GENERAL AGREEMENT ON TARIFFS AND TRADE

CONTRACTING PARTIES
Ninth Session

Review Working Party III on Barriers to Trade other than Restrictions or Tariffs

REPORT OF THE CHAIRMAN OF SUB-GROUP III-B
- STATE TRADING ETC.

In the three meetings held up to now, Sub-Group III-B has given a cursory examination to the liquidation of non-commercial stocks and the disposal of surpluses, and has made a comprehensive survey of state trading on the basis of the Danish proposal. It has not yet entered into an examination of the General Exceptions.

1. Liquidation of non-commercial stocks and disposal of surpluses

The first item in the Sub-Group's terms of reference was the disposal of non-commercial stocks and provisions relating to programmes for disposal of surpluses outside normal channels of trade.

Two drafts were tabled for discussion: a Chilean text (L/272/Add.1) relating to the liquidation of non-commercial stocks and an Australian proposal (W.9/78) drafted so as to provide for both non-commercial stocks and surpluses. There was no opportunity in the brief time devoted to these questions by the Sub-Group, to discuss the substance of the proposals. There was some debate as to whether the two subjects should, or could, be taken together or be examined separately. The question is still unresolved pending discussions between the Australian and Chilean delegations.

2. State trading

The Danish Government has submitted a proposal (L/273) involving the incorporation into the General Agreement of the provisions of Article 31 of the Havana Charter plus a paragraph requiring contracting parties to report annually on their state trading operations. The Danish representative stated that in proposing this amendment of the Agreement they aim at preventing the circumvention of provisions of the Agreement by resort to state trading operations. A proposal by the Australian delegation was submitted too late for any discussion and will be examined in forthcoming meetings.
The Sub-Group examined the Danish proposal and, in order to clarify the issues, singled out the major points of difference between the provisions of the present Agreement relating to state trading and those of the Danish proposal. An analysis of the state-trading provisions at present contained in the Agreement has been prepared by the secretariat and will be circulated with the text of this report. It was agreed that the principal points in the Danish proposal not covered by the General Agreement are the following:

1. the obligation to negotiate with the object of limiting protection afforded by export and import monopolies;

2. the obligation upon contracting parties, even in the case of unbound items, to make public, or notify the Organization of, the maximum import duty which will apply for the product concerned;

3. the application to export, as well as import monopolies of the obligation to negotiate;

4. the requirement that due account be taken of the fact that some state monopolies are established and operated mainly for social, cultural, humanitarian or revenue purposes;

5. the submission of annual reports on state trading operations to the Organization.

Although not all delegations have received instructions from their governments, a number supported the Danish proposal as a whole and there appears to be a majority who would favour the incorporation into the Agreement of certain elements of the Danish proposal.

1. The delegations were about evenly divided between those who favoured the obligation to negotiate the margins of protection afforded by state monopolies and those who opposed such an obligation. A number based their opposition on the fact that the Agreement does not include a comparable obligation to negotiate on tariffs. The Danish representative considered, however, that because of the characteristics of state trading, there was a justification for such an obligation, even though it were not paralleled by a similar obligation with respect to tariffs, and indicated that his Government strongly favoured such an obligation, whether or not the CONTRACTING PARTIES accepted his Government's proposal to incorporate in the Agreement Article 17 of the Charter.

2. Some delegations supported the proposal to require publication of the margin of protection for unbound items. A minority opposed this proposal, while some were undecided or reserved their position.

3. Those who favoured an obligation to negotiate the margin of protection afforded by import monopolies were also in favour of extending this obligation to export monopolies. Some delegations were opposed.
4. Three delegations supported the proposal of the Danish delegation to include the language of paragraph 6 of Article 31 of the Charter, which provides that in applying the provisions of the Article, due regard shall be had for the fact that some monopolies are established and operated mainly for social, cultural, humanitarian or revenue purposes. A majority reserved their position pending a further clarification of the meaning and intention of this provision.

5. The Danish proposal included a provision which does not appear in the Havana Charter, namely an obligation on the part of contracting parties to submit annual reports to the Organization concerning their state-trading operations. There was about equal support for the Danish proposal and for a modified proposal that such reports need be submitted only if requested by a contracting party having a substantial interest. Two delegations registered their opposition to any such provision.

To sum up, Mr. Chairman, it appears that the principal difference of opinion between the delegations in the Sub-Group is between those who consider that the present provisions of the Agreement are adequate to deal with state trading operations and those who feel that all of the obligations of the Charter should be incorporated into the Agreement. The further view was expressed that even where the Charter obligations have been incorporated into the present Agreement, they need to be restated and strengthened in order to improve the chance of their being observed.

In spite of these differences, the members of the Sub-Group approached the subject objectively and with an appreciation of each others' views, and I believe there is a real prospect that the existing differences can be resolved.
ANNEX

SUMMARY OF STATE TRADING PROVISIONS NOW IN THE GENERAL AGREEMENT

Note by the Secretariat

In view of the proposal of the Danish delegation, which in effect adds Article 31 of the Havana Charter plus a provision for annual reporting of state trading activities to Article XVIII of the Agreement, a number of members of the Sub-Group have asked for an analysis of the present GATT provisions. The following should be helpful to the Sub-Group in determining to what extent the substance of the proposal of Denmark is already covered by the Agreement.

Most-favoured-nation treatment

Article XVII:1 of the Agreement, which is retained in the Danish proposal, applies to state trading the same principle of non-discriminatory treatment as is applied elsewhere in the Agreement to actions by governments which affect private trading, and is identical in substance to the provisions of Article 29 of the Charter.

Prohibition against Quantitative Restrictions

Article XI:3 of the Agreement assures that the provisions of Articles XI - XIV relating to quantitative restrictions apply equally to state trading operations. This means that a state monopoly may not limit the quantity of goods imported or exported except as permitted in the case of other quantitative restrictions. It therefore has a similar effect to that of Article 31.5 of the Charter but goes further in two respects:

1. it applies to quantitative restrictions on export as well as import;

2. it omits the qualification "wherever this principle can be effectively applied" which is contained in the Charter Article.

Binding of protective margins

Article II:4 of the Agreement establishes rules which parallel closely those concerning import duties which appear in the same Article. It is clear that a state monopoly could afford protection to domestic producers by charging an unduly high price when it re-sells the imported article. Therefore, Article II:4 provides that a tariff binding may not be nullified by protection afforded through the operation of the monopoly. In order to make this provision more understandable, an interpretative note to Article II:4 provides that this obligation will be applied in the light of the provisions of Article 31 of the Havana Charter. In other words, protection afforded through a state
monopoly is interpreted to mean the addition of a mark-up upon re-sale of the imported commodity which exceeds the actual costs involved plus a reasonable margin of profit. Two illustrations of how Article II:4 would operate may be helpful:

1. Country "A" binds the duty on a commodity at 20 per cent ad valorem. It collects the entire 20 per cent at the custom-house. It may therefore grant no additional protection through the operation of the monopoly and must re-sell its imports at cost plus a reasonable profit.

2. Country "B" in the same circumstances chooses not to collect any part of the bound rate at the custom-house. It may therefore add at the time of re-sale an additional 20 per cent of the import value.

Article II:4 provides for another case, namely one in which the importing country and the exporting country which negotiates with it agree upon some other method of limiting the amount of protection to be afforded by the state monopoly. When there is such a specific agreement between the parties initially negotiating the concession and where that agreement is registered in the Schedule of the importing country, the other provisions of the paragraph are inoperative.

It is worthwhile to make two points concerning these provisions:

1. They are identical in substance with the provisions of Article 31, which provide for the binding of margins of protection by an import monopoly, except that they do not provide an obligation to negotiate.

2. Even though there is no specific obligation to negotiate on the margin of protection as such, the binding of an import duty serves automatically to bind the maximum protection that may be afforded through the operation of a state monopoly by establishing the maximum protection that can be afforded through an import duty plus a state trading mark-up combined.

Publication of state trading protective mark-ups

Unlike Article 31 of the Charter, the Agreement does not clearly require the publication of the mark-up that is afforded by a state trading monopoly. It is difficult to read such an obligation into Article X, which requires the publication of "laws, regulations, etc.". The protection afforded by state trading is rarely, if ever, enshrined in laws or regulations and may be a matter of day-to-day administrative decision. There has been no case where a contracting party has interpreted Article X to require publication of unbound protective margins of its state trading enterprises.
Protective export margins

The GATT in Article XI:3 subjects quantitative export restrictions effected through state trading to the same limitations as are applicable to export restrictions imposed by governments on private enterprises. The most-favoured-nation provisions of Article XVII apply to exports as well as to imports. Article II:4, however, refers only to imports. In this respect, it follows the pattern of the rest of Article II which makes no special provision for the binding of export taxes, though there is nothing to prevent such a binding when agreed to between two negotiating contracting parties.