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ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

SECOND MEETING

of the

SUB-COMMITTEE of COMMITTEE II

on

QUANTITATIVE RESTRICTIONS AND EXCHANGE CONTROL

held at

Church House, Westminster, S.W.1.

on

Tuesday, 12th November, 1946

at

3 P.M.

Chairman: DR. H.C. COOMBS (Australia)

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

THE CHAIRMAN: Yesterday we deferred from consideration the subject-matter covered by Articles 21 and 22 of the draft Charter; that is, the sections dealing with the nondiscriminatory administration of quantitative restrictions and the exceptions from this general rule. Of course, views have been expressed on these two Articles in general terms in earlier discussions. Particular points were raised. First, the need to link the transition period during which discrimination would be permitted closely with the transition period provided for in the International Monetary Fund; next, there were some doubts as to the adequacy of a past representative period as a basis for a definition of nondiscrimination, and a suggestion was made that the substitution of the general term "commercial considerations" would be preferable for this purpose. Other documents, affecting particularly these Articles, were submitted, including a paper by the Czechoslovakian Delegate and by the Polish Observer. A number of other papers were submitted affecting quantitative restrictions as a whole, but I do not recall any which particularly dealt with this nondiscriminatory principle. The subject-matter of these two Articles is now open for discussion.

MR. SHACKLE (United Kingdom): I do not think I am saying anything new in what I am about to say, but it may be as well to put it forward shortly. First of all, I do think that for the purposes of this Article we want something in the nature of a glossary which would explain the terms we use; the distinctions between licenses, quotas and so on, should somehow be clearly brought out. I think the terms themselves will lead to some confusion without some kind of glossary.

As regards the method of the sort of rule to be followed for the purpose of ensuring nondiscrimination, we are not greatly enamoured of the past representative period. Our order of preference as between methods would be as follows. First preference, that the permit to import shall not be assigned to any particular source of supply. In other words, it becomes a matter for the commercial judgment of the importer who has received the permit as to what sources he will go to get his supplies.

That as I think, in effect, the method which is mentioned at the end of paragraph 3 of Article 21 of the United States draft. Failing that, if it is necessary to choose sources, we should prefer that the basis be commercial consideration, thereby following the rule in the state trading Chapter. If, however, in any particular case it is not possible to assess the commercial considerations, and the first method is not available either, then, as a last resort, we would be prepared to contemplate the previous representative period, if a suitable one can be found, which would obviously be a matter of difficulty in present-day circumstances, subject to special factors. Broadly speaking, our understanding of the meaning of the term "special factors" is that they are much the same thing as commercial considerations. I want to remark that the greater prominence that one gives in this procedure to the past representative period the more rigid becomes the effect of the quota, the more it freezes a past pattern of trade.

MR. BIRAUD (France) (interpretation): I would like to support the statement just made by the United Kingdom Delegate. I have said several times -- and in particular explained to my United States colleagues -- that it would be extremely difficult to choose a period of reference which would be adequate. The best way of avoiding discrimination in the administration of quantitative restrictions would be to let the importers be free to choose the sources. This period of reference should be considered only in the third place. We agree with the United Kingdom on that point. As for the second stage which has been mentioned by him, I think it would be rather difficult to have a definition of it, but we are quite prepared to discuss it.

THE CHAIRMAN: Would anybody else like to comment upon this particular question, namely, the basis for nondiscriminatory administration?

MR. HAWKINS (United States): I do not think there is any disagreement here, if I understand the position which is taken. The French Delegate, if I understand him, suggests that the best way to avoid discrimination where quantitative restrictions are employed is not to allocate the quota by countries but to simply give licences to those that apply for them, with the

stipulation that they can utilise the licences to purchase wherever they please. I think we would agree with that. There is the other question, however, raised by Mr. Shackle, as I understood him, whose view was that if quotas are allowed, if it is permissible to allow them although not required, they should not be based on a previous representative period but should merely conform to the formula of commercial considerations. I would only just like to suggest that, poor though the representative period formula is -- and nobody who has had any experience of it is likely to be wholly satisfied -- it may be at least the starting point for establishing how the quotas would be allotted if they conform to commercial considerations. You start with the shares which countries have had in the past, you modify that to try to take account of any changes in the competitive position, and as a result you come out with shares which should, as nearly as can be determined, conform to the rule of commercial considerations. I am not clear whether the United Kingdom Delegate wants to strike out any reference to representative period.

MR. SHACKLE (United Kingdom): Perhaps I might answer that. I would say that as between the second alternative, commercial considerations, and the third alternative, the past basis modified by special factors, I think the difficulty is really one of degree; it is the degree of prominence to be given to commercial considerations. If I understand it, the term "special factors" is meant to mean much the same thing as "commercial considerations." We are not saying that the greatest weight should be given to commercial considerations, so far as ascertainable. My third is that when they are not so readily ascertainable it may be that the past representative period would have to be the first test applied, but qualified so far as possible in the light of the knowledge available of commercial considerations. I would add just one thing. You may have cases in which the parties concerned being brought together agree upon an allocation amongst themselves. I take it it would be generally agreed that where it is possible to follow that method, that is a proper way of giving effect to nondiscrimination.

THE CHAIRMAN: I did not quite gather your last point.

MR. SHLICKLE (United Kingdom): There is possibly a further method which may sometimes be used for ensuring nondiscriminatory allocation; that is, to bring together all the interested parties, the importing country and the exporting countries. If they all agree on allocation amongst themselves I take it that would be regarded as complying with the requirements of non-discrimination.

THE RAPPORTEUR: May I, as Rapporteur and not as a member of the United Kingdom Delegation, ask a question? If there is any difference of opinion between ^{what} the United States Delegate said and what the United Kingdom Delegate said on this matter it clearly does not rest on the first choice, which is that the importer should have a liberty of choice of supplies; it rests on the second line of defence, whether it should be a representative period suitable, modified, or whether it should be commercial considerations. Is there a way of joining those two into one, by talking about commercial considerations which include, among other things - which would also be stated - the trade which was done in a representative period. Indeed, that might be the first in the list of things which you considered. When we are dealing with what you fell back on, freedom of choice would be a commercial consideration which would be a matter of trade done in the previous period plus what had happened to relative prices, plus what had happened to demand and so on and so forth, whatever factors one puts down there. I wondered whether the United Kingdom and United States Delegates thought there was a basis of reconciliation there, because the wretched Rapporteur wants to know whether he should try to have a single draft or put up two alternatives.

MR. HAWKINS (United States): I think Mr. Mead has hit upon the way to bridge the gap. I would be perfectly willing to see a clause worded roughly this way. "If quotas are allocated" - that is the only time the question arises - "they should be allocated in accordance with

commercial considerations. If a representative period is used to establish what are commercial considerations it should be subject to adjustment in the light of any special factors which may have affected the trade in that period." That is not the language, but a rough formula which might straighten it out.

MR. SHACKLE (United Kingdom): I think broadly speaking that would meet us. I express that provisional view.

THE RAPporteur: May I repeat it to make sure I have the idea? If quotas are allocated they should be done on commercial considerations. If the representative period is used as the basis for those commercial considerations it should be modified according to any change in other factors.

MR. HAWKINS (United States): That is it.

THE CHAIRMAN: Any special factors which may have affected the trade in that period. Would anybody like to comment further on that?

MR. LOKNATHAN (India): Since we are dealing with quantitative restrictions arising out of balance of payments difficulties, I would like to ask whether the fact of exchange difficulty with a particular country would or would not be regarded as a commercial consideration? For instance, suppose we are short of a particular member's currency, in making allocations naturally we would obviously be guided by the fact that goods from that country cannot be financed, and hence any allocation must have regard to that factor. Would that be regarded as a commercial consideration or as a special factor to be brought in as a special criterion?

THE CHAIRMAN: Might we leave that question for the moment? I would like to dispose of the point about the representative period. We can come back to that later and have a look at what is meant by "commercial considerations" if we can clear this suggestion of the reconciliation on the question of the representative period.

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MR BARADUC (France)(Interpretation): Mr Chairman, I should like to see clearly the position of my United States and United Kingdom colleagues. Is it the I.T.O. which is going to judge whether the period selected is an adequate period or is it through bilateral negotiations that both members concerned will determine the commercial considerations to be taken into account?

MR HAWKINS (USA): Mr Chairman, I think it should be understood - and I believe the United Kingdom delegate agrees with this - that a country would not be required to allocate; that is the first point. Therefore the question would not come up. Now if he does decide to allocate then you have got the problem of determining how to allot shares to the various supplying countries. The proposal, as I understand it, would require them to be allocated in accordance with commercial considerations. The draft would recognize that past period as modified by subsequent practice might help to establish what allocation would result if commercial considerations were taken into account.

THE CHAIRMAN: I think the point which the French delegate wishes to have clarified is who is to be the judge of what are commercial considerations, or whether commercial considerations have in fact been observed. As I understand the original draft, the decision would be for the country or the government of the country imposing the quotas, and that it would not be for the I.T.O. to decide, nor is there any provision for consultation; it would be for the country imposing the quotas to make the decision as to what were in fact commercial considerations. Is that correct?

MR HAWKINS (USA): In our draft he would make that determination initially and subject to the obligation to consult if anyone questioned it.

THE CHAIRMAN: Is there any further discussion on this point, or can we take it that the suggested reconciliation with the United Kingdom-United States view is a reasonable way of interpreting what is meant by non-discriminatory administration? Mr Rapporteur, you can proceed accordingly.

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I think that we might now pass to the point raised by the Indian delegate, which was I think that he asked whether the fact that a country was experiencing shortages of a particular currency would be regarded as a commercial consideration justifying presumably the allocation of a smaller quota to that country than it might otherwise obtain.

MR HAWKINS (USA): Mr Chairman, in our draft we have made provision which I think probably covers the point. There is an exception from the rule of non-discrimination in Article 22; that permits discrimination where a country holds inconvertible currency and leaves discrimination in favour of the country where that currency is held in order to liquidate it and utilize it. Those are the only circumstances we see in which there might be discrimination on that ground.

THE CHAIRMAN: Is this the scarce currency provision?

MR HAWKINS (USA): No; there is the scarce currency provision that is also excepted; that is in paragraph 2 of Article 22.

THE CHAIRMAN: That is what I meant. The only circumstances in which the Indian delegate's question would be answered by an affirmative would be where that currency had been declared to be a scarce currency by the International Monetary Fund.

MR HAWKINS (USA): Then there might be discrimination in favour of the country.

MR SHACKLE (UK): Might I remark that there is also the United Kingdom alternative draft, and this includes in its paragraphs 2 to 4 provisions about non-discrimination, which although we have put them into the Balance of Payments draft Article would really, I think, be suitable as a general definition of non-discrimination. The Paper to which I am referring is Committee II/W/22. Under those paragraphs one has in the first place an exception for countries with inconvertible currencies, and then this carries on to paragraph 2(b) which is dealt with in a rather different way from the way in which it is dealt with in Article 22 of the United States draft. One has also paragraph 2(a) which deals with scarce currencies. It seems to us that apart ~~ff~~ from those two cases it could not be short of another country's currency if the International Monetary

Fund procedure were working.

MR LOKANATHAN (India): Do I understand that the answer is that it will not be regarded as a commercial consideration, but that it will be regarded as coming under either of the exceptions provided for in the Articles of the American Draft Charter or the scarce currency provisions of the Monetary Fund?

THE CHAIRMAN: I am not quite sure; I would not have understood that. I think I would have understood it in this way, that it would not be regarded as commercial considerations, but that the situation which you envisage is provided for in certain circumstances where the International Monetary Fund has declared the currency concerned to be a scarce currency. If it has not been so declared, even though an individual country may find itself short of that currency, there is no provision in the Draft Charter to enable it to discriminate against that country.

MR LOHRINGER (IMF): Mr Chairman, I think this is pertinent to the question which has been raised by the Delegate of India. It would be possible for a country in those circumstances to obtain the currency through the Fund, even though it did not hold balances of that particular currency, assuming it had drawn up to its full quota.

MR PHILLIPS (Australia): I was wondering whether the representative of the IMF could clear up one point. Supposing a country had drawn up to its quota from the Fund but had reserves outside the Fund, of other currency, is there any provision in the Fund enabling that country to use those reserves through the Fund for buying other currencies?

MR LOHRINGER (IMF): Well, I do not know that there is a specific provision in the Fund Agreement. It is assumed that members could use their foreign exchange reserve freely for whatever purpose they wish. I was not clear in my own mind as to the intent of the Delegate of India's question - whether it was dealing with a situation in which a currency would be generally scarce, which is an Article 7 scarce currency feature of the Fund, or whether a particular importing country happened to be short of a particular currency.

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It was not clear to me just which situation he had in mind.

MR LOKANATHAN (India): May I explain my question. It is this, that when you are dealing with difficulties, or rather with the quantitative restrictions needed in order to solve the balance of payments problem, this balance of payments is a total concept which is made up of difficulties in relation to particular members. Therefore, before a particular country's currency is declared to be scarce the Rules of the International Monetary Fund would become obligatory, and countries should be entitled to use quantitative restrictions in allocating the resources available to restrict purchases from the countries whose currencies are likely to be scarce in relation to that particular country, and deal in given quotas, which would necessarily govern the amount that would be allotted to purchases from countries which were running on a deficit.

MR LOHRINGER (IMF): I think the chief bearing that the Fund's operations would have on the situation would be that until a currency actually becomes scarce or is declared to be scarce by the Fund, a member would be able to buy that currency through the Fund provided his balance of payments situation was not so bad that he had exhausted his quotas - in other words, I think to the extent that the Fund is able to achieve its broad objective of effective interconvertibility of currency in current transactions, there would be a diminution in the importance of this question as to how much of a particular foreign currency a given country happened to hold at any one time.

THE RAPPORTEUR: May I put my understanding of the position in this way, Mr Chairman, because it would help me as Rapporteur to make sure that I have got it clear. There are three types of currency from the point of view of the Fund. There are those which are inconvertible, there are those which are convertible but not scarce, and there are those that are scarce. Now, if a country as far as the first is concerned wants to buy from another country which has an inconvertible

currency, the United Kingdom draft in paragraph 2(b) would enable the country to discriminate in favour of imports from that country, watched by the Organisation. As far as the scarce currency is concerned, under Article 7 of the Fund, a country could discriminate against that country and not buy its goods, but we are left there with the intermediate class of currencies which are convertible but are not scarce, and if the country concerned had not got some of that currency but had some other currency which was convertible it could convert it through the Fund into that currency. Am I not right in understanding that?

MR LOHRINGER (LAF): Yes, I think that was the point that the Delegate of Australia raised, if I understand it, that it might have some other foreign exchange reserves it could buy, or, of course, it could buy some of the currency which was not scarce from the Fund, simply by drawing on its quotas, that is buying in its own quota in the purchase of the needed currency from the Fund.

MR PHILLIPS (Australia): May I clear up the point I raised? I think my answer is in Article VIII, Section 4, of the Agreement, that a member "shall buy balances of its currency held by another member", and so on, but it would not actually be done through the Fund in the case I was quoting where a country had used all its full drawing rights in the Fund.

MR LOHRINGER (IMF): Yes, of course that is one of the features that give effective interconvertibility. That is, when it has a balance the country either gets paid off in its own currency or in gold, and if it is paid off in its own currency the paying country could obtain that currency through the Fund, which would reduce the Fund's holdings and put them in a position where they could get whatever particular foreign currency was needed; but it is getting into very technical aspects of the Fund, including multilateral clearing.

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THE CHAIRMAN: Is there anything further upon this point?

MR BARADUC (France) (Interpretation): I think that the proposal of the United Kingdom Delegate in paragraph 2(b) should be taken into account, and I should like to put a question in connection with that. Many countries, at least European countries, are having very important trade transactions with countries with inconvertible currencies because those countries are not members of the Fund. In connection with that question the representative of Czechoslovakia has submitted a statement, and I should like to ask the Delegate who represents the Fund if he knows that statement of the Czechoslovak Delegation, and I would also like to ask if we cannot consider that the proposal of the United Kingdom in paragraph 2(b) could not meet the views of the Czechoslovak Delegation, which to me seem to be quite justified.

MR LOHRINGER (IMF): I do not know that I am sufficiently familiar with the Czechoslovak proposal to be able to attempt to answer at this time whether the proposal under reference in the United Kingdom draft would meet it. As I recall, the Czechoslovak proposal was to the effect that you should consider rather separately countries with a balance of payments, countries with a convertible basis and those on an inconvertible basis, and the United Kingdom draft under reference would, I presume, subject to the approval or non-objection of the ITO, permit a country to discriminate against convertible currency countries in order to get a balance with inconvertible currency countries. That is the way I would understand the relationship of the two proposals, but I am not sure that that is an answer to the question.

THE CHAIRMAN: It is clear that it would go some way at any rate to meeting the Czech point, but it is not clear whether it would go the whole way.

MR BARADUC (France): Yes. I think perhaps we might leave that to our Rapporteur, after having consulted the representative of the IMF.

THE RAPPORTEUR: It occurs to me that there is one very important point here, which may be mainly of theoretical interest, from the point of

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the Czechoslovak case, but I am not sure. However, as the United Kingdom draft stands at the moment, I should understand it in this way, that if Czechoslovakia - and I take that merely as an illustration, because that is the Delegation that has raised the point - were in general balance of payments difficulties and were therefore able to impose import restrictions on balance of payments grounds, then under Article 2(b) of the United Kingdom draft it could discriminate in those restrictions in favour of countries or of the country whose currency was inconvertible, always subject to the fact that the Organisation would be able to rule that this was being misused; but the problem which arises in my own mind is this: Supposing that the Czechoslovak balance of payments was not in general out of equilibrium, so that it could not under the general rules impose restrictions on balance of payments grounds, but yet it was exporting from countries whose currencies were inconvertible, could it then impose restrictions in order to be able to discriminate in favour of those countries, even though its total balance was not in disequilibrium? Perhaps that is an impossible situation, but if it is not impossible it would be possible easily to redraft the thing to meet the case, because just as the American draft Article 22 says in its paragraph 1: "Members which are members of the International Monetary Fund shall not be precluded by this Section from applying quantitative import restrictions (a) having equivalent effect to any exchange restrictions which the Member is authorised to impose in conformity with Article VII of the Articles of Agreement of the International Monetary Fund", you could put "or in order to make use of inconvertible currencies", subject to this. You see my point. It says that if you have quantitative restrictions on balance of payments grounds, then in this case you can discriminate. It is a different thing to say: "You can put import restrictions on in order to be able to discriminate for this purpose"; and I think the Rapporteur has to know

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which he has got to say, whether he has to put them up as an alternative, or whether he is asking a nonsensical question.

MR CLARKE (UK): Surely the point here is that it is perfectly possible for a country to be in an over-all balance of payments equilibrium while at the same time a considerable drain is taking place on its monetary reserves, because it is having a surplus on its dealings with inconvertible currencies, while having a deficit on its dealings with countries with convertible currencies; and if Czechoslovakia, to take this illustration, were in difficulties on this score and wished or needed to discriminate in favour of countries with inconvertible currencies, it would be undergoing a drain on its monetary reserves, and this would therefore be a permissible thing for it to do, but if it was not undergoing a drain on its monetary reserves which would permit it to impose quantitative restrictions, then the question would not arise.

THE RAPPORTEUR: Mr Chairman, your Rapporteur would like to say that he thinks he asked a nonsense question, and that he withdraws it.

THE CHAIRMAN: No, it is a very important question, because it makes the choice of language in the Articles in which the exception is granted for balance of payments purposes of importance, and that phraseology does not relate solely to the total balance of payments but is linked with international reserves.

MR CLARKE (UK): This was one of the many reasons why we put our money on monetary reserves in framing these particular criteria; that is a very real difficulty, too, in many countries.

THE CHAIRMAN: If the Rapporteur bears that in mind when he drafts the balance of payments exceptions, to see that it is based on monetary reserves and not on balance of payments alone, then I think it is clear that the situation will be covered.

MR BARADUC (France) (Interpretation): That is clearly stated in the

British proposal.

MR LOMHRINGER (IMF): Mr Chairman, I wanted to point out in this connection what effect the pertinent provisions of the Articles of Agreement of the Fund would have on this situation. I think the situation is covered in Article 8, Section 3, which says: "No member shall engage in, or permit any of its fiscal agencies referred to in article V, Section 1, to engage in, any discriminatory currency arrangements or multiple currency practices except as authorized under this Agreement or approved by the Fund." I think what that means pretty clearly is this, that after a member assumes obligations under Article 8, that is after the transitional period, he will have to get specific approval from the Fund in order to discriminate or to use discriminatory currency practices in order to deal with a situation such as that posed by the Czechoslovak Delegation. Of course, under article 14 it could do it during the transitional period without such specific approval.

MR CLARKE(UK): Might I just add that this paragraph 2(b) about inconvertible currencies does deal with the state of affairs in the transitional period, which is when these fundamental difficulties arise, and when the transitional period of a country is then under the IMF then this problem automatically falls to the ground.

THE CHAIRMAN: Is there any further discussion on this particular point? While we are still on Articles 21 and 22, you will recall that the Czechoslovak Delegate, in the general discussion on this, did submit an alternative draft of Article 21 in particular, which was designed, if I understood it correctly, to leave out of this Article a number of matters which related to administration, and there I think his point was that it was sufficient in this paragraph to state the principles but to leave the question of machinery to the Governments concerned, to put into effect in accordance with those principles. If I remember rightly, Mr Hawkins in reply said he thought the suggestions were matters which should be considered carefully ~~by~~ by the Drafting

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Sub-Committee. I do not know whether any further thought has been given to that, because really it is something which the Rapporteur would need to be advised upon; but I think that paragraph 1 of the Czechoslovak draft is identical with the United States draft Charter down to the word "restricted". Then he omits the latter part; that is: "In order to facilitate observation of the operation of the provisions of this paragraph . . . Members undertake that in the application of such restrictions they will employ the use of quotas, and will avoid the use of licensing or other non-quota methods of restriction, to the fullest practicable extent."

MR HAWKINS (USA): Mr Chairman, I have given some consideration to that, and I agree fully that we should not get into too much detail, but I would suggest that the last sentence is not exactly detail; it is expressing a preference for making it absolutely obligatory for stating what the total amount of goods will be that will be allowed to come in, so that the balance can be met. Now, that is a rather general injunction, not absolutely rigid, because it might be necessary for a country to have a licence later on.

THE CHAIRMAN: Does anybody else wish to express a view upon that?

That example you have quoted is only an example, but I think the same point is carried through in practically every paragraph of the Czech re-draft.

MR HAWKINS (USA): I could comment upon that if you like.

THE CHAIRMAN: Yes, please do.

MR HAWKINS (USA): I think the second change there, if I remember rightly, was merely to strike out the provision for public notice in the second paragraph. I think he struck out the first sentence.

THE CHAIRMAN: Yes, that is right.

MR HAWKINS (USA): Again, there is a great deal of detail there, but the idea is to help traders to know what is going on. Then the third change was this: I think he struck out the last sentence of paragraph 3 - at least, that is my memory of it, because I have not got his draft before me.

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THE CHAIRMAN: Yes.

MR HAWKINS (USA): If that is correct, I think it would be a mistake to strike out the last sentence of paragraph 3, because that is a very basic point.

THE CHAIRMAN: Similarly with paragraph 4, I think he has omitted the proviso.

MR HAWKINS (USA): The purpose of that is to avoid having a member doing a lot of consulting before it acts; so it gives it the initiative.

THE CHAIRMAN: Well, the three things which the Czech Delegate has suggested should be dropped are first of all paragraph 1, with the undertaking that in the application of such restrictions they will employ the use of quotas rather than any other methods of restriction; and secondly to remove the requirement that they will give notice of the total quantity or value to be included in the quotas; and thirdly, in the third paragraph, the requirement that restrictions shall in no event be applied by sources of supply - that all these points are felt everywhere to be points of substance which would require to be embodied in any alternative draft.

MR HAWKINS (USA): Yes. I think countries having to resort to these quantitative restrictions would want to know the scope within which they could operate this, because they would want a great deal of elasticity. You see that under this draft you are not compelled; this is merely to express the order of preference/^{without}~~for~~ making any of them binding. It is the last sentence which he suggests should be dropped, the last sentence of paragraph 3, which seems to me is important.

THE CHAIRMAN: Would anybody else care to comment on that?

THE RAPporteur: I think the Rapporteur is in a muddle. Perhaps that can be cleared up out of school.

THE CHAIRMAN: Maybe. Has anybody got any other point on Articles 21 or 22 which he wishes to raise?

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MR PHILLIPS (Australia): There is one point I think we outlined briefly in the general Committee: that was the possibility of providing mechanism for the Organisation to approve discrimination in restrictions imposed on balance of payment grounds where it considered that the discriminatory restrictions would have a less harmful effect on world trade than non-discrimination. The sort of cases we were thinking of there were cases where perhaps the difficulties centred in a fall in employment or a depression in one or in a group of countries which caused balance of payment difficulties for other groups of countries which were not yet affected by the depression other than through their balance of payments. In those circumstances it seemed to us that if the restrictions had to be non-discriminatory then those countries applying restrictions would have to cut down their trade with everyone and thus spread the depression round the world. In those circumstances it might be better to allow discrimination. A particular case might be if a number of countries were applying restrictions on balance of payment grounds, and it seems unfortunate they should have to add to each other's difficulties by restricting imports from each other, and we realise that there are dangers in that. You could not have an indiscriminate use of discrimination; but we would suggest that in some circumstances the ITO might be able to find that discrimination was desirable and ought to be provided for.

MR GUNTER (USA): Mr Chairman, I would like to suggest that that type of situation might very well show up if the balance of payments was taken care of by the Scarce Currency Commission.

MR PHILLIPS (Australia): I would like to add to that that it might be taken care of by the Scarce Currency Commission. I do not think it is sure that it would.

MR GUNTER (USA): What other grounds would there be for discriminating against a country?

MR PHILLIPS (Australia): The fact that you would have to cut your imports from everyone, not merely from the country affected.

MR LOKANATHAN (India): As long as the multilateral convertibility of currencies is absolutely unsure. I think the difficulty, as pointed out by the Australian delegate, can be met, because when any particular country has difficulties with any other country the International Monetary Fund is there to provide multilateral currency. It is only when the Fund is unable to do so that the currency becomes a scarce currency; so that the real question there is really the same point as I had in mind when I raised this question. There may be occasions when, before the Fund itself provides complete convertibility, a country may feel that it is likely to run into a deficit with a particular country and it would like for some reason to take note of that and then use discrimination for the purpose of reducing its imports from that country. That is the sort of situation that may arise. Whether it is desirable to use the provision under this Article for this purpose is the real question.

THE CHAIRMAN: I am not sure whether this is the proper place to discuss this problem. It arises out of one of the proposed escape clauses, and I think on this it has been agreed that we should take out all these escape clauses and put them all together on one sheet of paper and then examine them in the light of the situations which they are designed to meet, to see whether they are all necessary or, taken together, whether they are adequate. But, at the same time, I do feel that there is some problem here. While it is true that the scarce currency provisions of the International Monetary Fund were designed to deal with just this type of situation, so far as I can see it is possible for a country whose currency is in danger of becoming scarce

avoiding their currency becoming scarce by taking action which does not in fact correct the type of situation which is the cause of the trouble. You have particularly a situation where employment is being maintained in one country by the development of exports and thus leading to an accumulation of international reserves. It would be possible for the country to prevent its currency becoming scarce by lending to the Fund, for instance, and that in itself would not correct the situation for the countries experiencing the corresponding adverse balances. It is true they could, so long as their quotas lasted, go on borrowing, but the longer they do that the more heavily they have to pay for the privilege of borrowing, and, furthermore, there is nothing in the situation which checks the situation itself, and it could presumably continue. So I do feel that it is not entirely satisfactory to rely upon the scarce currency provisions for this matter, but it is a question whether we should discuss this here or leave it until we are taking these escape clauses all together. That is the position. Would you like to leave it?

MR GUNTER: It is up to the rest of the Committee.

MR LUTHRINGER (IMF): Mr Chairman, I would like, without wishing to suggest that this discussion be prolonged, if that is not the will of the Committee, to add just one thing to the statement you have made, and that is that there is provision in the Articles of Agreement for discussion of a disequilibrium of this sort before a currency actually becomes scarce. That is not, of course, a compulsory solution, but the point I would wish to emphasise is that under the clear intent of the Articles of Agreement and their provisions this whole situation would be discussed - and seriously discussed - with the country that seemed to be the chief contributing cause of this situation in advance of actual declaration of currency becoming scarce; and secondly, of course, the country experiencing the disequilibrium would presumably be in discussion with the Fund too, so I think for what it is worth it would get a very general airing in advance of the currency actually becoming scarce.

THE CHAIRMAN: What are the views of delegates?

MR CLARKE (U.K.): I think we would sooner leave this.

THE CHAIRMAN: I think we would, too. It is a matter in which we have some interest, and I do not feel it is quite proper for me to participate in that

discussion as I may like to do, from the Chair, so, if it is acceptable to the rest of the Committee, I suggest we defer it until dealing with the escape clauses together.

THE RAPPOORTEUR (Mr Meade): In a draft I was preparing and hoping to have ready for tomorrow I had put something on these lines in square brackets. Shall I strike them out?

THE CHAIRMAN: That is between you and your conscience!

THE RAPPOORTEUR: Actually they were from the Australian draft. If you are going to bring them up elsewhere I will strike them out.

MR PHILLIPS (Australia): I would think they ought to be left in in square brackets!

THE CHAIRMAN: Are there any other matters arising out of 21 and 22?

MR SHACKLE (U.K.): There are two small points, I think, arising on Article 22. Some of the points in that Article, as I have already mentioned, are covered in paragraphs in our re-draft of our balance of payments Article but possibly should be removed to a more general context. First of all, there is the provision in Article 22(1)(b) of the United States draft about the currencies of territories having a common quota in the Monetary Fund. The drafting of that passage in the American draft seems to us obscure and there is a reference to Article 20(4)(g) of the Articles of Agreement of the Monetary Fund on common par value. We do not understand what is the significance of those references, and it appears to us the matter would be better covered in the way it is covered in paragraph 4 of our draft, which reads like this:

"Quantitative import restrictions shall be deemed non-discriminatory if they are applied in a manner otherwise consistent with paragraph 3" (that being the definition of non-discrimination) "by a group of territories which have a common quota in the International Monetary Fund against imports from other countries." That is what we take the significance of this provision to be, and we feel the draft we have suggested is perhaps clearer.

The other point is on 2(c) of our re-draft. This is a matter which is not covered in the United States draft. It is the question of a country whose economy has been disrupted by the war, and in paragraph 2(c) of our draft we contemplate an exception from the rule of discrimination in favour

of "restrictions to assist, by measures not involving a substantial departure from the general rule of non-discrimination, a country whose economy has been disrupted by war. The provisions of this sub-paragraph will cease to operate at 31 December 1949." The idea of that paragraph is taken actually from a paragraph in the United Kingdom and United States Financial Agreement - the Loan Agreement. I would like to call attention to those two differences.

THE CHAIRMAN: Would the United States delegate like to comment on the first point - the alternative wording for the idea at present embodied in 22(1)(b)?

MR GUNTER (USA): The U.K. draft is acceptable - on both points.

MR BARADUC (France)(Interpretation): Mr Chairman, I quite agree with the two points which were mentioned by the United Kingdom delegate and I should like to ask whether we could not adopt a more simple draft for paragraph 4, worded as follows: "For the application of the principle of non-discrimination exchanges existing between territories with a common quota in the International Monetary Fund shall not be taken into account."

THE CHAIRMAN: By exchanges you mean transactions?

MR CLARKE (U.K.): There is a point there, that that particular form of non-discrimination should only apply where the quantitative restrictions are being applied on balance of payments grounds. If the quantitative restrictions are for other purposes the question of whether the countries are in a common unit in the Monetary Fund is irrelevant.

THE CHAIRMAN: However, we could get the Rapporteur to take that alternative into account, I think.

MR BARADUC (France)(Interpretation): I should also like to say that, as far as the British proposal is concerned, to include in the charter a provision which already exists in the Anglo-American Agreement that there may be a possibility of discrimination in order to assist countries which have suffered on account of the war, we think that the charter should include such a provision, but we are rather doubtful about the date of 31 December 1949, and here I think I interpret the feelings of all the countries which are in the same position as France, and I think it is not possible to mention any date; and therefore I think that should be omitted from the draft, or we could choose another date more remote.

MR CLARKE (U.K.): Mr Chairman, we do not think we should put this in without a concluding date at all, because that might logically mean up to 1970 or 1980 a country whose economy had been disrupted by the war could receive this particular kind of assistance; but it would seem appropriate to put it on the same basis as the basis we may ultimately determine for the transitional period of that particular country.

MR BARADUC (France)(Interpretation): I quite agree with that proposal; it seems to be logical.

MR RODRIGUES (Brazil): Mr Chairman, we have presented an almost identical suggestion to that put forward by the representative of the United Kingdom, and on which the delegate of France has commented, but we feel that this restriction should be permitted also during the transitional period for the orderly liquidation of the surplus of reserves owned by the Government to any member country during or as a consequence of the war as well as to permit the readjustment of the conditions of production to normal times. My country has not taken part in the war in the same way as England and France, but restrictions caused our production to suffer in such a way that we need also to have a period for the readjustment of the conditions of production, and we believe we should not give an exact date but leave it to the Organisation to decide on the date.

MR VIDELA (Chile): Mr Chairman, I wanted also to refer to the point just made by the Brazilian delegate, because I see that the amendment proposed by the U.K. which is under discussion says "a country whose economy has been disrupted by the war"; and I want to make it clear that, although we were not in the war, this applies also to Chile, because we suffered the consequences of the war. In this connection I would refer you to a statement made by the Minister of Finance in Chile in connection with the foreign exchange and imports situation. This appears in the Fortnightly Review issued by the Bank of London and South America. It is in the last number, and I will hand it in to the Committee.

THE CHAIRMAN: Thank you.

MR GUNTER: Mr Chairman, I am not sure I got precisely the points the Brazilian and Chilean delegates were making. I believe they were getting into the

question of the right to discriminate during the transitional period, and I would suggest we postpone the discussion of that question until we have disposed of the more basic question of the right to impose restrictions for balance of payments reasons.

THE CHAIRMAN: Very well.

MR BARADUC (France)(Interpretation): I should like to add that we have not heard the defence of sub-paragraph (d) of the British proposal; and in our opinion it is very important because it completes Article 22. I suppose the Rapporteur will take it into account in drafting his report.

MR GUNTER (USA): That is the one I was suggesting we postpone until after we settle this other more basic question.

MR BARADUC (France)(Interpretation): I should like to add a comment to the British proposal. This is acceptable to us as a whole, but there is one point on which we disagree. We do not think it is actually possible to compel a member to abandon the practice of discrimination as long as it is not in a position to meet all the obligations under Article 8 of the Articles of Agreement of the Fund.

THE CHAIRMAN: Has anybody else got anything to raise affecting the content of the American draft Articles, or could we turn to any additional matters that are covered in the United Kingdom draft to see what the views of the Committee are on those matters?

PROF. GANGULI (India): I wish to raise a small point. I would draw your attention to Article 22, paragraph 2. Here a reference is made to "inconvertible currencies accumulated up to December 31, 1948". The point I wish to make is that inconvertibility of currencies is sometimes a matter of degree. There may be certain currencies which may be entirely inconvertible. There may be others which may be subject to complete multilateral inconvertibility, and at the same time there may be currencies which may not be subject to full multilateral convertibility; and I think in respect of currencies which are not subject to full multilateral convertibility this escape clause ought to apply as well. Here you come across only one significant word, "inconvertible" currencies, but there are currencies of other types, too. I wonder if we should not take into account currencies which are not subject to full multilateral convertibility.

THE CHAIRMAN: I would suggest that the word "inconvertible" should be taken to mean that the currencies are inconvertible unless they are freely convertible into all other currencies.

PROF. GANGULI (India): We could either say that or "currencies which are not subject to full multilateral convertibility".

THE CHAIRMAN: Are there any comments on that?

MR GUNTER (USA): I am not quite sure that I understand the point. A currency, it seems to me, is either convertible or it is not. I do not quite understand the idea of partial convertibility. Do you mean by that that it is convertible into some currencies and not into other currencies?

PROF. GANGULI (India): If by "inconvertible currencies" you mean currencies which are not subject to full multilateral convertibility, I shall be content; otherwise we shall have to make provision for that.

MR LOTHINGER (IMF): I think under the Fund situation the currency would either be convertible or inconvertible; that is speaking of currencies arising from current transactions. Either it would not be convertible or else it would be convertible through the Fund.

MR GUNTER (USA): Unless it was a scarce currency. It might not be converted into a scarce currency. But that would be taken care of.

PROF. GANGULI (India): If that is the position, I have nothing to say.

THE CHAIRMAN: Are there any matters arising out of the United Kingdom draft which affect the general content of non-discriminatory administration and the exceptions thereto which have not been covered in our discussions so far?

MR CLARKE (U.K.): We have not yet discussed the position of the transitional period.

THE CHAIRMAN: I think if delegates agree we might take this question of the transitional period and perhaps take the United Kingdom draft Article 2(d) as a basis for discussion. Would you like to comment on this first?

MR CLARKE (U.K.): I think it is fairly straightforward. We feel that the right to discriminate is a necessary one during the period before the currencies are generally convertible; and therefore we have set out the proposals on this basis. We have sought to provide that a country taking advantage of this provision should take advantage of it as little as possible. We have also

provided here that this right shall come to an end at December 31, 1949 unless the period for the individual member is extended beyond that date with the approval of the Organisation after consultation with the IMF. I believe this meets the point made by the French delegate a few moments ago of the linking up of this transitional period with the transitional period under the Fund. We are not in the least bit committed to this particular way of putting it. If it is the general feeling that it is better to say, "for a period of six months after the country has accepted the obligations of Article 8 of the Fund", we should be entirely happy about that proposal; but we thought this one would be helpful to certain other delegations.

THE CHAIRMAN: The United States delegate suggests that it might be wise to leave a final consideration of this question of the transition period until we are clearer on the criteria under which a country will be permitted to impose quantitative restrictions for balance of payments reasons. Is that suggestion agreeable to the delegates?

THE RAPPOREUR: Perhaps I could attempt to put up in any alternative draft about those criteria possibly alternative directions on the transitional period; that is to say, to postpone discussion now, but we might have certain alternatives before us to discuss later.

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THE CHAIRMAN: Is that agreeable?

MR BARLUDUC (France): Yes.

THE CHAIRMAN: I assume that discussion of Exchange Control is in the same position; it is very closely linked with the balance of payments question so you might care to discuss Article 24 at this stage.

MR GUNTER (USA): There is then the question of common membership in the I.T.O., and I see no reason why we should not discuss that, Mr Chairman.

MR CLARKE (UK): We are prepared to discuss that.

THE CHAIRMAN: I understand the position in relation to common membership is that there is no provision in the draft Charter for common membership. I think it was the United Kingdom delegation that expressed the view in their statement that there appeared to be some good reason for common membership and if that were not provided for that other modifications of the provisions regarding Exchange Control might be necessary. Would you like to add to what was said?

MR CLARKE (UK): Yes, Mr Chairman. We feel of the UK Delegation that common membership is of great importance; we attach importance to it for two main reasons. The first reason is that if one does not impose upon members of the I.T.O. obligations regarding their exchange practices, then the whole purpose of the I.T.O. may be frustrated by action by a member in the exchange field. It is equally possible - and we have been discussing here about the procedures for quantitative import restrictions - that a country might carry out precisely the same operations by exchange licensing which if that country were not a member of the I.M.F. and if there were not suitable provision in the I.T.O. Charter, would be frustrating the whole purpose of the Charter. Then there is a second point to which the Canadian delegate attached great importance at the meeting in full Committee, of the purposes being frustrated by exchange depreciation by a country which is not a member of the I.M.F. Countries which are members of the I.M.F. commit themselves only to depreciate their currencies under certain conditions, with the approval of the I.M.F. A country

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which is not a member of the I.M.F., therefore, is at a great advantage compared with countries who are members. That is the first broad series of reasons why we consider it is necessary to have common membership, avoiding a frustration of the purposes of the I.T.O. The second series of reasons is that we attach great importance to their being no overlapping in this field between the international organization dealing with trade matters, the I.T.O., and the international organization dealing with exchange matters, that is to say, the I.M.F. Once one gets a dual jurisdiction in this exchange field one is, from the point of view of orderly international management, in very serious difficulties indeed. Therefore, we feel that every effort should be made to secure common membership. If we could not secure common membership, we should want to write into the ITO Charter pretty well precise obligations of the IMF, in order to prevent the purposes of the ITO from being frustrated by exchange practices. We should want provision for prevention of exchange restrictions on imports, for convertibility, for exchange depreciation and for the avoidance of multiple currency practices, and we feel that Article 23 of the Draft Charter is not nearly comprehensive enough if you assume that you have to write all these obligations in. There is one difficulty, and that is the most serious difficulty, which we see of our proposal of common membership is the one raised by the Australian Delegate in the full Committee last time. Under the IMF, a country is able to get out of the IMF at a moment's notice. It is impossible to write a similar provision into the ITO for various reasons, which are being discussed on Committee V. Therefore, it can be argued that if we require constitutionally that members of the ITO should be members of the IMF, we should in fact be taking away the right of a country under the IMF to resign from it at a moment's notice. This we feel to be a very serious difficulty. We said in the full Committee that we were prepared to examine any suggestion which could be put forward to meet it. We feel ourselves that there is a possibility by covering this contingency of a special agreement between a member withdrawing from the IMF and the ITO, by which

that member would make certain undertakings about certain exchange matters and would accept jurisdiction of the Fund and whether it was carrying out those undertakings to the ITO on exchange matters. That is the sort of possibility which we have in mind as a last resort to meet this constitutional difficulty and the fact that a country has a right to get out of the IMF straightaway but cannot be given that right under the ITO. That is the sort of line which we should like to develop: the principle of common membership to provide a special let-out of this kind.

MR LUXFORD (International Bank): Mr Chairman, it might help a little on this discussion to recall that the Bank have exactly that same problem, because we have a condition stipulating common membership with the Fund and that the Bank handle the matter by providing that the country concerned shall automatically cease after three months to be a member of the Bank, if it loses membership in the Fund, provided that the Bank by a three-fourths vote may continue the country in its membership. That means that in that period you could work out the alternative conditions to take care of the fact that the country had dropped out of the Fund and I think the Subcommittee might want to consider that as one way of dealing with a difficult problem, rather than trying to define it in advance, leaving it for the time when it occurs.

M. BARADUC (France) (Interpretation): Mr Chairman, I would like to say that Mr Clarke has raised what is, in our opinion, an extremely important point, and he has exactly expressed the views of the French delegation with so much clarity and so well that I would only be taking up the time of the Subcommittee if I were to repeat in French what he has so well said in English.

MR GUNTER (USA): I think Mr Clarke made a very excellent statement, and we are very inclined to agree with the UK position.

MR LOTHINGER (IMF): Mr Chairman, the International Monetary Fund agrees entirely with the views stated by the United Kingdom Delegate, and it is our earnest hope that every effort will be made here to see if some plan which will provide for common membership cannot be worked out.

MR PHILLIPS (Australia): Mr Chairman, I think I had gone into Australia's

position fairly fully before. We realise the points raised by the Delegate of the United Kingdom and we are glad that he appreciates the difficulty, particularly regarding withdrawal from the Fund. I think that is an important point, but I am not at all sure that his suggestion for a special agreement with the organisation in the event of a member withdrawing from the Fund would be a satisfactory solution. It would put the member concerned in a very difficult position, it seems to us. Then, on the second point that he raised, there is one argument in favour of there being less necessity for restrictions or for the full restriction of the Fund and the organisation, that is, in the members of the organisation who are not members of the Fund, which would also not have the benefits of the Fund, and I think that is the same argument for their being subject to some qualification. The Delegate of the United Kingdom suggested that under the Draft Charter as it is drafted at present, there is no protection for a member who depreciates his currency, which does not seem to me to be correct, because I take it that Article 30 of the Draft Charter would take care of those cases where another member felt that the benefits it had under the Charter had been nullified by a movement in exchange rates of another member, but there is a procedure for complaint and, if the organisation upholds the member's complaint, there is a procedure for sanctions. I do not think I want to say anything more than that except that we still feel that joint membership is not essential.

THE CHAIRMAN: Does anybody else wish to comment upon this? It would appear, Mr Rapporteur, that the majority of the Committee favour the general point of view outlined by Mr Clarke and it would also appear that you will have to make special provision for recording the observations by Australia.

THE RAPPOORTEUR: Yes. What I am trying to do at the moment, Mr Chairman, is to try to get certain draft Articles, not a report, expressing the reservations. If I try to get by tomorrow the draft Articles which I am trying to do, Articles 20 and 22 anyhow, and if I do one for Article 23 on the lines which the members of the Sub-Committee seem to favour, it would be clear that Australia's position would be reserved, but I would not also be able to draft one which would meet Australia, as an alternative, to be ready at the same time. I hope that would be understood; I hope it would be under-

stood that I was not forgetting Australia's position, because the only draft that came forward tomorrow was the majority view. Is that satisfactory to the Sub-Committee; do you think, Mr Chairman?

THE CHAIRMAN: It is satisfactory to the Australian Delegate. Is there anything further on this point? If not, I suggest we might adjourn.

THE RAPPORTEUR: May I make this suggestion, that I try to get ready something on these lines. I would like to suggest a programme of work for the Rapporteur, that I have before you by tomorrow afternoon a redraft of Articles 20 and 22, and then there would be the majority view on the exchange control Article, and I think probably Article 20 would have two alternative versions, and possibly Article 21, but I am in a muddle about Article 21, and I wondered whether I might make a suggestion -- perhaps it is rather an informal suggestion -- that the United Kingdom Delegate, Mr Shackle, should get together with certain Delegates from the United States, because the arguments seemed to be mainly between the United States and the United Kingdom, taking into account the suggestions made by the Czecho-slovak Delegate, and hammer out something, and, if it is ready by tomorrow, we would have it for tomorrow at some time. If not, I think we can do Articles 20 and 22, without 21; I think Article 22 is in a sense an exception; Article 21 we can deal with on the exceptions without knowing what are the exceptions, what they are exceptions to, because we have a broad idea.

MR GUNTER (USA): I think probably Mr Hawkins or Mr Leddy would be the ones who would be best able to work on Article 21, because they are also involved in this Procedures Sub-Committee. I do not know what its schedule is so that I cannot commit them, but I am sure they will deal with it if they are able to work it in.

THE CHAIRMAN: That raises the problem of our own schedule. We are scheduled to meet tomorrow afternoon so that tomorrow is all right.

MR GUNTER (USA): We are talking about Articles 20 and 22?

THE CHAIRMAN: Yes, but there is some difficulty about the proposed meeting on Thursday, which clashes with the Procedures Sub-Committee. Also, if we meet in the afternoon, can we carry on without the people from the Procedures Sub-Committee?

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MR GUNTER (USA): Well, I will leave that question until tomorrow for decision.

THE CHAIRMAN: Very well. Tomorrow we will deal at least with Articles 20 and 22 and possibly a redraft of Article 21, if the United Kingdom and United States Delegates can produce an alternative.

THE RAPPOORTEUR: Yes; I am afraid I am working under some pressure and I may leave out some points.

THE CHAIRMAN: If you do, we will tell you. Thank you very much.

(The meeting rose at 4.50 p.m.)