

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

NOTE OF THE NETHERLANDS DELEGATION
WITH REGARD TO
"MOST-FAVOURED-NATION CLAUSE"

In the course of the general discussions of the Preparatory Committee and also of the I and II Committees thereof, it has become clear that in a number of countries, economic conditions are still such as to make it imperative for them to safeguard vital interests, by not granting most-favoured-nation treatment in every respect, and in the sense of the Draft Charter without a transitional period, which may be of a longer or shorter duration according to the situation prevailing in each of said countries. In general, it may be said that:-

1. in a number of countries, the war has had such catastrophic consequences, that with regard to the economic structure - industrial and agricultural equipment and manpower - things have to be put in some state of order before the Governments involved can again - and then gradually - adhere to a system of free trade.
2. in other - mostly economically under-developed - countries it is felt that a system of some protection will for the time being be required so as to make up for a certain handicap and thus in due course have an equal start when fully entering the field of free trade.
3. moreover, even apart from the considerations mentioned under 1 and 2, objections have been made to the acceptance of some preferences in the field of customs duties only, even of the negotiations on a selection basis in this respect without acknowledgment of the possibility, and even the necessity for certain other countries to do now as in the future, what others did in the past.

If this is the situation, the question arises as to whether certain criteria might be found and formulated as a minimum set of rules which all countries could accept herewith acknowledging a tendency in favour of regional co-operation which might find - among other - expression in some terms of tariff preference.

In the opinion of the Netherlands Delegation, the Preparatory Committee should try to find a solution for the above-mentioned difficulties and to suggest a formula which should provide for an acceptable exception to the rule of non-discrimination, which has inspired the American Draft Charter.

The Netherlands Delegation wish to put it on record that in their opinion, as a rule preferences should be limited both in number and in extent. But, on the assumption that the present Conference will be successful in finding and defining such a set of rules, it is suggested that with regard to the numbers of countries involved, preferences should be given the possibility to expand and to grow, so as to be applicable - on a reciprocal basis - to an increasing number of states and to all countries as a final stage and as an ultimate end. If this should not be possible, the line of conduct should be to diminish the margins of preference gradually and ultimately to abolish these altogether, with as the only exception, a customs-union as defined in the Charter.

The Netherlands Delegation therefore suggest that the Preparatory Committee study the possibility of admitting "open conventions" within the framework of the Charter as proposed above, and of defining a set of rules applicable to those multilateral agreements on a smaller scope than the suggested Charter and Protocol in which the latter agreement, the result of the coming tariff negotiations would have to be embodied and which would have then to come into effect at once. These rules should in any case imply that the participating countries should accept the ruling of the International Trade Organization, to be set up, and - as the case may be - of the International Court of Justice with

regard to the settlement of disputes arising out of such multilateral action of a number of countries.

On submitting this suggestion to the Preparatory Committee, the Netherlands Delegation wish to draw the attention of the Delegates to Article 75 of the Draft Charter, reading as follows:-

"Article 75. Amendments to Charter.

1. Amendments to this Charter shall become effective upon receiving the approval of the Conference by a vote of a two-thirds majority of its members: Provided, That those amendments which involve fundamental alterations in the objectives of the Organization or new obligations by the members shall take effect upon acceptance on the part of two-thirds of the members for each member accepting the amendment and thereafter for each remaining member on acceptance by it.

2. The Conference shall, by a two-thirds majority of the members, adopt rules of procedure for carrying out the provisions of this Article."

In the opinion of the Netherlands Delegation, the principle involved in their suggestion is already embodied in this Article, as quoted above. They must, however, already at this stage, draw the attention of delegates also to a special difficulty with regard to the Draft Charter as a whole, viz. the position of members with regard to non-members, inasmuch as when accepting the Charter, the adhering members will receive certain rights (and accept certain obligations) from which non-adhering states and in some cases, certain members too, may be excluded. If members are excluded from the benefit of any such rights, they presumably will have no grounds for complaint, because their exclusion would be the consequence of provisions of the Charter, to which they are a party. But when a non-member is excluded, the situation seems to be different, as the country in question is not a party to the Charter, and the terms of this agreement would be of no

avail, and therefore, legally speaking, be no defence, because the exclusion would be considered by that country as a "res inter alios". Therefore in the supposed case, any bilateral treaty of most-favoured-nation treatment between the member(s) and non-member(s) involved would still stand and hold good.

Therefore, in the opinion of the Netherlands Delegation, the Preparatory Committee should consider the advisability of a recommendation to the United Nations of a Declaration - in due course - so as to make it a sufficiently authoritative principle of International Law - to the effect that the Charter and any agreement based thereon - are not in conflict with the most-favoured-nation clause, as they are open to adherence by other countries.
