Mr. President,

The Argentine delegation favours the deletion of Article 50 of Chapter V of the Draft Charter. This amendment is based on the following considerations:

The Argentine Republic considers it indispensable to its economic-social development that essential public services be the property of the Argentine people, and it is with this aim in view and for the recovery of these services that it has nationalised various undertakings of this kind, such as railways and telephone services, in some cases providing for the participation of private interests in the operation of such services through the establishment of joint undertakings.

Further, express provisions of the Argentine Constitution and legislation lay down that certain services, namely, the post and telegraphs, shall be operated by the nation.

Moreover, the Argentine Government, in the belief that monetary policy cannot be separated from economic policy and that there is unanimous agreement that monetary policy should be governed by principles based on the economic interests of the nation, which are essentially the general interests of the community, has established a new economic and financial regime. Argentina's purpose in establishing this new economic and financial regime has been to promote the national development of national productive capacity in all fields, permitting economic expansion through the fullest utilization of natural and human resources, and to provide for general well-being, industrial development, the specialization and improvement of agriculture and cattle-raising, the increase of population and any other action which would tend to increase the national wealth.

The starting point of this new policy was the nationalization of the Central Bank, which was supplemented by the introduction of a new bank deposit system that has made it possible to give all depositors a State guarantee of the inviolability of the funds they entrust to the banks; in effect, this measure also meant the nationalization of banking services provided by undertakings backed by private capital.
As a part of this new economic and financial regime, measures relating to the insurance business were also taken. With the establishment of the Argentine Institute of Reinsurance we integrated our economic legislation on insurance, attempting to create a real insurance market or centre in Argentina, capable of achieving the stability and the power of absorbing risks which the country is entitled to expect in view of the extent and nature of its general economic development.

The above considerations fully explain the importance attached by my country to the services referred to in Article 50 of the Draft Charter now under consideration - services which are intimately and indissolubly associated with the State itself.

Because these services are thus identified with the State itself, we consider that Article 50, which in our view should be deleted, is incompatible with the constitutional principles and the economic-financial legislation of our country and impairs the principle of self-determination and sovereignty of our people; for it provides that activities which in Argentina are carried out by the State, should be subject to measures to be adopted by international organizations, in accordance with paragraph 3 of Article 50.

The Argentine delegation considers the amendment it is putting forward to be of such vital importance to Argentine economy that should Article 50 not be deleted, it will be obliged to make wide reservations.

Our position in this respect is definite and final.
ARTICLE 51

INTERPRETATION AND DEFINITION

1. The provisions of this Chapter shall be construed with due regard for the rights and obligations of Members set forth elsewhere in this Charter and shall not therefore be so interpreted as to prevent the adoption and enforcement of any measures in so far as they are specifically permitted under other Chapters of this Charter. The Organization may however make recommendations to Members or to any appropriate inter-governmental organization concerning any features of these measures which may have the effect described in paragraph 1 of Article 44.

2. In this Chapter

(a) the term "business practice" shall not be construed to include an individual contract of purchase and sale concluded between two commercial enterprises as buyer and seller respectively, provided that such contract is not used to restrain competition, limit access to markets or foster monopolistic control;

(b) the term "public commercial enterprises" means

(i) agencies of governments insofar as they are engaged in trade, and

(ii) trading enterprises mainly or wholly owned by public authority and over which there is effective control by public authority, including control of engagement in business practice listed in paragraph 3 of Article 44;

(c) the term "private commercial enterprises" means all commercial enterprises other than public commercial enterprises;

(d) the terms "decide" and "decision" as used in Articles 44, 45-A (except in paragraphs 3 and 4) and 47 mean that the Organization arrives at or reaches a conclusion, and do not prejudice the obligations of Members, but mean only that the Organization arrives at or reaches a conclusion.

[Handwritten notes on the page]
The enclosed are the revised texts of Chapter V as approved by the Sub-Committee, up to 5 January 1948.
ARTICLE 44

General Policy Towards Restrictive Business Practices

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

2. Without limiting the generality of paragraph 1 of this Article, and in order that the Organization may decide in a particular instance whether certain practices have or are about to have any of the effects described in paragraph 1 of this Article, the Members agree that complaints regarding any of the practices listed in paragraph 3 of this Article shall be subject to investigation in accordance with the procedure regarding complaints provided in Articles 45 and 47, whenever:

(a) such a complaint is presented to the Organization; and

(b) the practices are engaged in or are made effective by one or more private or public commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, or between private and public commercial enterprises; and

(c) such commercial enterprises, individually or collectively, possess effective control of trade (between two or more) among a number of countries in one or more products.

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

(a) fixing prices or terms or conditions (to be observed with third parties) in the purchase, sale or lease of any product;

(b) excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business.
field of business activity, allocating customers, or fixing sales quotas or purchase quotas;

(c) discriminating against particular enterprises;

(d) limiting production or fixing production quotas;

(e) preventing by agreement the development or application of technology or invention whether patented or unpatented;

(f) extending the use of rights under patents, trade marks or copyrights granted by any Member, to matters which are determined by its system of law not to be within the scope of such grants, or to products or conditions of production, use or sale which are similar determined not to be the subjects of such grants;

(g) any similar practices which the Organization may from time to time decide are restrictive business practices.

4. In this Chapter the term "public commercial enterprises" means

(a) trading agencies of governments, "and" in so far as they are engaged in trade and

(b) trading enterprises mainly or wholly owned by public authority and over which there is effective control by public authority, including control of engagement in a practice listed in paragraph 3 of this Article.

The term "private commercial enterprises" means all other commercial enterprises.

Procedure with respect to Consultations

Any affected Member which considers that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect described in paragraph 1 of Article 14 may consult other Members directly or request the Organization to arrange for consultation with particular Members, in a view to reaching mutually satisfactory conclusions. If requested by the Member and if it considers such action to be justified, the Organization shall
Organization shall arrange for and assist in such consultation. Action under this Article shall be without prejudice to the procedure provided for in Article 45-A.

ARTICLE 45-A

Procedure with respect to Investigation

1. A complaint may be presented in writing to the Organization by any affected Member on its own behalf or by any Member on behalf of any affected person, enterprise or organization within that Member's jurisdiction, may in accordance with Articles 44, paragraphs 2 and 3 present a written complaint to the Organization that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect described in paragraph 1 of Article 44. Provided that in the case of complaints against a single public commercial enterprise acting independently of any other enterprise such complaints may be presented only by a Member on its own behalf and only after the Member has resorted to the procedure under paragraph 1 of this Article in Article 45.

2. The Organization shall prescribe the minimum information to be included in complaints that particular practices exist which have or are about to have the effect described in paragraph 1 of Article 44. The information shall give substantial indication of the nature and harmful effects of the practices.

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

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

5. The Organization
(5) The Organization shall review all information available and
decide whether the practices in question are as described in
paragraphs 2 and 3 of Article 44, and have had, have or are about to
have the effect described in paragraph 1 of that Article.

(7) The Organization shall [notice all Members of its decision and
the reason therefor.

(8) If the Organization decides that in any particular case the
practices complained of are as described in paragraphs 2 and 3 of
Article 44 and have had, have or are about to have the effect described
in paragraph 1 of that Article, it shall request each Member
concerned to take every possible remedial action, and may also
recommend to the Members concerned remedial measures to be carried out
in accordance with their respective laws and procedures. Provided that
if the Organization finds that the practices concerned have the effect
and are as described in Article 44 and have been specifically required
by law, the provisions in paragraphs 7, 8, 9 and 10 of this Article
shall not apply, and the complaining Member shall have further recourse
only in accordance with the procedures provided in Chapter VIII of
or other relevant provisions of this Charter.

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

(10) As soon as possible after its proceedings in respect of any
complaint under this Article have been provisionally or finally closed,
the Organization shall prepare and publish a report showing fully the
decisions reached, the reasons therefor and any measures recommended
to the Members concerned. The Organization shall not, if a Member so
requests, disclose confidential information furnished by that Member,
which if disclosed would substantially damage the legitimate business
interests of a commercial enterprise.

(11) The Organization shall report to all Members and make public the
remedial action which has been taken by the Members concerned in any
particular case.
ARTICLE 46

Studies relating to Restrictive Business Practices

1. The Organization is authorized

(a) to conduct studies, either on its own initiative or at the request of any Member or of any organ of the United Nations or of any other inter-governmental organization relating to

(i) general aspects of restrictive business practices affecting international trade; and

(ii) conventions, laws and procedures concerning, for example, incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development of technology insofar as they are relevant to restrictive business practices affecting international trade; and

(iii) the registration of restrictive business agreements and other arrangements affecting international trade; and

(b) to request information from Members in connection with such studies.

2. The Organization is authorized

(a) to make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter, and

(b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade.

ARTICLE 47

Obligations of Members

1. Each Member shall take all possible measures by legislation or otherwise, in accordance with its constitution or system of law and governmental organization, to ensure within its jurisdiction, that private and public commercial enterprises do not engage in practices which have the effect and are as described in paragraph 1 of Article 44, and in addition it shall assist the Organization
assist the Organization in preventing these practices. Such assistance to be given in accordance with the Member's system of law and economic organization. 

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

3. Each Member shall furnish to the Organization, as promptly and as fully as possible, such information as is requested by the Organization for its consideration and investigation of complaints and for its conduct of studies under this Chapter: Provided that any Member on notification to the Organization, may withhold information which the Member considers is not essential to the Organization in conducting an adequate investigation and which, if disclosed, would substantially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld, and the reasons why it considers it not essential.

4. Each Member shall take full account of each request, decision and recommendation of the Organization under Article 3 and, in accordance with its system of law and economic organization, take in the particular case the action it considers appropriate having regard to its obligations under this Chapter.

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

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

ARTICLE 40
Supplementary Enforcement Arrangements

1. Members may cooperate with each other in prohibitive, preventative or other measures for the purpose of making more effective any remedial order issued by a duly
issued by a duly authorized agency of any Member in furtherance of the objectives of this Charter.

2. Members participating in or intending to participate in such co-operative action shall notify the Organization.

Members who co-operate with each other to prevent, within their respective jurisdictions, practices as described in Article 44 shall inform the Organization of the action taken.

ARTICLE 49

Domestic Measures against Restrictive Business Practices

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

ARTICLE 50

Special Procedures with respect to Services

1. The Members recognize that certain services, such as transportation, telecommunications, insurance and the commercial services of banks are substantial elements of international trade and that any restrictive business practices in relation to them by enterprises engaged in these activities in international trade may have harmful effects similar to those described in paragraph 1 of Article 44. Such practices shall be dealt with only in accordance with the following paragraphs.

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

3. If no adjustment can be effected in accordance with the provisions of paragraph 2 of this Article, and if the matter is referred to the Organization, it shall be transferred to the appropriate inter-governmental organization if one exists, with such observations as the Organization may wish to.
wish to make. If no such inter-governmental organization exists, Members may ask the Organization, under Article 69 (c), to make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it comes within the scope of this Charter.

4. The Organization shall, in accordance with paragraph 2 of Article 84, co-operate with inter-governmental organizations in connection with restrictive business practices affecting any field coming within the scope of this Charter and those organizations shall be entitled to consult the Organization, to seek advice, and to ask that a study of a particular problem be made.

ARTICLE 51

Exceptions to the Provisions of this Chapter

1. The obligations of this Chapter shall not apply to:

(a) inter-governmental commodity agreements meeting the requirements of Chapter VI; and

(b) any bilateral inter-governmental agreement relating to the purchase or sale of a commodity falling under Section D of Chapter IV.

2. Notwithstanding paragraph 1 of this Article, the Organization may make recommendations to Members and to appropriate inter-governmental organizations concerning any features of the agreements referred to in paragraph 1 (b) of this Article which may have the effect described in paragraph 1 of Article 44.
PART III

THE TEXT OF CHAPTER 4 AS APPROVED BY THE SUB-COMMITTEE

RESTRICTIVE BUSINESS PRACTICES

ARTICLE 44

General Policy Towards Restrictive Business Practices

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

2. Without limiting the generality of paragraph 1 of this Article, and in order that the Organization may decide in a particular instance whether certain practices have or are about to have any of the effects described in paragraph 1 of this Article, the Members agree that complaints regarding any of the practices listed in paragraph 3 of this Article shall be subject to investigation in accordance with the procedure regarding complaints provided in Articles 45 A and 47, whenever

(a) such a complaint is presented to the Organization; and

(b) the practices are engaged in or are made effective by one or more private or public commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, or between private and public commercial enterprises; and

(c) such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products.

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

(a) fixing
(a) fixing prices or terms or conditions to be observed in dealing with third parties in the purchase, sale or lease of any product;

(b) excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sales quotas or purchase quotas;

(c) discriminating against particular enterprises;

(d) limiting production or fixing production quotas;

(e) preventing by agreement the development or application of technology or invention whether patented or unpatented;

(f) extending the use of rights under patents, trade marks or copyrights granted by any Member, to matters which are determined by its system of law not to be within the scope of such grants, or to products or conditions of production, use or sale which are similarly determined not to be the subjects of such grants;

(g) any similar practices which the Organisation by a majority of two-thirds of the Members present and voting may from time to time decide are restrictive business practices.

In this Chapter the term "public commercial enterprises" means

(a) trading agencies of governments, in so far as they are engaged in trade and

(b) trading enterprises mainly or wholly owned by public authority and over which there is effective control by public authority, including control of engagement in a practice listed in paragraph 3 of this Article.

The term "private commercial enterprises" means all other commercial enterprises.

ARTICLE 45 [Investigations and] Procedure with respect to Consultations

Any affected Member which considers that in any particular instance a /practice
practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect described in paragraph 1 of Article 44 may consult other Members directly or request the Organization to arrange for consultation with particular Members with a view to reaching mutually satisfactory conclusions. If requested by the Member and if it considers such action to be justified, the Organization shall arrange for and assist in such consultation. Action under this Article shall be without prejudice to the procedure provided for in Article 45-A.

**ARTICLE 45-A**

Procedure with respect to Investigation

1. A complaint may be presented in writing to the Organization by any affected Member on its own behalf or by any Member on behalf of any affected person, enterprise or organization within that Member's jurisdiction, may in accordance with Article 44, paragraphs 2 and 3 of Article 44 present a written complaint to the Organization that in any particular instance a practice exists (whether engaged in by private or public commercial enterprises) which has or is about to have the effect described in paragraph 1 of Article 44. PROVIDED that in the case of complaints against a single public commercial enterprise acting independently of any other enterprise, such complaints may be presented only by a Member on its own behalf and only after the Member has resorted to the procedure under paragraph 1 of this Article in Article 45.

2. The Organization shall prescribe the minimum information to be included in complaints that particular practices exist which have or are about to have the effect described in paragraph 1 of Article 44. The information shall give substantial indication of the nature and harmful effects of the practices.

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

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

(6) The Organization shall review all information available and decide whether the practices in question are as described in paragraphs 2 and 3 of Article 44, and have had, have or are about to have the effect described in paragraph 1 of that Article.

(7) The Organization shall inform all Members of its decision and the reason therefor.

(8) If the Organization decides that the circumstances are as described in paragraphs 2 and 3 of Article 44 and have had, have or are about to have the effect described in paragraph 1 of that Article, it shall request each Member concerned to take every possible remedial action, and may also recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures. Provided that if the Organization finds that the practices concerned have the effect and are as described in paragraphs 2 and 3 of Article 44 and have been specifically required by the provisions in paragraphs 7, 8, 9 and 10 of this Article, the provisions shall not apply, and the complaining Member shall have further recourse only in accordance with the procedures provided in Chapter VIII and other relevant provisions of this Charter.

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

(10) As soon as possible after its proceedings in respect of any complaint under this Article have been provisionally or finally closed, the Organization shall prepare and publish a report showing fully the decisions reached, the reasons therefor and any measures recommended to the Members concerned. The Organization shall not, if a Member so requests, disclose confidential information furnished by that Member, which if disclosed would substantially damage the legitimate business interests of a commercial enterprise.
10. The Organization shall report to all Members and make public the remedial action which has been taken by the Members concerned in any particular case.

ARTICLE 46

Studies relating to Restrictive Business Practices

1. The Organization is authorized

(a) to conduct studies, either on its own initiative or at the request of any Member or of any organ of the United Nations or of any other inter-governmental organization relating to

(i) general aspects of restrictive business practices affecting international trade; and

(ii) conventions, laws and procedures concerning, for example, incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade marks, copyrights, patents and the exchange and development of technology insofar as they are relevant to restrictive business practices affecting international trade; and

(iii) the registration of restrictive business agreements and other arrangements affecting international trade; and

(b) to request information from Members in connection with such studies.

2. The Organization is authorized

(a) to make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter, and

(b) to arrange for conferences of Members to discuss any matters relating to restrictive business practices affecting international trade.

ARTICLE 47

Obligations of Members

1. Each Member shall take all possible measures by legislation or otherwise, in accordance with its constitution or system of law and economic...
organization, to ensure, within its jurisdiction, that private and public commercial enterprises do not engage in practices which have the effect and are as described in paragraph 1 of Article 48, and in addition it shall assist the Organization in preventing these practices. Such assistance to be given in accordance with the Member's system of law and economic organization.

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

3. Each Member shall furnish to the Organization, as promptly and as fully as possible, such information as is requested by the Organization for its consideration and investigation of complaints and for its conduct of studies under this Chapter; PROVIDED that any Member on notification to the Organization, may withhold information which the Member considers is not essential to the Organization in conducting an adequate investigation and which, if disclosed, would substantially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld, and the reasons why it considers it not essential.

4. Each Member shall take full account of each request, decision and recommendation of the Organization under Article 45 A and, in accordance with its system of law and economic organization, take in the particular case the action it considers appropriate having regard to its obligations under this Chapter.

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

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

ARTICLE 48
Supplementary Enforcement Arrangements

A. Members may co-operate with each other in prohibitive, preventive or other measures
other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this Charter.

2. Members participating in or intending to participate in such co-operative action shall notify the Organization.

Members who co-operate with each other to prevent, within their respective jurisdictions, practices as described in Article 44 shall inform the Organization of the action taken.

ARTICLE 49

Domestic Measures against Restrictive Business Practices

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

ARTICLE 50

Special Procedures with respect to Services

1. The Members recognize that certain services, such as transportation, telecommunications, insurance and the commercial services of banking are substantial elements of international trade and that any restrictive business practices in relation to them by enterprises engaged in these activities in international trade may have harmful effects similar to those described in paragraph 1 of Article 44. Such practices shall be dealt with only in accordance with the following paragraphs.

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

3. If no adjustment can be effected in accordance with the provisions of paragraph 2 of this Article, and if the matter is referred to the Organization, it shall be transferred to the appropriate inter-governmental organization.
organization if one exists, with such observations as the Organization may wish to make. If no such inter-governmental organization exists, Members may ask the Organization, under Article 69 (c) to make recommendations for, and promote international agreement on, measures designed to remedy the particular situation so far as it comes within the scope of this Charter.

4. The Organization shall, in accordance with paragraph 2 of Article 84, co-operate with inter-governmental organizations in connection with restrictive business practices affecting any field coming within the scope of this Charter and those organizations shall be entitled to consult the Organization, to seek advice, and to ask that a study of a particular problem be made.

ARTICLE 51
INTERPRETATION AND DEFINITION

1. The provisions of this Chapter shall be construed with due regard for the rights and obligations of Members set forth elsewhere in this Charter and shall not therefore be so interpreted as to prevent the adoption and enforcement of any measures so far as they are specifically permitted under other Chapters of this Charter. The Organization may however make recommendations to Members or to any appropriate inter-governmental organization concerning any features of these measures which may have the effect described in paragraph 1 of Article 84.

2. In this Chapter

(a) the term "business practice" shall not be construed to include an individual contract of purchase and sale or lease or agency concluded between two commercial enterprises as buyer and seller respectively, provided that such contract is not used to restrain competition, limit access to markets or foster monopolistic control;

(b) the term "public commercial enterprises" means

(i) agencies of governments insofar as they are engaged in trade, and

(ii) trading enterprises mainly or wholly owned by public authority and over which there is effective control by public authority, including control of engagement in any
any practice listed in paragraph 3 of Article 44 which is relevant to a particular investigation;

(c) the term "private commercial enterprises" means all commercial enterprises other than public commercial enterprises;

(d) the terms "decide" and "decision" as used in Articles 44, 45-A (except in paragraphs 3 and 4) and 47/mean that the Organization arrives at or reaches a conclusion, and do not prescribe/ determine the obligations of Members, but mean only that the Organization arrives at or reaches a conclusion.
FOURTH COMMITTEE: RESTRICTIVE BUSINESS PRACTICES

REPORT OF SUB-COMMITTEE

1. The Fourth Committee at its meeting on 4 December 1947 approved the formation of a Sub-Committee to consider the text of Chapter V in the light of all the various amendments related to this Chapter and of the observations expressed in the course of the meetings of the Fourth Committee.

2. The Chairman of the Fourth Committee on 5 December 1947 (document E/CONF.2/C.4/3) appointed the delegations of Argentina, Belgium, Canada, Ecuador, India, Iraq, Mexico, Norway, United Kingdom and the United States as members of the Sub-Committee.

3. The Sub-Committee held its first meeting on 6 December 1947 and unanimously elected Mr. Jose H. Lopez Alcar (Mexico) as its Chairman.

4. The Sub-Committee held 23 meetings and in the course of its work considered in great detail all the amendments included in document E/CONF.2/C.4/4 and had the benefit of consultation with representatives of the delegations of Afghanistan, Brazil, Ceylon, Colombia, Cuba, Czechoslovakia, Greece, Italy, South Africa, and Switzerland. A number of other delegations also attended the meetings of the Sub-Committee.

5. An ad hoc committee, appointed by the Chairman of the Sub-Committee and composed of the delegates for Belgium, Canada, Mexico, United Kingdom and the United States, accomplished a large part of the drafting of the new text.

6. The Sub-Committee has approved the text of Chapter V as it appears in Part III of this report and recommends that the text be approved by the Committee. The delegate for Argentina has reserved his Government's position in respect to the inclusion of "public enterprises" within the scope of Chapter V and Article 50.
1. GENERAL COMMENTS

7. The Sub-Committee noted that the majority of amendments submitted centred around the definition of three principles. These were as follows:

1. The extent of control to be exercised by the Organization over services, particularly those operated by Governmental Agencies.
2. The inclusion or exclusion of public commercial enterprises within the provisions of Chapter V.
3. The interpretation of the words 'decide' and 'decision' as used in Articles 44, 45, and 47.

8. In connection with point 1, in regard to Services, some delegations expressed their hesitation in accepting the text of Article 50 as it now stands, on the ground that public services, when state administered and managed, should not be subject to any inquiry under this Chapter. However, the Sub-Committee, after detailed study, substantially agreed and wishes to emphasize that there is nothing in Article 50 to prevent any Government from maintaining a monopoly or complete control over all of its public services, but that Article 50 merely refers to certain business practices in connection with those services, which might prove restrictive and have harmful effects as described in paragraph 1 of Article 44.

9. With reference to question No. 2, as to whether or not the business practices of public enterprises should be included within the scope of Chapter V, the Argentine delegation expressed itself as being strongly opposed to their inclusion, on the ground that the application of Chapter V to public enterprises established by a state in pursuance of economic objectives designed to improve the standard of living of the people of that state, would entail a surrender of sovereign rights which the Argentine Government was not prepared to relinquish. The delegate for Argentina has reserved his Government's position in respect of "public enterprises" throughout the Chapter.
Other members of the Sub-Committee supported the inclusion of the business practices of public commercial enterprises within the scope of Chapter V, on the principle that when a state engages in commercial activities, it acquires the same rights and obligations under this Chapter in respect of these activities as it required in respect of similar activities of private enterprises, and that the Chapter should not imply any discrimination in favour of one form of commercial enterprise over the others. However, the Sub-Committee made a clear distinction between the state acting in a legislative or executive capacity and the state pursuing the activities of a business enterprise. However, it was considered important to point out that the inclusion of business practices of public commercial enterprises in Chapter V does not infringe upon the sovereignty of the state itself, but 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.

10. With regard to 3, the Sub-Committee, after due study and consideration, decided to incorporate in their report to the Fourth Committee a definition of the words 'decide' and 'decision', as used in certain parts of this Chapter, to serve as an aid to proper interpretation of those words. The interpretation adopted by the Sub-Committee, and submitted to the Fourth Committee for approval is as follows:

"The words 'decide' and 'decision' ('constaté' and 'constatation' in the French text) as used in Articles 44, 45A (except in paragraphs 3 and 4) and 47 relate to conclusions by the Organization whether or not particular practices have had, have or are about to have the harmful effects described in paragraph 1 of Article 44, and do not prescribe the obligations of Members. Members' obligations regarding these 'decisions' are set out in the relevant paragraphs of Article 47. Therefore, such 'decisions' (or 'constatations') are not to be construed as binding the legislative, executive or judicial activities of Member States".

Furthermore, the Sub-Committee agreed on the following text to be included as sub-paragraph (d), paragraph 2 of Article 51:

"(d) The terms 'decide' and 'decision' as used in Articles 44, 45A (except in paragraphs 3 and 4) and 47, do not determine the obligations of Members, but mean only that the Organization arrives at, or reaches, a conclusion."
2. SPECIFIC COMMENTS

11. In paragraph 1 of Article 44 the words "and shall co-operate with the Organization" were substituted for the words "individually or through the Organization or in both ways" in order to express the general principle of co-operation between members and the Organization.

12. In paragraph 2, sub-paragraph (c) of Article 44 the Sub-Committee was of the opinion that the expression "effective control of trade between two or more countries" was open to possible misinterpretation. The amendment is designed to make it clear that the activities of an enterprise which has been granted sole rights of import or export of a particular product in a particular country, and which might, therefore, be said to have de jure control of trade between that country and any other, will not be liable to complaint unless it also has de facto control of trade and is in a position to exert monopolistic pressure on its suppliers or customers to accept certain terms or conditions. Generally speaking, the enterprise will not be in a position to exert such de facto control of trade with any other single country unless it also controls trade among several countries, and it is for this reason that the Sub-Committee introduced the more general expression "effective control of trade among a number of countries". The less frequent case of an enterprise which exerts de facto control of trade between two countries (in) tended to be covered by this phrase.

13. In Article 44, paragraph 3 (a) the term "third parties" has been changed to read "others" in order to maintain uniformity with the French text of the Geneva Draft of the Charter and to reflect the understanding of the representatives of some delegations as to the meaning of this sub-paragraph. It was the Sub-Committee's view that the language should be broad enough to allow the procedures of Chapter V to be applied to (i) cases in which two or more parties agree upon the terms of their behaviour toward other parties, including prices or other conditions of doing business with such other parties; and (ii) cases in which "one" enterprise, including a complex of firms related by common ownership of some or all of their respective capital, engage in the practice of monopolistic extortion towards other buyers or sellers. The representative of the United States delegation held that in the light of (ii) above, this sub-paragraph would therefore be applicable to cases similar to those which have been regarded by the United States courts as subject to the provision of the Sherman Anti-Trust Act which relates to "monopolizing or attempting to monopolize" trade.

/The Sub-Committee
The Sub-Committee emphasizes that this sub-paragraph is not to be construed as applying to simple price situations where, for example, an enterprise during the period of a "sellers' market" may be charging prices higher than could normally be obtained. It was not the Sub-Committee's intent to recommend that the Organization should exercise functions similar to those of a national price control agency. The Sub-Committee points out that sub-paragraph 3 (a), like all other sections of paragraph 3, can be construed only together with paragraphs 1 and 2.

14. Paragraph 4 of Article 44 was transferred to Article 51, paragraph 2, sub-paragraph (b).

15. The delegation of Afghanistan withdrew its amendment for the insertion of the words "including the discriminatory establishment of exclusive agencies, detrimental to a Member's economic recovery", after the members of the Sub-Committee had explained that the practices which were the basis of that amendment could be considered as falling under the provisions of paragraph 3 of Article 44, although, of course, each case would have to be considered on its merits.

Article 45

16. After much detailed study by the Sub-Committee it was decided to divide Article 45 into two Articles, namely 45 and 45A. This was done to distinguish clearly between the two procedures envisaged in Article 45, i.e. the procedure of consultation and the procedure regarding complaints.

Article 45A

17. Article 45A was renumbered and the new paragraphs 1 and 7 were redrafted to take account of the amendments submitted to Article 45.

The Sub-Committee feels that paragraph 7, to which a new proviso has been proposed, is of considerable importance. This paragraph provides that if the Organization decides that certain restrictive business practices have harmful effects, it shall call upon the Members concerned to take remedial action. The paragraph provides further that the Organization may make recommendations to the Members concerned regarding remedial measures to be taken in the particular case.

In view of its importance the Sub-Committee calls attention to this distinction between a decision of the Organization and a recommendation. The term decision relates to conclusions by the Organization as to whether the practices in question have harmful effects. The term recommendation relates to specific or general suggestions formulated and advanced by the Organization which set forth a course of action that might be followed to advantage by the Members concerned in remedying the situation under complaint. /It is not
It is not contemplated in paragraph 7 that in every case such a recommendation would be proper or necessary. In simple situations involving one, or perhaps two countries, a recommendation by the Organization might not be appropriate; however, in complex cases involving a number of countries, it is frequently difficult, if not impossible, for one country to act effectively and properly in the absence of knowledge as to the lines of conduct which other countries propose to follow. In the view of the Sub-Committee it appears inadvisable to require the Organization to make recommendations in every case or to define the type of case in which recommendations would be appropriate. This matter should be left to the discretion of the Organization.

Article 47

The transposition of the words "in accordance with the Member's system of law and economic organization" and the addition of the word "constitution" to paragraph 4 of this Article, are intended to make it clear that in implementing the obligations undertaken by a Member in terms of this Article it has to proceed in accordance with its own political and economic organization; that the nature of the exact legal or administrative implications of these obligations would vary from country to country; according to the difference in their constitutional and administrative structures; in other words, no changes in fundamental legislation would be involved in giving effect to a Member's obligations under this Article.

Article 48

The Sub-Committee found that the Geneva draft of Article 48 was ambiguous especially in relation to its reference to the term "remedial order". After a full discussion the Committee approved the present text as representing more clearly the intentions of the Article.

The delegation of Mexico held that the reference to banking in Article 50 might be interpreted as covering the credit and monetary control operations of a Central Bank undertaken to implement a national financial policy. The Sub-Committee was unanimously of the opinion that their Governments could not accept such an interpretation. They, therefore, agreed to the present text of Article 50 and to make the following observations: the alteration of the word "banking" in the first sentence of Article 50 (1) to the phrase "the commercial services of banks," is designed to make it perfectly clear that the banking operations to which the paragraph refers are simple financial services directly and intimately connected with international transactions such as the provision of short-term credit facilities to cover imports and exports of goods; and the alteration of the phrase
phrase "in relation to them" to the phrase "enterprises engaged in these activities in international trade" is intended to show that the paragraph refers only to banking institutions which are themselves directly engaged in international commercial transactions.

The Sub-Committee was of the opinion that it should be established beyond doubt that the provisions of Article 50 do not refer to such activities as the regulation of internal credit or of internal monetary circulation by a central bank or to long-term international lending by a governmental agency.

21. Article 51 has been entirely redrafted. Where paragraph 1 of this Article replaces the previous text of Article 51 in paragraph 2, the sub-committee, in the interests of clarity, has given an interpretation of the terms "business practice", "public commercial enterprise", "private commercial enterprise" and "decide" and "decision" as used in Chapter V.

/ADDENDUM TO THE REPORT
ADDENDUM TO THE REPORT OF THE SUB-COMMITTEE TO COMMITTEE IV

6 (A) The Sub-Committee wishes to record its thanks for the assistance it has received from the Executive, Interpreting and Clerical Members of the Secretariat. Their able and wholehearted co-operation has been greatly appreciated.

17 (A) The proviso to paragraph 45 (7) is designed to draw attention to the fact that the concluding stages of the procedure described in that Article cannot appropriately be utilized when the member assumes specific responsibility for business practices carried out by an enterprise within its jurisdiction. When it appears, therefore, that a practice which is the subject of an investigation has been specifically required by a Member, the complaint regarding such practice is removed from the scope of paragraphs 7, 8, 9 and 10 of Article 45A. Instead of the Organization requesting the Member to take the remedial action provided for in paragraph 7, and the succeeding paragraphs of Article 45A, further recourse, in such a case, may be had only in accordance with the procedures provided for elsewhere in the Chapter.