving prior notice, to suspend the application to the trade of the Member taking such action, of substantially equivalent obligations or concessions of which the Organization does not disapprove. As in the case of the Member taking the original action, the affected Members can also act before giving notice where "delay would cause damage difficult to repair".

Nothing in this Article requires Canada as a contracting party to the General Agreement on Tariffs and Trade to consult with or obtain agreement of Members who are not at that time contracting parties concerning the withdrawal or modification of concessions which Canada made under the General Agreement. Nor does this Article authorize a Member which is not a contracting party to withdraw from or suspend obligations under this Charter vis-a-vis Canada by reason of the withdrawal or modification of such concessions made by Canada under the General Agreement.

This Article was taken without any substantive change from the Geneva draft of the Charter. Like so many other Articles which have become to be accepted as standard clauses and have been added to the "general provisions" of most bilateral trade agreements, this Article was, prior to Geneva, finding favour as a standard clause. At Geneva, for example, this clause was taken from the Geneva draft of the Charter and included in the General Agreement on Tariffs and Trade. Furthermore, under an Executive Order issued February 25, 1947, in connection with the Reciprocal Trade Agreement Act of the United States, all future trade agreements entered into by that country must contain such a clause.

Article 41 - Consultation. The Charter contains a great many provisions for co-operation and consultation, discussion and the exchange of information, etc. This type of concerted action is one of the basic objectives of the Charter.

Because the bulk of such consultation can normally be expected to arise from matters arising out of the Commercial Policy provisions of the Charter, it was considered advisable to provide in Article 41 a specific over-all obligation on all Members to "accord sympathetic consideration to and afford adequate opportunity for consultation regarding representations which may be made by any other Member".

It was decided at Havana to add to the matters specifically mentioned in this Article, the question of "internal price regulations" and that of "practices and regulations affecting the freedom of transit". These additions and the interpretation given in the following paragraph were the only changes made from the Geneva text.

Article 41 was interpreted to require Members, subject to the exceptions (as those concerning national security) 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.

It will be noted later in this report that Chapter VIII-Settlement of Differences - imposes a specific obligation upon Members to the effect that consultation will be resorted to in all cases of disputes. In order to avoid unnecessary delay in the settlement of differences, however, such consultation or discussion as might have been carried on under Article 41, would be considered as consultation under Chapter VIII.

Article 42 - Territorial Application of Chapter IV. This Article provides that the provisions of Chapter IV - Commercial Policy-shall apply to the metropolitan customs territories of the Members and to any other customs territories in respect of which the Charter has been accepted by the individual Members having international responsibility for such customs territories. A customs territory for purposes of Chapter IV means 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.

For purposes exclusively of the territorial application of Chapter IV, each such customs territory shall be treated as though it were a Member. This fact does not, however, create any rights or obligations as between two or more customs territories, for example, Jamaica and Trinidad, in respect of which this Charter has been accepted by a single Member, the United Kingdom.

A distinction must be made between a "separate customs territory" (such as Southern Rhodesia) which may become a Member of the Organization under Article 71, and a customs territory (not "separate") which would be considered a Member exclusively for purposes of the territorial application of Chapter IV.

<u>Article 43 - Frontier Traffic.</u> This Article provides that the provisions of Chapter IV shall not be construed to prevent advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic. This has been for many years a standard clause in most-favoured-nation treatment agreements. Although not strictly defined, this exception is meant to permit the continuance of border traffic, such as that between Geneva and the Free Zones of France.

A second exception was added to this Article at Havana in order to permit advantages accorded to the trade of Trieste by countries (such as Italy) contiguous to that territory. Such advantages, however, must be granted subject to the terms of the Treaties of Peace arising out of the Second World War.

<u>Article 44 - Customs Unions and Free Trade Areas.</u> International trade agreements and conventions have traditionally recognized customs unions as a permissible departure from the most-favoured-nation principle. The Havana Trade Charter recognizes this principle, but goes considerably further in establishing that not only customs unions but free trade areas, and interim arrangements leading to customs unions and free trade areas, are to be recognized as permissible exceptions from the most-favoured-nation principle. This article establishes the legal framework to which customs unions and free trade areas must conform in order to qualify as recognized exceptions under the Charter. In addition, the Article provides for careful supervision and control by the Organization to avoid abuse and to guarantee that such arrangements do not deteriorate into new discriminatory preferential regimes. The need for careful supervision is particularly important since interim agreements leading to the formation of customs unions and free trade areas would almost certainly involve new preferential arrangements of a temporary nature.

The preamble to the Article recognizes the principle that voluntary integration between the economies of Members will have a beneficial effect on world trade by increasing the area of freedom of trade. It warns, however, that the purpose of a customs union or free trade area should be to facilitate the flow of trade between participating countries and not to raise barriers against the trade of other Members.

Formal definitions are established to describe the broad legal requirements of customs unions and free trade areas.

A <u>customs union</u> is described as the creation of a single customs territory to replace two or more separate customs territories so that;

(i) tariffs and other trade barriers are eliminated between participating countries on substantially all the trade between them, or at least on substantially all the trade between them in products originating in their territories.

Restrictions permitted for balance of payments reasons, and those permitted under the general exceptions contained in Article 45 may be retained. This definition would require the elimination of almost all existing preferences accorded by a member of a customs union against other members of the union. The concept "substantially all the trade" provides limited scope for the retention of some such preferences.

(ii) tariffs and other trade regulations imposed by each of the union members against non-members of the union must be substantially uniform. Existing preferences accorded by a customs union member against non-union members may be retained as an exception from the common tariff requirement.

A <u>free trade area</u> is described as a group of two or more customs territories in which tariffs and other trade barriers are eliminated on substantially all the trade in products originating in their territories. Restrictions permitted for balance of payments reasons and those permitted under the general exceptions contained in Article 45 may be retained. This definition would require the elimination of almost all existing preferences accorded by members of the free trade area against other members of the area. The concept "substantially all the trade" provides limited scope for the retention of some such preferences.

Members of the free trade area may retain their own independent tariffs against non-area members, including existing preferences accorded by a free trade area member against non-area members.

The formation of a customs union or a free trade area, or interim agreements leading to their formation, are permitted, providing the following conditions are met.

1. In the case of a customs union, or an interim arrangement leading to a customs union, the common tariff and regulations of commerce imposed against non-participating members must not be more restrictive on the whole than the barriers that prevailed before the customs union or interim agreement.

2. In the case of a free trade area, or interim arrangement leading to a free trade area, the tariffs and regulations of commerce imposed by each of the constituent territories against non-participating members must not be more restrictive than the barriers that prevailed before the free trade area or interim agreement.

3. An interim agreement leading to a customs union or free trade area must have a definite plan and schedule calling for completion of the customs union or free trade area within a reasonable period of time.

A Member desiring to enter into a customs union, free trade area, or interim agreement leading to such integration, must notify the Organization and provide all the necessary information concerning the plan. The Organization may require

modification of the plan to ensure that the conditions stipulated above are met. Any subsequent change in the plan is subject to the same conditions of review and possible modification by the Organization. Members may not proceed with their proposed plans unless the recommendations of the Organization are incorporated into the plan.

A final paragraph provides that a two-thirds majority of Members present and voting may permit a proposed arrangement leading to the formation of a customs union or free trade area, even though such proposals do not conform strictly with the requirements of the Article. The main purpose of this clause is to permit, in exceptional circumstances, a customs union or free trade area between Members of the Organization and non-Members.

The main substantial changes introduced at the Havana Conference were:

1. The introduction of the concept of free trade areas.

2. An entirely new treatment of the relationship between existing preferences and a customs union or free trade area.

A free trade area may be regarded as an imperfect form of customs union. In the past it has been treated as a possible stage on the road to a full-blown customs union, but was not accepted as a final form of tariff integration, permitting departure from the most-favoured-nation principle.

The introduction of the concept of free trade areas as a new exception from the most-favoured-nation principle must be viewed as part of a compromise on the closely related problem of new preferential arrangements. The Middle Eastern and Central American states represented at Havana pressed for the right to enter into new preferential arrangements in order to create a sufficiently broad market necessary for economic development and diversification. When it was suggested that the formation of a customs union would be a more satisfactory method of achieving this purpose, these countries indicated that their political and economic institutions would not permit the formation of a full customs union which was required by the terms of the Geneva provisions. The introduction of the more flexible concept of "free trade area" satisfied these objections, and in this way facilitated the reaching of general agreement on the fairly regorous requirements of the provisions dealing with new preferential arrangements for economic development.

The new and expanded treatment of the question of existing preferences was introduced because of the growing interest in a possible European Customs Union to which the United Kingdom may be a party. One of the vital considerations in the prospects for a European Customs Union which included the United Kingdom is how to reconcile it with the British Preferential System. It was found that the cursory treatment of this problem in the Geneva draft was incomplete and quite impractical from the point of view of the United Kingdom and some Commonwealth countries. The United Kingdom Delegation introduced a proposal which would enable countries which participated in a preferential system to carry their preferences intact into a customs union. The United States Delegation opposed this proposal, indicating that while it was prepared

to accord preferences against non-members of the union, it could not accept any deviation from the provision requiring the elimination of tariff barriers on substantially all the trade between members of the union, except within the limits laid down by the term "substantially". The compromise eventually reached incorporated this approach.

The Canadian Delegation pursued the line that although it was not Canada's policy to enter into customs unions or free trade areas, such integrating arrangements should be encouraged if they contribute to economic recovery and broaden the area of unrestricted trade. In line with this approach the Canadian Delegation made every effort to provide for close control and scrutiny by the Organization to ensure that interim arrangements, customs unions or free trade areas would not degenerate into techniques for increasing trade barriers against non-members of the union, or into new long-term preferential arrangements.

On the question of the relationship between existing preferences and customs unions, the Canadian Delegation sought to avoid giving the impression that it would allow its preferences to be an obstacle in the formation of a European Customs Union. The Australian and New Zealand delegations showed almost open hostility to a European Customs Union which would impair in any way their preferential position in the United Kingdom market. They opposed the Charter provisions on the grounds that they would require the elimination of most of their preferences, accorded by the United Kingdom against members of the customs union, without adequate provision for compensation. Since the definition of a customs union requires the elimination of certain preferences this would automatically reduce their bargaining value in negotiations for their elimination. This point of view was clearly summed up in the following remark, "Who will pay for a horse that is about to die?".

There can be no question that the formation of a European Customs Union which included the United Kingdom would impair the value of some Canadian preferences in the United Kingdom market. To some extent such loss would be compensated for by tariff reductions pursuant to the negotiations called for in the elimination of existing preferences. In a more intangible way Canada would derive long-term benefits from the general economic recovery in Europe which economic integration would make possible. The Canadian Delegation at the Havana Conference looked at Canadian interests in terms of the broad effects which a customs union would have on the economic strength of Western Europe rather than on the loss of some preferences in the United Kingdom market.

Article 45 - General Exceptions to Chapter IV. This Article lists in two groups measures which a Member may enforce or adopt which would not be subject to any of the provisions of Chapter IV. It should be noted that these measures are excepted from the provisions of Chapter IV only. Moreover, none of these exceptions may be used in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members, or a disguised restriction on international trade.

The first group of exceptions reproduces the standard exception clauses existing in most bilateral trade agreements, such as measures necessary to protect public morals; human, animal or plant life or health; national treasures of artistic,

historical or archaeological value; measures relating to the importation or exportation of gold or silver; to the products of prison labour; to the conservation of exhaustible natural resources (if such measures are made effective in conjunction with restrictions on domestic production or consumption); measures necessary to the enforcement of laws and regulations relating to public safety including the concept of public order, and of laws or regulations which are not inconsistent with the provisions of this Chapter, such as those relating to customs enforcement and to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices. This group of exceptions also includes measures taken in pursuance of intergovernmental commodity agreements concluded in accordance with the provisions of Chapter VI or in pursuance of any intergovernmental agreement which relates solely to the conservation of fishery resources, etc., and measures which involve 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 government stabilization plan. Normally export restrictions would be prohibited under the provisions of Article 20, paragraph 1.

There were only two additions made to the Geneva draft in this group, namely, the exception relating to public safety, and that relating to conservation of fishery resources, etc.

The second group of exceptions is intended to apply only during a transitional period, the duration of which will be fixed by the Conference of the Organization. The Geneva text in this connection provided that such measures, as are instituted or maintained and which are inconsistent with the other provisions of this Chapter, were to be removed by January 1, 1951. The deletion of a specific date is the only substantive change which was made in this group of exceptions. In practice it is not a serious broadening of the exceptions since (a) it is unlikely that the Charter will come into force before late 1949 and (b) the Geneva text permitted the deferment of the date of January 1, 1951, with the concurrence of the Organization.

The exceptions under this group are grouped into three sub-paragraphs as follows:

(i) measures essential to the acquisition or distribution of products in general or local short supply;

(ii) measures 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 after consultation with other interested Members of temporary surpluses of stock 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.

Although this Article was the subject of lengthy debate at Havana, attempts to add to these recognized exceptions were successfully opposed with the result that the Geneva text was not changed to any serious degree.

It will be noted that Chapter VIII of the Charter, which provides for the settlement of differences, authorizes a Member, claiming the nullification or impairment of a benefit, to complain to another Member even though this action is not inconsistent with the provisions of the Charter. One of the cases which this particular provision covers is the abuse by any Member of the exceptions which this Article specifies. Canada could, for example, complain to the United States on the basis of nullification or impairment of a benefit accruing to it under the Charter as a result of United States measures taken in relation to that country's copyright laws which would act as "a disguised restriction on international trade". Canada could lodge such a complaint which, in the event of non-agreement, would go to the Organization even though the United States were applying "measures necessary to secure compliance with its copyright laws" (sub-paragraph 1(a)(v)) and even though such measures as the United States are applying are not inconsistent with the provisions of Chapter IV. If agreement were not reached by the two countries concerned, the case would then go before the Executive Board and/or the Conference and both parties would be bound by whatever ruling was given.

CANADIAN LEGATION

Geneva, August 16, 1948

With reference to my despatch No. 165 of July 13, attached is the third section of Part II of the Report of the Canadian Delegation to the U.N. Conference on Trade and Employment at Havana. The fourth and last section of Part II will be sent on to you as soon as it can be typed.

L.D. Wilgress

CHAPTER V - RESTRICTIVE BUSINESS PRACTICES

Article 46 - General Policy towards Restrictive Business Practices
Article 47 - Consultation Procedure
Article 48 - Investigation Procedure
Article 49 - Studies relating to Restrictive Business Practices
Article 50 - Obligations of Members
Article 51 - Co-operative Remedial Arrangements
Article 52 - Domestic Measures against Restrictive Business Practices
Article 53 - Special Procedures with respect to Services
Article 54 - Interpretation and Definition

I

Article 46 - General Policy towards Restrictive Business Practices.

Measures to assist in the expansion of world trade and employment would be incomplete if confined to restrictions imposed by governments alone. Otherwise the effects of the removal of government restrictions, such as tariffs and trade quotas, might be more or less nullified by restrictions in the way of private agreements imposed by commercial enterprises. "Clearly", as the original United States-United Kingdom Proposals pointed out, "if trade is to increase as a result of the lightening of government restrictions, the governments concerned must make sure that it is not restrained by private combinations." Chapter V of the Charter contains the principal measures to prevent commercial enterprises from engaging in practices which would have harmful effects on international trade.

Article 46 establishes the general policy towards restrictive business practices, including the conditions under which such practices may be subject to investigation by the Organization and the definition of restrictive business practices.

Section 1 of Article 46 reads:

"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."

The business practices which shall be subject to investigation are those (1) which have harmful effects on the expansion of production or trade; and (2) which, as set forth in Section 2, are engaged in by one or more private or public commercial enterprises possessing effective control of trade in the commodity affected among a number of countries. Such investigations will be made only on the basis of complaints to the Organization.

The types of practice subject to investigation are further described, in Section 3, as (a) fixing prices, terms or conditions of purchase or sale. (b) allocating of markets or customers, fixing sales or purchase quotas, excluding enter-
/prises

prises from any market or field of business activity, (c) discriminating against particular enterprises, (d) limiting production or fixing production quotas, (e) preventing by agreement the development or application of technology or invention, (f) extending the use of rights under patents, trade marks or copyrights beyond their proper limits, and (g) any similar practices which the Organization may declare by a two-thirds majority vote to be restrictive business practices.

Article 47 - Consultation Procedure. Under Article 47 any Member which considers that its interests are or are about to be detrimentally affected by the existence of a restrictive business practice may seek a remedy by direct consultation with other Members or may request the Organization to arrange for such consultation. In the case of complaints against a public commercial enterprise which is not a party to any combination or agreement, an affected Member is required to attempt to reach a solution by consultation before requesting the Organization to undertake an investigation.

Article 48 - Investigation Procedure. The procedure for the initiation and conduct of investigations is provided in Article 48. A Member may present a written complaint to the Organization on its own behalf or on behalf of any affected person, enterprise or organization within the Member's jurisdiction. Such complaints shall give substantial indication of the nature and harmful effects of the practice. The Organization shall decide, after securing such supplementary information as it may deem necessary, whether an investigation is justified.

If the Organization decides that an investigation is justified, all Members are to be informed of the complaint, and the Organization may seek relevant information from any Member. The Organization is authorized to conduct or arrange for hearings, at which any Member and any person, enterprise or organization on whose behalf the complaint has been made, as well as commercial enterprises alleged to have engaged in the practice complained of, must be afforded reasonable opportunity to be heard.

It is then for the Organization to make its decision and to inform the Members of the decision and the reasons therefor. If it is an adverse decision the Organization will request the Members concerned to take every possible remedial action and it may also recommend remedial measures to be carried out in accordance with the respective laws and procedures of the Members concerned. As soon as possible after the close of its proceedings in each case the Organization must make public a report showing fully the decisions reached, the reasons therefor and any remedial measures recommended.

The Organization is empowered also to follow up any particular case by requesting Members to report fully on the remedial action taken. The Members and the public must be informed of any such remedial action.

Confidential information furnished by a Member, which if disclosed would substantially damage the legitimate business interests of a commercial enterprise, shall not be disclosed if the Member so requests.

Article 49 - Studies relating to Restrictive Business Practices. Provision is made in Article 49 for the Organization to conduct studies, either on its own initiative or at the request of any /Member

Member or of any organ of the United Nations or of any other intergovernmental organization, concerning the general aspects of restrictive business practices affecting international trade, conventions, laws and procedures relevant thereto and the registration of restrictive business agreements and other arrangements affecting international trade. The Organization is authorized to request information from Members and to arrange for conferences of Members to discuss any matters relating to restrictive business practices and to make recommendations to Members in regard to such conventions, laws and procedures as are relevant to their obligations under this Chapter.

Article 50 - Obligations of Members. Article 50 deals with the obligations of Members to prevent restrictive business practices having harmful effects. Each Member agrees to 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 such practices. Each Member undertakes, among other things:

(a) to make adequate arrangements for presenting complaints, conducting investigations, and preparing information and reports requested by the Organization;

(b) to 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;

(c) to report fully any action taken, independently or in concert with other Members, to comply with requests and carry out recommendations of the Organization and, when no action is taken, to inform the Organization of the reasons and to discuss the matter if so requested;

(d) to take part in consultations and conferences provided for in this Chapter at the request of the Organization.

While each Member is obliged under Section 3 of Article 50 to furnish, as promptly and fully as possible, information requested by the Organization in connection with an investigation or study, a Member may, on due notice, withhold information which it considers not essential to the conduct of the inquiry and which, if disclosed, would substantially damage the legitimate business interests of a commercial enterprise. In such circumstances the Member shall indicate the general character of the information withheld and the reason why it considers it not essential.

Article 51 - Co-operative Remedial Arrangements. Article 51 provides that Members may co-operate with each other to make more effective any remedial measures to prevent restrictive business practices having harmful effects. Members are to keep the Organization informed of participation in such co-operative action and of the measures taken.

Article 52 - Domestic Measures against Restrictive Business Practices. Article 52 makes clear that a Member is not restricted in any way by the provisions of the Chapter in the enforcement
/of its

of its own laws against monopolies or restraint of trade.

Article 53 - Special Procedures with respect to Services. Article 53 establishes special procedures to deal with complaints of restrictive business practices affecting services. Recognition is given to the fact that certain services, such as transportation, telecommunications, insurance and the commercial services of banks, are substantial elements of international trade and that restrictive business practices in relation to them may have harmful effects similar to those indicated in Article 46. When a Member considers that its interests are seriously prejudiced by restrictive business practices in connection with a service it may make written representation to the Member or Members within whose jurisdiction the commercial enterprises engaging in such practices are operating and seek by mutual consultation to secure a satisfactory solution. If a satisfactory adjustment cannot be reached in this way the matter may be referred to the Organization, which will transfer the complaint to the appropriate intergovernmental organization, where one exists, with such observations as the Organization may wish to make. If no such intergovernmental organization exists the Organization, if requested by Members, may make recommendations for an international agreement to remedy the particular situation in so far as it comes within the scope of the Charter.

Article 53 also makes provision for co-operation between the Organization and other intergovernmental agencies in dealing with or studying restrictive business practices affecting any field coming within the scope of the Charter.

Article 54 - Interpretation and Definition. Under Article 54 the provisions relating to restrictive business practices are not to be construed so as to prevent the adoption and enforcement of any measures specifically permitted under other Chapters of the Charter, for example, the measures permitted with respect to intergovernmental commodity agreements. The Organization may, however, make recommendations to Members or to any appropriate intergovernmental organization concerning any features of measures which may have the effect indicated in paragraph 1 of Article 46.

It is provided that the term "business practice" is not to be construed so as to include an individual contract, provided that such contract is not used to restrain competition, limit access to markets or foster monopolistic control.

"Public commercial enterprises" are defined as (a) agencies of governments in so far as they are engaged in trade and (b) trading enterprises mainly or wholly owned by public authority where the Member concerned declares that for the purpose of the Chapter it has effective control over or assumes responsibility for the enterprises.

II

General Remarks regarding Chapter V.

In spite of the variety of economic systems represented at the several stages of the Conference, and wide divergences of government attitudes toward the whole question of monopoly, discussions were amicable throughout and general agreement was reached without sacrifice of essential principles.

The provisions of Chapter V in the Havana Charter are substantially similar to the Geneva text, although strenuous

/efforts

efforts were made by some delegations to have the measures narrowed in some respects, and by others to have them widened. The subjects which gave rise to most debate were: (1) inclusion of public commercial enterprises; (2) inclusion of shipping and other services; (3) power of the Organization to make "decisions"; (4) provision for preventive action; and (5) whether the procedures of Chapter V should be exhausted before recourse to the procedures of Chapter VIII.

1. Inclusion of public commercial enterprises. Representatives of some countries, particularly those in which state trading is engaged in to a substantial extent, contended that public commercial enterprises should not be subject to investigation by the Organization. They felt that such a course might impair the sovereignty of Members. Article 46, however, as finally drafted, makes clear distinction between the state acting in a legislative or executive capacity and the state pursuing the activities of a business enterprise. The text agreed upon is designed to bring within the framework of the Chapter the business practices of public commercial enterprises insofar as they may harmfully affect international trade. Special provision was made, however, that complaints against a public enterprise acting independently of any other enterprise can be presented only after an attempt has been made to reach a satisfactory conclusion by consultation with the Members concerned.

2. Inclusion of shipping and other services. In the original draft of the Charter prepared by the United States in 1946 it was proposed that the undertakings in Chapter V should not apply to "agreements or understandings concerning railway transportation, aviation, shipping and telecommunication services". It was felt that all such services were affected by special considerations and would normally come within the jurisdiction of specialized intergovernmental agencies. At the London Session of the Preparatory Committee strong representations were made by several delegations that their interests were detrimentally affected by international agreements relating to services and that specialized agencies were non-existent in some fields and provided inadequate protection in others. It was decided at London that the Chapter should not apply to services, but at Geneva a compromise was reached by providing for special procedure with respect to complaints regarding services (see Article 53).

3. Power of the Organization to make "decisions". In every draft of the Charter provision had been made for the Organization (1) to decide whether an investigation is justified; and (2), after the investigation is completed, to decide whether the practices in question are of the type and have the harmful effects described in the basic article (Article 46) of the Chapter. The desirability of empowering the Organization to make such decisions was not questioned until objection was raised by one of the Latin-American delegations at Havana. They did not feel that a sovereign state should be required to accept a "decision" of the Organization that certain practices had harmful effects and to take any remedial action suggested by the Organization. They considered that the word "decision" implied something in the nature of a judicial finding which would have a binding effect on a Member. It was pointed out that no such binding effect was intended, that in Paragraph 4 of Article 50, defining Members' obligations, each Member undertakes merely to take full account of each request, decision and recommendation of the Organization and to take the action it considers appropriate "having regard to its obligations under

/this Chapter".

this Chapter". It is clear from Paragraph 5 of Article 50 that a Member is free to decide against any action, but in such an event the Member undertakes to inform the Organization why no action has been taken. The matter was resolved by the inclusion in Article 54 of a statement indicating that such "decision" did not impose or imply an obligation on the Members to accept them; the term means only that the Organization has come to its conclusion on the point.

4. Preventive action with respect to practices "about to have" harmful effects. There was considerable debate both at London and Geneva about the inclusion of this provision. Those opposed to its inclusion contended that the Organization should not condemn practices which merely showed possibilities of harmful effects. It was pointed out that the provision would apply only where there appeared to be strong probabilities of damage, and that it was desirable, wherever possible, to prevent imminent damage as well as to stop practices which had already produced harmful effects. The decision at Geneva to retain this provision was confirmed at Havana after only slight discussion.

5. Registration of agreements. Several delegations pressed strongly for the compulsory registration with the Organization of all international agreements relating to restrictive business practices. One suggestion was made that if any such agreement were not so registered the business practices agreed upon would be presumed to have harmful effects. Objection was raised that registration might be regarded as tantamount to a licence, that the volume of registered agreements would require the setting up of a very large staff of experts, and that the Organization would be interested in only a very few of the agreements. It was finally agreed by the Preparatory Committee that the registration of restrictive business practices should be specifically referred to in Article 49 and be made the subject of further study by the Organization.

6. Recourse of Members to Procedures of Chapter VIII before exhausting Procedures of Chapter V. The questions involved and the conclusion reached in this matter are dealt with in the section of this report relating to Chapter VIII.

III

Conclusions

The terms of Chapter V of the Havana Charter are along the lines which the Canadian Delegation has consistently advocated at the preparatory meetings and at the Havana Conference. In general, the provisions relating to restrictive business practices are similar in character to the principles embodied in Canadian legislation such as the Combines Investigation Act and Section 498 of the Criminal Code. The recommendations made in the report "Canada and International Cartels" as a basis for public policy in dealing with private international trade arrangements have much in common with the final results achieved at Havana. In referring to the proposals for an International Trade Organization in the House of Commons on July 2, 1946, Rt. Hon. Louis S. St. Laurent said:

> "... it is hoped the governments participating in the conference would agree upon terms to eliminate

/these

these international cartels or to control them in such a manner as to prevent their harmful effects upon the economies of the participating nations".

The language of paragraph 1 of Article 46 of the Havana Charter closely parallels this statement.

Under Chapter V the obligations of Members are of two main classes, those relating to investigations of restrictive business practices and those relating to remedial measures. With respect to the responsibilities which Canada would have to assume in meeting any requests of the Organization for information no particular difficulties should arise. The authority of the Canadian Government to conduct enquiries would appear sufficient to deal with any requests which might be made.

The type of remedial action which a Member would take is left to its own decision. Paragraph 4 of Article 50 provides "Each Member shall....take in the particular case the action it considers appropriate having regard to its obligations under this Chapter". Paragraph 1 of the same article establishes the obligation of each Member to "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" restrictive business practices having harmful effects. In any particular case the Organization may recommend remedial measures to a Member to be carried out in accordance with national laws and procedures (paragraph 7, Article 48). At the outset it would not appear necessary for any new legislation to be enacted to permit Canada to fulfill obligations under Chapter V of the Charter. Canada already possesses a substantial body of law designed to prevent undue restraint of trade and the Canadian Parliament has wide powers to control its trade with foreign countries. The constitutional division of powers between the federal authority and the provinces might give rise to some problems in the event that recommendations were made for specific regulatory action, but it would be a matter for Canada to decide in each case whether such measures could be appropriately taken. Experience might show the need for revision of criminal law or other federal legislation to implement recommendations of the Organization with respect to restrictive business practices. Instead of attempting to anticipate the nature of amendments that might be required it would appear desirable to await the results of investigations and studies of such matters by the new Organization.

CHAPTER VI - INTER-GOVERNMENTAL COMMODITY AGREEMENTS

As early as 1902 an inter-governmental sugar agreement was signed in Brussels by governments of a number of European countries. In the inter-war years agreements were entered into for rubber, coffee, tea, cotton, beef, rice, timber and tin.

Most of these agreements were drawn up by producing and exporting countries in an endeavour to overcome difficulties arising from the accumulation of surpluses. The approach as to these agreements lacked uniformity. There was no systematic treatment and no related action with respect to these agreements. The majority did not provide for representation on the controlling bodies by importing and consuming countries. During the war ex- /perience

perience was gained in the international management of a great many commodities. This experience has been drawn upon in framing the provisions relating to commodity agreements in the Charter.

The Charter recognizes that problems connected with primary commodities are of a special nature which do not apply to manufactured goods. It provides a systematic approach to the solution of such problems. There is to be careful examination of all aspects of a commodity problem and such examination is to be conducted on a wide basis with adequate representation of both producing and consuming interests.

The steps leading to an agreement which regulates price or involves restrictions on production or trade are, firstly, the formal request to the Organization by interested Members for an agreement. Secondly, the examination by a study group. Thirdly, the consensus of opinion among Members substantially interested that an international agreement is desirable to deal with the commodity situation. Fourthly, the approval by a commodity conference. Finally, the establishment of a commodity council to administer the agreement.

Such agreements may aim to stabilize the prices of primary commodities at levels which are fair to consumers and provide a reasonable return to producers. Provision is made for co-ordinating the activities of various international bodies concerned with commodity matters and to insure that countries do not make arrangements to improve their own individual position at the expense of others.

There was no susbtantial change in the Geneva draft at Havana. Some countries felt that because producers had more at stake when commodity prices fall, the provisions of the Chapter should be so framed as to place exporting countries in a more favourable bargaining position in international trade. They regarded co-ordinated control of the flow of commodities by producing countries as the best means of controlling speculation in outside markets. These views were not upheld by the majority of countries whose spokesmen felt that a balance should be maintained between producing and consuming interests. The principle of bringing all buyers and sellers together on equal terms to discuss their problems and endeavour to work out a mutually satisfactory agreement received major support. It was generally felt that the larger the number of countries which could come to agreement, the greater the chance of success in attaining the objectives of equitable and stable prices and an expanding market.

<u>SECTION A - INTRODUCTORY CONSIDERATIONS</u>

<u>Article 55 - Difficulties Relating to Primary Commodities.</u> This article sets out the nature of special difficulties relating to primary products and recognizes that such difficulties may at times necessitate special treatment of the international trade in such commodities through inter-governmental agreement.

<u>Article 56 - Primary and Related Commodities.</u> A "primary commodity" is defined in this Article in such a manner as to mean that butter, canned fish and lumber might be regarded as primary commodities for the purpose of bringing them within the scope of a commodity control agreement. It is also recognized that it would be unworkable to have an agreement for wheat and not for wheat flour, or an agreement for natural rubber which did not at the same time apply to the synthetic product. As to other related products, it becomes a matter of agreement among Mem-

/bers

bers substantially interested, and is then subject to organizational approval as to whether the commodity is in burdensome surplus supply. Representatives at Havana were in general agreement, however, that "machinery" would not come under the scope of this Article, but "steel" might be appropriately included as a related commodity for inter-governmental treatment under a commodity control agreement.

Article 57 - Objectives of Inter-governmental Commodity Agreements. The Conference agreed that inter-governmental commodity agreements are appropriate to achieve a number of objectives. Among these were included (a) adjustment between production and consumption when normal market forces bog down, (b) a framework for correcting un-economic use of resources and manpower, (c) to stabilize prices and (d) to develop natural resources of the world and protect them from unnecessary exhaustion. The last objective is appropriate in the case of international action applying to fishing and whaling operations.

In general, commodity agreements in the past have paid little attention to expansionist measures. In accordance with the objectives of the Food and Agriculture Organization inter-governmental agreements may be concluded with the object of expanding production, if this can be accomplished with advantages to consumers and producers. In certain cases the agreement may provide for the distribution of basic foods at special prices. The Conference also recognized that international action should be taken to assure the equitable distribution of foods or raw materials in short supply.

The International Wheat Agreement which recognizes an existing shortage and a possible serious surplus takes account of both situations in its objective of assuring supplies of wheat to importing countries and markets to exporting countries at equitable and stable prices.

SECTION B - INTER-GOVERNMENTAL COMMODITY AGREEMENTS IN GENERAL

Article 58 - Commodity Studies. Any Member on its own initiative may ask the Organization to make a study of a particular commodity, such a Member may be interested as a consumer or as a producer, or the Member may be mainly interested in the trading aspects of the commodity. The Member does not have to wait until actual difficulties are experienced but, as in the case of the present Wheat Agreement, may ask that steps be taken to forestall surplus difficulties.

The Organization may decide that the case put up by the applicant is not strong enough or that there is not sufficient interest indicated by other Members to warrant further action. On the other hand, the Organization may decide that a study should be made of the situation. If so, it must promptly invite all Members to appoint a representative to the study group. Each Member can decide for itself whether or not it is interested in participating in the study. Since certain non-Members may have a substantial interest in the international trade of the particular commodity they may also be invited, but this is optional on the part of the Organization.

The job of the study group is to investigate the production, consumption and trade in the commodity and report fully to their respective governments and to the Organization. The study group will also make recommendations on how best to

/deal

deal with special difficulties which exist or are expected to arise.

Article 59 - Commodity Conferences. Although any interested Members may ask the Organization to make a study of a commodity difficulty, the Organization is required to call a conference only when the request comes from Members whose interests represent a significant part of world trade in the commodity. Normally, however, the calling of a conference will result from a recommendation by a study group. Any Member may attend the conference and non-Members may also be invited.

The principle followed in the Charter is that a commodity agreement is strengthened by wide participation and that it should include not only the main producers but all countries which have an interest in the production, consumption and trade in the commodity. Another principle introduced is that the Members themselves will decide whether or not they are sufficiently interested to participate in a conference leading to an agreement.

Article 60 - General Principles governing Commodity Agreements. In this article a number of principles are laid down which Members are to observe in concluding and operating inter-governmental commodity agreements. Initially all participants, whether Members or non-Members of the Organization, are placed on an equal footing with respect to obligations. However, if a Member or a non-Member does not participate at the start and thereby escapes the initial obligations under the agreement then such a country, finding it more advantageous to be "in" than "out", cannot expect to come into the agreement on as favourable terms at a later date. Here again it is recognized that only through wide participation of substantially interested countries can action to remedy commodity difficulties be made effective. Adequate participation must be afforded to countries having a substantial interest in the commodity as importers or consumers. There must be full publicity regarding all phases of any agreement proposed or concluded, regarding the considerations which arose in the course of the discussions, and periodically, regarding the operation of the agreement.

Article 61 - Types of Agreements. Two types of inter-governmental commodity agreements are envisaged, (a) commodity control agreements and (b) other inter-governmental commodity agreements. A commodity control agreement is an 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.

This would allow governments which have become parties to an inter-governmental control agreement to employ measures such as quantitative restrictions on exports or imports which are otherwise prohibited under the commercial policy provisions of the Charter.

The Organization is empowered to decide whether an existing or proposed agreement is a control agreement and Members which enter into any new commodity control agreements can /do so

do so only through a conference at which all Members are entitled to be represented. If, in an exceptional case, there has been unreasonable delay in the convening or in the proceedings of the study group, or the calling of a conference, then Members substantially interested may proceed by direct negotiation to the conclusion of an agreement. This safeguard is provided to forestall possible delaying tactics on the part of some Members.

Members which participate in inter-governmental commodity control agreements are released for the particular commodity within the agreement from certain obligations under the Charter. For that reason the circumstances governing the use of commodity control agreements are contained within narrow and rigid limits, the procedure in setting up an agreement must follow a definite pattern and the Charter lays down specific rules regarding administration, renewal and settlement of disputes which do not apply to other than commodity control agreements. These special provisions are contained in Section C of the 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, characteristically 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 52, 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. Since commodity control agreements are restrictive, this article lays down the principles that such agreements be /designed

designed to assure adequate supplies of the commodity to meet world demand and at reasonable prices and everything possible is to be done to expand world consumption of the commodity. When decisions come to a vote, importers as a group are to have a number of votes equal to that of those Members mainly interested in obtaining export markets for the commodity. Restrictive measures are not to be applied to maintain uneconomic production but where practicable shifts are to be made to low cost areas of production. Programmes of internal economic adjustment are to be undertaken which will aid in the solution of the commodity problem.

Article 64 - Administration of Commodity Control Agreements. The conference agreed that the operation of each commodity control agreement should be governed by a Commodity Council and each participating country should have one representative of the Council. The voting power of representatives is to be on the basis of an equal division of votes between importing and exporting countries, and countries that do not fall precisely within either of these classes are to have an appropriate voice.

The International Wheat Agreement provides for equal voting rights for exporters and importers. The Wheat Council delegates of the importing countries hold 1,000 votes and the exporting countries have 1,000 votes which are distributed in proportion to their purchases and sales.

The Organization is entitled to appoint a non-voting representative to each Commodity Council and, by invitation, inter-governmental organizations, such as FAO, are represented on the Council. The Council appoints its own Chairman who may be nominated by the Organization and after consultation with the Organization the Council appoints its own Secretariat. The Commodity Council draws up its own rules of procedure and regulations which are subject to review by the Organization. The Organization can require the amendment of any regulation which is inconsistent with the provisions of the Charter which relate to inter-governmental commodity agreements. Although each Commodity Council works out its own methods and techniques to deal with a commodity problem, its operations are under constant review by the Organization through periodic reports and special reports which the Organization may call for at any time.

The expenses of a Commodity Council are borne by the participating countries and when an agreement is terminated the archives and all statistical material are to be turned over to the Organization.

Article 65 - Initial Term, Renewal and Review of Commodity Control Agreements. It was agreed that initial term of commodity control agreements should be limited to five years. Renewal terms are not to exceed five years and this rule is to apply to any existing agreement among Members which the Organization classifies as a commodity control agreement. The term of the International Wheat Agreement is five years.

The Charter provides that when Members enter into inter-governmental commodity control agreements they are allowed to adopt measures affecting international trade which are otherwise outlawed under the Charter. For that reason the Havana Conference agreed that the Organization should be given wide authority in the exercise of its control over commodity agreements. Each commodity control agreement must provide

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that if the Organization finds that its operation has failed substantially to conform to the rules of the Charter governing commodity control agreements then the participating countries must either revise the agreement or terminate it.

Article 66 - Settlement of Disputes. When disputes arise a procedure is laid down for handling them. A question of difference concerning the interpretation of the provisions of an agreement is discussed first by the Commodity Council and, if it cannot be resolved, it is then referred to the Organization.

SECTION D - MISCELLANEOUS PROVISIONS

Article 67 - Relations with Inter-governmental Organizations. While the drafting of this section of the Charter was under consideration in the first and second sessions of the Preparatory Committee, steps were concurrently being taken by Members to deal with international commodity problems through some form of agreement. An Interim Co-ordinating Committee with representation from the Food and Agriculture Organization and from the Preparatory Committee of the United Nations Conference on Trade and Employment was set up to co-ordinate the work of the two organizations with respect to inter-governmental commodity agreements. A representative of this Committee contributed to the discussions at Havana regarding the provisions in the Charter relating to inter-governmental commodity agreements and particularly to this section which has for its object the ensuring of appropriate co-operation with other inter-governmental organizations, such as the Food and Agriculture Organization. Such inter-governmental organizations by reason of their competency are 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.

This means that there will be active co-operation at all times between ITO and FAO and it is expected that the technical assistance which the Food and Agriculture Organization can provide will be utilized. The objective is to work together but avoid duplication of effort.

Article 68 - Obligations of Members Regarding Existing and Proposed Commodity Agreements. When the Charter comes into effect, Canada and all other Members of the Organization are required to transmit to the Organization the full text of each inter-governmental commodity agreement in which they are participating. New Members in the Organization must also comply with this requirement. If the Organization finds that any agreement is inconsistent with the provisions of the Charter which apply to inter-governmental agreements, the Members concerned must at once bring the agreement into conformity with the Charter provisions. The same obligation applies to prospective agreements which are under negotiation at the time the country becomes a Member of the Organization.

The International Wheat Agreement provides that, if any of the terms of that agreement are inconsistent with such requirements as the United Nations through its appropriate organs

/and

and specialized agencies may establish regarding inter-governmental commodity agreements, then the Wheat Agreement is to be amended and brought into conformity.

Article 69 - Territorial Application. This article deals with representation on the Commodity Council by Members and non-Members with dependent territories. It permits the metropolitan territory to be represented as an importer while at the same time the dependent territory may vote as an exporter.

Article 70 - Exceptions to Chapter VI. It was agreed that the provisions of Chapter VI do not apply to (a) any bilateral inter-governmental agreements, such as those which exist between Canada and the United Kingdom, (b) the provisions of an agreement which are necessary for the protection of public morals, or of human, animal or plant life, provided that the agreement is not inconsistent with the objectives of Chapter V or Chapter VI, (c) any inter-governmental agreement relating solely to the conservation of fisheries resources, migratory birds or wild animals.

Members who enter into agreements which have to do with commodities in short supply do not have to go through the study group and conference stages. In order to deal with an urgent problem, such as foodstuffs in short supply, they are permitted to enter into direct negotiations in order to overcome the difficulty.

The long procedure and rigid criteria laid down for commodity control agreements in Section C are not required if the Organization finds that such agreements relate solely to the conservation of exhaustible natural resources.

CHAPTER VII - THE INTERNATIONAL TRADE ORGANIZATION

Chapter VII of the Charter contains twenty-one Articles grouped into six Sections, as shown below. Sections A to E deal with Membership, Functions, the Conference, the Executive Board, Commissions, the Director-General and Staff of the Organization. Section F deals with the relations between I.T.O. and the United Nations, governmental and non-governmental organizations, the international status of the Organization, and contributions.

SECTION A - STRUCTURE AND FUNCTIONS (of the Organization).

Article 71 - Membership
Article 72 - Functions
Article 73 - Structure

Article 71 - Membership. This Article establishes a difference for purposes of membership between those States and separate customs territories which were invited and those which were not invited to the United Nations Conference on Trade and Employment (Havana). It does not differentiate between those who accepted and those who did not accept or did not attend the Conference; nor does it differentiate between United Nations Members and non-Members.

Original Members. Those States which were invited to the Havana Conference are eligible for original membership upon their acceptance of the Charter in accordance with the provisions of Article 103. (See below). Similarly those separate customs territories(1) which were invited to the Conference (their autonomy in the conduct of their external commercial relations and of the other matters provided for in the Charter having been established prior to their invitation to Havana) are eligible for original membership upon acceptance of the Charter on their behalf by the competent Member in accordance with the provisions of Article 104.

Others. The membership of all other States and separate customs territories must be approved by the Conference (of the Organization) by a simple majority of the Members present and voting. The same formal acceptance procedure, i.e., as provided in Articles 103 and 104 respectively, is applicable. Before membership of separate customs territories can be approved it must be established that such territories enjoy autonomy in the conduct of their external commercial relations (e.g., tariffs) and of the other matters provided for in the Charter. This would be established through the competent Member, that is, the Member who proposes the separate customs territory and who has responsibility for the formal conduct of the latter's diplomatic relations.

(1) Such as Burma, Ceylon and Southern Rhodesia. All three concluded tariff negotiations at Geneva. The first two, however, although originally invited as separate customs territories are now eligible as Member States, because they have since become fully responsible for the formal conduct of their diplomatic relations. The provisions, therefore, that acceptance of the Charter must be deposited on their behalf by the competent Member no longer applies.

Paragraph 4 of Article 71 provides that the Conference shall determine by a two-thirds majority of the Members present and voting the conditions upon which membership rights and obligations shall be extended to the Free Territory of Trieste, and Trust Territories administered, or any other "special regime" established, by the United Nations.

Paragraph 5 deals with territories under military occupation, and reads as follows:

> "The Conference (of the Organization), 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".

The main points of controversy in the discussions on this Article were, firstly, the treatment of separate customs territories for membership purposes and, secondly, the application of the Charter in respect of territories under military occupation.

Although the first point contained a good deal of hidden controversy, it was possible through co-operation to hold it almost completely under cover, so that the political aspects of the problem, particularly the relations between Indonesia and the Netherlands, were almost successfully bypassed. An amendment proposed by the Delegation of Burma, the effects of which are described below, was accepted, although in amended form, at an early date in the Conference; the agreed text did not cause any further difficulty. The effect of the Burmese amendment, and consequently the change which resulted from it in the Geneva text, is that the Charter now provides that those separate customs territories which were invited to the Havana Conference shall be admitted to full membership as original Members on acceptance of the Charter on their behalf by the competent Member. The Geneva text, on the other hand, provided that certain terms concerning the membership of such separate customs territories might be established by the Organization, and implied that full voting rights might not necessarily be accorded to them in all cases. Furthermore under the Geneva text only States could become original Members.

Similarly separate customs territories, even though not invited to the Havana Conference, shall be admitted to full membership after approval by the Conference and after acceptance of the Charter on their behalf by the competent Member.

It will be seen that, in both cases, acceptance of the Charter must be made through the competent Member. This was in accordance with the Canadian Delegation's view, since it removes the danger of the Organization being drawn into disputes which are outside the scope of the Charter. Delegations which took an active part in this debate were: Belgium, Burma, Ceylon, France, Indonesia, Philippines, Southern Rhodesia and the United Kingdom.

The second point of controversy mentioned above concerned the application of the Charter to territories under military occupation (Paragraph 5). This problem was the subject

of a lengthy and acrimonious debate, and was one of the serious issues which threatened the survival of the Conference.

The same problem had been studied at Geneva by the Preparatory Committee but without any definite agreement being reached. As for the General Agreement on Tariffs and Trade, a Final Note (see Canada Treaty Series, 1947, No. 27) was inserted in the text, reading as follows:

> "The applicability of the General Agreement on Tariffs and Trade to the trade of contracting parties with the areas under military occupation has not been dealt with and is reserved for further study at an early date. Meanwhile, nothing in this Agreement shall be taken to prejudge the issues involved. This, of course, does not affect the applicability of the provisions of Article XXII (Consultation) and XXIII (Nullification and Impairment) to matters arising from such trade".

The controversy at Havana centered round the United States proposal, which read as follows:

> "Each government accepting this Charter and having responsibility, either single or with other states, for the direction in Germany or Japan of matters provided for in this Charter, accepts it also in respect of such area or areas for which it may have such responsibility, to the extent of and for the period of its responsibility.
>
> "Provided that, with respect to these areas, nothing in this Charter shall be construed as applying to:
>
> (i) any measure required to maintain the security of the occupation forces;
>
> (ii) any measure pursuant to the terms of any treaty of peace in regard to any such area or required by other international agreements dealing with any such area and with terms for the conclusion of the Second World War;
>
> (iii) any measure made necessary, pending the conclusion of a special exchange agreement with the Organization in accordance with paragraph 6 of Article 24, by reason of the absence of an exchange rate; provided that the responsible Member for each area will direct its efforts towards the elimination of the conditions which have prevented the establishment of a rate of exchange and toward the conclusion of such an agreement".

The United States proposal quoted above underwent many changes as a result of discussions, each new draft being weaker than the previous one from the United States point of view, but none found any support. They were all bitterly opposed by both the Czechoslovakian and Polish delegations on the grounds that any such provision in the Charter was "contrary to the Potsdam decision respecting the economic unity of Germany". They threatened that if the United States persisted, it would be impossible for them to approve the Charter. Other countries, such as the United Kingdom, France and China, made it clear that they fully appreciated the financial burden placed on the United States as a result of their occupation of Germany and Japan but that they could not accept the proposal.

The United States Delegation would have been content with a Resolution of the Conference in place of a specific provision in the Charter but this proposal did not find favour and the compromise reached was the insertion of paragraph 5 to Article 71, text of which is quoted above. As will have been seen, the problem is left to the Conference of the Organization.

Even after this compromise had been agreed to, there was discussion on who were to be considered the "competent authorities". No agreement was reached in this connection, and it was decided to insert in the Report of the Committee dealing with this question a statement reading as follows:

> "The Committee did not discuss the question of which were the 'competent authorities' for the purpose of Paragraph 5 of Article 71 with respect to any particular territory. The Delegation of Czechoslovakia declared that in its viewpoint the competent authority in respect of Germany is the Inter-Allied Control Commission in Berlin. The delegation of Poland stated that in its opinion the competent authorities in respect of Germany and Japan are the Inter-Allied Control Commission in Berlin and the Far Eastern Commission in Washington respectively. The delegations of Czechoslovakia and Poland reserved their positions upon Paragraph 5 of Article 71".

<u>Article 72 - Functions (of the Organization).</u>* This Article formally attributes to the "Organization" the functions provided for in the Charter. It is this Article, therefore, which formally establishes the International Trade Organization whose function it will be to administer the Charter.

In this one respect above all others the Havana Charter differs from past inter-governmental agreements respecting international trade, none of which provided for an "organization", although it is true that past attempts at such agreements only covered such limited fields as customs formalities, which form only a segment of the present Charter; moreover, they were more of a regional than an international nature. The significant difference, therefore, is that the Havana Charter establishes an international body for its administration.

An examination of the substantive provisions of the Charter clearly indicates that this new concept of a World Trade Organization will not be a static one. A great number of decisions and determinations are left to the Organization, i.e., to its various organs; in other words, the Charter permits of evolution and development in the light of experience, and the accumulation of "case law" by the various organs charged with its application. It is hoped that the degree of flexibility which is provided for and the large number of functions to be performed will not prove to be too great and that it will ensure, in practice, the effective and efficient application and operation of the Charter. The Canadian Delegation warned repeatedly against the danger of writing a Charter which would lack the proper balance between flexibility and firmness and between vagueness and precision. It is safe to say that such a balance, in those cases where it could be visualized, was not always attained. The fact remains, however,

* Concerning the question of the allocation of the functions of the Organization among the various organs of Organization, see Article 77 later on in this Report.

that the balance reached was probably the best possible under the circumstances.

In addition to the over-all assignment of functions mentioned above, the Article enumerates certain functions which it was considered advisable to specify and group under one Article, even though the majority of these functions can in fact be implied, in whole or in part, from the detailed provisions of the Charter.

The cautiousness with which countries at Havana approached the question of the attribution of functions to the Organization is reflected in paragraph 2 which was added to the Geneva text and which provides that the Organization in the exercise of its functions shall have due regard to the economic circumstances and to the consequences of its decisions on the Members. The essence of this new paragraph was of course implied in the Geneva draft; nevertheless the Havana Conference favoured a specific provision to that effect.

The functions which are specifically mentioned are set forth below. For ease of reference the same identification of paragraphs as is used in the Charter has been used here.

(a) The collection, analysis and publication of information relating to international trade, including general economic development.

This function flows from and generalizes similar obligations on the part of the Organization and Members, e.g., Article 39 re submission of trade statistics, and Article 65, paragraph 2, re reports on inter-governmental commodity agreements. The Charter emphasizes the need, applicable in this case, for close co-operation between I.T.O. and other organizations which have related responsibilities in order to avoid unnecessary duplication. The Havana Conference stressed the fact that this function must be carried out in the light of such provisions.

(b) To encourage and facilitate consultation among Members.

It will be remembered that this is one of the objectives of the Charter. There are scores of cases in the Charter where consultations, discussion, exchange of information, etc., between the Organization and its Members, and between Members themselves, is mandatory. Such concerted action is generally recognized as one of the major over-all advantages of the Organization; it will be attained through the machinery set up by the new Organization.

(c) To undertake studies, make recommendations and promote bilateral or multilateral agreements concerning measures designed to achieve the purposes set forth below.

Any such agreements as would result from studies made in the following fields would have to be recommended to the Members for acceptance by the Conference after a two-thirds majority of the Members have so agreed. If a Member, after a specified time, does not accept the agreement, he must notify

the Organization of his reasons. The Charter provides, however, that in making recommendations and promoting bilateral or multilateral agreements in the fields mentioned in this sub-paragraph ((i) to (v) below), the Organization shall have due regard to the objectives (Article 1) of the Charter and the constitutional and legal systems of its Members.

(i) To assure just and equitable treatment for foreign nationals and enterprises.

Such broad language is meant to include, for example, agreements concerning the treatment of commercial travellers, of foreign creditors in bankruptcy, insolvency, re-organization, etc.

(ii) To expand the volume and improve the bases of international trade.

This is meant to cover agreements designed to facilitate, for example, commercial arbitration and the avoidance of double taxation. It will be noted that Chapter VIII makes provision for arbitration to be resorted to in cases of differences.

(iii)&(iv) To carry out the duties, having due regard to the avoidance of duplication, specified in paragraph 2 of Article 10 which details the functions of the Organization in the field of economic development and reconstruction, and to promote and encourage establishments for the technical training necessary for such developments.

These two sub-paragraphs were added to the Geneva text at the request of those countries to whom economic development was of major importance and who insisted that economic development be specifically mentioned in the "functions" Article. It is envisaged that the Organization will probably establish an Economic Development Commission to whom such tasks as are mentioned in Article 10 and in this sub-paragraph would be assigned. It is understood that the cost of any services which might be put at the disposal of a country would be borne by that country.

(v) Generally, to achieve any of the objectives set forth in Article 1.

(d) This is the provision concerning the relationship between world prices of primary commodities and manufactured products which was mentioned under Article 1.

(e) To consult with and make recommendations to the Members either individually or collectively; to furnish, advise and assist Members regarding any matter relating to the operation of the Charter and generally to take any other action necessary and appropriate to carry out the provisions of the Charter.

As can be seen, this last function empowers the Organization to do practically anything that it may

deem "necessary and appropriate". Coupled with (v) above, which provides, among other things, for the promotion of any agreements "to achieve any of the objectives of the Charter", it is a very wide, all-embracing function, the details of which will have to be worked out in the light of experience.

(f) Provides and authorizes the Organization to co-operate with the United Nations and other inter-governmental organizations towards the maintenance and restoration of international peace and security.

This is the provision under which the Organization would be empowered to implement any recommendations or directives on matters within the scope of the Charter which it might in future receive from the main organs of the United Nations, such as the General Assembly and the Security Council.

It is apparent from the foregoing that the functions assigned to this new Organization are very numerous, all-embracing and very often difficult, particularly in view of the fact that a number of them will bring the Organization into as yet unexplored fields of international economic relations. It is for this reason that the Canadian Delegation warned repeatedly of the danger of saddling a yet unborn organization with tasks so onerous that they might well paralyze it even before it has a chance to find its feet. Obviously, much will depend in this regard, as in all other respects, on the degree of reasonableness of the Members of the Organization. It is not contemplated, of course, that all the functions attributed to the Organization under this Article will need or, indeed, can receive immediate attention. The two-thirds majority requirement before an agreement can be recommended to Members by the Conference will no doubt act effectively to block any preposterous proposals which might well be made.

Article 73 - Structure. This Article merely provides that the International Trade Organization shall have the following:

A Conference
An Executive Board
Such Commissions and other organs as may be required
A Director-General
A Staff

SECTION B - THE CONFERENCE

Article 74 - Composition
Article 75 - Voting
Article 76 - Sessions, Rules of Procedure and Officers
Article 77 - Powers and Duties

The Conference will be the main organ of the International Trade Organization.

Each Member shall have one representative in the Conference of the Organization. In this connection the Geneva text was amended at Havana to permit a representative attending a session of the Conference to represent more than one Member. This change was advocated by a number of small countries, such as the countries of the Arab League, for reasons of economy

in personnel and expenses. The Canadian Delegation opposed this change because of the lobbying which might ensue and the almost inevitable attempts by certain Members to secure the vote of those Members who do not intend to send their representative to any particular session of the Conference. It was the view of our Delegation that each Member should be sufficiently interested in the work of the Organization to send its own representative to all sessions of the Conference.

Each Member in the Conference shall have one vote.

This provision concerning the method of voting was one of the most heated issues in debates on the organizational provisions of the Charter. It will be remembered that the question had not been decided at Geneva. There were two basic principles advocated.

The first, in the advocacy of which Canada played an active role, was that there should be a system of weighted voting, that is that Members of the Organization should be assigned a certain number of votes based on such factors as their international trade, national income and population, with the first factor to be assigned the highest relative weight. The United Kingdom, the United States, France, Belgium, the Netherlands, India, China, in other words all countries of actual or potential major economic importance favoured the system of weighted voting. It was argued that the International Trade Organization was a functional organization and that its Members should have a voice in its operations commensurate with the importance of the role which they would be called upon to play in the Organization, and roughly equivalent to their interest in the Organization.

There were many lengthy and heated debates, the majority of which, from the outset, were against this principle of weighted voting. In view of the obvious trend of the debate, the Havana Conference never reached the point of discussing the factors which would enter into a weighted-voting system and the relative weights which were to be assigned to each factor. Nor did it ever accept the possibility of using the weighted-voting system with respect to certain important decisions of the Conference of the Organization.

The other principle which for obvious reasons was the most popular, particularly in view of the very large number of small countries participating, was the principle of one state - one vote. Much was made of the argument that this system was the only "democratic" system and the only system which respected the status of the Members of the Organization as sovereign states. Such a wall of opposition to any other system but the one-state-one-vote method of voting was built up in the early days of the Havana Conference that it became quite obvious that the weighted-voting system was doomed to failure. During the full committee debate on this subject, for example, there were some 37 speeches made in favour of the one-state-one-vote system and only 8 or 9 in favour of the weighted-voting principle.

It became obvious that the early settlement of this issue was necessary in order to permit the Conference to make progress on other parts of the Charter. It was recognized that, if progress were to be made, the Havana Conference should have some idea, even though it might only be provisional, as to how the various determinations and decisions which the Conference of the Organization is required to make under the Charter would be arrived at. In view of this situation the Canadian and United Kingdom Delegations, after consultation, agreed to withdraw from their position and accept the one-state-one-vote method

as a working basis. This was done on a purely provisional basis, subject to the ultimate solutions which would be found on other major issues and subject also to the final provisions concerning the method of electing the Executive Board. The United States Delegation also withdrew its support from the weighted-voting principle, which made it almost certain that, subject to the general acceptability of the final text of the Charter, particularly on such issues as escapes for economic development and for new tariff preferential systems, the weighted-voting system would never be accepted.

In subsequent debates on the question of the composition of the Executive Board Canada was assured of a permanent seat on the Board (see below). The debate on the method of voting in the Conference was not raised again and our provisional reservation mentioned above was withdrawn.

The adoption of the one-state-one-vote principle for voting in the Conference makes the following two factors of utmost importance as far as the successful functioning of the Organization is concerned. Firstly, the degree to which the smaller countries in particular will be willing to co-operate, to show reasonableness, and to disregard the political aspects of questions which will be voted upon in the Conference. If this sine qua non of success is not met, the result will be that many decisions may not be acceptable for various reasons to the major countries upon whose membership the future of the Organization depends. The second factor is the question of the distribution of the various functions of the Organization between the Executive Board and the Conference and the degree of practical autonomy and strength which will be given the Executive Board. It is clear that if the work of the Executive Board is hampered or interfered with by an unreasonable Conference, and if its most important decisions are to suffer constant revision or reversal by the senior body, the Organization will not operate either efficiently or effectively. There is, however, such a multitude of functions which the Organization must perform, many of which are of an emergency nature and which, for reasons of efficiency, should be performed by the Executive Board, particularly in view of the fact that the Conference will normally only sit once a year, that there is a reasonable hope that the Executive Board will of necessity be given the free hand which it requires to carry out its functions expeditiously.

Except as otherwise provided, decisions of the Conference will be taken by a majority of the Members present and voting. There are certain cases, however, where the decision was deemed important enough that a two-thirds majority requirement was specified. These are listed in Annex A. To a certain degree a two-thirds majority provision replaces the weighted-voting method which, as indicated above, proved unacceptable to the vast majority.

The Conference shall elect its president and other officers each year. It will meet once a year at the seat of the Organization, which is yet to be determined. The Executive Committee of the Interim Commission has been assigned the task of making studies on possible sites for a permanent headquarters, and to make recommendation to the first session of the Conference which shall decide the location of the headquarters. There was no clear concensus of opinion at Havana on this question. It is known that the United States Delegation favours a site in the United States but not at Lake Success. Other possible sites mentioned are Geneva, Brussels, London and Oslo. There may also be special sessions convoked at the request of the Executive Board or of one-third of the Members.

It will have been noted that the vast majority of the functions to be performed pursuant to the provisions of the Charter are in most cases attributed to the Organization. Under Article 77 these functions and powers which are attributed to the Organization are vested in the Conference. As mentioned above, the Conference is empowered under the Charter to assign to the Executive Board any power or duty it so decides except such specific powers and duties as are expressly conferred or imposed upon the Conference by the Charter. A list of the major powers and duties which are specifically imposed upon the Conference and which, therefore, it may not delegate to the Executive Board, is given in Annex B.

The detailed delegation of powers and functions by the Conference to the Executive Board and Commissions of the Organization is to be studied by the Interim Executive Committee which will make appropriate recommendations to the First Session of the Conference. This is one of the important first tasks which the Executive Committee will face at its first meeting next August.

Article 77 specifically attributes to the Conference (this is an example of a power which may not be delegated to the Executive Board) the power to waive by a two-thirds majority of the votes cast an obligation imposed upon a Member by the Charter. This is a very important power which will not be used except in exceptional circumstances. A two-thirds majority will not, in all probability, be easily obtained. The use of the term "votes cast", instead of such term as "present and voting", permits the use of telegraphic or postal vote in cases of urgency.

This Article, in addition, lists other specific powers and duties of the Conference, the main ones of which are:

> Paragraph 4 provides that the Conference may prepare or sponsor agreements with respect to any matter within the scope of the Charter and, by a two-thirds majority, recommend such agreements for acceptance. An inter-governmental agreement directed at the avoidance of double taxation would be an example. A two-thirds majority of the Conference will be required, however, before such an agreement can be given the moral strength implied in a "recommendation" by the Organization.
>
> Under paragraph 6 the Conference shall approve the budget of the Organization and shall apportion the expenditures of the Organization among the members.
>
> It was on a proviso to this paragraph in the Geneva draft of the Charter that the Canadian Delegation had filed its only reservation at Geneva (Geneva draft, Article 74). The proviso in paragraph 6 of the Geneva draft stated that no Member shall be required to contribute more than one-third of the total of the expenditures of the Organization without its consent. Only the contribution of the United States would be affected by such a proviso. The Canadian Delegation had opposed and reserved its position on this proviso at Geneva because its application by the United States would have meant a higher per capita contribution on the part of Canadians as compared to the per capita contribution of the United States. The Canadian Delegation persisted in its opposition to this proviso so that at Havana, largely as a result of informal discussions with the United States Delegation,

the proviso was not inserted in the final text. An additional sentence, however, was added, providing that 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. The net result, therefore, is that future debate on the question of a maximum limit on the contribution of any country will be centralized in the proper body of the United Nations Organization.

SECTION C - THE EXECUTIVE BOARD

Article 78 - Composition of the Executive Board
Article 79 - Voting
Article 80 - Sessions, Rules of Procedure and Officers
Article 81 - Powers and Duties

The Executive Board of the Organization will consist of eighteen Members of the Organization elected by the Conference for a term of three years by a two-thirds majority of the Members present and voting.

Canada, as a country of "chief economic importance", is assured of a permanent seat on the Executive Board.

The Executive Board will be responsible for the execution of the policies of the Organization. It will exercise the powers and perform the duties assigned to it by the Conference pursuant to the provisions of Article 77, paragraph 2, which read as follows:

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

It will be noted that the assignment of any power or duty to the Executive Board needs the approval of a majority of the Members of the Organization rather than a majority of the Members <u>present and voting</u> as was implied in the Geneva draft. While it might appear that the required majority may be slightly more difficult to obtain, there will not in practice result any greater difficulty in obtaining the approval of the Conference before a power or duty can be assigned to the Board since it can be expected that on any important vote the number of Members "present and voting" would in fact be the same as the number of Members of the Organization.

There were attempts at Havana to weaken the Executive Board by making the assignment of powers and duties to it subject to the approval of the two-thirds of the Members of the Organization. A number of other proposals which would have had a similar effect were made particularly by smaller countries. The Canadian Delegation strenuously opposed any proposal which tended to weaken the powers of the Board. It is safe to say that if such proposals had found favour any hope of an efficient and effective Organization would have been lost.

It is safe to state that the vast majority of the "functions of the Organization" will, in the first instance at least, be performed by the Executive Board. The Executive Board will assign tasks to the Commissions and will supervise their activities. The functions or general terms of reference of Commissions, on the other hand, will be determined by the Conference. The Commissions will report to the Board, which will take such action upon their recommendations as it may deem appropriate.

The Board is empowered to make recommendations to the Conference or to inter-governmental organizations on any subject within the scope of the Charter. The power of the Executive Board to make recommendations to Members is one of the powers which will have to be attributed to the Board by the Conference. In what cases and to what extent these recommendations may be made has yet to be determined; as discussed above (Article 77), this question is to be studied by the Executive Committee of the Interim Commission, which will make appropriate recommendations to the first meeting of the Conference. There are, however, a number of cases, in addition to those mentioned above, where certain specific powers and duties are expressly conferred upon the Executive Board under the provisions of the Charter. The full list is given in Annex C.

Each Member of the Executive Board will have one vote and in all cases its decisions and determinations will be made by simple majority of the votes cast. The use of the term "votes cast" will permit telegraphic or postal voting when the Board is not in session. The Board will meet as necessary. Its Chairman and other officers will be elected each year. The Chairman may participate without the right to vote in the deliberations of the Conference.

Any Member of the Organization which is not a Member of the Board shall be invited to participate in the discussions by the Board of any matter of particular and substantial concern to that Member. For such purposes the Member shall have all rights except the right to vote.

The question of the composition of the Executive Board was one of the most difficult issues which faced the Havana Conference as far as the organizational provisions of the Charter are concerned. As was discussed above, this question was closely related to the method of voting in the Conference. It was only after a great number of formal, and as many informal, meetings on this issue that a compromise acceptable to all concerned was found.

Although this compromise was reached outside of the Co-ordinating Committee mentioned in the Introduction to this Report, it had to be tied to the "over-all compromise" reached by that Committee in order to give it the degree of "acceptability" necessary for general support. The major groups of countries between which there were serious conflicts of interests were as follows:

(1) The countries of "chief economic importance" which insisted on a permanent seat on the Board.

These countries were: the United States, the United Kingdom, France, Benelux and Canada. After the principle of weighted voting in the Conference had been lost it became essential, and the Canadian Delegation

was adamant in its position, that provision be made for permanent seats.

(2) Countries like India and China, with a very large population and potential economic importance, desired to be included in the same group as countries of "chief economic importance". The final agreement reached provided for the U.S.S.R. in this group if and when it joins the Organization.

(3) All other countries which could not hope to fall under (1) or (2) above were naturally opposed to any permanent seats. The vast majority, therefore, favoured what they called the "democratic" method of open elections for the full eighteen seats with a provision to permit the immediate re-election of a certain number, generally 7.

Australia was perhaps the most vocal of this majority group. Other groups of countries, such as the Latin American and those of the Arab League, insisted that, if there were any permanent seats, they should be assured a number of seats depending on the number of Members their group would have in the Organization.

(4) In addition, the following two basic criteria were generally accepted and permeated all the discussions. Firstly, that the Board be representative of the broad geographical areas to which the Members belong, and, secondly, that the Board be representative of the different types of economies or degrees of economic development to be found within the Membership of the Organization.

It will be remembered that at Geneva the problem of how the Board should be elected was not solved. The Geneva draft contained three alternatives. The basic issue as far as Canada was concerned with whether or not there should be so-called permanent seats on the Board assigned to countries of chief economic importance and, if so, how many. The lines in this debate were drawn approximately on the same basis as those referred to above on the related issue of voting in the Conference. There were some countries, however, who, although they favoured the principle of one state - one vote, were ready to accept the assignment of a number of permanent seats, the number ranging from three to six.

The Canadian Delegation held out for the assignment of eight permanent seats. As stated above, the majority of countries, in the initial stages of the lengthy debate, favoured the principle of free election with a provision permitting re-election of any Member.

Article 78, as finally established and accepted as part of the "over-all compromise", provides that at intervals of three years the Conference will 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 will be paid to their shares in international trade. The Members so determined are then appointed Members of the Executive Board. There is no doubt, and it was accepted as a matter of fact at Havana, that Canada falls within this category. We are therefore assured of a permanent seat on the Executive Board.

The other ten Members of the Board will be elected from among the remaining Members of the Organization by the Conference by a two-thirds majority of the Members present and voting.

The provisions of Annex L, which lays down the rules to be applied at the time of the election of the Members of the First Executive Board, establishes a precedent concerning the method under which future elections will be held.

The provisions of this Annex confirm the fact that Canada is assured of a permanent seat. The Annex specifies that the two countries in the Western Hemisphere with the largest external trade (United States and Canada) will be selected in order to comply with the provisions of sub-paragraph 3(a) of Article 78, that is, will be considered as countries of "chief economic importance". It will be noted that the Annex provides that six seats on the first Board shall be filled by Member countries of the Western Hemisphere. Assuming, the almost full participation of the Latin American countries, that group, for purposes of the First Board, is thus allocated four seats. There are provisions governing the number of seats to be allocated, varying with the number of Members in that group.

Similarly, Annex L establishes a precedent for the determination of the other six countries of "chief economic importance" by specifying that for purposes of electing the First Board the three countries of Western Europe with the largest external trade, that is, the United Kingdom, France and the Benelux Customs Union, will be assured permanent seats. In the same way, the Annex provides that the three Members with the largest populations, namely, China, India and the U.S.S.R., will be given permanent seats and therefore considered as countries of chief economic importance.

Finally, the Annex provides that any seat left vacant (for example, the seat reserved for the U.S.S.R. or any seat or seats left vacant as a result of some Latin-American countries not joining the Organization) will not be filled unless the Conference so decides by a two-thirds majority. It is not clear what country would be the eighth state of chief economic importance in the probable event that the U.S.S.R. will not join the Organization. There is some reason to believe that Italy might qualify for this seat.

SECTION D - THE COMMISSIONS

Article 82* - Establishment and Functions
Article 83 - Composition and Rules of Procedure

The Havana Charter does not provide for any specific commission. It merely provides that the Conference will establish such commissions as may be required for the performance of the functions of the Organization. These Commissions will have the functions or general terms of reference assigned to them by the Conference. They will be under the supervision of the Executive Board, to which they will report, and their rules of procedure will be subject to approval by the Board. The Charter empowers the Board to take such action upon the recommendations of the Commissions as it may deem appropriate.

* For a discussion on the Tariff Committee which was provided for under Article 81 of the Geneva Draft Charter but is not so provided for in the Havana Charter, see the reference to Article 17 of the Havana Charter in this Report.

Although Commissions were not specifically named in the Charter, it is expected that the functions of the Organization in certain fields are so numerous and will require such constant and detailed work that the need for the establishment of Commissions in those fields is almost certain to impose itself. This will in all probability be true as regards the following: Commercial Policy, Intergovernmental Commodity Agreements, Restrictive Business Practices, and Economic Development. It can be expected that these Commissions will be of a permanent nature. Nothing in the Charter, however, precludes the establishment of ad hoc Commissions where the Conference deems it necessary. The feeling at Havana was that the number of Commissions should be held to a minimum, and the practical difficulty of enlisting persons of the required calibre to serve on these Commissions was recognized as an inherent deterrent to any tendency to the contrary.

The appointment of the members of the Commissions will be made by the Executive Board unless the Conference decides otherwise. The actual number of members, which normally must not exceed seven, shall be determined by the Conference. It is understood that members of Commissions, and particularly the Chairman which each Commission will elect, will be internationally recognized experts in the general field of particular aspects of the work of the Commission to which they are named. As was stated above, this was recognized as a practical difficulty and the Charter permits enlisting the services of such men either on a permanent or on a temporary basis. The responsibilities of these persons shall be exclusively international in character. The Chairman of each Commission is given the right to participate in the deliberations of the Conference and of the Executive Board but will not have the right to vote. The Conference and the Executive Board will take steps to insure the avoidance of duplication in the work of the Commissions and that of other organizations; arrangements may be made for representatives of the United Nations and of other inter-governmental organizations to participate in the work of the Commission.

As in the case of the Executive Board, the allocation of functions, powers and duties has yet to be determined by the Conference upon recommendations to be submitted to it by the Executive Committee of the Interim Commission.

SECTION E - THE DIRECTOR-GENERAL AND STAFF

Article 84 - The Director-General
Article 85 - The Staff

The chief administrative officer of the Organization will be the Director-General. He will be appointed by the Conference upon the recommendation of the Board. His powers, duties, conditions of service and terms of office will be defined by regulations approved by the Conference.

The Director-General will be subject to the general supervision of the Board but will present to the Conference an annual report on the work of the Organization and the annual budget estimates and financial statements of the Organization. It can be expected that, in view of the fact that the Conference will normally meet only once a year and because the Board will be allocated the bulk of the current operating functions, of the Organization, most of the contacts between the Director-General and the Organization will be channelled through the Board, its

Chairman and whatever body is set up to perform the functions of the Board when this body is not in session.

The Charter authorizes the Director or his representative to participate without the right to vote in the meetings of any of the organs of the Organization.

The appointment of the Staff, including Deputy Directors-General, is left to the Director-General, subject to certain regulations and the fulfillment of certain conditions.

In the appointment of Deputy Directors-General the Director-General shall first consult and obtain the agreement of the Executive Board. It is expected that the Deputy Directors-General will be men of very high calibre appointed by the Director-General to specific fields of activities under the Charter. The original intention as contained in the London draft of a Charter was that the Deputy Directors-General would be Chairmen of the Commissions. This concept was dropped because it was thought that it was advisable to permit greater flexibility.

The Director-General will also appoint the Staff or Secretariat of the Organization and shall fix the duties and conditions of service in accordance with regulations approved by the Conference.

The Charter provides that the selection of the Staff, including the appointment of Deputy Directors-General, will be made as far as possible on a wide geographical basis and with due regard to the various types of economy represented by Member countries. This provision was insisted upon particularly by the Latin-American countries who claimed that in the appointment of the staff of the United Nations insufficient attention had been paid to the geographical factor.

The paramount consideration, however, in the selection of both the Deputy Directors-General and the Staff will be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity.

The Charter further provides that as regards the conditions of service, such as those governing qualifications, salaries, tenure and retirement, there shall be as much uniformity as possible between the Staff of the International Trade Organization and the Secretariat of the United Nations and of other Specialized Agencies.

The Havana Conference insisted that the Director-General should be a man of international reputation in the major fields covered by the Charter. It was recognized that such a person would not be easily found. No names were mentioned in the open meetings but there is no doubt that various possible candidates were discussed behind the scenes. It was generally recognized that much will depend, particularly in the first years, on the competence and judgment of the man chosen for the job.

SECTION F - OTHER ORGANIZATIONAL PROVISIONS

Article 86 - Relations with the United Nations
Article 87 - Relations with other Organizations
Article 88 - International Character of the Responsibilities of the Director-General, Staff and Members of Commissions
Article 89 - International Legal Status of the Organization
Article 90 - Status of the Organization in the Territory of Members
Article 91 - Contributions

By far the most controversial issue in this Section of the Charter was the question of whether "an economic measure taken by a Member directly in connection with a political matter" was to be subject to the provisions of the Charter (Article 86, paragraph 3).

There were no other major issues in this Section and the Geneva text of the Articles enumerated above was adopted with only minor changes.

Article 86 - Relations with the United Nations. This is a new Article. Paragraphs 1, 2 and 4 replace paragraph 1 of Article 84, and sub-paragraph (c) of Article 94, of the Geneva draft. Paragraph 3 is entirely new and deals with the function of the Organization concerning "essentially political matters".

It was thought advisable to group into a single Article all provisions concerning relations with the United Nations wherever the question of proper allocation of responsibility as between the Organization and the United Nations was involved.

Paragraph 1 provides, pursuant to the provisions of the United Nations Charter (Article 57), that the Organization will be brought into relationship with the United Nations Organization as one of the specialized agencies of the United Nations as soon as practicable after coming into being. The International Trade Organization will thus become another link in the network of agencies such as the International Monetary Fund, the International Bank for Reconstruction and Development, the Food and Agriculture Organization, and the International Labour Organization, all of which, according to the United Nations hierarchy, fall under the Economic and Social Council.*

This relationship will be effected by agreement approved by the Conference. The task of preparing such an agreement has been delegated to the Executive Committee of the Interim Commission. The only specific provisions which the Charter contains concerning this agreement are that it "shall, subject to the provisions of Chapter VII of the 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".

* It was the Economic and Social Council which, at its First Session, formally resolved on February 18, 1946, to call a United Nations Conference on Trade and Employment. At the same time the Council constituted a Preparatory Committee to elaborate a draft charter for the proposed world conference.

The need for co-operation and co-ordination of activities was fully recognized by the Havana Conference. Discussions could not without detailed documentation cover the full field and the detailed mechanics of such co-ordination in all its ramifications. A somewhat more detailed discussion did take place, however, in debates on Article 39 which deals, among other matters, with the collection of international trade statistics. A representative of the Statistical Office of the United Nations took part in these discussions. It was recognized that co-ordination in this field should be directed to obtaining greater uniformity and to the applicability of international trade statistics to the general pattern of international statistics. The need to avoid duplication of demands for statistical information made on countries by the various agencies of the United Nations was also stressed.

This agreement of relationship will be framed in consultation (initially at the Secretarial level) with the Economic and Social Council and will be subject to approval by the General Assembly of the United Nations to which the Council will submit the agreement. It is expected that the agreement, subject to the required changes, will follow closely the precedents set in other such agreements entered into by the other specialized agencies.

Paragraph 3 of this Article is independent in its operation. It contains provisions concerning the applicability of the provisions of the Charter to "any measures taken by a Member directly in connection with a political matter brought before the United Nations".

The controversy which arose over this Article was as to whether such "economic measures" (i.e. an import embargo) were to be subject to the provisions of the Charter. Basically, the principle involved was the degree to which the International Trade Organization could enter into or make decisions, directly or indirectly, on matters of an essentially political nature when dealing with economic measures which are connected with such political matters. There were in fact, however, two actual cases in the minds of participants at the Conference, namely, the India-South Africa and the Arab-Jewish disputes. Through the medium of informal and behind-the-scenes discussions it was possible to hold down to a minimum the open clashes which a plenary discussion on these issues would have provoked; it was not possible, however, to suppress completely reference to these two cases.

The delegations directly concerned were South Africa on one side and delegations of the Arab League countries and India on the other. The present text of the Charter was established on the basis of a vote which went overwhelmingly in favour of the present provisions. The United Kingdom Delegation was strong in its support of the provisions as they were adopted. The South African Delegation, acting on direct instructions from its Government, formally reserved its position on Paragraph 3 and on the interpretative notes to it during the final plenary meeting of the Conference.

In effect the Charter now provides as a basic principle that the Organization should not attempt to take action which would involve passing judgment in any way on essentially political matters. Pursuant to this principle and in order to avoid conflict of responsibility between the United Nations and the Organization with respect to such matters, the Charter stipulates that any measures taken by a Member directly in connection with a political matter brought before the United Nations will not be subject to the provisions of the Charter.

This provision covers measures maintained by a Member even though another Member has brought the particular political matter before the United Nations so long as the measure was taken directly in connection with the matter. It was also agreed that such a measure, as well as the political matter with which it was directly connected, should remain within the jurisdiction of the United Nations and not within that of the International Trade Organization.

As regards the two cases mentioned above, the present provisions mean that the economic measures taken by India against South Africa and any Arab boycott on Jewish goods are excepted from and not subject to the provisions of the Charter.

In the debates on this question, the Havana Conference held that the important considerations were: (1) to maintain the jurisdiction of the United Nations over political matters and over economic measures of the sort mentioned above which are "taken directly in connection with" such a political matter, (2) that nothing in the Charter should prejudice the freedom of action of the United Nations to settle such matters and to take steps to deal with such economic measures in accordance with the provisions of the Charter of the United Nations if they see fit to do so and, (3) that the International Trade Organization should not become involved in essentially political issues.

The responsibility for making a determination as to whether a measure is in fact taken directly in connection with a political matter brought before the United Nations rests with the International Trade Organization. If, however, political issues beyond the competence of the Organization are involved in making such a determination, the action will be deemed to fall within the scope of the United Nations.

Moreover, if a Member, which has no direct political concern in a matter brought before the United Nations as described above (and consequently excepted from the I.T.O. Charter), considers that a measure taken directly in connection therewith constitutes a nullification or impairment of a benefit accruing to it under the Charter, he may have recourse to the procedures provided for in Chapter VIII under the provisions of which a settlement can be reached.

Paragraph 4, like paragraph 3, is independent in its operation. It provides that any action taken by a Member in pursuance of its obligation under the United Nations Charter for the maintenance or restoration of international peace and security will not be deemed to conflict with the provisions of the I.T.O. Charter. It is under the provisions of this paragraph that the International Trade Organization could impose economic sanctions against one or more of its Members if requested to do so by the United Nations.

Article 87 - Relations with other Organizations. Whereas the agreement of relationship mentioned in Article 86 is to be established in consultation with the Economic and Social Council for its presentation to the General Assembly, the arrangements between the International Trade Organization and other intergovernmental* and non-governmental* organisations is left to the

* See Annex D.

I.T.O. itself. It will be noted that a differentiation is made between governmental and non-governmental organizations.

The Charter provides that arrangements will be entered into by the I.T.O. with other inter-governmental organizations which have related responsibilities.

Such arrangements will provide for effective co-operation and the avoidance of unnecessary duplication. To this end arrangements may be entered into for joint committees and reciprocal representations at meetings. Furthermore, under Article 63 of the United Nations Charter the United Nations may make recommendations, as discussed in the previous Article, for the co-ordination of the policies and activities of the specialized agencies.

A good example of the need for co-operation and co-ordination concerns the functions of the International Trade Organization in the field of Economic Development and Reconstruction with which a number of United Nations bodies are concerned. In view of the desire and need to prevent unnecessary duplication in such activities, the particular question as to how the International Trade Organization can most effectively carry out its function in that field has been referred to the Executive Committee of the Interim Commission for special study and report to the first annual Conference of the I.T.O. Another example of the necessity for co-operation which in this case is specifically mentioned in the Charter is the provision concerning the relationship between the International Trade Organization and the Food and Agriculture Organization covered by Article 67 (Relations with Inter-Governmental Organizations in Chapter VI, dealing with Commodity Agreements) which sets down some of the procedures for co-operation between the two organizations.

The Charter also provides that if it is deemed desirable the Organization may incorporate other inter-governmental organizations. Members of the Organization undertake, in conformity with their international obligations, to take the action necessary to give effect to any such agreement. An example of possible incorporation would be the International Customs Tariffs Bureau (Brussels) of which Canada is a member.

Alternatively the Organization may arrange for the transfer to itself of all or part of the functions of other inter-governmental organizations, or to simply bring such organizations under its supervision or authority. Such agreements may be entered into by the Director-General subject to the approval of the Conference.

Paragraph 2 permits the Organization to make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of the Charter.

As stated above, all the preparatory work involved in the preparation of the following agreements and arrangements have been delegated to the Executive Committee of the Interim Commission: (1) the agreement of relationship with the United Nations; (2) the preparation of documents and recommendations concerning relationship with inter-governmental organizations; and (3) the preparation of recommendations concerning arrangements with non-governmental organizations. The Executive Committee is charged with making recommendations and submitting the necessary documents to the first regular annual Conference of I.T.O. There exist of course precedents by which the Executive Committee will be guided in this work.

Article 88 - International Character of the Responsibilities of the Director-General, Staff and Members of Commissions. This Article merely provides that the responsibilities of the Director-General, members of Commissions and of the Staff (including Deputy Directors-General) will be exclusively international in character. These persons shall not seek nor receive instructions from any government or from any other authority external to the Organization. Similarly, the Members of the Organizations must respect the international character of the responsibilities of those persons and will not seek to influence them in the discharge of their duties.

Article 89 - International Legal Status of the Organization. The Organization will have legal personality and will 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. This Article merely restates and imposes upon the Members of the Organization compliance with the provisions of Articles 88 and 89 above.

The function of preparing the Annex to the General Convention on Privileges and Immunities of the Specialized Agencies has been delegated to the Executive Committee of the Interim Commission which will prepare this Annex with a view to recommendation by the Economic and Social Council to the first annual Conference of the Organization.

Article 91 - Contributions. This Article merely provides that each Member will contribute promptly to the Organization its apportioned share (pursuant to Article 77, paragraph 6) of the expenditures of the Organization.

A Member will automatically lose its right to vote in the organs of the Organization if it is in arrears to the extent of the amount of contributions due from it in respect of the preceding two complete years. Provision is made, however, that the Conference may by simple majority 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
Article 93 - Consultation and Arbitration
Article 94 - Reference to the Executive Board
Article 95 - Reference to the Conference
Article 96 - Reference to the International Court of Justice
Article 97 - Miscellaneous Provisions

Annex N - Special Amendment of Chapter VIII
Resolution - Concerning Relation of I.T.O. and the International Court of Justice

Chapter VIII deals with the procedure to be followed in the settlement of differences among Members and between Members of the Organization arising out of the operation of the Charter.

Like the concept of an International Trade Organization, the procedure which this Chapter establishes is an entirely new

departure in that it provides for the co-operative settlement of differences in the economic and commercial field when direct consultations between Members have failed. It is not surprising, therefore, that, in discussions in this hitherto unexplored field, there should have been some groping as well as clashes between different attitudes and concepts concerning the nature of such procedures.

The attitude of delegations at Havana on the major issues which arose reflected in large measure the type of legal training and background of delegates and, consequently, their concept of law. In other words, the various delegates were accustomed to different systems of jurisprudence involving differing concepts of law not only different in detail but frequently in principle. Thus, certain delegates who were accustomed to, or trained in, French law had difficulty in following and accepting the attitude of other delegates who had been trained in Anglo-Saxon law, which is made up in such large measure of Common Law. This consideration was also evident in the attitude which various representatives had towards the nature of Chapter VIII. Certain delegations considered it as essentially judicial in nature and had constantly in mind parallels with existing judicial procedures. This was particularly true, as was to be expected, of certain representatives who had received training or were engaged in some field of international law. Other delegations, including the Canadian Delegation, although recognizing that the Chapter undoubtedly had certain legal characteristics, particularly from a procedural point of view, considered it to be essentially non-legal in the sense that its prime purpose was to provide for the settlement of disputes in the highly technical field of economics, finance and commerce. As discussion progressed, that attitude became predominant.

By far the main issue which faced the Havana Conference in its formulation of the provisions of this Chapter concerned the extent of the field of cases which should be reviewable by the International Court of Justice (I.C.J.) and the closely related question of the type of review of the decisions of the Organization by the International Court, i.e., whether the decisions of the Court on matters referred to it by I.T.O. should have the nature of an advisory opinion or of a judgment. This question is dealt with under Article 96 below.

A second issue which reflected the different concepts of law was the extent to which the procedures of the Chapter should be detailed or "codified". As stated above, no precedent existed in this field from which the Havana Conference could benefit. It soon became clear, however, that the concensus of opinion at Havana favoured a more detailed elaboration (not necessarily a codification) of the provisions of this Chapter in order to make it more precise than it appeared in the Geneva draft. This course seemed to impose itself for the following reasons:

(1) The Preparatory Committee at Geneva had found it necessary to include a footnote to Chapter VIII pointing out that only a limited time had been devoted to the provisions of that Chapter and consequently had recommended that it receive full re-examination by the Havana Conference.

(2) The Geneva text of Chapter VIII was the result to some extent of an almost mechanical grouping under that Chapter of various related provisions which had been found in various articles of the London draft.

(3) It was found that differing interpretations of the Geneva text were possible. This of course prompted delegations to insist on a clearer and more precise text, particularly in view of the fact that certain possible interpretations, such as that relating to the exact power of the Organization to recommend sanctions, were totally unacceptable to certain delegations.

Still another controversy which occupied a great deal of time concerned the relationship of Chapter VIII and Chapter V as regards recourse, in point of time, to the procedures of Chapter VIII and those of Chapter V - Restrictive Business Practices - Articles 47 and 48 (see above).

Briefly the issue was as follows: The majority of delegations, including the Canadian and United States Delegations, considered that Chapter VIII stood behind the whole Charter, so to speak. In other words, that a Member could have recourse to the procedures of Chapter VIII whenever it "considers that a benefit accruing to it under the Charter is being nullified or impaired" under the terms of sub-paragraphs (a), (b) or (c) of Article 93. This view was opposed by the United Kingdom Delegation which stood virtually alone with the Belgian Delegation in maintaining that if the procedures of Chapter V were initiated, the procedures provided for in that Chapter should be exhausted before a Member could have recourse to Chapter VIII under which it could obtain redress.

The issue was introduced by the following notification to other Committees of the Conference which was issued by Committee VI which had Chapter VIII under its terms of reference:

> "The Sixth Committee has discussed the question of the relationship between Chapter VIII and other parts of the Charter. In the light of its discussion the Committee wishes to make known to other Committees of the Conference that, in its opinion, where an article of the Charter other than those contained in Chapter VIII establishes procedures for action by a Member or by the Organization, action in accordance with that procedure should precede that provided for in Chapter VIII, but shall not, unless it is so specified, impair the rights of Members under Chapter VIII.

As can be seen from the underlined portion, this notification assumed that recourse could be had by a Member to Chapter VIII at any time, unless specified otherwise in other parts of the Charter. This view was finally adopted and was incorporated in the Final Report* of Committee IV (dealing with Chapter V) in the following terms:

> "In the course of its discussions, the Committee (IV) had the benefit of a communication (quoted above) from Committee VI setting forth the opinions of that Committee on the subject of Chapter VIII in its general relation to other parts of the Charter. Committee IV found that the question was full of complexities and that

* This Report, as well as those of other Committees and certain sub-committees, was approved in toto at a Plenary Session of the Conference. They will have a very high evidential value for purposes of future interpretation of the Charter.

"it was difficult to foresee at this stage all implications of cases that may in practice arise.

"However, Committee IV calls attention to the fact that the procedures under Chapter V apply to complaints directed against Members as such. Therefore, the procedures set forth in Chapter V cannot preclude resort by a Member to the procedures under Chapter VIII, whenever it considers that there is nullification or impairment of the benefits under the Charter by another Member".

Another controversy, although not very serious, centered round the general question of the allocation of responsibilities between the Executive Board and the Conference. This type of controversy, however, namely the degree of power to be allocated to the Board under the provisions of the Charter, was more serious in discussions on other parts of the Charter.

In spite of the serious controversies which arose it was felt that the text of Chapter VIII which was finally established constituted an acceptable compromise more likely to work in practice. Furthermore, its provisions (e.g. Article 97, paragraph 2, under which the Board and the Conference will establish rules of procedure as may be necessary) are designed to permit of evolution and development in the light of experience and the accumulation of case-law.

The details of those issues and of others arising out of discussions are dealt with below under the related articles.

Article 92 - Reliance on the Procedures of the Charter. Article 92 is a rearrangement of the Geneva text of Article 92, paragraph 3, which has been divided into two paragraphs for purposes of clarity and placed as the first Article of the Chapter. Under paragraph 1 of this Article

"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 the Charter for complaints and the settlement of differences arising out of its operation".

There existed at one stage of the discussion a strong opinion that these provisions might conflict with the obligations of States under Article 36 of the Statute of the International Court of Justice. A number of States parties to the Statute have deposited pursuant to Article 36 a Declaration whereby they recognize as compulsory imso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning certain specified fields of international law. This problem of conflict did not concern Canada in view of the fact that our Declaration accepting the compulsory jurisdiction of the Court contains an exception(1) under which parties to disputes may agree to have recourse to other modes of settlement. The problem, however, arose out of the fact that other States had not made such a reservation and consequently might not be free to limit themselves to the procedures of

(1) This reservation had also been made by Australia, France India, Iran, Luxembourg, New Zealand, Netherlands, South Africa, Turkey, the United Kingdom and the United States.

Chapter VIII. After further study and the receipt of further advice, however, the majority of delegations concluded that no conflict existed. The insertion of the phrase "in relation to other Members and to the Organization", added strength to this conclusion.

It should be noted that the provisions of Paragraph 1 limit recourse to the procedures of the Charter. There are in fact in other parts of the Charter procedures for complaints and the settlement of disputes arising out of their operation. For example, Article 21, sub-paragraph 5(d) provides a procedure for the settlement of a dispute which might arise when a Member considers that another Member is applying restrictions (for balance of payments reasons) inconsistently with the relevant provisions of the Charter.

Paragraph 2 of Article 92 provides that Members also undertake, without prejudice to any other international agreement (e.g. United Nations Charter), that they will not have recourse to unilateral measures of any kind contrary to the provisions of this Charter. The term "unilateral economic measures" replaces the term "unilateral sanctions" which appeared in the Geneva draft. As will be seen below under Article 95, an attempt was made to avoid any reference, specific or implied, to the word "sanction".

Article 94 - Reference to the Executive Board. This Article sets out in some detail the third step in the settlement of differences, namely, the reference of unsettled differences to the Executive Board.

This Article and Article 95 - Reference to the Conference - represent the sort of elaboration of the text which was referred to in the introductory paragraphs to this review of Chapter VIII. The Geneva draft contained only one Article (90) "Reference to the Organization". In the process of breaking down the Geneva Article into two Articles - Reference to the Board, and Reference to the Conference - the question arose as to what the functions and powers of the Board were to be. The issue was not very serious and the net result was that the text which emerged gives to the Board somewhat wider powers which are more clearly set out.

Any Member concerned may refer a dispute to the Board. A case of nullification or impairment resulting from (a) ("the existence of any other situation") may come directly to the Board since, for reasons given above, consultation, as provided for in Article 93, may not be possible.

The Board will promptly investigate the matter to decide whether any nullification or impairment within the terms of Paragraph 1 of Article 93 in fact exists. The Executive Board may, in the course of its investigation, consult with such Members, inter-governmental organizations or commissions of the Organization as it may deem appropriate.

Having concluded its investigation, the Board will take such of the following steps as may be appropriate. As will be seen later, the following procedure will also be followed by the Conference when a case is brought before it:

1. Decide that the matter does not call for any action.

2. Recommend further consultation to the Members concerned.

3. Refer the matter to arbitration upon terms as may be agreed upon between the Board and the

Members concerned.

The Board may feel that further discussions between the Members or the submission of the matter to arbitration, might result in a satisfactory settlement.

If the Board finds that the nullification or impairment in fact exists and that it results from a breach by a Member of an obligation under the Charter, it may request the Member concerned to take such action as may be necessary to conform to the provisions of the Charter.

Although the Board has no power of enforcement in the event that a Member does not accede to the Board's request, it can be appreciated that such a request, by the Executive Board of the Organization could not be taken lightly by any Member.

5. In any nullification or impairment arising under (b) or (c), the Board may make such recommendations to Members as will best assist the Members concerned and contribute to a satisfactory adjustment.

It was made clear that this provision does not empower the Board (or the Conference) to require a Member to suspend or withdraw a measure which does not conflict with the provisions of the Charter (such as the use of a recognized exception in accordance with the provisions of Article 45).

A new, although limited, power was granted the Executive Board (paragraph 3) in that it can release the Member or Members affected from obligations or the grant of concessions to any other Member or Members under or pursuant to the Charter in the case of an emergency and within specified limits. If any Member or Members, however, in respect of which such obligations or concessions have been withdrawn, appeals the Board's decision to the Conference, the release granted by the Board cannot take effect.

The Board may at any time during its consideration of any question brought to it refer the matter to the Conference. This would cover, for example, the type of cases where the Board feels that the issues are of such importance or are so controversial that it belongs to the Conference (i.e., the full membership of the Organization) to deal with it.

<u>Article 95 - Reference to the Conference</u>. Although all cases of unsettled differences between Members must go through the Executive Board, such cases may be immediately referred to the Conference before any or little investigation has been done; for example, the Board may decide for various reasons that it will not investigate a dispute and consequently refers it directly to the Conference.

On the other hand, the case might have been fully investigated by the Board which might have

(1) taken action, e.g., released a Member from

granting specified tariff concessions to another Member;

(2) make a decision, e.g., requested a Member to conform to the provisions of the Charter;

(3) make a recommendation, e.g., recommended to a Member that it grant new (tariff) concessions to another Member as compensation.

In such cases any Member concerned may, within thirty days, request the Board to refer to the Conference for review any action, decision or recommendation of the Board.

It is hoped that the Conference will not be saddled with too many cases of disputes. It is hoped also that most cases will be settled through direct consultation between Members, and that those which are not so settled will be disposed of by the Board - although there also exists the danger that the Board may be overburdened and paralyzed administratively by a flood of unsettled disputes. It is not possible, of course to foresee whether such hopes will be realized.

Nor is it possible to envisage to what extent the judgment of the Conference will be impartial and based on factual considerations - no doubt it will vary greatly with cases. Experience at Havana revealed that countries which acted as a "bloc" in insisting on certain provisions (such as exceptions) will not necessarily act as a bloc when it comes to the application of such provisions. The fact remains that much of the successful operation of the Organization will depend on the reasonableness of its Members in those two respects.

In carrying out its (original) investigation or in making its review, the Conference will follow the procedure set down for the Executive Board.

The next question is the nature of the relief to be granted when the Conference has determined that nullification or impairment within the terms of paragraph 1 of Article 93. It should be noted that the provisions of the Charter for the settlement of disputes by the release of Members from obligations or the grant of concessions (Paragraph 3 of Article 94, release by the Board, and of Article 95, release by the Conference) represent the means of last resort to be used only when the nullification or impairment is "sufficiently serious". It was realized that this rather negative approach (such as permitting the withdrawal of a tariff reduction) might lead to serious difficulties, and, if abused, will constitute a retrograde step. Hence it was provided in sub-paragraph 2(e) of Article 94 (a procedure to which both the Board and Conference must adhere), that in the first place recommendations will be made to Members "as will best assist the Members concerned and contribute to a satisfactory adjustment". This would permit a more positive solution such as a recommendation to the "offending" Member to compensate the "injured" Member by granting the latter an appropriate concession rather than release the latter from an obligation towards the former.

As for the nature of compensation to be authorized, it was made clear that the relief to be granted must be compensatory and not punitive. The word "appropriate" in the text should not be read to provide for relief beyond compensation. Furthermore, the use of the term "Member or Members affected" was meant

to limit the number of Members to whom compensatory release from obligations could be granted. This is evidence of the general opposition, particularly on the part of delegations from Arab League countries, to any use of "sanctions" in this connection by the Organization.

It would not appear, however, that even such "safeguards" against sanctions would completely preclude their use by the Organization in certain circumstances. For example, the flagrant disregard by a Member of an important obligation of the Charter might be considered as nullification or impairment of a benefit accruing to all other Members(who are honouring their obligation). In which case the Conference could, under the terms of paragraph 3 of Article 95, authorize a "compensatory" release in favour of the "affected" (all) Members of the Organization towards the "offending" Member.

A new concept of differentiating between nullification or impairment under (a) on the one hand, and under (b) or (c) on the other was introduced and accepted at Havana (see Article 95 (3)). It was recognized that the first cause (breach of obligation) of nullification or impairment was more serious and consequently the provisions concerning its treatment allow of somewhat broader relief although, strictly, such relief must still be compensatory. There is no provision in this type of case for "assistance" towards a satisfactory adjustment between the Members concerned.

Paragraph 4 provides that when any Member or Members do in fact suspend the performance of any obligation or the grant of any concession to another Member, the latter Member is then permitted to give notice of withdrawal within sixty days after such action is taken, or if the International Court of Justice has been requested for an opinion, after such opinion is delivered. Withdrawal takes effect sixty days after notice instead of six months as provided for in the general withdrawal Article.

Article 96 - Reference to the International Court of Justice. The final step which may be taken in the procedure respecting the settlement of differences is provided for in this Article in the form of a request by the Organization for an advisory opinion (not a judgment) from the International Court of Justice. This, as will be seen, was the main and most controversial issue in this Chapter.

Paragraph 2 authorizes any Member whose interests are prejudiced by a decision of the Conference under the Charter (not only under Chapter VIII) to have such decision reviewed by the International Court of Justice. Such review is limited, however, to a request by the Organization for an advisory opinion which, pursuant to the Statute, can only be given on legal questions, such as the interpretation of the Charter.

It was made clear in official Reports of the Havana Conference that a real interest of the Member must be adversely affected before that Member can request the Conference to ask the Court for an advisory opinion. This was insisted upon so that a remote, theoretical or unsubstantial interest of a Member in the decision in question would not be sufficient reason to give a Member the right to request an advisory opinion.

Paragraph 1 formally authorizes the Organization itself to request from the Court advisory opinions on legal questions arising within the scope of the activities of the Organization.

The other provisions of Paragraphs 2 and 3 simply serve to spell out the requirements as to the form and the documentation and statements which must accompany, pursuant to the Statute of the Court (Articles 65, 66), a request for an advisory opinion. It will be noted that the Members substantially interested will be consulted in the preparation of the statement.

Paragraph 4 provides that pending the delivery of the advisory opinion, the decision of the Conference shall have full force and effect. This was deemed necessary in view of the length of time which may elapse before the advisory opinion of the Court is delivered. Provision is made, however, whereby the Conference will suspend the operation of its decision where in the view of the Conference damage difficult to repair would otherwise be caused to a Member. Such suspension would be decided upon by the Conference by simple majority.

Paragraph 5 provides that the Organization will consider itself bound by the advisory opinion of the Court, and that the decision (of the Conference) in question shall be modified in accordance with the advisory opinion.

For purposes of clarity, the Resolution concerning the relation of the I.T.O. and the I. C.J. and Annex N providing, within specified limits, for amendments to Chapter VIII by simple majority, are dealt with following the discussion of the main difficulties and controversies which arose on the Court issue. They both form an integral part, however, of the over-all compromise which was reached on the provisions of Chapter VIII.

As already stated the establishment of the provisions of Article 96 as outlined above was by far the most important and controversial issue in this Chapter. Broadly speaking, it concerned the relation of the I.T.O., its Members, and the I.C.J.

The main participants in this many-sided controversy were, on the one hand, the French Delegation, and, on the other, the United Kingdom and United States Delegations. The issue was sufficiently serious to cause those delegations to state in informal meetings that they would not be prepared to recommend the Charter to their governments if certain proposals, which they favoured or opposed for different reasons, were either inserted into or omitted from this Chapter.

The position of delegations as a whole varied greatly depending on the particular point at issue. Briefly, they ranged all the way from a very strict limitation on cases reviewable by means of an advisory opinion by the Court, to the view that practically any type of decision of the Organization should be made subject to appeal to the International Court of Justice, and that the decision of the Court should have the nature of a judgment. The problem in fact was one of degree.

The following few paragraphs outline briefly the relevant provisions of the Statute of the Court, indicating, where relevant, the particular points respecting which the major conflicts of opinion arose and the reasons for such conflicts.

The Statute provides two main procedures, namely, the judgement procedure and the advisory opinion procedure. It was on the choice between these two procedures that the main controversy existed. As will be seen below, the choice of procedure determined to a large degree the extent of the field of cases which could be permitted to go before the Court.

1. Judgment Procedure. A judgment is rendered on a contentious case following an appeal made by States parties to the Statute. This is the usual judicial procedure.

Since only States may be parties in cases before the Court (Statute 34), the International Trade Organization could not, therefore, under this procedure, be a party before the Court unless the Statute were amended.

The jurisdiction of the Court comprises all cases which the parties (States) refer to it (Statute 36).

The French Delegation, supported by many European and Latin American delegations, was particularly insistent that the judgment procedure should be adopted and provided for in the Charter.

In order to get around the practical difficulty arising from the fact that organizations such as the International Trade Organization cannot be parties in cases before the Court, the French Delegation made a formal proposal suggesting the adoption of a Resolution by the Havana Conference "expressing its wish that the International Court of Justice should consider whether its Statute could be amended so as to permit such procedure". This proposal was strenuously opposed by the United Kingdom, the United States, Canada and many other delegations. It was finally abandoned, although reluctantly and only after another resolution, mentioned below, was adopted by the Conference.

The following may be listed as the chief reasons why the French proposal was opposed by certain delegations and supported by others:

(a) Assuming the Statute could have been amended to permit the International Trade Organization to be a party in a case before the Court (which is extremely doubtful), any Member could have brought any decision of the Organization and the Organization itself before the Court. This could have resulted in a serious loss of control by the International Trade Organization over matters within its scope.

In fact, the consensus of opinion at Havana was closer to the other extreme, namely, that the I.T.O. should be sole master in its own house, that is, that its decisions should be final.

(b) Any question, such as questions of economic fact (e.g., whether a Member's balance of payments position is such as to warrant the use of quantitative restrictions, or whether a Member should be permitted to use QR's for economic development) would have been appealable before the Court. This, for obvious reasons, was perhaps the main reason why the judgment procedure was unacceptable to many important delegations. In fact, even the French Delegation modified its original position in this connection so that its revised proposal provided that the only grounds for reference to the Court should be legal considerations regarding competence, action ultra vires, or the interpretation of the Charter.

(c) If the required amendment to the Statute of the Court could not be implemented, the disadvantages outlined above would have been even more serious. Members could have, for example, brought their dispute before

> the Court irregardless of the fact that the Organization had made a ruling on it. The Court's judgment (assuming the Court had admitted the case) might have been contrary to that of the Organization, perhaps even contrary to the provisions of the Charter. Furthermore, the Organization could not have been a party before the Court when its decision was being reviewed. For obvious reasons, this situation could not be permitted to develop.

2. Advisory Opinion Procedure. This is the procedure which had been provided for in the Geneva draft and which still remains in the final text.

Advisory opinion may be given on legal questions only (Statute 65). It was because of this limitation that the French, Italian, Polish, Colombian and other delegations opposed this procedure.

Furthermore, only bodies (such as the International Trade Organization) may be authorized by the General Assembly of the United Nations (United Nations Charter, Article 96) to request for an advisory opinion from the Court.

This procedure, as can be seen, limits cases to legal questions such as the interpretation of the Charter. Under this procedure there is no "case" in the legal sense; neither Members nor the Organization can, therefore, be parties to such "cases". As outlined above, all that is required to be presented to the Court is an exact statement of the question upon which an advisory opinion is required, accompanied by all documents likely to throw light upon the question.

From the point of view of law, the differences between a judgment and an advisory opinion delivered by the Court ensues first and foremost from the degree of binding force attaching respectively to them. A judgment is binding upon the parties, whereas compliance with the terms of an advisory opinion is, as the name implies, optional. In this connection, the provisions of the I.T.O. Charter (Article 96, paragraph 5) make the advisory opinion binding upon the Organization. Some delegations regarded this as a "legal heresy".

In practice, there has been little difference between a judgment and an advisory opinion. The experience of the Permanent Court of International Justice shows that advisory opinions have always exercised great influence and have carried great weight; there is no instance in which the conclusions of such an advisory opinion have not in practice been applied. Indeed, the authority of an advisory opinion has always been such that no question submitted to the Permanent Court for such an opinion has ever subsequently come before it as the subject of contentious proceedings (judgment procedure). This arises from the fact that, as evidenced by the history of the Permanent Court, advisory proceedings before the Court were provided with the same procedural safeguards as were provided in contentious cases. In the eyes of the Permanent Court both categories of cases were equally important and they were dealt with on strictly analogous lines. At the moment, it is not possible to state positively that the International Court of Justice intends, in this respect, to follow the practice of the Permanent Court of International Justice, but in view of the terms of Articles 82 to 85 of the Rules of Court, it seems probable that it will do so.

The whole Court issue was debated at length and finally settled in a strong eighteen-country Sub-Committee in which all divergent views were represented. The basis of compromise, however, of which the Resolution and Annex represent the final link, had to be arrived at through informal meetings between the United States and the United Kingdom Delegations on the one side and the French Delegation on the other. Once the deadlock was broken the Sub-Committee text was approved by the full Conference after a relatively short debate and without any substantial change. Even though many delegations did not express a clear-cut opinion on this issue, it would appear that the majority were willing to accept the procedure provided for in the Geneva draft.

The Canadian Delegation would have preferred to see the Geneva draft accepted without change except possibly for a few necessary clarifications. The compromise reached on Article 96 at Havana, however, does not depart to any appreciable degree from the Geneva provisions. It is in the adoption of the Resolution concerning the relation between I.T.O. and I.C.J. and in the insertion of Annex N that the Havana text might eventually differ from the Geneva text.

It is expected that the final outcome of any action which might be taken pursuant to the Resolution and within the terms and limits of the Annex may be that the Charter will provide for review by the Court of a somewhat larger field of cases. But, as indicated below, the strict limits imposed by the Annex will not permit any appreciable extension of that field.

Resolution Concerning the Relation of the International Trade Organization and the International Court of Justice and Annex N to Article 100 (Amendments) providing for Special Amendment to Chapter VIII

We have already seen that certain delegations opposed the fact that the provisions of Chapter VIII did not provide recourse to the International Court of Justice on all questions arising out of the operation of the Charter. That view, as we have seen, has not gained favour.

As an alternative those delegations urged that the text of Chapter VIII be in particular amended so as to provide that Members might refer such questions as could not be decided by the Organization to the International Court. It was made clear, however, that these delegations did not urge that a Member should be allowed to attack the validity of an advisory opinion of the Court obtained through the procedures of Chapter VIII on the points covered by such opinions.

On the other hand, the views of other delegations, including the Canadian Delegation, were expressed that the procedures of Chapter VIII were plenary and adequate.

In view of the limited time available for further discussion and because of the legal complexities involved, the Havana Conference agreed that the Interim Commission should examine the question. The Resolution which was adopted provides that the Interim Commission, through such means as may be appropriate, shall consult with appropriate officials of the International Court of Justice, or with the Court itself, and after such consultation report to the first annual Conference of the Organization upon the questions of -

(a) whether such procedures (that is, review of legal questions through means of an advisory opinion) need to be changed to insure that decisions of the Court on matters referred to it by the Organization should, with respect to the Organization, have the nature of a judgment; and

(b) whether an amendment should be presented to the Conference pursuant to and in accordance with the provisions of Annex N.

It can be seen that the terms of reference of the Interim Commission under this Resolution are very wide. This was probably necessary to permit a full study of the question. That is one task. But it follows that its recommendations, if they were to be implemented by the Conference, could presumably upset the generally acceptable compromise reached on the text of Article 96.

It was necessary, therefore, to limit the possible practical application of the terms of reference. This was done in Annex N to Article 100 - Amendments. This Annex was in fact originally suggested by the French Delegation with a view to assuring that any amendments to the provisions of Article 96 as the Interim Commission might recommend would become effective upon approval by the Cônference by a vote of a simple majority of the Members rather than the usual two-thirds majority. That proposal was accepted and inserted in the Annex as part of the over-all compromise on this issue. The purpose was to make any amendment to the provisions of the Charter in this respect relatively "easy" in the light of the report to be presented by the Interim Commission.

On the other hand, however, and in order to preserve the general principle incorporated in Article 96, two provisos were inserted in Annex N. Any amendment which the Interim Commission can recommend must relate to review by the Court of matters which arise out of the Charter <u>but which are not already covered in Chapter VIII</u>. The two provisos were as follows:

1. Any amendment which may be approved by a simple majority vote shall not provide for review by the Court of any economic or finahcial fact as established by or through (e.g. <u>by</u> the I.M.F.) the Organization.

   This was meant specifically to cover the questions dealt with in sub-paragraph 2(c) of Article 36 of the Statute which recognizes the jurisdiction of the Court in all disputes concerning "the existence of any fact which, if established, would constitute a breach of an international obligation".

   <u>N.B</u>. This proviso, in fact, assures that the decisions of the Organization on matters of economic or financial fact cannot be referred to the Court.

2. No amendment can 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.

   This, in fact, means that the procedure as provided in Article 96, whereby legal questions may be referred to the Court for review by means of an advisory opinion which must be accepted, can not be amended (by simple majority vote). The fact that the advisory opinion must be accepted by Members as binding

means that the subject matter of the opinion can not subsequently be appealed before the Court as a contentious case.

It can be seen from the foregoing that the use of the "easy amendment" procedure provided for under this Annex is quite limited. It probably will not lead to any appreciable extension of the cases which can be referred to the Court. The number of cases which might be referred to the Court for judgment after, (1) matters not already covered in Chapter VIII, (2) questions of economic or financial fact, and (3) legal questions, have been specifically excepted, is probably not very large.

"The nature or extent of the reparation to be made for the breach of an international obligation" covered by sub-paragraph (d) of Article 36 of the Statute, might be such a case.

It is this type of problem and the question of establishing a speedy procedure perhaps specially adapted to the technical needs of the International Trade Organization, such as the formation of an economic panel of the Court, which the Interim Commission has been instructed to study with a view to making appropriate recommendations to the Conference.

Due in part to the uncertainty attaching to this whole problem, such as the type of amendment which might enjoy the "easy amendment" procedure, and in part to the inability of delegations to agree to an unequivocal text as regards the Resolution and the Annex, a third proviso was added to the latter. This proviso was proposed by the United Kingdom Delegation. It provides that if any amendment which may be recommended by the Interim Commission alters the obligations of Members, any Member which does not accept the amendment may withdraw from the Organization upon the expiration of sixty days (instead of the usual six months) after giving written notice.

CHAPTER IX - GENERAL PROVISIONS

Article 98 - Relations with Non-Members
Article 99 - General Exceptions
Article 100 - Amendments
Article 101 - Review of the Charter
Article 102 - Withdrawal and Termination
Article 103 - Entry into Force and Registration
Article 104 - Territorial Application
Article 105 - Annexes
Article 106 - Deposit and Authenticity of Texts; Title and Date of Charter.

Chapter IX, the final Chapter of the Charter, groups all those Articles as listed above which could not be incorporated into any other Chapter of the Charter. The provisions of all these Articles cover the whole Charter.

By far the most important issue in this Chapter concerned the question of relations with non-Members, which is dealt with in Article 98.

Two other issues in order of importance concerned the provisions for the review of the Charter, the authenticity of texts, and the number of acceptances necessary to bring the Charter into force.

Article 98 - Relations with non-Members. This Article was by far the main issue which faced the Havana Conference in its discussions on this Chapter. Agreement upon its provisions, however, was relatively easier and came about more quickly than had been anticipated.

It should be noted at the outset that the provisions of this Article, like those of all other Articles of the Charter, can, of course, bind only Members of the Organization. For reasons which may be implied from the discussion which follows, it is clear that the successful operation of the provisions of this Article will depend in no small measure on the reasonableness of the Members of the Organization both in adhering to the spirit of the provisions and in agreeing to "reasonable" departures in exceptional circumstances.

The Geneva draft reflected the very serious controversies to which the question of relations with non-Members had given rise at Geneva. In fact, no agreement could be reached and the Preparatory Committee transmitted three alternative texts to the Havana Conference without expressing any judgment concerning the merits of one proposal as against another.

The three alternatives were intended to present the Havana Conference with provisions which were of varying degrees of strictness and rigidity or, in other words, "unfavourable attitude" towards non-Members. Thus alternative A was considered the strictest or "most unfavourable" whereas alternative C was the "least unfavourable"; alternative B was an attempt to take the middle of the road attitude. It was along the lines of alternative B that discussions at Havana proceeded and the text which emerged more closely approximates this alternative than either of the other two.

Paragraph 1 of the Havana text makes it clear that nothing in the Charter can preclude any Member from maintaining existing or entering into new economic relations with non-Members. Paragraphs 2, 3 and 4 provide limits to the application of this general principle. The statement of this basic principle and its inclusion as paragraph 1 of the Article reflects the "less unfavourable" attitude towards non-Members which prevailed at Havana. As can be seen, the opening sentence of both alternatives B and C revealed a stricter attitude: "no Member shall seek exclusive or preferential advantages for its trade with any non-Member".

Under paragraph 2 of Article 98, Members recognize that it would be inconsistent with the purpose of the Charter:

1. 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, and

2. for a Member to conduct its trade with non-Member countries so as to result in injury to other Member countries.

In accordance with those two basic limitations to the principle enunciated in paragraph 1, Members agree to the following two positive undertakings -

(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".

In this connection it was agreed at the Havana Conference that termination of any existing obligations of Members towards non-Members should be in accordance with the terms of the agreements embodying such obligations.

It was also understood that, in general, this undertaking applies to treaties or agreements which, by their terms, preclude the extension to other Members of benefits provided for in such treaties or agreements. It is quite clear, however, and it was so agreed at Havana, that a Member might by other means enter into new arrangements with a non-Member (or attempt to maintain an existing agreement) which would preclude the non-Member from according to other Member countries any benefit provided for by such arrangements. It was recognized, therefore, that if a Member were wilfully to accomplish the same result by other means, such Member would be acting in contravention of this undertaking.

Furthermore, the Havana Conference agreed that action by a state trading enterprise of a non-Member, which would be non-discriminatory under the terms of Article 29 of the Charter, would also be considered non-discriminatory for the purpose of interpreting the provisions of the sub-paragraph.

(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 it accords to the trade of any other Member country, would injure the economic interests of a Member country".

It will be noted that under this undertaking a Member can accord to the trade of a non-Member treatment which could be more favourable than that which it accords to Member. It is only in the case where injury is caused to the economic interests of a Member country that this undertaking would apply.

Paragraph 4 makes it clear that nothing in the Charter will 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. It is specified that failure to accord such treatment will not be regarded as inconsistent either with the terms or with the spirit of the Charter.

Article 98 specifies three cases in which Members can disregard its provisions within specified limits:

(1) Paragraph 3 permits Members to enter into preferential agreements for purposes of economic development or reconstruction with non-Members in accordance with paragraph 3 of Article 15.

Thus by entering a preferential tariff agreement a Member country would contravene, unless this exception were made, the provisions of paragraph 2 since (1) it would be "seeking" and receiving from a non-Member advantages which other Members could not enjoy, and (2) such advantages thus obtained from and granted by a

non-Member would not be extended to all other Members.

It must be noted, however, that the "automatic approval" provisions of Article 15, under which the Organization must give its authorization, does not apply to a new preferential agreement involving Members and non-Members.(1) In such cases, approval can only be granted by a two-thirds majority of the Members present and voting, and subject to such conditions as the Organization may impose.

(2) Similarly, paragraph 3 allows Members to enter into customs unions or free trade area arrangements with non-Members, but in this case, as in the case of new preferential arrangements, a two-thirds majority of the Members present and voting is required in accordance with paragraph 6 of Article 44.

(3) The third exception is contained in an interpretative note to Article 98. This note provides that the provisions of Article 98 will not 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.

There are, of course, other cases where a Member would not be bound by the provisions of Article 98 in his relations with non-Members. For example, a Member can take action or enter into agreements with non-Members for national security reasons in accordance with sub-paragraph 1 (b) and (c) of Article 99.

It can be seen that the provisions of the Article are rather loosely worded. Many specific problems of relations between Members and non-Members have not been clearly foreseen and provided for, and will have to be solved on an ad hoc basis. Although the basic principles and undertakings which were deemed to be minimum requirements have been incorporated, it seemed impossible at Havana to reach agreement much beyond that point.

There were two general considerations which affected discussions on this issue and which in the case of certain delegations permeated their whole attitude. Firstly, the commercial relations of western and eastern European countries. Both groups were anxious to arrive at provisions which would not seriously impede commercial relations between them. Similarly, once it became almost certain that Argentina would not sign the Final Act at Havana, that country (which continued to take part in discussions) and other Latin American countries, such as Chile and Bolivia, were anxious not to make too "unfavourable" the treatment of non-Members under the Charter. The same considerations applied to Switzerland.

Secondly, it became clear that without knowledge of what countries would be Members and what countries would be non-Members of the Organization, particularly in the first few years of operation, that it would be premature to provide in the Charter itself for relatively "unfavourable" relations between Members and non-Members. It was recognized that any Member whose vital interests might become prejudiced by too rigid provisions could not afford to remain for very long a Member

of the Organization.

Paragraph 5 of Article 98 therefore provides that the Executive Board will make periodic studies of general problems arising out of the commercial relations between Member and non-Member countries. With a view to promoting the purpose of the Charter, the Board may make recommendations to the Conference with respect to such relations.

There would obviously be many considerations, applying to varying degrees in particular cases, which the Board will have in mind when making such recommendations on the relations of Members and non-Members. Such factors as the general economic circumstances of a Member, its creditor or debtor position, the volume and importance of its commercial relations, and other factors could all have a direct bearing in particular cases and thus affect the interests of the Member directly concerned and of other Members.

Any recommendations involving alterations in the provisions of this Article will be dealt with in accordance with the provisions of Article 100 dealing with amendments.

Article 99 - General Exceptions. Whereas Article 45 contains exceptions to Chapter IV only, the general exceptions contained in this Article are made to the whole of the Charter.

The majority of the exceptions provided in this Article are made for reasons of national security. Thus

(a) No Member is required to furnish any information, the disclosure of which it considers contrary to its essential security interests;

(b) Nothing in the Charter can prevent a Member from taking any action, "either singly or with other states which may or may not be Members of the Organization, which it considers necessary for the protection of its essential security interests where such action related to the following:

(i) Fissionable (atomic) materials or to the materials from which they are derived.

(ii) 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.

The expression "or of any other country", which was added to the Geneva text, makes it clear that the military establishment need not be that of a Member of the Organization. Under this provision a Member could impose, for example, an export embargo on exports to any other country of materials such as iron ore or steel.

(iii) Any action which is taken in time of war or other emergency in international relationships.

This provision was not further defined although when it came to establishing the authentic French text, the expression "other

emergency" was understood to mean a serious and impending emergency; the French text is: "cas de grave tension internationale".

(c) Nothing in the Charter can prevent a Member from entering into or carrying out any inter-governmental agreement (or other agreement on behalf of a government) made by or for a military (army, air force or navy) establishment for the purpose of meeting essential requirements of the national security of one or more of the participating countries.

This is a new exception which was not in the Geneva text and which was proposed by the United States Delegation to permit continuation of their stock-piling policies. In this case, as in those mentioned above, the agreement may include countries which are non-Members as well as Members of the Organization.

The Conference agreed on a necessary counterpart to this provision. Article 32 - Liquidation of Non-Commercial Stocks - was inserted in Chapter IV of the Charter. The main reason for the inclusion of this Article was to provide machinery for prior consultation in regard to the liquidation of stocks accumulated for security reasons under this exception.

The other exceptions provided for in this Article are not of a security nature.

Sub-paragraph 1 (d) provides that any action taken in accordance with the provisions of Annex M is also excepted from the provisions of the Charter. Annex M contains special provisions regarding India and Pakistan. It recognizes that 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 the Charter will not prevent the two countries from entering into interim agreements (such as tariff agreements) with respect to the trade between them. Once reciprocal trade relations have been established on a definitive basis, measures adopted by these countries in order to carry out definite agreements with respect to their reciprocal trade relations may depart from particular provisions of the Charter. Such measures, however, must be, in general, consistent with the objectives of the Charter. An exception, identical in substance, is contained in an interpretative note to Article XXIV, paragraph 5, of the General Agreement on Tariffs and Trade.

Finally, paragraph 2 provides that the Charter will not be construed to over-ride,

(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. All amendments to the Charter require approval by a two-thirds majority vote. The only exception to the two-thirds majority rule is in respect of amendments within the limits and in accordance with the procedure set forth in Annex N (to Chapter VIII) where a simple majority is provided for.

Article 100, however, differentiates between amendments which alter and amendments which do not alter the obligations of Members.

The determination as to whether an amendment alters the obligations of Members will be made by the Conference by a two-thirds majority of the Members present and voting. This determination must be made before any amendment is voted upon.

If it is determined by the Conference (or if it is obvious) that an amendment does not alter the obligations of Members (e.g. amendment to purely procedural provisions), it will become effective immediately for all Members upon approval by the Conference by a two-thirds majority of the Members (not only by the Members present and voting).

If the determination by the Conference is that an amendment alters the obligations of Members, that amendment must first receive the approval of the Conference by a two-thirds majority of the Members present and voting. If such approval is obtained the amendment will become effective for the Members accepting it upon the ninetieth day after two-thirds of the Members have notified the Director-General of their acceptance. Thereafter, it will become effective for each remaining Member upon acceptance by it.

The Conference may, in its decision approving an amendment which alters obligations, determine by a two-thirds majority of the Members present and voting that the amendment is of such a nature that the Member which does not accept it within a specified period after it becomes effective will be suspended from membership.

Paragraph 4 provides that the Conference will, by a two-thirds majority of the Members present and voting, establish rules with respect to the reinstatement of Members which have been suspended. It will be noted that this is a function specifically allocated to the Conference and which, therefore, can not be delegated.

A suspended Member may withdraw immediately on giving written notice. The Conference may, however, 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 Member which does not accept the amendment.

A Member (which has not been suspended) not accepting an amendment, which alters its obligations and which the Conference has decided must be accepted, will be free to withdraw from the Organization at any time after the amendment has become effective provided such Member has given sixty days' written notice of withdrawal.

Only time can tell with what success and restraint this Article will be applied. It is hoped that it will not be resorted to indiscriminately. For example, many difficult provisions of the Charter were agreed to at Havana on the basis of an overall compromise. There is no doubt that if the various provisions embodying the individual elements of such a compromise were presented for amendment one by one, the required two-thirds

majority could be obtained with the result that the Charter could be seriously weakened from the Canadian point of view. Practical examples would be a further weakening of such Articles as 13 and 15, the loss of permanent seats on the Executive Board for countries of chief economic importance. For obvious reasons it must be realized that such tactics could easily mean the end of the Organization.

Article 101 - Review of the Charter. The Geneva text of this Article recognized the advisability of convening a special session of the Conference for the purpose of reviewing the provisions of the Charter ten years after the entry into force of the Charter.

Provision for review is maintained in the final text. A few more details of procedure which were only implied in the Geneva text have been specified. A major change was made, however, in that review is now provided for after five years of operation.

It is envisaged that pursuant to this provision, Members of the Organization will meet with the sole purpose in mind of appraising the accomplishments of the Organization and of determining what changes might be necessary and generally acceptable in order to reach a fuller realization of the objectives of the Charter.

It was the consensus of opinion at Havana that in view of quickly changing economic conditions and methods, the ten-year period might prove to be too long. It might be added that the International Chamber of Commerce had advocated at Geneva review in the fifth year.

Many delegations, including the Canadian Delegation, did not support the shortening of the period. It was feared that a special session after such a relatively short time might result in another "Havana Conference" with its innumerable and serious conflicts, controversies and difficulties. It was felt that economic relations between nations would not have changed so substantially in such a short period in the history of international economic relations as to necessitate the re-opening of all the old issues, run the risk of disturbing basic compromises and lose what agreement had been reached. Lastly, it was held that five years was not a sufficiently long period on which to judge the operations of an organization of such gigantic proportions as the International Trade Organization.

It is too early to pass judgment on the soundness of those two opposing views. However, since it can be expected that the Organization will deal with any amendments at the time at which they are presented rather than let them accumulate pending the special session, it will probably be that the five-year review will be devoted to an examination of the basic principles on which the Charter rests. It will be little consolation to have provisions in the Charter providing that amendments resulting from such review will require a two-thirds majority approval. What will matter in such an overall review, if such is the case, will be the continued determination of nations to adhere to the road of economic co-operation under a code of law sufficiently firm to make an I.T.O. a worthwhile undertaking.

Article 102 - Withdrawal and Termination. This is the general withdrawal clause of the Charter which was taken from the Geneva draft with only a few drafting changes which improved the text.

Under its provisions any Member may withdraw from the Organization at any time after three years from the day of the entry into force of the Charter. Such withdrawal will become effective upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director General. It can be seen, therefore, that a Member could give such notice after two and a half years following the entry into force of the Charter and its withdrawal from the Organization would take effect three years from the day of the entry into force of the Charter.

It should be noted that there are other provisions in the Charter under which Members may withdraw from the Organization on relatively short notice. Those other provisions, the main ones of which are listed below, are exceptions to this general withdrawal Article. In the following cases a Member's withdrawal, after written notice to the Organization, becomes effective generally after sixty days:

ARTICLE	TITLE	CIRCUMSTANCES
Article 17, 4(e)	Reduction of Tariffs and Elimination of Preferences.	A Member is free to withdraw after tariff concessions are withheld from it as a result of that Member's failure to become a contracting party to the General Agreement on Tariffs and Trade.
Article 95, 4	Reference (of differences) to the Conference	A Member may withdraw following a decision by the Conference or after the advisory opinion of the International Court of Justice has been delivered.
Article 100, 3	Amendments	A Member may withdraw when not accepting an amendment which alters its obligations.
Annex N	Special Amendment to Chapter VIII.	Similarly, a Member may withdraw if not accepting an amendment which alters his obligations.

As can be seen, "emergency" withdrawal is permitted only in very few cases and under serious circumstances.

Paragraph 3 of this Article provides that the Charter may be terminated at any time by agreement of three-fourths of the Members of the Organization. This provision was taken without change from the Geneva draft. It is the only case in the Charter where a three-fourths majority is required. As can be appreciated, only an overwhelming desire on the part of the Members to terminate the Charter could bring about action under this provision.

<u>Article 103 - Entry into Force and Registration.</u> Acceptance of the Charter by Governments is provided for through the procedure of the deposit of instruments of acceptance with the Secretary-General of the United Nations rather than the procedure of signature.

During the first year following the signature of the Havana Final Act of the Havana Conference, that is, to the 24th of March, 1949, a majority of the governments who signed the Havana Final Act[x] must deposit instruments of acceptance before the Charter can enter into force. The Charter, therefore, cannot in any way enter into force before the 24th of March, 1949, unless twenty-seven governments, signatories to the Havana Final Act, have deposited instruments of acceptance.

If, after the 24th of March, 1949, the Charter has not yet entered into force, then twenty acceptances shall be sufficient to bring the Charter into force.

In both cases the Charter will enter into force on the sixtieth day following the day on which the required number of acceptances have been deposited.

If the Charter has not entered into force by the 30th September, 1949, provision is made whereby the Secretary-General of the United Nations will invite those governments which have deposited instruments of acceptance to enter into consultation and determine whether and on what conditions they desire to bring the Charter into force.

This Article contains three additional provisions, as follows:

1. Paragraph 3 provides that no State or separate customs territory, on behalf of which the Havana Final Act has been signed, can be deemed to be a non-Member for the purposes of Article 98 until the 30th September, 1949.

2. Annex O provides that any Government which has deposited an instrument of acceptance at least sixty days before the first regular session of the Conference will have the same right to participate in the Conference (of the Organization) as a Member.

3. Paragraph 4 authorizes the Secretary-General of the United Nations to register the Charter, pursuant to the provisions of the Charter of the United Nations, as soon as it enters into force.

A relatively minor controversy arose at Havana in connection with this Article. Certain delegations, of which the Latin American delegations were the most vocal, insisted on making the entry into force of the Charter a little more "difficult" particularly in the first year after the entry into force of the Charter. They considered that twenty acceptances, as provided for in the Geneva draft, was not a sufficiently high representative or "democratic" figure. Perhaps the main hidden motive on the part of those delegations was to ensure that the Organization would not become a 'going concern' and appoint its staff, including Deputy Directors-General, before they could (or would) decide to join. It will be remembered that Latin American delegations had been quite vocal in insisting that geographical representation should be an important consideration in the selection of the staff (see Article 85).

A small Working Party was set up to reconcile the various views and in record time agreed on the existing provisions of the Article. In fact there is no change of substance from the Geneva text. Although twenty-seven acceptances are required

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[x] See Annex D.

during the first year, this concession meant almost nothing since it was clear that the Charter could not, for various reasons, enter into force before the 24 th March, 1949.

Article 104 - Territorial Application. This Article is concerned with the question of the territorial application of the entire Charter. It will be remembered that Article 42 dealt with the territorial application of Chapter IV only.

Paragraph 1 provides that each government accepting the Charter does so in respect of its metropolitan territory and of the other territories for which it has international responsibility.

The Charter differentiates between "customs territories" (Article 42) and "separate customs territories" (Articles 71 and 103).

A customs territory is 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.

This type of territory (e.g. Jamaica) can be treated as though it were a Member exclusively for the purposes of the territorial application of Chapter IV - Commercial Policy - (M.F.N. and national treatment, tariff negotiations, etc.) after an instrument of acceptance has been deposited on its behalf by the competent Member (the United Kingdom).

A separate customs territory for which this Article provides is a customs territory which is autonomous in the conduct of its external commercial relations and of the other matters provided for in the Charter (e.g., Southern Rhodesia). This type of territory may become a full Member of the Organization as an original Member, if it was invited to the Havana Conference (sub-paragraph 1 (b) of Article 71), or, if it was not invited, after a favourable decision by the Conference as to its "commercial autonomy". (Article 71, paragraph 3). In both cases the deposit of the instrument of acceptance must be made by the competent Member (the United Kingdom). Such deposit may be made at any time.

An interpretative note was added to Article 104, by which Members who jointly administer a condominium may, if they so desire and agree, accept the Charter in respect of such condominium. In this connection, there was a short-lived and quiet political clash between the Egyptian and the United Kingdom Delegations concerning the Condominium of the Sudan. This controversy was settled by the inclusion in the official reports of the Conference of the following two notes.

On the part of the Egyptian Delegations:-

"The Delegation of Egypt, desiring to avoid any misunderstanding to which the interpretative note to Article 104 might give rise, desired to record the attitude of the Egyptian Government as regards the Sudan. In view of the fact that there are no customs boundaries between Egypt and the Sudan and in view of the fact that Egypt and the Sudan are one and the same territory, customs matters concerning the Sudan are the exclusive concern of the Egyptian Government".

On the part of the United Kingdom Delegation:-

"The Delegation of the United Kingdom said that the Government of the United Kingdom of Great Britain and Northern Ireland would not have thought that the general principle laid down in the interpretative note to Article 104 required any qualification, since it in no way prejudices the question of what is or is not a condominium. In view, however, of the declaration by the Delegation of Egypt, the Government of the United Kingdom decided to place on record that, as is well known, it does not accept the thesis of the Egyptian Government in regard to the Anglo-Egyptian Condominium of the Sudan".

Paragraph 3, which is independent in operation and applies to all obligations under the Charter, was taken without change from the Geneva draft. It deals with the question of the powers of the Members in relation to those of regional and local governments and authorities within that Member's territory. Attempts were made by non-federal states to insert provisions which would have obligated Members to "take all necessary measures" to insure observance of the provisions of the Charter by the regional and local governments and authorities within its territory. This, for obvious reasons, proved unacceptable. The text, as was agreed upon, requires each Member to "take such reasonable measures as may be available to it" to insure observance of the provisions of the Charter. This was the most to which countries like Canada, the United States, Australia, etc., could agree.

It should be noted that even though a measure may be "available" (e.g., constitutionally or, in the case of Canada under the British North America Act), it may not be "reasonable". In such a case there is no obligation on the part of a Member to take any measure which that Member itself considers unreasonable.

Article 105 - Annexes. This Article provides that the sixteen Annexes to the Charter (Annexes A to P) form an integral part of the Charter.

It should be noted, therefore, that the interpretative notes to the Charter which are listed in Annex P form an integral part of the Charter and have the same value as if they had been incorporated into the various articles to which they relate.

A serious attempt was made at Havana to keep these notes down to a minimum and, in view of the many proposals and requests which are made for interpretative notes, the number which finally found their way into Annex P is much lower than might have been expected; there are interpretative notes to twenty-three Articles and one note to Annex K.

It should be noted in this connection that a good many elaborations, explanations and interpretations which might have found their way into Annex P as interpretative notes were incorporated into the reports of Committee and those of the principal sub-committees of the Havana Conference. The contents of these reports (some 50,000 words) will be published by the Interim Commission and will have a high evidential value for purposes of future interpretation of the Charter.

For this reason it is apparent that the comparability of the authentic texts of the reports is almost as important as that of the Charter text itself. The Executive Committee, therefore, aided by a special panel appointed on a personal basis at Havana, will be responsible for securing comparability between the English and French texts of these reports. This

task could not be performed at Havana by the Legal Drafting Committee which only had time to devote its attention to the text of the Charter itself.

Article 106 - Deposit and Authenticity of Texts, Title and Date of the Charter. This Article provides that pursuant to Article 102 of the United Nations Charter the original texts of the International Trade Organization Charter in the five official languages of the United Nations (English, French, Chinese, Spanish and Russian) will be deposited with the Secretary-General of the United Nations.

There was a good deal of acrimonious discussion on the delicate question of what texts should be authoritative for purposes of interpretation. The Canadian Delegation, for technical reasons more than anything else, maintained that only the English and French texts should be authentic. When the United States Delegation reversed its position and accepted the five official languages of the United Nations as authentic, that principle was quickly adopted by the Conference. The Article, therefore, provides that, for purposes of interpretation of the Charter, the English, French, Spanish, Chinese and Russian texts will be equally authoritative and that any discrepancy between texts will be settled by the Conference. The Executive Committee of the Interim Commission has been charged with the task of establishing authentic texts in the Chinese, Spanish and Russian languages.

Since, under Article 39 of the Statute of the International Court of Justice, only French and English are recognized as the official languages of the Court, the phrase "subject to the provisions of the Statute of the International Court of Justice" was inserted in paragraph 1 of Article 106 so that the Chinese, Spanish and Russian texts will not be authoritative before the International Court.

Paragraph 2 of this Article establishes that the date of the Charter shall be March 24, 1948, which is the day on which the Final Act of the Havana Conference was signed. The need to establish the date of the Charter was necessary in view of the many references which are made to it in other parts of the Charter, such as Article 13, sub-paragraph 7 (a)(i); Article 18, paragraph 6; Article 35, paragraph 6.

The final paragraph of the final Article of the Charter provides that the Charter for an International Trade Organization will be known as the Havana Charter. This title was proposed and supported by all the Latin American countries.

Although the Canadian Delegation did not specifically support this suggestion, it did not oppose it when it became evident that there was general support for it. Although, at first sight, the title appears to be purely honorary, there was some feeling that the title might confirm the solidarity of the Latin American countries which was keenly felt at Havana and at times became obnoxious because of the many difficulties which it caused. The Havana Charter might become to mean in the eyes of those delegations "a Latin American Charter for under-developed countries."

ANNEX A.

CASES WHERE A TWO-THIRDS MAJORITY IS REQUIRED

Article and Paragraph		Title of Article	Determination or Decision
15	3	Preferential Agreements for Economic Development and Reconstruction	The Organization, by a two-thirds majority of the Members present and voting, may permit, subject to such conditions as it may impose, the proposed agreement (of the type which does not meet the conditions and requirements necessary to obtain "automatic approval") to become effective.
44	6	Customs Unions and Free-Trade Areas	The Organization may, by a two-thirds majority of the Members present and voting, approve proposals which do not fully comply with the requirements provided for in this Article, provided that such proposals lead to the formation of a customs union or of a free-trade area in the sense of this Article.
46	3(g)	General Policy towards Restrictive Business Practices	Article 46 defines restrictive business practices. The provisions of rule, Para. 3(g), permit the Organization to declare by a majority of two-thirds of the Members present and voting that practices similar to those defined in Article 46 are, in fact, restrictive business practices.
71	4	Membership	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 United Nations; and (c) any other special regime established by the United Nations.
77	3	Powers and Duties	In exceptional circumstances not elsewhere provided for in this Charter, the Conference may, by a two-thirds majority of the votes cast, waive an obligation imposed upon a Member by the Charter.
77	3	Powers and Duties	The Conference may also, by a two-thirds majority of the votes cast, define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations.

Article and Paragraph		Title of Article	Determination or Decision
77	4	Powers and Duties	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.
78	3(a)	Composition of the Executive Board	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. These Members are then declared elected to the Board.
78	3(b)	Composition of the Executive Board	The other members of the Executive Board shall be elected by the Conference by a two-thirds majority of the Members present and voting.
ANNEX L		Selection of the Members of the first Executive Board	A two-thirds majority of the Members present and voting is required before seats, left vacant through the failure of certain countries to join the Organization, can be filled at the election of the first Board.
100	1	Amendments	Any amendment which does not alter the obligations of Members shall become effective upon approval by the Conference by a two-thirds majority of the Members.
100	2	Amendments	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,...
100	2	Amendments	The Conference may, in its decision approving an amendment under this paragraph and by one and the same vote, (i.e. two-thirds majority), 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.
100	2	Amendments	The Conference may, at any time, by a two-thirds majority of the Members present and voting, det-

Article and Paragraph	Title of Article	Determination or Decision
		ermine the conditions under which such suspension shall not apply with respect to any such Member.
100 4	Amendments	The Conference shall, by a two-thirds majority of the Members present and voting, determine whether an amendment alters the obligations of Members.

ANNEX B.

SPECIFIC POWERS AND DUTIES EXPRESSLY CONFERRED OR IMPOSED UPON THE CONFERENCE AND WHICH MAY NOT BE ASSIGNED TO THE EXECUTIVE BOARD

(Ref. Art. 77 - 2. Below)

Article and Paragraph		Title of Article	Powers and/or Duties
24	3	Relationship with the International Monetary Fund and Exchange arrangements	Agreements regarding procedures for consultation with the Fund shall be subject to confirmation by the Conference.
71	2	Membership (Organization)	The membership of any State other than those not invited to the Havana Conference shall be approved by the Conference.
71	3	"	Similarly the Conference shall approve the admission of any separate customs territory not invited to the Havana Conference and consequently not eligible as original Members.
71	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 Trieste; any Trust Territory administered by the United Nations; and any other special regime established by the United Nations.
71	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.
77	1	Powers and Duties (Conference)	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.
77	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.

Article and Paragraph		Title of Article	Powers and/or Duties
77	3	Powers and Duties (Conference)	In exceptional circumstances not elsewhere provided for in this Charter, the Conference may waive, by a two-thirds majority of the votes cast, an obligation imposed upon a Member by the Charter.
77	3	"	The Conference may also, by a two-thirds majority of the votes cast, define certain categories of expectional circumstances to which other voting requirements shall apply for the waiver of obligations.
77	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.
77	4	"	The Conference shall specify a period within which each Member shall notify the Director-General of its acceptance or non-acceptance.
77	5	"	The Conference may make recommendations to inter-governmental organizations on any subject within the scope of this Charter. (The Executive Board has the same power under the Charter, see Article 81 (para.2)
77	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.
77	7	"	The Conference shall determine the seat of the Organization and shall establish such branch offices as it may consider desirable.
78	1,2(c), 3(b)	Composition of the Executive Board	The Conference shall elect the Executive Board.
78	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.

Article and Paragraph		Title of Article	Powers and/or Duties
78	4	Composition of the Executive Board	Any vacancy in the membership may be filled by the Conference for the unexpired term of the vacancy.
78	5	"	The Conference shall establish rules for giving effect to this Article.
ANNEX L		Selection of the Members of the First Executive Board	All the powers and duties specifically attributed to the Conference in relation with its election of the Board are repeated in Annex L to Article 78 which deals with the election of the First Board. In addition, if an uneven number of members has been elected so that the terms of service have to be adjusted, "The Conference shall determine the number to serve for two and for four years respectively".
80	1	Sessions, Rules of Procedure and Officers (Board)	The rules of procedure of the Executive Board shall be subject to confirmation by the Conference.
82		Establishment and Functions (Commissions)	The Conference shall establish such Commissions as may be required for the performance of the functions of the Organization. The Commission shall have such functions as the Conference may decide.
83	1	Composition and Rules of Procedure (Commissions)	The Commissions shall be composed of persons whose appointment, unless the Conference decides otherwise, shall be made by the Executive Board.
83	2	"	The conditions of service of members of Commissions shall be determined in accordance with regulations prescribed by the Conference.
84	1	The Director-General	The Director-General shall be appointed by the Conference upon the recommendation of the Executive Board.
85	1	The Staff	The Conference shall approve the regulations governing the appointment of Deputy Directors-General and other Staff members.
86	1	Relations with the United Nations	The Conference shall approve the agreement establishing the relationship between the Organization and the United Nations.
87	3	Relations with other Organizations	Whenever the Conference and the competent authorities of any inter-governmental organization whose purposes and functions lie

Article and Paragraph		Title of Article	Powers and/or Duties
87	3 (con't)		within the scope of this Charter deem it desirable (a) to incorporate such intergovernmental organizations 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.
91		Contributions	The Conference shall apportion shares of the expenditure of the Organization to the Members.
92		"	The Conference may permit a Member which is in arrears in the payment of contributions to vote, if it is satisfied that the failure to pay is due to circumstances beyond the control of the Member.
95	1	Reference to the Conference (Disputes)	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. The Conference shall confirm, modify or reverse such action, decision or recommendation referred to it under this paragraph.
95	3	Reference to the Conference (Disputes)	In cases of nullification or impairment under provisions of the Charter the Conference may release Members affected from obligations or granting of concessions to any other Members to the extent and upon such conditions as it considers appropriate and compensatory, having regard to the benefit which has been nullified or impaired and in proportion with the seriousness of the nullification or impairment.
97	2	Miscellaneous Provisions	The Conference and the Executive Board shall establish such rules of procedure as may be necessary to carry out the provisions of Chapter VIII.
98	5	Relations with non-Members	Any recommendation involving alterations in the provisions of this Article resulting from studies by and recommendations of the Board shall be dealt with in accordance with the provisions of Article 100 (Amendments) by the Conference.

Article and Paragraph		Title of Article	Powers and/or Duties
100	1	Amendments	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.
100	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 each Member accepting it.
100	2	"	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.
100	2	"	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.
100	4	"	The Conference shall, by a two-thirds majority of the Members present and voting, determine whether an amendment alters the obligations of Members or not.
100	4	"	The Conference 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.
ANNEX N		Special Amendment of Chapter VIII	Any amendment to the provisions of Chapter VIII which may be recommended by the Interim Commission of the I.T.O. after consultation with the International Court of Justice and which related 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.

Article and Paragraph		Title of Article	Powers and/or Duties
101	1	Review of the Charter	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.
106	1	Deposit and Authenticity of Texts	Any discrepancy between the authentic texts of the Charter (Chinese, English, French, Russian and Spanish) shall be settled by the Conference.

ANNEX C.

SPECIFIC AND GENERAL POWERS AND DUTIES EXPRESSLY CONFERRED OR IMPOSED UPON THE EXECUTIVE BOARD BY THE CHARTER

Article and Paragraph		Title of Article	Powers and/or Duties
76	1	Sessions, Rules of Procedure and Officers (Conference)	The Executive Board may request special sessions of the Conference.
76	1	"	In exceptional circumstances, the Executive Board may decide that the Conference shall be held at a place other than the seat of the Organization.
77	2	Powers and Duties (Conference)	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.
80	1	Sessions, Rules of Procedure and Officers (Executive Board)	The Executive Board shall adopt its own rules of procedure which shall be subject to confirmation by the Conference.
80	2	"	The Executive Board shall annually elect its Chairman and other officers.
81	1	Powers and Duties (Board)	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.
81	1	"	The Executive Board shall supervise the activities of the Commissions and shall take such action upon their recommendations as it may deem appropriate.
81	2	"	The Executive Board may make recommendations to the Conference, or to inter-governmental organizations, on any subject within the scope of this Charter.
82		Establishment and Functions (Commissions)	The Commissions shall report to the Executive Board and shall perform such tasks as the Board may assign to them.
83	1	Composition and Rules of Procedure (Commissions)	The Commissions shall be composed of persons whose appointment, unless the Conference decides otherwise, shall be made by the Executive Board.

Article and Paragraph		Title of Article	Powers and/or Duties
83	3	Composition and Rules of Procedure (Commissions)	The Executive Board shall approve the rules of procedure of each Commission.
84	1	The Director-General	The Director-General shall be appointed by the Conference upon the recommendation of the Executive Board.
85	1	The Staff	The Director-General shall consult with and obtain the agreement of the Executive Board before appointing Deputy Directors-General.
94	1	Reference to the Executive Board (Differences)	Any matter arising under paragraph 1 of Article 93 may be referred by any Member concerned to the Executive Board.
94	2	"	The Executive Board shall promptly investigate the matter and shall decide whether any nullification or impairment in fact exists, and shall then take such steps as may be appropriate.
94	3	"	In cases of nullification or impairment which are sufficiently serious to justify such action, the Executive Board 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.
94	4	"	The Executive Board may, in the course of its investigation, consult with such Members or intergovernmental 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.
94	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.
95	1	Reference to the Conference (Differences)	The Executive Board shall, if requested to do so within thirty days by a Member concerned, refer to the Conference for review any

Article and Paragraph		Title of Article	Powers and/or Duties
			action, decision or recommendation by the Executive Board under paragraph 2 or 3 of Article 94 (see above)x Unless such review is asked for by a Member concerned, Members shall be entitled to act in accordance with any action, decision or recommendation of the Board.
97	2	Miscellaneous Provisions	The Conference and the Executive Board shall establish such rules or procedure as may be necessary to carry out the provisions of Chapter VIII.
98	5	Relations with non-Members	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.

ANNEX D.

UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

	COUNTRIES MEMBERS OF UNITED NATIONS INVITED TO ATTEND*	ATTENDED	SIGNED FINAL ACT	ACCEPTED RESOLUTION ESTABLISHING INTERIM COMMISSION	ELECTED TO EXECUTIVE COMMITTEE
1	Afghanistan	x	x	x	
	Argentina	x		x	
3	Australia	x	x	x	x
4	Belgium	x	x	x	** (as BENELUX)
5	Bolivia	x	x		
6	Brazil	x	x	x	x
7	Burma	x	x	x	
8	Byelo Russian SSR				
9	Canada	x	x	x	x
10	Chile	x	x	x	
11	China	x	x	x	x
12	Colombia	x	x	x	x
13	Costa Rica	x	x	x	
14	Cuba	x	x	x	
15	Czechoslovakia	x	x	x	x
16	Denmark	x	x	x	
17	Dominican Republic	x	x	x	
18	Ecuador	x	x	x	
19	Egypt	x	x	x	x
20	El Salvador	x	x	x	x
21	Ethiopia				
22	France	x	x	x	x
23	Greece	x	x	x	x
24	Guatemala	x	x	x	
25	Haiti	x	x	x	
26	Honduras				
27	Iceland				
28	India	x	x	x	x
29	Iran	x	x	x	
30	Iraq	x	x	x	
31	Lebanon	x	x	x	
32	Liberia	x	x	x	
33	Luxembourg	x	x	x	** (as BENELUX)
34	Mexico	x	x	x	x
35	Netherlands	x	x	x	** (as BENELUX)
36	New Zealand	x	x	x	
37	Nicaragua	x	x	x	
38	Norway	x	x	x	x
39	Pakistan	x	x	x	
40	Panama	x	x	x	
41	Paraguay	Observer			
42	Peru	x	x	x	
43	Philippines	x	x	x	x
44	Poland	x		x	
45	Saudi Arabia				
46	Siam				
47	Sweden	x	x	x	
48	Syria	x	x	x	
49	Turkey	x		x	
50	Ukrainian SSR				
51	Union of South Africa	x	x	x	
52	U.S.S.R.				
	United Kingdom	x	x	x	x
	United States of America	x	x	x	x
	Uruguay	x	x	x	
	Venezuela	x	x	x	
	Yugoslavia				
57		47	44	46	

* In accordance with Resolution 62(V) of the Economic and Social Council

** Abbreviation for Customs Union of Belgium, Netherlands and Luxembourg.

	NON-MEMBERS OF THE UNITED NATIONS INVITED TO ATTEND *	ATTENDED	SIGNED FINAL ACT	ACCEPTED RESOLUTION ESTABLISHING INTERIM COMMISSION	ELECTED TO EXECUTIVE COMMITTEE
1	Albania				
2	Austria	x	x	x	
3	Bulgaria				
4	Finland	Observer			
5	Hungary				
6	Ireland	x	x		
7	Italy	x	x	x	x
8	Portugal	x	x		
9	Rumania				
10	Switzerland	x	x		
11	Transjordan	x	x	x	
12	Yemen				
13	Ceylon	x	x	x	
14	Southern Rhodesia	x	x	x	
15	ACA-Germany **				
16	ACA-Japan **	Observer			
17	ACA-Korea **				
18	Indonesian Republic	x	x	x	
18		9	9	6	

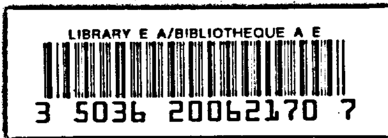
75 Countries invited TOTAL 56 attended 53 signed F.A. 52 Accepted Resolution

SPECIALIZED AGENCIES INVITED TO ATTEND *	ATTENDED
Food and Agriculture Organization	x
International Bank for Reconstruction and Development	x
International Civil Aeronautical Organization	
International Labour Organization	x
International Monetary Fund	x
International Refugee Organization	
International Telecommunications Union	
United Nations Educational Scientific and Cultural Organization	
Universal Postal Union	
World Health Organization	

NON-GOVERNMENTAL ORGANIZATIONS INVITED TO ATTEND *	
International Federation of Christian Trade Unions	
International Federation of Agricultural Producers	x
American Federation of Labor	
World Federation of Trade Unions	x
International Co-operative Alliance	x
Inter-Parliamentary Union	
International Organization of Industrial Employers	x
International Chamber of Commerce	x

* In accordance with Resolution 62(v) of the Economic and Social Council

** Allied Control Authorities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