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UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL.

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

THIRD MEETING

of the

STATE TRADING SUB-COMMITTEE

of

COMMITTEE II

held at

Church House, Westminster, S.W.1

on

Monday, 11th November, 1946

at

10.30 a.m.

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

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

THE CHAIRMAN: Although the Czechoslovak Delegation is not represented we had better start. We have in front of us a draft report of the Rapporteur's, which gives a preliminary notion of the course to be adopted in regard to a couple of the points raised, and goes on, as an appendix, with a redraft of Article 26. What procedure would the committee prefer? That we should first of all ask the Rapporteur to give any such preliminary explanation as he wishes on any part of his prefatory passage and then go on to discuss the redraft of Article 26 in detail? Would that be regarded as suitable? If nobody has any alternative suggestion I will ask the Rapporteur to say anything he wishes to say by way of supplementing the first four pages of this document.

THE RAPPORTEUR: The purpose has been to note as many of the general and specific points of agreement or comment as were made in the sessions of the sub-committee. With respect to item A (2) on the first page, it might be said that subsequently the Czechoslovak Delegate submitted an explanatory note which unfortunately we were unable to get into this report in its present state. That explains the reasons for the Czechoslovak amendment which was suggested. Item A (3) is a matter of general agreement that something in the nature of Articles 26 and 27 be retained. Item A (4), I think, is self-explanatory. The points with respect to Article 26 might require some comment. The redraft, it will be noted, attempts to meet with the suggestions under B(2) and B(3). No alteration has been made to allow for anything in connection with Articles 8 and 9 with respect to the purchase of commodities by a government department which are not for re-sale. We are prepared to discuss that point a little further. It is felt that there is no particular attempt here with respect to national treatment, which is the idea of Article 9, and this is meant to be a counterpart of Article 8 in terms of m.f.n. treatment. The point raised in connection with B(6) is one of general applicability not only to sections dealing with quantitative

restrictions but also to other sections of the draft charter, and we felt that at the present time, when the charter is subjected to considerable scrutiny on the part of various committees from various points of view, the matter of consistency is one that might be left to the Interim Drafting Committee to see that appropriate cross-references and relationships are established, as between these provisions of the draft charter and other provisions. That seems to us a general problem which will have to be coped with in due time. We thought that group would be the one most suitable for that purpose. The question raised with respect to the third sentence of Article 26, section 1, was that that third sentence might be omitted because it would seem to establish a more inequitable burden on state enterprises as compared with private enterprises, and we have set forth here some reasons which we feel are applicable as considerations directed towards keeping the third sentence which is under discussion. That is to be found over on the fourth page, particularly item B there at the top. I think that is fairly self-explanatory. The matter, of course, is subject to discussion.

THE CHAIRMAN: Might I at this point ask whether it might be convenient to pass from the section of the preface which deals with Article 26 to the revised text and then turn to Article 27 later? It might perhaps be best for the order of discussion. Shall we, then, pass to your re-draft of Article 26 and then we might have a discussion on the prefatory part regarding Article 26, and then on your new text? If it is agreed, we might do that. Would you like to go on to discuss your re-draft of Article 26 now?

THE RAPPORTEUR (Mr Armstrong): We made a small alteration in the phraseology - a matter of style. The original starts off, "If any member establishes". We thought we might put it more positively, "Any member establishing", and so on. That alteration is self-explanatory and we think it is in accord with the suggestions made at the previous meetings. The change in paragraph 2 has been made in accordance with the suggestions at the

previous meetings. The item which would appear particularly subject to discussion is the third sentence of paragraph 1.

THE CHAIRMAN: Thank you. May I now ask delegates for any remarks they would like to make upon either the preface relating to Article 26 or to the re-drafted text? I had one point that I would like to raise myself on Article 26. We have, I think, agreed that preferential state trading margins are to be negotiable in the same way as preferential tariffs. I think there is a corollary to that: that just as preferential tariffs remaining after the tariff negotiations are made subject to an exception from the m.f.n. rule in Article 8, so, I take it, one would need to attach to Article 26 an exception in favour of a state trading preferential margin in so far as it remains after the negotiations. Is not that so?

MR JOHNSEN (New Zealand): I think that is perfectly right, yes. I think also you would probably have to provide here for possible discrimination for exchange reasons so far as imports are concerned.

THE CHAIRMAN: Do we have anything corresponding to that in the private trade section? Is not that again to be covered to some extent by such things as quantitative restrictions on balance of payments grounds - the provisions for the transitional period? Is not that the analogy?

MR JOHNSEN (New Zealand): As long as it is covered, that is all right.

THE CHAIRMAN:

/ There is a cross-reference to section c. somewhere. It is suggested it should be widened so as to cover all the other relevant provisions of the charter.

MR JOHNSEN (New Zealand): That is only in respect of monopolies.

THE CHAIRMAN: Oh, yes, I see. Perhaps we may need a cross-reference, then, with 26 as well, to cover, as it were, what you may have to do in the transitional period while there are special balance of payment situations and inconvertible currencies. I should like to invite further views upon that.

MR HAWKINS (USA): Just how would you word that? I am not quite clear as to how you would handle it.

MR JOHNSEN (New Zealand): You might say something along these lines:

"Nothing in this Article shall preclude the application by a state

trading enterprise of discriminatory practices, provided such practices are in conformity with other Articles or other sections of the Charter."

MR HAWKINS (USA): To get your analogy, the only preferences that would exist as regards tariffs would be those remaining after existing preferences had been dealt with, on the agreed date - 1939 or any other date on which the negotiations took place, in other words, remaining after negotiation. You do not want to phrase this as to permit the imposition of any new preferences in state trading operations to any extent desired. You must have a starting point for this. If there were no preferences given now there would be no occasion for it.

MR JOHNSEN (New Zealand): It would have to be consistent with the remaining Articles.

MR HAWKINS (USA): Yes.

THE CHAIRMAN: There is a possible case where there is a change from a profit basis of trading, with tariffs, to state purchasing margins, and I take it that where a preferential tariff existed before that change a preferential margin would be regarded as an existing preference for the purpose of that provision. Is not that so?

MR HAWKINS (USA): Yes.

MR JOHNSEN (New Zealand): I should think that would be the position.

MR HAWKINS (USA): The only point I am trying to make is that if you are going to have an analogy the analogy should be complete. As regards preferences, there can be no new preferences evolved beyond those existing on the date agreed as a starting point, whatever it may be - July 1939 or any other date - and those existing on that agreed date will be subject to negotiations. Then your exception covers any remaining after the negotiations. As long as the analogy is kept straight through as regards state trading preferences then I think it is all right.

THE CHAIRMAN: Yes.

MR HAWKINS (USA): It is going to be a little hard to draft that, I am afraid.

MR JOHNSEN (New Zealand): Yes; I think you have got to relate it generally to the other provisions of the charter.

MR HAWKINS (USA): I think that possibly the best way would be to make provision in the other section.

THE CHAIRMAN: I was wondering about that, because we have so far moved the other way; we have rather tended to shift everything to this state trading section. There is also this point. I think it is here in 26 that you lay down the principle of equality of treatment in commercial considerations; so that on the face of it it seems to be rather there that any qualification for the remaining preferential margins should come in. Of course, I suppose it is arguable that under commercial considerations the very fact that there is a preferential margin left would influence a commercial firm and therefore should influence a state trader in exactly the same way. But I am not quite sure whether there may not be some need to qualify the sentence about equality of treatment.

MR HAWKINS (USA): I think the difficulty here is going to be the difficulty of getting the same degree of precision as regards preferences and state trading as you have in regard to tariff preferences. For example (I do not know whether this is a fact or not, but it is just to illustrate my point), if a country as of now has a general policy of giving preference to purchases in some other area (it is only a broadly stated policy and it does not say how much it gives, and there is no mathematical principle involved), how are you going to make that subject to negotiation in the same way as you do tariffs?

How are you going to measure any residue that is left after the negotiations have taken place? I have some doubt whether you can apply it.

THE CHAIRMAN: You are thinking of cases where at present preference is given not by tariffs but by quotas?

MR. HAWKINS: A country may just prefer to make its purchases in some particular country, and it may be prepared to pay quite a bit more, without saying how much more, to ---

MR. JOHNSEN: That would be inconsistent with this article, which says that it shall be guided by commercial considerations.

MR. HAWKINS: That clause would preclude any preference in purchases.

MR. JOHNSEN: Preference of the nature you suggest.

MR. HAWKINS: What you are trying to do is to qualify that in a way analogous to the manner in which tariffs are treated. My question is whether you can do it. Even though the principle may be the same, are you able to get the same degree of precision as when you are dealing with tariffs, where you have to specify margins of preference?

THE CHAIRMAN: That is true of all state trading provisions, that their exact observance is harder to check than that of provisions about private trading, but that is more or less inevitable in dealing with any subject in a new field. I should have thought that as far as laying down terms are concerned, where one probably cannot be fairly precise, the general principle should be to go by analogy with your rules for private trading, as far as possible, while recognising that it may be more difficult to keep a check on their exact observance.

MR. JOHNSEN: I think the next sentence in the article really covers the situation. It says that any member interested is entitled to ask for information as to the procedure followed.

THE CHAIRMAN: I can see some difficulties here. If we assume that article 19 goes through, you would ^{be} changing over from preference which had been given purely by quotas or partly by tariffs and quotas, to the state trading system, and you would have the question of what was the equivalent of a pre-existing quota preference, which obviously is difficult, but I do not think it affects the point we are discussing now, that in so far as a preferential margin given remains after these negotiations, there should be a saver for them under the principle of equality of treatment.

MR. JOHNSON: I would support that view. It seems to me you have got to make some provision in this article to link it up with the other provisions not only in regard to tariff preferences and quotas preferences, but also other forms of preferential treatment.

MR. HANKINS: I think I could accept the view, but I cannot see how you can implement it. It may be there is a way. I would suggest that Mr. Johnson or you, Mr. Chairman, prepare a kind of statement that might go in here. I cannot see how it would be worded.

THE CHAIRMAN: I had thought myself that, given for the moment the rest of this Draft Charter, this, so to speak, was entirely consistent with it, except in this one respect, that you had to provide in Article 8 for an exception from the Most Favoured Nation Rule for preferences remaining after the negotiations. You had to word it a little differently, it is true. Until other committees of this Committee decide to make alterations in the sections of the Charter which refer to private enterprise, I do not see that there is really any special problem for us to consider, beyond just introducing here a counterpart to the exception from Most Favoured National treatment which would introduce this qualification in respect of preference margins remaining after the negotiations, for the purposes of the state trading rule. Is not

this rather left at large until we see what changes are introduced into the private trading article as a result of the work of other Committees?

MR. JOHNSEN: I think you have got to bring the state trading into line with private trading in respect of preferences or discrimination.

MR. HAWKINS: I am quite agreeable to that. It is a question of how you can do it without doing a lot more than is intended. It may be it can be worked out. I am accepting the principle subject to its being stated in some way which is in some degree measurable. Let me offer a suggestion. It might be - a preference in state trading operations not greater than, in effect, the preference would be under the preference remaining on the product after the tariff negotiations. That is the analogy.

MR. JOHNSEN: I think it is always to be assumed that it must be the preference remaining after the negotiations. I should have thought that as long as there was a provision for any member to make representations and to ask for information, that would safeguard the position.

THE CHAIRMAN: I should have thought so. It would be up to the state trader to argue that in sizing up the commercial considerations he had taken into account, and not given undue weight to, the preferential margins that remained after the negotiations, in the same sort of way that the commercial firm would have regard to differences between M.F.N. and a preferential tariff. I do not see any difficulty in principle. I see that it may be a complicated thing to check in practice, but surely that is common to the whole subject of state trading.

MR. HAWKINS: That is not my point. It may be we can work this out. My question is how you will state this in the draft.

MR. JOHNSEN: I should imagine the easiest way would be to state it along comprehensive lines, so that you catch in everything.

MR. HANKINS: You mean by that, I take it, that the preference in state purchases should be preference to a degree not greater than the preference which would be accorded to private enterprise operations, given the margin of the tariff permissible.

MR. JOHNSON: Yes, whatever is permissible under any other articles in the Charter.

THE CHAIRMAN: I wonder whether possibly the subject divides itself into two parts, the first being the counterpart of the preferential tariff, which I should have thought it would not be difficult to deal with as a matter of drafting. The second is such other exceptions from equality of treatment or Most Favoured Nation treatment as may appear in other parts of the Charter. It is a little difficult to see just what form of words you need for that until one knows what other exceptions there are in other parts of the Charter. On the other hand, you might provisionally cover them by some general form of words. It is no use attempting a draft here, but I should have thought that, about the preference margins, the thing to do would be to base one's text on article 8, as it has now emerged, adapting the wording so that references to tariff preferences become references to state trading margins.

MR. JOHNSON: There may be quota preferences as well that might require to be negotiated.

THE CHAIRMAN: We still have to have our discussion on that. The quota questions were left to a small group to discuss, and I do not think the small group has so far met. It is a little difficult to see just how to deal with that until the group has met and discussed it in a preliminary way. On the other hand, we have already a definite point here which is capable of being dealt with as regards the preference margins corresponding to preference tariffs.

MR. JOHNSON: Then you have quantitative regulations in regard to the balance of payments, and any discrimination that might be required either during the transitional period or subsequently for particular purposes. That must be covered. I think that must be provided for in this article. There should be a link between the two provisions. There may be other provisions in the Charter as well which require to be linked up, and that is why I think it would be preferable to make any provision here general, rather than to refer to certain things.

MR. HAWKINS: How general would you make it?

MR. JOHNSON: We will have to have other meetings, I take it, to discuss drafts of some of these articles - at any rate, article 27. Perhaps in the meantime we could have an attempt to formulate something.

THE CHAIRMAN: The sort of articles that strike one at first sight as being ones to which you may need to make a cross reference are, first of all, the ones about Most Favoured Nation treatment, possibly the one about national treatment -- I am rather doubtful about that -- article 18 about tariff negotiations, the whole of the quantitative restrictions section, and then, I think, possibly also the provisions about emergency action -- article 29 -- and it may be the anti-dumping article. It sounds rather a far cry to suggest that questions like anti-dumping might affect state purchasing enterprises, but I think that theoretically they might, considering that it is a question of commercial considerations, such as price, quality, and so on. Suppose that you got sudden dumping, if it had to observe commercial considerations absolutely, it might have to take in the dumped consignments. It sounds rather a far cry, but I think it is logical. But there is a prima facie case for considering a cross reference to the article about anti-dumping. I think, also, possibly the one about emergency action. Perhaps we ought to think over this further. Shall we ask the Rapporteur to consider those points and reflect further upon them ourselves with a view to considering them in a further instalment of the Report? Can we now carry the general discussion any further?

MR. H. WILKINS: I think not. I think it would be helpful if the Rapporteur could get formulated any ideas that you, Mr. Chairman, and Mr. Johnson have. I think he might want to consult with you on this.

THE CHAIRMAN: I think the general principle is right, that where you have exceptions in the sections which relate to private trading, they should have some counterpart in the state trading section.

MR. TUNG (China): With regard to article 26, the last time I referred to the question of Government purchases for public use. In this redraft I see that there is no exception made to that effect. Could we take that into consideration?

THE CHAIRMAN: Thank you for mentioning that point. We have now in articles 8 and 9 a modified version which I think makes an exception for procurement by governmental agencies of supplies for governmental use and not for resale. I am not sure whether I have quoted it textually accurately. I think that is how the revision of article 9 runs, and there is a cross reference introduced into article 8 which brings the same exception into it.

MR. TUNG (China): Has that been done in the Procedure Committee?

THE CHAIRMAN: Yes.

MR. TUNG (China): I do not understand that. There is a cross-reference in Articles 8 and 9 to make an exception for Government purchases for public use.

THE CHAIRMAN: I do not think it speaks of public use, it speaks of governmental use and not for re-sale. That I think is the phrase the Sub-Committee has provisionally adopted.

THE RAPPORTEUR: I believe so.

THE CHAIRMAN: I think Article 8 has been modified to correspond.

MR. TUNG (China): That revision of Article 8 and 9 could be adopted as amended. I think it is all right. We need not mention it again here. If not, however, I wish to make that reservation. A State might buy steel from abroad, for instance; it is not done for commercial considerations. I give that as an example, and if such a transaction is covered by Articles 8 and 9 it is all right, if not I should like to have that phrase inserted somewhere.

THE CHAIRMAN: I am wondering whether one should not have a cross-reference to Articles 8 and 9, "subject to Articles 8 and 9" or possibly some words of that kind, because without it we may bring back in the general terms of Article 26 something which has been excluded under Articles 8 and 9.

MR. TUNG (China): Yes, there should be either a cross-reference to that or some phrase here - it does no harm to repeat it.

THE CHAIRMAN: Maybe not; it is a question of drafting as to whether we should actually repeat the exception here.

MR. TUNG (China): We might perhaps introduce in the second sentence of Article 25, beginning "To this end such enterprise shall,..." some such phrase as "with the exception of Government purchases for public use". If not a cross-reference will satisfy me.

THE CHAIRMAN: Shall we note the substance of the point, if it is agreed, and leave the precise drafting in the first instance to the Rapporteur? Later it may have to be taken in the Interim Drafting Committee.

MR. HAWKINS (United States): It is a rather important point of substance. Taking it out of Article 9, which was the most difficult place to keep it since it would require that a Government purchaser could not even buy for its own nationals, it is a little less difficult in Article 8 where the obligation is only to apply fair treatment as among foreign suppliers. That was the purpose in Article 8 and now it is out of both of them, and if we also take it out here the effect is that Government purchases, even though they might be very extensive, could be made in a flagrantly discriminatory manner. That is a matter of some consequence. I know we have discussed all that before, and we have resolved the situation in Articles 8 and 9 by leaving it out, but now --

MR. JOHNSON (New Zealand): Just how has it been left out of Article 8? Do you remember the wording?

MR. HAWKINS (United States): It is knocked out of the last sentence of Article 8, and then in Article 9, where it was incorporated by reference to Article 8, we have taken out the reference to Government purchases.

THE CHAIRMAN: Was there not a further small verbal change in Article 8? I think I have it here somewhere.

THE RAPPOURTEUR: I have it here, and I will read Article 8 as revised:

"With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports and with respect to the method of levying such duties and charges and with respect to all rules and formalities in connection with importation or exportation and with respect to all matters affected by the provision relating to national treatment in Article 9, any advantage favour privilege or immunity granted by any member country to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for all other member countries."

Then the sentence beginning

"The principle underlying this paragraph ..."

down to the end of the sentence is omitted.

MR. HAWKINS (United States): That sentence was the one imposing most favoured nation treatment in contracts for public works.

THE CHAIRMAN: The change that has been made is affected by the provisions of Article 9. These are new words and as I understand them they have the effect of taking out of Article 8(1) the same area of subject-matter, as it were, as is taken out under Article 9 by the words "Except laws and regulations governing the procurement by governmental agencies of supplies for governmental use and not for re-sale." So they are taken out of both these articles; is not that the effect?

THE RAPORTEUR: Yes.

THE CHAIRMAN: We are then left with the question, then, that having taken it out of Articles 8 and 9 the general most favoured nation and national treatment provisions, are they to remain out altogether or are they to be put in somewhere in the State trading Articles, and if so to what extent?

MR. JOHNSON (New Zealand): There again I think this raises the question of linking them up with other Articles of the Charter. The best way to do that is by some comprehensive provision rather than a specific reference to any particular Article.

MR. HAWKINS (United States): The question seems to me to be this: as things now stand, we have dropped any obligation whatsoever regarding purchases for Government use. That is dropped out. There is no provision which limits in any way purchasing for Government use. The question now is whether to carry that exemption over into Article 26? I think the Article as redrafted does not contain that exception, in other words, it would cover ---

MR. JOHNSON (New Zealand): It would cover everything.

MR. HAWKINS (United States): It would cover everything, and would provide for non-discriminatory treatment in respect of Government purchases from abroad whether for re-sale or for Government use. The question becomes, whether you want to strike out or qualify this, to eliminate the application of the most favoured nation provision to purchases for Government use.

MR. JOHNSON (New Zealand): Yes, I think it has to be made consistent with Article 8.

THE CHAIRMAN: I had the impression that the discussions in the Procedure Sub-Committee were intended to cover the substance of this question, and that the logic of the procedure in the Sub-Committee's conclusion was that these matters of procurement for governmental use and not for re-sale were to be excepted from the national treatment and most favoured nation provisions. I think that the Sub-Committee imagined that that would be extended throughout the Draft Charter, but if I understand it aright, the question is should we reopen the question of substance now?

MR. HAWKINS (United States): That is the point. I gather from the comments so far that the Delegate of China did not want to reopen it, but wanted to exclude from the operation of the most favoured nation principle, whether in Article 8, 9 or 26, the question of purchases for Government use.

MR. TUNG (China): Yes.

MR. HAWKINS (United States): That leaves rather a large gap in this document, because Government purchases could be extremely extensive and could cover many millions or hundreds of millions of dollars' worth of purchases for public works - for power installations and so on. The purchasing Government can discriminate as between foreign suppliers; it is perfectly free to discriminate flagrantly. That in effect is what we are saying.

MR. TUNG (China): That may be, but usually such a Government must promote a big loan from outside in order to effect such purchases? In such cases they are bound to have agreements. If they get a big loan from one country it may be hard to get one from another country, and in such circumstances it may be quite impossible for a Government to apply most favoured nation treatment in its transactions, although of course in principle they should stick to them.

MR. JOHNSON (New Zealand): Was not this question thrashed out in the other Committee?

MR. HAWKINS (United States): More or less. I think it was dropped out of the other two articles in order to get rid of a troublesome question. Could I make my point clear? I am not urging that the exact language that we have here applies, I am only pointing out that the subject is important as that should not be simply ignored. I should be quite content if there were some provision in very general language to the effect that given all the circumstances of a particular case Governments should seek to afford fair and equitable treatment among foreign suppliers, and that questions coming up in this field should be subject to discussion and consultation within the International Trade Organisation. We should have something, so that it is not entirely blank. I would even go so far as to say that matters arising in this field should be referred to or be made the subject of consultation in the International Trade Organisation, to the end that the foreign supplier countries should be accorded, in general, fair and

equitable treatment in the light of all the circumstances.

THE CHAIRMAN: Would any other Delegation wish to comment on the subject?

MR. JOHNSON (New Zealand): I think there might be a difficulty in discussing it with the Organisation if it was a question of holding up contracts. Subsequent discussion would not be of much avail, and you could not discuss it beforehand. Any member of course has the right to raise a question of that nature, under the Charter.

MR. HAWKINS (United States): I was not suggesting advance consultation.

MR. JOHNSON (New Zealand): Under this allocation of payments clause any member would have the right to raise the issue.

MR. HAWKINS (United States): I would be content with something even more general than that, then, just to keep the subject within the competence of the Trade Organisation, if we could find some suitable language for the purpose, such as "It shall be one of the functions of the Organisation to consider questions arising in connection with Governmental purchases for public use."

MR. TUNG (China): I think the apprehension arises from this term "public use", but if you have a qualifying phrase "not for re-sale" that will immediately ease it. No Government could abuse that phrase "for public use and not for re-sale". If they imported certain articles and sold them to their own nationals, they could not do that because it would be for re-sale, but they could import for purposes of public works.

MR. HAWKINS (United States): Perhaps this is a simpler solution, so that we can pass on. I suggest that the Rapporteur be requested to consider whether there is any other provision already in the Draft Charter which would normally bring this subject within the competence of the Trade Organisation, and if so, we could drop the matter.

THE CHAIRMAN: There is one point I should like to mention before we leave this, and that is in an earlier stage of this discussion I remember that the United Kingdom delegation did put forward a suggestion that in this matter of governmental purchases not for re-sale there should be a rule that any preferences given should be reasonable, and that was to be decided as between preferences given to home suppliers and preferences within existing preferential groups. That would I think, by its use of the word "reasonable" give the I.T.O. a competence to consider these questions. As a matter of fact, that amendment was not further considered when this proposal to exclude governmental purchases not for re-sale was passed in the Procedures sub-Committee. I am wondering whether there is any value in our considering that idea of introducing some such expression as "reasonable preferences." Of course, we are here reopening a subject which was discussed, and no doubt the proceedings in these sub-committees are subject to review by the main committee later, so that we are not by any means debarred I take it from opening the substance of this question again. I remember that there was a paper which we submitted to the Procedures Sub-Committee when this question was under consideration for the first time, some amendments to Articles 8 and 9 which were intended to deal with this point. They suggested the exclusion of goods not for re-sale. Although they introduced a reference to "reasonable preferences" they did make that suggestion. Perhaps I may leave it with the Rapporteur to look at that paper and consider whether any useful idea might emerge from it.

Shall we leave the question there, then, for the time being? Has anybody any other point that he wishes to raise on Article 26, including the redrafted text in the Rapporteur's report?

MR TUNG (China): Do I understand that "state enterprise" in the first sentence of Article 26 merely means those state enterprises dealing with trading, or whether it also includes manufacturing businesses, because the words "or produces" here would seem to cover manufacturing businesses.

THE CHAIRMAN: I think the answer to that is Yes - is it not? It does cover manufacturing as well as trading.

MR HAWKINS (USA): It would apply to a case where the state organization is a manufacturing organization; it applies only in respect of its purchases abroad - foreign purchases.

MR TUNG (China): A state trading enterprise engaged in production of certain articles - but the whole reference will be to purchases and sales?

MR HAWKINS (USA): Foreign purchases and sales.

MR TUNG (China): Not to the function of production?

MR HAWKINS (USA): No.

MR JOHNSEN (New Zealand): As I understand it, the Chinese delegate's remarks would infer that the words "or produces" should be eliminated. Is that the idea? There is no relationship between the local production and importation.

MR HAWKINS (USA): No.

MR TUNG (China): I do not understand why the words "or produces" are put in there, or whether they are intended to apply in the case of production or just for purchases and sales involved.

MR HAWKINS (USA): There is no limitation here on what a producer does in the production field; this relates solely to his purchases and his purchases abroad, and his only obligation there is as to foreign-supplying countries and non-discriminatory treatment. That is all this relates to.

MR JOHNSEN (New Zealand): You could eliminate the words "or produces" without destroying the sense at all.

MR HAWKINS (USA): You would not destroy the sense, but if you eliminated the words "or produces" then an organization engaged in production would be perfectly free in its foreign purchases to discriminate among foreign suppliers, or it might result in that.

MR TUNG (China): Does this also imply that a loan should be fairly and equitably distributed among other nations?