PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE 
ON TRADE AND EMPLOYMENT 

COMMITTEE II 

SUB-COMMITTEE ON STATE TRADING 

REPORT OF SUB-COMMITTEE ON STATE TRADING 
TO COMMITTEE II 

PART I 

The Sub-Committee consisted of Delegates for China, Czechoslovakia, New Zealand, the United Kingdom and the United States. It met six times under the Chairmanship of Mr. SHACKLE (United Kingdom), and Mr. JOHNSEN (New Zealand). As Rapporteurs functioned Mr. ARMSTRONG (United States), and later, Mr. YOUNG (United Kingdom). 

PART II 

Non-discriminatory Administration of State Trading Enterprises. 

The provisions of Article 26 of the Draft Charter were, on the whole deemed acceptable to the Sub-Committee on State Trading, subject to the modifications indicated below. 

1. It was considered that this Article - in conformity with certain others in that Charter - should be modified so as to refer to goods only. Hence the words "or services" were deleted in the first paragraph. 

2. In paragraph 1 of Article 26 the words "distribute or produce" in the first sentence have been placed in square brackets for the reason that certain Delegations consider that it should be possible for a Member government to confer exclusive or special privileges upon certain types of enterprise, e.g., for carrying on certain types of manufacture, without at the same time exercising effective control over the trading operations of such enterprise. In order to make their point of view clear these
Delegations wish to add in square brackets "and exercises effective control over the trading operations of such enterprise,." Other Delegations, however, consider that in such circumstances it would be proper that the government conferring the exclusive or special privileges should assume the responsibility of exercising effective control over operations effecting the external trade of such enterprise.

3. The illustrative examples of "commercial considerations" by which the State Trading enterprise of a Member State should be guided in fulfilling its obligation of non-discriminatory administration, were supplemented to include "differential customs treatment".

4. Attention was paid to the nature of the "specific and detailed information" which the Member maintaining a State enterprise was required to provide by the terms of the Draft Charter in order to make possible a determination whether the trading operations of the enterprise fulfilled the requirements of paragraph 1. It was argued that such enterprise should not be called upon to provide more information than a private enterprise trading under the same or similar conditions. Accordingly, the last sentence of paragraph 1 was amended so as to fall in line with the provisions of Article 30 of that Charter.

5. Since paragraph 1 of Article 8 of the Draft Charter had been amended by deletion of the provision relating to governmental contracts, it was felt necessary to insert a new paragraph in Article 26 dealing with the subject. A distinction was made as between governmental purchases for resale which are covered by this paragraph, and purchases for governmental use and not for resale. The discussion on this latter point was prompted by the consideration that in some countries purchases of industrial and other equipment of various types from abroad might well be effected through the medium of State enterprise and that, while it might be difficult in certain circumstances to observe the rule of "commercial considerations" for such purchases, it was at least necessary
to provide that the rule of "fair and equitable treatment" should apply but that in applying it full regard should be given to all relevant circumstances. The question was raised whether purchases on the basis of the so-called "tied loans" would be considered to conform with this rule. The view was generally held that a country receiving a loan would be free to take this loan into account as a "commercial consideration" when purchasing its requirements abroad. The position of countries making such "tied loans" was another question.

6. Two changes were made in the definition of a State enterprise in the last paragraph of this Article. For greater clarity, the words "directly or indirectly" were deleted and the words "effective control" were substituted for the term "a substantial measure of control".

7. A small Sub-Committee composed of representatives of the Netherlands the Union of South Africa, and the United States considered the question of Marketing Boards. It was agreed that when such Boards buy or sell they would come under the provisions relating to State trading. Where they lay down regulations governing private trade their activities would be covered by the relevant articles of the Draft Charter.

The report of the Sub-Committee on Marketing Boards was noted by the Sub-Committee on State trading with the understanding that the term Marketing Boards was confined to Boards established by express governmental action.

Expansion of Trade by State Monopolies of Individual Products.

The principle underlying Article 27 of the Draft Charter, being the counterpart of paragraph 1 of Article 18 of that Charter, was considered generally acceptable by the Sub-Committee. The changes which were recommended and which are listed below serve mainly two purposes - first, to provide a more accurate basis for the determination of the "negotiable margins" and secondly, to take into account the special nature of fiscal monopolies.
1. The references to Article 28 of the Draft Charter in the first sentence was provisionally removed (See article 28 below).

2. The term "landed cost, before payment of any duty, of such products purchased by the monopoly from suppliers in Member states" was substituted for the wording of (a) of that article reading "the price at which such product is offered for sale to the monopoly by foreign suppliers," since it was considered that a mere offer did not provide a firm basis for the calculation of the margin. A similar change was made in (b) in respect of exports. Moreover, since in certain countries imports by State monopolies are subject to customs duty, it was considered appropriate to choose a definition which, while taking into account all costs up to the moment of entry, excluded duties and other charges (e.g. internal taxes, transportation and distribution). It was generally agreed, however, that it would be open to countries to negotiate, if they wished, a margin representing the difference between the total cost of a product (i.e. including internal taxes, costs of distribution and transportation etc. and, where appropriate, profit) and the monopoly's first hand selling price in the home market.

3. It was considered that, when calculating the margin under (b) of Article 27, allowance should be made for a margin of profit; that margin, however, should not be so excessive as to restrict the volume of trade in the product concerned. Accordingly, the words "a reasonable margin of profit" were added.

4. It was considered appropriate that, in applying the margin determined by negotiation, landed costs and selling prices might be averaged over a recent period of years, and a sentence to that effect was added.

5. In view of the changes likely to be made by other Sub-Committees in the Articles of the Draft Charter (in particular in relation to Quantitative Restrictions and to "escape clauses") it was felt advisable to delete the reference to Chapter C of the Draft Charter and to
substitute therefor the words "subject to the other provisions of this Charter". The sentence was further modified so as to permit of account being taken, in the case of imports, of rationing of the product to consumers, and in the case of exports, of the quantities available for export.

6. Attention was paid to the special position of monopolies operated for revenue purposes. It was contended that their profits (and consequently the margins between their "landed costs" and selling prices) had to be regarded as a form of internal taxation. A new paragraph (2) was added to cover the case of such monopolies.

Expansion of Trade by Complete State Monopolies of Import Trade

Although Article 28 of the Draft Charter was not discussed as to substance, it was decided that it should remain provisionally as it appears in the Draft Charter, subject to possible consideration at a later stage.
APPENDIX

Article 26 - Non-discriminatory Administration of State Trading Enterprise

1. If any Member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product, and exercises effective control over the trading operations of such enterprise, the commerce of the other Members shall 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 enterprises of any product. To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as price, quality, market-ability, transportation, and other terms of purchase or sale, and also differential customs treatment. The Member maintaining such State enterprise, or granting exclusive or special privileges to an enterprise shall make available such information as may be appropriate in connection with the consultation provided for in Article 30.

2. The foregoing provisions of this Article relate to purchases by State enterprises for re-sale. With respect to purchases by State enterprises for governmental use and not for re-sale, Members agree to accord to the commerce of other Members fair and equitable treatment having full regard to all relevant circumstances.

3. For the purposes of this Article, a State enterprise shall be understood to be any enterprise over whose operations a Member government exercises effective control.
Article 27 - Expansion of Trade by State Monopolies of Individual Products

1. If any Member (other than a Member subject to the provisions of Article 28) establishes, maintains or authorizes, formally or in effect, a complete or substantially complete 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 trade with that Member in the product concerned, enter into negotiations with such Member or Members, in the manner provided for in respect of tariffs under Article 18, with regard to:

(a) 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 Member States; or

(b) in the case of an export monopoly, the maximum margin by which the price for a product charged by the monopoly to purchasers in such Member States may exceed the price for such product charged by the monopoly in the home market, after due allowance in either case for internal taxes, transportation, distribution and other expenses incident to purchase, sale or further processing, and a reasonable margin of profit.

For the purpose of applying these margins regard may be had, in respect of imports, to average landed costs and selling prices of the monopoly and, in respect of exports, to average prices charged by the monopoly for exports and sales in the home market respectively, over recent periods. Members newly establishing any such monopoly in respect of any product shall not create a margin as defined above greater than that represented by the maximum rate of import or export duty which may have been negotiated in regard to that product pursuant to Article 18.
With regard to any monopolized product in respect of which a maximum margin has been established pursuant to this Article, the monopoly shall, as far as practicable and subject to the other provisions of this Charter -

(i) import from Member countries and offer for sale at prices charged within such maximum margins 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 of the product to consumers which may be in force at that time, and

(ii) in the case of an export monopoly, offer for sale to purchasers in Member countries at prices charged within such maximum margins quantities of the product to the fullest extent that they can be made available for exportation.

2. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated solely for revenue purposes.
Article 26. Expansion of Trade by Complete State Monopolies of Import Trade.

Any Member establishing or maintaining a complete or substantially complete monopoly of its import trade shall promote the expansion of its foreign trade with the other Members in consonance with the purposes of this Charter. To this end such Member shall negotiate with the other Members an arrangement under which, in conjunction with the granting of tariff concessions by such other Members, and in consideration of the other benefits of this Chapter, it shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon. This purchase arrangement shall be subject to periodic adjustment.