

## CHAPTER 4

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### NEGOTIATING THE CHARTER

THE establishment of an international trade organization was first proposed in a resolution introduced in the House of Representatives by Cordell Hull, then a member of Congress, during the First World War. The idea was further developed by Huston Thompson, then a member of the Federal Trade Commission, in an address before the American Society of International Law in 1919. It was advanced again in a report presented to the World Economic Conference by the International Chamber of Commerce in 1927. It appeared in one of the resolutions adopted by the Seventh International Conference of American States at Montevideo in 1933. It was brought forward once more by a committee of American experts reporting to a National Peace Conference in 1938. Similar proposals were made by the Postwar Committee of the National Association of Manufacturers in December 1943, by the American Federation of Labor in April 1944, and by an International Business Conference meeting at Rye, New York, in November 1944.

The negotiations that culminated in the completion of the *Havana Charter* date from the publication of the *Atlantic Charter* on August 12, 1941. In that document, the President of the United States and the Prime Minister of Great Britain declared it to be the intention of their governments to "endeavor, with due respect for their existing obligations, to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity." This statement of purpose was adopted by all of the United Nations. Four months after it was published, the United States entered the Second World War.

A *Mutual-Aid Agreement*, dealing with lend-lease relationships, was signed by the United States and the United Kingdom on February 23, 1942. In Article VII of that *Agreement*, the two governments expressed their determination that the terms of lend-lease settlement "shall not be such as to burden commerce between the two countries, but to promote mutually advantageous relations between them and the betterment of world-wide economic relations. To that end, they shall include provision for agreed action by the United States of America and the United Kingdom, open to participation by all other countries of like mind, directed to the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods, which are the material foundations of the liberty and welfare of all peoples; to the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers. . . ." This article was contained in similar agreements with thirteen other governments.

#### THE YEARS OF PREPARATION

During the next three years, plans were drawn up within the government of the United States and conversations were initiated with other governments looking toward the establishment of international organizations to deal with problems of food and agriculture, to stabilize currencies, to provide credits for reconstruction and development, and to reduce barriers to trade. As a part of this program, proposals relating to an international trade organization were developed by a series of interdepartmental and interagency committees meeting continuously in Washington from the spring of 1943 to the summer of 1945 under the general chairmanship, successively, of Myron C. Taylor, Dean Acheson, and William L. Clayton, then Assistant Secretaries of State. These proposals were explored in a number of meetings, known as the "Article VII conversations," with a group of British officials in the autumn of 1943, with Canadian officials in the early months of 1944, and with each group, in London and in Ottawa, during the summer of 1945. In the work of the interdepartmental committees and in the Article VII conversations, the substance of the American *Proposals* began to take shape.

The interdependence of the programs that were developed in each area of economic cooperation was clearly recognized. The United Nations Conference on Food and Agriculture, meeting in Hot Springs in May 1943, recommended that governments agree "to reduce barriers of every kind to international trade and to eliminate all forms of discriminatory restriction thereon as effectively and as rapidly as possible." The International Labor Conference, meeting in Philadelphia in May 1944, recognized "the great contribution which the international exchange of goods and services can make to higher living standards and to high levels of employment" and recommended vigorous action to promote the expansion of international trade. The United Nations Monetary and Financial Conference, meeting at Bretton Woods in July of the same year, included among the purposes of the International Monetary Fund and the International Bank for Reconstruction and Development, promotion of the expansion and balanced growth of international trade, and the Conference recommended to participating governments that "they seek, with a view to creating, in the field of international economic relations, conditions necessary for the attainment of the purposes of the Fund and of the broader primary objectives of economic policy, to reach agreement as soon as possible on ways and means whereby they may best reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations. . . ."

The final draft of the American *Proposals for the Expansion of World Trade and Employment* was completed in the course of the negotiations that led up to the *Anglo-American Financial Agreement* and the two documents were published on December 6, 1945. They were accompanied by an understanding on commercial policy in which the United Kingdom expressed its "full agreement on all important points" in the *Proposals*, accepted them as a basis for international discussion, and promised to use its best endeavors to bring such discussions to a successful conclusion. In a series of notes exchanged with the United States between October 1945 and December 1946, the governments of Belgium, Greece, Poland, France, Turkey, Czechoslovakia, and the Netherlands endorsed the purposes of the *Proposals* and agreed to avoid action that would prejudice the outcome of the projected negotiations.

Copies of the *Proposals* were forwarded to every other country in the world. At the same time, the United States extended to fifteen other countries (the United Kingdom, the Soviet Union, France, and China; Canada, Australia, New Zealand, South Africa, and India; the Netherlands, Belgium, Luxembourg, and Czechoslovakia; Brazil and Cuba) invitations to participate in definitive negotiations for the reduction of tariffs and other barriers to trade. Action by the United States in these negotiations was to be taken within the limits of the authority conferred by Congress when it amended and renewed the Trade Agreements Act in 1945. The invitations extended by the United States were accepted by fourteen countries; the Soviet Union has never replied.

At the first meeting of the Economic and Social Council of the United Nations, held in London during the early months of 1946, the United States introduced a resolution providing for the calling of an International Conference on Trade and Employment and the appointment of a Preparatory Committee to elaborate its agenda. The subjects suggested for inclusion in the agenda, item by item, were those contained in the American *Proposals*. The resolution was adopted without a dissenting vote. The United States and the countries which it had invited to participate in tariff negotiations were appointed to the Preparatory Committee. To this group the Council added Norway, Chile, and Lebanon. The United States thereupon invited these three countries to join the tariff-negotiating group.

During the spring of 1946, the interdepartmental committees that had developed the American *Proposals* prepared a *Suggested Charter for an International Trade Organization*. This document was an elaboration of the *Proposals*; but, since it was purely an American draft, it did not in any way commit those countries that had endorsed the *Proposals*. The *Suggested Charter* was circulated to governments belonging to the Preparatory Committee and discussed with them in conversations held in their capitals during the summer of 1946. It was presented to the American people as a basis for public discussion in September of that year.

The first meeting of the Preparatory Committee was held in London from October 15 to November 26, 1946, with all of its members except the Soviet Union in attendance. Despite the initial reluctance

of Australia to go beyond exploratory conversations and the reluctance of the United Kingdom and France to give formal recognition to the *Suggested Charter*, the Committee adopted an agenda which duplicated the outline of the American draft and voted to accept the text of that draft as the basis for its deliberations.

## THE ISSUES AT LONDON

The central issue at London was raised by the proposal of the United States to outlaw the use of quantitative restrictions as a matter of principle, permitting them only with international approval in exceptional cases and requiring that they be administered, in such cases, without discrimination. The principle was generally accepted; the extent and character of the exceptions, however, were a matter of debate. Easier escapes were advocated to enable nations to meet balance-of-payments difficulties, to maintain full employment, and to promote economic development. The balance-of-payments issue was the principal concern of the United Kingdom and France. Though technical in character, it was clear cut and it was finally compromised by a textual revision that retained the intention of the American draft. The employment issue and the industrialization issue were championed by Australia; here the attack upon the rule condemning import quotas was oblique.

The Australians argued that the American draft was negative rather than affirmative, consisting of prohibitions rather than positive measures to expand trade. With the support of the British, they sought to emphasize the fundamental importance of maintaining full employment. But neither government proposed any positive international measure directed toward this end. Instead, they argued that any member of the trade organization should be permitted to restrict imports in any way it chose whenever another member's demand for its products should decline sharply or whenever another member, over a long period of time, should buy and invest abroad far less than it sold. They were concerned, in short, with the possible consequences of an American depression or the persistence of imbalance in the trade of the United States. It was finally recognized, however, that financial difficulties would arise in either case and that the balance-of-payments provisions of the *Charter* would therefore

apply. The only affirmative provision with respect to the maintenance of employment adopted at London made it a matter of domestic policy; this was the proposal that had originally been made by the United States.

Australia also took the lead in presenting the case for industrialization, and here it was supported by India, China, Lebanon, Brazil, and Chile. But here, too, affirmative proposals were wanting. The real concern was that freedom to promote industrialization by imposing quotas on imports be retained. This appeared, for a time, to present an issue on which negotiations might break down. The controversy was resolved, however, when the United States proposed for inclusion in the *Charter* a new chapter on economic development, including an article under which a member of the trade organization might obtain permission, in a particular case, to employ an import quota in promoting the development of a new industry.

In the debates on restrictive business practices, the anticartel forces were led by Canada and the United States; their principal opponents were the United Kingdom, Belgium, and the Netherlands. The chapter that was finally adopted followed the outline contained in the American *Proposals*. The United States had inserted in the *Suggested Charter* a presumption that certain practices were restrictive in their effects; this was dropped. The chapter was strengthened, however, by including private monopolies and state-trading enterprises within its scope.

On commodity policy, the Committee was confronted with an effort made within the FAO to separate agricultural commodities from other commodities and commodity policy from trade policy by setting up a comprehensive buffer-stock, surplus-disposal, and relief operation under a World Food Board. It was the American position that a common policy should apply to agricultural and non-agricultural commodities and that commodity policy should be kept in relation with commercial policy under the international trade organization; this position was accorded general support. A British effort to obtain specific endorsement for buffer stocks was defeated. The chapter that finally emerged retained the safeguards proposed by the United States.

Save for the addition of a chapter on economic development, the

document completed at London followed the pattern of the American draft, incorporating the proposals made respecting commercial policy, cartels, commodities, employment, and an international trade organization without changes of major significance. On certain articles, dealing with indirect forms of protection, voting power in the organization, and relations with non-members, the Committee did not complete its work. It therefore appointed a Drafting Committee to prepare proposals on the first two of these matters and to edit the entire text. This Committee, meeting in Lake Success from January 20 to February 25, 1947, produced a third edition of the *Charter*, known as the "New York draft."

While the Preparatory Committee was meeting in London, the Acting Secretary of State, in accordance with procedures adopted under the Trade Agreements Act, gave notice of intention to enter into tariff negotiations with the members of the group. Upon the motion of the United States, the Committee agreed that these negotiations should be held at Geneva at the time of its second meeting in the spring and summer of 1947 and it approved a memorandum outlining the negotiating procedures that were to be employed.

#### PREPARATIONS FOR GENEVA

Public hearings on the tariff list were opened before the Interdepartmental Committee on Reciprocity Information in Washington on January 13, 1947. The statements presented in these hearings were then examined by the Interdepartmental Committee on Trade Agreements, together with studies made by the Tariff Commission and other relevant materials. On the basis of the recommendations made by this Committee, the President then set the limits within which the United States would be permitted to negotiate. At the same time, in accordance with proposals made by Senators Vandenberg and Millikin, the President issued an *Executive Order* requiring the inclusion of an escape clause in future trade agreements and establishing certain procedures to be followed in their negotiation and administration.

The London draft of the *Charter* was circulated widely throughout the United States and informal public hearings on the draft were held before the Executive Committee on Economic Foreign Policy

in Washington, New York, Boston, Chicago, New Orleans, Denver, and San Francisco during February and March of 1947. Some two hundred representatives of business, agricultural, labor, and civic organizations appeared at these hearings. The great majority of them expressed their general approval of the purposes of the *Charter* and their support for the project of establishing a trade organization. Many of them made specific suggestions for the improvement of the draft. Detailed analyses of the *Charter* were also made by the National Foreign Trade Council, the National Association of Manufacturers, the United States Chamber of Commerce, and the United States Associates of the International Chamber of Commerce, and their recommendations were discussed in a series of meetings with the Department of State. The New York draft of the *Charter* was the subject of thorough hearings before the Senate Committee on Finance under the chairmanship of Senator Millikin during March and April 1947; defects were pointed out and suggestions for improvement were made.

All of these recommendations and suggestions were brought together and studied by the Executive Committee and many of them were incorporated in the instructions which the American delegation carried to the second meeting of the Preparatory Committee. This meeting convened in Geneva on April 10, 1947.

#### THE ISSUES AT GENEVA

At Geneva, between early May and late August, the text of the *Charter* was reorganized, obscure passages were clarified, inconsistencies were removed, and the appearance of the document was generally improved. Almost without exception, the changes that had been suggested in the United States were accepted and the draft was amended accordingly. Of particular importance was the inclusion of two new articles, one limiting the freedom of nations to discriminate against foreign motion-picture films and the other dealing with the treatment of private foreign investment. The latter article, while unacceptable in substance, did serve to bring the subject of foreign investment within the scope of the *Charter*. On only one point did the United States suffer a reversal: at the instance of Canada, the Committee adopted an amendment forbidding the use



of export subsidies without the prior approval of the trade organization. On this point the position of the United States was formally reserved.

The major issues of the meeting again centered in the character of the two principal exceptions to the rule condemning import quotas: the articles dealing with balance-of-payments difficulties and with the promotion of economic development. The United Kingdom and France sought greater latitude for discrimination in the administration of quota systems and their desires were met, in part, by the substitution of a text permitting such discrimination if fixed criteria were satisfied. At the same time, the safeguards surrounding the balance-of-payments exception were strengthened, at the instance of the United States, by the adoption of an amendment requiring the trade organization, in deciding whether a member were in such financial difficulty that the exception could be used, to accept the determination of the International Monetary Fund. This amendment had particular significance because of the heavy vote accorded the United States in the decisions of the Fund.

Under the leadership of India, the battle for freedom to promote industrialization through the use of import quotas and other restrictive devices was resumed. This time, however, the attack was centered on provisions requiring undeveloped countries, before employing such devices, to obtain the prior approval of the organization. It was proposed, as an alternative, that freedom to impose restrictions in the name of economic development be restored and that the organization be given power subsequently to examine the measures adopted and to order their discontinuance. The difference on this issue was again compromised, this time by the adoption of amendments speeding up consideration of applications for exemption, preventing the postponement of decisions by obstructionist delays, and creating a presumption in favor of an affirmative decision where certain conditions were fulfilled. But the principle of prior approval was retained.

On three issues the Committee took no final stand. With respect to voting power in the trade organization, the composition of its executive board, and relations between members and non-members, it prepared alternative drafts for consideration by the world confer-

ence that was to meet at Havana in the fall. The Committee completed its work on the *Charter* on August 22, 1947.

#### THE "GATT"

Twenty-three countries participated in the tariff negotiations that accompanied the work on the *Charter* at Geneva. The Soviet Union again failed to appear. The eighteen other members of the Preparatory Committee were joined, in these negotiations, by Syria as a member of a customs union with Lebanon; by Burma, Ceylon, and Southern Rhodesia as autonomous customs territories within the British Commonwealth; and by Pakistan, whose independence was declared while the meetings were in progress. The bargaining proceeded on a product-by-product basis between pairs of countries and was confined to products for which one of the parties was the other's principal supplier. The concessions thus obtained, however, were generalized to every member of the group. Among twenty-three countries, more than 170 of these bilateral talks were possible. In some cases, however, the volume of trade was insignificant; 123 bilateral negotiations actually occurred. The United States was a party to twenty-two of them; 101 took place among the other members of the group. The simultaneous staging of these negotiations thus produced a round of concessions that otherwise would never have been made. Some fifty thousand items were considered in more than a thousand meetings held over a period of six months. The final results of the 123 negotiations were incorporated in a single document, the *General Agreement on Tariffs and Trade*, which was completed on October 30, 1947.

The parties to the *General Agreement* carried on three-quarters of the world's trade before the war; they handled a much larger fraction in 1947. The *Agreement* covered two-thirds of the trade among the members of the group. It provided for substantial reductions in duties on some products, the binding of low rates of duty on others, and the binding of free entry on still others. It reduced preferences affecting a large part of the trade of the British Commonwealth and eliminated preferences on a long list of products imported by the various countries of the Commonwealth. It was accompanied by an exchange of notes between Canada and the United Kingdom

in which each country released the other from its contractual obligations with respect to remaining preferences, thus removing an obstacle to their further elimination. The *GATT* provided, moreover, that no new preferences could be created and no existing preferences increased.

All of these concessions were safeguarded by general provisions designed to prevent participating countries from canceling them out by resorting to other forms of restriction or discrimination. These provisions, paralleling the rules of the *Charter*, covered restrictive methods of customs administration, discriminatory internal taxes and regulations, quota systems and exchange controls, and the operation of state-trading enterprises. They insured the application of the principle of most-favored-nation treatment to a major part of the world's trade.

The *General Agreement* was without precedent in history. It included more countries, covered more trade, involved more extensive action, and represented a wider consensus on commercial policy than any agreement that had ever been concluded in the past. It afforded a hopeful contrast to the record of failure that had characterized the years between the two world wars. The announcement of its provisions, on November 18, 1947, created an atmosphere that was favorable to the success of the United Nations Conference on Trade and Employment which opened in Havana on November 21st.

#### THE ISSUES AT HAVANA

Fifty-six nations sent delegations to Havana; others were represented by observers; the Soviet Union did not attend. The conference opened with a chorus of denunciation in which the representatives of thirty undeveloped nations presented variations on a single theme: the Geneva draft was one-sided; it served the interests of the great industrial powers; it held out no hope for the development of backward states. Some eight hundred amendments were presented, among them as many as two hundred that would have destroyed the very foundations of the enterprise. Almost every specific commitment in the document was challenged. Proposals were made for many broad escapes. Quantities of irrelevant material were introduced. There were attempts to confine the new trade organization

to purely advisory functions. There were provisions designed to make it difficult, if not impossible, to bring the *Charter* into force. With this beginning, the conference went to work.

On most matters, though the debates were vigorous, agreement without significant compromise was achieved. The articles relating to invisible tariffs, state trading, restrictive business practices, commodity agreements, and employment retained the principles set forth in the Geneva draft. The objectionable provisions of the article on foreign investment were dropped. The requirement of prior approval for export subsidies was removed. Criteria governing the gradual development of customs unions and free trade areas were elaborated in some detail. The issue concerning voting power in the trade organization was settled on the basis of one-country, one-vote; on certain questions, however, a two-thirds majority was required, and the finality of the International Monetary Fund's determination with respect to the use of the balance-of-payments escape clause was retained. Countries of major economic importance, including the United States, were given permanent seats on the organization's executive board. The problem of relations with non-members was settled by a formula which did not require members to penalize non-members but gave its sanction to the adoption of such a policy.

Greater freedom to discriminate in the administration of quota systems by countries in financial difficulties was again sought by the nations of Western Europe. This issue, which was bitterly contested over many weeks, was finally decided by affording countries adhering to the *GATT* the privilege of choosing, in effect, between the provisions of the London and Geneva drafts. The resulting article bears the marks of a hard-fought compromise. Latitude for discrimination is now confined, however, to a transition period that can be terminated by the International Monetary Fund.

The most violent controversies at the conference and the most protracted ones were those evoked by issues raised in the name of economic development. Under the leadership, this time, of several of the Latin American states, the undeveloped countries attacked the Geneva draft at several points. They challenged the commitment to negotiate for the reduction of tariffs. They objected to a provision which enabled parties to the *GATT* to determine whether this com-

mitment had been fulfilled. They sought freedom to set up new preferential systems, impose import quotas, and employ other restrictive devices without prior approval. And they proposed that a semi-autonomous economic development committee be established within the trade organization for the purpose of facilitating these escapes.

These issues were resolved, following a prolonged deadlock, by a series of compromises. The rules that had governed the tariff negotiations at Geneva were spelled out in the *Charter* and the commitment to negotiate was retained. Countries denied admission to the *GATT* were accorded the right to appeal this decision to the trade organization. Parties to the *GATT*, on the other hand, were permitted, after two years, to confine most-favored-nation treatment to its members, thus putting pressure on other countries to make the concessions that would enable them to join. The proposed committee on economic development was dropped. Provision was made for the promotion of economic development by the establishment of new preferences between members of the organization, but only if both of the countries involved should satisfy a number of criteria and if the organization should approve. Alternative methods of obtaining permission to use import quotas to develop new industries were elaborated in great detail and in two limited cases (industries established during the war and those fabricating raw materials deprived of markets by the action of other governments) permission was made automatic, but its duration was kept under control. The principle of prior approval was again preserved.

#### THE SIGNIFICANCE OF HAVANA

The *Final Act* of the Havana conference was signed by fifty-three countries on March 24, 1948. Argentina and Poland refused to sign; the transmission of Turkey's authorization was delayed. The *Final Act* authenticated the text of the *Havana Charter*. It did not commit governments to ratify.

The *Charter* is the most comprehensive international economic agreement in history. Its provisions cover most of the problems of commercial relations in minute detail. The commitments they contain are fundamental in importance; they are more extensive than those assumed in any previous agreement. As it stands today, the

*Charter* is the product of more than three years of careful preparation in the United States and almost eighteen months of continuous international negotiation. No such document has ever had fuller consideration or been written with greater care. The importance of its provisions and the vast amount of labor that has gone into them justify patient analysis and objective appraisal. It is to this task that we now turn.