Article 34

Emergency Action on Imports of Particular Products

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

2. Before any Member shall take action pursuant to the provisions of paragraph 1, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and
those Members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical and exceptional circumstances such action may be taken provisionally without prior consultation, provided that consultation shall be effected immediately following upon the taking of such action.

3. If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action, shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than sixty days after such action is taken, to suspend, upon the expiration of thirty days from the date on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, of such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In serious cases the Organization may authorize an affected Member to suspend concessions or obligations in addition to those which may be substantially equivalent to the action originally taken.

Article 35

Consultation - Nullification or Impairment

1. Each Member will accord sympathetic consideration to, and will afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange regulations, subsidies, state-trading operations, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally all matters affecting the operation of this Chapter; and will, in the course of such consultation, provide the other Member with such information as will, without prejudicing the legitimate business interests of particular private or state business enterprises, enable a full and fair appraisal of the situation which is the subject of such representations.
2. If any Member should consider that any other Member is applying any measure, whether or not it conflicts with the terms of this Charter, or that any situation exists which has the effect of nullifying or impairing any object of this Charter, the Member or Members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter. If no such adjustment can be effected, the matter may be referred to the Organization, which shall, after investigation, and, if necessary, after consultation with the Economic and Social Council of the United Nations and any appropriate inter-governmental organizations, make appropriate recommendations to the Members concerned. The Organization, if it considers the case serious enough to justify such action, may authorize a Member or Members to suspend the application to any other Member or Members of such specified obligations or concessions under this Charter as may be appropriate in the circumstances. If such obligations or concessions are in fact suspended, any affected Member shall then be free, not later than sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization.

SECTION I - TERRITORIAL APPLICATION

Article 38

Territorial Application of Chapter V - Customs Unions - Frontier Traffic

1. The provisions of Chapter V shall apply to the customs territories of Members. If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as a separate Member for the purpose of interpreting the provisions of Chapter V.

2. The provisions of Chapter V shall not be construed to prevent

(a) advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or

(b) the formation...
(b) the formation of a union for customs purposes of any customs territory of any Member and any other customs territory provided that the duties and other regulations of commerce imposed by any such union in respect of trade with other Members shall not on the whole be higher or more stringent than the average level of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union.

3. Any Member proposing to enter into any union described in sub-paragraph (2) (b) shall consult with the Organization and shall make available to the Organization such information regarding the proposed union as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

4. The Members recognize that there may in exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Any such exception shall be subject to approval by the Organization pursuant to paragraph (2) of Article 63.

5. For the purpose of this Article a customs territory shall be understood to mean any area within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such area. A union of customs territories for customs purposes shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.

CHAPTER VI

RESTRICTIVE BUSINESS PRACTICES

Article 39

Policy Towards Restrictive Business Practices

1. Members agree to take appropriate measures, individually or through /the Organization
the Organization or in both ways, to prevent business practices affecting
international trade which restrain competition, limit access to markets or
foster monopolistic control whenever such practices have harmful effects
on the expansion of production and trade and the maintenance in all
countries of high levels of real income or on any of the purposes of the
Organization as set forth in Article 1.

2. Without limiting the generality of paragraph 1, Members agree that
the practices listed in paragraph 3 below shall be subject to investigation
in accordance with the procedure with respect to complaints provided by the
relevant Articles of this Chapter, if the Organization considers them to
have or to be about to have any of the harmful effects enumerated in
paragraph 1 of this Article, whenever

(a) they are engaged in or made effective by one or more private
commercial enterprises or by a combination, agreement or other
arrangement among commercial enterprises, whether among private
commercial enterprises, among public commercial enterprises, (i.e.,
trading agencies of governments or enterprises in which there is
effective public control), or among private and public commercial
enterprises; and

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

3. The practices referred to in paragraph 2 are as follows

(a) fixing prices or terms or conditions to be observed in dealing
with others 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 or purchase quotas;

(c) discriminating against particular enterprises whether by boycott
or otherwise;

(d) limiting
(d) limiting production or fixing production quotes;

(e) suppressing the application or development of technology or invention, whether patented or unpatented;

(f) extending of the use of rights under patents, trade marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

Article 40

Procedure with Respect to Complaints and Conferences

Members agree that the Organization shall

(a) Arrange, if it considers such action to be justified, for particular Members to take part in a conference requested by any Member which considers that any particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39.

(b) Consider each written complaint submitted by any Member or submitted with the authorization of a Member by any affected person, organization or business entity within that Member's jurisdiction, claiming that particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39, and prescribe the minimum information to be included in such complaints.

(c) Consider, and request each Member concerned to furnish, such information as the Organization may deem necessary including, for example, information or data from commercial enterprises within its jurisdiction, and then determine whether further investigation is justified.

(d) If it considers that further investigation is justified notify all Members of each such complaint, request the complainant or any Member to provide such information relevant to the complaint as the Organization...
Organization may deem necessary and conduct or arrange for hearings provided that any Member and the parties alleged to have engaged in the practice will have the opportunity to be heard at such hearings.

(e) Review all information available and come to its findings whether the practices in question have or are about to have the effect described in paragraph 1 of Article 39.

(f) Report fully to all Members the findings reached and the reasons therefore; if it finds that the practices have had or are about to have the effect described in paragraph 1 of Article 39, request each Member concerned to take every possible action to prevent the continuance or recurrence of the practices, and at its discretion recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures.

(g) Request all Members concerned to report fully the action they have taken to achieve these results.

(h) Prepare and publish, as expeditiously as possible after enquiries have been provisionally or finally closed, reports on all complaints dealt with under sub-paragraph (d) of this Article, showing fully the decisions, findings or other conclusions reached, the reasons therefore and any action which the Organization has recommended the Members concerned to take; provided that

(i) publication of such reports or any portion thereof may be withheld if it deems this course justified; and

(ii) the Organization shall not, if a Member so requests, disclose confidential information furnished by that Member which would materially damage the legitimate business interests of a commercial enterprise.

(i) Report to all Members, and make public if it deems desirable, the action which has been taken by the Members concerned to achieve the purposes described in sub-paragraph (f) of this Article.
Article 41

Studies Relating to Restrictive Business Practices

The Organization may:

(a) Conduct studies, either on its own initiative or at the request of any Member of the United Nations or any specialized agency brought into relationship with the United Nations, relating to

(i) types of restrictive business practices in international trade;

(ii) conventions, laws and procedures such as those concerning incorporation, company registration, investments, securities, prices, markets, fair trade practices, trademarks, copyrights, patents and the exchange and development of technology, insofar as they are relevant to restrictive business practices; and to request information from Members in connection with such studies.

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

(c) Arrange conferences for purposes of general consultation on any matters relating to restrictive business practices.

Article 42

Obligations of Members

In order to implement the preceding Articles in this Chapter, each Member undertakes to

(a) Take all possible steps by legislation or otherwise to ensure that private and public commercial enterprises within its jurisdiction do not engage in practices which have the effect described in paragraph 1 of Article 39.

(b) Take fullest account of the Organization's findings, requests and recommendations made under sub-paragraph (f) of Article 40 and determine appropriate action in accordance with its system of law and economic organization to prevent within its jurisdiction the continuance or recurrence of any practices which the Organization
finds to have had [or to be about to have] the effect described in paragraph 1 of Article 39.

(c) Establish procedures to deal with complaints, conduct investigations, prepare information and reports requested by the Organization and generally assist in preventing practices which have the effect described in paragraph 1 of Article 39, these measures to be taken in accordance with the particular system of law and economic organization of the Member concerned.

(d) Conduct such investigations as may be necessary and practicable to secure information requested by the Organization or to prevent practices which have the effect described in paragraph 1 of Article 39.

(e) Furnish to the Organization, as promptly as possible and to the fullest extent practicable, such information as is requested by the Organization under sub-paragraphs (c), (d) and (g) of Article 40 and under sub-paragraph (a) of Article 41 provided that the Member

(i) may withhold confidential information relating to its national security; or

(ii) on proper notification to the Organization, may withhold information which is not essential to the Organization in undertaking an adequate investigation and which, if disclosed, would materially 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.

(f) Report, as requested by the Organization under sub-paragraph (c) of Article 40, the action taken, independently or in concert with other Members, to implement recommendations made by the Organization under sub-paragraph (f) of Article 40, and, in cases in which no action is taken, to explain to the Organization the reasons therefore and
Discuss the matter further with the Organization if requested to do so.

(g) Take part in conferences upon the request of the Organization in accordance with sub-paragraph (a) of Article 40 and sub-paragraph (c) of Article 41.

Article 43

Supplementary Enforcement Arrangements

1. Members may, by mutual accord, co-operate with each other in prohibitive, preventative or 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 Chapter.

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

PART II

Drafting Suggestions

Article 34

Paragraph 3

It is suggested that in the penultimate line the phrase "concessions or obligations" be made to read "obligations or concessions".

Article 35

Paragraph 2

(a) The Sub-Committee may wish to consider whether the phrase "object of this Charter" should not be changed to "purpose of the Organization".

(b) It is suggested that the words "notwithstanding the provisions of Article 89" be inserted in the last sentence between "free" and "not later than".

(c) It is suggested the last words of the Article should be amended to read "by the Secretary-General of the United Nations" instead of "by the Organization".

/Article 38
Article 38

Paragraph 1
(a) It is suggested that as this paragraph applies generally to Chapter V it is misleading and inappropriate to include it under Article 38. It should perhaps be the subject of a separate Article.

(b) The Sub-Committee may wish to consider whether the second sentence is not superfluous.

Article 39

Paragraph 1
(a) It is suggested the word "other" be inserted between "the" and "purposes" at the conclusion of this paragraph.

(b) "Members agree to take" should become "Members shall take".

Paragraph 2
"Members agree that" may be deleted.

Article 40

(a) "Members agree that" should be deleted.

(b) In sub-paragraph (e), it is suggested that the phrase "come to its findings" be changed to "conclude".

Article 41

(a) It is suggested that the words "brought into relationship with the United Nations" in sub-paragraph (e) are superfluous.

(b) The Sub-Committee may wish to consider whether the Economic and Social Council should not also be mentioned in sub-paragraph (e).

(c) The last line of sub-paragraph (a) should read "and may request......"

Article 42

(a) It is suggested that the opening words be amended to read "In order to......Chapter, each Member shall".

/PART III
PART III

RESERVATIONS AND ALTERNATIVE TEXTS

Article 34

(a) The delegate for the United States reserved his position for the time being regarding the rephrasing of the last four lines of paragraph 1 which was carried out by the Committee on the suggestion of the delegate for Czechoslovakia.

(b) The delegates for Canada and Chile maintained the doubt their delegations had expressed at the First Session regarding the undesirability of permitting action under Article 34 without prior consultation even in emergency circumstances.

(c) The delegate for Canada maintained the proposal his delegation had made at the First Session that if action without prior consultation was permitted to a Member, immediate counter-action by other affected Members should also be permitted without the delays involved in obtaining the permission of the International Trade Organization to take such action.

(d) The words "in serious cases" in the last sentence of paragraph (2) were referred to the Legal Drafting Sub-Committee for further examination. The delegate for Canada suggested they be changed to "in case of serious abuse".

Article 35

(a) The delegate for Czechoslovakia reserved his position regarding the addition proposed by the delegate for the United States to the end of paragraph (1) to provide for the supply of information.

(b) The delegate for Brazil reserved his position regarding the inclusion of anti-dumping and countervailing duties in paragraph (1).

(c) It was agreed that the phrase "object of this Charter" should be scrutinized by the Legal Drafting Sub-Committee.
Article 38

(a) The delegate for Chile suggested the following alternative text to sub-paragraph (b) of paragraph (2):

"(b) the formation, including its initial transitional stage, of a union for customs purposes of any customs territory of any Member and any other customs territory.

PROVIDED THAT............"

This alternative text was supported by the delegate for Lebanon. The delegate for South Africa stated that he did not support the alternative text, but would be satisfied by the insertion in the Report of words similar to those which had been inserted in the Report of the First Session to cover this particular point.

(b) The delegates for Brazil and the Lebanon maintained the reservations they had made at the First Session regarding paragraph (4). The delegate for Lebanon stated that a two-third majority should not be necessary for approving preferences of a regional character. The delegate for Chile also made a reservation on this paragraph.

Article 39

(a) The delegate for China reserved his position regarding the inclusion of public commercial enterprises in sub-paragraph (a) of paragraph (2). The delegate for Brazil made a similar reservation.

(b) The delegate for the Netherlands maintained the reservation his delegation had made at the First Session regarding the technical character of sub-paragraph (3) (f).

Article 40

(a) The Legal Drafting Sub-Committee was requested to examine the rearrangement of Article 40 proposed by the delegate for Australia in E/PC/T/C.6/W.45.

(b) The delegate for Australia suggested that the words "come to its findings"
findings" in sub-paragraph (e) and "findings" in sub-paragraph (f) should be replaced by "determine" and "determinations" respectively. This suggestion was referred to the Legal Drafting Sub-Committee.

(c) The Delegate for the Netherlands maintained the reservation his Delegation had made at the First Session regarding the reference of complaints to the International Court of Justice.

Article 42

(a) The Delegate for Australia queried whether sub-paragraph (g) of Article 40 was necessary in view of sub-paragraph (f) of Article 42. This question was referred to the Legal Drafting Sub-Committee.

(b) The Delegates for Belgium-Luxembourg and France reserved their positions regarding the words "which is not essential to the Organization in undertaking an adequate investigation" in sub-paragraph (c).