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SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT.

TARIFF AGREEMENT COMMITTEE

It was proposed at the close of the third meeting of the Committee that consideration should be given at the next meeting to the amendments which have been submitted by Delegations to Part III of the General Agreement on Tariffs and Trade, and that an annotated agenda should be distributed in anticipation of that meeting.

However, it appears as if the work of the Committee would be greatly expedited if a decision were reached on the fundamental issues which have arisen in the course of the general debate on the General Agreement, before passing on to the detailed consideration of the text of the Agreement. Previous agreement on these questions, if only provisional, would permit work on detailed matters to progress rapidly and satisfactorily. The alternative to this procedure would consist of settling these basic points of substance in the course of debate on individual amendments and such a method might lead to a good deal of repetitious argument.

Consequently, it is proposed that the Committee should initially discuss and reach tentative agreement on the seven items which appear below, before passing on to consider amendments to the Draft Agreement. The commentary appearing under each heading is intended to facilitate discussion.

1. Submission of the Agreement to the Economic and Social Council for approval.

In document E/PC/T/W/274, the Czechoslovak Delegation states that the conclusion of a General Agreement on Tariffs and Trade is not included in the terms of reference established in the Resolution creating the Preparatory Committee and that the conclusion of the Agreement represents action taken outside the Economic and Social Council of the United Nations. It is added that the purpose of the Agreement is to give an example to other countries in respect of the lowering of tariffs and the reduction of preferential treatment; this is only provisional action, which will have to be merged with the I.T.O. on its creation as, otherwise, conflicting action arising from the existence of two parallel bodies might occur.

The Czechoslovak Delegation therefore suggests that:

(a) the Agreement should be submitted to the Economic and Social Council before being put into force so as to make sure that there will be nothing in the Agreement which would conflict with the policies of the United Nations generally and the Economic and Social Council specially (see amendments proposed to Article XXIV (4) in documents E/PC/T/W/274 and E/PC/T/W/285);

(b) the Agreement to be limited so as to enable its earliest liquidation and transfer of functions of its Committee on the setting up of the I.T.O.

Other consequential Czechoslovak amendments introduced in the light of the Delegation's views on the relationship between the Agreement and the Economic and Social Council, appear in Document E/PC/T/W/274 (Articles XXIII (2), XXIV (3a), XXIV (3b) and XXXI).

As the Agreement could not be signed at Geneva if this proposal were adopted, the Czechoslovak Delegation has suggested that a Protocol should be signed here whereby the signatories would undertake to put the tariff reductions into force according to their constitutional laws.

The United Kingdom Delegation has pointed out that the Economic and Social Council (which is aware of the contents of the Resolution regarding the Tariff Negotiations approved at the First Session) has not requested that the Agreement be submitted to it and therefore it would appear as if it is in agreement with the procedure being followed by the Preparatory Committee.

The Committee should therefore decide whether the point raised by the Czechoslovak Delegation in regard to the Economic and Social Council is valid and - if so - what action should be taken.

2. Significance of signature of the Agreement at Geneva.

(a) The Australian Delegation has expressed doubt as to the significance of signature, which it understands implies the commitment by Governments to introduce ultimately the Agreement to Parliament with the Governments' support. It has suggested that the text of the Agreement should be authenticated through initialling at Geneva and that a time and place should be fixed

for the signature of the Agreement, which would imply the undertakings which it attaches to signature. The Australian amendment to Article XXXII, Paragraph 2, contained in document E/PC/T/W/277, incorporates the view that the time and place of signature should be left open for the present.

The Brazilian, Norwegian, Indian and New Zealand Delegations appear to be in general agreement with the Australian view.

In document E/PC/T/W/271, the United States Delegation proposes an amendment to Article XXXII, intended to meet the difficulties cited by the Australian Delegation in connection with signature of the Agreement. According to this re-draft, the fact that the name of a country appears in the list of those which intend to give provisional application, does not represent a commitment in itself, because provisional application would be contingent upon the signatures of all such Governments becoming effective by a certain date. The Delegation of Australia (and any other Delegation which finds itself in the same situation) would attach a reservation to its signature, to the effect that the signature would become effective when its Government gave written notice to that effect to the Secretary General of the United Nations.

After consulting the Legal Adviser, the Secretariat wishes to convey to Delegations its understanding that in the process of signature followed by acceptance, signature merely serves to establish the text of the document. It has no binding force upon the Governments represented by the Delegates who sign, except that it means

that those Governments have agreed the authenticity of the text. On the present draft of the Agreement, it has a binding effect only in respect of Governments mentioned in paragraph 1 of Article XXII, who thereby commit themselves to the provisional application of the Agreement.

This legal interpretation appears to do away with a number of the doubts that have been expressed hereto. However, any Delegation that wishes to do so, can protect its position further by signing "ad referendum". For example, the South African Delegation has stated that it will sign or initial the Agreement at Geneva "ad referendum" so as to give its Government time to study the Agreement.

(b) The Syro-Lebanese Delegation has pointed out its understanding that signature of the Agreement will not constitute an obstacle to the Freedom of discussion of the Charter at the World Conference on the part of the two countries which it represents. It would be useful for the Committee to reach an understanding in this connection.

3. Tentative Timetable of developments.

Delegations have referred on a number of occasions to the probable developments that will take place over the next year. It may be helpful if the following time-table is taken as a basis for discussion:

1. Signature of the General Agreement
on Tariffs and Trade - September 30, 1947.
(after review of results of
negotiations from 10 to 30
September)
2. Simultaneous public announcement
of the full Text of the General
Agreement - November 15, 1947
3. Opening of the World Trade
Conference - November 21, 1947
4. Entry into force of the General
Agreement through provisional
application - December 15, 1947
5. Termination of the World Trade
Conference - January 15, 1948
6. Entry into force of the General
Agreement on Tariffs and Trade
through ratification - April/June 1948
7. Ratification of the Charter
of the International Trade
Organization - August 1948

4. Provisional application of the Agreement

(a) The following Delegations have indicated that they are in a position to give provisional application to the Agreement: (provisional application is interpreted as meaning that action in accordance with Article XXXII can be taken by executive action)

- (i) Belgium-Luxemburg;
- (ii) Canada;
- (iii) France;
- (iv) Netherlands;
- (v) United States;
- (vi) United Kingdom (This Delegation feels that it would have difficulty in putting the Schedules into effect earlier than January 1st. It suggests in document E/PC/T/W/273, in its proposals on the procedure for the provisional application of the Agreement, that the Governments which are able to give provisional application to the Agreement, should give notice by a certain date of their intention to effect provisional application as from a second specified later date).
- (vii) Australia (provided signatures are affixed to the Agreement about the middle of November).
- (viii) Czechoslovakia would be able to put into force provisionally the tariff reductions and those Articles which are directly concerned with Customs and Customs formalities, but the rest of the Agreement could not be put into force before a decision on it had been taken by the Czechoslovak Parliament.

(b) The following Delegations have stated that their Governments cannot effect provisional application:

- (i) Norway (it is very unlikely that it will be possible for, first, the Government and, secondly, Parliament to take any decision on whether or not Norway is in a position to put the Agreement into force, until the end of November. Consequently, November 21st would probably be the earliest date on which the General Agreement could be signed and put into effect. However, Parliament might prefer to wait for the end of the World Conference before taking a decision on the General Agreement, in the light of the findings of the Conference on the Charter).
- (ii) New Zealand (like Norway, cannot make the Agreement effective, even provisionally, until ratified by Parliament. The date on which New Zealand might give application would be dependent on whether, at the time of publication, Parliament was in Session and was able to pass the necessary legislation).
- (iii) South Africa (the country's legislation requires ratification wherever duties are below the intermediate column of the tariff, and, as numerous reductions have been agreed below the intermediate column, the Agreement would have to be ratified by Parliament before being brought into force. Parliament generally meets in January).

- (iv) Southern Rhodesia (It is expected that the Agreement would be submitted to Parliament in January, 1948, and, if approved, could probably be put into force shortly afterwards).
- (v) Cuba (The Agreement as a whole must be ratified by the Upper House, and tariff changes must be approved by the Government. The Cuban Government will do its best to speed up the procedure, but it cannot commit itself to any fixed date to put the Agreement into force).

Out of the 13 countries mentioned above, 8 are able to effect provisional application. Delegations will have to reach a decision on provisional application in the light of the total number of Governments that are able to effect it.

5. Inclusion in the Agreement of the Articles of the Charter which are reproduced in Part II.

The Delegations of the United States, Netherlands and Belgium have stated that they consider Part II to be an essential part of the General Agreement.

However, in document E/PC/T/W/272, the Norwegian Delegation points out that if signatories to the Agreement were to accept essential parts of the Charter, they would limit their freedom of action at the World Conference and would be unable to give due weight to the considerations advanced by other countries at the Conference. It adds that the Economic and Social Council's Resolution of February 18, 1946, limited the Preparatory Committee's task in respect of the Charter to the submission of a draft convention for the World Conference.

The Norwegian Delegation proposes that Part II be deleted. It therefore suggests in document E/PC/T/W/272 the deletion of Article XXVII, basing itself on the fact that as Part II should be omitted, no provisions on amendments are required; all amendments should be unanimous and it does not appear necessary to include an express ruling to that effect. On Article XXXII, the Norwegian Delegation states that if Part II is left out, there is no need to distinguish between the definitive and provisional entry into force of the Agreement, as the Agreement would be conditional on the creation of the I.T.O.

The Australian Delegation proposes in document E/PC/T/W/277 that Article XXII (Article 38 of the Charter) be transferred from Part III to Part II.

It should be pointed out that a decision on whether Part II should remain in the General Agreement, is closely related with Item 6 below.

6. Effect of the Charter on the Agreement upon the entry into force of the former.

As now drafted, the Agreement provides in Article XXVII(1) that Part II, in whole or in part, shall be superseded by the Charter if:

- (a) two-thirds of the contracting parties so wish it, and
- (b) all of the contracting parties have become Members of I.T.O.

However, the following Delegations feel that supersession should operate automatically on the entry into force of the Charter.

- (1) The Delegation of Australia feels that the replacement of the General Articles of the Agreement by the Charter ought to be automatic unless there is good reason to the contrary. The possible need for the Agreement to be so constructed as to stand on its own feet, should it be necessary, should not be permitted to prejudice in any way the possibilities of success of the Charter. In document E/PC/T/W/277, the Australian Delegation proposes that Article XXVII, paragraph 1, be amended so that on the coming into force of the Charter, Part II of the Agreement shall be superseded by the Charter as among those contracting parties who have accepted the Charter.

As explained by the Australian Delegation, this amendment is designed:

- (a) to make it automatic that the provisions of the Charter replace the relevant parts of the Agreement;
- (b) to avoid the situation created by the present draft under which, in the event of any contracting party failing

to join the I.T.O., the remaining parties are obliged to work under both the Charter and the General Agreement, whose provisions may differ significantly.

- (ii) The Chilean Delegation feels that logically any modification to the Charter should later be transferred also to the Agreement. This view applies to Part II as well as to Articles I and XXII of the Agreement.
- (iii) The Brazilian Delegation feels that if the Agreement and Charter were to co-exist and were fundamentally different, substantial difficulties would arise in securing parliamentary ratification of two different texts.
- (iv) In document E/PC/T/W/272, the Norwegian Delegation states that the Agreement should retain the character of a multi-lateral Tariff Agreement. It proposes that Article XXVIII should be redrafted so as to incorporate the following concepts:
 - a) If the I.T.O. is not set up, parties to the Agreement should be able to withdraw on short notice after the World Conference.

(b) If the I.T.O. is set up, the signatories to the Agreement must join it within a short period, or withdraw from the Agreement unless unanimously permitted to continue.

(v) The Czechoslovak Delegation considers that paragraphs 1 and 2 of Article XXVII should be deleted. Parts I and II of the Agreement should cease to be effective automatically as soon as I.T.O. is established. As regards Article XXVIII, this Delegation feels that countries should be free to withdraw from the Agreement at any time, because otherwise they would run the risk of having to apply two different instruments, the Agreement and the Charter. (see document E/PC/T/W/274).

(vi) The Syro-Lebanese Delegation is agreeable in principle to the inclusion in the Agreement of Part II, provided that Part II shall be automatically replaced by the equivalent provisions of the Charter (document E/PC/T/W/291).

In addition, the French Delegation will not seek parliamentary approval of the Agreement until after the World Conference because of the possible complications that would arise in presenting two different texts dealing with the same subject to Parliament within a short period.

However, other Delegations hold different views on the question. For example:

(i) The Indian Delegation considers that Part II of the Agreement should not be replaced by the Charter unless all contracting parties accept the Charter.

In document E/PC/T/W/278, the Indian Delegation proposes that Article XXVII, paragraph 1, be amended so that if a majority of the contracting parties (instead of two-thirds, as in the present text) so wish it, Part II, in whole or in part, shall be superseded by the Charter.

(ii) The Belgian Delegation feels that the provisions of the Charter could replace the equivalent ones in the Agreement on condition that they were similar and did not afford less protection than the ones in the Agreement; automatic replacement of Part II by the Charter is unacceptable because it means subscribing to an unknown text. There should be no objection to Part II being different from the Charter provided it were not inconsistent therewith.

The Delegations favouring the supersession of the Agreement by the Charter have made the following proposals on the functions of the Committee established under the Agreement:

(ii) In document E/PC/T/W/277, the Australian Delegation proposes an amendment to Article XXIII, paragraph 7, whereby the functions of giving effect to the provisions of the Agreement would be automatically transferred to the I.T.O. on its establishment.

- (ii) In document E/PC/T/W/272 the Norwegian Delegation proposes that paragraph 7 of Article XXIII be deleted because when the I.T.O. starts functioning, the functions of the Committee set up by the Agreement should be taken over by the I.T.O.
- (iii) The Czechoslovak Delegation has submitted an amendment to Article XXIII, paragraph 7 (document E/PC/T/W/274) to the effect that its second part should be deleted because as soon as I.T.O. is established, the meetings of the Committee set up under the Agreement should cease automatically and its functions should be transferred to I.T.O. Further, in document E/PC/T/W/285, it proposes the deletion of paragraphs 1,2,3,4,5 and 6 of Article XXIII and of Article XXVII.

It should be noted that a number of reservations have been made by Delegations to Articles of the Charter which are reproduced in the Agreement. This appears to be a fundamental consideration in reaching a decision regarding the effect that the Charter is to have on the Agreement, because whatever solution is found must enable Delegations to sign the Agreement in spite of their present reservations to certain Articles of the Charter.

7. Implementation of Charter provisions in addition to those appearing in Part II of the Agreement.

This matter is dealt with at present in the Protocol, which it is proposed should be signed at the same time as the General Agreement. The undertaking on the part of the signatories to apply the principles of the Charter, is

contained in Paragraph 4 of the Protocol.

However, the following three points have now arisen:

(a) Proposal to delete the undertaking to observe the principles of the Charter.

(i) The Norwegian Delegation considers that the Protocol should be deleted whilst certain of its clauses can be transferred to the Preamble, if necessary. The Norwegian Delegation feels that the present draft represents too binding a commitment to the principles of the Draft Charter, in view of the need to avoid hampering the freedom of action of Delegations at the World Conference.

(ii) The Czechoslovak Delegation proposes the deletion of the undertaking in the Protocol to observe to the fullest extent of the authority of each Government, the principles of the Draft Charter (see proposals in documents E/PC/T/W/274 and E/PC/T/W/285).

(b) Inclusion of the entire Charter in the Agreement.

The Australian Delegation wishes the Schedules and the Charter as a whole to be dealt with and adopted simultaneously. It would prefer the Agreement to contain all of the Charter in its present form, on the understanding that when the Charter is finally approved, it will replace the General Articles of the Agreement.

(c) Effect of inclusion of Charter provisions in the Agreement on the freedom of action of Delegations in respect of reservations to the Charter.

The Syro-Lebanese Delegation is agreeable to

the terms of the Protocol, provided it will not require the application on their part of principles of the Charter to which they have lodged reservations (document E/PC/T/W/291).