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

Summary Record

Fifteenth Meeting of Commission A.

held on Friday 20th June, 1947, at 2.30 p.m.

Chairman: Mr. Max Suetens (Belgium)

The CHAIRMAN informed the Members that the combined Czechoslovak and United States draft of Article 31 was not yet completed and that therefore the discussion of the Commission would begin with paragraph 1.

Article 31:1

Mr. J.A. MUNOZ (Chile) referred to the interpretation given by Mr. Evans yesterday of the words "through public offers or bids or otherwise", and stated that it should be:

> put on record that any enterprise, whether state-trading or not, "if it sells or buys products according to commercial considerations", it could not be obligated to carry out its business transactions only through "public offers or bids".

Article 31:2

The Commission discussed the words "for use in production of goods for sale" in paragraph 2 of this Article which the drafting Committee in New York placed in square brackets.

Mr. MUNOZ (Chile) preferred to delete these words, but if the majority wished to have them included he would not press his point.

Mr. DESCLEE (Belgium) declared himself for retaining these words, and explained that the provisions of Article 31 should not be limited to imports for direct re-sale purposes but also expanded to imports for production which finally leads to re-sale.

Mr. BAYER (Czechoslovakia) referred to the Czechoslovak amendment contained in W.187. He would be willing to raplace the word "sale" by "re-sale".

Mr. John W. EVANS (United States) wished to retain the words now in square brackets, and thought that the general approach of the Czechoslovak amendment was probably better than that of the United States amendment. He would accept a combination of both "goods for re-sale" and "goods for use in the production of goods for re-sale" as bases for discussion in the Sub-Committee.

Mr. L.C.WEBB (New Zealand) called attention to the United States comment on their amendment (W.195) and thought that the words in paragraph 2 were added in New York at the suggestion of the United States, and not in London.

He found it difficult to understand the precise implications of the term "for use in production of goods for sale". In explaining his reservation on paragraph 2, Mr. Webb stated that there were instances in the New Zealand economy too complicated to bring them simply within the compass of this phrase. Perhaps the Sub-Committee might find some better wording.

Mr. EVANS (United States) corrected the error in the comment of the United States Delegation on their amendment to paragraph 2. It should read "New York draft" and not "London draft".

It was agreed in London that this paragraph should not cover production of services such as electric power. He thought that the words "for use in the production of goods for sale" could be retained in spite of difficulties in certain cases.

M. DESCLEE (Belgium) said he would like to revert to the concept of the London Conference and quoted from the Report, page 17, Section E(v).

Article 31:3

The CHAIRMAN referred to the alternatives (A) and (B) in Drafting Committee Report, page 28.

M. DESCLEE (Belgium) explaining the Belgian amendment (W.65) wished that the English version of it should be corrected to read:

"This Article shall apply when a Government of a Member

exercises, directly or indirectly, an effective control over enterprises, organizations or agencies, or over their trading operations only, whether this control is exercised by virtue of legal provisions, or as the consequence of granting exclusive or special privileges, or merely in fact."

Since the Charter was based on the concept of competitive economy there were difficulties to apply it to state-trading which gave more emphasis to national interests. This would make it difficult for a complaining member or the Organization to substantiate the claim that certain controls worked against the free competitive system, and therefore one should not limit too much the field of application of Article 31.

M. IGONET (France) thought that there was some confusion about the two categories of enterprises according to 31 and 32. A government production programme may be applied not only to state-trading but also to a private enterprise without changing its private character. In such cases Article 31 should not apply.

M. DESCLEE (Belgium) thought that if a government imposed certain programme of production this might mean discrimination, and this discrimination would be introduced into trading operations of enterprises subjected to the programme; to this Article 15 would apply. If however, the discrimination was not the result of national law but of governmental control, state-trading enterprise would be penalized according to Article 31.

M. IGONET (France) stated that it was obvious that a governmental production programme would be implemented by a programme of purchase of raw materials, without any obligation on the enterprises as to the origins of such materials. Under these programmes a state-trading enterprise should have no other obligation than a private firm. But the rule of non-discrimination, as laid down in Article 31, did not apply to private firms, and one should, therefore, avoid mentioning non-discrimination and limit Article 31 to a statement that enterprises operating in virtue of special privileges should act in the same way as private firms do.

Dr. T.T. CHANG (China) expressed his preference for alternative (B) because he understood that even if privileges granted to an enterprise were withdrawn the government will still be legally entitled to exercise control. He proposed an amendment to alternative (B):

to insert the word "member" before the word "government" in the first line.

Mr. MUNOZ (Chile) referred to the Chilean amendment (W.192), which he considered merely a clarification to ensure the smooth working of the Charter. He quoted the example of the Chilean production and exports of Natural Nitrate of Soda by a Corporation, created by law, but in which the Chilean Government had no capital interest. The Government exercised certain measure of control but this was in no way total or absolute. The Corporation had certain special privileges with regard to the level of profits; its exports were influenced solely by commercial considerations; export prices of its products were competing with synthetic products. He felt that it was impossible to consider such Corporation

as a state-trading enterprise under Article 31. For that matter, he thought that no enterprise should be considered as a state enterprise if the laws of its own country did not consider it as such, and therefore the Chilean delegation introduced its amendment.

He understood that "effective control" meant total and absolute control over commercial activities and wished that the Sub-Committee would clear this point. It might be argued that a Corporation such as the Chilean would have nothing to fear from the provisions of Article 31 since its export sales are guided solely by commercial considerations, but he thought that clarification was still needed.

In the opinion of the Chilean delegation only an enterprise in which the Member government held more than 50% capital and was therefore in a position to control absolutely its commercial activities should be considered as a state-trading enterprise.

Mr. AUGENTHALER (Czechoslovakia) thought that the second part of paragraph 3 was redundant because the definition was already given at the beginning of Article 31. He therefore wished to delete both alternatives A and B. He admitted that at some later date there may be cases which would not fit into the pattern, but the Charter could not provide for all possibilities. It will be the task of the ITO to decide which was and which was not a state-trading enterprise.

Mr. EVANS (United States) wished to explain the United States concept of Article 31: it should cover cases in which a government had in fact created an

agency which might or might not be a state enterprise in the popular meaning of this term. In the case of such agency provisions of Chapter V other than Section E would be inoperative, and therefore the state should be asked to see that operations of such enterprise were carried out in conformity with Article 31. If the operations of such an agency were conducted on commercial principles it would have nothing to worry about with regard to Article 31; if its operations were not carried out in that way then they would have to conform to the provisions of Article 31.

If the opening sentence of Article 31 indicated clearly enough this contention then he thought that the suggestion of the Czechoslovak delegate to delete paragraph 3 was worth while considering.

Mr. DEUTSCH (Canada) agreed with the Czechoslovak delegate and expressed doubts if a definition of state-trading were necessary. The rule of non-discrimination applied to any enterprise and therefore it might not be necessary to have a definition of what was a state enterprise.

Mr. MUNOZ (Chile) expressed his sympathy with the views of the Canadian, Czechoslovak and United States delegates and thought that if a definition of a state enterprise should prove very difficult, paragraph 3 could be dropped. The Sub-Committee should consider this.

Dr. HOLLOWAY (South Africa) said if a definition was sought one must ask what was the purpose. A state enterprise should, according to the discussion, follow the rule of non-discrimination, but no such

requirement had been set up for a private enterprise. There were two reasons for that; first, private enterprises as such were not Members of the Organization, and secondly, nobody could prevent an importer if he preferred to import goods from a particular country. Private firms would be guided by commercial considerations and therefore the rule of non-discrimination was not necessary for them. In the case of state enterprise, however, it was known that states are influenced often by non-commercial considerations and therefore the special rule of non-discrimination had been set up for state-trading.

Article 31 does rather too much in the way of defining and re-defining and one must ask oneself if the definition should contain a narrow or a wide limitation. One must know how much control there was and what was the nature of it. Was the control stated in Article 31 the same kind of control as control of imports or exchanges? He thought that instead of speaking of control over trading operations the expression "control over management" should be used, which would introduce the right to give orders to the enterprise how to buy or sell into the concept of control.

It was his contention that there was no difference between the expressions "the government shall exercise" and "the government shall have the right to exercise". A government may influence an enterprise without any interference because the enterprise would know the intentions of the government.

Dr. Holloway thought that it did not matter whether it was by virtue of a special privilege or not,

or simply in the way of application of the law of the country; it was the right to interfere and the right to deviate from commercial considerations which was essential and which was the reason why special rules for state-trading were set up. He thought that it was necessary to define, so as to distinguish them, the two groups of enterprises, those which may act for non-commercial reasons and those which would normally act for commercial reasons.

Mr. WEBB (New Zealand) held no strong views whether or not a definition of state-trading should be confined to the first lines of Article 31 or should be amplified in paragraph 3. Should, however, paragraph 3 be dropped, the words

"and exercises effective control over the trading operations of such enterprise"

should be re-introduced in the first part of Article 31, where they originally were.

Article 32.

The CHAIRMAN introduced the amendments to Article 32 (W.198, page 7) and opened discussion.

Dr. AUGENTHALER (Czechoslovakia) said that state monopolies must adhere to programmes since the states have limited stocks of foreign exchange; therefore a list of priorities must be set up. To make this possible was the intention of the Czechoslovak amendment (W.187). That was the present position but at some later time the shortage of foreign currency might be remedied, and therefore, no detailed provisions should be made for state monopolies at present.

The London draft of Article 32 contained special provisions for export monopolies which in his opinion were inoperative unless the state monopoly held also a monopoly of the world market. With regard to import monopolies he said that a government might wish to stabilize prices paid to home producers. In such case the negotiated margin might not be practicable and the Member would come in conflict with commercial considerations and at the same time in conflict with the rule of non-discrimination. The Czechoslovak delegation thought that generally negotiations of margins would not be practicable but that negotiations with regard to quantity or other aspects might be possible. The aim of the Czechoslovak amendment was to simplify the provisions of this Article.

Mr. EVANS (United States) explained the motives of the United States amendment (W.195). Paragraph 1 of Article 31 paralleled the most-favoured-nation principle, Articles 31 and 32 parelleled the provisions of Chapter V calling for negotiations in order to increase trade. He thought that Article 32 as drafted in London and New York did not cover properly the field.

In his opinion Article 32 was too rigid to cover a number of cases which should be negotiated with a country maintaining a monopoly of individual products. There were cases of mixing, etc. The amendment was intended to create more flexibility and afford the possibility for a request to be made by exporting countries with regard to negotiations along other lines. Therefore, a general provision was made for negotiating any other arrangements which would be thought desirable by the exporting country.

He believed it was necessary to retain the provision for negotiating with respect to export commodities. This was the parallel to the provisions of the Charter which required countries to negotiate export taxes and duties. A country with export monopoly should negotiate in an analogous way as a country using export duties.

He was prepared to drop paragraphs 3 and 4. It was clear that it was no gain to the country negotiating under paragraph 3 unless its products had, as a result, been offered in the domestic market for a lower price in unrestricted quantities. Therefore, the U.S. amendment to paragraph 1 was introduced which provides flexibility for negotiation of margins.

He also thought that paragraph 4 was unnecessary because there was no more reason for specifying that the fiscal nature of a monopoly should be considered in the negotiations than to make the same distinction between revenue and other tariffs.

Mr. SHACKLE (United Kingdom) agreed with the Czechoslovak delegate that state-trading should not be considered as a new form of protection. He thought, in agreement with the Canadian delegation that some rules should govern the activities of state-trading in a mixed economy country and that these rules should be analogous to those established for private trading.

He thought that it was unfortunate that the extensive amendment of the United States delegation had been presented at such a late stage and after a thorough consideration of this matter in London.

The attempt to merge Article 33 with Article 32 would make for complication and confusion. There was an

essential distinction between these two Articles: Article 32 was meant for a mixed type of economy with only a limited number of products covered by state-trading, the rest operating on a private basis; in this case considerations of cost and prices were equally applicable to the state-trader as to the private trader. Article 32 dealt with a complete state-trading monopoly, and there the method of negotiating quantities was doubtful and, in his opinion, hardly suitable or feasible. Moreover, negotiating quantities would be meaningless unless also prices are negotiated which was recognized in the Czechoslovak amendment.

Members would be involved in a series of global negotiations with all interested countries directed towards quantities and prices and this would be impracticable. It was a foregone conclusion that such negotiations would never be carried out and the Committee's work be frustrated; even if they succeeded, so long as state-trading countries' external purchasing power was limited the effect would be that in proportion as they bought more of a product which had been negotiated they would have to buy less of other products, especially of those of a competitive type.

If this Conference should have useful results the London draft of Article 32 must be maintained, that is, that negotiations should be as near as possible to the exact parallel of tariff negotiations under Article 24. Mr. Shackle did not think that the problem of mixing and processing of products could not be coped with. Information about costs, etc. could be supplied by trading enterprises, and if there was willingness to disclose

data it would be possible to assess margins. The question of variety of prices and their fluctuation was taken care of by averaging over time and over consignments.

The difficulties about shortage of exchange mentioned by Dr. Augenthaler were recognized in Article 26 where reference to Article 32 was made. Nor was it impossible to assure stable prices to home producers which in the case of negotiated margins could be done by applying variable subsidies.

The two types of a partial state-trader and a complete state-trader should be kept apart and different methods should be applied.

He thought that paragraph 3 should be retained because there was a necessity for a provision regarding the satisfying of domestic demand; otherwise state-trading would be used as means of quantitative restrictions for protective purposes.

For all these reasons the present concept of Article 32 should be retained.

Mr. DEUTSCH (Canada) supported the remarks of the United Kingdom delegate. The Czechoslovak and United States amendments introduced many new considerations into both tariff negotiations and the substance of the Charter. The Charter should take care of different situations as encountered in countries with private enterprise and in those with a mixed system, and the provisions of the Charter should strike a balance between obligations and benefits.

All countries should be required to negotiate, upon request, the protection they afford to their industries: free trading countries would negotiate their customs

tariffs, and state-traders the protective margins provided by their monopolies. The Charter did not permit, in his view, of negotiating quantities - this would introduce a new principle. Such negotiations would be complicated and they would require the establishment of minimum quotas, which meant that the importing country would undertake to buy a certain amount of a commodity. That again, can be done only when the price was known.

The bilateral procedure would be inappropriate for negotiating quantities and prices. Such negotiations were covered by Chapter VII, containing provisions of a quite different nature. These did not apply to negotiations concerning imports by a state monopoly.

He agreed with the United Kingdom delegate that the objections raised against the present provisions of Article 32 could be overcome. If it were impossible to determine the margin between buying price of the imported product and the selling price of the product after mixing or processing, one could always resort to subsidies which were allowed under the Charter. He did not think that the difficulty to attain the exact equivalent of tariff negotiations was insurmountable. Nor was it impossible to carry out a policy of stable prices. There was the procedure of averaging over time and consignments, and there was the possibility of using subsidies in cases in which the margin did not allow the maintenance of a sufficiently high domestic price.

The Czechoslovak and United States amendments introduced fundamental changes. The principle of the present Article 32 should be retained.

Mr. EVANS (United States) considered that the objectives advanced by the United Kingdom and Canadian

delegates were identical with those pursued by the United States delegation.

It was not the intention of his amendment to incorporate Article 33 in the new Article 32. This amendment intended to provide for negotiations product by product on a bilateral and not multilateral basis which, in cases in which it was impossible to formulate requests on the basis of the marginal mark-up, would be a better parallel to tariff negotiations than no negotiations at all.

The amendment did not intend to provide for negotiations on the basis of global quotas. The initiative for the request for negotiations should be with the exporting country, and this country should suggest other methods if the first type of negotiations was considered valueless.

Mr. BOGAARDT (Netherlands) referred to the Netherlands amendment (W.191) and stated that his government attached great value to commodity agreements. It was impossible to fix a maximum margin because a world market price was an unknown factor. Nor would averaging of cost be helpful since prices of primary commodities were known to vary considerably. He thought that the Czechoslovak amendment had many merits, and that he would raise no objections to the United States amendment. On the latter he had two observations to make: first, it should state clearly the difference between negotiations on a bilateral and on a multilateral basis; second, a drafting point, in paragraph 2(c) of the United States amendment, the full stop should be replaced by a comma so as to link the following words "Provided" to (a), (b) and (c). He also thought that the words "subject to the provisions of Article 31" could be deleted.

The meeting rose at 6.05 p.m.