

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

Prepared by the Secretariat for discussion  
of Articles 31, 32 and 33.

This agenda supersedes the relevant parts of document E/PC/T/W/64, and should be read in conjunction with the Report of the Drafting Committee (E/PC/T/34) hereafter referred to as "D. C. Report". It incorporates proposals reported to the Secretariat by Delegations to 14 June 1947 inclusive (cf. E/PC/T/W/65, 69, 70, 101, 187, 191, 192, 195, 197).

In quotation of the proposed texts, where practicable, deletions are indicated by square brackets, and additions by underlining.

SECTION E - STATE TRADING.General note

The Czechoslovak Delegation (W/187) submitting a proposal for a new re-draft of the section on State-Trading makes the following comment:

The Czechoslovak Delegation wants to draw the attention of the Preparatory Committee to the declarations made by various delegations at the beginning of the Second Session and also to the principle contained in the Charter, i.e. that the Charter should enable all states of whatever political, economical and social structure to collaborate peacefully in the attainment of the purposes of the Charter. One of the very grave problems which the Preparatory Committee has to solve is the economic collaboration of countries which are "free-trade countries" and countries which regulate their foreign trade. In many respects the institutions and systems of these two are quite similar but in other respects they differ. Having considered this, the Czechoslovak Delegation welcomes the New Zealand amendment as submitted in document E/PC/T/W/101 which it regards as the most appropriate way to harmonize these various systems of foreign trade. The Czechoslovak Delegation feels that

this amendment merits a special section in the Charter, since the system of control of foreign trade envisaged there does not necessarily presume that trade has actually to be conducted by state trading enterprises only and operates through private or state enterprises. That is why the Czechoslovak Delegation suggests that the New Zealand amendment be placed first. The provisions concerning state trading would follow.

As may be seen from the proposed Draft, the whole text has been divided provisionally into 3 articles. The final numbering of these articles and their heading has been left to the consideration of the Sub-committee concerned.

(Texts of article as proposed in the Czechoslovak amendment will be found below under corresponding headings.)

Article 31 - Non-discriminatory Administration of State-trading Enterprises.

The United States Delegation (W/195) suggests to change the heading of this Article as follows:

[Non-discriminatory administration of] Most-favored-nation treatment by state trading enterprises

Paragraph 1

1. The reservation referred to in the D.C. Report under (b) was made by the delegate for Czechoslovakia who objected to the inclusion of the words "distribute or produce" in the first sentence.

2. The Czechoslovak Delegation (W/187) proposes the following text (for comment of General Note):

"1. If any Member establishes or maintains enterprises, whether state owned or private which have been granted exclusive or special privileges, formally or in effect, to import or export, the commerce of other Members shall be accorded treatment no less favourable than that accorded to any country other than that in which the enterprises are located in respect of purchases and sales. To this end such enterprises shall, in making their external purchases or sales of any product, be influenced by commercial considerations, such as price, quality, marketability, transportation and other terms of purchase or sale,

having due regard to any differential customs treatment maintained consistently with other provisions of this Charter."

3. The United States Delegation (W/195) proposes to divide paragraph 1 in two sub-paragraphs (a) and (b), and to delete from the present text of paragraph 1 the words after "or produce any product," beginning with "the commerce of other Members...." to ".... this Charter." and to replace them by:

"such enterprise shall, in purchases or sales affecting international trade, act in a manner consistent with the principle of general most-favored-nation treatment which is applied in Article 14 to governmental measures affecting private trade."

and to add new sub-paragraph (b) as follows:

"(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall make any purchases or sales affecting international trade solely in accordance with commercial considerations such as price, quality, marketability, transportation and other terms of purchase or sale and, 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."

Comment of the United States Delegation:

The changes in this paragraph are proposed (1) to simplify the previous language and to eliminate the possible inference that most-favored-nation treatment by state enterprises might require identical prices to buyers and sellers in different markets; (2) to provide, in the phrase beginning with "shall afford" a necessary implementation of the obligation to act in accordance with commercial considerations.

Paragraph 2.

1. The three delegates reserving their position against the insertion of the words "or for use in the production of goods for sale" represented Chile, Czechoslovakia and New Zealand.

2. The Czechoslovak Delegation (W/187) proposes the following changes (for comment see General Note):

"2. The provision /s/ of paragraph 1 of this Article /relating to purchases or imports by state enterprises/ shall not apply to purchases or imports of products for /re-sale (or for use in the production of goods for sale). With respect to purchases or imports by state enterprises of products for / governmental use and not for /re-sale (or for / use in the production of goods for sale /), /. However, the Members shall accord to the commerce of /the/ other Members fair and equitable treatment, having full regard to all relevant circumstances."

3. The United States Delegation (W/195) proposes the following changes:

"2. The provisions of paragraph 1 of this Article /relating to purchases or imports by state enterprises/ shall apply to /purchases or/ imports of products for resale or for use in the production of goods for sale. With respect to /purchases or/ imports /by state enterprises/ of products for governmental use and /not/ neither for resale /or/ nor for use in the production of goods for sale, Members shall accord to the Commerce of other Members fair and equitable treatment /having full regard to all relevant circumstances/."

Comment of the United States Delegation:

These changes are intended to express more simply and in fewer words the intent of the London draft. Except for the removal of the brackets from that draft, these changes do not affect the substance of the paragraph.

Paragraphs 1 and 2.

Attention is drawn to the use of the word "commerce" (three times). In other articles of the Charter (e.g. Nos. 1, 32, 34, 39, 48, 49, 53 and 61) the word "trade" is used.

Paragraph 3.

1. The reservations as to the two alternatives in the wording of this paragraph were made by the delegates for Chile, Czechoslovakia and New Zealand. The last-mentioned two delegates declared their preference for Alternative A (if they would have to choose between A and B).

2. The Delegation of Belgium-Luxembourg (W/65) proposes to re-word paragraph 3 as follows:

"3. This Article shall apply when a Member government, directly or indirectly, whether by virtue of legal provisions, or under arrangements granting special or exclusive privileges, or merely in fact, exercises effective control or management of enterprises, organs or agencies or of their trading operations only."

Comments by the Delegation of Belgium-Luxembourg:

This amendment is designed to make the provisions of Article 31 applicable to organizations in the import policy of which the state has no direct right of intervention. In addition, it amalgamates alternatives A and B so that the situations envisaged in each of them are covered by the Charter and the application of Article 31 is not unduly limited by its wording.

3. The Czechoslovak Delegation (W/187) proposes to limit the text of this paragraph to the first sentence, deleting both Alternatives A and B of the text of the D.C. Report.

4. The United States (W/195) proposes the adoption of Alternative B of the text of the D.C. Report.

5. The Chinese Delegation (W/70) proposes to substitute for Alternatives A and B the following:

"or over whose trading operations a Member government is, under the arrangements providing for the special or exclusive privileges granted to the enterprise, legally entitled to exercise effective control."

6. The Chilean Delegation (W/192) proposes to substitute for Alternatives A and B the following :

"It shall not apply, however, to enterprises whose external purchases or sales of any product are influenced solely by commercial considerations."

or alternatively:

"or over whose trading operations a Member Government exercises effective control by virtue of the special or exclusive privileges granted to the enterprise. It shall not apply, however, to enterprises whose external purchases or sales of any product are influenced solely by commercial considerations."

Comments by the Chilean Delegation:

The sole purpose of the proposed amendment is to make perfectly clear when an enterprise, organ or agency is to be considered as a State Trading Enterprise, within the meaning and subject to the provisions of Article 31. It is our understanding that what is fundamentally pursued by this Article is that there shall be "non-discriminatory administration of State Trading Enterprises", that is, that all business transactions carried out by these so-called State Enterprises, who receive special or exclusive privileges from a Member Government, shall be influenced solely by commercial and not by political considerations. If this is so, we consider that the definition approved in New York, even if one or the other of the two alternatives is added to Paragraph 3, is absolutely inadequate and vague. There are, to be sure, quite a number of enterprises who would come under that definition and yet their external purchases and/or sales are influenced solely by commercial considerations and not by political considerations. We consider that the provisions of Article 31 should not be applicable to these latter enterprises.

Article 32 - Expansion of Trade by State Monopolies  
of Individual Products.

4 The United States Delegation (W/195) proposes to change the heading of this Article as follows:

"Expansion of international trade by Members having  
state monopolies [of individual products]"

Paragraph 1.

1. The Chinese Delegation (W/69) proposes to delete in the first sentence, lines 13, 14, 15 and 16, the words:

"to limit or reduce the protection afforded through the operation of the monopoly to domestic users of the monopolised product or"

2. The Czechoslovak Delegation (W/187) proposes the following changes:

"If any Member, other than a Member subject to the provisions [of Article 33] concerning a complete monopoly of foreign trade establishes, maintains or authorizes enterprises having, formally or in fact, an effective monopoly of the importation or exportation of any product, such Member shall, upon the request of any other Member [or Members] having an interest in the trade with that Member in the product concerned, enter into negotiations with such Member [or Members] in the manner .... - .... over recent periods.] in order to assure exports or imports of the monopolized product in adequate quantities at reasonable prices."

Comment of the Czechoslovak Delegation (cf. also remarks in the General Note):

As to the D.C. Draft of Article 32 the Czechoslovak Delegation felt itself obliged to simplify the whole text because it appeared during the tariff negotiations that the provisions of Article 32 were impracticable. In this respect the Czechoslovak Delegation should like to draw the attention of the Preparatory Committee to the report of the International Chamber of Commerce, (Document E/PC/T/44, page 32, Article 32, Expansion of Trade by State Monopolies of Individual Products). The text of the ICC's comment on this Article runs as follows:

This article, by attempting to establish principles for the price policies of State monopolies of individual products, enters into a very difficult and controversial field and establishes rules which will inevitably become the object of future controversy. The I.C.C. considers it preferable to limit the Charter's provisions concerning the behaviour of State monopolies of individual products to simple general rules, leaving the detailed interpretation and administration of those rules to the I.T.O. itself.

3. The United States Delegation (W/195) proposes to change the present paragraph 1, and to add a new paragraph, as follows:

"1. If any Member ~~other than a Member subject to the provisions of Article 33~~ establishes, maintains or authorizes, formally or in fact, an effective monopoly of the importation or exportation of any product, such Member shall, upon the request of any other Member or Members having ~~an~~ a substantial interest in trade with that Member in the product concerned, ~~enter into~~ carry out negotiations with such Member or Members in the manner provided for in respect of tariffs under Article 24 ~~with regard to~~ with the object of achieving (a) in the case of an export monopoly, arrangements designed to limit or reduce the protection 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 ~~the maximum margin by which the price for an imported product charged by the monopoly in the home market may exceed the landed cost, before payment of any duty, of such product purchased by the monopoly from suppliers in the territories of Members, after due allowance for internal taxes, transportation, distribution and other expenses incident to purchase, sale or further~~

processing and for a reasonable margin of profit.

For the purpose of applying this margin regard may be had to average landed costs and selling prices of the monopoly over recent periods/ arrangements designed to limit or reduce the protection afforded through the operation of the monopoly to domestic producers of the product or a competing product, or arrangements designed to increase the total imports of the product. Any arrangement negotiated under this paragraph shall be subject to the provisions of Article 31, and any Member entering into negotiations under this paragraph shall afford to other interested Members an opportunity for consultation with respect to the proposed arrangements.

2. Any Member substantially interested in the exportation of a commodity to a Member maintaining such a monopoly affecting such product may, subject to the terms of paragraph 1 of this Article, request the other Member to negotiate:

- (a) the maximum margin by which the price at which the monopoly sells the product concerned exceeds the price paid to sellers of Member countries.
- (b) the total quantity of the commodity which the Member maintaining the monopoly shall agree to import from all sources, or
- (c) any other arrangement to accomplish the purpose of paragraph 1 of this Article.

Provided that, any such arrangement shall be subject to the provisions of Article 31, and the Member requesting a negotiation under this paragraph shall immediately notify the Organization of the nature of this request."

Comment of the United States Delegation:

The London draft of paragraphs 1, 2 and 3 of Article 32 established too rigid a formula for the application of the general provision calling for negotiations with Members maintaining state enterprises or monopolies. The proposed changes provide for the negotiation of any arrangement under these circumstances which is consistent with the principles of Articles 31 and 32.

(Note: Paragraph 2 of the D.C. Report, page 28, to become Paragraph 3).

Paragraph 2.

1. The Czechoslovak Delegation (W/187) proposes the deletion of this paragraph (cf. General Note).
2. The United States Delegation (W/195) proposes the following amendment (for comment see under paragraph 1):
- "2 3. Any Member newly establishing any import monopoly in respect of any product shall not create a margin as defined in paragraph 1 (b) establish a degree of protection to its domestic producers greater than that represented by the maximum rate of import duty which may have been negotiated in regard to that product pursuant to Article 24, or otherwise, through the operation of such monopoly, impair the value to other Members of such negotiated concession."

Paragraph 3.

1. The words "from Members" were placed in square brackets for consideration at the Second Session (D.C. Report, pages 28-29).
2. The Czechoslovak Delegation (W/187) proposes the deletion of this paragraph (for comment see General Note).
3. The United States Delegation (W/195) proposes the deletion of this paragraph in conjunction with the changes suggested by this Delegation in respect of paragraphs 1 and 2, which make paragraphs 3 and 4 unnecessary in view of the flexibility thus provided in Article 32.

Suggested new paragraph.

The Netherlands Delegation (W/191) proposes to insert the following new paragraph 4, and to change the existing paragraph 4 into 5.

"4. In any case of a monopoly of the importation or exportation of a primary product, either the Member applying the measure or the Member or Members having an interest in trade in the product concerned, considering that the difficulty may be determined to be a special difficulty of the kind referred to in Chapter VII, are entitled to ask that the negotiations provided for in paragraph 1 of this Article follow the procedure laid down in that Chapter."

Comment of the Netherlands Delegation:

The Delegation is of the opinion, that there is a striking analogon between the protection included in a subsidization on agricultural products and the protection, which may be included in the price margin charged or allowed by a monopoly of the importation or exportation of such products. In some cases it is much more helpful if the negotiations are on the multilateral basis as provided for in Chapter VII and are accompanied by a study of the root causes of the problem. Therefore an additional paragraph is proposed, which makes it optional for both interested parties to resort to this means of consultation.

Paragraph 4.

1. The United States Delegation (W/195) proposes the deletion of this paragraph for the reasons mentioned under paragraph 3.
2. The Czechoslovak Delegation (W/187) proposes to insert between "revenue" and "purposes" at the end of the paragraph the words

"health or security."

3. The Norwegian Delegation (W/197) proposes the following changes in this paragraph:

"In applying the provision 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."

Article 33 - Expansion of Trade by complete State Monopolies  
of Import Trade.

1. The Drafting Committee did not discuss this Article which the First Session had left for consideration at a later stage.
2. The United States Delegation (W/195) proposes to delete this Article.

Comment of the United States Delegation:

In the revised form suggested, the provisions of Article 32 can apply to any state trading country, including the countries contemplated in Article 33, and this Article, therefore, is no longer necessary.

3. The Czechoslovak Delegation (W/187) proposes to replace the London text by the following (cf. under General Note):

"If representations according to Article 35 are made in respect of state trading operations, the Member may withhold confidential information, relating to its national security or which, if disclosed, would materially damage the legitimate interests of the enterprise concerned."

4. The New Zealand Delegation (W/101) proposes to replace in the text of the London Charter, page 33, line 3, the word "import" by the word "foreign", and to add a new paragraph as follows:

"2. (a) Any Member who although not establishing or maintaining a complete or substantially complete monopoly of its foreign trade nevertheless establishes or maintains an effective system of complete control of its foreign trade shall promote the expansion of its foreign trade with other Members, in consonance with the purposes of this Charter. To this end such Member shall undertake:-

- (i) To make available, in any given period, for expenditure on imports - after providing for debt repayment and service charges and for any other external charges or outlay - the whole of the proceeds from its visible and invisible exports in excess of the amount of its monetary reserves determined to be reasonable.
  - (ii) To consult with the Organization when determining the given period referred to in sub-paragraph (i) above and when determining the level of its monetary reserves to be regarded as reasonable.
  - (iii) To practise no discrimination between the sources of supply of imports.
  - (iv) To have due regard, in controlling its foreign trade, to the interests of other Members.
- (b) Where any other Member considers its interests adversely affected by such control of foreign trade the procedure laid down in Article 35 shall apply."

Note. In the discussion of Article 4 in the Sub-Committee on Chapter III (cf. E/PC/T/95, page 3) the Delegate for New Zealand stated that his Delegation would prefer not to discuss the New Zealand Amendment to Article 4 (cf. E/PC/T/W.113) until Article 33 and related parts of the Charter had been discussed. Until then the New Zealand Delegation would reserve its position on Article 4, and subsequently might wish to reopen the question of further amending that Article.