

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

NOTE

by the Polish Observer concerning the Draft General
Agreement on Tariffs and Trade

The Draft General Agreement on Tariffs and Trade as laid before the governments of the countries participating in the work of the Preparatory Committee of the United Nations Conference on Trade and Employment, calls for a few comments, both of a juridical and a practical character.

The General Agreement has been drafted by the Drafting Committee appointed by the Preparatory Committee at its First Session "For the purpose of preparing a Draft Charter based upon the report and other documents" of that session. The Drafting Committee prepared the Draft General Agreement as a working paper to the Second Session of the Preparatory Committee "without commitment to any government".

Should the Draft General Agreement in its proposed form be adopted by the Governments of the countries participating in the work of the Preparatory Committee the following consequences should be considered:

1. It is said in the preamble of the Draft General Agreement that its signatories desire "to further the objectives" of the future U.N. Conference on Trade and Employment "by making effective among themselves such provisions of the...draft Charter as are applicable at this stage". In fact, by adopting the text of the Agreement as it stands, the signatories would adopt in advance virtually the whole of the Charter (with the exception of its Chapter VIII dealing with the International Trade Organization). Apart from including into the Agreement 20 articles of the Draft Charter in full text (out of 60 which form the first seven chapters) they would pledge in the Protocol constituting an integral part of the Agreement:

- (a) to apply in their relations the spirit of the provisions included in Chapter I of the Draft Charter,
- (b) "to observe and to make effective to the fullest extent of their authority all of the principles and provisions" of Chapter III, IV, V, VI and VII of the Draft Charter.

2. It is difficult to imagine what would be the discussion of the Draft Charter when laid before the 55 United Nations assembled in the Conference on Trade and Employment. By adopting textually or in principle the first seven chapters of the Draft prior to the Conference the 17 Governments of the countries participating in the Preparatory Committee would, in fact, find it difficult to discuss or alter the first 60 articles of the Draft, while the remaining 38 governments would probably deem such discussion necessary. In regard to the 20 articles included in the General Agreement in their full text the 17 governments would be prevented even from agreeing to any drafting amendments as they would already have adopted and signed the respective formulae prepared by the Preparatory Committee.

3. While some multilateral provisions may be needed to complete the successful achievement of tariff negotiations pursued among the 17 participants of the Preparatory Committee in Geneva prior to the opening of the U.N. Conference on Trade and Employment, it seems doubtful whether the situation, as visualized in p.2 above, could really be the aim of the authors of the Draft General Agreement. The Conference would, in such a case, amount to:

(a) the discussion of the provisions of the Draft Charter relating to the I.T.O.;

(b) the presentation to the 38 United Nations not taking part in the Preparatory Committee of the 60 articles forming the first seven chapters of the Draft Charter in view either of adopting them "en bloc" or of refraining from joining the Organization.

4. It has been said already that the wish of completing the presently negotiated tariff agreements by some sort of multilateral document is perfectly understandable. Moreover, some of the countries applying in their commercial policy tariffs as the only means of protection may feel reluctant to assume commitments in this sphere without having any assurances as to the degree in which other forms of protection applied parallelly to tariffs by their partners would operate after they themselves have substantially reduced their tariff levels. It would seem, however, that in order to obtain such a legitimate assurance, there is no need to adopt by less than one third of the United Nations a Draft which has not been discussed by more than two thirds of them, thus making extremely difficult both, technically and legally, the discussion of the U.N. Conference on Trade and Employment. It would seem that, in view of obtaining the needed assurances, it would be sufficient:

(a) to include into the future General Agreement only those articles of the Draft Charter which are closely related to tariffs - thus completing the agreement reached in the negotiations; the articles in question would comprise: art.14 (most favoured-nation treatments),

art.15 (national treatment on internal taxation and regulation), art.17 (anti-dumping and countervailing duties), art.18 (tariff valuation), art.19 (customs formalities), as well as art.34 (emergency action on imports of particular products) and art.38 (territorial application - frontier traffic - customs unions);

(b) to add in the future General Agreement two special provisions:

aa) one - to the effect that, during the period between the entering into force of the General Agreement and the entering into force of the Charter (after its final adoption by the U.N. Conference), the present protective measures, other than tariffs, applied by the signatories of the General Agreement would not be reinforced in any way;

bb) the second - providing that if as the result of the discussions in the U.N. Conference on Trade and Employment, the provisions related to the protective measures, other than tariffs, could be considered by any of the signatories of the General Agreement as having been weakened as compared with those of the Draft Charter as laid before the U.N. Conference, the interested party would be free to withdraw partly or fully the tariff concessions applied by it as the result of the negotiations held in Geneva;

(c) Finally - the U.N. Conference on Trade and Employment should be held as early as possible after the end of the work of the Preparatory Committee.

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