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ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

SECOND MEETING

of the

STATE TRADING SUB-COMMITTEE

of

COMMITTEE II

held at

Church House, Westminster, S.W.1.

on

Friday, 8th November, 1946

at

10.30 a.m.

Chairman: Mr. R.J. SLACKLE, C.M.G. (United Kingdom)

(From the Shorthand Notes of
W.B. GURNEY, SONS & FUNNELL
58, Victoria Street,
Westminster, S.W.1)

THE CHAIRMAN: Well, Gentlemen, as I gather we are all present, shall we begin? I think at the end of yesterday we had started on Article 27; we had been discussing the first sentence, that is to say, that very long sentence which begins Article 27 down to the semi-colon at about the 10th line after the words "price for such product charged in the home market". Has anybody else got points to raise on that particular sentence, the first of Article 27? (After a pause:-) Well, I have a point to raise myself; it is this: it concerns the definition of the margin, the words about 6 lines down, being "the maximum margin by which the price for an imported product charged by the monopoly in the home market may exceed the price at which such product is offered for sale to the monopoly by foreign suppliers". Now, this is a point which I mentioned in the main Committee. There is a difference of wording here as between the draft Charter and the proposals of December last. The way in which this is worded in the Proposals of December last is this: "the maximum margin between the landed price of the product and the price at which the product is sold in the home market". I then said that our feeling in the United Kingdom delegation was that "landed price" is much better than "the price at which such product is offered for sale to the monopoly"; because it is so difficult to tell what really is an offer for sale. It may be a big offer; it may be a small offer; and as to price, well, it might conceivably be a sort of accidentally low dumping price; and we feel that you want something firmer as a basis. For that reason we should favour going back to the "landed price" which was the test in the Proposals of last December. May I invite discussion on that point?

Mr JOHNSEN (New Zealand): I think that seems a very reasonable proposition.

Mr HAWKINS (USA): It seems reasonable to us too.

THE CHAIRMAN: Thank you. Well, if nobody has any further comments on that particular point or on that first sentence, we can now pass on. After the semi-colon it goes on: "after due allowance in either case for internal taxes and for transportation, distribution and other expenses incident to purchase, sale or further processing." That is a qualification of what has gone before. Has anybody points on that? (After a pause:-)

Well, I have one point — "distribution and other expenses", I suggest that we should there include a reasonable profit. After all, it is only right and proper that a State trading concern should be able to earn a reasonable profit, just like a commercial concern. Have you got any comments on that point?

(After a pause:-) Then let us go on to the next sentence:

"Members newly establishing any such monopoly in respect of any product shall not create a margin as defined above greater than the maximum rate of import duty (or, in the case of an export monopoly, greater than the maximum rate of export duty) which may have been negotiated in regard to that product pursuant to Article 18." Are there comments upon that? That is the change-over, as I understand it, from private trading to State trading after a tariff rate has been negotiated.

Mr HAWKINS (USA): Mr Chairman, can I go back to your "reasonable profit" point?

THE CHAIRMAN: Yes.

Mr HAWKINS (USA): I had not considered that. I think it probably is all right. My only query is whether it might not result in a margin much wider than the negotiators had contemplated as a reasonable profit. It is a very loose phrase. I am just thinking out aloud on this. I had not thought of the point before. My only query is, does that leave open the possibility of increasing that protective margin unduly? I put that as a question. I have no conviction on it at the moment.

THE CHAIRMAN: Well, of course, I suppose that as the I.T.O. will be in charge of all this Charter, questions as to the interpreta-

tion of such a word as "reasonable" might always come up to the ITO. After all, it is to have a procedure for settling disputes, is it not? We had tried to think whether one could put in some sort of illustrative figure of what might be a reasonable profit; but it is extremely difficult when one considers the different circumstances of the different products, and so on.

Mr TUNG (China): Mr Chairman, I think your point is well taken; because if we leave out the words "reasonable profit", it means that a State enterprise would have to carry on for nothing except expenses. I think the word "reasonable" has been used in many Chapters and everywhere in this Charter; and that word has to be interpreted in some way by ITO, as you have just said. So I am strongly for the insertion of that phrase in that sentence — "at a reasonable profit".

Mr HAWKINS (USA): Mr Chairman, I am again thinking out aloud on the point. I should have thought that when there are these negotiations on the margin, consideration of what is a reasonable profit might be taken into account infixing that margin.

THE CHAIRMAN: Yes.

Mr HAWKINS (USA): In other words, is "reasonable profit" a term which could be defined generally by the ITO or any other organisation? Is it not something which the parties to a negotiation might best work out? Suppose, for example, that the country which has raised the question as to the margin says: "We think the margin between the purchase and re-sale price should be 10"; and the other party said: "Well, that leaves us no room: it does not even cover our costs; it does not even take account of the fact that we are entitled to a profit", whereupon there could be a discussion then and there on the particular case in the light of the circumstances whether that is a reasonable profit in the circumstances.

Mr JOHNSEN (NEW ZEALAND): Yes, but is not this just spelling it out and indicating the types of addition ^{to} the landed cost that you would have to allow for? In other words, it is merely an

indication that, considering whether there was a case to put forward, you would have to allow for a reasonable profit as well as the other items. It does not say that it limits the amount of the profit that might be allowed. I do not think it alters the sense in any way, does it? In other words, that would be an indication to the ITO, if any question was raised, that a reasonable profit would have to be taken into consideration.

Mr HAWKINS (USA): I think that may be right. I am just trying to think how the text would read. If it means only that, then I think it is all right, that that is a factor which would have to be taken into account in the negotiations. If it means that, then I should be perfectly satisfied.

Mr JOHNSEN (New Zealand): That is right: it must be taken into consideration.

Mr HAWKINS (USA): If that is all it means; but what I am wondering is whether the amendment as drafted would mean that that is figured in the landed price. If reasonable profit is only a factor to be taken into account in determining the margin, then it is perfectly all right.

Mr JOHNSEN (New Zealand): Yes.

Mr HAWKINS (USA): It depends how you word that.

THE CHAIRMAN: Well, perhaps the Rapporteur would consider that point.

THE RAPPORTEUR: We might do something in the way of changing "after due allowance" to "taking into consideration", or something like that.

THE CHAIRMAN: It may be.

THE CHAIRMAN: There is one other point I would like to mention, and that is the question of averaging. This has been mentioned in the main Committee. I then suggested that you would have to have some averaging if only for administrative reasons, but for purposes of stabilisation you might want to have a rather longer period of averaging than would be necessary for strictly administrative reasons, and I suggested that possibly there might be a period of, say, three years. I would like to amplify that in the sense that the average would be a moving average with determinations, say, every year. I think that might to some extent help Mr. Hawkins, who was inclined to feel that three years was, just like that, too long a period. May I ask for his views on that point -- the moving average with annual determinations?

MR. HAWKINS (USA): I think that would be all right.

MR. JOHNSEN (New Zealand): Would this Article not operate in respect of individual transactions without regard for any prior transactions?

THE CHAIRMAN: It is hard to see how you could carry through the price at which you had bought a particular consignment to the sale price of that same consignment. You would need to lump together. When I say "we", I speak for the UK Delegation -- what we had felt was that you would need to segregate the supplies you got from each country of supply, so that for its supplies, taken over whatever the period might be, you would actually observe the margin as between the average of your buying price from that source and your sales. You would undertake to show that you were observing the margin. If you did that, each country would see that it was being treated in accordance with the undertaking. That was how we envisaged the thing might be made to work.

MR. HAWKINS (USA): The point is well taken, for this reason, that your buying prices for different lots would be variable. You would be buying where you could at best advantage. Your selling price

internally would probably be uniform. If you had to relate the selling price internally to the buying price of each parcel, you would get constantly varying prices internally, whereas if you can take an average of your purchase prices over a period --

MR. JOHNSEN (New Zealand): It is only the margin you are negotiating and not the actual price.

MR. HAWKINS (USA): But that is the basis on which you compute the margin. The margin would be at some amount exceeding the average landed price.

MR. JOHNSEN (New Zealand): I see a difficulty there, in that you are taking the landed cost of shipments from different sources, and there might be little relationship, in having regard to changes of the nature of the commodity, in the margin in one case and the margin in another.

THE CHAIRMAN: Is not that rather likely to be covered by differences of quality from different sources. The kind of wheat you get from one source may be different from the kind of wheat you get from another, and the same goes for a good many things. It may well be that you would have different selling prices in any case, and that itself would in a general way correspond to differences of source.

MR. JOHNSEN (New Zealand): I can see a lot of practical difficulty in giving effect to this.

THE CHAIRMAN: I think our feeling has been that it will have to be observed as a broad general principle and as faithfully as possible, but that one cannot undertake to, as it were, show that it has been observed in minute detail in cases of particular transactions. It would have to be rather broadly observed.

MR. JOHNSEN (New Zealand): You would suggest then, in considering the margin, that account might be taken, rather than say that account shall be taken of average prices over a prior representative period.

MR. HAWKINS (USA): I should think that would be a practical way of stating it, leaving it permissible to average.

THE CHAIRMAN: Shall we pass from that sentence? I think the point we had got to was the third sentence.... "With regard to any monopolised product in respect of which a maximum margin has been established pursuant to this Article, the monopoly shall, subject to the provisions of Section C of this Chapteretc."

MR. JOHNSEN (New Zealand): I think we had not yet taken the previous sentence.

THE CHAIRMAN: The one which begins: "Members newly establishing any such monopoly in respect of any product shall not create a margin as defined above greater than the maximum rate of import duty....etc." That is cases where, after there has been a tariff negotiation, the method is changed, so that from private trading one would pass to a state trading monopoly. This says, in effect, that the limit of the margins under state trading shall, in that case, be the maximum negotiated tariff rate.

MR. JOHNSEN (New Zealand): It seems to me that you are attempting to compare a margin of tariff protection with a margin between the landed cost and the selling price, and I do not think that is practicable.

THE CHAIRMAN: You think there are elements in the two situations which would require the money amount or the ad valorem amount to be different.

MR. JOHNSEN (New Zealand): I should think so. You talk about a margin of protection that represents an amount of duty only which is a factor in the margin between the landed cost and the selling price. That is only one factor. This sentence says that the two shall be the same.

THE CHAIRMAN: I had thought that just as the tariff was intended to be regarded as a protective measure, so the margin of the state trader might also be regarded as protective, and that prima facie

the amount of protection under the one system might be regarded as a suitable measure under the other. I suppose it is arguable that state trading combines, as it were, quantitative restriction with tariffs, but I am not sure how that bears on this particular point.

MR. JOHNSEN (New Zealand): You can visualise cases where the state trading monopoly would still have to pay the duty in any case, even though it is a monopoly.

THE CHAIRMAN: Yes, but is not that rather a bookkeeping point, that it pays the duty for goods into the general exchequer, and then recovers in its firsthand sale price in its home market. Is there more than a bookkeeping point in that?

MR. JOHNSEN (New Zealand): It might ultimately become a bookkeeping point, but in the first instance it is part of the construction of the landed cost from the selling price.

THE CHAIRMAN: You are thinking that if it paid the duty it would then have its distributive costs on top of all that, and you might find the negotiated tariff figure was not a suitable one?

MR. H. WILKINS (USA): Is your point, Mr. Johnson, that if the landed cost included the duty, and then you had a margin between the landed cost and the selling price equal to the duty, you would include the duty twice in that margin?

MR. JOHNSEN (New Zealand): That was not my initial point. The initial point I made was that in the earlier portion of this particular Article we talk about negotiation in the margin between the landed cost and the selling price, and this particular sentence says that members newly establishing any such monopoly in respect of any product shall not create a margin, as defined above, greater than the maximum rate of import duty which may have been negotiated in regard to that product, pursuant to Article 18. You are comparing a margin with a rate of import duty.

MR. HAWKINS (USA): That is intentional, the point being that the negotiated margin between the purchase and the resale price is a protective factor. If a country that did not have a monopoly on the product had previously negotiated a rate of duty, a maximum rate of duty of, say, 20 per cent., and then established a state monopoly for the product, they should observe and not exceed that degree of protection in the margin between their purchase and resale price. That is the thought here.

MR. JOHNSON (New Zealand): What you really mean to say is that members newly establishing such a monopoly in respect of any product shall, if the product is not subject to duty if imported by the monopoly, in fixing the margin, make allowance for no greater amount than the amount of duty which would otherwise be payable. In other words, you do not want them, by reason of the fact that the monopoly imports the product and does not have to pay duty, to increase the margin unduly on that account.

MR. HAWKINS (USA): That is right. I think you have raised a question that we ought to look at -- how this would apply in the case of a duty-free product. Suppose that at the time negotiations took place on tariffs the product were free of duty, and suppose that in the negotiations the product were bound duty-free, and suppose that then a monopoly is created, what is the margin in that case?

THE CHAIRMAN: It raises the question whether to negotiate over what you might call the distributive part of the margin or not. If you are negotiating to cover the distributive margin, then your margin will be something higher than nil. If you are simply negotiating for the protective element, it would remain nil. I am not quite sure whether the intention of this sentence is that you would negotiate about distributive margins or not. Our feeling was that you would not negotiate about a margin on the understanding that it included no more than your real costs, with

a reasonable profit.

MR. HAWKINS (USA): I think the question of a reasonable profit does come in their definitely.

THE CHAIRMAN: You might negotiate about that, but the question of actual costs is hardly a matter for negotiation. It might be a matter for inspection or verification.

MR. JOHNSON (New Zealand): Is there any necessity for the sentence at all? Is it not covered by the general provisions of the Article?

MR. HAWKINS (USA): It is intended to cover cases where there has been a change between the time the margin negotiations took place, or after them, of the tariff negotiations. If, for example, the duty were bound at 20 per cent., and then a monopoly were created and the difference between the purchase and the resale price were 40 per cent., the duty concession is nullified.

MR. JOHNSON (New Zealand): Yes, but they are still paying the 20 per cent. duty. If the duty were bound at the original rate, there would not be any change in that case. The fact that the new monopoly had been created would not affect the position; that is, if the Government Department that made the importation had to pay the duty, and if no duty was payable, then that would be a fact that would be taken into consideration in determining the margin, and any country that wished to make representations, if they thought the margin was too great, would be entitled to raise that point.

THE CHAIRMAN: Is there not this point about that, that the position is a little different as between state trading and private trading, in that the state trader could conceivably, as it were, just stand the cost of the duty himself and then behave, so to speak, as though the duty was not there. In other words, he could either ignore the effect of the duty when assessing commercial considerations, or, on the other hand, he could sell at such a high price to the home market that he would so to speak discourage imports. He would

discourage demand. My feeling had been that the reason why the margin had been expressed in this way was in order to prevent his doing that sort of thing, or putting his resale price arbitrarily high in a way which would perhaps diminish demand, and therefore diminish imports. Is not that your feeling?

MR. HAWKINS (USA): That is the point.

MR. JOHNSEN (New Zealand): That is the whole essence of the argument, is it not? It seems to me you are complicating the position unduly by introducing that sentence. The effect of it would normally be taken into consideration in determining the margin.

MR. HAWKINS (USA): Except that in the case under consideration, if the duty had been fixed and later the Government took over the trade, there would have to be a renegotiation of that rate, unless there was some provision which lays down the margin to be followed by the state trading organisation. He could do that in a number of ways. He could operate as a private importer previously had done, and in fixing the resale price simply take into account the duty which had been previously paid. That would be in conformity with this provision. But in the absence of some provision like this, the only recourse would be a renegotiation of the item.

THE CHAIRMAN: It would always be open to the state trader, suppose he found the tariff rate was too low for his purposes, to attempt renegotiation, to reopen the matter with the country with which he had previously negotiated the tariff rate.

MR. HAWKINS (USA) I think one of the difficulties is that we are attempting here to work out in detail the application of a principle without the concrete facts before us, whereas what we should be doing here is simply stating the principle. I do not think we can work out the application. If that is a sound principle, it should be written in, and then when the cases arise, we should use it as a guide as to what action should be taken.

MR JOHNSEN:(New Zealand): If you said "In so far as duty is affected in the margin between the landed cost and the selling price no greater amount shall be provided for in that respect than the actual amount of duty payable", that applies to any other cost factor. It is just a point, as to whether you need to provide for it.

THE CHAIRMAN: That would leave open the possibility of having an additional margin over and above the negotiated duty and I take it the supplying countries would be anxious to see that extra amount limited, would they not, so that you would be involved in a re-negotiation if, in fact, the amount of the margin were to differ from the amount of the duty previously negotiated.

MR JOHNSEN:(New Zealand): That is always open to negotiation; but it would be at the discretion of the countries concerned as to whether they should take up the question at all. After all, the duty is only a factor in the margin. It is the whole margin that is the subject of negotiations - not merely the duty factor.

THE CHAIRMAN: That rather depends, does it not, on the way in which the margin is built up. If you regard it as built up by an element which corresponds to duty, an element which corresponds to distribution costs and the other costs here, and finally a reasonable profit, does it not follow from that that if you put your costs on one side as representing the real costs of your operations, you have then two negotiable things - the protective element and the profit element. There may be, so to speak, an addition to be made to the original tariff element in respect of the profit, but I should have thought, as regards the other elements, they would^{not} be matters for negotiation. It would be recognized that the margin might include them, but they would^{not} be subject to negotiation.

MR JOHNSEN (New Zealand): The duty would not be subject to negotiation under this article either. Any negotiation of duty would be in terms of a general trade agreement, I should say.

THE CHAIRMAN: It depends a little, does it not, on the nature of the countries that are negotiating. If a country which is State trading in a product were negotiating with another country which was not, it would then be a State margin which would be negotiated, instead of a tariff rate. Is not that the sort of way in which it would work?

MR JOHNSEN (New Zealand): I understood that this meant the margin between the full landed cost, including the duty and any other charges on importation - also transportation, distribution, /internal taxes, any processing charges and a reasonable margin of profit.

MR HAWKINS (U.S.A.): You mean in the final landed price?

MR JOHNSEN (New Zealand): It goes a bit beyond the landed price.

MR HAWKINS (U.S.A.): Yes.

MR JOHNSEN (New Zealand): In determining what additional amount should be added to the full cost in arriving at the selling price.

MR HAWKINS (U.S.A.): In that case, if I understand you correctly, you would be including the duty twice, in fact?

MR JOHNSEN (New Zealand): No.

MR HAWKINS (U.S.A.): You would be including two protective elements - one is the duty which is already there and then there is a margin on top of that on your definition.

MR JOHNSEN (New Zealand): Any margin, of course, that I had in mind, was the reasonable profit after you had arrived at the full cost. That is the final margin, is it not - the reasonable profit? You have to allow for all costs prior to that point. What you are endeavouring to get at is that too great a profit is not taken. That would be the

effect of restricting sales and consequently imports. That is the purport of this, but you have to allow for any duty payable and any other actual charges which are involved.

THE CHAIRMAN: It does depend, does it not, rather on the way in which the monopoly chooses to work. On the one hand it may actually pay the duty and then recover that in its selling price or, on the other hand, it may just buy at the one landed price and sell at another price to the wholesalers in its home market and, so to speak, it collects the duty automatically in that way. It is a sort of agent of the Exchequer. It is almost a matter of the administrative relationship between different government departments more than anything else, is it not? Our own departments, who do a certain amount of this State purchasing themselves, felt it could be worked either way, as a matter of practice, probably consistently with the terms of this.

MR JOHNSON (New Zealand): Would it not cover it if we provided in the previous sentence "after due allowance in either case for import duties, internal taxes and for transportation, distribution and other costs incident to the purchase, sale or further processing, and also a reasonable profit". You have the whole of the cost factor and a reasonable profit covered then.

MR HAWKINS (U.S.A.): Suppose it is 100 per cent duty on a product or even, say, 200 per cent? If that is included in the landed cost and then a margin is put on top of that, you have got a tremendous protection.

MR JOHNSON (New Zealand): That is the case with private importation.

MR HAWKINS (U.S.A.): Yes, but in the case of the private importation, the duty is the thing that determines the price at which he can sell.

MR JOHNSON (New Zealand): No. You must make allowance for his other costs and also for reasonable profit; otherwise he could not do business at all. In other words, what you are concerned about is that the State trading monopoly should not be in a position to charge a higher price than a private trading organisation. But in each case they are allowed to take into consideration duty and any other charges involved. It seems to me

that would cover it, if you want to make any particular provision for duty, if you just included it in that preceding sentence.

THE CHAIRMAN: One needs to have some sort of assurance, does one not, that even after duty has been paid, the monopoly does not then go on to charge a considerably higher price in its own market, which would, in fact, have either an extra protective effect or an extra effect in discouraging demand.

MR JOHNSEN (New Zealand): The reasonable profit is the limiting factor there.

THE CHAIRMAN: Yes. It really is a question, is it not, of how, from the negotiating point of view, you deal with the different elements that go into the margin - ^{your} / tariff, / ^{your} various costs and your profit. If one assumes that the various costs are not negotiated, although they may be subject to some sort of check you are then left with the tariff negotiable and possibly a profit margin negotiable. Does not that mean that the negotiated rate of tariff is likely to be ^{the} / appropriate figure unless in a particular negotiation the parties want to negotiate about the reasonable rate of profit.

MR HAWKINS (U. S. A.): Yes.

MR JOHNSEN (New Zealand): I do not think we want to confuse the negotiation of a tariff with the negotiation of a margin of profit. This is designed to cover negotiation of a margin of profit.

THE CHAIRMAN: The total margin rather, is it not ?

MR JOHNSEN (New Zealand): The tariff is quite a separate factor.

THE CHAIRMAN: I still have the feeling that that is rather a question of mere administration. Whether the importing monopoly pays the duty or does not, it rather comes to the same thing in the last analysis, does it not - that it is, so to speak, merely an administrative question.

MR JOHNSEN (New Zealand): That is so. So that you cannot make any special provision to cover the tariff. All you can make provision for is any duty payable. But the State must be in a position at some stage, to account for the revenue that is to be received in respect of imports.

THE CHAIRMAN: I wonder whether we had better leave this point to be thought over further and perhaps discussed at our next meeting. We shall probably have to meet on Monday to consider the Rapporteur's report. We might then take up this point again, when we have reflected on it a little more. Is there anything more on that sentence, or shall we pass to the next? "With regard to any monopolist product in respect of which a maximum margin" - I have already read that. Has anybody any points on that sentence?

MR. JOHNSON (New Zealand): You have already raised a point on that yourself, I think. There is a further point - and this is another one of practical impossibility - in respect of exports: "in the case of an export monopoly, offer for sale to foreign purchasers such quantities of the product as will be sufficient to satisfy the full foreign demand for the product". I cannot see how any exporting country could take responsibility for that.

MR. HAWKINS (U.S.A.): You would want to insert, would you not, "supplies being available"?

MR. JOHNSON (New Zealand): Yes, naturally.

MR. HAWKINS (U.S.A.): That, of course, is practically implied, but there is no objection to making it explicit.

MR. JOHNSON (New Zealand): "as far as practicable".

MR. HAWKINS (U.S.A.): You see the point there? The export side relates to relatively few cases - in case the raw material is withheld in foreign countries in order to protect the domestic finishing industry. The prices here are dealt with - the margins. Suppose that were all agreed to and then suppose the exporting country simply did not allow any to be exported, to take an extreme case - suppose they did not sell any. Taking the illustration I gave you the other day (it is not quite a parallel case but it will illustrate what I mean) take peeler logs, used in the veneering industry: there is an agreement that the price margin there will be determined so that there is no undue protection to the domestic plywood industry. The exporting country agrees to that and then does not sell any.

The effect is to defeat the purpose. This is intended to prevent that. Obviously, if supplies are not available, it cannot do it. In the case I cited the supplies - ample supplies - were available.

MR AUGENTHALER (Czechoslovakia): I think that it would not be just to impose, on State trading organisations or State monopolies, an obligation to offer commodities for export in order to fulfil a foreign demand and at the same time put upon them an obligation as to prices. I think each enterprise of this kind should be free to offer or not offer as they wish. I do not understand why a State enterprise or a monopoly should be under this obligation if there is not the same obligation on private enterprises which are in the same position. We have had several cases where foreign enterprises have just refused to make offers - not because of commercial considerations, but they have just said that they are not offering to nationalised industries.

MR TUNG (China): I have expressed the same view as the Czechoslovakian delegate has just expressed. It is impossible for any exporting country to meet the full demand of a market at the prices charged at the same margin. I want that to be on record.

THE CHAIRMAN: Mr. Hawkins, would you like to comment on these points?

MR HAWKINS (U.S.A.): Of course, there is this difference, that in the case of a product dealt with by private enterprise - in the majority of cases at least - there are a number of competing suppliers. Under normal conditions these suppliers are looking for markets. Normally you can always find suppliers who will make goods available in a ^{given} exporting country. It is not likely that there would be a withholding by all of them of supplies to the market, whereas in the case of a monopoly it is something which is subject to the decision of one body as regards the supplies of the product produced in that country.

THE CHAIRMAN: Really, one has here rather a combination, has one not, of two functions of the State trading monopoly. On the one hand it is a trader, on the other hand it is, so to speak, a piece of the machinery of government. Under the private trade you have dealt with the possibility

of an export prohibition in another article - in article 19 I think. Here you have to cover the possibility that the State trading organisation might act as a government organ imposing an export prohibition. Is that not so? You have put in this provision words about satisfying the external demand in order, as it were, to cover the possibility of an indirect prohibition being escaped by the State monopoly, just as on the import side you provide that the domestic demand shall be satisfied, because that is the equivalent of saying that you would not have an import restriction. Here you say that, subject to the negotiated margins, the foreign demand should be met in order to correspond to your export prohibitions in article 19. Is not that rather the scheme of it? I take it by referring "to the provisions of Section C of this Chapter" we have brought in all the exceptions in the import restrictions articles? Those come in article 19 mostly, do they not?

MR JOHNSEN (New Zealand): I think we discussed that and we thought there might be others. I was going to suggest that the first portion of the sentence might be altered to read "The monopoly shall, as far as practicable and subject to other provisions of this Charter, import and offer for sale" - in other words, make it general. You do not need to refer to any particular section of the Charter. You would have to have "as far as practicable" because no government organisation could undertake to import and offer for sale. There are a lot of factors which might preclude any such arrangement. It is a question of actual practicability.

MR HAWKINS (U.S.A.): Yes. I do not see any objection to those two suggestions.

THE CHAIRMAN: All right. That will consist in adding "as far as practicable and subject to the other provisions of this Charter" in place of the words "subject to the provisions of Section C of this Chapter" in that sentence. Is that the proposal?

MR JOHNSEN (New Zealand): Yes, that is what I have suggested.

THE CHAIRMAN: Should we say "the other provisions of this Chapter"? I think it should be "Charter".

MR HAWKINS (U.S.A.): Article 19 refers to the commodity chapter.

THE CHAIRMAN: The Rapporteur will perhaps take note of that amendment.

MR TUNG (China): I would like to make our attitude clear towards this article 27. We would accept article 27 with these reservations: First, in any negotiation of the maximum margin we must have due allowance for a reasonable profit, as you suggested. The second point is that the second sentence should be deleted from this article.

THE CHAIRMAN: The second sentence ?

MR TUNG (China): Yes, and the last sentence.

THE CHAIRMAN: That is the sentence beginning "Members newly".

MR TUNG (China): Yes, and the last sentence. I do not think there is any necessity for that provision.

THE CHAIRMAN: Does the amendment which has been suggested by the New Zealand delegate go any way to meet you on that sentence ?

MR TUNG (China): I am not quite clear what he has suggested.

THE CHAIRMAN: If I understand it rightly, the amendment refers to the sentence which begins "with regard to any monopolist product" and it would read like this "With regard to any monopolist product in respect of which a maximum margin has been established pursuant to that article, the monopoly shall, as far as practicable and subject to the other provisions of this Charter, import and offer for sale" and so on.

MR TUNG (China): What do you mean by "other provisions" ?

THE CHAIRMAN: That would cover, I take it, in the first place, all the provisions about import and export restrictions in Section C. It would then also cover other chapters of the Charter, such as the commodity arrangements chapter, the restrictive businesses chapter and so on. I do not know whether there are any other specific provisions in the Charter which would have an obvious and direct bearing, apart from the ones about import and export restrictions.

MR JOHNSEN (New Zealand): It is very difficult, at this stage, to say how far other provisions might affect it. I think it is better to make it comprehensive.

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THE CHAIRMAN: Yes. I am not quite sure that, even so, one does not

need to include something about rationing, because I am not sure

there is any specific provision in this Charter which does deal

with the tendency of rationing, is there? I do not think it

is mentioned, for example, in article 19.

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RAPPORTEUR: I should say paragraph 2 of Article 19 (i)

THE CHAIRMAN: It is a detailed point, is it not?

RAPPORTEUR: Yes.

MR TUNG (China): Article 19, paragraph 2?

RAPPORTEUR: No, on reflection, I do not think that is right.

MR TUNG (China): I do not see the necessity for this provision in the last sentence; I do not think that any state enterprise should be under obligation to meet the full domestic demand or the demands of the foreign market, because, from the point of view of mere commercial considerations, they will do as much business as they can. Why should they be required to meet the full demand either way?

THE CHAIRMAN: It is in a sense, is it not, rather a counterpart of what we might put in about import and export prohibitions and restrictions, in that if you do not put in anything about satisfying demand you then leave the way open for the state trading monopoly to be a means of introducing import or export prohibitions and restrictions. In fact, is that not so? I take it that it was with that possibility in mind that this provision about meeting domestic demand or external demand as the case may be was put in. What I feel is that if one simply omits any reference to demand it is a little difficult to see how one could provide against the possibility of the provisions of the Charter about import and export prohibitions and restrictions being simply circumvented by setting up a state trading monopoly, and that is a point which we would have to take care of in some way. I am not suggesting that this is necessarily the right way, but I think there is a problem there.

RAPPORTEUR: The objective of that requirement, as you pointed out, was to cover the problem of quantitative restrictions in the same way that the objective of the earlier part of Article 27 is intended to provide a counterpart for Article 18, Tariff Negotiations. Naturally, whatever was said with respect to quantitative restrictions in connection with state trading by state monopolies would have to conform in general principles to

what was said in Article 19 and subsequent Articles with respect to quantitative restrictions. I think another point might be made that would perhaps clarify it a little bit, and that is that this sentence in Article 27 does not require state enterprises which are not monopolies of a particular product to satisfy full foreign demand or, conversely, domestic demand. This applies only to monopolies which are complete export monopolies for a particular product or complete monopolies for distribution of a particular product.

MR JOHNSEN (New Zealand): It is only where the margins have been negotiated in respect of products; if there have been no negotiated margins this does not apply.

THE CHAIRMAN: Yes.

RAPporteur: Yes, that is right; that is a restrictive feature.

MR JOHNSEN (New Zealand): Yes.

RAPporteur: And it is not applicable until the margin has been negotiated.

MR JOHNSEN (New Zealand): It is not applicable until some country actually makes representations and negotiates a margin.

RAPporteur: That is right.

MR AUGENTHALER (Czechoslovakia): Mr Chairman, may we take a specific case. Supposing my country Czechoslovakia had to begin exporting timber - and this is only for the sake of argument, because it is not likely to do so. Now, during the war our forests were so depleted by the Germans that just to bring them up to the pre-war level it would take from ten to fifteen years, and that is assuming that we cut no trees at all. In that state of affairs why should a state monopoly be obliged to offer the product to full foreign demand?

RAPporteur: Mr Chairman, if the Czechoslovak delegate will refer to Article 32 he will notice that under Item J it says: "Nothing in Chapter IV of this Charter shall be construed to prevent the adoption or enforcement by any Member of measures (j) relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with

restrictions on domestic production or consumption." I think that that would cover the case of timber.

THE CHAIRMAN: Might I also suggest that there is a further passage as well? The passage you cited just now would seem to presuppose that there was an internal restriction on consumption; but surely under Article 19, paragraph 2 (b), where you have "Export prohibitions or restrictions temporarily imposed to relieve conditions of distress which are local to the exporting country and which are caused by severe shortages of foodstuffs or other essential products" that would cover you. Of course, we have had some discussion on the meaning of the word "distress," and it may be that the drafting of that leaves something to be desired; but surely the intention there is rather that it should cover the type of situation which the Czechoslovak delegate has mentioned, that you could if you were very short of, shall we say, timber, prohibit or restrict its export. I take it that if we are to apply the provisions of this Article to the state trading chapter we shall then have left it open to the state trading organization to say: "No, I am not going to export any timber for a number of years to come just because there is a domestic shortage." Is not it possible that the matter might be covered in that way?

RAPPOREUR: I should think so, and I think that there are sufficient means in the draft Charter as it exists, and as it may be modified, to cover a situation in which you have such a point raised. For example, presumably if you were conserving timber reserves you would be conserving them in terms of domestic consumption as well as in terms of export.

MR AUGENTHALER (Czechoslovakia): Yes, but probably not to the same degree.

RAPPOREUR: Probably not to the same degree; but if they were made effective in conjunction with restrictions on domestic production and consumption you would make it part of the over-all consideration to cover it.

THE CHAIRMAN: Under Article 19 paragraph 2 (b) you could restrict exports without restricting domestic consumption, if you wanted to.

RAPPORTEUR: Yes, that is true.

MR JOHNSEN (New Zealand): Yes, but there have got to be severe shortages before you can do that.

THE CHAIRMAN: Yes. In a sense one has to think of all this in the first place in the context of private trade and, secondly, in the context of state trading. What we want to be sure about is, is it not, that in such an Article as Article 19 we have covered by exceptions the things which it is necessary to cover, and if we do that then all this is incorporated by reference in the state trading chapter. This is in a sense rather a question as to whether the exceptions listed in Article 19, or elsewhere in Section C, are sufficient for the various purposes that may be needed, because problems of this kind can arise equally under private trading as under state trading. Is not that so?

RAPPORTEUR: Yes.

THE CHAIRMAN: So that what we want to look at rather narrowly - it is true that it is not before this sub-committee - is whether the exceptions in the quantitative restrictions, Section C, are themselves sufficient.

RAPPORTEUR: I would not think that was entirely a function of this sub-committee.

THE CHAIRMAN: No, I do not suggest that at all. What I mean is that from the moment that we have put in the cross reference to Section C of this chapter, or even to the other provisions of this Charter, you have brought in, by reference, all of those. Therefore, the question is whether that particular contingency under state trading is sufficiently provided for, or whether it becomes a question as to whether the exceptions in this Chapter about export prohibitions are sufficient or not. Is not that so? It is not a question which is peculiar to this subject; it arises just as much - and primarily - on the private trading clause.

RAPPORTEUR: Yes. It is a substantive question in another field but which is applicable to any form almost of trade such as the timber item that

Mr Augenthaler raised. It would make no difference whether timber was being exported by private firms or by a state trading organization, because you might have a conservation programme.

THE CHAIRMAN: Thank you. Are there any further comments on this sentence?

Can we provisionally leave that Article to the Rapporteur and pass now to Article 28?

MR TUNG (China): Are we going to discuss it at the next meeting, Article 27?

Is that what you mean?

THE CHAIRMAN: Yes. We certainly could leave it that way, that we will further discuss the question of satisfying demand, when we come to discuss the Rapporteur's report on Monday.

MR JOHNSEN (New Zealand): How about this question of rationing and price control? Are you going to leave that over in the meantime, or are you going to make a concrete suggestion there?

THE CHAIRMAN: I am not sure that price control necessarily comes in. You might have rationing without price control - probably normally you would not, but it is conceivable; and it is definitely my feeling that one has got to provide an exception in this obligation to meet demand in the case where there is rationing, whether or not there is price control. I do not think that is covered by the cross-reference to Section C, and I doubt if it is covered by anything else in the Charter. If that is so, then I think we need to think of some form of drafting which will bring in an exception for the case where there is rationing.

MR JOHNSEN (New Zealand): But why would there be rationing?

THE CHAIRMAN: Well, I take it for the reason that one has rationing now - shortage of supply.

MR JOHNSEN (New Zealand): As far as practicable, this says, you shall meet domestic demand. If it is not practicable rationing will be covered by it.

RAPPORTEUR: Yes.

THE CHAIRMAN: I have the feeling that this question of rationing ought to be specifically provided for here. I would prefer that it should not be covered merely by some general phrase such as "as far as possible". Can we just leave that as a point to be noted?

Mr JOHNSEN (New Zealand): Yes.

THE CHAIRMAN: Perhaps the Rapporteur would consider whether an amendment is or is not needed in the drafting. And then we will resume at our next meeting this question. I would only like to remark on leaving it that I feel that if one cut it out there would be a gap, because you would have left the way open for a State trading enterprise to circumvent the provisions of the import and export restrictions, and I feel one ought to have some provision to deal with that, though whether it ought to be in this precise form or not is perhaps a question which we could have open. Shall we now pass to Article 28. Would the United States delegation wish to give any further explanations with regard to this? I think they have already explained it in the full Committee.

THE RAPPORTEUR: I think we have said what we have to say on the matter. We think that something of this nature should be retained as comparable action on the part of a country with a complete State monopoly of foreign trade - action comparable to reduction of trade barriers by countries which do not have complete State monopolies of trade. On the other hand, we recognise that in the absence of the country primarily concerned, it might be inappropriate to do anything particularly firm in this regard until an opportunity has been afforded for a discussion with that country.

THE CHAIRMAN: Yes. Your suggestion would be that it should stand, as it were, in square brackets?

THE RAPPORTEUR: Yes.

THE CHAIRMAN: As being something which is there as a possible basis for discussion?

THE RAPPOREUR: Yes.

THE CHAIRMAN: Not as being anything which we necessarily recommend as being the right provision?

Mr JOHNSEN (New Zealand): And the Report would go forward accordingly.

THE CHAIRMAN: Yes.

THE RAPPOREUR: I might add that I think it would be most useful and helpful if we could have a discussion of the general proposition to get the ideas of everyone concerned, still on the understanding that it will be on a tentative basis.

Mr JOHNSEN (New Zealand): Seeing that it is likely to affect only one country, as far as we can see at the moment, would there be any good purpose? Would it not be wasting a lot of time?

THE RAPPOREUR: It might be.

Mr JOHNSEN (New Zealand): After all, the country concerned is the one which should have the opportunity of discussing it.

THE RAPPOREUR: On the other hand, it might be desirable. We in the United States, for example, would like to know what other people think with regard to this particular problem. This is what we happen to think about it.

THE CHAIRMAN: Yes, from the angle that, on the assumption that the country in question did adhere, what would be a reasonable undertaking to ask from it — reasonable, that is, from the point of view of the other members with a view to ensuring that they got some counterpart for the benefits which they would be giving to that country under this Charter. That is your point, is it not?

THE RAPPOREUR: Yes.

Mr JOHNSEN (New Zealand): Well, it would seem that the first sentence really covers the position generally. I cannot myself see why a country having a complete State monopoly should be able to operate under any different rule than say in Article 27 if that is adopted.

THE RAPPORTEUR: The intention in the difference between Article 27 and Article 28 is perhaps not very well expressed; but it is this, that when you are dealing with a State monopoly of a particular product conducted in a country which in general follows practices in private trading, you are dealing with one type of economic phenomena, whereas when you are dealing with a country which has a complete State monopoly of all foreign trade and all domestic trade, you are dealing with another type of economic phenomena, and the differences in essence between those require some consideration.

Mr JOHNSEN (New Zealand): Well, I think we had certain views in the full Committee on this particular question. I do not think it would be right that any discussion of this particular Article should be confined merely to Members of this Committee, if we are going to consider it in broad terms.

THE RAPPORTEUR: I agree.

THE CHAIRMAN: I think you have in a way put out an invitation for any other and better ideas, so to speak, for incorporation in this Article, if anyone has them.

THE RAPPORTEUR: That is right.

THE CHAIRMAN: So far no one has produced any.

THE RAPPORTEUR: That is right.

THE CHAIRMAN: Well, perhaps that is rather too sweeping a statement.

Mr JOHNSEN (New Zealand): I think it is a matter for the full Conference.

THE CHAIRMAN: Well, can we carry the discussion on this any further, does anybody feel? (After a pause:-) In that case, then, we retain it, as I say, purely as a possible basis for negotiation, should the question of negotiation arise, and leave it at that. Well, that brings us, I think, to the end of this Subcommittee's field until we have our Rapporteur's Report.

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Mr AUGENTHALER (Czechoslovakia): Mr Chairman, I say this only for the Report of the Rapporteur: I would like it to be mentioned in the Report in some form that in our view the State trading countries should be only those which have exclusive imports or exports; that is, monopolies or State trade organisations which have been created for purely financial moral, religious, health and similar reasons are not subjected to any of those negotiations; and then that State enterprises should not be subject to any obligations which are not applied to private enterprises which are in the same situation. For that reason, and as it has been seen that this State trading and so on are extremely complicated matters, we would recommend that it should be subjected to further study to see all sides of this problem.

THE CHAIRMAN: May I just ask a question or two to make sure I have your points clearly. In the first place, I understood you to say that that you felt we should only have specific provisions about ^{State} trading where monopolies are concerned, as distinct from State trading which is not a monopoly. Am I right in thinking that that was your first point?

Mr augenthaler (Czechoslovakia): Yes, only State trading enterprises which are exclusive importers or exporters.

THE CHAIRMAN: Yes, having the sole right to import and export the product?

Mr AUGENTHALER (Czechoslovakia): Yes; if they are not exclusive importers or exporters, then anybody can deal with other companies.

THE CHAIRMAN: Then I think your second point was that those State monopolies which are not, so to speak, trading monopolies but are exclusively for raising revenue or the protection of morals, and so on, should also be completely excluded, even though they are monopolies? Am I right in thinking that that was your point?

Mr AUGENTHALER (Czechoslovakia): Yes.

THE CHAIRMAN: It would be, so to speak, the trading monopolies only which should be covered?

Mr AUGENTHALER (Czechoslovakia): Yes.

THE CHAIRMAN: And your third point was that State trading organisations should not be subject to any obligations which did not apply to private enterprise in the same conditions?

Mr AUGENTHALER (Czechoslovakia): Yes.

THE CHAIRMAN: I see. Thank you.

THE RAPPOORTEUR: Mr Chairman, the Rapporteur would appreciate it if the delegate from Czechoslovakia could give him a little paper on that with the formulations spelt out of the observations.

THE CHAIRMAN: Well, thank you. In that case, then, I think we now adjourn and meet again on Monday to consider the Rapporteur's Report. Thank you very much. The time will be announced later.

(The meeting rose at 11.55 a.m.)