

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENTCzechoslovak Observations and Amendments to Part III
of the Draft of the General Agreement on Trade and
TariffsGeneral Comment.

The conclusion of a General Agreement on Tariffs and Trade is outside the terms of reference of the resolution by which the Preparatory Committee was created. Therefore in the view of the Czechoslovak Delegation the conclusion of this Agreement represents action taken outside the Economic and Social Council of the United Nations. The purpose of this agreement in the view of the Czechoslovak Delegation is to give an example to other states in respect of a lowering of tariffs and a reduction and elimination of preferences. It is the assumption of the Czechoslovak Delegation that this is only a provisional action creating a provisional state of affairs which will have to be merged with the ITO as soon as it has been created. Otherwise there would be a certain danger of having two parallel bodies in existence - one the ITO - the other one an executive organ charged with the administration of certain of the provisions of the Agreement. The determination of these bodies need not necessarily be the same on the same issues. It is also the view of the Czechoslovak Delegation that in no case must either the creation of ITO or the conclusion of the Agreement lead to a situation which would create specialized agencies trying to achieve an existence independent of the United Nations and especially of its highest body competent for economic affairs, i.e., the Economic and Social Council. That this view might be shared by many delegations is apparent from the discussions during the last session of the Economic and Social Council. Thus the delegate of Norway in connection with the discussion on whether non-Members of the United Nations should have the right to vote at the International Conference on Trade and Employment or not, declared among other things:

"In other connections, we have seen a certain tendency on the part of the specialized agencies to make themselves more or less independent of the general policies of the United Nations. I think that same consideration is involved here in a certain way." (Doc.E/PC/T/156, page 13.)

The Delegate of Canada declared:

"But we are a Council of the United Nations and we have to view this matter not in the light of the atmosphere of any particular place at the moment, but in the light of what this means to the much more important question, and that is the continued integrity and effectiveness of the United Nations Organization as a whole."

"I believe we are developing a dangerous tendency in this Council. This Council could easily become a mere filing agency, and I am not so sure that critics of the Organization would not be justified in making that kind of an observation. When this Council was established - certainly at its first meetings, when discussions took place as to its terms of reference and as to the kind of developing functions it would assume - it was not intended to be a body that would exercise vis-a-vis the specialized agencies, the function of an equal partner, but it was to be a co-ordinating body, a sort of a cabinet, I doubt if we are developing that function. It would seem to me that we must view this question in the light of that situation. I feel that the Economic and Social Council will lose in prestige and in efficacy if it does not develop into a body that exercises more than mere moral authority on the specialized agencies, with whom it has now entered into contractual relationships on terms that are settled. On that account, it need not be discussed at this time. However, in my judgment and in the judgment of my delegation this matter does give reason for a good deal of concern." (Doc. E/PC/T/156, pages 14, 15, 16).

The Czechoslovak Delegation therefore suggests that it would be more appropriate

a) to submit the draft Agreement before it is put into force to the Economic and Social Council 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 especially,

b) to limit the scope of this Agreement in such a way as to enable its earliest liquidation as soon as the Charter has been put into force and also to enable a quick transfer of all the functions of the "Committee" to ITO.

Specific Comments.

Art. XXIII.

par. 2: In the view of the Czechoslovak Delegation the Committee ought to be convened by the Economic and Social Council at a date appointed by the Council.

par. 7.: The term "is capable of exercising its functions" is rather vague - a definite date ought to be put into the Agreement. Also in the whole paragraph leads to a certain duplicity of functions of the Committee and the functions of ITO - as soon as ITO is established the meetings of the Committee should cease automatically and its functions

ought to be transferred to ITO. Thus the second part of this paragraph seems to be superfluous altogether.
par. 8.: Ought to be left out of the Agreement having in view the provisional and short term character of the Committee since it might evolve procedures for the settlement of disputes which might be either prejudicial or conflicting with those evolved by ITO.

Art. XXIV.

par. 3a): The second part of the sentence /"and which is not self-governing in matters provided for by this Agreement"/ ought to be deleted in view of the spirit of the decision of the Economic and Social Council on this matter.

par. 3b): The last sentence ought to be deleted as conflicting with the spirit of the decision of the Economic and Social Council concerning voting rights of separate customs territories.

par. 4.: As mentioned in the General Comment the Agreement ought to be submitted first to the Economic and Social Council so as to make sure that it is not in conflict with the policies of the United Nations.

Art. XXV.: The last part of the sentence ought to read "consult with the other contracting parties having a substantial interest in the product concerned."

Art. XXVI. The mentioning of the date ought to be deleted. The Czechoslovak Delegation assumes that by that date the Charter will be in force and ITO established - the modification of Schedules ought to be then submitted to the rules of ITO. The words "the Committee determines" ought to be deleted for the reasons given above. On the other hand the Czechoslovak Delegation is of the view that even earlier modifications should be permitted.

Art. XXVII.:

par. 1 and 2. Ought to be deleted. If any duplicity of functions of specialized agencies is to be avoided, Part I and II of the Agreement should cease to be effective automatically as soon as ITO is established.

Art. XXVIII.: The determination of the date after which contracting parties have the right to withdraw assumes that these parts of the Charter which have been incorporated into the Agreement will not be changed at the International Conference on Trade and Employment. Thus the determination of this date is correct only, if this assumption proves to be correct, as well, which, however, it is difficult to foresee at the present stage. Therefore, in the views of the Czechoslovak Delegation contracting parties ought to have the right to withdraw at any time, otherwise they might find themselves in a situation where two problems of international trade are being handled in two different ways in two international conventions equally and at the same time effective.

Art. XXIX.: This Article is superfluous altogether. The Agreement is a short term convention and its administration and functions will have to be absorbed by ITO at the earliest practicable date. Also provisions incorporated in this Agreement from the present wording of the Charter may undergo changes or modifications at the International Conference in Havana. Thus international obligations which are not wholly consistent with the Agreement would have been terminated, but may be found to be wholly consistent after modifications have been introduced at a later stage.

Also in the view of the Czechoslovak Delegation the Agreement cannot automatically supersede previous agreements, if these agreements have been ratified in all due form and approved by the legislative body of the state concerned, since by ratification they have become part of the internal laws of that state. It should be left to the parties of these agreements to find a form how to bring them into harmony with the General Agreement (exchange of notes etc.). According to customary Czechoslovak constitutional procedures bilateral agreements can be changed only by bilateral acts.

Art. XXX.:

par. 1. The word "governments" ought to be changed into "states" as governments are not contracting parties and according to international law contracting power is an attribute of independent states.

par. 2.: Seems to be superfluous since states partners to a treaty cannot "decide" that other states partners to the same treaty shall cease to be contracting parties. Otherwise it could also be argued that by the same right these states might "decide" that other states have become "contracting parties" though they have not been partners to the treaty at all.

Art. XXXI. This Article ought to read, in view of the decisions of the Economic and Social Council about the voting rights of states non-Members of the United Nations as follows: "States Members of the United Nations not parties to this Agreement may adhere to it on terms to be agreed upon between them and the contracting parties. Other states could be admitted only with the prior approval of the Economic and Social Council."

Protocol of Signature.

Par. 3.: of the preamble of this Protocol does not exactly correspond to facts inasmuch as it speaks about Members of the Preparatory Committee, having recommended the text of a draft Charter to the Conference through the Economic and Social Council. However, at the time of the decision of the Economic and Social Council about

the convening of the Conference such a draft Charter could not have been recommended through the Economic and Social Council as it did not yet exist at that time.

par.4.: of the preamble ought to be deleted since without express approval of the governments concerned no Member of the Preparatory Committee can bind itself to any "undertaking."

But the idea of contracting parties meeting again should the Charter not have entered into force by November 1, 1948 seems to be a good one. This idea, however, ought to be subject of a special article forming part not of the Protocol, but of the Agreement itself. This article also ought to contain a provision that the contracting parties will be convened under the auspices of the Economic and Social Council.