

SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE  
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENTCOMMISSION A

Summary Record of the Fourteenth Meeting held on Thursday,  
19 June 1947 at 2.30 p.m. in the Palais des Nations, Geneva.

CHAIRMAN: Mr. Max SUTENS (Belgium)

The CHAIRMAN introduced document W.198 and opened discussion  
on Section E of Chapter V dealing with "State-trading".

Article 31

Dr. AUGENTHALER (Czechoslovakia) stated that state-trading  
did not oppose free trade, and thought that it was difficult to  
set up at present precise provisions for state-trading which so  
far had not found its definite forms and which operated in abnormal  
circumstances. The issue was obscured by considerations which  
had nothing to do with state-trading as such but which were inherent  
in the present shortage of commodities, hard currencies, etc.

He had no definite feeling about Article 33 but thought that  
Articles 31 and 32 were intended to operate only when the special  
difficulties of the post-war period disappeared and international  
trade functioned under normal conditions.

There are three groups of state-trading enterprises in  
Czechoslovakia: 1. Old monopolies established for revenue, health,  
and security purposes for which no new provisions are required;  
2. enterprises intended to maintain stable prices for primary  
commodities, mainly foodstuffs, and to stabilize farmers' income.  
The Czechoslovak government wished to plan agricultural production  
in accordance with the recommendations of the FAO; and 3. State  
enterprises which would fall into the category of this Section,  
mostly nationalized industrial enterprises such as mines and large

key industries which acted in exactly the same way as private enterprises. The state had no control over their commercial activities, but they were components of an economic plan. Their task was to inform the planning centre about their production possibilities. Since not all raw materials could be supplied the economic planning had to cut down materials for non-essential goods. The raw materials actually acquired were turned over to the industries and from that moment on the government did not interfere with their commercial activities, nor was there any control of exports. As to imports, these were controlled for balance of payments reasons.

There was nothing which would distinguish in this respect state-trading enterprises from private enterprises at this moment, but in a few years, when the reconstruction period was over, state-trading may be more clearly defined. It was therefore his opinion that rules for state-trading in international trade should be worked out in the light of experiences gained during the period of transition.

He thought that there were points in common in his own and the United States' amendments and he therefore suggested that these two Delegations might have, with the concurrence of the Commission, an opportunity to discuss a possible common amendment.

Mr. John W. EVANS (United States) hoped that the Czechoslovak and United States might elaborate a text of Article 31, seeing that the approach of the two Delegations was quite similar though not without differences in detail.

In explaining the United States amendment (W.195) Mr. Evans stated that the new text was intended to replace the former somewhat cumbersome wording.

The reference to the most-favoured-nation treatment was introduced in order to allay the doubt that "commercial principles" meant that exactly the same price would have to exist in different markets. The amendment which introduced a new paragraph (b) was intended to clarify the meaning of the New York text.

Mr. MUNOZ (Chile) stated that if the interpretation of sub-paragraph (b) in the United States amendment was that state-trading enterprises were to be guided only by commercial considerations he had no objection to this amendment. He also understood that this amendment eliminated the possible implication that the most-favoured-nation treatment should require the state enterprise to fix identical prices for buyers and sellers in different markets. He wished that the final report of the Preparatory Committee should put on record that the interpretation set out in the New York Report, page 27, sub-paragraph (c) was accepted by the Committee.

Mr. SHACKLE (United Kingdom) supported the suggestion of the Chilean Delegate to put on record:

"That the charging by a state enterprise of different prices for its sales of a product in different markets, domestic or foreign, is not precluded by the provisions of Article 31, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets."

He suggested that the meaning of the wording "through public offers or bids or otherwise, shall afford the enterprises of all Members full opportunity to compete for participation in such purchases or sales" was too narrow and suggested the following rewording: "and shall afford the enterprises of all Members fair opportunity to participate in such purchases and sales."

Dr. CHANG (China) objected to the second sentence in the New York draft, reading "To this end such enterprise shall, ... be influenced solely by commercial considerations, ...". This text would not cover international loans which were essential for his country.

As to the United States amendment Dr. Chang thought that the introduction of the words "general most-favoured-nation treatment" might lead to confusion and wondered if the wording in the New York text was not sufficient. He therefore favoured the New York text in that respect.

He was of the opinion that the United States amendment did not cover the cases in which international loans were involved.

He also contended that the situation might be different in cases when a certain product was urgently needed or disposed of in a short time, or when the policy of the country was concerned.

He therefore could not accept the United States amendment.

Mr. John W. EVANS (United States) in replying to the question of tied loans raised by the Chinese Delegate, quoted from the New York Report, page 17, Section E, item (v), as follows:

"The view was generally held that a country receiving a loan would be free to take this loan into account as a 'commercial consideration' when purchasing its requirements abroad. The position of countries making such 'tied loans' was another question."

It should be understood that "public offers or bids" were not the only means whereby a Member could comply with this general provision; this was indicated in the words "or otherwise".

Mr. IGONET (France) supported the views expressed by the Delegate for Czechoslovakia, and wished that during the period of transition the provisions of Articles 31 and 32 should not apply and that exceptions to these provisions should be stated in the Charter.

State enterprises should not carry any burdens which were not imposed on private enterprises; the latter were allowed to take into consideration loans and provisions for long range commercial policy and that should also apply to state enterprises.

Mr. DEUTSCH (Canada) said that though his Delegation was in sympathy with the difficulties of certain countries during the transitional period, he thought that the articles dealing with balance of payments difficulties took care also of state enterprises. If import programmes were necessary they could be carried out under the provisions relating to balance of payments. Therefore, there was no necessity to set up special provisions for the state-trading countries.

He agreed with the Delegate for Czechoslovakia that the Committee should not formulate precise rules at this stage but try to learn from experience. However, he expressed apprehension lest state-trading enterprises should be allowed such greater freedom and scope that they assumed a dangerous position in relation to countries organized on the basis of private enterprises. Provisions regulating the operations of state trading should in general not be more loose or provide wider scope than those set up for private enterprises.

If certain general principles and rules were not applied to state-trading the Charter would be seriously out of balance.

Mr. RODRIGUES (Brazil) wished that the words "through public offers or bids or otherwise" in the United States amendment

should be deleted, because he considered this provision unworkable.

Mr. CHANG (China) referred again to tied loans and said that in spite of the language quoted from the London Report he did not think that the present expression "commercial considerations" covered the cases of loan arrangements. He therefore wished a clarification of the proposed text.

Dr. AUGENTHALEF (Czechoslovakia) explained to the Delegate of Canada that he did not wish that no rules at all should be set up, but that too many detailed rules were impracticable at this time when the real functioning of state enterprises was not yet clear and when the position was obscured by the present difficulties of balance of payments. In a period when restrictions on exports or imports for reasons of balance of payments were general there was no practical difference between state-trading and private enterprises, but differences might come to light later.

The Czechoslovak law requires state enterprises to operate according to commercial considerations. They act as private enterprises and therefore they should not be submitted to discriminating rules. Since a private enterprise would not be obliged to state why, where and at what price a commercial operation had been concluded, it should not be mandatory on state-trading enterprises to disclose to a competitor such details. That would be discrimination against state enterprises.

M. IGONET (France) supported the views of the Czechoslovak Delegate and quoted examples of the necessity for a state-trading enterprise to operate strictly according to commercial considerations just as it might be in the case of private enterprise.

Mr. DEUTSCH (Canada) called attention to the fact that the expression "commercial considerations" should not be defined in narrow terms. These words did not mean simply the lowest price but referred to other legitimate considerations which the enterprise would be entitled to take into account; they did not simply mean to buy and sell at lowest or highest prices, respectively.

He stated again that in his opinion these Articles should not contain provisions for balance of payments difficulties. Since these were taken care of in other Articles it would confuse the issue if they were put in two places of the Charter.

Mr. WEBB (New Zealand) did not think that the proposed alteration of the title of Article 31 was appropriate. He would prefer the title "The Administration of State-Trading Enterprises".

He questioned if the interpretation that a state-trading enterprise might buy and sell at best prices was consistent with what was generally regarded as the most-favoured-nation principle.

The United States amendment used the expression "such enterprises shall", but Mr. Webb thought that here not the enterprise but the state was meant. He did not agree with the deletion of the words "having due regard to any differential customs treatment maintained consistently with the other provisions of this Charter", nor with the inclusion of the words "through public offers or bids".

He supported the opinion of the Czechoslovak Delegate that this was not the proper moment for precise legislation in respect of state trading.

Mr. EVANS (United States) in reply to the objections of the Delegate for New Zealand, stated that he did not feel

strongly about the change of the title of Article 31 and would go back to the original wording of the New York draft.

The words "having due regard to any differential customs treatment ..." were omitted because the United States Delegation was of the opinion that this was covered by the concept of "commercial considerations".

With regard to the expression "such enterprises shall", Mr. Evans believed that this paragraph might be recast. He did not consider that either the New York draft or the United States amendment went too far towards legislating for state enterprises.

The contention expressed by some Delegates that the Charter imposed more rigid requirements on state-trading than on private trading was based on a misunderstanding of the purposes of Section E. Free marketing countries were subjected to obligations of Chapter V with respect to tariff negotiations and quotas and both these were inapplicable to and meaningless for a country engaged on state-trading, and therefore, there were rules in Section E which did not apply to private enterprises.

Dr. HOLLOWAY (South Africa) thought that the reference to Article 14 as given in the United States amendment was on the whole an improvement but that at this moment one could not say what the proper interpretation was because Article 14 referred to 15 and 15 again to 24. The Commission must therefore know the future wording of Article 14.

As far as paragraph 2 was concerned, he thought that both the Czechoslovak and the United States amendments departed from the main subject and that a sub-committee should give this matter proper consideration.

The CHAIRMAN proposed, and the Commission approved, that further discussion be conducted on the new amendment which the Delegations of United States and Czechoslovakia would prepare.

Article 32

Mr. OFTEDAL (Norway) found that the New York draft of Articles 31 and 32 was satisfactory, except in one point, and called attention to the amendment of the Norwegian Delegation, (W.197) to include the words "social, cultural humaniterien" in paragraph 4 of Article 32.

(The meeting rose at 5.10 p.m.).