

UNITED NATIONS  
ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the  
INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the  
SIXTH MEETING

of the  
DRAFTING SUB-COMMITTEE

of the  
STATE TRADING SUB-COMMITTEE

of  
COMMITTEE II

held at

Church House, Westminster, S.W.1.

on

Thursday, 21st November, 1946

at

2.30 p.m.

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

Note: There are no Verbatim Reports of the fourth or fifth meeting of the State Trading Sub-Committee..

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

Corrections to E/PC/T/C.II/ST/PV/3.

- Page 13, line 12, delete "I think it is all right".
- Page 13, line 13, after "State" insert "enterpris".
- Page 13, line 14, to read "for instance, not on commercial" instead of "for instance, it is not done for commercial".
- Page 13, line 17, after "somewhero" add "in this Article".
- Page 17, line 8, delete "promote" and insert "procure".
- Page 17, line 14, delete "them" and insert "it".
- Page 18, line 21, delete "could" and insert "should".
- Page 21, line 8, after "whole" insert "substance".
- Page 22, line 9, after "whole" insert "subject".
- Page 22, line 17, delete "this" and insert "the".

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THE CHAIRMAN: We have waited twenty minutes and I think we might make a start.

The missing delegations will have their chance of presenting their observations in full Committee II. Would that be agreeable to the Sub-Committee?

MR JOHNSON (New Zealand): How are we placed for a quorum?

THE SECRETARY: There is a quorum.

THE CHAIRMAN: I think on the whole we might as well go ahead. If the other delegates have not come in perhaps we can return in our tracks. Is it agreed that we make a start? (Agreed.)

I think the best thing is to take this report paragraph by paragraph, unless anybody has any other remarks to make on the order of procedure. Is that agreeable? (Agreed.) Shall we first of all take the provision which comes before the numbered paragraphs on page 1? Has anybody any remarks to make on that? I am referring, of course, to the three lines below the heading "Nondiscriminatory Administration of State Trading Enterprises". I think we might pass now to numbered paragraph 1. Has anyone any remarks on that?

Paragraph 2. I have one small point there myself. This is not a change of substance I am suggesting in the least, but I think it would read better if we were to say: "The illustrative examples of 'commercial considerations' by which the State Trading enterprise of a Member State should be guided in fulfilling its obligation of nondiscriminatory administration, were supplemented to include 'differential customs treatment'. I think we might say "illustrative examples" because the list that follows does not pretend to be at all exhaustive but just gives examples and illustrations. I think by saying that we should improve the paragraph.

(At this point Mr Tung arrived and the Chairman repeated his suggestion for improving paragraph 2.)

Is that change agreeable in paragraph 2? (Agreed.) Before we pass to paragraph 3, may I ask the delegate of China whether he has any remarks on the opening provision or on paragraph 1?

MR TUNG (China): No. I am sorry I was unable to be present at the beginning of the meeting.

MR TERRILL (USA): Could I return to paragraph 2 to make a very small point?

"Differential customs treatment" now heads the list of the illustrative examples.

THE CHAIRMAN: That refers to the text of the Article?

MR TERRILL (USA): Yes, I am referring now to the text.

THE CHAIRMAN: I had thought we might go through the text separately, but shall we take the point now as you have raised it?

MR TERRILL (USA): I am sorry if I am out of order, but I would suggest that, since it may not be as important as the other illustrative examples, it should be put further back towards the end of the list?

THE CHAIRMAN: Yes. Where would you suggest putting it?

MR TERRILL (USA): I had not any particular place in mind.

THE CHAIRMAN: Let us add "and also differential customs treatment" at the end, which rather dissociates it from the other one.

MR JOHNSEN (New Zealand): That will be all right.

THE CHAIRMAN: That is five lines from the end of paragraph 1 of Article 26. It will now read: "such as price, quality, marketability, transportation, and other terms of purchase or sale, and also differential customs treatment". Is that agreed? (Agreed.)

Shall we now return to the introduction? Are there any points on paragraph 2?

Perhaps we could pass to paragraph 4. Has anyone any remarks on paragraph 4?

I have some verbal points on the third sentence. That reads: "The discussion on this latter point was prompted by the consideration that in some countries large purchases of industrial equipment from abroad might well be effected through the medium of State enterprise and that" - I will break off there because my remarks apply to what I have already read. It seems to me that the word "large" before "purchases" is unnecessary, because it may sometimes be large and it may sometimes be small. Also I think that in the next line "industrial equipment" is perhaps too specific. It seems to me that many kinds of equipment might come into this. The likeliest kinds would be, I should expect, things for communications, telegraph equipment, telephone equipment, railway equipment, and so on, and that therefore it would be better to say "equipment of various types"; so that the phrase would read, instead of "large purchases of industrial equipment", "purchases of equipment of various types". Is that agreed?

(Agreed.) Are there any further remarks on paragraph 4?

MR TUNG (China): The word "large" is deleted?

THE CHAIRMAN: Yes, and the word "industrial", and after "equipment" the words "of various types" would be put in.

MR TUNG (China): May we say "purchases of industrial equipment or equipment of other types"?

THE CHAIRMAN: No, I would knock out the word "industrial", so that it would read: "purchases of equipment of various types".

MR TUNG (China): That means excluding "industrial"?

THE CHAIRMAN: Yes, that would cover everything. Are there any more points on paragraph 4?

Paragraph 5 is a statement of fact.

Paragraph 6. Now we have a little report from the Sub-Committee on Marketing Boards. I do not know whether everybody has a copy of it, but it is very short so I might perhaps read it. It is as follows:-

"The Sub-Committee on Marketing Boards, composed of the representatives of the Netherlands, the Union of South Africa and the United States, met once informally.

The Sub-Committee considered two kinds of activities of the Marketing Boards: as trading and as regulating bodies. In the first case, when such Boards buy and sell products, they would come under the provisions relating to State Trading. In the second case, when they lay down regulations governing private trade, their activities would be covered by the relevant Articles of the Draft Charter."

May I take it that the report of the Sub-Committee gives rise to no observations?

MR JOHNSEN (New Zealand): I think it is apparent that before they would come under state trading they would have to come within the final paragraph of Article 26; that is, the operations would have to be under effective control by a member government. You could visualise Boards over which a Government had no control whatever.

THE CHAIRMAN: Yes. What would that mean - to exercise effective control? I suppose in the last resort a member government can always effectively control anything within its jurisdiction, can it not? It can pass an Act of Parliament to control anything.

MR JOHNSEN (New Zealand): Yes.

THE CHAIRMAN: The trouble is that if one says that anything that can be controlled by Act of Parliament is a state enterprise one has covered everything.

MR JOHNSEN (New Zealand): Yes; but I think that is the first condition - that these boards are subject to effective control of member governments.

THE CHAIRMAN: Does it not depend to some extent on the wording about the exclusive

special privileges, because they might be covered, might they not, under that? It is in the third line of paragraph 1 of Article 26: ". . . if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product", and so on. Well, these marketing boards, I should imagine, in most cases would come within these words, would they not?

MR JOHNSEN (New Zealand): But that sentence you refer to is still qualified by the final paragraph of that Article.

THE CHAIRMAN: Yes. There is a clash in that case, is there not, between the second sentence of paragraph 1 and paragraph 3? I had the idea that, so to speak, the two sentences were meant not to exclude anything but rather that the one would supplement the other; but I do not know whether that is agreed as a matter of substance. Do we agree as a matter of substance, on the one hand, that any enterprise to which a Government has given exclusive and special privileges to import, export, purchase, sell, etc., shall be regarded as coming within the scope of this? Is there anyone who takes the view that that goes too far?

MR JOHNSEN (New Zealand): I should think that, if the Government merely gave it some exclusive right to manufacture, it would still not come within this Article unless it had some effective control over its operations.

THE CHAIRMAN: Yes. I was trying for the moment to get behind what one might call the interpretive aspect of these two passages to the substance that we want to lay down. Do we agree as a matter of substance with the words "if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product". Do we regard that as going too far or not? What would you say to that, Mr Johnsen?

MR JOHNSEN (New Zealand): I would say that is all right, only if it is still held qualified by that last sentence; in other words, the effective control must operate at all points.

THE CHAIRMAN: Of course, I can see this objection being taken on reading it that way, that is that it would be possible for a Government to set up some kind of monopoly and then wash its hands of everything it did thereafter -- in other words, to say: "You can go off and do what you jolly well like". Surely we can hardly mean to envisage that sort of situation, can we, otherwise one would open up a very large loophole in this whole provision. All the Government would have to do would be to give exclusive monopoly rights to some concern and then renounce any further control over it. It would rather drive a coach-and-four through the whole of this Article, would it not, if you could do that?

MR JOHNSEN (New Zealand): If it operated as a private trader, of course, it would be subject to the normal conditions under which private traders carry on transactions, so far as imports and exports are concerned.

THE CHAIRMAN: I think it is a state-sponsored monopoly and in that way it is in a rather different situation from that of a private concern in any normal circumstances.

MR JOHNSEN (New Zealand): It is a monopoly of imports or exports, of course; that is covered by the next Article.

THE CHAIRMAN: Yes. It does just occur to me that there is a way in which as a matter of drafting we could get over this apparent inconsistency rather easily, and that is by amending 3 to read: "A state enterprise shall be understood to include any enterprise". That, of course, assumes that we have got to make paragraph 3 supplementary to the phrase in the first sentence of paragraph 1. If we say "shall be understood to include any enterprise", then I think the inconsistency disappears, but, of course, it does leave a question of substance, I suppose, as to whether we are prepared to see any enterprise to which a member grants exclusive or special privileges to import, export, purchase, sell, etc., covered by the provisions of the Article. I think our intention has been that they should all be covered, otherwise we should have had some qualifying words already, if that was

not so.

MR JOHNSEN (New Zealand): I think they are already qualified by the remainder of the sentence, which indicates that the effective part of it is really a question of imports or exports. I doubt whether you can bring transactions by a private organisation within the terms of this Article. I think the first condition must be that the state should exercise some measure of control and be in a position to direct the enterprise as to its policy respecting imports or exports.

THE CHAIRMAN: I think the concluding words "purchase, sell" are the crucial ones, are they not? If there is a body set up with exclusive or special privileges in various matters enumerated, then with regard to its purchases or sales the provision is that it shall observe equality of treatment. The question then is whether the enumeration of the things which the monopoly does is excessively long or not. The enumeration is "to import, export, purchase, sell, distribute, or produce any product". I seem to remember that we have had this sort of discussion once already in this Sub-Committee and that we decided to leave the words as they are.

MR JOHNSEN (New Zealand): We decided to eliminate the word "produce" at one stage and then, on the representations of the United States Delegate, we re-inserted it.

THE CHAIRMAN: Yes.

MR JOHNSEN (New Zealand): That is in the second place, but it is still governed, I think, by the condition that the member Government must exercise some control over its operations in relation to sale and purchase.

THE CHAIRMAN: I wonder, in reading this very narrowly, whether that is necessarily so, because you see in the first sentence of Article 26 you say: "If any Member establishes or maintains a state enterprise". That is one thing. Then you go on to the second thing: "or ..... grants exclusive or special privileges ... to any enterprise". So that paragraph 3 must qualify the words

"state enterprise" in line 1 of paragraph 1, and, therefore, also, I think, the things referred to three lines lower down, that is to say, the monopolies to which exclusive or special privileges are granted. Surely, the reference to "state enterprise" in 3 must qualify "state enterprise" in the first line of paragraph 1?

MR JOHNSEN (New Zealand): The final sentence qualifies the whole lot.

THE CHAIRMAN: I should have said, seeing that a state enterprise is exclusively in the first sentence contrasted with other enterprises to which exclusive or special privileges are granted; if in paragraph 3 you define the term "state enterprise", it must refer to the place where the term has been used before, which is in contradistinction to the enterprises to which exclusive or special privileges are granted.

MR JOHNSEN (New Zealand): I see your idea there.

THE CHAIRMAN: I have a little feeling that it has so far been the intention of the Sub-Committee that all enterprises to which exclusive or special privileges in these matters of importing, exporting, purchasing, or selling or distributing or producing apply should be covered by the scope of this Article. I think we rather re-open the question of substance, do we not, if we try to limit them? On the whole, <sup>what</sup>/I should be inclined to suggest (perhaps not with a chairman's accustomed impartiality) is that we amend paragraph 3 by substituting the word "include" for the word "be" -- "shall be understood to include any enterprise". I think we have then abolished any inconsistency and that we should probably be giving effect to the general line of thought which we have been following hitherto in the Sub-Committee. Would you see any grave objection to dealing with the matter in that way?

MR JOHNSEN (New Zealand): I think we run into immediate difficulty if we endeavour to make this apply to any private organisation operating under some right given it by the Government, unless the Government exercises some control over its policy of importation,

exportation, selling or purchasing. The Government would have to do that, you see, otherwise it would not be effective.

THE CHAIRMAN: Yes; <sup>but</sup> I think there is a point that, if a Government gives exclusive privileges to a concern to do these various things and then retains no effective control over it, it would take it outside the scope of these provisions altogether, and, therefore, it could carry on monopoly-trading in a way which would be quite inconsistent with the intentions of this Article. Is not that so?

MR JOHNSEN (New Zealand): Not if it was a private trading organisation operating, for instance, under a licence to manufacture goods. Its overseas trade in that case would be regulated by normal private commercial practices.

THE CHAIRMAN: Supposing it were a monopoly importer or seller, that would not happen, would it?

MR JOHNSEN (New Zealand): A Government would probably direct the policy there.

THE CHAIRMAN: Yes, but for the purpose of this we have to have something a little stronger than probability, do we not? I see the point, as regards the manufacturing concern, that you have covered all you need when you cover its purchases and sales, but ---

THE RAPPOORTEUR: Would not a private monopoly be covered, if I understand Chapter V aright, by Chapter V?

THE CHAIRMAN: The Chapter on Restrictive Business Practices?

THE RAPPOORTEUR: Yes. I believe they have now included some words to the effect that a single monopoly, provided it does have a monopoly, is subject to the provisions of Chapter V.

THE CHAIRMAN: I think the provisions of Chapter V are very general, are they not? They are simply that, if the monopoly indulges in practices which frustrate the purposes of the convention, then there is a procedure of complaint. That is roughly the substance of Chapter V, is not it? This attempts to be a good deal more specific, and one might take the view that one needs something more specific to control this particular type of monopoly, which is, so to speak, a state-sponsored monopoly - one which the state has seen fit to set up. It is rather in a special position as compared with a purely private monopoly.

MR. TUNG (China): I think Mr. Johnson's point is worth following up. I wonder if we could improve this interpretation by qualifying the word "operation." "For the purpose of this article a state enterprise shall be understood to be any enterprise over whose operations in respect of import and export a Member Government exercises effective control." That lays down the operations.

THE CHAIRMAN: It is in respect of external purchases and sales rather than imports and exports.

MR. TUNG (China): Just say "trading operations", or "operations in respect of importation and exportation." I do not know whether Mr. Johnson has that in mind.

MR. TERRILL (United States): That would be narrowing it a little too much, because the Government might exercise control over the policies of a firm which would affect indirectly the imports or exports. To narrow it quite as specifically as you have suggested might be going a little too far, and raising an opportunity for later cases in which there might be conflicts of interpretation of this article.

THE CHAIRMAN: Should we say, "over whose external trading operations"?

MR. TUNG (China): External?

THE CHAIRMAN: It is external, because so far as the trading operations are purely internal it does not come within the scope of this Charter.

MR. TERRILL (United States): My point is really on that matter. In practice it is unlikely that you can differentiate between purely internal and external operations in the case of a given industry.

THE CHAIRMAN: Shall we say "over whose trading operations"?

MR. JOHNSON (New Zealand): I think that would be more satisfactory.

MR. TUNG (China): I think the main purpose of this Article is to deal with trade, export and import trade. I think this has been fully explained by Mr. Hawkins in previous meetings. If we say "For the purpose of this article we do not intend to deal with any other operations of a state enterprise, in any financial matters or in any other respect", what we are wanting to deal with is the external trading operations, and I think if we say "external trade operations" it would be quite sufficient for the purposes of this Article.

THE CHAIRMAN: I am not quite sure it is as simple as that. I was going to say that under Article 27 there is provision for the internal trading operations, but I do not think that is right. It is not related to internal operations, and not related, for example, to the buying of home products.

MR. TUNG (China): Is there any connection with the internal operations?

THE CHAIRMAN: No, I do not think there is. At first I thought there was, but I think that is probably wrong.

MR. TUNG (China): Of course, if they want to sell things they have to buy from the home market. Is that also included in the same operations of exportation and importation?

THE CHAIRMAN: It is a little hard to say, because if they are exporting presumably they are buying the things they export in the home market - or at least, they may well be doing so.

MR. TUNG (China): Say "trade operations".

THE CHAIRMAN: "... over whose trade operations." Has anybody any observations on that suggestion?

MR. TERRILL (United States): I think that is a rather critical point, and also a very difficult one. It is one on which we would not want to just make any snap judgment. This provision in this Article <sup>might</sup> relates to and be actually in conflict with other provisions in the Charter, and we ought to have due time to reflect on the matter at issue. If it were possible to do so without prejudice to the report it might be well to leave this for further study by the Drafting Committee to be sure that this definition given in paragraph 3 is proper.

THE CHAIRMAN: Yes. We could, I suppose, put the word "trading" in square brackets in paragraph 3, and call attention to the position in which we have left the word in the report. That would be a possible way of doing it, would it not?

MR. JOHNSEN (New Zealand): I think so.

THE CHAIRMAN: We can hardly hope to discuss all these implications of substance now, so we could put the word "trading" in square brackets. When we have done this I do not think we have particularly tidied up this question,

because what we have done is to introduce a possible qualification into the definition of a state enterprise. That still leaves us with the other half of the question, which is the enterprise to which exclusive or special privileges have been given. There I think we have the question how far such an enterprise should be governed by the provisions of this paragraph. If I understand it right, this paragraph says that type of enterprise, even if it be a manufacturing enterprise - a distributing enterprise shall we say - shall in regard to its purchases or sales observe the relevant equality of treatment.

MR. JOHNSEN (New Zealand): Obviously unless there is some control exercised by a Member Government you could not regulate the purchases or sales.

THE CHAIRMAN: Is that necessarily so? I take it when the member granted an exclusive and special privilege to a concern to do these various things there would be some kind of enabling act, or something, which would define the power given to the enterprise. Now, if this paragraph were accepted it would be quite possible for the Member Government to write into that act, or draft Charter, or whatever it was governing the enterprise, something which said "You shall observe the rules of paragraph 1 of Article 26 of this Convention, or Charter." That would be entirely possible.

MR. JOHNSEN (New Zealand): I think the intention here would be that a state would exercise some control over its trading operations. I can give you a specific example perhaps. I do not know whether I have given it before. That is, in connection with an industry for manufacturing rubber tyres. We have what is called an Industrial Efficiency Act, under which an examination is made of the production of certain industries with a view to putting them on the most efficient basis. The Government issues licences to certain manufacturers to produce the products. That is as far as it goes, you see. It says that in that particular industry there shall be three manufacturers. The footwear industry is another. I think it would be very difficult to insist that in a case like that, that the manufacturers, over whose operations the Government exercised no control at all - apart from giving the licences to manufacture - should conform to some special requirement. You could not really administer it.

THE CHAIRMAN: I feel that here there is a rather large question of substance. This is a question we cannot here to settle now. We shall have to somehow place the point on record and leave it for further consideration. This is bound to be our final meeting, and I think you would agree, Mr. Johnson, there is a question of substance here. I feel it would be quite open to someone to say that if the state gives a monopoly power to a manufacturing enterprise, or even two or three manufacturing enterprises, that, so to speak, it can hardly disassociate itself from that responsibility as to the trading practices they follow. It puts them in the status of partial monopolies, and as such they should be regarded as rather special cases, and therefore possibly subject to rather special obligations. I think that is a possible point of view to take as regards that. I wonder if any other Delegation wishes to say anything on that point?

MR. JOHNSON (New Zealand): It all depends on the special privileges. In regard to footwear, for instance, there might be over 100 manufacturers.

MR. TERRILL (United States): To the extent that the number was increased and you had competition regulating transactions, the provisions of this particular section would be less likely to come into force.

MR. JOHNSON (New Zealand): There is competition, you see, and that is generally the object in granting licences to manufacturers - to create competition.

MR. TERRILL (United States): I submit that the delegation of sovereign powers by a Government to private industry does thereby relieve the state of the responsibility for its subsequent acts in the industry, even though it does not conduct detailed day to day operations. Anyhow, it can never be proved as to what its influence is in the day to day operations of the industry.

THE CHAIRMAN: Has any other Delegate any observation on this point?

Mr. Johnson, would I be right in thinking that your point would be met if we put some square brackets round some of the words in the fourth and fifth lines - "distribute or produce"? You would want to put "produce" at least into brackets. Would you want to bracket any of the other words? ". . . purchase" and "sell" should clearly remain in, and I suppose "export and import" as well.

MR. JOHNSEN (New Zealand): Where the member is exercising some control over the trading operations - internal trading operations - there would not be any doubt about it.

MR. TERRILL (United States): I would not like to see disribution eliminated from this section.

THE CHAIRMAN: I am not for a moment suggesting the elimination of any point or words, but only placing them in square brackets with a view to further consideration at the next stage. Mr. Johnsen, would you wish to include "disribute" in square brackets, or would it suffice for your purpose if we simply put the word "produce" in square brackets?

MR. JOHNSEN (New Zealand): I think "distribute" has not the same force as "imports, exports, purchases, sells." If there is going to be any word subject to further consideration I think "distribute" should be included with "produce." But "produce" is the main one, if there is any suggestion that a private trading concern over which the Government has no control in respect of its external trading operations is to be subject to this article.

THE CHAIRMAN: In that case you would prefer to see both words included, that is "distribute or produce" in the square brackets?

MR. JOHNSEN (New Zealand): Yes.

THE CHAIRMAN: We will put the square brackets round them, and introduce a little explanation into the report. I am afraid this is the only way to deal with this point. Does the Sub-Committee agree generally as to that? One feels one would rather have attempted to narrow the point further, but I do not think we possibly can.

MR. JOHNSEN (New Zealand): I think that when we discussed this previously we were all of opinion that this final sentence qualified all those operations.

THE CHAIRMAN: If so, it would require redrafting, would it not?

MR. JOHNSEN (New Zealand): It would, yes.

THE CHAIRMAN: We shall need to introduce something to cover that in the report of the Rapporteur. That raises the question whether we shall have to have another session to agree that. I take it we cannot have another session, so possibly we ought to attempt to agree some sentence on the spot.

THE RAPporteur: I was going to suggest that if we did not waste too much time we might agree some words here.

THE CHAIRMAN: We had better deal with the points as they occur, reading down the article. "Paragraph 1, the words 'distribute or produce' in the first sentence have been placed in square brackets, for the reason that" - is it one Delegation or certain Delegations?

MR. TUNG (China): May I also join with that view?

THE CHAIRMAN: ". . . certain Delegations consider that it should be possible for a Member country" - perhaps we had better say "Member Government to confer exclusive or special privileges upon" - shall we say "certain types of enterprise"?

MR. JOHNSON (New Zealand): Yes.

THE CHAIRMAN "e.g. for carrying on certain types of manufacture without at the same time exercising effective control over the operations." Is it "over the operations" or "over the trading operations"?

MR. JOHNSON (New Zealand): "trading operations."

THE CHAIRMAN: ". . . over the trading operations of such enterprise." I think we have to say a word about the other point of view, have we now?  
 "Other Delegations, however, consider that in such circumstances it would be proper that the Government conferring the exclusive or special privileges should" - shall we say "assume the responsibility for exercising effective control over the trading operations of the enterprise." I will read that through once more.  
 "Paragraph 1: the words 'distribute or produce' in the first sentence have been placed in square brackets for the reason that certain Delegations consider that it should be possible for a Member Government to confer exclusive or special privileges upon certain types of enterprise. e.g. for carrying on certain types of manufacture without at the same time exercising effective control over the trading operations of such enterprise. Other Delegations, however, consider that in such circumstances it would be proper that the Government conferring the exclusive or special privileges should assume the responsibility for exercising effective control over the trading operations of the enterprise." Does that sufficiently express the points of view?

MR. JOHNSEN (New Zealand): I have a small suggestion to make in respect of Article 26, which might cover the point. The third line reads, "or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product" - and could you then add "and exercises effective control over the trading operations of such enterprise"?

THE CHAIRMAN: I quite see the point of that. On the other hand, I think that leaves the question of substance untouched, does not it? That is one way in which the drafting could be amended so as to express the one point of view. On the other hand, I think it leaves the question of substance untouched.

MR. JOHNSEN (New Zealand): I was going to suggest you might put those words in there in square brackets, just to indicate that point of view.

THE CHAIRMAN: We can insert the words in square brackets if it leads to clarity; but I do not know that we need to do that if we set out the different points of view in the covering report. I think the nature of the substance is clear enough from the passage which we have just written down. I am quite prepared, if you prefer for clarity sake, to include the further words in square brackets.

MR. JOHNSEN (New Zealand): Would you read that again, Mr. Shackle? I did not take it down.

THE CHAIRMAN: This is the passage we propose to put into the report:

"The words 'distribute or produce' in the first sentence have been placed in square brackets for the reason that certain Delegations consider that it should be possible for a Member Government to confer exclusive or special privileges upon certain types of enterprise. e.g. for carrying on certain types of manufacture without at the same time exercising effective control over the trading operations of such enterprise. Other Delegations, however, consider that in such circumstances it would be proper that the Government conferring the exclusive or special privileges should assume the responsibility for exercising effective control over the trading operations of the enterprise."

MR. JOHNSEN (New Zealand): Could we say "the external trading operations"?

THE CHAIRMAN: Perhaps we had better say "external trading operations" there.

I think that is a necessary qualification on that point.

MR. TERRILL (United States): What about "over operations affecting the external trade of the enterprise"?

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THE CHAIRMAN: Yes. "over operations affecting the external trade of the enterprise." Does anybody think that does not make the point sufficiently clear?

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Do you think, Mr Johnson, that does not make the point sufficiently clear?

MR JOHNSON (New Zealand): There is only this point that I would like to make: that if the member grants exclusive privileges to any enterprise to import, export, purchase or sell, it still must control the operations of that enterprise before it can give effect to this Article.

THE CHAIRMAN: Yes. Do you think it should not have to control the import, export, purchase or sale?

MR JOHNSON (New Zealand): If you put those words in that I suggested there it would indicate that it should.

THE CHAIRMAN: We may write the words down that you proposed to insert?

MR JOHNSON (New Zealand): After the word "product" I would suggest the insertion of "and exercise effective control over the trading operations of such enterprise".

THE CHAIRMAN: Those words again would come in the square brackets and we should write them into the passage and insert a reference to them in the covering report dealing with that passage. We finished the first sentence by saying "without at the same time exercising effective control over the trading operations of such enterprise". I think we should want to put in some such words as these: "In order to make their point of view clear these delegations wish to add in the same sentence the further square bracketed words" - and then we have your phrase, "and exercise effective control over the trading operations of such enterprise".

MR JOHNSON: That is right.

THE CHAIRMAN: Will that meet your point?

MR JOHNSON: That, I think, would meet it.

THE CHAIRMAN: Then we go on as before, "Other delegations, however, consider".

Can we now pass on? We have not introduced so far any further amendments apart from the word "trading" in paragraph 3. We shall have, I suppose, to put in a reference to that word as well. I am not sure whether the addition of "trading" is now necessary, is it, with the addition which you have proposed in paragraph 1?

MR JOHNSON: No, I do not think it is.

THE CHAIRMAN: I think the word could be cut out, could it not?

MR JOHNSON: Yes.

THE CHAIRMAN: There remains <sup>the</sup> the earlier suggestion to substitute "include" for "be". I am not really certain that affects it, on second thoughts, because we are still talking about state enterprise, therefore anything we say in paragraph 3

will only qualify state enterprise in paragraph 3 and will not affect the state enterprise to which exclusive privilege is granted either one way or the other; so I think we may delete that suggestion and leave the word "bâ" as it is. Can we now go back to where we were in the report? This passage that we have just written down will need to come probably after paragraph 4, will it not; or should it be after paragraph 5? No, I do not think so, because paragraph 5 is dealing purely with the definition of state enterprise at the end; so I think this will have to come between 4 and 5; or does it come even before 4?

THE RAPPORTEUR: I should have thought between 1 and 2, as they are early words in Article 26. Just for ease of reading I thought we might have it at the beginning.

THE CHAIRMAN: We talk about "commercial considerations" in paragraph 2. I think the correct place would be after paragraph 1, so that it will become a new paragraph 2. Shall we, then, make that a new paragraph 2? (Agreed.)

I think we have already passed paragraph 3.

Now we have paragraph 4, which I think we provisionally passed.

MR TUNG (China): I have a point in regard to paragraph 4, where the words "governmental contracts" appear. In our previous discussions it was clearly understood, I think, that it not only included government purchase for administrative use but also things like public works and so on, so long as they are not for resale. I will accept that paragraph on that understanding.

THE CHAIRMAN: May I ask if other delegations have observations on that point? My impression is that there was recognised to be some ambiguity about the word "governmental" but that nothing could be done to make it clearer. That may not be an accurate impression. Your point is really what we are to understand by the word "governmental", is it not?

MR TUNG (China): Yes; especially if you consider the following sentence in paragraph 4, where we are talking about equipment of various types, and so on, and "purchases".

THE CHAIRMAN: That leads one to assume a comparatively wide interpretation of the word "governmental", does it not?

MR TUNG (China): Yes.

THE CHAIRMAN: If anybody thinks that that wide interpretation should not be possible, may I ask that he now speaks?

MR TUNG (China): May I put it on the record that the interpretation should include the various types?

THE CHAIRMAN: I venture to think that the sentence, now that we have taken out the word "industrial", does leave us in doubt once more. If the word "industrial" had been there it would have made it clear, but now that it has gone it becomes obscure once more.

MR TUNG (China): I should like to have the word "industrial" there, so that we shall talk about purchases of industrial equipment and other types of equipment or supplies from abroad.

THE CHAIRMAN: "Purchases of industrial equipment and other types of equipment or supplies from abroad"?

MR TUNG (China): Yes.

THE CHAIRMAN: Perhaps we could say "purchases of industrial and other equipment of various types"?

MR TUNG (China): Yes.

THE CHAIRMAN: Are there any comments on that suggested amendment, that instead of "purchases of equipment of various types" we should read "purchases of industrial and other equipment of various types"?

MR JOHNSEN (New Zealand): It really does not alter the sense of it.

THE CHAIRMAN: I think it does by implication, because, once you have written that in, it appears that, at any rate in the view of this Sub-Committee (though that may not count for anything in the last resort, because I do not know that the proceedings of this Sub-Committee would ever be taken into account in interpreting the provisions of the Charter) the word "governmental" has a sufficiently wide interpretation to include the purchase of industrial plant.

MR TUNG (China): Yes.

THE CHAIRMAN: Shall we leave the words as suggested, then? (Agreed.) Are there any other points on paragraph 4?

Paragraph 5: any comments?

Paragraph 6: any comments? Here we have the question of marketing boards, and I have read to you the report of the Sub-Committee on Marketing Boards.

Are there any comments on that?

MR JOHNSEN (New Zealand): Where do we stand on that now?

THE CHAIRMAN: I think the question whether a body is a marketing board or not does not in itself affect the question whether it falls within the terms of Article 26 or not, does it? Whether you call it a marketing board or something else, if

it is an enterprise which is on the one hand a state enterprise or one to which exclusive or special privileges have been given, then they will fall within the terms of 26(1), and the question becomes one as to what the terms of 26(1) are, that is to say, whether they include on the one hand the words "distribute or produce" or whether they omit those words and include the words "and exercise effective control over the trading operations of such enterprise". We have now, in effect, two variants of paragraph 1 of Article 26, one of which would cover all these bodies, including all the marketing boards. On the other hand, the other version would include those marketing boards over whose operations there was not government control. So that question would not affect it, would it?

MR JOHNSON (New Zealand): As a matter of fact, I find it difficult to understand why a special question should be raised in regard to marketing boards. It would be a question of fact in each case as to whether it was covered by 26 or 27.

THE CHAIRMAN: If I remember rightly, this question arose in the discussion in the full Committee, did it not, and I think Mr Hawkins then undertook to have this point gone into by a small Sub-Committee. What is said here may very well be no more than an interpretation of the provisions of Article 26. On the other hand, if it is agreed to be a right interpretation, it may as well stand there, more particularly because we have to refer to the work of this Sub-Committee on Marketing Boards in any case, have we not - it is a historical fact that it has met and produced this report, so we have to take notice of it.

THE RAPPORTEUR: Might I remark that there is a delegate from the Union of South Africa present? Perhaps he can help us on what was meant by this.

MR HAYLEVELD (South Africa): There is rather a big difference between ourselves and Holland about this. In our case, all these marketing boards are set up under a single Act and it would be relatively simple to fit them in, except that some of them have not quite accepted all the functions; but the Dutch system is far more complicated. As I understand it, in the case of their dairy industry, for example, they collect a tax on the importation of feeding stuffs and then ultimately they refund the greater part of that tax to the producers who export these products. We had a separate discussion with Mr Speckenbrink on all the complications of the Dutch system, and it is far more involved than ours.

THE CHAIRMAN: The crucial question really is whether these boards engage in purchasing or selling on their own account is it not?

MR BEYLEVELD (South Africa): Most of ours do but the Dutch boards do not necessarily do it. They have this complicated system of not really buying and selling; it is a board but they get the tax adjustment through the duties levied, and then it is repaid to them ultimately as a sort of a duty repaid.

THE CHAIRMAN: I see - or, at least, I see in a general way. But is there anything which is awkward, when one looks at the terms of this report, in what you have just said? This divides the boards into two classes, the ones which buy and sell products and the ones which do not but lay down regulations governing private trade. I take it your marketing boards would fall within the class which buy and sell?

MR BEYLEVELD (South Africa): We are largely in the first class, and I think the Dutch are largely in the second group.

THE CHAIRMAN: If so, their activities would be covered by the relevant Articles of the draft Charter. Of course, "relevant" leaves the matter a little in the air, but I presume that the subsidies Article would be the relevant Article?

THE RAPPORTEUR: I changed it to "relevant"; originally it was "the other".

THE CHAIRMAN: "Relevant", on the face of it, seems to imply relevant to the state trading provisions; at least, it leaves it entirely in the air.

THE RAPPORTEUR: Mr Hawkins' manuscript words, I think, were "would be covered by other Articles of the draft Charter".

THE CHAIRMAN: Would it be better to restore the word "other"? I was going to say that the trouble is that we would be altering a document which comes from another Sub-Committee, but is that so?

THE RAPPORTEUR: It was very informally handed to me after being hurriedly scribbled by Mr Hawkins.

THE CHAIRMAN: May I suggest we restore the word "other" in both places, then - both in the Sub-Committee's report and in the text here?

MR TERRILL (USA): You could say "other relevant".

THE CHAIRMAN: With that change of "relevant" to "other relevant" are we content with these passages?

MR JOHNSEN (New Zealand): Should not that in each case indicate that the operations of the boards would require to be under effective control by the member government before they come within the definition of state trading?

THE CHAIRMAN: When such boards buy and sell would they come within it? Would you wish to say, "In certain circumstances boards might buy and sell without any effective government control"?

MR JOHNSON (New Zealand): A marketing board might, easily.

MR BEYLEVELD (South Africa): I do not know how the Dutch board is constituted but in our case all those boards have a director or representative who is an official of the Department of Agriculture, and at the same time the Minister exercises control over the board as a whole.

THE CHAIRMAN: So that you would be in a position to see that the Board observed equality of treatment in commercial considerations?

MR BEYLEVELD: Yes, I think so - through one member of the directorate being an official and the Minister having a general power over the board as a whole.

Whether that applies to the system in Holland or how they would constitute their boards, I do not know.

THE CHAIRMAN: I think we shall have to leave that for the Dutch to raise if they wish to when this report comes up in the full Committee. I was wondering what we need to do about this paragraph. What we could do conceivably, I suppose, is, instead of saying "it was agreed" say "the Sub-Committee agreed", and leave the rest of the paragraph as it stands; and then add "In the Sub-Committee on state trading one Delegation was of opinion that the provision regarding marketing boards which buy or sell should be confined to those boards over whose operations the Member Government concerned exercised effective control." Would that meet the point?

MR. JOHNSEN (New Zealand): I thought that would be understood.

THE CHAIRMAN: I think it really is the counterpart of what we have discussed earlier, is it not? If the Government confers exclusive powers upon a certain enterprise or enterprises it would, more or less ipso facto make itself responsible for seeing that those bodies followed the principles of commercial consideration and equality of treatment in their trading operations. There are two distinct points of view. One is that which holds that one is, so to speak, a corollary to the other; and the other is that they need not be interconnected in that way, and that it should be possible for a Government to give exclusive trading powers to a particular enterprise or enterprises without taking any responsibility for the way in which it conducts its trading operations. Those are the two views, if I understand them rightly. I hope I have not misrepresented them. Broadly speaking, I think that is the position.

MR. JOHNSEN (New Zealand): I think that is right.

THE CHAIRMAN: In that case, shall we amend paragraph 6 so as to read: "That Sub-Committee" -- say "That" because it makes it clear -- "agreed", and then we shall have to add a new sentence.

MR. JOHNSEN (New Zealand): I was going to raise a question in regard to what Mr. Beyleveld said. I assume when you discussed this you spoke about boards operating under some sort of Government control?

MR. BEYLEVELD (South Africa): In our case I am talking of the Act which established the Boards. Mr. Hawkins has a copy of that Act.

THE CHAIRMAN: Shall we write here: "When the report of the Sub-Committee on marketing boards" -- it is really a sub-sub-committee, but we do not need to go to these lengths -- "was considered by the Sub-Committee on State Trading one Delegation expressed the view that if a Member Government did not exercise effective control over the operations of a marketing board the provisions of Article 26" -- it is Article 26; Article 27 is not involved -- "should not apply to the operations of such a board."

I think that covers the point, does it not?

MR. TERRILL (United States): In my country we have a smart trick which we call "riding without handle bars." It seems to me we are here creating a situation in which Governments are, as it were, riding without handle bars; we are creating a sort of no-man's land.

THE CHAIRMAN: Would you like to add some words?

MR. JOHNSON (New Zealand): The point I wanted to make clear was that this state trading provision would apply only if these marketing boards were created by the Governments, or were under the control of the Governments.

THE CHAIRMAN: I think that is covered by the words we have written in.

MR. KUNOSI (Czechoslovakia): There cannot be any doubt upon that. If it is not created by the Government it is a private business.

MR. JOHNSON (New Zealand): It says here "The Sub-Committee agree that such boards buy or sell", but it does not say the type of boards. The only doubt in my mind was whether that was too comprehensive. I do not know of any actually myself, but there may be circumstances when an industry might set up a marketing board of its own. To say, without qualifying it, that such boards would come within state trading, I thought to be going a little too far. That is the point I had in mind really.

THE REPORTEUR: When the main Committee set up this Sub-Committee my definite understanding was they meant governmental marketing boards.

THE CHAIRMAN: Boards organised, so to speak, under Acts of Parliament?

THE REPORTEUR: Yes, not private marketing boards.

THE CHAIRMAN: Not one which happened to be set up by traders without any Government authority.

MR. JOHNSEN (New Zealand): That was the distinction I wanted to make.

MR. KUNOSI (Czechoslovakia): I do not think there can be any doubt about it.

THE CHAIRMAN: Could we say "Government sponsored"?

MR. TERRILL (United States): It can take on any name under the Company Act; it can call itself a company, or a corporation, or any other name. Any organization establishing itself under a company Act - even if it calls itself a board - remains under that Act. It is not under any special arrangement, or under special marketing legislation. Are not you covered on that, on Mr. Johnson's point?

THE CHAIRMAN: I think we cover it in this sentence: "The Sub-Committee agree with the report of the Sub-Committee on Marketing Boards on the understanding that it referred to marketing boards established under Government sponsorship" or "authority", or something of that kind.

MR. JOHNSEN (New Zealand): I merely raised the question from the point of view of clarifying the point.

THE CHAIRMAN: Has any Delegation any comment on that suggestion, that we should add a sentence to the effect that, "The Sub-Committee on State Trading agree with the report of the Sub-Committee on Marketing Boards subject to the understanding that it refers to marketing boards established under Government" ----

THE RAPPORTEUR: What about "established by the Governments"?

MR. BEYLEVELD (South Africa): I do not know whether you want to establish them arbitrarily, like a Government issues proclamations or orders. Do you want them under that arrangement, or do you want them under some specific legislative plan which has more permanency about it?

MR. JOHNSEN (New Zealand): You could say "sponsored by Governments" or "over which Governments exercise control." That is really what is meant.

THE CHAIRMAN: That leaves one category uncovered, does not it? That is, the case where the Government might conceivably pass some sort of Act which establishes a marketing board and specifically leave open the trading operations to its own discretion. Is not that so?

MR. JOHNSEN (New Zealand): Well, it would sponsor the board in that case.

THE CHAIRMAN: The board is "established under Government auspices" I should have thought was perhaps all right. The word "auspices" is vague, but

sufficiently intelligible.

MR. JOHNSEN (New Zealand): If that one paragraph was left out, or if there had been no report, it would have taken care of itself.

THE CHAIRMAN: We have to take note of it because I think we have been asked to take note of it, for one thing. I do not know whether we can quite content ourselves with simply reproducing what it says and leaving it. If we feel that there are definite observations which ought to be made -- and from the discussion I think there are definite observations which ought to be made -- we have to settle the nature of the comment we make. I will read my first sentence again: "When the report of the Sub-Committee on Marketing Boards was considered by the Sub-Committee on State Trading, one Delegation expressed the view that if a Member Government did not exercise effective control over the operations of a marketing board the provisions of Article 26 should not apply to the operations of such a board." Does that cover the case?

MR. JOHNSEN (New Zealand): That is not what I had in mind.

MR. TERRILL (United States): Would I be right in thinking you had in mind the case where a board was established under governmental auspices, either by order or by specific legislation, or both?

MR. JOHNSEN (New Zealand): Yes. The Government exercises some measure of control over it, you see. I do not know of any case where a marketing board will be set up by an industry without some measure of Government control, but this does not allow for such a type of board. It was purely a matter of drafting, that is all.

THE CHAIRMAN: We could add a further sentence on these lines: "Certain Delegations considered that where a marketing board was established under Government auspices the Government concerned should assume effective control over its external trading operations".

MR. TERRILL (United States): We have raised that general issue before. I wonder if we could not merely say we have noted the report of the Sub-Committee, with the understanding that the term "marketing board" was confined to boards established under governmental auspices, as you suggested a few

minutes ago, because that is really another issue on the earlier point about responsibility.

THE CHAIRMAN: Of course, that assumed that the Boards established under Government auspices would be under effective Government control. Is not that so?

MR. TERRILL (United States): That is right.

THE CHAIRMAN: I am not sure whether that would cover Mr. Johnson's point.

MR. JOHNSON (New Zealand): It might be as well here to provide for, or indicate that there may be cases where boards might be established by an industry without coming under any control at all.

THE CHAIRMAN: In that case it would be covered by the reference to "Government auspices", and we shall not need to say anything about Government control.

MR. JOHNSON (New Zealand): That is right.

THE CHAIRMAN: "The report of the Sub-Committee on Marketing Boards was noted by the Sub-Committee on State Trading" -- I think you had some words, Mr. Terrill, did you not?

MR. TERRILL (United States): "with the understanding that the term 'marketing board' or 'boards' "was confined to boards established under governmental auspices."

THE CHAIRMAN: "The report of the Sub-Committee on Marketing Boards was noted by the Sub-Committee on State Trading with the understanding that the term 'marketing boards' was confined to boards established under governmental auspices." Does that cover it.

MR. BEYLEVELD (South Africa): Does that really take you much further? Co-operative companies are mostly established under the auspices of the Government, but you cannot call a co-operative company a marketing board.

THE CHAIRMAN: It is the word "auspices" that is ambiguous. In a sense every company that ever was incorporated is set up under Government auspices because it is set up under company law.

MR. BEYLEVELD (South Africa): Exactly.

THE CHAIRMAN: ". . . governmental sponsorship" is better than "auspices." "Sponsorship" is vague, but it does imply a more active interest on the part of the Government than "auspices."

MR. JOHNSON (New Zealand): In each case could not the Executive Board of

the Organization determine whether any particular board came within the terms of the articles on state trading?

MR. TERRILL (United States): I am not quite sure how to do that. A firm operating under a patent falls within paragraph 1 of Article 26, because that is an exclusive grant by the Government to produce, make or sell; it includes imports and exports. It clearly is not the intention to bring patented articles into the Article there, yet it might be interpreted to include them.

MR. BEYLEVELD (South Africa): Would not you be covered in paragraph 6 if where you say "would come under the provisions" you simply say "would come under and be subject to the provisions. . .?"

THE CHAIRMAN: For the moment we are considering what the Sub-Committee on Marketing Boards is supposed to have said. We may be in a position to amend what they are supposed to have said.

MR. TERRILL (United States): How about saying "confined to those officially established under governmental auspices", to avoid the implication that they result from private initiative in the matter and merely conform to certain regulations that may exist? Mr. Young suggested "by Governments", but I suggest "officially established" is more explicit.

MR. JOHNSEN (New Zealand): You could visualize boards operating where the industry itself works in conjunction with the Government.

THE CHAIRMAN: Shall we say "established under Government encouragement by specific legislation", or something like that - "by express legislation"?

MR. TERRILL (United States): "Express legislation" or "other governmental action."

THE CHAIRMAN: "Established by express governmental action"?

MR. TERRILL (United States): Yes, and that would include legislation.

THE CHAIRMAN: If we put that sentence in have we sufficient covered the marketing board point? There being no comment I take it it is agreed. We now pass to the note on Article 27.

(The introductory paragraph was read). Any comments?

(Paragraph 1 was read)

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

Are there any points on that? I have just one remark. The words "including profit" imply that profit may be negotiable. On the other hand, I do not read it as implying the profit is invariably to be negotiable. I think, as I have said before, I can envisage cases in which the state trading concern or the ministry may not want to negotiate about profit, while on the other hand quite recognising there would be an appeal to the I.T.O., say, if its rate of profit was considered to be unreasonable.

MR TERRILL (USA): Perhaps we could put "profit" at the end and then say "and where appropriate"?

THE CHAIRMAN: Yes; I think that is better. We take out the words "including profit" at the beginning, and it reads at the end, "costs of distribution and transportation, etc., and, where appropriate, profit". That is just before the bracket.

MR TERRILL (USA): Yes.

THE CHAIRMAN: Then we come to paragraph 3. (Paragraph 3, as amended, was read.)

There we say "were" instead of "was". Any comments?

Now paragraph 4. (Paragraph 4, as amended, was read.) Any comments?

Now paragraph 5. (Paragraph 5, as amended, was read.) Any comments?

Paragraph 6. (Paragraph 6, as amended, was read.) Any comments?

Now we pass to "Expansion of trade by complete state monopolies of import trade". I suppose the qualification "import trade" is right, is it, because, if I remember rightly, Article 28 is concerned with importing and exporting, is it not?

THE RAPORTEUR: It is headed "Expansion of trade by complete state monopolies of import trade" in the U.S. draft charter.

THE CHAIRMAN: Let us leave it, then.

MR JOHNSEN (N.Z.): I am wondering whether in this paragraph we should refer to the name of a particular country.

THE CHAIRMAN: I was wondering. It might be more tactful not to. You can easily get round it by saying "in the absence of the country chiefly concerned".

MR KUNOSI (Czechoslovakia): I would prefer to say that "an immediate adoption of this Article was impracticable", and leave it there.

THE CHAIRMAN: Just leave it there, with a full stop? We could say that "During the discussion of Article 28 of the Draft Charter it was found that an immediate adoption of this Article was impracticable", and just put a full stop there.

MR KUNOSI (Czechoslovakia): Yes. We have some doubts, too, about the following sentence. I just do not know what the purpose would be of leaving this Article in the report.

THE CHAIRMAN: I think in all the discussion we have had so far the idea has been to leave it in square brackets without taking a decision about it one way or the other, and, as it were, waiting to see what happened next. Is not that so?

MR JOHNSEN (N.Z.): Yes, the question of inclusion or deletion would be considered

at the next meeting of the Preparatory Committee.

MR KUNOSI (Czechoslovakia): I do not think we need this last sentence.

THE CHAIRMAN: Do we not need to put in something which, so to speak, gives it its status or lack of status? Even if it is printed in square brackets one will need an explanatory sentence.

MR KUNOSI: The American draft charter has now been discussed in general and it becomes in its new form the report of this Preparatory Committee. Now, this is a draft Article which has not been discussed at all. It does not mean that it has been adopted in any kind of form, even provisionally, by the Preparatory Committee. It will have to be covered by some kind of text but I do not like this one.

THE CHAIRMAN: Except that the text of it has been mentioned, even if its substance has not been discussed.

MR KUNOSI: I do not think it is practicable to put it in this way.

THE CHAIRMAN: I think <sup>if</sup> we decide not to put anything we shall be putting forward a point of view which was not the feeling of the main Committee, if I remember rightly. I do not think anybody went to the length of suggesting actual deletion.

THE RAPPORTEUR: If my recollection is correct, I think there were suggestions by the Canadian delegation that only the first sentence should be left to stand; and there was, as I recollect it, a long discussion in Committee II as to what should be done with this, and my understanding was that it should not be dealt with and it was impracticable to deal with it in the absence of the state chiefly concerned, and that it should appear in square brackets. I think this was the decision finally, on the grounds, as Mr Hawkins explained, that this charter had already been given publicity and one could not therefore leave a complete blank.

MR KUNOSI: But the type of publicity given to a draft article submitted by one country is not the same as that which will be given to an article put forward by seventeen nations after discussion together.

THE CHAIRMAN: I think the object of this paragraph here surely is to show that this is not agreed with or disagreed with but simply left to stand because the American draft charter put it in there. That is the object of this paragraph, I think.

MR KUNOSI: Will the other Articles which have not been discussed also be left in square brackets?

THE CHAIRMAN: I do not think there are any others, and even this has been discussed in a sense, and it is quite inconclusive.

MR TERRILL (USA): Would it meet Mr Kunosi's point if we amended the second sentence to read, "It was decided therefore to let the Article stand provisionally and without discussion as it appears in the draft Charter."

THE CHAIRMAN: We might say that it was decided that it was impracticable to discuss it.

MR KUNOSI (Czechoslovakia): What is the importance of it to have it standing there? What does it mean? It is only an indication of the conception of the U.S. Government on this problem.

THE CHAIRMAN: I do not think Article 28 as appearing in the Charter is necessary from the point of view of the U.S. Government because, so to speak, it was thrown out as a basis for discussion and nothing more than that.

MR TERRILL (USA): It was, of course, nothing more than the basis of discussion, and there was no formal decision on the matter. It was discussed, as you know, with the Governments of all the countries present as a general matter for inclusion at this Conference, and if it did not appear at all in the charter the charter would be left with a gap, which would seem to me to arouse a great deal of perhaps unbounded questioning, and that the best way to deal with the problem would be to let the Article stand bracketed, with the note that Mr Kunosi has provided us with, to the effect that the matter has not been discussed in any substantive way.

MR KUNOSI (Czechoslovakia): That would satisfy me.

THE CHAIRMAN: Shall we write some words down?

MR TERRILL (USA): My idea was very simple: That we decided to let the Article stand provisionally. We could introduce a sentence with the words, "Although the Article was not discussed as to substance, it was decided that it should remain provisionally in the draft Charter and subject to consideration at a later stage".

THE CHAIRMAN: "Subject to possible consideration at a later stage"?

MR TERRILL (USA): Yes.

THE CHAIRMAN: That takes the place of the top words here. We leave the heading, which corresponds to the text of the draft Charter. Is that agreed now?

(Agreed.)

Now we have Article 26. We have already discussed some points on it, but I do not think we have necessarily covered the whole ground. I will read it

through rapidly in the form in which I believe it now stands. (Article 26 as amended was read.)

Can we pass on to Article 27? (Article 27 as amended was read.)

THE RAPPORTEUR: I would point out one small error which has crept in. Should it not read "landed cost" instead of "total landed cost"? I think that was agreed.

THE CHAIRMAN: Yes. In the sentence which reads, "For the purpose of determining" and so on, and ends "recent period of years", I suggest that we alter the word "determining" to "applying". I think it is more appropriate. (Agreed.)

MR JOHNSEN (N.Z.): Then, just after that, in the last line, I think the word "they" should go before the word "can".

THE CHAIRMAN: "can be made" is passive, is it not?

MR JOHNSEN (N.Z.): So that we say, "to the fullest extent that they can be", and so on. The word "they" relates to quantities.

THE CHAIRMAN: I think it is rather an open question whether you put in "they" or do not. If you do not it is the extent that can be made available; if you do it is quantities. I think it is "they" clearly - "to the fullest extent that they can be made available." In the phrase "prices charged under such maximum margins" I do not think "under" is quite right. I think it would be better to say "prices charged within maximum such/margins" or "subject to such maximum margins." What it means, I take it is, the price is inclusive of the maximum margin. I do not think "under" is the right way to express that.

MR. TERRILL (United States): I think the words "subject to" would meet it.

THE CHAIRMAN: It is "subject to and inclusive of", is not it?

MR. JOHNSEN (New Zealand): I think "within" would be better.

THE CHAIRMAN: I think "within" is right, because you define your margin as the difference between the landed cost and the first selling price. Let us say "within" instead of "under" in both places.

Paragraph 2: "In applying the provisions of this article due regard shall be had for the fact that some monopolies are established and operated solely for revenue purposes."

Are there any further comments?

MR. TUNG (China): I have a matter of substance which I overlooked in the past discussion, in regard to a sentence in the middle of paragraph 1:

"For the purpose of determining these margins in respect of imports, regard may be had to average landed costs and selling prices by the monopoly over a recent period of years."

I think we should include "exports", and omit the word "landed", so that it would read:

"For the purpose of determining these margins in respect of imports or exports regard may be had to average costs and selling prices by the monopoly over a recent period of years."

I do not know what the opinion of other Delegations may be, but I think that covers imports and exports. If we have the average for imports we should also have an average for exports.

THE CHAIRMAN: First of all I will ask if any Delegation has any observation on the point of including "exports" as well as "imports". We should get that point clear, and then consider the wording. Is it agreed to include exports as well as imports?

MR. JOHNSEN (New Zealand): I do not know whether it applies in the case of exports.

THE CHAIRMAN: I think it might, because you can conceive of a negotiated export margin. Suppose you had a state selling exporting monopoly, it might conceivably want to practise some kind of price stabilisation, and for the purpose of that it might want to increase its export margin, or export tax one might say for the sake of simplicity, which fluctuated according to the price which the exporting produce was fetching. That is the point, is not it?

MR. TUNG (China): Yes.

THE CHAIRMAN: For that reason you might want to run over an average of a period instead of fluctuating from day to day. I think that is the point.

MR. JOHNSEN (New Zealand): Yes.

THE CHAIRMAN: If we agree that exports go in the question is, I think, whether we can simply say "in respect of imports and exports regard may be had to average costs and selling prices", or do we need to be a little more specific and say "regard may be had in the case of imports to average landed costs and selling prices, and in the case of exports" follow the wording of (b). I do not think that leaves any serious ambiguity. It would read - substituting "applying" for "determining" -

"For the purpose of applying these margins in respect of imports and exports regard may be had to average costs and selling prices" and instead of "by the monopoly" "over a recent period of years."

MR. JOHNSEN (New Zealand): I hardly think that applies for exports. In the case of export monopolies the margin is the different between the price at which the product is normally sold for domestic consumption and the price for export.

THE CHAIRMAN: I think perhaps we will have to be a bit more specific. I take it there is no other point of substance left.

"For the purpose of applying these margins," (comma) "regard may be had," "comma", "in respect of imports to average landed costs and selling prices over a recent period of years" - bringing those words in there - "and in respect of exports to the average prices offered by the monopoly to purchasers than other Member states." 56.

MR. TUNG (China): Could we cover it by simply saying "regard may be had to average costs and selling prices for imports or exports as defined above" - something like that.

THE CHAIRMAN: The trouble is in (b) we are not comparing costs but comparing the charge in respect of a commodity in a home market. You might say "to average export prices offered for sale".

THE RAPPORTEUR: Could you say "charged" instead of "offered"?

THE CHAIRMAN: I think perhaps we ought to alter "offered" to "charged" in the text. That is just the same argument. Is it agreed that we make that change? What I am suggesting is that in (b) for the words "a product offered for sale by the monopoly to purchasers" we read "a product charged by the monopoly to purchasers" - substituting "charged" for "offered". Is that agreed.

MR. TERRILL (United States): The only difference between the two cases is that under the first one the act is a prospective one, and so it would include offers there as well as the actual negotiated price. It is not on all fours with the latter use, which is a statistical one, where you are using only prices that have actually been charged in the market. It may be a very small point, but I think there is that difference. I do not know whether the drafters intended the word "offered" to have a real significance or not.

THE CHAIRMAN: If I may say so, I think it was quite consistent in the original draft, because there it said "offered" in both places; whereas we have altered "offered" in (a), and that rather changes the case, does not it?

MR. TERRILL (United States): The charge could not be more than the maximum, because the initial offer could not be, so it would not make any practical difference. I see no immediate objection to it.

THE CHAIRMAN: If we make that change I do not know whether we have to refer to it in the introductory note. I think we have referred to it there.

THE RAPPORTEUR: It is in paragraph 2.- "similar changes made in respect of exports."

THE CHAIRMAN: I wonder whether we ought to refer to (a) and (b), and say "a similar change was made in (b)."

THE RAPORTEUR: "... similar change was made in (b) in respect of exports."

THE CHAIRMAN: Let us go back to where we were. The point to which we had got in writing down the sentence is:

"... regard may be had, in respect of imports to average landed costs and selling prices over a recent period of years, and in respect of exports to average prices charged for exports and sales in the home market respectively."

MR. TERRILL (United States): Could we qualify "average" by "recent average prices"?

THE CHAIRMAN: Yes - "over a recent period of years." "Recent average prices" does it well enough. It would be a little more tidy if we could make "recent period of years" qualify the sentence. We can take out the words "over a recent period of years" where they are already in, put a comma after respectively and then write in "over a recent period of years."

It would then read:

"... regard may be had, in respect of imports to average landed costs and selling prices, and in respect of exports to average prices charged for exports and sales in the home market respectively, over a recent period of years."

MR. TERRILL (United States): This is intended to cover all kinds of commodities and markets. We might just say "over a recent period."

I do not know whether it is monthly average or yearly average prices.

THE CHAIRMAN: We have had a somewhat perfunctory discussion about that. They may be different for imports and exports.

I have read paragraph 2. We now pass to article 28. Is there any point in regard to article 28? That is just as it was in the draft Charter, in square brackets.

That completes our task apart from one point, to which I have to refer, and that is a note from the Secretary of Committee II, which says:

"I wish to draw your attention to the Verbatim Report of the Sub-Committee On Quantitative Restrictions and Exchange Control for November 15th (E/PC/T/C.II/GR/FV/4), pages 29 -31.

In short, the point there raised appears to be that since Articles 20 and 21 would (in the case of pressure on the balance of payments) give greater freedom to countries to use quantitative restrictions (even with a certain degree of discrimination) than would be permitted to state traders under Articles 26 - 28, it would be required to add to the last mentioned Articles a provision that in such cases state traders would be allowed to restrict further than allowed under Articles 26 - 28 (up to the limit allowed in 20 and 21).

You will observe that while Mr. Helmore had the provisions of Article 21 in mind, the rapporteur considered that reference should be made to Article 20 (and only to Article 20)."

I think that matter is already covered, because in the relevant passage we have referred not to any particular Article by number but to the other provisions of the Charter. That is paragraph 1 of Article 27, commencing "With regard to any monopolised product . ." The subject of the other provisions of this Charter clearly takes in all these qualifications, and therefore must cover the point raised by Mr. Helmore.

I think that brings us to the end of our work. It remains to retype this report with the amendments we have made and submit it to the full Committee.

(The meeting rose at 4.48 p.m.)