

ECONOMIC AND EMPLOYMENT COMMISSION

THIRD SESSION

PROVISIONS OF THE HAVANA CHARTER FOR AN INTERNATIONAL
TRADE ORGANIZATION OF PARTICULAR INTEREST TO THE
ECONOMIC AND EMPLOYMENT COMMISSION

Note by the Secretariat

1. This memorandum calls attention to those provisions of the Charter for an International Trade Organization (ITO) which, it is thought, are of particular interest to the Economic and Employment Commission. The text of the Charter and related resolutions is contained in the "Final Act and Related Documents" (document E/CONF.2/78)* of the United Nations Conference on Trade and Employment, held at Havana, Cuba, from November 1947 to March 1948. All references relate to this document.

2. Objectives of the ITO (Chapter I)

Members of the ITO pledge themselves, individually and collectively, to promote national and international action designed to attain the following objectives:

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

"2. To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.

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

* In view of the limited supply of this document, it is not attached to this Note; however, copies of it have been sent to the members of the Economic and Employment Commission.

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/"4. To promote

"4. To promote on a reciprocal and mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce.

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

"6. To facilitate through the promotion of mutual understanding, consultation and co-operation the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy."

3. Employment and Economic Activity (Chapter II)

The major provisions relating to the employment objectives of the ITO are contained in Articles 2 to 7. Articles 3 and 4 are of particular importance, containing undertakings by Members. Article 3 provides that "each member shall take action designed 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". Article 4 deals with the effects of persistent maladjustments in a Member's balance of payments on other Members and provides that the Member whose balance of payments is characterized by a persistent maladjustment "shall make its full contribution" towards correcting the situation, while appropriate action shall be taken by the other Members concerned. Article 6, entitled "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 pressures from abroad. In case of deflationary pressure special consideration shall be given by the Organization to the consequences for any Member of a serious or abrupt decline in the effective demand of other countries. The Geneva draft of this Article mentioned only deflationary pressure, the reference to inflationary pressure being introduced at Havana.

Chapter II contains two references to the functions of the Economic and Social Council in the field of employment. Paragraph 2 of Article 2 reads as follows:

"2. The Members recognize that, while the avoidance of unemployment or underemployment must depend primarily on internal measures taken by individual countries, such measures should be supplemented by concerted action under the sponsorship of the Economic and Social Council
/of the United Nations

of the United Nations in collaboration with the appropriate inter-governmental organizations, each of these bodies acting within its respective sphere and consistently with the terms and purposes of its basic instrument".

The text of Article 5, entitled "Exchange of Information and Consultation", is as follows:

"1. The Members and the Organization shall participate in arrangements made or sponsored by the Economic and Social Council of the United Nations, including arrangements with appropriate inter-governmental organizations:

(a) for the systematic collection, analysis and exchange of information on domestic employment problems, trends and policies, including as far as possible information relating to national income, demand and the balance of payments;

(b) for studies, relevant to the purpose and objectives set forth in Article 1, concerning international aspects of population and employment problems;

(c) for consultation with a view to concerted action on the part of governments and inter-governmental organizations in order to promote employment and economic activity.

"2. The Organization shall, if it considers that the urgency of the situation so requires, initiate consultations among Members with a view to their taking appropriate measures against the international spread of a decline in employment, production or demand."

The United Nations Conference at Havana also adopted a Resolution on Employment which appears as Item 10 on the Agenda of the Economic and Employment Commission.

4. Economic Development and Reconstruction (Chapter III)

Articles 8 to 12 deal with measures to promote economic development and reconstruction. Under Article 9 Members undertake to further development and reconstruction within their respective territories and to do so through measures not inconsistent with other provisions of the Charter. Article IX deals with international co-operation for economic development, both between Members and through inter-governmental organizations, including the Economic and Social Council. Paragraph 2 of Article 10 states specific functions in this field which may be performed by the ITO and takes note of the relationship between such activities and those of the Economic and Social Council. The provisions are as follows:

"2. With a view to facilitating and promoting industrial and general economic development and consequently higher standards of living,

/especially

especially of those countries which are still relatively undeveloped, as well as the reconstruction of those countries whose economies have been devastated by war, and subject to any arrangements which may be entered into between the Organization and the Economic and Social Council of the United Nations and appropriate inter-governmental organizations, the Organization shall, within its powers and resources, at the request of any Member:

- (a) (i) study the Member's natural resources and potentialities for industrial and general economic development, and assist in the formulation of plans for such development;
- (ii) furnish the Member with appropriate advice concerning its plans for economic development or reconstruction and the financing and carrying out of its programmes for economic development or reconstruction; or
- (b) assist the Member to procure such advice or study.

These services shall be provided on terms to be agreed and in such collaboration with appropriate regional or other inter-governmental organizations as will use fully the competence of each of them.

The Organization shall also, upon the same conditions, aid Members in procuring appropriate technical assistance."

The Conference at Havana also adopted a resolution with a view to determining the functions which the ITO should perform in order to carry out its "positive" functions for economic development and reconstruction. The main provisions of the resolution are the following:

".....the Interim Commission of the International Trade Organization is hereby directed to examine

- (i) the powers, responsibilities and activities in the field of industrial and general economic development and reconstruction of the United Nations, of the specialized agencies and of other inter-governmental organizations, including regional organizations;
- (ii) the availability of facilities for technical surveys or studies of: the natural resources of under-developed countries; or the possibilities of their industrial development, whether general or in relation to the processing of locally produced raw materials or other particular industries; or for the improvement of their systems of transportation and communications; or with respect to the manner in which investment of foreign capital may contribute to their economic development;

/and in the

and in the light of this examination to report to the Organization upon

- (a) the structure and administrative methods,
- (b) the working relations with the United Nations, the specialized agencies and other inter-governmental organizations including regional organizations which will enable the International Trade Organization most effectively to carry out its positive functions for the promotion of the economic development and reconstruction of Members."

The Interim Commission, which was established at the end of the Havana Conference, is instructed to submit its report in time for the permanent ITO Conference to take appropriate action at its first session.

Under Article 11 Members undertake not to impose unreasonable impediments in the way of obtaining facilities for development or reconstruction, not to take action injuring the enterprise, skills, capital arts, or technology supplied by other members.

Article 12 deals with the treatment of international investment. It recognizes the right of Members to insure that foreign investment is not used as a basis for interference in their internal affairs or national policies, to determine to what extent and upon what terms they will allow future foreign investments, to prescribe and give effect on just terms to requirements as to the ownership of existing and future investments, and to prescribe and give effect to other reasonable requirements with respect to existing and future investments. Subject to these rights, Members undertake to provide reasonable opportunities for investments acceptable to them and adequate security for existing and future investments. They also undertake to give due regard to the desirability of avoiding discrimination as between foreign investments. Finally, they undertake to enter into negotiations directed toward the conclusion of bilateral or multilateral agreements relating to the opportunities and security for investment which Members are prepared to offer and any limitations which they are prepared to accept of the rights referred to above.

Articles 13 to 15 deal with exceptions to the provisions of the Charter relating to tariffs, quantitative restrictions, preferences, etc., which may be enjoyed by Members in the interest of furthering their economic development and reconstruction. They recognize that special circumstances may justify the imposition of such restrictions and set forth both criteria and procedures under which such exceptions may be made.

5. Commercial Policy (Chapter IV)

Chapter IV contains sections on the following subjects:

- A. Tariffs, Preferences, and Internal Taxation and Regulation;
- B. Quantitative Restrictions and Related Exchange Matters;
- C. Subsidies;
- D. State Trading and Related Matters;
- E. General Commercial Provisions (freedom of transit, valuation for customs purposes, trade regulations, etc.)
- F. Special Provisions (Emergency action on imports of particular products, general exceptions, etc.)

Section B on Quantitative Restrictions would appear to be the part of Chapter IV of most direct interest to the Economic and Employment Commission. This contains Article 20 which provides a general prohibition on quantitative restrictions on imports and exports subject to a number of exceptions. Articles 21, 23 and 24 stipulate the exceptions to the general rule against quantitative restrictions which may be made for balance of payments reasons. Article 21 states the conditions under which a Member may impose quantitative restrictions to safeguard its balance of payments. A preamble to Article 21 states that Members recognize that the Organization should promote consultations among members and, where possible, agreed action consistent with the Charter for the purpose of correcting a maladjustment in the balance of payments. After setting forth the criteria for exceptions to the rule against quantitative restrictions the Article takes account of the relationship between domestic economic policies relating to employment, development, or reconstruction and the balance of payments position of a country in the following way:

"(b) The Members recognize that, as a result of domestic policies directed toward the fulfilment of a Member's obligations under Article 3 relating to the achievement and maintenance of full and productive employment and large and steadily growing demand, or its obligations under Article 9 relating to the reconstruction or development of industrial and other economic resources and to the raising of standards of productivity, such a Member may find that demands for foreign exchange on account of imports and other current payments are absorbing the foreign exchange resources currently available to it in such a manner as to exercise pressure on the monetary reserves which would justify the institution or maintenance of restrictions under paragraph 3 of this Article. Accordingly:

/(i) no Member

- (i) no Member shall be required to withdraw or modify restrictions which it is applying under this Article on the ground that a change in such policies would render these restrictions unnecessary;
- (ii) any Member applying import restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of such policies.
- (c) Members undertake, in carrying out their domestic policies, to pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources."

Article 23 recognizes the basis for deviations from the general rule of non-discrimination, particularly in the circumstances of the post-war transitional period. It states the conditions under which and the extent to which a country, which is permitted to use quantitative restrictions on imports for balance of payments reasons, may use such restrictions in a discriminatory manner.

6. Other Provisions

The ITO Charter contains detailed provisions relating to restrictive business practices and inter-governmental commodity agreements, which it is not considered necessary to describe here.

In view of the interest of the Sub-Commission on Economic Development on the subject of the relative prices of primary products and manufactured goods, reference should be made to Article 72 relating to the functions of the ITO, which includes the following:

- "(d) in collaboration with the Economic and Social Council of the United Nations and with such inter-governmental organizations as may be appropriate, to undertake studies on the relationship between world prices of primary commodities and manufactured products, to consider and, where appropriate, to recommend international agreements on, measures designed to reduce progressively any unwarranted disparity in those prices;"

Other provisions affecting the prices of primary products are contained in the Section on Subsidies (Articles 25-28) and in Article 32 which relates to the disposition of stocks of primary products accumulated by governments for "non-commercial" purposes.

7. Interim Commission

By resolution of the Havana Conference an Interim Commission of ITO has been established to carry out certain functions pending the entry into force of the full-fledged organization. The Interim Commission will operate through an Executive Committee of eighteen members assisted by an Executive Secretary and Staff.

Among the functions of the Commission will be the preparation of the provisional agenda for the first session of the Conference of the ITO, the submission to the conference of recommendations on administrative matters for the Organization, preparation of a draft agreement of relationship with the United Nations, and the survey of agencies concerned with economic development and reconstruction mentioned in paragraph 4 above.
