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 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
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 of abuse the Organization may authorize an affected Member to suspend obligations or concessions 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 public or private, 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 Chapter 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 day on which written notice of such withdrawal is received by the Organization.

SECTION I. TERRITORIAL APPLICATION

**Article 38**

Territorial Application of Chapter V - Frontier Traffic - Customs Unions

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 of a customs 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 duties and regulations of commerce applicable in the constituent territories prior to the formation of such union.

3. Any Member proposing to enter into a customs union any union described in sub-paragraph (2) (b) shall consult with the Organization and shall make available to it 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 be exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Any such exception shall conform to the criteria and procedures which may be established by the Organization pursuant to paragraph (2) of Article 66.

5. For the purpose of this Article a customs territory shall be understood to mean any area territory within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such area territory. A union of customs territories for customs purposes customs union 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 shall agree to take appropriate measures, individually or through 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 impair 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 between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, (i.e., trading agencies of governments or enterprises in which there is effective public control), or between 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 of this Article are as follows:

(a) fixing
(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 production or fixing production quotas;
(e) suppressing the application or development of technology
or invention, whether patented or unpatented;
(f) extending 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

1. 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,
(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 may deem necessary and conduct or arrange for hearing provided that any Member and the parties alleged to have engaged in the practice shall have the opportunity to be heard at such hearings.

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

2. (a) The Organization shall report fully to all Members the findings reached its determination and the reasons therefor; if it finds that the practices have had the effect described in paragraph 1 of Article 39, it shall request each Member concerned to take every possible action to prevent the continuance or recurrence of the practices, and may recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures;

(b) request all Members concerned to report fully the action they have taken to achieve these results;

(c) prepare and publish, as expeditiously soon as possible after enquiries have been provisionally or finally closed, reports on all complaints dealt with under paragraph (d) of this Article, showing fully its decisions, findings or other
conclusions reached, the reasons therefore and any action which the Organization has recommended to 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.

(a) Report to all Members, and make public if it deems desirable, the action which has been taken by the Members concerned to achieve realize the purposes described in sub-paragraph 2 (a) of this Article.

Article 41

Studies Relating to Restrictive Business Practices

1. The Organization may

(a) conduct studies, either on its own initiative or at the request of any Member, or of the United Nations, or, of 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 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;
2. **The Organization may**

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

(b) **arrange conferences for purposes of general consultation on any matters relating to restrictive business practices.**

**Article 42**

**Obligations of Members**

1. In order to implement the preceding Articles in this Chapter, each Member **shall**

(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, determination, requests and recommendations made under sub-paragraph (f) of Article 40 and decide as to 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.

2. **It shall further**

(a) 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 country concerned.
(b) [A] 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.

(c) [A] 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) sub of Article 40 and under [sub-paragraph (c) 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.

(d) [A] report, as requested by the Organization under sub-paragraph [sub-paragraph (e) 2 of Article 40, the action taken, independently or in concert with other Members, to implement recommendations made by the Organization under [sub-paragraph (f) 2 of Article 40, and, in cases in which no action is taken, to explain to the Organization the reasons therefor and discuss the matter further with the Organization if requested to do so.

(e) [A] 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, preventive 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.

NOTES

Article 34

(a) 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.

(b) 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 counteraction 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.

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 (I) 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 (I).

Article 38

(a) Certain Members of the Legal Sub-Committee, considered that separate customs territories under the jurisdiction of a Member cannot be considered a separate Member for all the purposes of Chapter V, such as the right of withdrawal
withdrawal under Article 35, problems arising out of Articles 26 and 29 and the right to vote. The Sub-Committee felt that this matter should be brought to the attention of the Committee.

(b) 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 has been inserted in the Report of the First Session to cover this particular point.

(c) 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. The Sub-Committee considered it to involve a matter of
substance and agreed to refer it back to the Drafting Committee.

(b) The Delegate for France proposed that the beginning of paragraph 1 b should be worded to read "consider each written complaint submitted by any Member, or submitted, with the support of such Member, by any affected person, etc....".

Article 42

(a) The Delegate for Australia queried whether sub-paragraph 2 b of Article 40 was necessary in view of sub-paragraph 2 d of Article 42. This question was referred to the Legal Drafting Sub-Committee. The Sub-Committee felt that paragraph 2 b should be retained.

(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 (e).