OM
A1

E/PC/T/C.III/PV/2

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT.

Verbatim Report

of the

SECOND MEETING

of

COMMITTEE III

held in

Committee Room 4,

Church House, Westminster, S.W.1.

on

Wednesday, October 23rd, 1946.

at

3 p.m.

CHAIRMAN: M. PIERRE DIETERLEN (France).

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

THE CHAIRMAN (Interpretation): The meeting is open. I think the first item on the agenda is that regarding the study of the requests that have been submitted by the International Chamber of Commerce and the World Federation of Trades Unions, which have sent letters to the Secretariat. Copies of these letters have been distributed and we shall now have to take a decision with regard to the work of our Committee in this connection, and the Chairman proposes to the Committee that it should adopt the same decisions as were adopted by other Committees, when it was decided that these organizations might address the Committee whenever it seemed useful to the Committee. Further, it was suggested that the Secretariat should ask these representatives of the International Chamber of Commerce and of the World Federation of Trades Unions to send in in writing any points that they thought would be useful and which were to be put before this Committee. Has any delegate any other suggestions or observations to make on this subject?

As there are no observations I conclude that you have accepted the proposal I have just put forward. I will ask the Secretariat to note this and in replying to the letters to request that the two representatives concerned will send in in writing the points which they think it would be useful to raise in the matter of cartels and of restrictive commercial practices.

The second item is a question of gathering opinions and having a general discussion on the problems that are to be examined here. With regard to this, I would like to go back to the proposal I made at the first meeting. It seems useful, before going into the details, that we should clarify the

discussion by means of statements made by the various delegates here on the underlying principles of the problems before us. The best way, therefore, would be to hear the various delegates who wish to take part in this discussion, and in that case I will call upon them in the alphabetical order of their delegations. As it is a case of discussing a draft Charter submitted by the United States delegation I might ask the United States delegate to make a concise statement first of all on the general ideas underlying the draft which has been submitted by the United States Government. If, however, Mr. Wilcox prefers to speak in his turn that can be arranged, but if he will make his statement first of all it will probably make the discussion easier for the rest of the delegates.

MR. WILCOX (United States): Mr. Chairman, I should be pleased to make a brief statement at the outset as to why, in the first place, we feel that a chapter relating to Restrictive Business Practices is an essential part of a world trade Charter, and, secondly, very briefly, as to our general approach on how to deal with the problem.

First, why should we have a chapter on Restrictive Business Practices in a world trade Charter? It seems to me that the absence of such a chapter would be an extremely serious omission which might have serious effects upon our objectives in the programme as a whole. First, let us take the purpose of removing or reducing barriers to international trade. The Committee on Commercial Policy is dealing with the question of policy with respect to tariffs and quantitative restrictions, quota systems and other impediments to trade between nations imposed by Governments.

Now it will not do us very much good to reduce or remove such barriers to trade if we still leave it in the hands of non-governmental business enterprises to establish barriers to trade on their own account. The types of restrictions that have been imposed by international agreements between business enterprises are quite as effective in preventing the movement of goods between nations as are tariffs, and perhaps even more so. That is, goods can move from one country into another, surmounting the tariff wall, if they pay the duty, but when you have a cartel agreement between enterprises in two countries whereby each of them agrees as to the part of the world's territory that he is to share and the part that the other one is to have, there you have a clear agreement of division of markets, the goods do not move at all. You have not a moderate tariff or a high tariff; you have an absolute embargo. As a matter of fact, you may have a more serious prohibition on the movement of goods there than you have under a quantitative restriction, under quota. At least under a quota system enough goods move in to fill the quota, but in a market-sharing arrangement between the partners in a cartel the amount of goods that moves from one country into another may be zero, and may be kept at that figure if the partners to the cartel arrangement control the whole supply.

Another aspect of this matter that is serious from our point of view, I think, is that the public regulations of the flow of trade are matters of public policy. They are arrived at by Governments; they are openly arrived at; they are matters of record. In the case of the control of the flow of trade by cartel agreements you have private treaties, privately arrived at, in the private interest, without consideration of the public interest involved.

Now we should seriously imperil the work that we do in the

reduction of trade barriers if we took no action whatsoever with respect to restrictive agreements between business enterprises in international trade.

Secondly, with respect to employment, the effect of a private agreement between concerns constituting a monopoly arrangement will usually be to establish a price higher than a competitive price, and at that higher price there can be fewer goods sold, less demand satisfied, less consumption, less production, and consequently less employment. That is, monopoly per se, and particularly private monopoly, is prejudicial to the maintenance and expansion of employment.

Monopoly also makes for rigidity, which makes it difficult for business to adapt its prices and its production policy to changing economic situations. It tends also to concentrate a larger part of the distribution of the earnings of industry in the hands of ownership, and a smaller part consequently goes to the participants in the enterprise, labour, and the producers of materials, and so on, who constitute the great bulk. That is, monopoly in its very nature is prejudicial rather than conducive to industrialization.

There are two respects, it seems to me, in which restrictive business agreements are likely to put a brake on the industrialization of relatively undeveloped areas. In the first place, if you have agreements between cartel partners which raise the price and maintain a high minimum price for industrial equipment, that is going to make it very much more costly for under-developed areas to get that equipment and to industrialize.

Furthermore, it has been and might continue to be the practice of cartel partners deliberately to try to prevent the development of new competitive industry in new areas by various

harassing tactics, including deliberate dumping or threats of dumping, or outright boycotting. These things have been done in the past; they are a matter of record in our history. They are clearly prejudicial to industrial development in newer areas.

The same thing is true of access to technology. An agreement between industrial partners to share markets, whereby a concern, let us say in the United States, as an illustration, will agree that it will not make any sales of equipment, that it will not sell any know-how, that it will not give any patent rights in the eastern hemisphere, in return for an agreement from a concern, let us say in a European country, that it will not give any patent rights to anybody else or sell any know-how in the western hemisphere, dividing the world, as many of these agreements have, into provinces that are regarded as the territory for exploitation by the cartel partners - such an agreement, I say, is a definite obstacle and a definite bar to the obtaining of patent rights, technology, know-how, and the ability to get a competitive enterprise on its feet. Furthermore, when technology is obtained it is frequently obtained under definite limitations.

It is said "Yes, you can have this patent right, but only if you limit your sales to a particular market and do not undertake to sell beyond those territories".

Further, the chapter on Restrictive Business Practices is an essential support to the chapter on Commodity Arrangements, because if you lay down what appear to be reasonable provisions with respect to commodity arrangements between governments, and you say, for instance, that there must be equal representation of producers and consumers, that the consumer interest must be represented and that there must be publicity as to the details of such arrangements, those are matters, I think, upon which we can agree. Well, if you do that, and then have no provision at all as to non-governmental international arrangements, you

have got a complete escape from all of the safeguards that you set up with respect to the fairness of inter-governmental arrangements themselves.

Now those are the reasons why we feel that provisions with respect to Restrictive Business Practices are an essential part, an integral part of the structure of a world trade Charter.

Very briefly, our approach as to handling this problem: I may say that what you see in the suggested Charter is a second thought. Our first thought was that the world in general in its own interest would do well to emulate the United States in establishing within other jurisdictions laws comparable to our Anti-trust Statutes, but in discussing the matter with othercountries we have come to the conclusion that such a programme is probably too ambitious a one, and consequently what we have proposed is a much more modest and a much more tentative approach to the problem. What we suggest, simply, is that we establish an agency with appropriate machinery to receive and consider complaints with respect to restrictive business practices and to make recommendations for remedial action; and that is all.

Now I would have you note first that under our proposal nothing whatsoever happens until there is a bona fide complaint and that complaint has been sifted by the International Trade Organization and found to have some substance. That is, the Organization would take no initiative in the matter on its own account; and, secondly, following such a complaint, you would have public hearings, with all arguments advanced, pro and con: that is, the reasons why a particular practice was alleged to be prejudicial to the interests of any country would be advanced, and the reasons

why it might be argued that such practice was defensible could be advanced, and on the basis of that the agency involved would make a recommendation to a sovereign state as to action that that state should take.

What you have here is an emphasis, not a statute; an emphasis on a careful, case by case analysis, and, in the form of these recommendations as they emerge from that process, the building up over time of an international code of accepted business conduct, which would rest in the last analysis upon the sanction of world opinion.

There is just one other comment I want to make about that, and that is, that if this kind of an approach to the problem is going to help, if it is going to be effective, this agency must be given a definite mandate and definite criteria upon the basis of which to proceed with its work. It must be regarded seriously. When it akss for an appearance and a defence it must be listened to. The job that it has to do must be laid out for it to do, so that everyone understands what it is.

Now that is what we have sought to provide, with such success as you shall judge, in Article 34 of our draft Charter, and particularly in paragraph 2 of that Article.

E/PC/T/C.III/Pv/2
~~E/PC/T/C.III/2~~

THE CHAIRMAN (Interpretation): I should like to thank Mr Wilcox very much for his very helpful statement. I knew perfectly well, when I called upon him, that he was not only speaking as the United States delegate but as a distinguished expert on this subject. Mr Wilcox has written an important book on cartels, and there is no one here better qualified to explain the position of his Government than he himself. He has enlightened me very considerably. Now, before calling upon other delegates I have a point of procedure that I would like to raise. We have not got the simultaneous translation system here and therefore that means that we shall have to have successive translations which means occasionally very great loss of time. We are not prepared to refuse a translation from French into English, but as I think that quite a number here of the French-speaking delegates also know English, I am wondering whether they are prepared to renounce the right to have everything interpreted. That does not mean, of course, that these interpretations will not be made, but only that we do not have every single thing that is said in English translated into French, and even that will be done if there is a special request for this. Some interventions that are made in English will of course have to be translated into French, because there are occasionally things that are not absolutely clear; but these translations will not be made unless there is a special request for them. As far as the interpreters are concerned, the work will be the same and they will have to prepare interpretations of them and they can always be called upon to make them. Then another point is that there may be some doubt here about speeches. Some of you may be prepared to make a statement now and some of you may not be so prepared on the exact position of your Governments. In that case some Delegates may prefer to postpone their contributions to the debate until tomorrow. Subject to these remarks, I will now call upon the Delegate of Australia.

MR LECUYER (France) (Interpretation): Mr Chairman, I would be very glad to have certain technical, legal and economic questions translated, because

I myself could not follow a debate on those subjects. Therefore, perhaps delegates would be willing to limit what they have to say to the absolute minimum.

THE CHAIRMAN (Interpretation): I quite agree that translations should be made in such cases, but with regard to interventions it would be very difficult not to allow delegates to say all that they consider is important and necessary, and I am quite sure that no one will abuse this permission. If there are no further observations to be made, I will call on the delegate of Australia.

MR FLETCHER (Australia): Mr Chairman, I am afraid that, speaking for Australia, there is not much that I could usefully say on this topic at this stage. The activities of cartels and private business associations of that kind form a subject which has neither called for nor received much active attention - particularly sustained active attention - by Departments of Government within Australia in recent years. For this reason such information as we have concerning the restrictive practices followed by the cartels and somewhat similar associations operating within Australia, and their effects, rests mainly on hearsay rather than upon facts elicited by objective investigations. Largely on that account, we feel some hesitation, especially at this early stage, in the Committee's discussions, in either passing judgment on particular practices listed in the American Draft Charter or in lending support to particular proposals. I ought to say that for the present we are in much doubt as to the practical implications of particular proposals and the proposals as a whole. The fact that they cover a very wide field and variety of private business arrangements makes any assessment of the practical implications of the proposed rules very difficult. Article 34 of the United States Draft Charter enumerates many different types of business arrangements which shall be presumed to have the effect of frustrating the purpose of the organization to promote expansion of production and trade. It seems to us that this enumeration has the effect of extending our deliberations into a very much wider field than we usually have in mind when we speak of international

cartels. For instance, I imagine that few agreements or understandings exist between any two business people in which they do not agree to do one or more of the things specified in the second paragraph of Article 34. I am also inclined to think that we shall find these arrangements are very widespread and frequently have at least something to be said in their favour. Because of this belief, we favour a cautious approach, at least initially, with perhaps a bolder approach when an international organization has been developed to handle the subject and has acquired some first-hand experience out of its handling of particular complaints. It seems to us that if we attempt too much at once there is a danger of establishing a vast international organization which would be forced to decide cases on stereotyped lines, and that we should be expecting a lot if we expected infallibility in these remote control recommendations. It may be of interest to mention that Australian experience has been that the framing of laws directed towards the suppression of particular kinds of business practices is one thing. It is a much more difficult thing to establish that, in balance, a particular practice is harmful in all circumstances. Since 1906 a law for the repression of destructive monopolies and combines has been in existence in Australia. Under this law it is an offence for any person to combine with another person in restraint of trade or commerce, or with intent to restrain trade or commerce, or to do any of a number of other things. Between 1908 and 1913 a series of prosecutions occurred under the law, but these prosecutions were all unsuccessful. It is true that limitations on the law-making powers of the Federal Government were partly responsible for the negative results. The lack of success cannot be attributed entirely to those constitutional limitations. It might reasonably be said that the failures were, for the most part, equally attributable to the difficulties in the way of proving public detriment of an unreasonable character. I note that, among the practices which shall be presumed to have the effect of frustrating the purpose of the organization to promote expansion of production and trade, our American friends include

combinations, agreements or other arrangements which allocate or divide any territorial markets or field of business activity.

I know of many instances in my own country where young manufacturing enterprises have made agreements with older and well-established manufacturing enterprises in other countries under which the infant Australian enterprise, in return for a payment or a consideration of some kind, receives technical assistance or enjoys the right to employ processes developed, or to be developed, by the more experienced manufacturing enterprise in the overseas country. Most of these private arrangements or agreements stipulate that the Australian enterprise shall confine its sales to a restricted field - usually the local markets or even some smaller area. On the whole, we feel that private agreements of this kind have contributed much towards the development and maintenance of technical efficiency in industry within Australia. Actually the Government or its officials have frequently advised persons setting out to manufacture particular goods in Australia for the first time that it may, in the interests of securing the efficient production of these goods, be advisable for them to enter into a private arrangement with an experienced oversea manufacturer of similar goods, instead of relying on their own more limited technical experience. We rather fear that a Charter which included provisions which purport to see wrong in all agreements providing for territorial limitations would tend to discourage corporations both at home and abroad from concluding such arrangements in future. If that were the result we should, in the light of our actual experience over many years, feel that the particular provision or provisions in the Charter were contributing to defeat one of the Charter's principal objectives, namely, the objective of encouraging and assisting the industrial and general economic development of member countries, particularly of those still in the early stages of industrial development.

I might refer briefly to another Australian experience to illustrate that a practice which in general may be deemed to be

undesirable may, in certain circumstances, be considered worthy of our blessing. As originally drawn, the Australian Act for the repression of monopolies and combinations acting in restraint of trade made it an offence for a person - person A - to refuse, either absolutely or except upon disadvantageous conditions, to sell or supply to person B any goods or services for the reason that person B deals with person C. The Australian Government subsequently found that this provision in thelaw stood in the way of Australian shippers of our principal export products making the regular shipment of those products on the basis of periodical sailings and at reduced rates. This arrangement contemplated that the shippers, for their part, should ship the products in question exclusively in the vessels of the particular shipping lines with which the agreement was made, and that the shipowners should, for their part, have the right to refuse the reduced rates to those shippers who merely made a convenience of the general arrangement and shipped only by the conference line only when it suited them.

The shipping arrangements in question were considered so desirable in the general interest that they were actually sponsored by the Government. The Government also assisted in the negotiation of the arrangement. However, the terms of the arrangement were such that the shipowners needed to be in a position where they could lawfully refuse the same advantageous terms to persons who did not ship the particular products exclusively in the vessels of the particular shipowners who became parties to the agreement. The Australian Government considered that the provisions were such as to warrant an amendment of the original law to place shipowners in a position where they could lawfully discriminate against those shippers who did not ship the particular products exclusively in the vessels of the shipowning companies which provided the regular sailings. Our view at the moment is that the American proposals as they stand would carry us much further into the field of supervision and suppression than may be necessary or even desirable. At the same time, I admit we have had comparatively little

experience in the field of cartels and private business agreements. We hope later, as a result of the discussions which take place around this table on the detailed provisions in the American or other proposals, to be in a position to indicate to what extent we might lend support to the line of approach contemplated in the American document or revised proposals that may develop from the Committee's discussion and consideration of the subject.

(Owing to the above speech being only in manuscript it was impossible to translate it into French immediately after its delivery. It was agreed that it should be translated later and copies circulated to the Committee)

MR DU PARC (Belgium) (Interpretation): In view of the very great importance of this question of cartels for Luxemburg, I would ask that the Delegate of Luxemburg speak first and then I will make some additional observations.

MR BASTIAN (Luxemburg) (Interpretation): International industrial agreements of a private nature, provided that they fulfil certain conditions, the first one of which should be the absence of anything of a hidden character and the second the possibility of governments controlling their activities, are likely to be of great service in reducing crises, in protecting isolated producers, and also they would be in the interests of small nations. If they are carried out satisfactorily they represent an element of security because they realise and divide adaptation between supply and demand and stability relative to price of production. Secondly they affect in a satisfactory way the labour question. In this way they represent a factor in social peace. Relative stability of production does not mean that this is done by artificial restrictions or by Malthusian economy and economic measures. It does not mean either stagnation or stoppage of technical progress. If international agreements were multiplied between the two wars it was because they responded to a real demand. Whatever they were and whatever they are, they cannot be confused with trusts and they do not change anything here. Contrary to international agreement,

How?

a trust is a well known enterprise which is carried out by absorption or by agreement and which hands over to one sole body its complete administration from the commercial and the industrial point of view, either in suppressing entirely the constituent parts of the central society or by setting up a society which, according to its discretion, helps on the common good and shares the results. According to a pre-established rule, the union which is carried out within this trust is permanent and it is complete. The word "cartel" itself is unsatisfactory and inadequate. Between a simple "gentlemen's agreement" and a trust there is a whole series of intermediary organizations which exist of which cartels form only one fraction. International agreements can be defined as movements having for their object the co-operation of the industrial enterprises of various countries with a view to the setting up of a better organization of production and of markets and the suppression of certain overhead charges, together with the hunt for new markets, the regulating of currency and of competition and the development of technical progress. Is that object compatible with the aims that the International Conference on Trade and Employment is following? We believe, on the other hand, that it can contribute very greatly and satisfactorily to the carrying out of these objects. A group of interests such as, for instance, an international agreement, can itself quite clearly take on aggressive forms such as an attempt to dominate the markets and in this way to suppress the small producers and exploit the consumers. There are quite a number of abuses which have to be avoided. We have to consider that the following practices should be condemned: the reduction, which is economically unjustifiable, of supply to a level which is incompatible with the normal needs of consumption; the raising of prices to exaggerated heights; the boycotting of producers or of consumers; and, in particular, unfair machinations which tend to prevent access to the sources of supply: unjustifiable discrimination not only against certain producers but also against certain consumers in particular when this discrimination refers to prices and conditions of sale, and when

it sets aside those which result from the normal usages of commerce; the seizing hold of technical inventions, of natural resources or other processes which tend to prevent exploitation. Good agreements if care is taken do not fall into any of these excesses. We have seen that they only look to the advancement of the interests of private people or of the generality which might result in unregulated competition and ruination brought about by economic crises and the effects of international disorder. Agreements which tend along these lines to increase production or to improve the quality of production and which lead to the harmonious development and the placing on markets of manufactured goods together with collaboration between consumers, are those that are desired. We must not forget that the progress of science and the considerable development of mechanisation are carried to an extradordinary length, very often quite out of proportion with the absorption capacity of the market and the possibilities of producers. This development in mechanization has led to a reduction in cost price and to the growing importance of definite prices which have resulted in far more sensitive variations in the degree of activity. They need, if not a market which is working at full blast, at least a pace which is sufficiently regular to be maintained in order to result in a good percentage of capacity. The interdependence of the various branches of activity has become such that a stoppage of industry would immediately lead to a whole chain of troubles and to stoppages in allied branches and in other industries such as transport. This of course has a serious influence on economic and social planning. Nations which live through all their international markets and which have only got a small home market are exceedingly sensitive to crises which attack their markets and which attack the markets of big products in the commercial world. They suffer much more ~~in~~ from this break in competition and its normal consequences than they do generally from reduced customs tariffs of a fiscal nature and which are not protectionist. Their wish to-day is that nothing should be included that can attenuate the effects of the crises and they hope

consequently that a close economic collaboration between the nations will take place between the industrialists of those nations and also between producers and consumers.

I now come on to a survey of a certain number of characteristics of these agreements, the conditions that they offer and the drawbacks which very often accompany them. First of all, the form. The form that these international agreements can take is very varied and very numerous. The most important agreements are not always those whose legal aspects seem to be the most marked. The question of form is perhaps not most important; and whether an agreement be based on simple articles of association or on a private signature or whether it take the form of a co-operative society or limited company, that does not alter the agreement itself very much. What is more important is that it should not come in any clandestine way; and just as an agreement translates itself by certain effects on the market, it could, in an international organization which carries on real international co-operation to be found in these agreements, occasionally put into force adequate measures.

With reference to the aims of these agreements, amongst the main forms of sound industrial agreements we might mention those that aim at (1) adapting supply to demand, (2) limiting the extension of price fluctuations, (3) ensuring technical progress, (4) the exchange of results obtained from scientific research, and (5) favour the consumption, and consequently the production, of goods according to a system of propaganda which has been well organized. Furthermore, experience has proved that agreements which are well regulated have allowed Governments to avoid the setting up of protectionist measures or of weakening or even of suppressing protection that existed for certain regions. As a matter of fact, the negotiations which have been carried on directly between the professional people who have a deep knowledge of the market are generally more easy than between Governments. The history of the international steel agreement gives us numerous examples.

The settlement, for instance, of Franco-German difficulties, the problem of imports, the reduction of customs duties in Great Britain, the agreement with the Union of South Africa and the suppression by this latter country of the anti-dumping duties, an ideal to which we tend, and which of course is the suppression in any case or the lowering of the customs barriers and of arbitrary quotas; the conclusion of an international agreement amongst producers, traders and consumers - all these things suggest other means by which this objective can be obtained, and in any case they do facilitate it.

Now, let us turn to the question of technical progress: it has often been said that agreements check it or hold it up. That is not the case; the contrary is rather the case; and if countries have suffered from obligations which have been taken on too lightly by producers who live in their territories, we cannot, on that account, say that the agreements are to blame for that. The agreements of the International Steel Association, for instance, do not prevent the development of plant in countries that were signatories of that agreement or which were bound by similar conventions. Whether it was a question of big or small producers there was never any appeal at all made to a jurisdiction which in order to be perfectly protected had inserted a clause in these conventions; and the quotas were not absolutely unchangeable. On various occasions they were altered in order to take into account the changes that had taken place in the structure of the groups that belong to this Association. One of the most marked conditions of this concrete agreement is precisely the fact that the formula is so flexible; all reservations can be made and all guarantees of security clauses can be inserted in the agreement itself. Each Government, in particular, has to take the necessary measures in order to prevent nationals from signing obligations which might be harmful to the general interest. But there is no question at all but that the certainty of obtaining regular benefits has favoured very much more productive investments, that is to say, technical progress. These agreements facilitated the process by

which joint experiments that would have been far too expensive in new processes and in the finding of new markets have been carried out. The control of production or of exports, the sharing of markets and agreements concerning prices: should these be considered restrictive and should they be condemned? As soon as they attempt to remedy excesses in competition and not to prevent sound competition, and as soon as they try to maintain a reasonable structure of prices which do not mean ruination, or the entire suppression of markets on the part of producers who are interested, then these agreements can only do good.

Economic liberalism is a factor which makes for progress, but we must not forget that all excesses are harmful. It does not realise the adaptation of supply to demand, except in an imperfect way and always, as it were, in a lagging way and by sudden jumps. No country can accept a situation where its economy or its exports are ruined by prolongation of crises or commercial struggles, which bring good to no-one. If evolution is to take place, then it is much better for it to take place progressively. It must not be carried out by continual struggling and perhaps excluding the possibility of agreements between producers for the rationalization of production. These agreements are a means of ensuring to everyone a reasonable share in the profits of international commerce. It does not completely suppress competition, nor even selection, and experience has shown that if these international agreements are well carried out, then in periods of crisis they represent a very precious element in the recovery of commerce, and in periods of boom they act as a tolerating factor.

A study of profits and prices for production or other purposes which have in the past been the object of agreements shows that the variations either way have not been entirely suppressed, but merely attenuated. We would take as an example the experience of 1931-32, which was a time when prices dropped to a ridiculously low degree and were lower than cost, and we would like to know what these prices would have been in 1938 if there had not been an international agreement. The demand of the export markets at that time fell lower than in 1931-32; it represented less than 40% of what it had been before the 1929 prices. Had we had a regime of absolute freedom at that time it would have led to the ruin of quite a number of producers and others and

other serious social difficulties, such, for instance, as the dismissal of large numbers of workmen. Prices in the home market would have been affected and nobody would have gained; it would merely have aggravated the whole world economy. The agreement, which acted as a curb on the rise during the boom of 1937, tried to follow the same moderating policy and the same wise policy when prices were falling, and tried thus to limit the evil, and we can say that it was successful. An agreement which would be effective for raising prices artificially would be harmful and must be condemned, although any exaggeration along these lines would lead to reactions which would neutralise these tendencies, either by the fact that substitute products were put forward, or for other reasons. Moreover, on account of the enormous incidence of fixed prices in modern industry producers generally prefer to sell a relatively high tonnage at low prices, rather than a small tonnage at high prices.

The main aim of the Conference is to bring about in all the member countries social security by stability of occupation and stability of labour and the wages given to that labour. This presupposes, of course, a certain stability of production, the absence of sudden changes, the attenuation of periodical crises of over-production or under-consumption. We are convinced that such agreements can play a very important social part, but it is desirable, in order that their action should be efficacious, that their duration should not be limited merely to the periods of acute crisis.

With regard to the relations between international agreements and governments, those agreements, if they are well regulated, can be a very important factor towards carrying out economic and social progress. In order to gain this end it is

absolutely necessary that their activity be known by the governments, and controlled by them. A certain number of countries do at present regulate the activities of such agreements, and others are preparing to follow them along those lines. Luxembourg - a democratic country, not only by desire, but also by tradition - is of opinion that these agreements should be submitted to a certain control, which, while respecting the rights of the various members, will safeguard the interests of consumers and workers. To this end it believes it is necessary that the statutes underlying these agreements, whatever their mode of constitution may be, should be deposited with the governments, and that periodical reports of their activities should be submitted to the governments. On the other hand, Luxembourg is of opinion that the governments should have the necessary national legislation in order to be able to prevent and suppress abuses, whenever necessary, by means of the agreements.

THE CHAIRMAN (Interpretation): The Chair thanks the delegate of Luxembourg for his statement, and calls on the delegate of Belgium to speak.

MR. Du PARC (Belgium) (Interpretation): Mr. Chairman, we entirely share the views which have been expressed in the draft Charter regarding the aims which are to be attained with regard to employment and international trade, and we think, too, that those aims comprise a maximum of employment and the maximum of revenue attainable. We believe also that the development of close economic relations between the nations will facilitate its realisation. We think, however, that agreements which refer to prices or tend to regulate production, when they consider exclusively the ordering or regulating of industry do not in general oppose the definite aims of the

Charter. It is certain that the policy which is carried out by these agreements can have unfortunate consequences, but there are far more cases where this policy has had salutary effects on economic activity and effects which have contributed to the carrying out of the aims towards international co-operation to which the authors of the Charter on International Trade and Employment are looking.

In order to prevent the action of these agreements following undesirable lines it would suffice to arrange for a control which is both national and international to watch over the interests of the people in general. The origin of many agreements of which we have had experience in Belgium is linked up with a very difficult situation in which at a certain time the enterprises of a certain industry found themselves placed. The elaboration of agreements corresponded then to reactions, tending to defend one's self or to adapt certain data which existed, and they were not based on a desire to obtain any exaggerated profits.

Furthermore, it appeared, based on experience, that these reactions of defence were very much more useful towards the general policy of tending to reduce economic fluctuations than the reverse, because in quite a large number of cases they favoured progressive development of consumption alongside production.

We could mention from this point of view the various agreements which fell under the International Steel Agreement; such, for instance, as the agreements concerning coke, cement, nitrogen, copper, tin, etc. Their development showed none of the defects with which as a rule these forms of organization are reproached. Thus, nearly all the agreements aimed at setting aside such drawbacks as the exaggerated capacity of production, and nobody

has ever claimed that they are responsible for any kind of penury. Indeed, statistics prove the contrary, because taking the average from 1925 to 1929 as being 100, they show that world production between 1929, at the time when there was general freedom of trade, and 1937, rose as follows: for copper, from 120 to 142; for zinc, from 109 to 114; for tin, from 117 to 126; and for aluminium, from 124 to 224. With regard to nitrogen, thanks to careful propaganda the consumption by agriculture rose from 1,670,000 tons in 1928-29 to 2,244,000 tons in 1936-37. The same factors hold good for cement. Here I will give the example of Belgium, where an agreement has been in existence since 1935, and the consumption of cement per head of population rose from 227 kilos in 1929 to 239 in 1937 and 252 in 1938, after having fallen to 191 in 1932.

Turning now to prices, statistical research has shown that not only for the rise, but also for the fall, fluctuations of prices fixed by agreement are less marked than price fluctuations of products which are subject to free competition.

All the agreements that we have mentioned so far work under central bodies which have special offices for research work and for increasing the quality of products, for increasing their utility, and also services which study the structure of the markets in order to organize production on the very best basis and get the various enterprises to function as though they were one body. Such agreements have made it possible to get more marked specialization, and at the same time favour an increase of productivity and a reduction of cost prices.

These few examples which I have given show that agreements, if they are well regulated and ordered, can have very satisfactory results. They favour stability and progressive development of production; they keep up the level of employment and wages.

We must not forget, however, that on the other hand agreements

can also give rise to deviations and to abuses. In order to meet this peril it is desirable that legislative provisions be enacted in the various countries so that the public authorities may have the wherewithal to parry these abuses which might perhaps take place in this regime of economic power. These measures should be extended, furthermore, to all abuses that any person or body might perhaps be able to create in order to get a dominating economic power. In Belgium a draft law has been tabled which includes preventive measures and measures for suppression. The preventive measures are four in number. First, they prescribe the sending in in writing of all contracts which have been taken over by the parties to any national agreement which aims at establishing a joint economic regulation, when those who sign this agreement together represent a preponderating influence in some specially regulated branch of industry. Secondly, they impose on every national agreement which is of major importance for the economy of the country the obligation of communicating to the Administration copies of all the documents on which the agreement is based. Thirdly, they impose on any national enterprise which takes part in an agreement the obligation to notify its participation to the Administration. Fourthly, this legislation authorizes the Administration to make it compulsory to have rules which have been adopted by the majority of the members. That is to say, those who are concerned must first of all give proof that the agreement which they wish to see extended and made obligatory has been adopted by a clear majority, and that the agreement is in accordance with the general interest.

With regard to measures aiming at suppression and which are provided by the legislation which has been drafted, these

refer to abuses of economic power.

The most important condition at the base of any international action is that each country shall have the necessary legislation in order to meet such abuse of economic power. Furthermore, in order that such action shall be efficacious it is desirable that such legislation should correspond to identical conceptions and ideas.

THE CHAIRMAN: I thank the delegate of Belgium, and I call on the delegate of Brazil.

MR. RODRIGUES (Brazil) (Interpretation): Mr. Chairman, the restrictive business practices which have as their aim the dominating of outlets and of markets and the warping of the normal process of price formation have been dealt with for some time by the ordinary legislation which safeguards the popular economic regime. The Brazilian Constitution attaches very great importance to this legal principle, which was approved by our Article 148 on the 18th September last, and which has set up a constitutional provision which states that the law will suppress the abuse of economic power, whatever its form, including groups of individual enterprises or social groups of any kind which attempt to dominate the national markets, to eliminate competition or to arbitrarily increase their profits. On the other hand, it is certain that nations which, like Brazil, are now in the act of developing themselves economically, have very good reason, which need not be mentioned here, for fearing the pernicious effects of these practices on their economies, and that is why Brazil is in principle in agreement with the proposals put forward by the United States. Brazil itself has had the honour of submitting suggestions for Article 38, Section (n) of a document which has been submitted to this Committee. It will

thus be seen that for Brazil the adoption of these principles that appear in this international Charter will be most effective on the international plane and in accord with the legal provisions that are at present in force in Brazil.

The Brazilian delegation would like to reserve to itself the right to come back to this subject later on, and of submitting modifications if necessary to the proposals that have been put forward.

THE CHAIRMAN (Interpretation): I thank the delegate of Brazil for his statement, and I call on the delegate of Canada.

MR. F.A. McGREGOR (Canada): Mr. Chairman, the representatives of Canada welcome very warmly the opportunity of discussing with other nations ways and means of dealing with the problem of restrictive business practices in international trade. Expansion of international trade and employment is the positive aim of the conference and all its committees, and removal of barriers is a necessary means to that end. In Committees II and IV interest is focussed on the removal or reduction of restrictions imposed by governments. The task of this Committee is to deal with restrictions imposed, not by governments, but by private business enterprises.

Many of the private restrictions are in form and effect similar to those imposed by governments. Private international combinations can act, sometimes more effectively than individual governments, in prohibiting or limiting exports or imports; they can and do sometimes impose quantitative restrictions, just as governments can and sometimes do, and take over control of prices of certain commodities, make extensions of the protection afforded by state-granted patent rights. In these and other ways they

can to some extent displace national laws by private laws of their own making.

The effects of such private restrictions can thus be as far-reaching as the effects of public restrictions. But they are imposed by private interests and presumably are designed to serve private interests. They are not imposed, and usually are not authorized, by any public authority acting in the interests of the general public affected by them.

It is not suggested that all the restrictions imposed by private international combinations affect injuriously the country subject to the restrictions. It is surely obvious, however, that such private power to impose restrictions, some of which may be injurious, should be subject to some effective control. At present there appears to be no adequate control, either indirectly through competition or directly by government action, to prevent undesirable effects. Clearly competition within cartelized industries is not doing the job; nor can the competition of substitute commodities be depended upon, because too often the substitutes are controlled by the same authority directly or through agreements with others. Nor is potential competition a sufficient deterrent, since there are too many ways of rendering potential competition impotent. It is equally clear that action by the government of any one country is usually inadequate to safeguard the interests of its citizens against injury by powerful groups operating outside its jurisdiction.

We in Canada feel strongly that where private industry sets up such unreasonable barriers to a reasonably free interchange of goods, governments, individually and collectively, should do something about it. We assume that the governments represented in this Committee will be sympathetic to a policy of joint action to curb private business practices which produce such interfering effects. It is our hope that this

Committee, in considering private barriers to trade expansion, will be as successful as the other Committees in devising measures which will assist in achieving the common objective. We shall concentrate on the private barriers. "Clearly" (as the U.S.-U.K. proposals expressed it so neatly) "if trade is to increase as a result of the lightening of government restrictions, the governments concerned must make sure that it is not restrained by private combinations."

Probably it will be difficult to discuss this subject in this Committee without resorting frequently to use of the word "cartel", a word which, as one English writer has put it, "is no longer an economic term but an epithet of opprobrium." If we cannot avoid its use, perhaps we can agree to think of the word "cartel" as merely a shorthand synonym for the rather unwieldy but more accurate phrase "private international unduly restrictive business practices". Even the constant repetition of the official description, "restrictive business practices", might add unnecessarily to the length of our discussions.

Our Canadian attitude might be expressed in a word as definitely opposed to private international agreements that are unduly restrictive. Our emphasis is on the word "unduly". That is the effect of our Canadian legislation, the Combines Investigation Act and Section 498 of the Criminal Code. It was designed, of course, to deal with domestic combinations and monopolies, in a day when we knew less about international cartels than we do now. Not that we know a great deal about them yet, but we are learning.

It was because of the desire of our government to learn more about international cartels, because of its awareness of some of their detrimental effects, that an inquiry was made, a year or so ago, to find out what they are, how they work, how they affect the Canadian economy, and what legislative or other

steps might be necessary to safeguard the Canadian public. The results of our study are contained in a report, "Canada and International Cartels", which was completed in October, 1945. If members of the Committee would be interested in seeing the report, we have a few copies available in English and French. It is not by any means an exhaustive study. We merely presented, by way of illustration, a few instances of the way in which Canada was affected by private international agreements, made some comment on them, and submitted several recommendations.

In referring to this Report in Parliament in July last, the Rt. Hon. Mr. St. Laurent, Minister of Justice, said:

> "This report was requested for the purpose of ascertaining what the situation was. It was tabled for the purpose of permitting Parliament and the public to realize that there were abuses which required intervention."

Mr. St. Laurent stated also:

> "It is the intention of the Government to recommend to Parliament substantial implementing of the recommendations of this report."

That intention has already been carried out. One of the recommendations, which obviously could not be implemented immediately, was the taking of "effective measures of international collaboration to check the abuses of cartelization". More specifically the report recommended that the Government of Canada give its support to the establishment of an international office to deal with cartels, in connection with the Economic and Social Council. The recommendation concluded:

> "The establishment of an international office to further negotiations among nations and to assist in the establishment of accepted principles for the control of cartels through discussion and compromise would seem to be one of the essential first steps in dealing with the international cartel problem."

If other nations were to make such an inquiry as we made, they might be shocked, as we were, to discover the extent to which the course of trade in certain commodities has been

influenced by decisions of private business interests outside the country. We had known little or nothing about the existence of many of the agreements, much less their terms. They were private agreements, many of them exceedingly private. Much of the information we secured appeared to corroborate what the American authorities had found in their much more extensive inquiries. Some of the agreements we examined stated baldly that Canada, or rather the Canadian market for certain goods which we must import, belonged to this or that foreign producer. The decision has been made for us, by outsiders, what kinds and qualities of goods we should get, in what quantities, and at what price. Tariff reductions, to induce other suppliers to come in, could be of no effect because they had agreed to stay out of our market. In turn they were assigned to other areas in which they were granted a monopoly, not a grant by the State, but by their associates in the cartel. Although such a monopoly would be offensive to our laws, we could not take the case to the courts because the agreements were not made in Canada, or by Canadians, or by persons domiciled in Canada.

Similarly, some of our manufacturers have not been free to export certain goods to other markets because of agreements which confined them to the Canadian market. We might suggest that other nations suffered through inability to buy these excellent Canadian products, just as we suffered from our inability to sell them freely in the export market. These are only two examples of private international business practices which we would regard as unduly restrictive. There are many other types. We need the help of other nations, just as you may need ours, to remove such barriers to a desirable expansion of international trade. It is our hope that the nations here represented will undertake to do their utmost to prevent such practices. It is our conviction, as Canadian public servants, that Canada will do its utmost in such a joint endeavour. Canada may be freer than some, of course, to give such an undertaking because we feel that we have been more sinned against than sinning. The international cartel cannot be thought of certainly as a typically Canadian product. We think of it rather as an imported product, but one which perhaps should be put on our prohibited list. If, however, Canadian firms should be found by the Organization to be parties to private international agreements which unduly restrict international trade, other nations can rely on it that Canada will do its utmost to implement the terms of any intergovernmental agreement to restrain such restraints. May I add a footnote to our use of the terms "unduly restrictive"? We realise, as you all will, the enormous difficulty of administering such a general provision; the difficulty, but not the impossibility, of proving that any course of conduct is undue or unreasonable; the difficulty, but again not the impossibility, of securing anything like uniformity of interpretation by even a majority of the countries in the Organization. One country or one group of countries may consider as eminently reasonable an arrangement which is profitable to them, but others may regard the same arrangement as highly obnoxious because they suffer from it. In proposing such a test of unreasonableness instead of a series of

specific prohibitions, we fully realize that some reprehensible restrictive agreements would escape condemnation which would unquestionably be condemned if the offences were spelled out in more exact terms. It may be that the Organization would have to start off by condemning only such agreements as are unduly undue or unreasonably unreasonable. Even if that were so, we suggest that too rigid a formula would defeat its own purposes, might well be unenforceable because of its rigidity (you might say because it was unduly restrictive). It would probably condemn practices which technically came within the definition but which actually were not injurious to the trade of any country. It might also, to use the words of a very learned judge, "by particularization defeat its purposes by providing loopholes for escape."

In suggesting this approach we have an uneasy suspicion that some who do not share our general attitude towards cartels might consider that a Daniel had come to judgment and had pleaded their cause. I need not remind you of the ultimate triumph of justice which restrained the Venetian capitalist from getting more than was coming to him. Our thought is that by building up a kind of international case law in this field, one important case after another, we shall gradually achieve a reasonably clear-cut definition of what all agreed should be prohibited. We should then have a body of law that would be enforceable because it would have the substantial backing of international public opinion. In the long run, of course, everything will depend upon the fairness and firmness and commonsense which is used in the administration of such an international convention. It would be strange indeed if representatives of seventeen different countries did not come to this conference with widely divergent attitudes toward the international cartel. Personally, I have been more impressed thus far by the degree of unanimity that is apparent than by our differences. I have found no one here yet who thinks cartels should be completely annihilated, and none who would go to the other extreme of lauding them as unmixed blessings. We all recognize that some of them can do and have done things that are thoroughly reprehensible

and should not be permitted to recur. We all recognize too the contributions some of them have made to scientific research and the stabilization of their industries, although some would question the value of too much stabilization. For ourselves, we do not favour the method of striking a balance by adding up their virtues in one column and their vices in another, and then pronouncing them either virtuous on the whole and therefore unblamable, or on balance vicious and therefore thoroughly damnable. It is their improperly restrictive practices we want to get at, and wethink that by joint effort of governments such practices can be got at, and eliminated.

We may have more differences of opinion on how to go about eliminating undesirable practices; but even on this point I question if we shall find ourselves in the end very far apart. We would not favour, for example, a programme of more registration of cartels and their agreements, fearing that such a measure would amount to little more than a licensing of their activities, a kind of government acquiescence without adequate knowledge of what was being done under the licence. There are other objections to such a course, but that is a subject for more detailed consideration in our subsequent meetings.

What I have tried to do in this statement is to indicate Canada's general attitude. It is an attitude of lively interest in the problem, a desire for more light with warm appreciation of the light and leading wehave already had from other countries, genuine agreement with the objectives as they have been outlined, and enthusiastic support of measures which will assist in achieving those objectives. We are not in sympathy with what is sometimes referred to as "industrial self-government" where that means government of an industry by the industry for the industry. That is not our idea of democratic self-government because it does not include representation of all the parties affected. We think that any international convention that may be agreed upon should provide adequite measures for examination of alleged offences and adequate measures fof redress where offences have been proved. Equally, we favour other positive preventive measures designed to curb the acquisition and

exercise of power by strong private international groups where there are clear indications that such power is likely to be used to frustrate the objectives of the Organization. If we are not all agreed that absolute power always corrupts absolutely, surely we can agree at least that "the power to do ill deeds oft makes ill deeds done."

I hope we have made it clear that ours is not an attitude of apathy or lukewarmness. We can be as cool as the coolest toward any policy of government interference where no harm is being done and no harm is likely to be done. At the other extreme we can be quite cold toward any proposal to do nothing about it or to make only futile gestures in dealing with the problem. But Canada will give warm and wholehearted support, we feel confident, to any policy which concentrates on the abuses of cartelization and which represents an earnest effort to prevent practices of international combinations or monopolies which are unduly or unreasonably restrictive.

THE CHAIRMAN (interpretation): The Chairman says that he would like to thank Mr McGregor very warmly for his statement. In that statement he referred to an enquiry carried out under his direction on behalf of the Canadian Government some time ago, and the Chairman is quite sure that you all know of this very remarkable report which gives the findings of that enquiry. He read it some months back and is glad to find that a number of facts and qualities contained in that report are again in the statement put before us today.

It is now ten minutes to six and the Chairman considers it is time to think about the conclusion of this meeting. Before adjourning, the Secretary will make a communication.

THE SECRETARY (Mr Korican): There have been a few changes in the delegations to this Committee, and I would invite all delegations to send me a list of their delegates, alternates and advisors on this Committee, giving also their affiliation in their domestic position, and I will then make up a complete list of the Committee to circulate among all the delegations. As a wish has been expressed to me that such a list should be available, I will make it from your notes. There have been today a few unfortunate occurrences owing to the system of translation. I will try tomorrow to get the use of the large conference room with the simultaneous interpretation system. I am not quite sure whether I can promise that, but in any case I can promise that there will not be such lapses again. As regards the speech on the part of the Delegate for Australia, we shall circulate it as a working paper, as a secretariat paper, in its French version.

THE CHAIRMAN (interpretation): The Chairman states that further statements will be heard tomorrow at 11 o'clock, which is the time scheduled for our meeting. At 11.30 there is a meeting of the Heads of Delegations and the Chairmen of Committees. Our Chairman will have to attend that meeting, of course, and our Vice-Chairman, Mr Gonzalez, who is Head of the Chilean Delegation, will also have to attend that meeting. That means that our Chairman and Vice-Chairman will have to leave the meeting then and it will have to adjourn. If we have the advantage of the simultaneous interpreting

system, we shall probably be able to hear two statements, and then in the afternoon we shall be able to finish with this statement.

MR McGREGOR (Canada): Would it be possible to consider a meeting at an earlier hour tomorrow, say 10.20 or even 10 o'clock?

THE CHAIRMAN (interpretation): I think that it will be rather difficult for some delegations to meet before 11 o'clock, but I would propose that as the French Delegation can be here at 10.30, if it suits the majority of the Delegations and the Secretariat has no objections of a practical nature to make, we should meet at 10.30 tomorrow. That would leave us an hour for our meeting in the morning.

THE SECRETARY (Mr Korican): I think that we will be able to arrange a meeting for 10.30 tomorrow morning. The place of the meeting will be found in the Journal, also the hour of the meeting, but I think I can promise now that we shall start at 10.30.

THE CHAIRMAN (interpretation): Are there any further observations or questions? If there are none, then we will adjourn.

(The meeting adjourned at 6 p.m.)