THE HAVANA CHARTER
FOR AN
INTERNATIONAL TRADE ORGANIZATION

AN INFORMAL SUMMARY

Background

THE HAVANA CHARTER

Chapter I: Purpose and Objectives

Chapter II: Employment and Economic Activity

Chapter III: Economic Development and Reconstruction

Chapter IV: Commercial Policy

Chapter V: Restrictive Business Practices

Chapter VI: Inter-Governmental Commodity Agreements

Chapter VII: The International Trade Organization

Chapter VIII: Settlement of Differences

Chapter IX: General Provisions

Annexes: A to P

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At its first session on 18 February 1946, the Economic and Social Council of the United Nations decided to call an International Conference on Trade and Employment and constituted a Preparatory Committee to elaborate an annotated draft agenda for such a Conference.

Representatives of the following governments were appointed by the Economic and Social Council as members of the Preparatory Committee: Australia, Belgium, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom and the United States of America. With the exception of the Union of Soviet Socialist Republics, all of the above-mentioned Governments were represented on the Preparatory Committee throughout its sessions.

The first session of the Preparatory Committee was held in London from 15 October to 26 November 1946. In the course of this session, a draft charter for an International Trade Organization was prepared. This draft charter was subsequently examined and edited by a Drafting Committee appointed at the first session and which met in New York from 20 January to 25 February 1947. Subsequently the second session of the Preparatory Committee was convened at the European Office of the United Nations in Geneva on 10 April 1947. This session adopted its report on 22 August 1947, including the draft charter prepared for consideration by the United Nations Conference on Trade and Employment.

The United Nations Conference on Trade and Employment, in accordance with the resolution adopted by the fifth session of the Economic and Social Council, met at Havana, Cuba, from 21 November 1947 to 24 March 1948.

The Conference drew up the Havana Charter for an International Trade Organization to be submitted to the governments represented. The Conference also adopted certain resolutions, including a resolution establishing an Interim Commission for the International Trade Organization. At the conclusion of the Conference a Final Act was signed authenticating the texts of the documents prepared by the Conference.

The following governments attended the Havana Conference:

Afghanistan, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Greece, Guatemala, Haiti, India, Indonesia, Iran, Iraq, Ireland, Italy, Lebanon, Liberia, Luxembourg, Mexico, Netherlands,
New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Southern Rhodesia, Sweden, Switzerland, Syria, Transjordan, Turkey, Union of South Africa, United Kingdom, United States of America, Uruguay, Venezuela.

All of the above listed governments signed the Final Act, authenticating the text of the Havana Charter, except Argentina and Poland.

By the end of 1950 the Havana Charter had been accepted by Liberia and - conditional upon acceptances by the United Kingdom and the United States - by Australia. No acceptances had been deposited with the Secretary-General of the United Nations. On 6 December 1950, the United States Department of State issued a statement of policy indicating that the Havana Charter would not be submitted again to the United States Congress. Subsequently it became evident that the establishment of ITO would be indefinitely postponed.
CHAPTER I

PURPOSE AND OBJECTIVES

The first Chapter (Article I) states in broad terms the purpose and objectives of the Charter and of the ITO. The purpose is defined by reference to Article 55 of the Charter of the United Nations. The objectives are listed as:

(a) To assure a large and steadily growing volume of real income and effective demand, to increase the production, consumption and exchange of goods, and so to contribute to a balanced and expanding world economy.

(b) To promote industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.

(c) To further the enjoyment by all countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development.

(d) To promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment to international commerce.

(e) To enable countries, by increasing the opportunities for their trade and economic development, to abstain from measures which would disrupt world commerce, reduce productive employment or retard economic progress.

(f) To facilitate the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy.
CHAPTER II

EMPLOYMENT AND ECONOMIC ACTIVITY
(Articles 2 to 7)

The fundamental principle of Chapter II is that full and productive employment is not a matter solely of domestic concern to a country but affects the economic wellbeing of all other countries. So, while domestic measures must be the prime means of avoiding unemployment, there must also be concerted international action to this end, under the sponsorship of the Economic and Social Council in collaboration with the appropriate intergovernmental agencies.

Under Article 3 (Maintenance of Domestic Employment) each Member will take action to achieve and maintain full and productive employment and large and steadily growing demand within its own territory through measures appropriate to its political, economic and social institutions. Members will seek to avoid measures creating balance of payments difficulties for other countries.

Where persistent maladjustment in a Member's balance of payments leads to balance of payments difficulties for other Members, which would handicap them in maintaining full employment without resort to trade restrictions, the Member is to make its full contribution and appropriate action is to be taken by the other Members concerned, to correct the situation. Such action should expand rather than contract international trade (Article 5).

Article 6 (Safeguards for Members Subject to External Inflationary or Deflationary Pressure) recognizes that Members may need to take action to safeguard their economies against inflationary or deflationary pressure from abroad. In the case of deflationary pressure special consideration is to be given to the effect on any Member of a serious or abrupt decline in the effective demand of the other countries.

Article 7 (Fair Labour Standards) calls on Members to do whatever is appropriate and feasible to eliminate sub-standard conditions of labour and refers in this connection to co-operation with the International Labour Organization.

CHAPTER III

ECONOMIC DEVELOPMENT AND RECONSTRUCTION
(Articles 8 to 15)

The object of Chapter III is to encourage the fuller use of the world's economic resources, the development of relatively backward areas and the reconstruction of those countries whose economies suffered in the war. Under
Article 9, Members are obligated progressively to develop and to reconstruct industrial and other economic resources and to raise standards of productivity. Members are to co-operate with the Economic and Social Council and with ITO to promote economic development as well as reconstruction of war-devastated countries. Members undertake, under Article II, not to impose unreasonable impediments in the way of obtaining facilities for development or reconstruction nor to take action injurious to the enterprise, skills, capital, arts or technology supplied by other Members.

Article 12 deals with International Investment for Economic Development and Reconstruction. It recognizes that public and private international investment can be of great value in promoting development and reconstruction. But Members have the right, without prejudice to existing international agreements, to ensure that foreign investment is not used as a basis for interference in their internal affairs or national policies and to determine to what extent and upon what terms they will allow future foreign investment. Members also have the right to prescribe, on just terms, requirements as to the ownership of existing and future investments. Subject to those rights, Members undertake to provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments. They also agree that it is desirable to avoid discrimination as between foreign investments. Members also undertake, upon request, to participate in negotiations for bilateral and multilateral agreements on the subject of investments.

The need in appropriate circumstances, for governmental assistance to economic development and reconstruction of particular industries or branches of agriculture, in the form of protective measures such as quantitative import restrictions is recognized in Article 13. But unwise use of such measures would put a burden on the economies of the Members using them and unwarranted restrictions on international trade. A distinction is made between protective measures which would conflict with negotiated obligations (e.g. obligations which have been assumed through negotiations with other Members) not to increase tariffs on particular products and measures which would affect products that have not been bound in tariff negotiations. Protective measures of the former type are to be settled mainly by direct negotiations between the Members concerned. Measures of the latter type must be referred to ITO for approval. Automatic ITO approval will be granted if certain stated criteria are fulfilled. Detailed provisions are laid down to ensure adequate and speedy consideration of proposed measures under this Article, for consultation and negotiations with Members whose trade would be affected and for appropriate scrutiny and control through the ITO of the exceptional protective measures authorized under this Article.

Special circumstances may justify Preferential Agreements for Economic Development and Reconstruction (Article 15). ITO must be informed of any proposed new preferential arrangement and may, by a two-thirds majority, authorize
an exception to Article 16 to permit the arrangement to go into effect. ITO approval will be given automatically if the new preferential arrangement fulfills stated conditions or criteria. Amongst these are (a) territories amongst the parties to the arrangement must be contiguous, or all parties belong to the same economic region, and (b) the preferential rates involved are necessary to ensure a sound market for the particular industry to be created, reconstructed or developed. If the new arrangement is found to be likely to injure the trade of Members outside the arrangement, procedures are laid down for negotiating satisfactory compensation.

CHAPTER IV

COMMERCIAL POLICY
(Articles 16 to 45)

Section A. Tariffs, Preferences, and Internal Taxation and Regulation

This section sets out three basic rules in the field of customs duties and other charges affecting imports and exports. Article 16 enunciates the rule of non-discrimination in tariff matters, by incorporating the unconditional most-favoured-nation principle. This article requires each Member to accord every other Member equal treatment with respect to customs duties, customs regulations and formalities and internal taxes. Existing preferential systems are excepted from this rule pending their elimination by negotiation but existing preferences may not be increased or new preferences created.

The second fundamental rule is set forth in Article 17, which obligates Members to enter into and carry out negotiations directed to the substantial reduction of tariffs and the elimination of preferences. The results of such negotiations are to be incorporated in the General Agreement on Tariffs and Trade concluded at Geneva in October 1947 between twenty-three countries. If a Member fails, without sufficient justification, to carry out tariff negotiations, the ITO may authorize the withholding of benefits which it receives under the most-favoured-nation clause.

The third basic rule, set forth in Article 18, prohibits the imposition of internal taxes which discriminate against imports, that is, internal taxes may not be higher on the imported product than on the domestic; and, with two important exceptions, forbids the use of other discriminatory internal regulations for the purpose of affording protection to domestic industries. One of the exceptions is existing "mixing" regulations, but the article bans the adoption of future internal quantitative regulations of this sort. The other exception is the permission given by Article 19 for the use of screen quotas to protect domestic motion picture industries. However, other discriminatory devices to protect national film industries are banned.
Section B. Quantitative Restrictions and Related Matters

The basic general rule with respect to quantitative restrictions (i.e. quotas limiting imports and exports to fixed amounts) is that they are prohibited (Article 20, paragraph 1). To this general rule there are a number of permanent and temporary exceptions, of which two are of primary importance. One of these permits import quotas for agricultural products (Article 20, paragraph 2(c)), where governments have found it necessary to limit the production of marketing of domestic farm products.

The second main exception to the general rule against QR's permits import restrictions to protect a country's monetary reserves and safeguard its international financial position (Article 21). Article 22 lays down the rules for the non-discriminatory application of quantitative restrictions which are permitted. Article 23, in view of the problems of post-war adjustment, authorizes Members in balance-of-payments difficulties to deviate from the principle of non-discrimination during the transitional period. Article 24 provides for close collaboration between the ITO and the International Monetary Fund in this field: Members of the ITO must either join the Fund or enter into a special exchange agreement with the ITO, and the ITO must consult fully with the Fund on all financial and balance-of-payments questions and must accept the findings of the Fund on statistical and other facts relating to foreign exchange, monetary reserves and balance of payments. The provisions relating to balance-of-payments restrictions provide long and detailed rules and criteria designed to assure that restrictions are applied only when necessary for financial reasons, that they are administered fairly and reasonably.

Section C. Subsidies

Articles 25 to 28 deal with subsidies, including any form of income or price support, which operate so as to maintain or increase exports or to reduce (or prevent an increase in) imports. Members are obliged to give full details of the subsidies they are using and to discuss limitation of subsidies with members whose trade is affected.

The abandoning of export subsidies as a general policy is to take place as soon as possible and in any event not later than two years after the Charter enters into force, although ITO has powers to grant extensions. However, as regards primary commodities special provision is made for the use of export subsidies in certain defined circumstances. Members may not use subsidies on primary products to gain more than a fair share of world trade in the products concerned.

Section D. State Trading

The object of this section is to ensure that Members which conduct their external trade wholly or partly through state trading enterprises shall not obtain any special privilege or suffer any special disability under the Charter.
Articles 29 to 31 lay down the principle that state trading enterprises must be guided by commercial considerations in buying and selling and must avoid discrimination. An exception is allowed for imports of products for governmental use. A Member maintaining a monopoly of imports is required, subject to certain safeguards, to negotiate with other Members for the reduction or limitation of the protection afforded to domestic producers, and in the case of an export monopoly to negotiate in order to assure adequate exports at reasonable prices. In general, import monopolies are to import sufficient quantities to satisfy domestic demand.

Article 32 regulates the disposal of stocks acquired for strategic purposes.

Section E. General Commercial Provisions

The general object of this section (Articles 33 to 39) is to ensure equality of treatment, full information and maximum simplicity in customs rules and other formalities connected with imports and exports.

In addition to dealing with valuation of goods for customs purposes, export and import formalities, marks of origin, publication of trade regulations and statistics and freedom of transit, the section also provides rules covering anti-dumping and countervailing duties.

Section F. Special Provisions

Article 40 permits the withdrawal or suspension of tariff concessions and other obligations under this Chapter in order to meet an unforeseen emergency situation wherein a sudden flood of imports causes or threatens serious injury to domestic producers. Article 41, requires a Member, subject to certain safeguards, to consider sympathetically representations made by another Member concerning the administration of its customs and other trade regulations.

The territorial application of Chapter IV is dealt with in Article 42, with exceptions for frontier traffic in Trieste in Article 43. Recognizing the desirability of customs unions and free-trade areas which facilitate trade between the parties and do not raise barriers to the trade of other Members, Article 44 contains provisions looking towards the formation of customs unions and free-trade areas. Article 45 sets out the general exceptions to Chapter IV, including, in addition to the standard exceptions found in commercial treaties, a few temporary exceptions connected with emergency situations arising out of the war.
Members agree to prevent on the part of commercial enterprises, whether private or public, restrictive business practices affecting international trade whenever they have harmful effects on the expansion of production or trade and interfere with the achievement of any other objectives of ITO. Members also agree to co-operate with ITO to this end.

If a Member considers that it is affected by such practices in a particular instance, it may consult directly with other Members concerned with a view to remedying the situation. It may, also, request the good offices of the Organization in this procedure.

Alternatively, ITO may investigate complaints made by any affected Member either on its own behalf or on behalf of affected parties under its jurisdiction. Complaint against a single public enterprise, acting independently, can be brought only by a Member and after it has consulted with the other Members concerned.

Complaints must conform to definite rules. The parties complained against must, individually or collectively, possess effective control of the trade in question. The practices are contained in a list which includes price fixing, exclusion from markets, discrimination, limiting production, preventing by agreement the development or application of technology, or abusing rights under patents, trademarks or copyrights. ITO shall then decide whether or not the standards of Chapter V have been violated. If so, it must notify all Members of its decision and call upon them to take the necessary measures to remedy the situation.

A Member is not required to adopt the findings or recommendations of ITO but it is obliged to take them fully into account in determining the action it believes appropriate. Decisions of ITO and the actions which Members take will be published.

Restrictive business practices in regard to international services, such as transportation and the commercial services of banks, are not subject to the complaint procedure outlined above. Members are obligated to attempt settlement by direct consultation. If such consultations are not successful, ITO may refer the case to the appropriate international agency, where one exists. Where one does not, ITO may, if requested, make recommendations for, and promote agreement on, measures designed to remedy the situation insofar as it falls within the scope of the Charter. Business practices relating to shipping services shall be subject to the jurisdiction of the International Maritime Consultative Organization in accordance with its Charter.
CHAPTER VI

INTER-GOVERNMENTAL COMMODITY AGREEMENTS
(Articles 55 to 70)

Recognizing that special difficulties may affect certain primary commodities, Chapter VI permits Members to enter into inter-governmental commodity agreements. It sets forth the objectives of such agreements and prescribes certain governing principles as well as the procedures for establishing and administering such agreements.

The formation of a commodity agreement would normally begin with a study group, which ITO may convene at the request of any Member which believes that special difficulties may occur with respect to a commodity. All interested Members, and non-Members whenever appropriate, may participate in such a group to investigate the production, consumption, and trade situation in regard to the commodity. On the basis of a recommendation by the study group, ITO can promptly convene an inter-governmental conference to discuss the preparation of a commodity agreement. ITO must invite all Members substantially interested in the production or consumption of, or trade in, the commodity concerned to participate in such a conference.

Two general types of inter-governmental agreements may result from a commodity conference:

1. "commodity control agreements", which are designed to regulate prices or production and foreign trade in a commodity and are restrictive in purpose or effect; and
2. other commodity agreements, which lack these restrictive features.

Both types are subject to the general principles of the Chapter. Commodity control agreements, however, are subject to additional principles and requirements.

All commodity agreements must be open, on equal terms, to any Member. Adequate participation must be ensured for countries substantially interested in the importation (or consumption) of the commodity as well as those substantially interested in its exportation (or production). Members of ITO which do not participate in an agreement must be given equitable treatment. ITO must make public full information on each step leading up to an agreement and its subsequent operation.

Commodity control agreements can be concluded only if one of the following conditions prevails:
1. The commodity is produced by numerous small producers; its demand and supply are relatively inelastic; a burdensome surplus exists, or is in prospect, and would result in serious hardship to producers; or

2. Widespread unemployment exists, or is in prospect, in a particular industry and would result in widespread unemployment because of inelastic demand for the commodity and a lack of alternative job opportunities.

If such circumstances are present and a commodity control agreement is concluded, it must be subject to certain standards in addition to the general principles mentioned above. It must assure that supplies will be adequate at all times to meet world demand at reasonable prices. It must allow importing countries the same voice as exporting countries in decisions upon substantive matters. It must permit increasing opportunities for satisfying world demand from the most economic sources of supply. Participating countries must adopt corrective measures during the period of the agreement to help solve the commodity problem in question.

Each commodity control agreement is to be administered by a commodity council composed of all participating countries, each having one vote. If disputes arise out of a control agreement, they will first be discussed within the council. In the event of failure to settle a dispute, the Council shall refer it to ITO. Each council must also report periodically to ITO on its affairs and ITO shall give full publicity to all matters relating to each agreement. Although renewal is permitted, no agreement shall be concluded for more than five years and if ITO finds that any agreement, existing or future, does not conform to the provisions of Chapter VI, it must be revised or terminated by the Members.

The main exceptions to the Chapter are purchase and sale agreements concluded between two governments or their agencies, agreements between one exporting and one importing country, agreements dealing only with the fair distribution of commodities in short supply, and agreements relating to conservations of exhaustible resources or to fisheries, migratory birds and wild animals.

CHAPTER VII

THE INTERNATIONAL TRADE ORGANIZATION

(Articles 71 to 91)

Chapter VII sets out the structure and functions of ITO (except for Settlement of Differences).

Section A (Articles 71 to 73) lays down the conditions of membership, lists the general functions of ITO, other than those specified in other Chapters.
The structure of ITO is to comprise a Conference, an Executive Board and such Commissions as ITO may establish. There is also to be a Director General and Staff.

Section B (Articles 74 to 77) contains provisions relating to the composition, voting, sessions, procedure, officers, powers and duties of the Conference. Each Member will have one vote in the Conference.

Section C (Articles 78 to 81) relates to the Executive Board, its composition, procedure, and powers. The Board will be composed of eighteen Members, consisting (a) of the eight Members determined by the Conference to be Members (or Customs Unions) of chief economic importance, and (b) the remaining Members to be elected by a two-thirds majority vote. Each Member of the Board will have one vote.

Section D (Articles 82 and 83) authorizes the Conference to set up appropriate Commissions and provides for their composition, functions and procedure.

Section E (Articles 84 and 85) covers the appointment and general powers of the Director General and lays down general rules governing selection of the Staff.

Section F (Articles 86 to 91) deals with the relations of the ITO with the United Nations and other international organizations. In Article 86, Members recognize that ITO should not attempt to take action which would involve passing judgement on essentially political matters which fall within the scope of the United Nations.

Other articles in Section F deal with the international responsibilities of the Director General and the Staff, the legal status of ITO, and contributions.

CHAPTER VIII

SETTLEMENT OF DIFFERENCES

(Articles 92 to 97)

Chapter VIII deals with the settlement of disputes and with the interpretation of the Charter. Procedures are laid down for complaint by a Member if it considers that another Member is not fulfilling its obligations, or if any other situation arises which nullifies or impairs a benefit which it receives under the Charter.
If any Member considers that any benefit accruing to it directly or indirectly, implicitly or explicitly, under any of the provisions of the Charter is being nullified or impaired, the Member concerned may first resort to consultation with the other Member or Members concerned or arbitration, keeping ITO informed. Failing settlement the dispute may be referred to the Executive Board (Article 94), with provision for appeal to the Conference (Article 95). The ITO may, under Article 96, request from the International Court of Justice advisory opinions on legal questions arising within the scope of ITO activities. Advisory opinions of the Court pursuant to its statute must also be requested at the instance of interested Members in order to secure a review of decisions of the Conference.

If the Executive Board or the Conference finds that any benefit accruing to a Member under the provisions of the Charter is in fact being nullified or impaired and all other methods provided for settlement of disputes have failed, it may release the complaining Member from any obligations of the Charter or from the grant of concessions under the Charter to the extent which it considers appropriate and compensatory.

The rules of procedure for settlement of differences will be established by the ITO.

CHAPTER IX

GENERAL PROVISIONS
(Articles 98 to 106)

The last Chapter contains miscellaneous general provisions. Nothing in the Charter will preclude any Member from trading freely with non-members (Article 98) but Members agree not to enter into arrangements with non-members to obtain preferential trade treatment and not to conduct trade with non-members in a way that would injure trade with Members. The problems arising out of relations with non-members will be studied further by ITO.

Article 99 lists the General Exceptions to the Charter. No Member will be required to give information which it considers contrary to its essential security interests. No Member will be prevented from taking whatever action it considers necessary in relation to fissionable materials, traffic in arms or in time of war or other emergency in international relations or in entering into or carrying out agreements made by or for a military establishment for the purpose of meeting essential requirements of national security. Nothing in the Charter will override the World War II peace settlements.
Articles 100 to 102 deal with amendments to the Charter, review after five years, withdrawal of Members and termination of the Charter.

The Charter will enter into force (Article 103) sixty days following acceptance or ratification by a majority of governments signing the Final Act of the Havana Conference. If by 24 March 1949, the Charter is not in force, the acceptance of only twenty governments will be needed. If the Charter is not in force by October 1949, the Secretary-General of the United Nations will invite those governments which have accepted to discuss whether and on what terms they desire to bring the Charter into force.

Articles 104, 105 and 106 deal with territorial application, the annexes, authenticity of texts, title and date of the Charter.

THE ANNEXES

Annexes A to J relate to Article 16 and list the preferences in force between two or more territories on 1 July 1939.

Annex K relates to Article 23 and provides the text of the so-called "Geneva option".

Annex L relates to Article 78 and provides the rules for the selection of the first Executive Board.

Annex M relates to Article 99 and contains special provisions regarding India and Pakistan.

Annex N relates to Article 100 and contains provisions for possible amendments which may be recommended by the Interim Commission after consultation with the International Court of Justice, regarding the procedure in Chapter VIII for review by the Court.

Annex O relates to Article 103 and provides that the sixty-day rule regarding depositing of acceptance may be waived in regard to the first regular session of the Conference.

Annex P lists the interpretative notes to various articles of the Charter.