COMMITTEE III: COMMERCIAL POLICY

SUB-COMMITTEE J: STATE TRADING

Addendum to Draft Report

The following should be inserted in the Draft Report after Item No. 24:

The representative of Mexico 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 of Mexico withdrew his amendment.
COMMITTEE THREE: COMMERCIAL POLICY

SUB-COMMITTEE J (STATE TRADING)

WORKING PAPER

Item 3

The Working Party has suggested to add a new provision to Article 30, replacing the footnote to sub-paragraph 1 (a), as follows:

"Governmental measures imposed solely:
(a) to ensure standards of quality and efficiency in the execution of foreign trade; or
(b) to grant privileges for the exploitation of National natural resources,
do not constitute exclusive or special privileges within the meaning of Article 30 provided that such measures do not result in effective control by the Government of the trading activities of the enterprises in question."

The United States delegation alternatively proposes to replace the present footnote by a footnote reading as follows:

"Paragraphs 1 (a) and (b) of this Article shall not be construed as 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 foreign trade, or
(B) for the exploitation of natural resources within its territories.
Provided that the Member does not thereby establish in effect a monopoly or exercise effective control over the trading activities of the enterprises in question."

Item 19

The delegation of Mexico has declared its readiness to withdraw its amendment to paragraph 6 of Article 31, if the report of the Sub-Committee would include interpretation by the delegation of Mexico of this paragraph in the following terms:

"The delegation of Mexico has been endeavouring to find a suitable interpretation of the term 'social purposes' as used in paragraph 6 of Article 31. It has failed to find any such interpretation in the available document of the Second Session of the Preparatory Committee; it considers, lacking such interpretation, that said term is designed
term is designed to include activities of state monopolies established, in accordance with specific legislation, among other purposes, for the welfare of the country and its people, and which operate, in this connection, to supply the necessary elements for the people's subsistence and development of important economic and social aspects."
THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE J (STATE TRADING)

WORKING PAPER

1. The following memorandum has been received from the Secretary of Sub-Committee A of Committee III:

"Working Party 3 (Article 18) of Sub-Committee A (Articles 16, 17, 18 and 19) of Committee III is of the opinion that, in order to avoid difficulties of interpretation, the wording of paragraph 5 of Article 18 and of paragraph 2 of Article 30 should be comparable, and that the rule of equitable treatment should apply to both.

The Working Party is therefore recommending to Sub-Committee A that paragraph 5 of Article 18 be revised as follows:

Revised Paragraph 5 of Article 18

5. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not for a view to commercial resale or for a view to use in the production of goods for commercial sale; and that Sub-Committee A recommend to Sub-Committee J that paragraph 2 of Article 30 be revised as follows:

Revised paragraph 2 of Article 30

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 a view to commercial resale or with a view to use in the production of goods for commercial sale. With respect to such imports, and with respect to the laws, regulations and requirements referred to in paragraph 2 of Article 18, the Members shall accord to the trade of the other Members fair and equitable treatment."

It should be pointed out that the Report of Working Party 3 has not yet been approved by Sub-Committee A.

2. The Central Drafting Committee has requested that the attention of this Sub-Committee should be given to the definition of the term "primary commodity" given in paragraph 1 and/or 2 of Article 53.

In view of the Central Drafting Committee it would be desirable that Sub-Committee J should consider whether the term "primary product" as used in the second proviso of paragraph 4 of Article 31 is intended to be interpreted in the same way in that case whether Article 31 should include a reference to that definition.
Sub-committee J: State Trading

Report of Working Parties 1 and 2

Meeting held 23 January 1948, at the Capitol, Havana, Cuba

Annotated Agenda, Items 2 and 3, Paragraph 1 (a)

It is ultimately decided to retain this item as a footnote with the following text:

Sub-paragraphs 1 (a) and (b) of this Article shall not be construed as applying to the trading activities of enterprises to which a Member has granted licenses or other special privileges

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

(b) for the exploitation of its natural resources, provided that the Members do 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.

Annotated Agenda, Item 15

The proposed amendment to paragraph 6 submitted by Switzerland: It was decided to recommend retention of the Geneva Text.

Annotated Agenda, Item 10

It was agreed to include in the Report of the Working Party the following statement by the delegate from Mexico:

“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, may be influenced in their negotiations by that fact.

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”.

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/Rev Item
New Item

The Working Party considered the matter referred by the Joint Sub-Committee of Committees V and VI, relative to stockpiles accumulated in connection with national security. After full discussion, it was decided to recommend to the Sub-Committee that the following text be inserted as a new Article 31 A:

"Any Member holding stocks of any primary commodity accumulated for non-commercial purposes, in accordance with the provisions of paragraph 2, shall (a) give not less than 12 months public notice of its intention to liquidate such stocks; or (b) give 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. The provisions of this paragraph shall not apply to routine disposal of supplies necessary for the rotation of stocks."

Item d. (b)

At the meeting of the Working Party held on 27 January, the delegate for Belgium reported that the reservation reported in the footnote of the second column, page 28, was wrongly placed. The reservation by this delegation being to the footnote dealing with different prices at the bottom of the first column of the same page. He advised that having studied the new text of the proposed footnote on the same subject, his delegation would be prepared to withdraw its reservation.

The new text reads as follows:

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

To Mr. W. Nash, Chairman of the sub-Committee J of Committee III, Section D – State Trading.

The Cuban Delegation, having explained the object of its amendment (document C.3/Add.52) will be satisfied if paragraph 2(b) is 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 we gave to sub-paragraphs a) and b) in paragraph 2, 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)
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 has 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 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 provision for consultation on the liquidation of such stock piles, the Joint Sub-Committee has 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.