

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE
ON TRADE AND EMPLOYMENT

COMMITTEE II

DRAFTING SUB-COMMITTEE ON STATE TRADING

Fourth Meeting
held on Friday, 15 November 1946
at 2 p.m.

Chairman: Mr. SHACKLE (United Kingdom)
Leter: Mr. JOHNSEN (New Zealand)

DISCUSSION OF ADDENDUM TO DRAFT REPORT OF RAPPORTEUR
(E/FC/T/C.II/W.57)

1. Article 26

Mr. KUNCSI (Czechoslovakia) said that importers might go through state channels in the purchase of capital and reconstruction goods abroad, when no private capital was available. Would that contingency be covered by Article 26 (2) ?

Mr. HAWKINS (United States) The case of large purchases for public use, to which the Delegate for Czechoslovakia had referred, was not specifically covered in the Article. If reference to such purchases was left out of the Article entirely, the Article would appear to sanction them. The Drafting Sub-Committee might, he suggested, confine itself to recognizing the principle, without trying to cover all the various aspects of the problem.

He suggested the possible inclusion of some such clause as :

"In respect of purchases for public use, Members shall give fair and equitable treatment to the trade of other Members "

to replace the clause "commercial considerations".

Mr. TUNG (China) raised the question of purchases tied to loans. He thought "fair and equitable treatment" would best apply to such

cases.

Mr. HAWKINS (United States) said that the purchasing country could not be open to criticism in such circumstances.

Mr. KUNOSI (Czechoslovakia) thought that the principle of non-discriminatory treatment should be emphasized in the field of loans, where political and other considerations were important.

Mr. JOHNSEN (New Zealand) suggested the insertion of a new paragraph in the revised Article 26, as paragraph 2, to cover the point under discussion. With the additions accepted by the Sub-Committee, the paragraph would read :

"2. The foregoing provisions of this Article relate to purchases by State enterprises for resale. With respect to purchases by State enterprises for public use and not for resale, members agree to accord the imports from other members fair and equitable treatment having full regard to the relevant circumstances."

Mr. TUNG (China) suggested the use of the clause "as far as practicable" following the word "accord" in the fourth line of the paragraph: but it was the sense of the Sub-Committee that the addition would be redundant, the point being covered in the clause "having full regard to the relevant circumstances".

In the discussion of paragraph 3 of the Rapporteur's Report it was brought out that the sole purpose of the inclusion of the word "produce" in the first sentence of paragraph 1 of Article 26 was to cover the case of some enterprise which, given a monopoly to produce certain goods, might have to make certain importations from abroad. In such circumstances, the only obligation imposed by the paragraph would be that all foreign producers should be treated alike, i.e. "be accorded treatment no less favourable than that accorded to the

commerce of any country other than that in which the enterprise is located, in respect of the purchase or sale by such enterprise of any product".

In reply to an inquiry, Mr. HAWKINS (United States) suggested that by the omission of the word "produce" from the sentence, a producer, even though his government exercised control of his enterprise, would not be obligated to apply the most-favoured-nation principle in his foreign purchases.

Mr. JOHNSEN (New Zealand) asked whether the activities of three New Zealand manufacturers, who were licensed by the Government to make motor car tyres, but who operated as private traders, would be within the scope of the Article.

Mr. HAWKINS (United States) replied that, as the Government exercised no control over the organizations in that case, the Article would not be applicable.

He did not feel particularly strongly that the word "produce" should, or should not, be retained in the Article. Its omission would, he thought, leave a question on which the Charter would be silent, and some confusion might result.

Mr. KUNOSI (Czechoslovakia) pointed out that the general principles were covered elsewhere in the Charter.

Mr. JOHNSEN (New Zealand) took the chair.

Mr. TUNG (China) agreed to the retention of the word "produce" in the fifth line of paragraph 1 of the revised Article 26, as it appeared on page 3 of the Rapporteur's Report.

Paragraph 4.

Agreed

Paragraph 5

The CHAIRMAN thought that some change was required in paragraph 1 of Article 12 to cover continued tariff preferences. He suggested

the addition of the clause:

"Nothing in this Article shall prevent the application of preferences or discriminatory action permitted by other sections of the Charter."

Mr. HAWKINS (United States) was reluctantly prepared to accept the point; but he suggested the insertion of the words "customs treatment" in the clause "commercial considerations, such as price, quality, marketability, transportation, customs treatment, and terms of purchase or sale."

State purchases, like private purchases, would be influenced by commercial considerations such as higher duties. The words "customs treatment" would cover duties and preferences, and would avoid direct reference to them. The phrase "customs treatment" would be broad enough to cover quota restrictions, if they were not abolished, and balances of payments. He would not object to the wording "differential customs treatment".

The CHAIRMAN understood that the United Kingdom Delegate had discussed the subject, and had wording to suggest.

It was agreed to consider the matter again when Mr. Shackle was present.

The CHAIRMAN inquired whether the final sentence of paragraph 1, which provided that information might be sought to determine whether operations of an enterprise were being conducted in accordance with the requirements of the paragraph, was necessary, in view of the provision for consultation included in Article 30.

Mr. ARMSTRONG, Rapporteur, pointed out that the question had been considered in two previous discussions, but that no conclusion had been reached, other than that the matter required further consideration. The sentence would require from a member operating a State enterprise information no more extensive in scope than that required by Article 15

with regard to customs and trade regulations where private trade was concerned.

Mr. KUNOSI (Czechoslovakia) felt strongly that the same requirements with regard to information should be imposed on both private and state trading enterprises. There was often strict secrecy with respect to private enterprises.

Mr. HAWKINS (United States) suggested that the Delegate for Czechoslovakia might be disturbed about the implications of the last part of the sentence. Would he wish the last four lines of the Article deleted ?

Mr. YOUNG (United Kingdom) pointed out that in Article 37 of Chapter V (Restrictive Business Practices) members were required to supply information regarding private firms. It was not unreasonable that a Government should be called upon to give similar information regarding state enterprises.

The CHAIRMAN inquired whether Article 30 covered the point adequately, and suggested that most members would prefer to have it covered in Article 26 also.

Mr. HAWKINS (United States) pointed out that Article 30 provided for "sympathetic consideration" and consultation, which did not quite meet the case in the present instance.

Mr. KUNOSI (Czechoslovakia) felt that the subject would be covered by the application of Article 30: but it seemed fairer to apply the principle to state enterprises in the same manner that it was applied to private enterprises, in order to avoid discrimination.

Mr. HAWKINS (United States) said he would not be concerned, whether Article 30 was retained or omitted.

Mr. KUNOSI (Czechoslovakia) suggested that state enterprises should not be treated differently; they were more subject to improper practices than private enterprises.

Mr. TUNG (China) suggested that military establishments were state enterprises, and should be excepted from the Article.

The CHAIRMAN pointed out that military establishments would be covered by sub-paragraph (a) of Article 32 (General Exceptions to Chapter IV).

Mr. YOUNG (United Kingdom) felt that in the final sentence of paragraph 1 of Article 26 the inclusion of a provision for providing information regarding state enterprises was necessary. The term "specific and detailed information" was too precise. He suggested the deletion of the words "specific and detailed".

The CHAIRMAN suggested that the verb "shall" should be changed to "should" in the third line of the final sentence (page 4 of Rapporteur's Report).

Mr. KUNCSI (Czechoslovakia) favoured the insertion of the following sentence:

"Representations made with respect to the operation of state trading organizations shall be dealt with in conformity with Article 30 of the Charter."

The Rapporteur was requested to review the various suggestions made by members of the Sub-Committee regarding the point.

Mr. KUNCSI (Czechoslovakia) reminded the Sub-Committee that Mr. Augenthaler had suggested that exceptions should be made for state enterprises or monopolies for purposes of health, morals, or similar considerations, for religious enterprises which imported and sold religious articles, and for monopolies for fiscal purposes.

Mr. HAWKINS (United States) said that Mr. Augenthaler had been referring specifically to monopolies for revenue purposes, such as the salt and tobacco monopolies which were considered under Article 27. The other monopolies to which the Delegate for Czechoslovakia referred

were covered by the general exceptions in Article 32.

At the suggestion of Mr. KUNOSI (Czechoslovakia), it was agreed to delete the words "directly or indirectly" at the end of paragraph 2 of the Article as revised in the Rapporteur's report.

2. Article 27

Mr. KUNOSI (Czechoslovakia) wondered whether, under the provisions of the Charter, a tobacco monopoly in country A would be required to buy tobacco from country B, where the price was lower than in country C, even though the people of country A preferred the type of tobacco grown in country C.

Mr. HAWKINS (United States) replied that a monopoly could take a liking for a particular type of tobacco into consideration just as a private firm would do.

Mr. KUNOSI (Czechoslovakia) observed that the tobacco monopoly of his country was an important source of government revenue. Would Czechoslovakia have to negotiate the reduction of that revenue?

Mr. HAWKINS (United States) replied that a country would not be required to grant a reduction of a particular margin, just as it would not be required to reduce a particular tariff. If it did reduce the margin, it would naturally expect to receive some benefit in return.

Mr. KUNOSI (Czechoslovakia) was concerned, in the case of tobacco, about the requirement under Article 27 that a monopoly should import such quantities as would satisfy the full domestic demand. Tobacco was a luxury.

Mr. SHACKLE (United Kingdom) pointed out that the monopoly would only be required to supply the demand for tobacco at the price margin which had been agreed upon. In the case of a particular product, such as tobacco, the country concerned might choose not to lower the price margin to an extent which would greatly increase domestic demand.

There was considerable discussion of the "total cost" (7th line, page 5, E/FC/T/C.II/W.57) of a product imported by a monopoly, particularly in connection with the question as to whether "total cost" should include a margin of profit, a reserve against future losses, duty or distribution costs. There was also discussion of the relative advantages of using "total cost" or "landed cost" in calculating the margin to be negotiated.

It was agreed to substitute the words "landed cost before any payment of duty" for the words "total cost" and to delete the words "duty and" (lines 12 and 13, page 5, E/FC/T/C.II/W.57) between the words "case for" and "internal taxes". What would be negotiated would be the margin between landed cost and the selling price; that margin might or might not include a duty.

It was agreed to retain the words "in the manner provided for in respect of tariffs under Article 18" which had been placed in brackets in the revision of the Article in the Rapporteur's Report (lines 2 and 3, page 5).

It was agreed that there should be a provision similar in substance to that originally included in the Draft Charter covering cases where new monopolies might be established in respect of products for which duties had been reduced. It was felt that without such a provision it might be necessary to negotiate again the reduction of the margin of protection enjoyed by such products. That provision had been placed in brackets in the revision of the Article in the Rapporteur's report (lines 16 - 20, page 5).

Mr. SHACKLE (United Kingdom) thought that in that connection that such a newly established monopoly should be allowed a reasonable profit; if other members considered the profit unreasonable, they should have the right to complain to the ITO.

It was agreed to retain the phrase "at the prices charged under such maximum margins" at the end of the Article.

It was agreed, after some discussion, to retain the clause "account being taken of any rationing of the product to consumers which may be in force at that time" in the last sentence covering the obligation of a monopoly to meet the full demand for a product (last two lines, page 5, of Rapporteur's report).

It was agreed that the Rapporteur should redraft Article 27 in the light of the decisions which had been reached and that the Sub-Committee should meet again to study the new draft.

The Meeting rose at 6.30 p.m.
