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UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT.

Verbatim Report

of the

FOURTH MEETING

of

COMMITTEE III

held in

The Convocation Hall

Church House, Westminster,

on

Wednesday, 30th October, 1946.

at

3 p.m.

CHAIRMAN: M. PIERRE DIETERLIN (France).

(From the Shorthand Notes of
W. E. GURNEY, SOHS & FURSELL,
58, Victoria Street,
Westminster, S.W.1.)

THE CHAIRMAN(interpretation): Gentlemen, I call the meeting to order.

The first item on our agenda today concerns a point of procedure. I have received a letter from Mr. Myndham-White, informing me of a request from the French Delegation concerning the system of translation. We have been using the system of simultaneous interpretation in the main room, but the French Delegation says that that system does not enable the Delegates to follow the original and the translation and to see whether the translation is really faithful, and sometimes, as technical discussions make it very difficult for the team to follow the original text, inaccuracies can creep in, and it is very difficult for the different Delegates to correct those inaccuracies. Therefore, they suggest that the system of successive interpretation and the original statement may be requested sometimes in the case of very important and substantial statements. Naturally, that does not concern today's debate, but I should certainly like the Committee to express their feelings so as to enable me to answer the question which was put to me by Mr Myndham-White. Personally, I think it is useful that we should, ^{not} be content with the simultaneous interpretation, but that in some cases we should allow Delegates to request subsequent translations in particular in the case of important and substantial statements. Are there any objections or remarks on that question?

As there is no objection I take it that my suggestion has been adopted.

Now, we pass to the substance of our agenda. In the course of our previous meeting we agreed that each Delegate would consider the general aspect of our problems in the light of the statements which have been made around this table here. I have been in close contact with the different Delegations who have expressed their views to me. So Delegates consulted with their colleagues, so now it seems that our position is much better than it was a week ago. I do not think I am yet in a position to propose a text which is agreeable to all. I think

Mr. McGregor has prepared a draft in the light of his own contact and his own experience.

Mr. MCGREGOR (CANADA): Mr. Chairman, what is submitted in the suggested re-draft of Article 34 which has been distributed is not presented as the proposals of any one country. It is rather a composite product. Its basis is the United States draft, but it incorporates changes which have been suggested by several countries.

As we all know, our very fair-minded Chairman, Mr. Dieterlin, has had talks with many of the delegates; Mr. Korican has been conducting confessions in his office; and many of us have been having informal talks amongst ourselves. This document is an attempt to put down the kind of thing that might be acceptable to us all. The Chairman has had his hand in it, but I do not think he would claim or admit sole authorship. He would probably say, with Kipling's barrack-room plagiarist,

"When 'O'er smote his blo' min' lyre
 'E'd heard men sing o'er land and sea,
 And what 'e thought 'e might require
 'E went and took, the same as me."

Whoever drafts or re-drafts the Article, it is our joint responsibility to see that it is right. Article 34 is so basic to the whole chapter on restrictive business practices that it would be most unfortunate if it were accepted by this Committee without close examination of every element in it.

A few days ago Canada was pressing for the criterion of unfairness or unreasonableness; we thought too that provision should be made for action by the Commission on its own initiative as well as on complaint. The weight of opinion has rather forced us to give up our "unreasonableness" and our "initiative". Most of us, Canada included, would agree with the United Kingdom that "harmful effects" is a better criterion than "undue" for our purposes. As for the "initiative" provision, if it finds no place in this Article, some of us certainly fight for its retention in the second line of Article 36.

May I suggest that we might have the original draft before us as well as this document which I call the new draft? The question of who can make a complaint to the international body will come up for discussion under Article 35; but I take it that we can confine ourselves for the moment to Article 34.

Mr Wilcox has given up what many of us thought were his "specific prohibitions" and he may yet yield on his "presumption" provision. Neither is included in this draft; but the practices which he listed are retained in this draft as illustrations of the ways in which harm may be done. We are all agreed, I think, on that.

In paragraph 2 (a) of the original draft the word "service" appears, and India and South Africa and others are keen to have it retained; others would like to strike it out. It is left in, in this new draft, but the exceptions to it will have to be discussed when we come to Article 40. Some think that only combinations should be dealt with; others, that we should include the single large enterprise if it substantially controls the supply of a product. Paragraph 2 (2) of the new draft reflects the latter view. The idea we had in mind was that a combination or monopoly in one country, even though it had no restrictive agreements with commercial interests in other countries, should come within the scope of the Organisation's work, but only if its control were wide enough to affect international trade seriously. Should we include government agencies in one country which enter into restrictive arrangements with private enterprises in another? The original draft provided that we should include them. With this the new draft agrees, but it spells out in clearer terms, in a separate paragraph 2 (1), the definition of "commercial enterprises" which appears at the end of the first paragraph in the original draft.

Some of us have objected to the words "frustrating the purposes of the Organization" as something that could never be proved. It is like suggesting that a single violation of the Ten Commandments would upset the

whole moral order of the universe, and frustrate the purposes of the Almighty. The simpler wording suggested by the United Kingdom, "whenever such practices have harmful effects", is less resounding but it is probably more realistic.

The phrase, "if they appear to have harmful effects", at the bottom of paragraph 2, is plainly a compromise between two suggestions: one, "are capable of having harmful effects," and the other, "appear likely to have harmful effects." Canada would prefer the latter, and would definitely oppose "capable of" on the ground that every combination is capable of doing harm, but it is only the ones that are doing harm or are likely to do harm that the Organization should be concerned about. "Whenever," by the way, is the word Brazil uses in its suggestions, and it looks like a good word.

The words "shall be subject to investigation" at the end of paragraph 2 of the new draft are substituted for the idea in paragraph 2 of the original draft, that certain practices "shall be presumed to have" certain undesirable effects "unless shown to the contrary in a specific case." No doubt the United States delegate will have some strong words to say about this proposed change. Some of us tried it on Mr Wilcox yesterday, and it is putting it mildly to say that he did not like it. These are the main points of any significance in the new draft, but there are one or two other suggested changes that should be noted: (1) France's suggestion that the exception noted in paragraph 2 (b) of the original draft should be inserted as a proviso at the end of the paragraph and should be applied to (a) as well as (b). That strikes us as an improvement. (2) In the very first words of the original draft it is suggested that the words "take appropriate individual and collective measures" should be changed to "take appropriate measures, individually and through the Organization." There are one or two other changes in the wording of that sentence which are of no great consequence. From a re-reading of the speeches made last week and from conversations I have had with several members of our Committee, I should judge that this pro-

posed re-draft of Article 34 would be acceptable to the delegates of most - and probably all - of the countries represented, as a substantial foundation for the subsequent sections, which relate more to matters of procedure. These other sections are important, some very important, but it is most desirable to subject this Article to close scrutiny and analysis and to achieve substantial and intelligent agreement on whatever provisions are finally accepted.

Would it be appropriate, Mr Chairman, if I were to move the adoption of this re-draft of Article 34 as a basis for full discussion of its provisions?

THE CHAIRMAN (Interpretation): I should like to express my profound thanks to Mr McGregor for the very important contribution he has made to our debate and for the explanations which he has given to us. I think he wants to say something further, and I therefore again call upon Mr McGregor.

MR MCGREGOR (Canada): May I just inquire about the French translation? My own knowledge of French is very slight, but I wondered if the translation of one phrase should not have been that Canada has been accused of being unreasonable but as lacking initiative. No one would here dream of accusing us of being unreasonable; they might think us unduly modest and shrinking and perhaps, in that sense, lacking initiative. May I therefore ask if perhaps one of our own delegation could examine the French text. I should have let the reporters have a copy of my remarks. They were written in advance but not far enough in advance I am afraid to enable us to give them that service. This is just an aside, but I presume that can be arranged.

THE CHAIRMAN (interpretation): I must say to the Canadian Delegate that I thoroughly agree with his proposal and I support it whole-heartedly, with all the weight of my Chairmanship. Now may I ask Mr Wilcox, who took a very active part in the inter-delegation talks which have been taking place lately, and also took a very important part in drafting this text, to give us an explanation concerning the United States attitude as regards Article 34.

MR WILCOX (U.S.A.) Mr Chairman, it seems to me that this text, for which Mr McGregor declines to accept fathership, does represent a distinct contribution to our work in many respects, and in some respects a decided improvement to the original. I suggest, for instance, that the moving of the exception out of paragraph 2.b. to the end of that section is a decided improvement, because that exception clearly, I think, should apply also to 2.a., that is, that the ordinary resale price maintenance arrangements between a producer and his distributors should not be included there. I think the changing of the wording about which Mr McGregor spoke are also improvements. I will not try to deal with those in detail. There are two points here that I think are of very great importance, and I should like to confine my remarks to those points, to emphasize the significance of the difference between this text and the original text in the United States draft.

In Article 34, paragraph 1, of the original draft, it says: "Members agree to take appropriate individual and collective measures to prevent business practices among commercial enterprises which restrain competition, restrict access to markets or foster monopolistic control in international trade, and which thus have the effect of frustrating the purpose of the Organization". As that wording stood, it involved a judgment. It did not leave the question open to determination whether they did or did not have this effect in individual cases. Some of those who have analysed and criticised this passage said that as we had written it we really begged the question and did not leave it open to determination; and the important

change there is that the new draft says "members agree to take measures", etc. "with respect to those practices, whenever such practices have harmful effects" - the implication there being that in some cases they do have harmful effects and that in other cases they do not have such harmful effects, and that whether or not they have these harmful effects is a matter to be determined. I think that this is an improvement over our original draft. At least, it seems to me that it expresses the ideas of all of the other Delegates with respect to this matter and that our original wording did not, and it seems to me that this is a very important change.

The other change that I should like to point out is that relating to paragraph 2 of our original. In that original paragraph it said: "members agree that among the practices, which shall be presumed, unless shown to the contrary in specific cases, to have the effect specified" -- are a list of practices. What that wording did was to establish a presumption against the practices listed; and it put the burden of proof on the enterprise against whom the complaint had been brought. Now, our purpose in that was primarily procedural; that is, it was our view that if we said to this enterprise: "Now, it is going to be presumed that the effects of these practices will be harmful unless you show us that they are not", there would then be a much greater pressure upon them to appear and to present actual evidence, rather than to make a purely perfunctory reply. Our judgment was that the agency which we shall establish, unlike an agency with an individual country, would not have the power of subpoenaing it. It could not send a Marshal to arrest a man and seize him and order him to appear, and seize his books and papers. What we had in mind in establishing the presumption was to make sure that this was regarded as a serious matter, that the concern against which a complaint was brought actually did regard it seriously and actually did make an appearance and actually did argue its case in defence of itself. This point of view I explained patiently and persuasively and at some length, I thought, and with clear and cogent logic to Mr. McGregor and to some of the other Delegates. For some reason that I am unable to understand, they profess to be unable to see the force of that argument, and I must confess that I failed to elicit support for my point of view. Now, the

difference in the draft as Mr. McGregor has submitted it is that, with respect to these particular practices, there is no longer established a presumption that they have harmful effects. The only thing that remains is that they shall be subject to investigation if they appear to have harmful effects, and the presumption is removed. Now, in these two respects this version involves a very substantial softening of the original text, and in the first place I think that change is quite justified. I think our position was mistaken, as I look at it. In the second case, I think we are right, but nobody else seems to think so. I just want to point out the importance of that change, that the presumption disappears and we have left an illustrative list subject to investigation. Now, I do prefer the wording that Mr. McGregor suggested: "If they appear likely to have such harmful effects". I would like to see the word "likely" inserted, but if, as I believe, these two changes do meet the concern which other Delegates have felt about the original text and will contribute towards bringing us to an agreeable position, I think that we should be prepared reluctantly to accept the revised text as a basis for our further work.

THE CHAIRMAN (interpretation): I think we should express our feeling of gratitude for the explanation which Mr. Wilcox has given us and which emphasised the importance of the modifications which are now included in the new draft presented by Mr. McGregor. I think we should thank him wholeheartedly for the understanding and objective spirit he has shown in the preliminary studies that have led us to an agreement as to this new draft presented by Mr. McGregor. If all present showed the same understanding and objectivity, I think agreement would be easy; and I do not doubt that everyone will show that amount of understanding and objectivity. I now call upon the Delegate of Norway.

Mr. FOLSTAD (NO. WAY): Mr. Chairman, the Norwegian Delegate would, I think, be fully agreeable to the first paragraph of the suggested new text. With regard to the second paragraph of that new text, there appears to be one point on which we are not quite certain whether we would like it included or not. It is said in paragraph 2 that "without limiting the generality of

paragraph one, members agree that the practices listed below" etc. - "shall be subject to investigation if they appear to have such harmful effects". Our view is that it ought to be up to the organisation to investigate whether a practice has that effect or not. That means that it should not be up to the organisation to discuss (if there is a complaint) whether that complaint is sufficiently well founded as to make the organisation believe that it appears that such and such effects have happened. I think that in order that the organisation should be sufficiently effective to be able to really prevent the harmful practices, it should be generally accepted that whenever there is a complaint then the organisation shall put into sway, so to say, the investigation, and that should be an investigation, a procedure, which should take place without discussing beforehand whether it is likely that the investigation may show this or that result. In other words, if there is a complaint the organisation should make investigation, and having investigated, the organisation should pass judgment as to whether the practices complained about have the effect which is specified in paragraph one.

THE CHAIRMAN (interpretation): I thank you, Mr. Elstad, for your very interesting remarks. I call on the United Kingdom Delegate.

MR. HOLLERS (UK): Mr. Chairman, it would have given me very great pleasure, especially after the devoted efforts of Mr. McGregor and Mr. Ilcox, to which you have referred, to be able to say that this new revision of Article 34 of the Draft Charter of the United States was wholly acceptable to the United Kingdom. I cannot say that immediately, and I think that you would agree, Sir, that on this very crucial point in the deliberations of this Committee, we are all perhaps entitled to have time to consider the draft. At the same time, I should like to say that we here do recognise, speaking for the United Kingdom, that this marks a very great improvement in our view on the corresponding article of the United States draft Charter, and that in many ways the manner in which the

problem is dealt with is a satisfactory one and entirely on the right lines.

Now, I do not know that it is necessary for me at this stage (especially as I am bound to reserve my position to some extent) to say very much, especially as the remarks made by the Canadian Delegate show the profundity with which he plumbed the depths of the thinking of the United Kingdom; indeed I feel, if I may refer to his own reference to the "confessional", that it might appear that we had been into the confessional with him and through all the restrictive practices which that involves. I might perhaps refer to one or two of the more important points which arise on this suggested revision, so far as they are of particular interest to the United Kingdom.

In the first place, I feel considerable sympathy with what has been said by the Delegate of Norway in regard to paragraph 2(b), the expression, "if they appear to have such harmful effects." All I think is wanted - and perhaps, indeed, this may be the intention behind this - is something which shows that a legitimate complaint will be investigated by the Commission on behalf of the Organization. I say "legitimate complaint:" I think that a complaint should be directed to something which in the Commission's judgment is a practice which is having, or is likely to have, a harmful effect. In this connection I might refer to the words of Article 35 of the United States draft Charter. We may be coming to that, but if I may use it for purposes of reference, that Article, sub-paragraph (4) opens with these words: "When it deems that a complaint deserves further examination." Behind those words in the new draft may be the same thought, but I suspect that that could be improved on; and I am wondering whether perhaps the question does not arise afterwards as to whether we ought to specify to whom the appearance is given. At the moment it is simply, "If they appear to have such harmful effects" without saying to whom they appear to have those effects. Mr McGregor has mentioned I think a certain difficulty that the United Kingdom delegation feels about the mention of services in this revision. We had ourselves felt that perhaps it would be more in line with the Charter generally if this were limited to goods; that "services" perhaps would be capable, as we may find later on, of being dealt with in another way. The reference to services, I might mention, is not made in the United States proposals of December 1945, and there have been references in the discussion we have had this afternoon to the original document. In the minds of the United Kingdom delegation it is necessary to realize that the original document really is the proposals rather than the draft Charter. Thirdly, we have some doubts about the reference in the suggested revision, in Article 2 (2), to one or more commercial enterprises, just in so far as that would involve the application of this procedure, or might involve it, to a single firm, which,

especially I feel in relation to the subsequent reference to a particular area as well as to the generality of areas, might involve us in some difficulties of minutiae, in the sort of difficulty with regard to the sole shop in a village which is dealing in international trade in the sense that it is providing the inhabitants of that village with imported goods. That is a difficulty which no doubt could be discussed and perhaps brushed aside.

Fourthly, I would like to say that we would have to reserve our position at this moment in regard to the very wide extension of paragraph 2 (1) to public commercial enterprises which, of course, involves a whole host of problems, major and minor.

Now, Sir, I think that that probably concludes the remarks which I need make at this stage. You in your wisdom will, no doubt be evolving for us a satisfactory procedure whereby we may carry the matter a further step. Generally, however, I would like to repeat what I said before, that I think this suggested revision is a document which we should welcome and which may well prove the basis of the solution of the major points with which this very important Committee is concerned. We have in it a rather different approach whereby we recognize the difficulty of condemning, or the inappropriateness of condemning, in advance, all practices, or presuming that all practices of this sort are harmful; and my concluding words at this stage would simply be this, that we must, I feel, not perhaps over-estimate the extent to which we may be able to deal with the problem all at once. One does not want to give people the impression that we will be able to do things we shall not be able to do; and I would link those remarks with just one word which appears in the second line of this suggested revision, the word "prevent." If one looks at the proposal one will find contained in this text merely the word "curb." We may try to prevent, but we may not succeed in entirely doing so. We have, however, every intention of curbing in international trade those sorts of practices in so far as they have been, or can be, shown to have harmful effects. I think that is all I have to say at the moment.

THE CHAIRMAN (Interpretation): The explanations given by Mr Holmes, the delegate of the United Kingdom, are of two kinds: some of them are general, some are more particular, and express the personal preoccupation of the United Kingdom delegate. They will be taken into account. As regards the general explanation given by the United Kingdom delegate concerning the time which should be given for delegations to examine at leisure the new text for Article 34, the remarks made by Mr Holmes meet myself and I was going to make a somewhat similar suggestion later on. I am sure also that these remarks will meet the feelings of most delegates round this table, and I share, on this point, Mr Holmes's concern. I now call upon Mr Hakim, the delegate of the Lebanon.

MR HAKIM (Lebanon): Mr Chairman, I wish to support the remarks that were made by the Norwegian delegate concerning the weakness of the last phrase in paragraph 2. The last phrase reads, "shall be subject to investigation if they appear to have such harmful effects." Now I would like to ask here one question: Shall be subject to investigation by whom? Is it to be by the Organization only or by the Members also? Because the first paragraph says, "Members agree to take appropriate individual and collective measures to prevent business practices among commercial enterprises" and so on. Then I would like to ask another question: What follows this investigation, what is it going to lead to? There seems to me to be here a weakness in the link between paragraph 2 and paragraph 1, for paragraph 1 says, "measures to prevent these restrictive business practices"; then paragraph 2 says simply that an investigation will be made. I know, Mr Chairman, that the two former articles speak about studies to be made, followed by recommendations, but again this is a basic article and all the following articles say that they are in order to implement this Article 34. So that if we state here the basic principle of what the organization and the members are to do, it seems to me that we should not be satisfied with saying that an investigation will be made. I think we should go on here to say that the investigation will be followed by certain recommendations

or actions that are appropriate. Therefore, Mr Chairman, I think that this last phrase should read something like this - I will just suggest wording which may be changed, according to the ideas of the members present here - "shall, if they appear to have such harmful effects, be subject to investigation by the organization" (I do not know whether it is necessary to have "and the Members")- "who shall take appropriate decisions regarding them." Then in the following articles these decisions which the Organization will take will be spelled out; but it seems to me that it is necessary, in this paragraph, to say something as to what will be done after the investigation is made.

THE CHAIRMAN (Interpretation): I think the remarks which have just been made by the Delegate for the Lebanon are very pertinent, and I wish to make a few remarks by way of explanation of the gaps in the present text which he has emphasized. I think that at the present stage we cannot give final form to this Article 34; the final form will only be possible in the light of future discussions when we discuss Articles 35, 36 and so on to Article 40; these articles deal in more precise form with the question of procedure, and once we have come to agreement on Article 35 to Article 40 inclusive, then we can go back to the drafting of Article 34. I think, for the present stage of our discussion, it is quite useless to dwell at excessive length on Article 34 in its present form, and we shall have ample opportunity later to do that, and therefore I think all delegates will be in a position to consider necessary amendments.

MR MULHOPKAR (India): Mr Chairman, I am afraid that I cannot share the view held by those at this table with regard to the revised draft, particularly subparagraphs (2) of Article 34 as presented by Mr McGregor. The whole approach in that subparagraph is entirely different from the approach put before us in the draft Charter by the United States delegation. The Indian delegation would like to endorse the view presented in the draft Charter with regard to malpractices which are being carried on by various cartels and combines and which have been proved without any doubt restrictive

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business practices. Mr McGregor's suggestion merely lays down that these practices should be subject to investigation. Surely this Committee is competent enough to assert definitely that certain practices resorted to by certain parties or combines in international trade are restrictive unless they are shown to be to the contrary by those concerns themselves. It should not be left to the complaining member to lodge a complaint with the I.T.O. that these practices are in effect harmful to international trade. Another weakness in the revised proposal or draft is that every country is not like the U.S.A. or the U.K. or other well-financed countries. There are small countries which suffer from these malpractices, and they would not only not have the necessary finance but the legal acumen and all other necessary equipment to fight an action against a very big cartel. So that I suggest the Committee should seriously consider whether the draft put forward on this problem by Mr McGregor is a correct one, or whether we should follow the lead given by the United States Delegate. That gives rise to sub-paragraph (2) of Article 34, what I have just said.

As regards the general trend of the revised draft, particularly subparagraph (1) and sub-paragraph (3), I should like to express my thanks to Mr McGregor for his statement that he has taken note of the points of view submitted by India and other countries; but I am afraid that I do not find any indication of the fact that we stressed at the third meeting of this Committee. It is true that the draft includes services; but what we wanted to say was that there should be a specific mention of services such as banking, insurance and shipping which are ancillary to trade. The Indian delegation will in due course submit an amendment in order to get those services specifically mentioned either under subparagraph (1) or subparagraph (3) in the revised draft. Then there is another weakness which was pointed out by our delegation at the last meeting and that is with reference to certain exemptions claimed under Article 40 of the proposal; and when that article is reached we would like to press for the deletion of certain subclauses in that

Article, because the exemptions there as indicated in the draft Charter are in conflict with the references to malpractices indicated in Article 34; but I am sure that the Committee would take note of our suggestions when we reach Article 40.

With these observations, Mr Chairman, I suggest that

subparagraph (2) of Article 34 should be radically changed, or that

the approach put forward by the United States delegation should be

accepted. Thank you, Mr Chairman.

THE CHAIRMAN (interpretation): I think we should express our gratitude for the way in which Mr Mulherkar has taken a firm stand. I think he goes to the root of the problem. His attitude confirms a previous attitude he expressed in a general discussion at an earlier stage of the conference. I do not want to have general discussion on this question now, but I think very soon I can present a suggestion acceptable to all, and on which we shall give ample opportunity to Mr Mulherkar to express his own views.

MR LEENDERTZ (Netherlands): Mr Chairman, first of all I would like to join the ranks of the gentlemen who have complimented Mr McGregor on his draft, and Mr Wilcox for his attitude taken. It was only just before lunch that I returned from the Continent and read this paper, and so I should want some time before I could express myself more definitely concerning this draft, but I do think that a very material step has been taken by these gentlemen in arriving at a basis on which we could deal with the thing in a fair and satisfactory way.

There is one point which I think I might raise now, and that is regarding the 4th and 5th lines of the first paragraph of the Article: "or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income". I think there might be one or two questions in this wording which might be altered without doing any harm to the intentions of the author of the draft. There are a few countries which think that under certain circumstances cartels may have some harmful effects. For instance, stabilisation might be arrived at by some kind of salutary restriction. So it should, to my idea, read in this way: that it might have harmful effects on the expansion of real useful production. But that is only one small point.

The other one is this: It seems to me, from this draft, that the expansion of production and trade would automatically lead to maintenance in all countries of a high level of real income. That may or may not be so. That is a point that is being questioned in literature, and it is also

being dealt with here in a lot of Committees. To say whether a thing is harmful, or has a harmful effect on all those things together, is rather begging the question. It may be useful from ^{one} point of view, and it may be of very little use from another point of view. I have not had time to word it effectively, but I would suggest a translation in this way: "whenever such practices, by their influence on the expansion of production and trade and the maintenance in all countries of high levels of real income, produce harmful effects". I should like to think it over myself and discuss it tomorrow, but I should like to put it forward here for consideration. I shall be very glad to study this further and to have an opportunity of discussing it further tomorrow.

THE CHAIRMAN (interpretation): I think we should express our gratitude to Dr. Leendertz for his remarks.

Before we proceed with the work of the study of Chapter 5, I wish to submit a few suggestions of a general character. First of all, I would repeat ^{that} the text which has been presented at the beginning of today's meeting by Mr McGregor was circulated at the last minute, and Delegates, therefore, must have full leisure and ample opportunity to consider it, before they can present any amendment which would be useful or desirable. Yet I shall request them to be so kind as to present their amendments in writing to the Secretariat.

Secondly, it seems obvious that this text is only a mere provisional basis for discussion, and that it can therefore be modified subsequently in the light of the conclusions reached concerning the other points on Chapter 5 discussed in the frame of this Committee. I do not think, therefore, as we have no time to consider this question in a leisurely manner and as this is not the final wording, that it is useful now to ask the Committee to come to formal agreement on this point. On the other hand, I think that the explanation we heard last week, or that which we have been hearing today, have given us sufficient clarification to enable us to proceed with the study of the other items of our agenda, the subsequent articles of Chapter 5. As these

bear on practical questions, legal and technical problems that perhaps may arise, I think it is very hard, at the present stage of our discussion, to have an overall discussion within the frame of our full meeting. I therefore propose to set up a Sub-Committee which would be entrusted with the task of studying articles 35 to 40. This Sub-Committee naturally will make this study taking into account all the original observations which will have been presented to the Secretariat. All Delegates will have ample opportunity to make contact with the Committee. Subject to this reservation, I hope this Sub-Committee will do useful work only insofar as it is limited in number and insofar as it is not made up of our full committee. I hope that consideration will be given to the importance of the part played in earlier meetings by different delegates. Naturally the delegates nominated for this Sub-Committee would be acting in their personal capacity as regards the study of Articles 35 to 40, and would not be representing their delegations. In the light of these explanations, I should like to nominate Mr Wilcox, Mr McGregor, Mr Holmes, Mr Thiltges, Mr Leendertz, Mr Mulherkar and myself as Chairman. Are there any comments on these nominations?

M. LECUYER (France): (interpretation): Mr Chairman, I want to put a question as regards amendments. You have said that the delegates will have an opportunity to submit amendments to the articles, but I wonder whether you mean amendments to Article 34 or to all articles, because as the other Articles 35 to 40 will be re-examined by the Sub-Committee, I think it is no use Delegates moving amendments to articles which will probably be modified by that Sub-Committee. Therefore, I think it would only be useful to have amendments to Article 34 at the present stage.

THE CHAIRMAN (interpretation): I wish to express my gratitude to Mr Lecuyer for the very pertinent question regarding a point on which I am afraid I was not precise enough. In my view, the amendment to be handed to the Secretariat with a view to passing it on to the Sub-Committee, can relate to Article 34 as well as the following articles, the two naturally being

very closely inter-related. I think now, when we come to the practical aspect of the question, that the Sub-Committee must not lose sight of the general aspect which I took care of at the beginning. So they will be fully competent to deal with article 34 as well as the subsequent articles.

We have now before us a proposal for an amendment transmitted by the Chilean Delegation concerning article 40. This amendment will be passed by the Secretariat to the Sub-Committee, who will consider it in due time. I wish to express my gratitude to the Chilean Delegation for the excellent example of energetic work which they are giving now.

I also hear that we have before us a suggested addition to the Agenda submitted by the Brazilian Delegate. The Brazilian Delegation proposes that the following addition be made to item 1: "(c) With reference to the economic development of the less industrialized countries".

I do not think there are any objections to our adopting the amendment suggested by the Brazilian Delegation, yet I should like to know if there are any observations which any Delegations may wish to make on this matter.

MR HOLMES (U.K.): I am not quite clear how that fits in. Does the suggested addition to the Agenda relate to c. in the second page of document 1 of this Committee: "Studies and Conferences relating to restrictive Business Practices"?

THE CHAIRMAN (interpretation): In answer to the United Kingdom Delegation, may I ask the Brazilian Delegation if they are in a position to give us the explanation that has been requested?

MR DE BARROS (Brazil)(interpretation): Mr Chairman, the spirit behind this amendment is that the Agenda in its first item, points a and b, studies the problem of restrictive practices on trade, first of all as concerns the future organisation envisaged, and then as regards specific practices. The Brazilian Delegation has thought that it would also be useful to add another point to this item concerning the countries which are now beginning to be industrialized, because they suffer from cartels more than other countries and from other practices also. So it has seemed to the Brazilian Delegation that it would be useful to study this problem as well as the others, and the Brazilian Delegation have thought that adding this reference to the Agenda would not entail any difficulties in further discussions, and would, on the contrary, be useful.

THE CHAIRMAN (Interpretation): I feel sure that the concern which has been expressed by Mr de Barros is fully shared by everyone of us here. If I understand the remarks of Mr Holmes rightly I think that this concern is connected with the general objective not only of the present Committee but also the full Conference, and if this concern is to be specifically expressed then that expression of opinion and concern can come within the framework of Article 34 (1), at the end of the clause which says, "whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income." I hope I express the views of those delegates who drafted this document if I say that in their opinion the maintenance in all countries of high levels of real income was tantamount to the maintenance of full employment in those countries which are really concerned with this problem and the question of industrial development in those countries which are preoccupied with the necessity of ensuring their further industrial development.

May I ask Mr de Barros if he is satisfied with the explanations which I have been giving and if he deems it necessary that we should devote a special chapter of our discussion to this question?

MR DE BARROS (Brazil) (Interpretation): I would agree to that suggestion from the Chair, provided, of course, due study was given to it.

THE CHAIRMAN (Interpretation): Mr de Barros can rest fully assured that I shall not lose sight of this question, neither will the delegates in the course of our future meetings. Now, does anyone wish to make any comments regarding my proposal concerning the setting up of a working sub-committee, or would any delegation have other proposals to make in this respect? If no one wishes to speak, I take it that we all accept the proposal for the setting up of a working sub-committee, the members to be: Mr Wilcox, Mr McGregor, Mr Holmes, Mr Thiltges, Mr Leendertz, Mr Mulherkar, and myself as Chairman of the present Committee. I would ask them to make a tremendous effort because I think it is desirable that we should finish our work within the next eight or ten

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days. We shall have a meeting tomorrow at 3 p.m. and the Secretariat will inform members of the place of meeting in due course.

MR HOLMES (UK): Mr Chairman, according to to-day's Journal of this Preparatory Committee there may be a meeting tomorrow afternoon of another Committee with which I am concerned. If that is so, I certainly would not wish to hold up the proceedings of the subcommittee which you have appointed. Would it be possible therefore for my alternate to attend on that occasion instead of me?

THE CHAIRMAN (Interpretation): Before answering Mr Holmes, I should very much like to have the feeling of the Committee. But may I say this, that in my opinion delegates should attend the meetings of this subcommittee in their personal capacity, so that if the Committee is agreeable to the suggestion that Mr Holmes has made of being replaced by an alternate delegate, my proposal would not of course constitute an absolute rule, but in so far as it is possible for delegates to attend I think it is desirable that the members elected to this Committee should attend meetings personally. Does anyone wish to make any comment regarding the request made by Mr Holmes? If no one has anything to say I take it that the Committee agrees to Mr Holmes's request. Does anyone wish to ask any further questions? If no one else wishes to speak, I confirm that the working sub-committee will meet tomorrow afternoon at three o'clock. As regards the next meeting of the full Committee itself, the time and place will be told you in due course by the Secretariat. I hope that the working sub-committee will complete their work without a full meeting of the Committee being necessary, but if an important question cropped up which required general consultation with members of the full Committee I should certainly not hesitate to call here a meeting of the full Committee, because I think the sub-committee should be kept in touch with the general feelings of the full Committee. As no one else wishes to speak, the meeting stands adjourned.

(The meeting rose at 5.15 p.m.)