

PART II



ANALYSIS OF THE HAVANA CHARTER



## CHAPTER 5

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### THE CHARTER IN A NUTSHELL

It is the central purpose of the *Havana Charter* to contribute to the improvement of living standards all around the world by promoting the expansion of international trade on a basis of multilateralism and non-discrimination, by fostering stability in production and employment, and by encouraging the economic development of backward areas. It will be the purpose of the International Trade Organization, which is established by the *Charter*, to substitute cooperation for conflict, in international commerce, in industrial stabilization, and in economic development, by providing a medium through which nations may regularly consult with one another concerning the international consequences of national policies.

The numerous provisions of the *Charter*, covering the whole range of trade relationships, are set forth in nine chapters and 106 articles. Some of these articles are confined to general statements of principle. Others contain definite commitments as to national policy; they have to do, primarily, with governmental barriers to trade—tariffs, import and export quotas, exchange controls, internal taxation and regulation, restrictive customs requirements, preferences and other forms of discrimination, state trading, and subsidies—and, secondarily, with such related matters as restrictive business practices in international trade, intergovernmental commodity agreements, international aspects of domestic stabilization policies, economic development, and international private investment. These articles are accompanied by others which contain qualifying provisions, enumerating general exceptions or making it possible for a signatory of the *Charter* to obtain a release from one of its obliga-

tions. In these cases, the pattern adopted, as suggested in the original American *Proposals*, is the enunciation of a general rule, the specification of exceptions to the general rule, narrowly limited and precisely defined, and the establishment of regulations and procedures whereby members of the Organization may avail themselves of these exceptions. Provision is made, in other articles, for the settlement of differences and for adjustments by which the balance of mutual advantage, if it is disturbed, may be regained. General principles are thus preserved; freedom to take action that would be harmful to others is limited; and restrictive measures are brought under international control. The remaining articles of the *Charter* outline the structure, the functions, and the procedures of the ITO.

#### GENERAL PRINCIPLES

The principles that are recognized, explicitly or implicitly, in the text of the *Charter*, are these—

That barriers to trade, other than tariffs, should be eliminated or minimized.

That tariffs should be reduced and preferences eliminated.

That trading areas should be widened by forming customs unions and free trade areas.

That, in general, member states should not discriminate among other member states.

That members should not be required, however, to extend equal treatment to non-members or to members who do not agree to reduce barriers to trade.

That state-trading operations should be governed by the principles that apply to private trade.

That subsidies should not be used to obtain more than a fair share of the world market.

That international trade should not be restrained by public or private monopolies or cartels.

That intergovernmental agreements with respect to trade in primary commodities should conform to established principles.

That the maintenance of industrial stability and fair labor standards are essential to the expansion of world trade.

That economic development and reconstruction will expand world trade and increase real income.

That international private investment, if afforded security, will promote economic development.

That the use of protective measures to promote economic development may be justified.

That members should consider the effect of their trade policies on others and consult with them upon request.

The obligations in which these principles are embodied and the qualifications by which they are accompanied may be briefly summarized.

#### TARIFFS AND PREFERENCES

Members of the ITO must carry out negotiations directed, through selective and mutually advantageous action, toward the substantial reduction of tariffs. But if, through unforeseen developments, a particular reduction should increase imports so sharply as to cause or threaten serious injury to domestic producers, a member may suspend its operation in whole or in part.

Reductions in tariffs will operate to reduce or eliminate margins of preference. Aside from the existing preferences that may survive negotiation, each member must grant every other member engaging in such negotiations equal treatment for its trade. No new preferences may be created; no existing preferences may be increased. Permission may be obtained, however, for new preferential arrangements that are required to promote economic development and for those which are incidental to the formation of a customs union or free trade area.

#### INVISIBLE TARIFFS

Members must not hamper trade by imposing discriminatory internal taxes or regulations or new measures requiring manufacturers to mix domestic materials with imported ones, by employing restrictive methods of customs administration, or by resorting to other hidden forms of protection. In the case of motion pictures, the only restriction allowed is a requirement that a certain fraction of screen time must be devoted to the exhibition of domestic films; such quotas are made negotiable and remaining screen time must be kept open to free competition. Members must afford freedom of transit to goods moving across their territories. They must confine anti-dumping and countervailing duties to cases of actual injury and limit them

in amount. They must publish, fully and promptly, all statistics, laws, regulations, decisions, rulings, and agreements affecting international trade.

#### IMPORT AND EXPORT QUOTAS

As a general rule, quantitative limitations on imports and exports are forbidden. But this rule is qualified by a number of necessary exceptions. Most of these are technical in character or temporary in duration. Two are more important. Import quotas on agricultural products may be used to supplement domestic production and marketing controls and surplus disposal programs if such quotas do not reduce the share of imports in the domestic market. And a member may employ import quotas to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves or, in the case of a member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. Under the latter provision, a member may select imports on the ground of essentiality. But it may not completely exclude any class of goods. It must avoid unnecessary damage to the interests of other members. It must seek to restore equilibrium in its balance of payments on a sound and lasting basis and to assure an economic employment of productive resources. It must consult with the ITO concerning the effect of its restrictions on other countries, the causes of its monetary difficulties, and the ways in which they may be overcome. It must relax its quotas as its monetary position improves and eliminate them entirely when its difficulties disappear.

Where quotas are permitted, they must be administered without discrimination. But there are also necessary exceptions to this rule. In the main, these exceptions are designed to make the provisions of the *Charter* consistent with the *Articles of Agreement* of the International Monetary Fund. The most important of them is limited in duration, for each country, to the length of its transition period in the Fund. Such a country must undertake, during this period, so to administer its restrictions as to promote the maximum possible development of multilateral trade. It must conform either to the rules of the Fund or to strict criteria laid down in the *Charter* and administered by the ITO. And it must consult the Fund or the ITO if it

wishes to discriminate after March 1, 1952, conform to such limitations as they may prescribe, and abandon any practices to which they may object.

#### EXCHANGE CONTROLS

Since quota systems and exchange controls may be used alternatively to restrict trade, it is important that the rules that govern these two devices be laid down and administered consistently, so that it will be impossible, by resorting to one of them, to escape from the rules that govern the other. Accordingly, the *Charter* provides that members shall not, by exchange action, frustrate the intent of the *Charter*, nor by trade action, the intent of the *Articles of Agreement* of the International Monetary Fund. Members of the ITO who do not belong to the Fund are required to join it or, failing this, to enter into a special exchange agreement with the ITO. Any such agreement would be established and administered in collaboration with the Fund.

#### STATE TRADING

The rules that regulate state-trading enterprises parallel those that govern public control of private trade. A member maintaining a state monopoly must declare the margin that it will add when it sells an imported product in its domestic market. It must negotiate with respect to the height of this margin in the same way in which members negotiate with respect to tariffs. It must satisfy the full domestic demand at the resulting price, imposing no other limit on the quantity it buys. It must act in a manner that is consistent with the general principle of most-favored-nation treatment, buying and selling on the basis of commercial considerations and affording the enterprises of other members adequate opportunity, in accordance with customary business practice, to compete for participation in its purchases and sales.

#### SUBSIDIES

If a member pays any subsidy that increases exports or reduces imports, it must inform the ITO and be prepared to discuss the possibility of limiting the subsidy at the request of any member who

may be harmed. Subsidies affecting exports of primary commodities may not be employed to obtain more than a fair share of world trade. Determination as to what constitutes a fair share of world trade is to be made initially by the member granting the subsidy, subject to consultation upon request with other members, and to modification upon appeal by the ITO. Other export subsidies, with minor exceptions, must be abandoned when the *Charter* has been in force for two years.

#### RESTRICTIVE BUSINESS PRACTICES

Each member agrees to take all possible measures, by legislation or otherwise, to ensure, within its jurisdiction, that commercial enterprises, whether private or public, do not engage in practices which restrain competition, limit access to markets, or foster monopolistic control in international trade, whenever such practices interfere with the expansion of production or trade or the achievement of any objective of the *Charter*. Upon complaint by a member, the ITO will make an investigation, hold hearings, and if it finds that the practices in question have such an effect, will request the members concerned to take every possible remedial action and may recommend remedial measures to be carried out in accordance with their respective laws and procedures.

#### COMMODITY AGREEMENTS

Members agree substantially to limit their present freedom to enter into intergovernmental commodity agreements. Such agreements will be confined, in general, to primary commodities. They must be open to participation, on equal terms, by any member of the ITO. And they must be accompanied, at every stage, by full publicity. Agreements which regulate production, exports, imports, or prices are confined, moreover, to commodities produced under strictly specified conditions and to periods of burdensome surplus and widespread distress. They must be limited in duration and subject to periodic review. They must afford consuming countries and producing countries an equal voice. They must assure the availability of adequate supplies. They must provide increasing opportunities for satisfying world requirements from economic sources. And



each country participating in such an agreement must adopt a program of economic adjustment designed to make a continuation of the agreement unnecessary. These rules do not prohibit commodity agreements; they do not promote them. They are designed to safeguard the interests of consumers, to force adjustment to changing conditions, and to facilitate the early restoration of free markets.

#### INDUSTRIAL STABILIZATION

Each member agrees to 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. The nature of the action to be taken by any member is for it alone to choose. No member is asked to guarantee that its efforts will succeed; the commitment is simply that such efforts will be made. This commitment was taken by the Congress of the United States when it passed the Employment Act of 1946. And full employment, as the term is used in the *Charter*, is defined in the words of that law.

Certain countries have been reluctant to enter into a freer trading system because they fear that such a system would make it more difficult for them to maintain their domestic employment programs. This might happen, for instance, if there were a persistent maladjustment in which one or more countries bought too little abroad and invested too little abroad in relation to their exports while others produced and sold too little abroad to balance their accounts. In such a situation, the *Charter* provides that all of the members concerned shall take action designed to correct the maladjustment. But the particular measures that are to be adopted by any member are for it alone to decide.

#### ECONOMIC DEVELOPMENT

Each member agrees to develop the resources of its own territory, to raise standards of productivity, and to cooperate with others, through international agencies, in promoting general economic development. Members who export facilities required for development agree to impose no unreasonable impediments to their exportation and members importing them agree to take no unreasonable action

injurious to the interests of those who provide them. Upon request, the ITO may advise any member concerning its plans and programs for development and aid the member in obtaining technical advice and assistance.

Each of the less developed countries will make its own decisions as to the industries it wishes to promote. Where public assistance is required, it will be free to subsidize new industries. And where it has not included a commodity in a trade agreement, it will be free to impose new tariffs or to raise existing ones. But in those cases in which a member desires to use some method of protection that it has promised not to use, that is, where it wishes to impose an import quota or a new mixing requirement, it must first obtain permission to do so. If the product in question is covered in a trade agreement, as most products are, consent must be obtained from other parties to the agreement. If the product is not covered in such an agreement, consent may be obtained directly from other members who would be affected or permission may be requested through the ITO. In two cases—industries established during the war and those processing native materials whose markets have been cut off by other countries—permission will be granted automatically for such a period as the Organization may specify. In all cases, it will be subject to limitations laid down in the *Charter* or imposed by the ITO. The *Charter* thus establishes a new principle in international affairs: that such restrictive measures as import quotas and mixing regulations are not to be employed, without international sanction, for the development of infant industries.

#### INTERNATIONAL INVESTMENT

The ITO has among its purposes encouragement of the international flow of private capital for productive investment. It is authorized to formulate and promote the adoption of agreements regarding the conduct, practices, and treatment of foreign investments. Members may enter into consultation regarding these matters and must participate in negotiations directed toward the conclusion of such agreements. They must provide adequate security for existing and future investments. They must not take unreasonable or unjustifiable action injurious to foreign investors; they must impose

no requirements as to the ownership of investments that are not just and no other requirements that are not reasonable. And if any member violates these rules, it may be deprived of concessions that have been granted it under trade agreements on the ground that a benefit promised to other members under the *Charter* has been nullified or impaired.

#### STRUCTURE OF THE ITO

The ITO will have, as the basis of its organization, a Conference of member states, each of them casting a single vote. Continuing administration of its affairs will be in the hands of an Executive Board of eighteen members, eight of whom will always represent the eight countries of chief economic importance, including the United States. Detailed operations will be delegated to a Director-General and a staff and to a small number of specialized commissions composed of technical experts. The Organization will be brought into relationship with the United Nations and, in financing its activities, the principles adopted by the United Nations will apply.

#### FUNCTIONS OF THE ITO

It will be the function of the ITO, through consultation among its members, to carry out the substantive provisions of the *Charter*. In addition to this, the agency will serve as an international center for information on matters affecting trade and as a source of advice and assistance to member governments. It will undertake to improve trade statistics. It will collect, analyze, and publish data on exports, imports, balances of payments, prices, subsidies, customs regulations, and national commercial policies; on treaties and other agreements affecting trade; on conventions, laws, and procedures relating to restrictive business practices; on commodity problems and the operation of commodity agreements. It will develop and recommend standards for the grading of commodities, for commercial terms, for documentation, for tariff valuation, and for the simplification of procedures that act as obstacles to trade. It may draft modern international conventions and standard provisions for commercial treaties and recommend the conclusion of new agreements or the modification or termination of old agreements on commercial policy, restric-

tive business practices, commodities, economic development, and international investment.

#### SETTLEMENT OF DIFFERENCES

Disputes arising between members of the Organization may be settled by direct consultation, by arbitration, or by the decision of the Executive Board. Members may appeal the rulings of the Board to the Conference and, on legal questions, the Organization or any of its members may request an advisory opinion from the International Court of Justice. The Organization will be bound by opinions rendered by the Court.

If the ITO determines, upon complaint, that a member has not lived up to its obligations under the *Charter*, it may release the complaining member or members from corresponding obligations so that the balance of interest between the parties to the dispute may be restored. The offending member may thus be faced with higher tariffs, quotas, or other restrictions on its trade. This prospective loss of benefits should serve as a powerful deterrent to non-compliance. But the ITO will have the power to place such limits on retaliation that it cannot degenerate into economic war.

#### RELATIONS WITH NON-MEMBERS

Members of the ITO must not seek preferential treatment from non-members or enter into arrangements with non-members which would prevent other members from obtaining equivalent benefits. They must not discriminate in favor of non-members and need not extend to them treatment as favorable as that which they accord to members. Any member, if it chooses, may thus, within the spirit of the *Charter*, confine most-favored-nation treatment to other members of the ITO. Such action, if taken by the major participants in world trade, would tend to make membership attractive and non-membership unattractive by confining benefits conferred by the *Charter* to countries that are willing to accept its obligations.

These, in summary, are the major provisions of the *Havana Charter*. In the chapters that follow, their substance, their qualifications, and their significance will be examined in greater detail.