

THIRD COMMITTEE: COMMERCIAL POLICY

REPORT OF SUB-COMMITTEE J (STATE TRADING)

1. The Third Committee at its twenty-eighth meeting on 7 January 1948 approved the formation of a Sub-Committee on Section D - State Trading - of Chapter IV consisting of the representatives of Czechoslovakia, Ecuador, Egypt, Mexico, Netherlands, New Zealand, Pakistan, Switzerland, the United Kingdom and the United States.
2. The terms of reference of the Sub-Committee were to consider and make recommendations upon the text of Articles 30 and 31 and the Notes attached and amendments submitted to these Articles.
3. The Sub-Committee understood the proposal by the delegation of Argentina to delete the entire Section D, which had met with no support during the discussion in Committee, to be outside its terms of reference and did not, therefore, include it in its considerations.
4. The Sub-Committee held its first meeting on Monday, 12 January 1948 and unanimously elected the Right Honourable Walter Nash (New Zealand) Chairman.
5. The Sub-Committee held seven meetings. Representatives of several countries not members of the Sub-Committee attended the meetings as observers. Delegates for Belgium, Canada, Cuba and Denmark took an active part in the discussion on points of special interest to them.
6. In the course of its work the Sub-Committee examined the text of Articles 30 and 31, the Notes attached and all outstanding amendments submitted to these Articles as listed in document E/CONF.2/C.3/9, as well as amendments and observations subsequently submitted by Members and recommendations made by other Sub-Committees.
7. In order to facilitate the work of the Sub-Committee, several working groups to consider particular items were established on which the delegates for Czechoslovakia, Mexico, the Netherlands, New Zealand, Switzerland, the United Kingdom and the United States were represented. The successful conclusion of the Sub-Committee's tasks was in no small measure due to the untiring efforts of these working groups under the presidency of the Chairman of the Sub-Committee, and of the Secretariat.

8. The Sub-Committee was able to reach unanimous agreement on most points, only a small number of decisions taken being subject to reservations by individual delegations. This large measure of agreement reached was due to the spirit of conciliation shown by all who had submitted amendments.
9. The text of Section D as agreed - subject to the reservations mentioned - and recommended by the Sub-Committee for approval by Committee III is attached as an Annex to this Report.

SPECIFIC COMMENTS

Section D

10. With regard to the additional provisions included in this Section it was considered necessary to make a corresponding change in the title of the Section.
11. In the opinion of the Sub-Committee, the term "state enterprise" in the text does not require any special definition; it was the general understanding that the term includes, inter alia, any agency of government that engages in purchasing or selling.
12. A drafting amendment, replacing in sub-paragraph 1 (a) the words "principles...applied in this Charter to governmental measures" by "prescribed in this Charter for governmental measures" was adopted so as to express more correctly the purpose of the provision.
13. It was decided to embody the substance of the paragraphs in the footnotes to paragraph 1 relating to Marketing Boards in a new Article to follow Article 30.
14. In regard to the footnote to paragraph 1 concerning different prices in different markets for sales of products by state enterprises, it was decided to retain the interpretation contained in the footnote. The Sub-Committee agreed, therefore, to amend the text so as to include purchases as well as sales and to take account also of relevant factors other than supply and demand. The representative of Belgium stated that if the new text is approved his delegation would not maintain the reservation made at Geneva.
15. The Sub-Committee felt that the Note appended to sub-paragraph 1 (a) could not be dispensed with. It was unanimously agreed to recommend the retention of its text, with certain alterations, as a footnote attached to that sub-paragraph and forming a part of the Charter.
16. It was felt that the matter covered in the Note appended to sub-paragraph (b) did not require express statement. It was therefore agreed to delete this Note.
17. An amendment by Mexico proposing to delete paragraph 2 was withdrawn.

/18. It was not

18. It was not considered necessary to retain the Note attached to paragraph 2 in the Geneva Draft.

New Article 30 A

19. Following the discussion on the footnotes relating to Marketing Boards appended to paragraph 1 of Article 30 and on the amendment by the New Zealand delegation as to how the provisions of the Charter would apply to the activities of Marketing Boards, Commissions and similar bodies it was agreed unanimously that a provision dealing with this question should be included in the Charter. A suitably drafted text for a new Article, headed "Marketing Organizations", has accordingly been inserted.

Article 31

20. Arising from the amendment proposed by the United States, the Sub-Committee agreed that the last phrase of sub-paragraph 1 (b) as previously drafted did not accurately express the intention of that provision. It was therefore decided to make the drafting change indicated in the annexed text.

21. The Cuban delegation explained the object of its amendment (document E/CONF.2/C.3/1/Add.52) and advised that they would be satisfied if paragraph 2 (b) was altered in any of the following ways:

(A) "...or would be not wholly effective for the achievement of...."

(B) ".....or would not be satisfactorily effective for the achievement of....."

"Provided that a record should also be kept with the Committee with an explanation of the interpretation to the effect, that if the negotiation of the maximum import duty should not be entirely or partially effective in attaining the objects mentioned in sub-paragraph 1 (b), any other agreement which is reached in accordance with sub-paragraph 2 (b) does not exclude the agreement regarding the maximum import duties mentioned in sub-paragraph (a)." It was considered that the proposed change in the wording would not add anything to the present scope of sub-paragraph (b). The Sub-Committee expressed the view that the wording of sub-paragraph (b) was not intended to preclude a negotiation by mutual agreement under this sub-paragraph in conjunction with, or in addition to, a negotiation under sub-paragraph (a).

22. The Sub-Committee expressed the view that the Note appended to paragraph 3 of the Geneva Draft which reads:

"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 that such change is made public or notified to the Organization."

represents a correct interpretation of the provision. It was considered,

/however, that

however, that the text as drafted was sufficiently clear and that there was no need to retain the footnote.

23. In order to remove any possible misinterpretation of paragraph 4 and to make its intention fully clear the words "exclusive of" were substituted for "after due allowance for".

24. In paragraph 4 as well as in the Note to paragraph 4 the words "primary product" were replaced by the words "primary commodity". In using the expression "primary commodity" in Section D the Sub-Committee had in mind the definition contained in paragraph 1 of Article 53.

25. The Sub-Committee considered that it was desirable to retain the Note appended to paragraph 4 of the Geneva draft as a footnote.

26. The proposal by Denmark to add to paragraph 5 the following proviso: "Provided that such rationing does not aim at restrictions over and above such restrictions that are otherwise justified according to the Charter"

was not approved as it was felt that Chapter VIII gave adequate safeguards in the event of abuse by any Member, and furthermore that Article 41 provided specifically for consultation with regard to all state-trading operations.

The representative of Denmark thereupon withdrew his amendment.

27. An amendment to paragraph 6 submitted by the delegation of Switzerland was fully considered in the Sub-Committee.

It was decided to retain the present text.

28. The Representative of Mexico supported by the delegate of Ecuador made the following statement:

"The delegation of Mexico has noted the views of the Sub-Committee that it was not intended in the drafting of paragraph 6 of Article 31 to define in any narrow sense the term 'social purposes', and further that it would be unwise for the Sub-Committee itself to decide that a particular interpretation should have greater force than any other. The responsibility placed on the Members and the Organization is simply that they should pay 'due regard' to the fact that some monopolies may be established mainly for 'social purposes' and, to that extent, general economic considerations would not be the sole factor to be taken into account in any negotiations.

In these circumstances, the delegation of Mexico considers that this term would appropriately include, amongst other aspects of monopolies established and operated mainly for social purposes, such state monopolies as are set up under specific legislation to supply the necessary elements for the people's subsistence and to foster the social development of the nation".

/The representative

The representative of Mexico then withdrew his amendment.

29. The representative of Ecuador provisionally reserved his position in respect of all provisions relating to state monopolies for fiscal purposes.

30. It was decided to omit the Note attached to Article 31 of the Geneva draft, concerning the deletion of Article 33 as contained in the London draft.

31. The following statement appears as a footnote under Article 31 on page 29 of the Geneva draft:

"Arising out of a proposal by the New Zealand delegation to make an addition to the previous text of Article 33, the Preparatory Committee considered the special problems that might be created for Members which, as a result of their programmes of full employment, maintenance of high and rising levels of demand and economic development, find themselves faced with a high level of demand for imports, and in consequence maintain quantitative regulations of their foreign trade. In the opinion of the Preparatory Committee the present text of Article 21, together with the provision for export controls in certain parts of the Charter, e.g. in Article 43, fully meet the position of these economies.

The delegation of New Zealand reserved the position of its Government on this question."

The New Zealand delegation stated that until the final text of the Charter had been determined it maintained its reservation on this question.

32. The Sub-Committee considered the following communication from the Chairman of Sub-Committee 1 of Committee VI:

"The Joint Sub-Committee of Committees V and VI has been considering the substance and the location of an exception to be made in respect of agreements made by or for military establishments for the purpose of meeting essential requirements of national security. The Sub-Committee had decided to recommend the inclusion of the appropriate provision in Article 94.

However, in putting forward this recommendation the Sub-Committee is of the view that a related provision should be introduced elsewhere in the Charter concerning the need for consultation on the liquidation of any stock piles accumulated under such a provision in Article 94. The Sub-Committee considers that the insertion of a provision on liquidation might best be considered in Section D of Chapter IV. Accordingly, the Joint Sub-Committee would be grateful if Sub-Committee J of the Third Committee would give consideration to this question. The Joint Sub-Committee has instructed me to communicate this request to you, and at the same time to transmit for possible consideration by

/Sub-Committee J

Sub-Committee J two alternative versions of such a provision which the Joint Sub-Committee had before it:

- (1) That following the word "sale" at the end of the first sentence in paragraph 2 of Article 30 a proviso might be added to the following effect:

"Provided that, upon a complaint that substantial injury is being caused or is anticipated, a Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to disposal of reserve stocks so acquired."

- (2) That any provision to be made in Section D might be along the following lines:

"Any Member accumulating non-commercial reserves of primary commodities for military purposes under an inter-governmental agreement.....shall not make arrangements for the commercial liquidation of such reserve stocks in such a way as to injure the commercial interests of producers of the commodities in question, and shall consult with the Organization as to the best means to that end."

While the Joint Sub-Committee was agreed in recommending that Sub-Committee J consider the inclusion of some provisions for consultation on the liquidation of such stock piles, the Joint Sub-Committee had not examined the merits of either of the texts reproduced above and is merely transmitting them for information and to provide a possible basis for discussion."

The Sub-Committee decided to recommend the insertion of a new Article, to follow Article 31, dealing with the liquidation of non-commercial government stocks of primary commodities. The term "non-commercial purposes" has been used to make clear that the stocks held by Governments for commercial purposes - e.g., those of state trading enterprises, are excluded from the provisions of the proposed new Article. The main reason for the inclusion of Article 31A was to provide machinery for prior consultation in regard to the liquidation of stocks accumulated for security reasons. It is implied in the text of the Article that the Organization on receipt of notice as provided shall advise the Member Governments accordingly.

New Article 31A

33. The Sub-Committee considered that Article 31A does not in any way affect the obligations of Members under Article 30 as it relates solely to public or prior notification of an intention to liquidate stocks.

/ANNEX

ANNEX

SECTION D - STATE TRADING AND RELATED MATTERS

ARTICLE 30

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] prescribed in this Charter [to] for 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, having due regard to the other provisions of this Charter, make any such purchases or sales solely in accordance with commercial considerations, including [prices] price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other Members adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.
(c) No Member shall prevent any enterprise (whether or not an enterprise described in sub-paragraph (a) of this paragraph) under its jurisdiction 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 resale or for use in the production of goods for sale. With respect to such imports, the Members shall accord to the trade of the other Members fair and equitable treatment.

NOTES

Paragraph 1

Different prices for sales and purchases of products in different markets are not precluded by the provisions of this Article, provided that such different prices are charged or paid for commercial reasons having regard to differing conditions, including supply and demand, in such markets.

Sub-Paragraph 1 (a)

Sub-paragraphs 1(a) and (b) of this Article shall not be construed as
/applying to

applying to the trading activities of enterprises to which a Member has granted licenses or other special privileges

(a) solely to ensure standards of quality and efficiency in the conduct of its external trade;

(b) for the exploitation of its natural resources;

provided that, the Member does not thereby establish or exercise effective control or direction of the trading activities of the enterprise in question, or create a monopoly whose trading activities are subject to effective governmental control or direction.

ARTICLE 30A

Marketing Organizations

If a Member establishes or maintains a marketing board, commission or similar organization it shall:

(a) be subject to the provisions of paragraph 1 of Article 30

with respect to purchases or sales by such organizations; and

(b) with respect to any regulations of such organizations governing

the operations of private enterprises, be subject to the other

relevant provisions of the Charter.

/ARTICLE 31

ARTICLE 31

Expansion of Trade

1. If a Member establishes, maintains or authorizes, 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 it in the product concerned, negotiate with such Member or Members in the manner provided for under Article 17 in respect of tariffs, 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 operation of the monopoly to domestic users of the monopolized product or designed 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 designed to prevent reduce any limitation of imports to an extent inconsistent with the provisions of this Charter, which is comparable with a limitation made subject to negotiation under other provisions of this Chapter.

2. In order to satisfy the requirements of sub-paragraph 1 (b) 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 consistent with the provisions of this Charter if it is evident to the negotiating parties that to negotiate a maximum import duty under sub-paragraph (a) of this paragraph is impracticable or would be ineffective for the achievement of the objectives of paragraph 1 of this Article.

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 arrangement.

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

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] exclusive of 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 further that, where the product concerned is a primary [product] commodity 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. This Article shall not limit the use by Members of any form of assistance to domestic producers permitted by other provisions of this Charter.

NOTE

Paragraph 4

With reference to the second proviso the method and degree of adjustment to be permitted in the case of a primary [product] commodity that is the subject of a domestic price stabilization arrangement should normally be a matter for agreement at the time of the negotiations under sub-paragraph (a) of paragraph 2.

ARTICLE 31A

Liquidation of Stocks

1. Any Member holding stocks of any primary commodity accumulated for non-commercial purposes shall:

(a) give not less than four months public notice of its intention to liquidate such stocks; or,

(b) give not less than four months prior notice to the Organization of such intention.

In either case, the Member concerned shall, at the request of any Member which considers itself substantially interested, consult as to the best means of avoiding substantial injury to the economic interests of producers and consumers of the primary commodity in question.

2. The provisions of paragraph 1 shall not apply to routine disposal of supplies necessary for the rotation of stocks to avoid deterioration.