

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

Report to Commission A
by
Sub-Committee on Articles 31 & 32

PART I

R E P O R T

1. Commission A appointed, at its meeting on Tuesday, 24 June, a Sub-Committee on Articles 31 and 32 consisting of the representatives of the following countries:

Canada, Chile, Czechoslovakia, France, Netherlands, New Zealand, Norway, the United Kingdom and the United States.

2. The Sub-Committee elected to joint chairmanship Mr. Erik Colban (Norway) and Mr. John J. Deutsch (Canada).

3. The Sub-Committee held 9 meetings. Several informal meetings of Members were held to assist the reconciliation of views.

By invitation of the Sub-Committee and in accordance with the decision of Commission A representatives of several countries not members of the Sub-Committee, and representatives of the International Bank for Reconstruction and Development, and the International Monetary Fund participated in the work of the Sub-Committee.

4. The Sub-Committee considered the draft text of, and notes and reservations to Articles 31 and 32, as given in the D.C.

Report, and amendments to these and other Articles presented during the Second Session by various delegations listed in the Annotated Agenda (E/PC/T/W.198), and the Notes of the Secretariat (E/PC/T/W.239).

5. The Sub-Committee considered the deletion of Article 33, and approved unanimously Note 20.

The Sub-Committee recommends that this note should be included in the Report of the Second Session to the World Conference.

6. The Sub-Committee approved unanimously the text of Articles 31 and 32, and the explanatory notes included in this Report.

7. All reservations on these Articles as given in the Report of the Drafting Committee (hereinafter referred to as 'D.C. Report'), page 27 and 28, were withdrawn.

EXPLANATORY NOTES

The Sub-Committee presents the following notes to the Commission as an explanation of its understanding of certain portions of the text, without making specific recommendations as to the ultimate disposition of these notes.

Where an asterisk has been placed before a note, one or more of the Delegates in the Sub-Committee believed it essential that the note in question be included in the official explanation of the text.

TITLES OF ARTICLES 31 AND 32

Note 1 The Sub-Committee recommends that in view of the 31 and 32 general heading 'State-Trading' of Section E, the titles of Articles 31 and 32 should be limited to 'Non-discriminatory Treatment' and 'Expansion of Trade', respectively.

ARTICLE 31

Paragraph 1(a)

Note 2 *It was the understanding of the Sub-Committee that 31:1(a) governmental measures imposed to ensure standards of quality and efficiency in the execution of external trade, or privileges granted for the exploitation of national natural resources, did not constitute 'exclusive or special privileges'.

Note 3

31:1(a)

F.

It was the understanding of the Sub-Committee that if a Member Government exempted an enterprise from certain taxes, as compensation for its participation in the profits of this enterprise, this procedure should not be considered as 'granting exclusive privileges'.

Note 4

31:1(a)

G.

It was the understanding of the Sub-Committee that the intent of the words 'involving either imports or exports' is to cover within the terms of this Article any transactions by a state enterprise through which such enterprise could intentionally influence the direction of total import or export trade in the commodity in a manner inconsistent with the other provisions of the Charter.

Paragraph 1(b)

Note 5

31:1(b)

*It was the understanding of the Sub-Committee that a country receiving a 'tied loan' would be free to take this loan into account as a 'commercial consideration' when purchasing requirements abroad.

Note 6

31:1(b)

X

It was the understanding of the Sub-Committee that the expression 'customary business practices' was intended to cover business practices customary in the respective line of trade.

Note 7

31:1(b)

The Sub-Committee deleted the language of the draft of the D.C. Report 'any differential customs treatment maintained consistently with the' on the understanding that the remaining part of the sentence 'having due regard to the other provisions

Note 7 (contd.)

of this Charter' covers also differential customs treatment maintained consistently with the other provisions of the Charter.

The opinion of the Legal Drafting Committee whether this interpretation was correct, is requested.

Paragraph 1(c)

Note 8 The Legal Drafting Committee is requested to give its
31:1(c) opinion on the necessity for the inclusion of the words 'Subject to the provisions of this Charter'.

Paragraph 1(a), (b) and (c)

Note 9 The Sub-Committee considered the position of Marketing
31:1 Boards established by Members, and whether the note in the Report of the First Session (Section E, page 17, item i: (vii)) should be maintained. It was felt that so far as sub-paragraphs 1(a) and 1(b) were concerned the present text left no room for doubt that if Marketing Boards were engaged in purchasing or selling, their operations were subject to the provisions of these sub-paragraphs.

It was understood by the Sub-Committee that the activities of Marketing Boards established by Members which do not purchase or sell but lay down regulations covering private trade should be governed by the relevant Articles of the Charter.

Note 10 *It was the understanding of the Sub-Committee that the
31:1 charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided

Note 10 (contd.)

that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 2

Note 11

31:2

It was the understanding of the Sub-Committee that the term 'goods' is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

Paragraph 3

Note 12

31:3

The Sub-Committee has deleted Paragraph 3 of the draft of the D.C.Report in view of the fact that the enterprises covered by this Article are defined as precisely as is practicable in sub-paragraph 1(a).

ARTICLE 32

- Paragraph 2
Note 13
32:2 It was agreed by the Sub-Committee that the obligation of Members according to sub-paragraph (b) of paragraph 1 and paragraph 2 of Article 32 to negotiate was analogous to the obligation according to Article 24 in respect of negotiations for reduction of tariffs.
- Paragraph 3
Note 14
32:3 * It was understood by the Sub-Committee that if the maximum import duty is not bound by negotiations according to sub-paragraph 2(a) the Member is free to change at any time the declared maximum import duty, provided such change is made public or notified to the Organization.
- Paragraph 4
Note 15
32:4 This paragraph specifies the meaning of the expression 'maximum import duty' which replaces the expression 'maximum margin' of the draft of the D.C. Report.
- Paragraph 5
Note 16
32:5 This paragraph replaces, in an amended form paragraph 3 of the draft of the D.C. Report.
- Paragraph 6
Note 17
32:6 This paragraph contains the amended text of paragraph 4 of the draft of the D.C. Report.
- Paragraph 7
Note 18
32:7 This paragraph was introduced to make explicit the understanding that nothing in Article 32 shall limit the use by the Member maintaining a monopoly of any form of assistance to domestic producers permitted by other provisions of the Charter.

NOTE ON THE PROPOSED DELETION OF ARTICLE 33

Note 19
33

The First Session of the Preparatory Committee did not consider, in its meetings in London and New York, the text of Article 33.

The Sub-Committee now recommends to the Preparatory Committee the deletion of this Article.

In revising the draft of Article 32, the Sub-Committee has aimed at producing a text sufficiently flexible to permit any appropriate negotiations with a Member which maintains a complete or substantially complete monopoly of its external trade. However, since no representative of such a country has attended sessions of the Preparatory Committee, it is suggested that the question whether Article 32 provides an adequate basis for participation by such a country in the rights and obligations of the Charter should remain open for discussion at the World Conference.

The Sub-Committee, therefore, recommends that the Preparatory Committee call this matter to the attention of the World Conference.

PART II

TEXT OF ARTICLES 31 & 32

Section E. State-Trading.

Article 31

Non-discriminatory Treatment.

1 (a) Each Member undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its purchases or sales, involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment applied in this Charter to governmental measures affecting imports or exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall make any such purchases or sales solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of other Members adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales, having due regard to the other provisions of this Charter.

(c) Subject to the provisions of this Charter Members shall not prevent any enterprise (whether or not an enterprise described in sub-paragraph (a)) within their respective jurisdictions from acting in accordance with the principles of sub-paragraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for re-sale or for use in the production of goods for sale. With respect to such imports, Members shall accord to the trade of other Members fair and equitable treatment.

ARTICLE 32

Expansion of Trade

1. If any Member establishes, maintains or authorises, formally or in effect, a monopoly of the importation or exportation of any product, such Member shall, upon the request of any other Member or Members having a substantial interest in trade with that Member in the product concerned, negotiate with such Member or Members in the manner provided for in respect of tariffs under Article 24, and subject to all the provisions of this Charter with respect to such tariff negotiations, with the object of achieving:

(a) in the case of an export monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operations of the monopoly to domestic users of the monopolized product or to assure exports of the monopolized product in adequate quantities at reasonable prices; or

(b) in the case of an import monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic producers of the monopolized product, or to prevent any limitation of imports to an extent inconsistent with the provisions of this Charter.

2. In order to satisfy the requirements of sub-paragraph (b) of paragraph 1 of this Article, the Member maintaining a monopoly shall negotiate

(a) for the establishment of the maximum import duty that may be imposed in respect of the product concerned; or

(b) for any other mutually satisfactory arrangement which is consistent with the other provisions of this Charter if it is evident to the negotiating parties that to negotiate a maximum import duty under paragraph 2(a) is impracticable, or would be ineffective for the achievement of the objects of paragraph 1.

Any Member entering into negotiations under sub-paragraph (b) of this paragraph shall afford to other interested Members an opportunity for consultation in respect of the proposed arrangements.

3. In any case in which a maximum import duty is not negotiated under paragraph 2(a) of this Article, the Member maintaining the import monopoly shall make public or notify the Organization of the maximum import duty which it will apply in respect of the product concerned.

4. The price charged by the import monopoly for the imported product in the home market shall not exceed the landed cost plus the maximum import duty negotiated under paragraph 2 of this Article or made public or notified to the Organization under paragraph 3 of this Article, after due allowance for internal taxes, transportation, distribution and other expenses incident to the purchase, sale or further processing, and for a reasonable margin of profit; Provided that regard may be had to average landed costs and selling prices over recent periods; and Provided that, where the product concerned is a primary product and the subject of a domestic price stabilization arrangement, provision may be made for adjustment to take account of wide fluctuations or variations in world prices, subject where a maximum duty has been negotiated to agreement between the countries parties to the negotiation.

5. With regard to any product to which the provisions of this Article apply, the monopoly shall wherever this principle can be effectively applied and subject to the other provisions of this Charter, import and offer for sale such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at that time.

6. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for social, cultural, humanitarian or revenue purposes.

7. Nothing in this Article shall limit the use by Members of any form of assistance to domestic producers permitted by other provisions of this Charter.