

## CHAPTER 15

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### THE INTERNATIONAL TRADE ORGANIZATION

THE ITO is designed to take its place beside the FAO, the ILO, the Bank, and the Fund among the specialized agencies of the United Nations. Like these other agencies, however, it will derive its powers, not from the United Nations, but from those governments that voluntarily accept its basic instrument. The body of the *Charter* consists, in effect, of a series of agreements among those governments upon substantive questions relating to international trade in the fields of employment, economic development, commercial policy, restrictive business practices, and commodity problems. Its first chapter creates the International Trade Organization through which they pledge themselves to cooperate as members in achieving the purposes of these agreements. The following chapters outline the functions of the Organization. The concluding chapters establish its structure and provide for the settlement of differences. The *Charter*, as a whole, sets forth the constitution of the ITO.

The functions assigned to the Organization are important and numerous. It will collect, analyze, and publish information, make studies and issue reports, recommend changes in laws and procedures, promote international agreements, and render technical assistance to governments. It will encourage and facilitate consultations, call conferences, and sponsor negotiations between member states. It will administer the provisions of the *Charter*, making determinations when interests come into conflict, acting on requests for releases from obligations, and laying down conditions to limit such releases as it may grant. It will receive complaints, settle disputes between members, and permit withdrawal of concessions in

cases of violation so that a balance of interests may be maintained.

All of these functions were suggested in the *American Proposals*. As they were given further application in the course of the negotiations, the prospective work load of the Organization was increased. New commitments were introduced; responsibility for their enforcement was assigned to the ITO. Compromises were effected; their terms involved administrative burdens for the ITO. Exceptions were to be considered; action on applications and prescription of limitations became the duty of the ITO. Differences were expected to arise; provision was made for their settlement by the ITO. Problems remained unsolved; further study was required of the ITO. As the *Charter* grew in scope and in detail, the tasks assigned to the Organization became more numerous and difficult. As the agency is now envisaged, its responsibility will be a heavy one.

#### THE STRUCTURE OF THE ITO

Countries invited to attend the Havana conference may become original members of the ITO. Other countries may join when a majority of the members approves. The right of membership may be extended to those dependent territories that possess full autonomy over their external commercial relationships. Provision is also made for the possible inclusion of the Free Territory of Trieste, trust territories, and other special regimes established by the United Nations, and territories that are now under military occupation (71).

Final authority for the determination of the Organization's policies will rest in a Conference composed of delegates from all the member states. In the deliberations of this body, each member will have one vote (VII B). Responsibility for the execution of policies is placed in an Executive Board consisting of representatives of eighteen member states. On this Board also each member will have one vote. Eight of the Board's eighteen seats will always be assigned to the eight members of chief economic importance (VII C). The formula that is provided for the determination of economic importance makes it clear that these seats will go, if they join, to the United States, the United Kingdom, Canada, France, the Benelux customs union, India, China, and the Soviet Union. Four of the

remaining seats will go, at the first election, to the countries of Latin America and one each to the countries of Scandinavia, to those of the Near and Middle East, and to the Arab states (Annex L).

The detailed work of the Organization will be carried on, under the supervision of the Executive Board, by a Director General and a staff (VII E). As the need arises the Conference may also establish specialized commissions to deal with problems arising in such fields as economic development, international investment, commercial policy, restrictive business practices, and commodity problems (VII D). As members of these commissions, the Executive Board will select technical experts who are not to serve as representatives of governments. These bodies may not be in continuous session; their members may devote only a portion of their time to this activity. The commissions will prepare reports and make recommendations to the Executive Board for such action as it may deem appropriate.

The relation of the ITO to the United Nations will be defined in an agreement similar to those entered into by other specialized agencies (86). Its relations with the Food and Agriculture Organization and the International Monetary Fund are prescribed in some detail; its relations with these and other intergovernmental organizations are to be subject to agreements that will insure effective cooperation and the avoidance of unnecessary duplication in their activities. The ITO may also absorb or bring under its supervision certain existing organizations such as the International Customs Tariff Bureau whose operations fall within its competence (87).

Contributions for the support of the Organization are to be apportioned among its members in accordance with such principles as may be followed in financing the United Nations. If a maximum limit is placed upon the share that a member may be asked to contribute to the budget of the United Nations, this limit must also be applied to its contribution to the ITO (77-6). This provision, of course, has particular significance for the United States.

#### THE WORK OF THE ITO

First of all, the ITO will be an international center for information on matters affecting trade. It will undertake to improve trade

statistics. It will collect, analyze, and publish data on exports, imports, balances of payments, subsidies, and customs revenues, on customs regulations and their administration, and on other aspects of national commercial policies. It will prepare and publish a periodic review of the operation of commodity agreements. It will report annually on quantitative restrictions that may be employed to safeguard balances of payments and on such discrimination as may be permitted in their use. As a source of information on all of these matters, it will be of inestimable value to the business community.

Second, the ITO will be a source of advice and assistance to member governments. It will develop common standards for the classification and grading of commodities, for tariff valuation, for customs nomenclature and documentation, and for the simplification of procedures that act as obstacles to trade. It will make studies of laws and regulations relating to restrictive business practices. It will draft modern international conventions and standard provisions for commercial treaties dealing with such matters as commercial arbitration, the avoidance of double taxation, the protection of foreign nationals, the treatment of international investments, and the conditions of doing business abroad. It may recommend the modification or termination of old agreements and promote the conclusion of new agreements in any of these fields. Upon request, the Organization may also furnish advice with respect to programs of economic development and assist members in obtaining such advice.

Third, the ITO will encourage and facilitate intergovernmental consultation on all matters affecting trade. If one country should complain that it has been injured by restrictions imposed by another, the Organization will invite both parties to enter into consultation and will lend its good offices to effect a settlement of the dispute. It will arrange for similar consultations with respect to restrictive business practices. It will convene study groups and summon conferences for the investigation and solution of problems affecting international trade in primary commodities. Upon request, it will sponsor negotiations directed toward possible modification of the terms of existing trade agreements. If pronounced imbalance persists in international trade, or if depression threatens to spread around the world, it will initiate consultations for the purpose of

formulating a program of corrective action. Any program developed through such consultations will not be one which is dictated by the Organization, but one to which its members may voluntarily agree.

Fourth, one of the most important functions of the ITO will be that of determining whether exceptions are to be granted, in individual cases, to the agreed rules that limit the freedom of nations to employ certain restrictive or discriminatory measures in controlling their trade. Such exceptions may be requested both for existing measures and for projected ones. They may involve the imposition of quotas or mixing regulations, the extension of preferences, the establishment of a customs union, or the control of international trade in primary commodities. They may have the purpose of promoting economic development, creating wider trading areas, safeguarding monetary reserves, or protecting small producers from the hardship caused by burdensome surpluses and widespread unemployment. The information required for action upon such requests will be collected by the Organization's staff. This information may be referred to a technical commission for study and advice. But such exceptions as are granted must be voted by governments belonging to the Executive Board of the Organization or to its Conference.

In passing on applications for exceptions, numerous determinations will be required. What countries have a substantial interest in the commodity concerned? What members would be materially affected by the action that is proposed? Have the conditions laid down in the *Charter* been fulfilled? Have the criteria that are prescribed been satisfied? Would denial of an application seriously prejudice the interests of the applicant? Would approval jeopardize the position of another member in world trade? In answering such questions as these, the Organization will function, in effect, as a court.

As a fifth function, the ITO has been granted wide powers to lay down conditions to govern a release. It may circumscribe its permission to impose an import quota or a mixing regulation for the development of an infant industry and may fix the time during which these devices may be used. It may prescribe the extent, intensity, and duration of such quotas as it may approve for the protection of a member's balance of payments. It may set limits within which such a member will be permitted to discriminate. It

may require that a plan looking toward the formation of a customs union be modified. It may condition its approval of new preferences on the reduction of duties to other countries, the establishment of certain margins, and the award of compensation to members who would suffer injury.

These powers may be exercised only when members apply for exemption from the *Charter's* rules. In most other cases, the ITO may request action; it may not prescribe it. There are but two exceptions to this general rule. If the Organization finds that a member is not conforming to the criteria that limit discrimination in the use of import quotas, it may order the member to discontinue such discrimination within sixty days (Annex K). And if it finds that conditions no longer justify discrimination, in a particular case or in the administration of a quota system as a whole, it may require its abandonment within sixty days (23-1*h*). It is only in this connection that authority to issue such an order is conferred.

In addition to the functions that fall within these categories, enforcement of the *Charter's* provisions gives the Organization certain other duties to perform. It will conduct investigations and hold hearings relating to restrictive business practices, recommend remedial action, and request members to report on such action as they may take. It will ask for similar reports on the progress made in establishing standards of customs valuation and simplifying customs formalities. It will determine whether procedures established to review the decisions of customs officials are adequate to afford protection against an arbitrary administration of customs laws. It will decide whether most-favored-nation treatment must be extended to a member on the ground that it has been unreasonably excluded from participation in the *General Agreement on Tariffs and Trade*. It will set limits on the withdrawal of tariff concessions from a member who has suspended similar concessions on the ground that domestic producers are threatened with serious injury. In general, it will determine whether nations have lived up to their obligations under the *Charter* and seek to insure that compliance is obtained.

These tasks are more numerous and more difficult than those assigned to any other intergovernmental agency. It is unlikely that they could be performed effectively if the Organization were to be

flooded with requests for action in its early years. At the outset, a measure of forbearance will be required. In the long run, however, the load of work should not be unmanageable; greater responsibilities have been assumed successfully by agencies of national governments. The undertaking, in any case, is so important that solutions for problems of administration must be found.

#### THE SETTLEMENT OF DIFFERENCES

If a member considers that any benefit promised it by the *Charter* is being nullified or impaired as a result of action taken by another member, it must attempt to settle the difference through direct consultation. If they wish to do so, the parties to the dispute may submit it to arbitration on terms agreeable to them (93). If these procedures do not effect a settlement, the case may be taken to the Executive Board of the ITO.

The Executive Board, after investigating the matter, may dismiss the complaint, suggest further consultation, refer the case to arbitration, or make appropriate recommendations to the members concerned. If these steps are unavailing and if the Board finds the case to be serious and the complaint to be valid, it may release the complaining member from obligations assumed toward the other member under the *Charter* or from concessions made to it in a trade agreement. Any such release, however, must be limited in extent to that required to compensate the complaining member for its loss of benefits (94).

If either member so requests, the case must be referred to the Conference for review. The Conference may confirm, modify, or reverse the decision of the Executive Board. It may recommend further consultation, arbitration, or corrective action. And, in serious cases, it may release the complaining member, on a compensatory basis, from obligations toward the other member or concessions granted it (95).

Such a release is regarded as a method of restoring a balance of benefits and obligations that, for any reason, may have been disturbed. It is nowhere described as a penalty to be imposed on members who may violate their obligations or as a sanction to insure that these obligations will be observed. But even though it is not so regarded, it will operate in fact as a sanction and a penalty. The risk

that tariff concessions will be withdrawn and most-favored-nation treatment denied is one that is not lightly to be assumed.

On economic and financial questions arising in such cases, the ITO will have the final word. On legal questions, it may seek an advisory opinion from the International Court of Justice. It must ask for such an opinion if any member so requests. The Organization will be bound by any opinion rendered by the Court and, if necessary, will modify its own decisions accordingly (96). A basis is thus provided for the development of a body of international law to govern trade relationships.

#### MISCELLANEOUS PROVISIONS

The *Charter* is to enter into force if twenty of the countries represented at the Havana conference deposit instruments of acceptance with the United Nations before September 30, 1949. It may be brought into force at any later date by agreement among the governments that have deposited such instruments (103).

The *Charter* may be amended by a two-thirds vote of the members of the Conference. No amendment that changes the obligations of members will become effective for any member, however, until it has been accepted by that member or by two-thirds of the Organization's membership. The Conference may expel any member that declines to accept an amendment that has been thus approved or it may establish conditions under which such a member may remain within the ITO (100).

The provisions of the *Charter* must be reviewed by a special session of the Conference five years after it has entered into force (101). This requirement, modeled after one contained in the Charter of the United Nations, is designed to force a reexamination of these provisions when the period of postwar reconstruction shall have ended and conditions conducive to multilateralism shall have been restored.

Any member may withdraw from the Organization, on sixty days' notice, when the *Charter* has been in force for three years. The existence of the Organization may be terminated by a three-fourths vote of its membership (102).