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UNITED NATIONS  
ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

FIRST MEETING

of the

STATE TRADING SUB-COMMITTEE

of

COMMITTEE II

held at

Church House, Westminster, S.W.1,

on

Thursday, 7th November 1946

at

3 p.m.

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

(Note: The Verbatim Reporters were not present at the beginning of the meeting.)

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

THE RAPORTEUR (Mr Armstrong): ..... We think that we have set that out as clearly as we could. The purpose of Article 27 specifically was to cover the type of state monopoly of an individual product which, under methods of tariff negotiation, would not be affected as a normal commercial enterprise not a state monopoly would be affected. We therefore felt that it was necessary to spell out the way in which a commercial enterprise which was a state monopoly in a particular product should be dealt with in terms of tariff negotiations, because the difference between the cost of the commodity imported and the sale price is represented to some extent by taxes, to some extent by a profit to the state monopoly - something of that kind. The total quantity imported by that state monopoly is determined on the basis not solely of the prices of commodities offered but on the quantity which it is desired to distribute of that commodity within the country, the quantity necessary to import to make up the difference between the domestic supply and the total distribution. We therefore felt it desirable to have a specific basis for negotiating on that particular type of enterprise which would be different from the regular commercial enterprise not a state monopoly which would be affected by the operation of a tariff. Article 28 is again an entirely different proposition. That has to deal with countries which have state monopolies of foreign trade, and since, as far as I know, there is only one state in the world which does have a complete state monopoly of foreign trade, namely, the USSR, the purpose of that is to provide something similar that that country shall do to correspond to reductions in tariffs made by other countries; and that is the purpose of the inclusion of that.

As was stated in our general discussion, we do not necessarily feel that anything particularly firm should be done along the lines of Article 28 until there has been an adequate opportunity for discussion of the matter with the country primarily concerned. I do not know whether that is a full enough explanation. Perhaps it can be gone into a bit more.

THE CHAIRMAN: Thank you very much. If I understood the United States' delegate's explanation correctly, it is that in the first place Article 26 is concerned with what you might call non-discrimination - the counterpart of most favoured nation treatment in the realm of private trade. Article 27, if I understand rightly, is concerned with the limitation of protection, and would therefore correspond to the provision for negotiation in regard to tariffs and preferences which we have in Article 18 in relation to private trade; while finally Article 28 is meant to deal with the case of the country which has a complete state monopoly of foreign trade. The Czech delegate's proposition, if I understand it rightly, would consist in establishing a principle of equality of treatment and providing that there be a recourse to the I.T.O. as to whether that treatment should be applied, and to leave the matter there. I wonder whether we want to make provision for the other matters covered by Articles 27 and 28, namely, the limitation of protection in the first place and the State monopoly in the second place. First of all, on the limitation of protection, the counterpart of negotiation on ordinary customs duties, is it felt that we should do well to retain something which is in principle similar to Article 27 or not? I have a feeling myself that one does need something, because equality of treatment may not in itself amount to very much. You may have a very exclusive regime which applies with perfect equality to all countries and, in fact, no trade under it is possible. That is a theoretically possible case and I should have thought to deal with that one did need to have some provision dealing with protection as well as provisions dealing with discrimination. Has anyone anything to suggest on that point?

MR HAWKINS (U. S. A.): Only to say that it does seem appropriate to the countries under systems of private enterprise that if they are reducing duties in order to admit more imports, there should be some corresponding provision for countries having State monopolies of buying and selling. In other words, we think clearly in principle Article

27 is the counterpart of the provisions of Article 18. Article 18 requires countries to reduce duties. Article 27 is designed to impose upon State monopolies obligations corresponding to the provisions in Article 18.

THE CHAIRMAN: Thank you. I took it that the Czechoslovak delegate's point was that a State monopoly may be designed as a means for raising internal revenue primarily, and that that constitutes a difficulty in attempting to negotiate the price at which it will offer the product for sale. Am I right in thinking that was the position?

MR AUGENTHALER (Czechoslovakia) : There may be different reasons for that. The pure form of monopoly has existed in Czechoslovakia for a very long time, and it has been of a financial character. Some monopolies may have another character. I may have State control of exports, for instance. I think, in some countries, they may intentionally raise the price so as to make it possible to restrict the consumption of certain things, though that is not the case in Czechoslovakia. I am thinking of alcohol, the consumption of which may be restricted for social or health reasons. Therefore, I do not see how we can lump together all these various forms of State monopoly. We think it would be a more flexible arrangement to leave in the Charter just the general principle, and leave the details for negotiation between the countries concerned. Then, later on, we shall see what can be done under the International Trade Organisation. We have seen from the discussions that there are various ways of doing these things.

SIR HAWKINS (US): I can fully understand the points and the reasons for the views just expressed by the Delegate of Czechoslovakia. I should like to clarify a little what is the intention here, because I think it is possible to reconcile what we have here in the Charter with the views he has just expressed. I would start first with Article 18. The obligation there is only an obligation to negotiate. Negotiation will take place only if somebody requests negotiation with respect to a

particular product in relation to state trading. There are quite a number of cases I know of myself where monopolies have been operated strictly and purely for revenue purposes. I think in such cases as that no request to negotiate on that margin is likely to be forthcoming; or, if the request were made and the country concerned were assured that the monopoly was purely for revenue purposes and there was no danger of using it for protective purposes that would be an end of it. Now, there may be cases - and these are <sup>the</sup> ones we are trying to catch - in which a country might deliberately establish a monopoly for protective purposes, creating a wide margin between its purchases and resale price for the purposes of building up or protecting a competing domestic industry. In those cases, exporting countries concerned would certainly draw them to the attention of the importing countries, and they would be entirely within their rights, if this charter were adopted, in requesting negotiations on those margins. Now all that comes down to this. I think there might be many monopolies - certainly a number of them - which would never come into the negotiations largely for the reasons the Delegate of Czechoslovakia has indicated. There is one further point in connection with his remarks. Explosives are a general exception covered under paragraph D of Article 32.

THE CHAIRMAN: I have a feeling there is one further point, and that is the case of what you might call the equivalent of a sumptuary duty. The Czechoslovakian Delegate mentioned the alcohol monopoly as a possible means of limiting the consumption of spirits and so on by charging a relatively high price for them. That is perhaps a particular case where it could be considered. Is there anything the United States Delegate would like to say on that point?

MR HAWKINS (US): Yes, I think the same thing would apply in the case of any monopoly as would apply in the case of any customs tariff by a country where the reduction of tariffs would be significant. There is no obligation here in Article 18 for these countries to reduce every rate. There is a general obligation to reduce tariffs substantially, but negotiations would be on a selective basis. In the case just cited,

if there were a reason for not wanting to reduce or to bind the state trading margins, the country concerned would advance its reasons for not wanting to do it. If the state trading country attached a good deal of importance to it, the other country in that case would simply have to forgo some benefits for its exports which they might have got if the other country were willing to reduce or bind the protective margin. I think the main point is that there is no compulsion here under this draft to reduce every rate in a tariff or correspondingly to reduce or bind every state trading margin. It is a matter for negotiation.

THE CHAIRMAN: Thank you. May I now ask whether any Delegate wishes to express an opinion as to whether we should retain article 27 in principle or not. I would not at this stage raise a question of drafting but whether in principle we think something in the nature of article 27 is a desirable thing to keep. May I have further views on that?

MR. JOHNSEN (New Zealand): I think the point is whether this achieves any useful object not covered elsewhere in the Charter. I take it that in the absence of this particular article a member could have recourse to other provisions of the Charter which would enable him to make representations and seek an adjustment in any case where he felt his position was adversely affected, through the operation of some state monopoly. I would like the view of the United States Delegate on that. There is one other question I would like to ask at this stage, and that is this: how this particular paragraph applies to a country with a complete state monopoly. Would it mean that every item of its imports would be subject to negotiation in respect of margins? I am wondering whether such a thing would be practicable. There is a further question. In order to establish margins of profit I think the agreed basis was to take an average over a period. Having regard to the nature of the transactions that are likely to be employed under this particular article, I am just wondering whether it would be practicable

to apply it. It seems to me that in actual practice there would probably be a difficulty there. I know that in our case we have very few state monopolies. We import citrus fruits and we have a system there designed to ensure equitable distribution of those citrus fruits at the most favourable price.

THE CHAIRMAN: Might I suggest that we discuss the New Zealand Delegate's points in order? His first point was whether the subject matter of Article 27 could not be sufficiently covered by the general right of recourse which member countries already have under other provisions of the Charter; and there he has in mind the impairment clause, which is Article 30. The question then will be whether we need have as detailed

provisions as those, considering there is the general impairment

provision of Article 30. Might I ask for views on that first of all?

MR HAWKINS (US): Mr Chairman, I would like to look at Article 30 from this point of view. I think the New Zealand Delegate is probably correct that there would be recourse under Article 30, but it would have a rather less effect than if there were some obligation that could

be invoked.

The primary purpose, or one of the main purposes, of Article 30, is that when an obligation, as all obligations must be, is stated in somewhat general terms and a member does not consider that another member is carrying it out, there, at least, is something on which to base the complaint. Now, if you took out Article 27, there would not be. Article 26 covers a different field from Article 27. Article 26 corresponds to most favoured nation treatment, yet a close reading of Article 30 will show you that it applies even to cases which are not specifically covered. To that extent I think you have a point.

THE CHAIRMAN: Thank you. I am bound to say I have a little feeling myself that there are a very great many matters up and down this Convention on which we are going to ask the Organisation to exercise a discretion. It will be all the more difficult for it to exercise that discretion in proportion as it has the less direct guidance in the terms of the Convention itself to guide its judgment on any particular case, and from that point of view my general feeling would be that the more we can give it general guidance and indications as to how it should exercise its discretion, the less difficult task we shall be placing upon it.

Shall we pass on from there to the second point, which was the question as to the practical applicability of a provision in the case of a complete State trading monopoly, and whether there would not be so many margins to deal with that the scheme would be unworkable. Are there any comments on that? My own understanding of the matter is that the position of a complete State trading monopoly was entirely reserved to be dealt with under Article 28 and that Article 27 would not apply. Am I correct in thinking that?

MR AUGENTHALER (Czechoslovakia): I have no special comments to make as regards Czechoslovakia's point of view on this Article. I think there is one single country concerned with it and that is Soviet Russia, and I have not the slightest idea how they feel about that Article 28. It is Article 28 about which we are speaking, is it not?

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

MR AUGENTHALER (Czechoslovakia): The U.S.S.R. may agree or they may not agree. I do not know.

MR HAWKINS (U.S.A.): I understood just now that the New Zealand delegate was referring to Article 27.

MR JOHNSEN (New Zealand): Yes. It seemed to me there would be no reason why a country which had a complete State monopoly would be placed in any different position from a country which had a monopoly only in respect of one or two things.

MR TUNG (China): On reading Article 27 I think it is implied there that a State trading enterprise must be profitable, but of course that is something we cannot assume in all cases. It does not apply to my own country. For that reason I do not think it is practicable to take the price margin as a basis for examination. My other point is that it is impossible for any country to supply the whole world demand for a product, despite what it says at the end of the paragraph.

THE CHAIRMAN: Shall we deal with the points made by the Chinese delegate now? I think his first point was that the whole of this Article is based on the assumption that state trading is profitable, whereas that may not be the case; and, furthermore, a state trading monopoly may even set itself the task intentionally of losing money and thereby fixing prices at a certain level; and his point, I think, was that in that case the fixing of a profit margin is not a practicable proposition. Are there any comments on that?

MR HAWKINS (USA): Mr Chairman, let us take the case where a product is not sold in the domestic market at a price higher than that paid for it. The only possible object of negotiations in that case would be, so to speak, to bind a rate for the market; and even in that case I should think it would be doubtful if anybody would request it. They would look at the past history of the operation of the monopoly and very likely make it not the subject of negotiation.

THE CHAIRMAN: This Article would essentially have in view the placing of

an upper limit on the profit to be made; so that in a case where a state monopoly did not set out readily to do that sort of thing agreement could easily be arrived at to fix a suitable margin. Is that your point?

MR AUGENTHALER (Czechoslovakia): As to the margin for exports, actually I do not see the necessity of any article about that. There would only be an economic reason for that in cases where the country concerned has a world monopoly, but not when it is an internal business, because naturally each country is itself concerned to export as much as it can. There might be a danger there of a state monopoly exporting at a lower price than it would otherwise. That would be covered, I suppose, by the part of the charter dealing with dumping. Really I do not see the necessity for this provision. I would like to say that on this point -----

THE CHAIRMAN: Might I suggest that we deal first with this point about export margins? Might I ask for comments on that?

MR HAWKINS (USA): I think in general what the Czech delegate has said is correct. Let me illustrate the kind of case which could well come within the negotiations contemplated here. I do not think you need worry about negotiations in most cases, but this is designed to provide the analogous case to that of an export duty. Let me illustrate it if I can. It would certainly come under negotiations. There are a good many illustrations, but I will only take one. There are some countries which produce what are called peeler logs, from which veneer is made - that is plywood. In this case there was a restriction put on the export of them, the purpose being to make the cost of the raw material very high, so that foreign veneer plants could not compete with veneer plants operating in the country that restricted the export of the raw material. That is the kind of case which is envisaged here. In the case I mentioned a country such as, say, the United Kingdom or the United States or a good many others might say to the producer of that raw material that the price at which the particular country is selling this product abroad is far in excess of their own purchase price, and the effect of it is that they cannot operate their plywood industries. In the subsequent negotiations they would seek to get the country producing the raw material - peeler logs in this case - to

agree that that margin between the purchase price and the re-sale price (should not exceed "X", or whatever they could agree to. That is the type of case that would come under negotiation. Again, this is an analogy: it is the export duty as compared with the import duty which the rest of the Article is analogous to.

MR JOHNSEN (New Zealand): Would not the negotiation in that case start off with the negotiation for the contract in the first place to get the logs?

MR HAWKINS (USA): It would, under conditions of short supply. This is an actual case I have been telling you about, back in the 'thirties. If we had been in negotiation under this Article at that time we certainly would have been asking for a limitation or a removal of the restriction on the export of the product, because it was affecting our plywood people. Other people were affected even more so, because they had no supplies, whereas we did have something.

THE CHAIRMAN: If I understand the position rightly, it is this: that you may have cases - comparatively few - where, though there may not be a complete monopoly position, there is something which has in it sufficient of the nature of a monopoly that it is possible for an exporting country to levy an export tax, or, in the case of a state trading monopoly, an export margin, either with a view to protecting the domestic industry or simply raising revenue. If I understand it rightly, this simply leaves it open for any country which wishes to to approach the country which has the export tax or margin and to invite it to negotiate a maximum limit to the rate of that tax or margin, and it would be in the discretion of the country approached as to whether it would negotiate or not, and to what level it would negotiate. I should have thought that that perhaps did not seem an altogether unreasonable provision to put in.

MR JOHNSEN (New Zealand): One can visualise making representations of that nature, and the obstacles that might be placed in the way.

MR HAWKINS (USA): Mr Chairman, if we had put in this draft exactly what we ourselves would have liked, there would have been a prohibition of export

duties and a prohibition of restrictions on raw material. This is in effect saying, "Well, we are ready to negotiate for it because we have to negotiate on import tariffs", and then somebody would make the logical remark that a protective export tax is also necessary for some people and is designed by them for the same purpose, very often, as a protective import duty, and therefore to be logical you must negotiate on that, too.

THE CHAIRMAN: Thank you. I think there is perhaps one further consideration which enters into this, and that is that you may have a case of a country which produces the raw material of an industry, and they may see a risk that in certain countries which are not themselves producers of raw material there may be imposed customs duties which would protect the processing of that <sup>RAW</sup> material and would encourage the processing within that country. Now, the country which is a source of raw material may find that it is justified in doing something to offset the possibility that by that means a processing industry may be taken away from it and may be established elsewhere. There may be a certain reasonableness in the idea that a country producing the raw material should be in those cases able to defend itself by reserving the right to have an export tax serving to prevent the processing industry being completely taken away from it by an import duty in another country. Do I make myself clear? Having regard to that, I should be tempted to express an opinion that it would not be altogether reasonable to require the complete abolition of export taxes, but, on the other hand, there may be a good case for asking for negotiation.

MR AUGENTHALER (Czechoslovakia): In Czechoslovakia we have no export duties and never have had them, with one exception, but I know there are several countries, especially in Eastern Europe and in the Balkans, which have export duties; but those export duties actually take the place of import duties, because they are unable to get the necessary results in any other way. That is why they have been introduced. I do not know if it would be possible for those states to do without them or not.

THE CHAIRMAN: One sees the difficulty that countries may have which rely on export duties. I take it that it follows from that that if they are willing to negotiate and bind the right of those export duties they will wish to bind them at a comparatively high rate; but I do not think that is necessarily an objection in principle, is it, to this paragraph, because it may be that in consequence of that fact the country which relies to such a large extent on export duties for its revenue may<sup>not</sup> have very much to bargain with, but that does not, so to speak, put it out of court. It may nevertheless come into the negotiations and may negotiate to the extent which it feels to be reasonable in the circumstances. That is not precluded. On the other hand, it is not compelled to negotiate any given reduction according to this Article. Is not that the intention?

MR JOHNSEN (New Zealand): One can visualise that the cases which come up for consideration under this Article would be very few in actual practice.

MR HAWKINS (USA): Yes. Where there is an export tax it is very likely, except in the case of a country with a monopoly, to be kept at a moderate level, in order to get the maximum revenue; but the number of cases of export duties is very very small compared with the number of cases of import duties.

MR JOHNSEN (New Zealand): Apart from that, the number of countries where representation could actually be made would be relatively few.

MR HAWKINS (USA): In our own experience it is only now and then. It may be that in half a dozen cases you could say we have worried about the export tax, and those have always been where the tax was put on and made very high to protect a domestic industry by depriving foreign competing industries of the necessary raw material. There is very little of it, though. Of course, to keep our discussion clear, we are not talking about export duties in Article 26; we are talking about an analogy. That Article 26 allows for negotiation, but a country might refuse to negotiate on export duties, or, if they were pressed on it, they might say, "We will simply make a state monopoly of it".

THE CHAIRMAN: Thank you. If it perhaps a legitimate comment on these Articles in general that they are, so to speak, meant to produce the counterpart, if I understand it rightly, for state trading, of the rules elsewhere laid down for private trading; so that, just as you have potentially negotiated limitations for import duties, with export duties you would have the corresponding negotiable limits upon the margins of import or export. Is not that so?

THE CHAIRMAN: Have we any further comments upon this point? Export margins.

MR HAWKINS (USA): The New Zealand delegate had one point we have not covered, and I think the Brazilian delegate raised the question of average.

THE CHAIRMAN: Yes. If I remember, the New Zealand Delegate's point was this, that in the practical administration of this Article 27 one would be unable literally to observe the terms of it in relation to particular consignments imported in the sense that you would not be able simply to add to the buying price your negotiated margin and sell at the resulting price, but that you would have to average it over a period perhaps in order to make the thing administratively workable. I seem to remember that we of the United Kingdom Delegation raised that point ourselves, and if I understood the Delegate rightly it is not possible to observe a rule of this kind very precisely. He did raise the question whether it was worth while having it. May I ask for views upon that point?

MR HAWKINS (USA): Only one comment. I should think that the period taken should be relatively short so that the average prices will reflect the current prices fairly accurately. You mentioned a period of three years. Just offhand that seems to me to be a bit long. That is something that will have to be considered later in the light of other circumstances.

MR JOHNSON (New Zealand): If it went to negotiation would not you be negotiating on margins irrespective of any prices?

MR HAWKINS (USA): I think the Chairman's idea, as I understood it, was that it is administratively impossible when a buyer is getting supplies at the best price, because there may be a dozen different prices. Which are you going to take? The Chairman said an average. Then you have to compare that with your resale price, which presumably would be uniform to keep the margin which is the subject of negotiation. He did not mention that period as short and practical, but that is the sense of it and the reason for this suggestion.

THE CHAIRMAN: Yes, it is a question of administrative practicability.

Then there is a further point which I made in Committee II, that for purposes of producing stabilised prices you might want to take a rather longer period, but I do not know that we need discuss now just how long that period would be, I think the point with which we ought to concern ourselves here is as to whether an average over a certain period would be administratively necessary, but I do not feel that that necessarily invalidates the usefulness of some point of this kind.

Then I think there is one other outstanding point which is raised by the New Zealand Delegate, and that is as to whether it is really useful to contemplate a procedure of this kind in the case of a complete State trading monopoly. Perhaps Mr Hawkins would wish to comment upon that point?

MR AUGENTHALER (Czechoslovakia): Mr Chairman, I should like to speak on a point which was raised before, the words "full domestic demand", because I think again one has to remember that there is rationing and there are other restrictions on consumption in certain countries, so that I cannot see how a country should have an obligation placed upon it to import up to the full domestic demand. Of course, the demand may be very great, but for some other reasons there is a restriction on consumption at home.

MR HAWKINS (USA): Mr Chairman, it is an application of principle rather than a mathematical formula. The purpose of it is this, let us suppose, to take a harder case, that you have to supply the full foreign demand in the case of export duty, taking the case cited, of a particular raw material which is used by certain industries in the producing countries and by other industries in other countries which do not have the raw material supply. Let us suppose that State trade monopolies were created in the exporting country and let us suppose that the other countries which have industries which use the raw material in question negotiate

in the matter, and that it is decided, for instance, that the difference between purchases in the home market for resale abroad should not exceed, say, 10 per cent or whatever you like. Then let us suppose that the export country simply withholds supplies from the market. The fact is that it will force that price up or create a position of scarcity which would have the same effect on the finishing industries in the foreign country. That is the purpose of it. The same would apply in reverse in the case of imports.

Now there were one or two amendments - or at least one particular amendment - suggested in the full Committee, which I think help to meet your point. In the full Committee I agreed that they were desirable. I think Mr Shackle himself suggested them. We qualify that where there is rationing or where there is price control. Obviously in the case of imports if a country is rationed for supplies it cannot meet the full domestic demand, and that qualification I think is proper.

MR JOHNLEN (New Zealand): Then there is the question of restriction, and you might have an exclusive commodity to deal with.

MR HAWKINS (USA): Whatever the reason may be, that causes an effort to be made to impose rationing in order to curtail consumption, although, of course, we hope that in due course it will not be necessary to have rationing.

THE CHAIRMAN: Is it right that the cross reference to Section 6 of the chapter, which comes somewhere towards the end of Article 27, is meant to cover at any rate some of these points, in the sense that just as under private trading, if you had an import control, that import control would be linked with the balance of payments or for other reasons which are specified in Section C with other things, and correspondingly those exceptions would apply in the State Trading chapter, so that if you had balance of payment difficulties of the kind which would justify those restrictions - say, for instance, you had State trading - if you could justify the need for restriction of trading for balance of

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payment reasons, you would not need to satisfy the full domestic demand, and correspondingly the other exceptions which are listed in Section C. I think some reference has to bring in those exceptions. Is not that so?

MR HAWKINS (USA): That is correct.

MR JOHNSEN (New Zealand): But Section C might not be sufficiently wide to cover the whole of those transactions, and I am wondering whether it would not be better to alter those words to read "shall, if not inconsistent with any other provisions of this Article", and so on, because there is some question of regulation for other purposes; and one knows quite well that under Section C it is a question of industrial development.

MR HAWKINS (USA): If there were other provisions permitting restrictions on imports, then there should be a reference also to those other provisions.

MR JOHNSEN (New Zealand): Yes.

MR HAWKINS (USA): But, you see, when we were drafting this we were referring only to the things we had put in, and if the exceptions in Article 19(2) were extended in any way under this language they would be automatically covered, because it refers to Section C and would cover anything that was regarded as legitimate in respect of quantitative restrictions.

MR JOHNSEN (New Zealand): We should have to bear that in mind in the case where there is some provision in some other Section in the Charter.

THE CHAIRMAN: Might we ask the Rapporteur to note that point, and if any additional ground on which import and export restrictions are permitted should be introduced in the course of discussions elsewhere in this Conference then a cross reference should be introduced to this article, so as to correspond to the other purposes of State trading. Perhaps we could leave the point about export, and for that latter home demand,

in that position.

I think we have now covered the points raised by the New Zealand Delegate.

MR JOHNSON (New Zealand): What about the State monopolies?

THE CHAIRMAN: Yes, the question whether the provisions of Article 27 would be workable in the case of a complete State monopoly.

MR HAWKINS (USA): As to that, I think that in the case of a complete State monopoly of foreign trade you do not have the same internal conditions where you have an internal market price.

THE CHAIRMAN: Your idea in effect is that if you took a ~~complete~~ State trading monopoly it would be dealt with simply and solely by Article 28, and Article 27 would not apply?

MR HAWKINS (USA): Yes.

MR JOHNSON (New Zealand): On the export side do you mean to say that a country having a State monopoly could not adopt the practice you suggest?

MR HAWKINS (USA): There is a possible point there which we ought to consider.

THE CHAIRMAN: I do not know whether anybody is ingenious enough to suggest a way in which the export side could be taken care of under Article 28; perhaps we might deal with that as a point to be considered and thought about further.

MR HAWKINS (USA): Could we make use of the Rapporteur and ask him to come in on that point?

MR ARMSTRONG (Rapporteur): It is very difficult to contrive ways and means for inducing countries with State monopolies of foreign trade to export them if they do not care to export them. The purposes of Article 28 in this connection would be that you would ask the countries with a State monopoly of foreign trade to indicate, according to our draft, what they would buy for others and in terms of tariff concessions might buy themselves. Now, it might well be that this Article should be extended to take care of articles which other members might wish to buy from that member for one reason or another, and I think support might well be given to that.

MR HARRIS (USA): Yes.

MR JOHNSEN (New Zealand): In regard to Article 27, the full domestic demand, it is subject to other considerations, and there are no such requirements in respect of a country having full State monopolies, and we would certainly negotiate with them as to the amount that they might buy, but that is not related to the demand at all.

THE CHAIRMAN: Shall we leave it and ask the Rapporteur to consider this problem further, noting no doubt that it is very much more difficult to get a solution in regard to State monopolies than in cases where there is not a complete monopoly?

I think that brings us back, does it not, to the point at which we started this discussion, which is upon the Czechoslovak amendment as to whether it is desirable to retain anything in the nature of Articles 27 or 28, or whether we should confine ourselves to having the principle of Article 26 stated in the records of the Organisation in cases where it was felt that the principle was not being faithfully observed. I think our discussion has so far been concerned with the question of whether Article 27 should be removed. Am I right in thinking that the general feeling in the Sub-Committee is that perhaps on balance we might do well to retain something corresponding to the principle of Article 27? I ask that before we pass to Article 28. (after a pause): In that case perhaps we could pass on to Article 28. There is the question as to whether in principle anything of that kind is worth retaining. I seem to remember that we had a discussion in the main Committee about this in which it was suggested that perhaps it was not necessary or useful to keep the second and third sentences of this paragraph but that we might keep the first sentence, the general principle which is stated in the first sentence. Has anybody any point to add to the discussion which took place on that in the main Committee?

MR JOHNSEN (New Zealand): The Canadian Delegate suggested something about that. It had reference to the question of practicability, and I am inclined to agree with what he said.

MR HAWKINS (USA): I think the Canadian Delegate withdrew that suggestion.

MR JOHNSEN (New Zealand): Did he?

MR HAWKINS (USA): Yes.

THE CHAIRMAN: I think we should wait if there is an opportunity to negotiate this with such a country as is contemplated in this type of article.

MR HAWKINS (USA): As I got the sense of the discussion in the full Committee, it was not that we adopted this article 28 and recommended it finally and strongly, but as we might have other things to agree it had got to be kept in until the Soviet Union had a chance of considering it, when there would be some opportunity of seeing what their reaction was to it. Otherwise we had no basis for discussion with them.

THE CHAIRMAN: Thank you. In that case the question arises whether we should go straight on and consider/drafting/articles 27 and 28 or whether we should eliminate them and simply replace them by the Czechoslovak article. Has anybody any further comments upon that question? (After a pause): In that case I think perhaps we had better go back and consider Article 26 in detail, and then go on to articles 27 and 28 in detail. I think we had already discussed to some extent the first sentence of Article 26. We have dealt with the question of what is meant by a State enterprise, and perhaps it is unnecessary to reopen that question; then we have gone on to the question of omitting the words "or services", and I think we had agreed that we could omit those words. Now, may I ask whether anybody else has any further comments to make on the first sentence of Article 26, paragraph 1?

MR JOHNSEN (New Zealand): There is that question of non-discriminatory treatment of which I think some note was taken in relation to non-member countries.

THE CHAIRMAN: I think the Rapporteur has noted that. Now would it be the desire of the Sub-Committee to adjourn for tea at this point and perhaps resume at 5 o'clock? (Agreed.)

(after a short interval)

THE CHAIRMAN: Gentlemen, if we are all ready, may we now resume.

I have been asked to say that as a verbatim report is being taken of the proceedings in this sub-committee it would be very helpful to the reporters if members would kindly remember not to drop their voices and to speak clearly and sufficiently deliberately.

I think we might now go back to where we were which was the first sentence of Article 26. May I ask if anybody has any further comments upon that sentence before we pass on.

MR AUGENTHALER (Czechoslovakia): If any member establishes a state enterprise, I suppose that means an enterprise which exclusively imports and exports?

THE CHAIRMAN: May I ask the United States delegate to deal with that point? I think there is a difference in terminology, as it were, between Articles 26 and 27, is there not, and while the word "monopoly" does not seem to occur in Article 26 as far as I have noticed, it does come into Articles 27 and 28.

MR HAWKINS (USA): Article 26 would cover state purchases, even though there is no monopoly or an obligation on the state purchaser to buy in the best market. Article 27 refers to monopolies. The reason for that distinction there is that if Article 27 applied only to state purchases where there was no monopoly the price disparity, or the trading margins which are mentioned here, would not have much significance because imports by private traders would take care of the internal price situation.

MR AUGENTHALER (Czechoslovakia): In a special case like that where there are several private enterprises importing and exporting, would the state enterprises, which would be competing with other enterprises exporting and importing, be subsidiary to those private enterprises, and is this case covered by that point?

MR HAWKINS (USA): That case would be covered by Article 26.

THE CHAIRMAN: In other words, the one obligation lying upon it would be to

observe commercial considerations such as price equality, etc.

MR JOHNSEN (New Zealand): There is one question I would like to raise, Mr Chairman, and that is in respect of preferences. I am not sure whether they are covered by some other provision in the Charter, but when we get down to using terms such as non-discriminatory treatment or treatment not less favourable, it is necessary I think to consider the position in relation to preferences. In that respect I think that we have either to be sure that there is some other provision in the Charter or that there is some provision relevant to this Article which safeguards the position respecting preferences. I would also like to have some information as to the position regarding long-term contracts as affecting the price of a particular article: that is a position that we would like to have safeguarded if it is possible.

THE CHAIRMAN: Yes. As to the point on preferences, that was one which I had in mind to mention myself. It seems to me that what one probably requires there is something analogous to what one already has in Article 8 (2) as regards tariff preferences. In Article 27 one would have negotiations about state trading margins which would correspond to the negotiations about tariffs under Article 18. Just as negotiations about preferential tariffs are included under Article 18, so I assume negotiations about preferential state trading margins should be included under Article 27; and from that I take it that it would follow that just as in Article 8 (2) you safeguard from the operation of the most-favoured-nation rule tariff preferences as they remain after the negotiations, so here, and I imagine that Article 26 would be the appropriate place, you would safeguard the preferences remaining in state trading margins after the negotiations. Does that commend itself to the Committee?

MR JOHNSEN (New Zealand): I think that we would need to go rather further than that, Mr Chairman. There are other types of preferences such as quota preferences in respect of certain products, and that is a subject that has to be discussed between a number of interested countries, and that also

would need to be covered here.

THE CHAIRMAN: I am wondering whether in a sense, talking about state trading, one is not, so to speak, bracketing tariffs and quotas to some extent, because may not it be argued that a state trading monopoly to some extent combines both a tariff element and an import or export restriction element. In that sense, therefore, if you said that your state trader must satisfy domestic demand in the case of imports and external demand in the case of exports, you would then say that he would have to observe certain negotiated margins or margins to remain after negotiation, and you may possibly then have covered the whole ground. Is not that arguable?

MR JOHNSON (New Zealand): I do not know that that would cover the quota preferences, having regard to the first sentence of this Article.

THE CHAIRMAN:

/Should we leave it in this way, that this question has still to be discussed in another group, by asking the Rapporteur and then a conclusion might be reached in the matter of quota preferences, but due account should be taken in due course in drawing up or attempting to draw up our final ideas upon these Articles of these points. Would that meet the case? I rather doubt if we can carry it further at present because I think this matter has still to be discussed elsewhere.

MR JOHNSON (New Zealand): Yes.

MR HAWKINS (USA): A good deal depends upon the provisions which are adopted regarding quotas; and if this draft were adopted as we have it there would not be any quotas except in specified cases, for instance, as regards the exceptions listed under Section C. Now I would not think that any of those exceptions could properly provide for a preference; they are there for a particular purpose; and I should not think that, on a quick look at them, preferential quota treatment would be justified.

MR JOHNSON (New Zealand): We would say that it should be subject to negotiation the same as tariff preferences. That is a point that was made when we were discussing quota preferences.

THE CHAIRMAN: Might I suggest that perhaps we could leave that to be dealt with, in the first place, by the small group to whom the Chairman of

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Committee II referred it. If I remember rightly, the Australian delegate raised the question in Committee II and it was left that it should be considered, in the first place, by a small sub-committee consisting of Australia, Canada, New Zealand, the United Kingdom and the United States. As far as I know, that small group has not yet met; it will be discussing the matter within the framework of the Articles about import restrictions, and my feeling is that we had better perhaps leave the matter over for the moment, in the sense that perhaps we might recognize that this would correspond to the scheme of the Charter as it was drafted, but that if something fresh is introduced in the matter of quota preferences as a result of the discussions in this group, then we should in due course have to take account of it here. Would it meet the case if we left the matter like that? (Agreed). Thank you. Then we come to the second point of the New Zealand delegate as regards long-term contracts. I think that has been to some extent discussed already in the main Committee; I think the delegate for India raised that point, and Mr Hawkins then gave some explanations in regard to it. Would Mr Hawkins wish to add anything now?

MR HAWKINS (USA): Mr Chairman, I think this Committee might, at some stage, discuss that point rather fully. The question that arises is not I think a question of drafting in connection with these Articles; it is a question of the interpretation of a phrase in Article 26, namely, the commercial considerations provisions. Your question then becomes: Is a long-term contract for a given quantity of goods a transaction that comes within the meaning of the term "commercial considerations"? In the full Committee I suggested that it depends, first, on how much of a country's import requirements are involved in the purchases in a particular country and, second, upon the length of the contract. I do not know whether you want to go into that now or not. I could elaborate this point here, if you like, but it seems to me that we might profitably spend some time discussing the point. If the theory that we have here is only a general principle, a principle of buying

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in accordance with commercial considerations, we, and I think everyone else agrees, think that that means that you buy to the best advantage, as a private trader would do. Now, I would not suggest, for the reasons given by the Delegate of Czechoslovakia, that we attempt to spell out here the meaning of the term "commercial consideration", because you can get a lot of other questions beside this one, but I do think it is desirable on every occasion on which a specific case arises involving a question of interpretation that it be threshed out and that there be full discussion of it to the end that over a period of time you develop something of a case law on the subject. Those are very general principles, but they mean no man can say in advance what is applicable to all cases. It is only over a period of time after the Organisation has been functioning, maybe for some years, that we will be able, in the light of a precise examination of the application of the phrase "the particular circumstances", to get a clearer and more accurate meaning of what the phrase "commercial considerations" really means. My point is that we do have cases of long-term contracts which were made for purposes of record, but it is clear that at some stage they must be discussed to see if we can arrive at any sort of conclusion, or at least to see if we can bring out all of the considerations that are involved; but leaving it for the record and not for the purpose of amending the text.

MR JOHNSON (New Zealand): In other words, long-term contracts will not necessarily be inconsistent with this article.

MR HAWKINS (USA): Not necessarily; it all depends on how long we have. Five years is excessive. Others think not, but we think it excessive, as you know.

MR JOHNSON (New Zealand): Yes.

MR HAWKINS (USA): We also think that the quantity of purchases is important; for instance, if one country purchased an entire supply from a single foreign supplier for one year we would have grave doubts about

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that, because we think that some competitors in other countries who could have supplied on a competitive basis should have been allowed to do so, and they would have been excluded from the market. I am only giving our view, realising that others have different opinions on this point.

THE CHAIRMAN: Thank you. Of course, a long-term contract is not a thing which is unknown in the commercial world. I remember such things as newspaper, which I believe is habitually bought on a long-term contract. I think our own feeling in the United Kingdom Delegation is that it would be a matter for which it would be very difficult to frame a priori general rules which would determine exactly how the adoption of commercial considerations of this type was to be applied to particular contracts, and we feel very much, as Mr Hawkins has said, that it is a matter of building up case law as we go along.

Has anybody anything else that they wish to add on the subject of long-term contracts at this stage? (After a pause): Perhaps we can pass on. We have already met the point about preferences under State trading monopolies.

Now we come to the second sentence of paragraph 1: "to this end such enterprise shall, in making its external purchases or sales of any product or service, be influenced solely by commercial considerations, such as price, quality, marketability, transportation and terms of purchase or sale." May I ask if there are any comments upon this sentence?

MR TUNG (China): There is one question I should like to ask on this, Mr Chairman. Do I understand that Government purchases are to be treated as exceptions to the provisions of this sentence? For instance, it states here that these "purchases or sales of any product or service (should) be influenced solely by commercial considerations". Are Government purchases also included in this?

THE CHAIRMAN: Well, if I understand it rightly, the idea is that we try

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to lay down a guiding rule for Government purchases.

MR. TUNG (China): If a Government purchases a certain commodity from abroad it may be for military purposes or for other public purposes, and in such cases, especially for military purposes, they cannot closely conform to the commercial considerations mentioned.

THE CHAIRMAN: Yes. I have to attempt to give a sort of interim answer to your question, if I understood it rightly.

MR. TUNG (China): Have I made the point clear?

THE CHAIRMAN: I think you have made it perfectly clear, if I may say so, but my understanding is this, that we have discussed the question of Government purchases for what you might call administrative use and for the use of the Government concerned and not for resale, on Articles 8 and 9, and it was there decided that they should be excluded. I think, having regard to that decision in the Procedures Sub-Committee, it would be consistent if we here introduced a qualification to this and used cross references, so to speak, to the decision already come to on Articles 8 and 9, so that Government purchases for Government use and not for resale would be excluded from Article 26, as just as they would from Articles 8 and 9.

I think that is how the matter was left, was it not?

MR. HAWKINS (USA): Yes, I agree with your conclusion, also that we will have that whole question that we had so much trouble with in the Tariff Preferences Committee back in this one.

MR. TUNG (China): I understand there is a specific point in Article 9 as to Government purchases. There is no provision in Article 8.

MR. HAWKINS (USA): We took it out of article 9; but I do think, Mr Chairman, in accordance with your suggestion, that we should make some qualification here so that this applies to purchases for resale, which is rather important, because otherwise I think, as the Chinese Delegate may have in mind, this language would cover, as it is, purchases for Government use, which is something quite different.

MR TUNG (China): Yes.

THE CHAIRMAN: Yes. We need cross references in fact here to what we have already agreed, or provisionally agreed, on Articles 8 and 9. Then there is a point about administrative supplies. Does the United States Delegation consider that that is covered by some of the general exceptions? You have, for example, Article 32, I think.

MR HAWKINS (USA): Yes, there is a general exception; the item is covered.

MR TUNG (China): Is that item (d), Article 32?

MR HAWKINS (USA): No.

THE CHAIRMAN: I dealt with (d) in article 32.

MR HAWKINS (USA): Yes.

THE CHAIRMAN: That has a certain extension into (e).

MR TUNG (China): That refers to articles for military use alone and not for other public use.

THE CHAIRMAN: I think we have covered other public uses by the amendment of Articles 8 and 9 - that was my impression. Then the second sentence of paragraph 1. Has anybody any further point to raise upon that? If not, let us go on to the third sentence: "The member maintaining such state enterprise, ~~which~~ or granting exclusive or special privileges to an enterprise, shall, upon the request of any other Member having an interest in the trade in the product or service concerned, or upon the request of the Organization, provide such specific and detailed information as will make possible a determination as to whether the operations of the enterprise are being conducted in accordance with the requirements of this paragraph." Are there any comments upon that?

MR AUGENTHALER (Czechoslovakia): With regard to the last phrase, which implies that State enterprises should be only those which are monopolistic, not any State enterprise, we do not request other countries with private enterprises to give us information as to what they are buying; so that I think it would be fair to ask State enterprises only in this case where they have monopolies.

they have monopolies.

THE CHAIRMAN: Might I ask for further comments upon that point?

MR HARKINS (USA): I think there is one distinction to be drawn here, is there not? In the case of trade by private enterprise market prices are established which are easily ascertainable, and the market situation is something which can be known by any interested person, whereas the operation of a State enterprise would not be known possibly unless the information were supplied. I state that somewhat hesitatingly, because I am not sure I have the point.

THE CHAIRMAN: It rather strikes one that if a State enterprise is not a monopoly it will more or less in the nature of things be compelled to behave as a private enterprise will. Is not that so, because it very likely will be actually competing with private enterprises in the market, and in those circumstances it is very difficult to see how it can behave very differently from the way in which private enterprises would behave.

MR AUGENTHALER (Czechoslovakia): State enterprises may come in in two senses. One sense means exactly as private enterprises, as happens in some cases in Czechoslovakia, where they act as private enterprises. Then we do not see why any Member should make a request for any detailed information about their activities, especially if they have no monopoly at all. Maybe there is another kind of State enterprise which intervenes only in certain cases, subsidiary buyers. Suppose that there should be some enterprise created by the State, just to maintain prices at a certain level, those enterprises would not sell and would not buy so long as the market was normal, but they would intervene only at the moment when the market was too high or too low, just to maintain a certain stability. Of course, then that enterprise is not acting according to commercial principles, because it is there for entirely different reasons, and I do not know how it would fit in.

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THE CHAIRMAN: Yes, it does rather seem to me on the face of it that it does in the case of monopolies where there is a risk of a possible breaking of these rules - that it is, therefore, in those cases that one needs to provide for information to be supplied to enable observance of the rule to be checked; but it is a little difficult to see that there is a case for requiring that in any instance where there is not a monopoly.

MR HANKINS (USA): I am rather inclined to think that Mr Augenthaler has got a point there.

THE CHAIRMAN: Shall we leave it for further consideration by the Rapporteur and the United States Delegate for the time being?

(Agreed.)

MR AUGENTHALER (Czechoslovakia): I would request that these details should be considered where State enterprise may mean any State enterprise. I suppose that here it was meant rather as a State enterprise having a practical monopoly.

THE CHAIRMAN: The wording is a little peculiar, is it not, because the sentence starts: "The member maintaining such state enterprise", which seems to contemplate something in the nature of a monopoly, so that it looks as though one has here some things which are not monopolies, and others which are.

MR HANKINS (USA): That was the point I was worrying about. I am wondering if we did not go a little astray a little while ago in giving at least the impression that this obligation to buy in the best market applied only where there was no monopoly. It does apply where there is no monopoly, but the obligation to buy where purchases can be made to the best advantage would also apply to a monopoly. This language would cover any such purchases whether monopolist or not.

THE CHAIRMAN: Yes. On the other hand, if you have a case where there is no monopoly, such as, shall we say, some kind of State industry which is buying supplies of a kind which is also required by other industries,

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it is very obvious, is it not, one would require it to give special information to check that it is observing the rules of commercial considerations? In the nature of the case one would expect it to be observing those rules more or less automatically. Is not that so?

MR HARKINS (USA): I would suggest for tentative consideration by the Rapporteur qualifying the last sentence to make it applicable only in the case of a monopoly.

THE CHAIRMAN: Thank you. Can we leave that sentence now and come to paragraph 2 of Article 26?

MR JOHNSEN (New Zealand): Before we pass on from it, would not it be covered by Article 30, which refers particularly to State trading operations? I was wondering whether we might not delete that sentence entirely in the light of that.

MR HARKINS (USA): Yes, it specifically covers State trading operations in Article 30.

THE CHAIRMAN: Well, the question is shall we agree that this sentence is unnecessary, subject to any further views which on consideration the Rapporteur may wish to put forward?

MR AUGENTHALER (Czechoslovakia): If I may mention it, Mr Chairman, I think there was one complication mentioned here, that instead of "specific measure of control" the wording should be "effective" in the second sentence?

THE CHAIRMAN: Yes.

MR AUGENTHALER (Czechoslovakia): "effective measure of control" or something like that was proposed by the British Delegation.

THE CHAIRMAN: If I might revert for a moment to this point about the last sentence of paragraph 1, may we take it that in view of Article 30 it is perhaps unnecessary to have this last sentence of paragraph 1? Perhaps we might leave that to the Rapporteur to consider that further; but that our decision should be provisional<sup>ly</sup> that the sentence is unnecessary?

(agreed.)

Now we go on to paragraph 2, and there we have this point which we

have already to some extent discussed, the question whether the words "substantial measure of control" should be substituted by the words "a substantial measure of effective control". My own preference there would be for the words "effective control". On the one hand it seems to me that the word "substantial" is ambiguous, and if you say "effective" you do not gain much by adding the word "substantial" measure. I should like to get the views of the Sub-Committee upon this point. May I just ask if the Sub-Committee would regard it as satisfactory to substitute the words "effective control" simply?

MR JOHNSON (New Zealand): I see no particular reason to object to that.

MR HAWKINS (USA): The only thing is that if you have got control I think that implies it must be effective; it is a matter of drafting only; but is there such a thing as ineffective control?

THE CHAIRMAN: Yes. Would it be good enough to say "exercise control directly or indirectly"?

MR HAWKINS (USA): Yes.

THE CHAIRMAN: That might be best.

MR HAWKINS (USA): Yes.

THE CHAIRMAN: Shall we provisionally agree to amend it in that way, so that it would read: For the purposes of this Article, a state enterprise shall be understood to be any enterprise over whose operations a Member government exercises control directly or indirectly?"

MR JOHNSON (New Zealand): There are relative measures of control.

THE CHAIRMAN: It rather depends on what you mean by control, because if control means, so to speak, an element of power to direct the activities of an enterprise, then the word "control" by itself would be enough; on the other hand, if you are thinking in the sense of, shall we say, shareholding and voting power, that is rather a different sense of control, is it not, and there one might need to say "a predominating measure" or something like that. I do rather imagine the word

"control" was used in quite a general sense and not in the sense of shareholding and voting control. Perhaps I was wrong.

MR HAWKINS (USA): There is one case I can think of which might not be covered if you leave out the words "substantial measure." It is a case where a government has five out of eleven directors, the rest being private citizens, and yet the policies of the organization are pretty well under the control of the government, but it is not a nominal or legal control, but it is control in fact. I would be a little afraid if you left out the word "substantial" that you would exclude a case of that kind.

THE CHAIRMAN: Would not the word "effective" meet that, because in fact, although there was not so to speak a majority of governmental directors on the board, and if in fact the government really did control the activities of the concern, then surely that would be effective control.

MR HAWKINS (USA): Yes.

MR JOHNSEN (New Zealand): I think that "effective" is in fact more effective here!

MR HAWKINS (USA): Yes. In other words, "effective" is used in contradiction to "legal" or "nominal."

MR JOHNSEN (New Zealand): Yes. We can achieve something through having "effective control," whereas if we had "substantial control" we might not be able to achieve anything.

THE CHAIRMAN: Can we pass on to Article 27?

MR AUGENTHALER (Czechoslovakia): I beg your pardon. I think "control" in this sense means that at the end of the year you can say, "This State is controlling what happens here," but then it might be too late, and I think the intention here rather is that the operations of the enterprise are directed by the State, or something like that. Of course, as regards control, if the State has some enterprise it has some control over it, and the State just says, "Well, you will buy this

or that," but I do not quite know how much it would affect it. Let us see. They might leave it to the enterprise in question to do it in its own way and they might buy wherever they thought fit at any price, and at the end of the year the State would just take control by imposing duty. Now, suppose that you have in mind a case where the State would say exactly to those enterprises where they should buy and so on, where the operations are directed, that would be what is meant.

MR HAWKINS (USA): That is what we are trying to describe.

THE CHAIRMAN: I think there is a little confusion arising here between what one might call the English significance of the word "control" and the French word "contrôle," which is rather a check or an audit; and I think it is possible that there may be a little doubt on that score. But I should have thought the word "control" in its English sense had a fairly clear significance here.

MR HAWKINS (USA): The word "effective" helps that.

THE CHAIRMAN: Yes. May we leave that sentence now, and if the Rapporteur has any further thoughts about it we can return to it, but provisionally we will leave it at "effective control." (Agreed)

Then we come to Article 27, the first sentence, "If any member, other than a Member subject to the provisions of Article 23," and so on, down to the words "may exceed the price for such product charged in the home market." I think we might stop there for the moment. May I ask for comments on the sentence so far.

MR JOHNSEN (New Zealand): I did raise the question and I think Mr Hawkins agreed with it, that after the words "shall enter into negotiations," there should be inserted the words, "upon request," the same as in Article 18.

MR HAWKINS (USA): Yes, I think that is so.

MR JOHNSEN (New Zealand): Could we add a little bit more than that, but it would need to be brought into line with the wording of Article 18 in that respect.

THE CHAIRMAN: Well, do we agree to that, to leave the actual wording to the Rapporteur. Is that so? (Agreed). Does anybody else wish to raise

any question?

MR TUNG (China): In cases where there are monopolies of certain products, and the price of those products is fixed in contracts or in agreements with foreign governments or with foreign firms, we have to sell those products according to the terms of the contract, the price and cost of production and the price in the home market, but we can never tell what is likely to happen, because sometimes prices rise much higher on the home market than prices on the foreign market, and in that case the Government concerned is losing money. Then we could not fix any profit margin or price margin to conform to the provisions of this Article.

MR HAWKINS (USA): I think in a case of that kind it would have to be settled by the negotiating process if any country requested that a specific margin be agreed. The formula would have to be constantly kept in mind. It merely keeps the question open for discussion between the countries concerned.

MR TUNG (China): Is a member country to enter into negotiation on its own initiative or is it bound to enter into negotiation?

MR HAWKINS (USA): I am not sure I understand you.

MR TUNG (China): I think according to this any state monopoly is bound to enter into negotiation with other members. According to what you have just explained, it seems to me that any member is free not to enter into any negotiation in such cases as I have just mentioned.

MR HAWKINS (USA): I would say they are not free to refuse to discuss the matter. I think it would be an obligation here. If any foreign country were interested in raising the question you could discuss it with them, but you are not required to take any action.

MR TUNG (China): That means they could object to any margin which was fixed?

MR HAWKINS (USA): Yes. The thing that makes it practicable is that the foreign country may then give you less than it would otherwise have given. It is a matter of negotiation, but it is worth while for you not to do it. They might make it worth while for you. The only obligation here is to discuss. I think that would be mandatory.

THE CHAIRMAN: It is in fact an almost exact counterpart of what you look at in the tariff negotiations, is it not?

MR JUGENTHALER (Czechoslovakia): I feel that this is one of the more difficult points. I have already raised the question of state monopolies of a financial character. I leave that now. I think it was our Dutch colleague who raised another problem. If you have a monopoly for cereals, for instance, and there are certain prices fixed to protect the small farmers, and then you get some offers from abroad, are you under an obligation to discuss the selling price of those cereals in the home market, if the country asks you to fix a certain price which would be below the price you pay to the home producers?

THE CHAIRMAN: Is that intended to be governed in any way by this Article, do you think, Mr Hawkins?

MR HAWKINS (USA): I think it is involved. I think it presents a difficult case. I think you would be obligated to discuss it. It may be that the system of agricultural protection employed is something that would have to come under discussion as to whether it is excessive or not. I think that is all involved in it. It would certainly be true in the case of the United States if attempts were made to maintain price stability for agriculture.

THE CHAIRMAN: I am not sure whether I have fully understood the question. I thought it related to the case in which the monopoly sells to consumers in the home market at a price lower than it would be willing to sell at to producers abroad; or at least that is part of the question, is it not?

MR JUGENTHALER (Czechoslovakia): No, I do not think so. I think it is rather like this. Let us imagine a certain country which is in an inferior position as regards conditions of production in a particular industry. It cannot close this production down, let us say, because of the social effects entailed - the population has to live. I am thinking now of agriculture particularly. Let us imagine that to make this agricultural production profitable the government introduced a kind of monopoly, paying to the home producers a certain fixed price, just to make their existence tolerable. Then might come certain offers for imports from abroad, at very low prices. If the price for these imported goods is to be the subject of negotiation and agreement, the result might be that it would entirely upset the policy of creating the state monopoly for the purpose of protecting the people.

THE CHAIRMAN: My impression is that that is a case which is somewhat analogous to what is done in this country as regards agriculture, where we have a system of guaranteed prices (I am not an expert on this subject but I think this is the position) for various staple agricultural products. My understanding about this - and Mr Hawkins will no doubt correct me if I am wrong - is that the obligation under this Article 27 relates to the margin between your buying price - speaking of imports - and your first-hand

selling price in the home market; it is not related to the price which you pay to home producers; and so I think there is an analogy with subsidies under private trade, because in the subsidies provision, contained in Article 25(1), you have a provision which allows of the paying of general subsidies to your home producers as distinct from export subsidies, and which are subject to consultation if it is held that it is doing serious injury to other people's trade. In state trading also, if you are paying a subsidy to your home producer, you are not precluded from doing so by the terms of Article 27, but you may run into a check under the terms of Article 25(1) if it is determined that serious injury to the trade of any member is caused or threatened by your subsidisation. Is not that how the scheme is meant to work?

MR HAWKINS (USA): I think that is involved. However, I think Mr Augenthaler has a point here, and I think we ought to look at it very closely, and if we could be allowed to think out aloud on it, maybe we can find a solution here to this problem. I would like to get the case just as clearly as possible in front of us. My understanding is that you visualised a situation in which there is a domestic monopoly which buys from a local farmer and sells, we will say, at a price of 100. Then the foreign suppliers come along, and let us say that at a given period they offer their goods at a price of 80. Now the foreign company says this, "We would like to negotiate with you on this; we want a price spread of 10, making the price at which our product would sell 90, and thereby pulling down your stabilised domestic price from 100 to 90." Is that the case you have in mind?

MR AUGENTHALER (Czechoslovakia): Yes.

MR HAWKINS (USA): I think my reply to it would be this - again keeping before us the analogy of tariff negotiations. The United States and many other countries have attempted to protect agriculture to maintain a given level of prices by a tariff. In the case of the United States, for example, we have a modest rate of duty of 42 cents a bushel on wheat. Foreign suppliers do not like that. We say that we have got to stabilise this internal price for the American farmer. Now, the foreign

supplier in that case would say, "But you are maintaining that level at such a height that it is stimulating production and creating competition for me and diminishing my market." A still better case, which is, I think, more nearly in line with what you have suggested, is this. We are an exporting country and that is confusing the issue, so let us take the United Kingdom; let us imagine the United Kingdom were attempting to maintain a high internal price through an import duty; suppose they wanted to maintain the internal price at 100 and put a duty of 20 per cent on. Now, a foreign supplier would say to the U.K., "We would like to have that duty reduced. We do not ask you to destroy your domestic market, but we think your rate of protection is so high that you are cutting unduly into the market for foreign suppliers."

I think the case you cited is a parallel case to that last one, and that the foreign supplier would approach the other country concerned - the one that has this monopoly - and would say, "At 100 you produce a certain amount and reduce imports correspondingly. We would like to have you make that 90, which would result in some less domestic production and give a little larger market for foreign suppliers." I am not saying the foreign country approached on this would necessarily agree to it, but I do think it is a proper subject for negotiations. It is the level at which you stabilise and the extent to which that market is supplied for domestic production as against imports which is the important point of controversy between the two parties, and which would have to be worked out in negotiations. I think the analogy to a protective tariff follows pretty closely there. Having said all that, I would like very much to hear some critical observations on it, because I think it is important that we try to think these things out.

THE CHAIRMAN: There is the possible analogy with a protective tariff and there is the possible analogy with the subsidy to home production. If it is regarded as analogous to the protective tariff, there is an opportunity to negotiate about it under Article 27. It does not necessarily follow that the country approached will agree to any particular reduction or binding, but still it is more or less committed, I take it, to discuss the possibility of doing so. If, on the other hand, it is regarded as analogous with a subsidy, then I take it paragraph 1 of Article 25 would apply, and if it were combined

that serious injury is being done to the trade of any member, there would then be a case for a discussion, under the last sentence of that paragraph.

MR HAWKINS (USA): I think that is right. We are on the first sentence of Article 27.

MR JOHNSEN (New Zealand): There is really no other type of case to which this could apply.

MR HAWKINS (USA): No; I think Mr Shackle has covered the points. One can easily think of a case. We visualised an internal price maintained at 100 to help the agriculture of the country. Supposing that country said, "We are going to make it 200", that is of natural concern to other countries. In other words, the price at which it is fixed is of definite concern to other exporting countries. The country with the monopoly will naturally be reluctant to deal with it, but the question is this, at what level are you going to stabilise the production of that product? How much of that market are you going to reserve for the home producer?

MR AUGENTHALER (Czechoslovakia): Another very important point on that is this. Our pre-war experience was that many countries which were operating these monopolies just fixed prices by law, so as to be quite sure about it; they passed the necessary acts in their parliaments. I do not know how you would negotiate in that case. I know cases where the countries concerned preferred to buy abroad, and if somebody came and said, "Well, I am hurt by this", they would buy a certain quantity from them, even if they had no use for the particular commodity; but in that case they refused categorically to negotiate on the price, because they said "The price is part of our policy and we cannot negotiate on that because it is laid down by parliament".

MR HAWKINS (USA): I at once admit that where a price is fixed by law it is much more difficult for the country to deal with it. On the other hand, the fact that it is fixed by law should not render it immune. In the case of the countries relying on tariffs, the law has got to be changed under negotiations. Again I recognise the difficulty of it. It may be specially difficult in the case you cited.

THE CHAIRMAN: So the position is that in a case of that kind the country which had fixed its price by law might not be willing to negotiate and it would not be compelled to negotiate, but if it were not willing to negotiate its bargaining power would be by that much reduced. Is not that the position?

MR HAWKINS (USA): I would say that any country which in the spirit of this section or any other section here talks about negotiations is absolutely obligated to discuss and to consider it. After all, the question would not be raised unless the particular act, whether it is a tariff or a high fixed price for domestic producers, were affecting the economic interests of another country. Wherever it is within the general spirit of this charter the very least that should be shown is willingness to discuss it and to consider the ways in which it is adversely affecting the other country; and the two countries concerned should try to work out something which will be at least a little more satisfactory to both. It does not mean that you have got to reach agreement. Maybe you cannot. But you are under an obligation to negotiate.

THE CHAIRMAN: It is a point which a little bit resembles the point in, I think, Article 18, where it is said that prior international commitments should not stand in the way of negotiation about a preferential rate. By analogy here I suppose you would say the existence of a prior national commitment in the shape of a law should not preclude discussion of the particular rate, which would imply that the country concerned should, as it were, be willing to consider the possibility of modifying its law. Is that the correct way of putting it?

MR HAWKINS (USA): Yes, that is my view. The whole spirit underlying what we are trying to do is that countries will not take national action in complete disregard of the injury it may do to other countries. It does not mean to say they modify every action they have taken, but they should consider sympathetically the problem it creates for the other country and see if some mutually satisfactory arrangement cannot be worked out. As I said, maybe it cannot; there is no compulsion to arrive at an agreed result; there is a compulsion to try to do it.

THE CHAIRMAN: Before we proceed with this discussion, might I raise a point about the time of our next meeting? I do not know how far we can hope to go tonight. It is now nearly ten minutes past six. I take it we cannot expect to finish these Articles this evening, unless we work quite late. It is suggested that we should meet again on Friday morning to continue and finish on section F, State Trading, and that then we might meet on Monday again, at a time to be fixed, to receive and consider the report of the Rapporteur. Does that commend itself to the Sub-Committee as a programme - to meet tomorrow, Friday, at, say 11 a.m., to continue the discussion, and then on Monday, at a time to be fixed, to consider the Rapporteur's report? (Agreed.) Shall we adjourn now and take it up tomorrow again at the beginning of Article 27, or continue for five minutes longer? I think we might ask the Chinese delegate to make the point he wishes to make, and when that is disposed of we might adjourn.

MR TUNG (China): My point is very brief. What should happen in the case of no outcome of the negotiation? Do we just let it go? Is there to be any coercion?

MR HAWKINS (USA): There would be no coercion in a particular case - though coercion is not a very good word. However, we will stick to it. Now, if it turned out that in every single case in which there was a request for a tariff concession or where there is a state trading operation there was a failure on the part of a country to make any concession to the interests of other countries concerned, I think that is when you get the case where there might be an obligation under paragraph 3 of Article 18. There is not and should not be - I would say must not be - any sanction or provision which compels a country, we will say, to reduce that price of 100 of which Mr Augenthaler was speaking. There would be special cases where you could not possibly do it, and there might be cases where you could do it. You have to look at it on the average - the general action taken by the country.

THE CHAIRMAN: Perhaps we might adjourn now and resume tomorrow, at 10.30 a.m., on the first sentence of Article 27.

The meeting rose at 6.15 p.m.