UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL.

PRELIMINARY COMMITTEE
of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report
of the
THIRD MEETING
of the
STAFF TRADING SUB-COMMITTEE
of
COMMITTEE II
held at
Church House, Westminster, S.W.1

on
Monday, 11th November, 1946
at
10.30 a.m.

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

(From the Shorthand Notes of
W.B. GURNEY, SONS & FUNNELL,
58, Victoria Street,
Westminster, S.W.1.)
THE CHAIRMAN: Although the Czechoslovak Delegation is not represented we had better start. We have in front of us a draft report of the Rapporteur's, which gives a preliminary notion of the course to be adopted in regard to a couple of the points raised, and goes on, as in an appendix, with a redraft of Article 26. What procedure would the committee prefer? That we should first of all ask the Rapporteur to give any such preliminary explanation as he wishes on any part of his prefatory passage and then go on to discuss the redraft of Article 26 in detail? Would that be regarded as suitable? If nobody has any alternative suggestion I will ask the Rapporteur to say anything he wishes to say by way of supplementing the first four pages of this document.

THE RAPPORTEUR: The purpose has been to note as many of the general and specific points of agreement or comment as were made in the sessions of the sub-committee. With respect to item A (2) on the first page, it might be said that subsequently the Czechoslovak Delegate submitted an explanatory note which unfortunately we were unable to get into this report in its present state. That explains the reasons for the Czechoslovak amendment which was suggested. Item A (3) is a matter of general agreement that something in the nature of Articles 26 and 27 be retained. Item A (4), I think, is self-explanatory. The points with respect to Article 26 might require some comment. The redraft, it will be noted, attempts to meet with the suggestions under B(2) and B(3). No alteration has been made to allow for anything in connection with Articles 8 and 9 with respect to the purchase of commodities by a government department which are not for re-sale. We are prepared to discuss that point a little further. It is felt that there is no particular attempt here with respect to national treatment, which is the idea of Article 9, and this is meant to be a counterpart of Article 8 in terms of m.f.n. treatment. The point raised in connection with B(6) is one of general applicability not only to sections dealing with quantitative
restrictions but also to other sections of the draft charter, and we felt that at the present time, when the charter is subjected to considerable scrutiny on the part of various committees from various points of view, the matter of consistency is one that might be left to the Interim Drafting Committee to see that appropriate cross-references and relationships are established, as between those provisions of the draft charter and other provisions. That seems to us a general problem which will have to be coped with in due time. We thought that group would be the one most suitable for that purpose. The question raised with respect to the third sentence of Article 26, section 1, was that that third sentence might be omitted because it would seem to establish a more inequitable burden on state enterprises as compared with private enterprises, and we have set forth here some reasons which we feel are applicable as considerations directed towards keeping the third sentence which is under discussion. That is to be found over on the fourth page, particularly item B there at the top. I think that is fairly self-explanatory. The matter, of course, is subject to discussion.

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

THE RAPPORTEUR (Mr Armstrong): We made a small alteration in the phraseology - a matter of style. The original starts off, "If any member establishes". We thought we might put it more positively, "Any member establishing", and so on. That alteration is self-explanatory and we think it is in accord with the suggestions made at the previous meetings. The change in paragraph 2 has been made in accordance with the suggestions at the
previous meetings. The item which would appear particularly subject to discussion is the third sentence of paragraph 1.

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

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

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

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

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

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

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

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

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

"Nothing in this Article shall preclude the application by a state
trading enterprise of discriminatory practices, provided such practices are in conformity with other Articles or other sections of the Charter."

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

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

HAWKINS (USA): Yes.

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

HAWKINS (USA): Yes.

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

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

CHAIRMAN: Yes.

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

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

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

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

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

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

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

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

MR. JOHNSEN: Preference of the nature you suggest.

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

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

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

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

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

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

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

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

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

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

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

MR. JOHNSEN: I should imagine the easiest way would be to state it along comprehensive lines, so that you catch in everything.
MR. HANKINS: You mean by that, I take it, that the preference in state purchases should be preference to a degree not greater than the preference which would be accorded to private enterprise operations, given the margin of the tariff permissible.

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

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

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

THE CHAIRMAN: We still have to have our discussion on that. The quota questions were left to a small group to discuss, and I do not think the small group has so far met. It is a little difficult to see just how to deal with that until the group has met and discussed it in a preliminary way. On the other hand, we have already a definite point here which is capable of being dealt with as regards the preference margins corresponding to preference tariffs.
MR. JOHNSON: Then you have quantitative regulations in regard to the balance of payments, and any discrimination that might be required either during the transitional period or subsequently for particular purposes. That must be covered. I think that must be provided for in this article. There should be a link between the two provisions. There may be other provisions in the Charter as well which require to be linked up, and that is why I think it would be preferable to make any provision here general, rather than to refer to certain things.

MR. HAWKINS: How general would you make it?

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

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

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

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

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

THE CHAIRMAN: Thank you for mentioning that point. We have now in Articles 8 and 9 a modified version which I think makes an exception for procurement by governmental agencies of supplies for governmental use and not for resale. I am not sure whether I have quoted it textually accurately. I think that is how the revision of Article 9 runs, and there is a cross reference introduced into Article 8 which brings the same exception into it.
MR. TUNG (China): Has that been done in the Procedure Committee?

THE CHAIRMAN: Yes.

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

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

THE REPORTER: I believe so.

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

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

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

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

THE CHAIRMAN: Maybe not; it is a question of drafting as to whether we should actually repeat the exception here.
MR. TUNG (China): We might perhaps introduce in the second sentence of Article 25, beginning "To this end such enterprise shall,..." some such phrase as "with the exception of Government purchases for public use". If not a cross-reference will satisfy me.

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

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

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

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

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

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

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

Then the sentence beginning "The principle underlying this paragraph ..."
down to the end of the sentence is omitted.

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

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

THE RAPPORTEUR: Yes.

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

MR. JOHNSEN (New Zealand): There again I think this raises the question of linking them up with other Articles of the Charter. The best way to do that is by some comprehensive provision rather than a specific reference to any particular Article.
MR. HAWKINS (United States): The question seems to me to be this: as things now stand, we have dropped any obligation whatsoever regarding purchases for Government use. That is dropped out. There is no provision which limits in any way purchasing for Government use. The question now is whether to carry that exception over into Article 26? I think the Article as redrafted does not contain that exception; in other words, it would cover ——

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Shall we leave the question there, then, for the time being?

Has anybody any other point that he wishes to raise on Article 26, including the redrafted text in the Rapporteur's report?

MR TUNG (China): Do I understand that "state enterprise" in the first sentence of Article 26 merely means those state enterprises dealing with trading, or whether it also includes manufacturing businesses, because the words "or produces" here would seem to cover manufacturing businesses.
THE CHAIRMAN: I think the answer to that is Yes — is it not? It does cover manufacturing as well as trading.

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

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

MR HAWKINS (USA): Foreign purchases and sales.

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

MR HAWKINS (USA): No.

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

MR HAWKINS (USA): No.

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

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

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

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

MR TUNG (China): Does this also imply that a loan should be fairly and equitably distributed among other nations?
MR HAWKINS (USA): Yes, subject to any limitations that there might be on
the loan. That is a question we had up at the full Committee and there
I suggested that there would be no violation on the part of the buying
country if the loan was limited in its use to purchases from particular
sources. Anything that comes in there is on the part of the lending
country.

MR TUNG (China): If you omitted the words "or produces" what would be
the effect on the whole of this Article?

MR JOHNSEN (New Zealand): I cannot see the relationship of the words "or
produces" to the rest of the sentence.

MR TUNG (China): Yes; what we want to control are purchases and sales.

MR HAWKINS (USA): Yes; it might not affect it; but the purpose of it is
to cover cases in which there is a monopoly of production which involves;
or may involve, purchases from abroad, and in that case the obligation
on the State producer is to avoid discrimination in its purchases abroad
among foreign suppliers.

MR JOHNSEN (New Zealand): I think it would apply even with the words
"or produces" out.

THE CHAIRMAN: It is difficult to imagine any case in which you would have
a State-run industry which never bought anything from abroad. Take
coal-mining: even there you are bound to buy your pit-props from abroad;
and it is a little hard to see that the addition of these words "or
produces" is really achieving anything.

MR JOHNSEN (New Zealand): If you look at it in relation to the second
part of that sentence it makes it appear even less necessary.

MR TUNG (China): Yes.

THE CHAIRMAN: Yes; if a nationalized manufacturing enterprise does not buy
anything abroad, then the Article simply remains inapplicable.

MR JOHNSEN (New Zealand): Yes.

MR TUNG (China): Yes; it is unnecessary.

MR HAWKINS (USA): The first part is descriptive of the kinds of State enter-
prises that you are talking about. The second part is the obligation on

those state enterprises as defined with respect to foreign purchases, if any.

MR TUNG (China): I think the best definition of a State enterprise is that given in paragraph 2, and I think that is enough.

MR HAWKINS (USA): The purpose of the second paragraph is not to cover the kind of activity; it is intended to cover the degree of governmental control. That is the purpose of that second paragraph.

MR TUNG (China): Yes. I think we should deal only with State-trading enterprises. The whole of the section is dealing with State trading.

MR HAWKINS (USA): Yes; but the point is that a State monopoly for the production of a particular product may - and is likely also - to be a trader to the extent that he buys from abroad. It is intended to cover that kind of case. It has nothing whatever to do with what the producing organization does in the field of production; it relates only to its foreign purchases.

MR TUNG (China): What I am afraid of is that activities in production would also be involved in this application of the principle of equitable commercial considerations; but as a matter of fact we want only to control purchases and sales, not production. We do not want to interfere with any production.

MR HAWKINS (USA): No, there is no intention here to do that. It is only to the extent that a producing agency buys abroad; that is the whole purpose of it.

THE CHAIRMAN: I must confess that I find it hard to see how these words really introduce anything fresh into the Article. It seems to me rather that if your state enterprise purchases or sells any product, then the Article will apply in any case; but if, on the other hand, it does not purchase or sell products then the Article will not apply; so that, on the face of it, I would be rather inclined to think that the suggestion of the Chinese delegate is correct, and that we could have a considerable simplification of the wording without losing any of the substance. I may of course be wrong in that.
MR JOHNSEN (NEW ZEALAND): That would be my view also; and if you look at it in relation to Article 8 (and this is intended to bring State trading into line with Article 8) it refers only to importation and exportation.

THE CHAIRMAN: It is I think conceivable that you might have some kind of state enterprises which were not really even commercial but which might buy some things - I suppose missionary societies, for example - and in that case it is difficult to see, even so, that the issue is affected by these words.

MR HAWKINS (USA): I think there might be something in it from the point of view of drafting. As I understand it, there is no objection here to our requiring a state producing agency which does buy from abroad would give fair and equitable treatment among foreign suppliers. There is no objection I take it in substance; but it is a question of whether the words referred to are necessary. Off-hand, I am inclined to think that they are not and that you could drop them without much loss, because it is referring to any agency which imports, exports, and so on.

MR JOHNSEN (New Zealand): Yes. I think they could be dropped without destroying the sense at all.

THE CHAIRMAN: Without affecting the substance?

MR JOHNSEN (New Zealand): Yes.

THE CHAIRMAN: May we ask the Rapporteur to consider that point further?

MR HAWKINS (USA): I think, off-hand, that it would be all right to drop those words.

MR JOHNSEN (New Zealand): There is another question that arises and that is in relation to the second part of that sentence, "or any Member granting exclusive or special privileges, formally or in effect, to any enterprise," and so on, "shall accord to the commerce of each of the other Members treatment" and so forth. Now one can contemplate a Member granting an exclusive right to some private organization to import, in which case the Member could not really grant most-favoured-nation treatment.

MR HAWKINS (USA): Paragraph 2 is intended to cover that.

MR JOHNSEN (New Zealand): It would all depend—

MR HAWKINS (USA): — on the degree of control.
MR. JOHNSEN (New Zealand): Looking at that in relation to the previous sentence, what is really intended I think is that the member granting such inclusive or special privileges shall arrange for most-favoured-nation treatment to be accorded in respect of imports, exports, etc.

MR. HA/JKINS (United States): If the member has effective control. It is the member that has the obligation to use the control in such a way as to conform with the Article.

THE CHAIRMAN: I am not quite sure whether a difficulty arises from the change in wording which has been made here. Originally that sentence in the Article was in the passive and not in the active. I think as a result of that the fact that the member itself would not directly accord treatment which was in fact accorded by an enterprise which had been set up is, so to speak, covered. Is not that so? The original wording was: "If any Member establishes or maintains a state enterprise...

From the drafting point of view I think that does get over the difficulty to which the New Zealand Delegate has just called attention.

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

THE RAPPORTEUR: It is easy to put it back to the original while substituting for "non-discriminatory treatment, as compared with the treatment", "treatment no less favourable than that."

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

THE CHAIRMAN: Are there any other points on Article 26? If nobody has any further points on Article 26 we might now turn to Article 27 so far as it is dealt with in the portion of the Rapporteur's report which we
have before us. May I ask for any comments on Article 27.

MR. JOHNSEN (New Zealand): Is there any suggestion at this stage of setting out a new draft of Article 27?

THE RAPPORTEUR: In that connection may I say that it was my understanding that the sub-committee had not proceeded sufficiently far with Article 27 to warrant an attempt to produce a new draft yet. The purpose of the observation set down in the report is to record points mentioned, questions raised and alterations agreed to in general, without attempting to go any further, because it was felt that the whole matter was subject to further discussion at this meeting.

THE CHAIRMAN: In that case perhaps the best plan might be to go through the numbered paragraphs on page four of the draft report which we have before us and take them one by one. Firstly,

"1) The Sub-Committee on Procedure is understood to have agreed that Article 27 should be amended by the addition of the words 'and preference' after the word 'tariffs' at the end of line 5."

Are there any further comments on that point? I think we have dealt with a point akin to it in the case of making exception under Article 26 to the equality of treatment rule from preferential margins in so far as they may remain after negotiation. Apart from that, has anybody any point on paragraph 1? Then follows:

"2) It was agreed that a modification of Article 27 would be made to allow for restrictions of imports which are connected with price control or rationing, whereby the satisfaction of full domestic demand would be precluded."

Are there any further comments to make upon that?

MR. JOHNSEN (New Zealand): It is a matter of drafting something there.

THE RAPPORTEUR: It is a matter of drafting. We have not yet decided just how to put it.

THE CHAIRMAN: "3) It was agreed that there should be appropriate cross-references to other pertinent portions of the Charter."
I think we have already discussed that on Article 26.

"4) It was agreed to insert the words 'upon request' in line 4 of sentence 1, following the word 'member.'"

MR. JOHNSEN (New Zealand): I think there we suggested we should add a little more than that — "upon request of any member having an interest in trading in the produce concerned." I think you want to indicate what type of member should have the right of making a request.

MR. HAWKINS (United States): It should be parallel language to Article 18.

MR. JOHNSEN (New Zealand): I think that would be as well.

MR. HAWKINS (United States): You would put exactly the same language in.

THE CHAIRMAN: "5) It was agreed that 'landed price' should be substituted for 'price at which a product is offered for sale' in (a) of this Article."

I think that is a question which is closed, at any rate at this stage.

"6) A question has been raised of including profit as a factor to be considered in connection with the negotiation of the margin. This is subject to further discussion."

I had the impression that as a matter of principle it was agreed that profit was a reasonable element to include. There was the question how, if you said "reasonable profit" the reasonableness would be determined, whether it would be a matter for the I.T.O. to settle or whether it should be a matter for negotiation — or whether, indeed, it might not be both. You might have negotiation about it, or, alternatively, you might have reference to the I.T.C. in some case in which it was considered that a monopoly was charging an unreasonable profit. Apart from that I thought we had agreed (had not we?) that reasonable profit was a reasonable thing to include.

MR. HAWKINS (United States): I think the only question was how to handle it. I think that is agreed to. My own view was that is the sort of thing which inevitably would come up in the negotiating process when you are trying to determine that margin.
MR. JOHNSEN (New Zealand): At this stage it was purely a matter of indicating to the Organization what factor should be included when considering the margin.

THE RAPPORTEUR: I did not attempt to elaborate that because of the rather extensive discussion which took place regarding it, and because there was some difference on the phrasing as it now is in the draft — whether after "due allowance" you insert words to make it read "due allowance for profit", or whether you want to take into consideration the profit and other factors involved. "Due allowance" would imply — to me at least — that you would say so much for profit, so much for tax, and so much for this, that and the other thing; whereas consideration would involve looking at this as a factor.

I felt it was not quite clear from the discussion how that ought to be left.

THE CHAIRMAN: It is rather a question of how the negotiations on a margin would go. It might go in one of two ways. You might be discussing something which corresponded to a protective tariff or an overall margin, which would include all the different elements of distributive costs. If you were negotiating on the second point you would have to set down, I take it, certain figures or percentages which might be regarded to cover the distributive costs and it would, so to speak, be agreed in the negotiations whether those figures were to be regarded as reasonable or not. I should have thought myself that as a practical matter that would be very difficult, and that a negotiation which covered that element which corresponds to tariffs is about as much as one could contemplate as a practical matter. I may be wrong about that. If it was a question of negotiating a reasonable profit does it follow that a reasonable profit at one time would be reasonable at another? The cost of borrowing money, rates of interest and so on vary from time to time, and for that reason it may that what would be a reasonable rate of profit for state enterprise to make at one time would not be reasonable at another. It is a little difficult to contemplate a negotiation which, as it were, freezes the rate of profit.
MR. JOHNSEN (New Zealand): You would really negotiate about the margin over total cost and the total cost would include all factors - including duty distribution of charges, or any other factor.

THE CHAIRMAN: In that you have to bring up, not exactly what your trading account is but something like it to satisfy the other parties as to what is a reasonable distributive cost and so on. It is asking rather much, is not it?

MR. JOHNSEN (New Zealand): If you are going to get down to facts it is the only basis on which you could determine it.

THE CHAIRMAN: Suppose you have it laid down in principle that your margins are to cover - so far as they are not corresponding to protective tariffs - the actual cost and a reasonable profit, if there is some recourse on what is reasonable you do not need to go into all these factors in the negotiations. You could confine yourself to negotiating something which corresponds to a customs tariff rate. Is that not so?

MR. JOHNSEN (New Zealand): I do not think we could introduce customs tariffs into this at all. After all, that is a fixed factor.

THE CHAIRMAN: But that is bound to be one of the elements of negotiation, is not it?

MR. JOHNSEN (New Zealand): I understand this Article to cover the situation after these tariff negotiations are completed. This relates purely to the procedure under which a state trading monopoly operates in importing and selling goods. The object is to ensure that the state trading monopoly - which for some reason or other might not wish to negotiate the importation of goods, in the minds of other interested members - should not so increase the price of the commodity that it restricts the quantity that might be sold or imported. Is not that the case, Mr. Hawkins? I understood that was the essence of this particular Article. If that is not the case I cannot see much use for it.

THE CHAIRMAN: I think that was our conception. We had felt that some of the elements in this margin would not be determined by negotiation. They
would be rather on the basis of matters of fact, in a sense, on which there could be an appeal to the I.T.O. You would say distributive costs are to be covered and it would follow there that they must be real costs - and, if necessary, must be justified to the Organization as representing real costs. I agree that the profit margin does rather complicate the question what is a reasonable profit margin.

There again I think our feeling was that that might be determined by recourse to the Organization, and if it was felt in a particular case that the profit being charged was unreasonable you would then be left to negotiate just what corresponds to a tariff. It does not follow it would be merely and actually a tariff which you would negotiate in any given case because it is conceivable that a state trading organization might not pay duty. It is rather a question of bookkeeping and procedure, as it were, whether it actually pays something which is called a customs duty. You want to make sure that whatever corresponds to customs duty shall be negotiable.

MR. JOHNSON (New Zealand): The position as I understood it was that it would be any margin over the total cost, inclusive of all factors.

THE CHAIRMAN: I agree that the way in which it is worded here does seem to imply you negotiate for the total margin and the negotiating parties review the elements of distributive costs. However, I am wondering whether that is not very difficult as a practical matter of procedure, and whether you have not got to cover some of this by general principles such as saying that the costs must be real costs - must not exceed the real costs. That would simply the negotiations a great deal. As regards the profit margin, it does seem to me a little difficult to try to freeze that for a long period. What is reasonable at one time may not be reasonable at another.

MR. JOHNSON (New Zealand): I suggest the easiest way to cover the situation is to provide merely for the margin over total cost.
THE CHAIRMAN: In that case you would bring in the reasonable element of profit.

MR. JOHNSEN (New Zealand): That is included in the margin over total cost.

THE CHAIRMAN: Yes, and you include the profit in the total cost.

MR. JOHNSEN (New Zealand): No, the profit would be in the margin. It would not be included in the total cost.

MR. HAWKINS (United States): That would mean a separate negotiation.

MR. JOHNSEN (New Zealand): That is if any member was so disposed as to want to have a look at it.

MR. HAWKINS (United States): That was my conception, because profit is a variable thing, as Mr. Shackle pointed out.

THE CHAIRMAN: Really as regards reasonable profit you would have, as it were, two recourses. First of all you could negotiate it; and secondly, if you did not negotiate it you could, if you wished, appeal to the Organization.

MR. JOHNSEN (New Zealand): You said "landed costs" previously. I think, "may exceed the total cost of the product."

THE CHAIRMAN: Are we agreed upon the general idea underlying that, that the distributive costs element and the other costs element should not themselves be subject to the negotiation? That what is subject to negotiation is what corresponds to tariff plus possibly the reasonable profit. If we agree that is the right way to have it I think it will mean some change in the drafting of this sentence.

MR. JOHNSEN (New Zealand): I think so, but I suggest we omit all reference to tariffs, otherwise you just complicate the issue.
I should think that most governments would not be in a position to negotiate on the tariff after they had made trade agreements.

THE CHAIRMAN: No, except that in a particular case, of course, you may have a state trading organisation already operating and not paying duties at the time when you negotiate. If that is the situation you then have to negotiate something which corresponds to the tariff which would have been charged under private trade. Is not that so?

MR JOHNSEN (New Zealand): Yes. There again I think that factor would be taken into consideration in arriving at the total cost.

THE CHAIRMAN: There is one point about "reasonable profit". I think I must rather reserve for the purchasing departments of the United Kingdom their position, as I do not know their views on the question of negotiating on the rate of profit. I think it is possible they may see difficulties. They might tend to say it should be a matter which could be taken to the I.T.O. but that it was not a proper subject of negotiation. I do not know that they will say it, but it is possible that they may, and to that extent I would like to hold the position open and not be taken as committing them.

MR TUNG (China): Suppose a state enterprise puts out a certain amount of funds each year to ensure against possible loss which it might incur in the following years, would you call that a cost or could you include that in the profit? I think that should be considered as cost.

THE CHAIRMAN: It should certainly come in one or other of those two heads, should it not?

MR TUNG (China): It is quite possible for a state enterprise to lose money, and it often is the case. If they put it aside as a kind of insurance against future losses it should be counted as cost and not be brought into negotiation.

What is your view on that, Mr Hawkins?

MR HAWKINS (U.S.A.): I think you need to examine the point rather carefully, otherwise it would be possible for prices to be fixed so high as to build up a huge reserve beyond any possibility of being absorbed by future losses.

But, on the principle as you have stated it, a charge to take account of future losses, I should think that could properly be regarded as a cost. That is literally what it is. It is not profits in the sense that shareholders would get a profit. It is merely to prevent a deficit. I think from an
accounting point of view you could regard that as a proper element of cost, because there is always a danger, as you can see, of building up a reserve which is much larger than is necessary for the purpose and ultimately declaring an extra dividend - the sort of thing that some private corporations have been known to do. We are not, of course, talking about that; we are talking about a reserve genuinely for the purpose of preventing a deficit in future years.

MR JOHNSEN (New Zealand): Would not that be a case of providing in the margin or making some provision in it to cover contingencies? It is really not a cost; I think it would have to be regarded as included in the margin between cost and selling price.

THE CHAIRMAN: If we are trying to work all the way through this on the analogy of what a private enterprise would it, does it not fall within the profit rather than the cost? One assumes the profit which a private trading concern makes is sufficient to cover possible losses - at least, it is out of its profits that ultimately the possible losses have got to be recouped. Is not that so? So that notionally it should be rather out of the profits than the cost, should it not?

MR JOHNSEN (New Zealand): What normally represents the cost is the margin between the two.

MR HAWKINS (USA): The purpose is to ensure this "reasonable profit" over a period of years. I think that is right.

MR JOHNSEN (New Zealand): That would be a matter the subject of discussion with any member particularly interested and who wanted to raise it.

THE CHAIRMAN: Yes; perhaps we can leave it there for the moment.

MR TUNG (China): Shall we discuss it again?

THE CHAIRMAN: I think we shall probably need some re-drafting of this passage, shall we not, if we really accept the idea that the cost elements are not to be actually within the negotiation but are to be governed by a general principle such as that they must correspond to real costs. I am not sure whether we have agreed to that or not, but I have the feeling that if we do not it is going to be a very complicated negotiation. I would like to ask for further views on that point. Do we contemplate that the figures to be inserted in the margin for distributive costs are to be negotiated about?
MR JOHNSEN (New Zealand): I do not think they are subject to negotiation; I think they would come under review should any member raise a question regarding the margin, which is taken as profit over and above actual cost. If he had any information which suggested that too much allowance was being made for distribution of costs or anything like that he would be entitled to raise it.

THE CHAIRMAN: I have a feeling that the way in which the sentence is now worded, to the effect that a member "shall enter into negotiations" with regard to "the maximum margin by which the price for an imported product exceeds the landed price, "after due allowance in either case for internal taxes and for transportation, distribution and other expenses", implies that the actual figures to be put in for the internal taxes and transportation and other expenses would all come into negotiation. I may be wrong about that, though. I should have thought it rather desirable to have something there which made it clear that they are not in the negotiation, and if they are not in, perhaps one may have to say something more to the effect that distribution and other expenses shall be the actual expenses. Shall we just ask the Rapporteur if he would consider that point further?

MR JOHNSEN (New Zealand): I would suggest that the position is covered if you say "by which the price of an imported product charged by the monopoly in the home market may exceed the total cost thereof to the monopoly after due allowance is made for internal taxes" or those other items mentioned here; and you could if you wanted to make some provision for a "reasonable margin of profit". Personally, I am inclined to think it is not necessary, because that is covered in the margin between total cost and selling price. You could make a reference to duty when you were enumerating the other cost factors if you wished to do so. I think that could be spelt out pretty clearly there without much trouble. Perhaps if we got together with the Rapporteur, as in the case of Article 26, we might be able to arrive at something.

THE CHAIRMAN: Perhaps we may leave it in that position. Now, that has taken in paragraph 6, and that brings us to paragraph 7. I think there is a typing...
error in the second line, where "working average" should read "moving average". I do not think there is anything more to say on that, is there? It does not affect the text of what we write in here in any case - the text of the Article. Paragraph 8. Is there any further point to discuss on that?

MR TUNG (China): What do we mean by supplies being available? I would like some further explanation there.

THE CHAIRMAN: I think all this rather turns on what is written into the other provisions of the charter. One might assume possibly that there would be provisions elsewhere in the charter sufficient to cover cases, shall we say, of exceptional shortage of supplies which made it impossible for you to export or at least to meet the full external demand. It is a problem which would arise on quantitative restrictions and export restrictions as well as on state trading; so the question perhaps rather is whether we should leave it to be discussed on the Articles on particularly quantitative restrictions or whether we should attempt to cover it separately here.
MR. HAWKINS (US): I understood the reason for including it was the point made by someone here that you could not make the obligation to supply the full domestic demand absolute, because it might be impossible. Therefore, this phrase was suggested simply to recognise that point in principle. That is about all that is needed. You hardly need to spell it out in detail as long as that obligation to supply the full demand is qualified in that respect. I would be willing to accept that as it is.

THE CHAIRMAN: We would insert the words "supplies being available." We have an alternative to that in sentence (3).

MR. HAWKINS: It is a question of rendering the idea.

MR. JOHNSEN: As far as practicable. There might be other reasons. It might not be purely a question of availability. I think the second alternative is preferable.

MR. HAWKINS: That is agreed.

MR. JOHNSEN (New Zealand): If I may revert to paragraph 7, the phrase suggested there would require a little modification now. It talks about account being taken of average prices. "Average margins" would probably require to be substituted there.

THE CHAIRMAN: I think what I had in mind in suggesting the moving average was this, that you would have really two averages. You would have the average of landed price of a product as coming from a particular source. You would have the average of the first-hand selling price in the home market, and you would compare those two average figures in order to verify whether the margin negotiated was being observed. That at least was my conception of how it would work.

MR. JOHNSEN (New Zealand): You would have to take those factors into consideration in order to arrive at the margins that existed in respect of previous transactions. I think it is the margins you are actually making a comparison of.
THE CHAIRMAN: The margin where it is negotiated becomes the fixed thing, as an ad valorem percentage or as an actual money amount. I am not sure how averages would apply to the margin itself.

MR. JOHNSEN (New Zealand): This is something that would have to be settled in the light of experience really. The position, as I see it, is that if any member wishes to raise the question regarding the margin being taken by a state trading monopoly, it would be considered in relation to the margins that had been taken in respect of previous transactions over a period.

THE CHAIRMAN: That is particularly of such things as distributive costs, you mean?

MR. JOHNSEN (New Zealand): The only way in which I could see that they could proceed would be to ask the state trading monopoly to produce some information as to the margins of profit, if you like to call it profit, that had been taken in respect of previous transactions.

THE CHAIRMAN: That does raise again the question of just what one means by the word "margin". As we have used it so far, we have tended to think of it as just the equivalent of what corresponds to the customs duty, the import duty element.

MR. JOHNSEN (New Zealand): I had not visualised that at all. I had visualised it as representing the margin between total costs after allowing for all factors, including duty and the selling price. The others are variable factors - distribution costs, for example.

THE CHAIRMAN: That brings us back to what it is one negotiates about, whether about the distributive costs and the rest of it, or whether one confines oneself either to what corresponds to the duty or to what corresponds to the duty and the reasonable profit. If you assumed that the distributive costs, the taxes and so on are not negotiated about, but are covered by some sort of general formula, it then follows that you are left to negotiate about only what corresponds to duty, and possibly the reasonable profit.
MR. JOHNSEN (New Zealand): There is always the right to negotiate regarding a tariff at any stage any country might raise that issue. If the other country is prepared to negotiate on the tariff, well and good. The position, as I understand it, is that this particular article is intended to cover the margin between the total cost and the selling price so as to ensure that that should not be too great, or so great as to restrict trade unduly.

MR. HAWKINS (USA): The idea was that the margin should be in state trading enterprises equivalent to what the tariff was when the trade was handled by private traders.

MR. JOHNSEN (New Zealand): In most cases, if the goods are for sale, the state trading monopoly pay the same duty as any trade organisation.

MR. HAWKINS (USA): In that case you would negotiate on the duty and the margin would have to be much smaller than it would otherwise be.

MR. JOHNSEN (New Zealand): Would the duty be negotiable at that stage in respect of individual transactions? You cannot alter the tariff to fit in with any particular transaction, unless you cover it by a trade agreement. After all, a country might create a monopoly for one year, or even for less than a year, and then go back to state trading or work the two in conjunction at some stage, in which case this article would not apply at all.

THE CHAIRMAN: I think there are perhaps one or two points one has to bear in mind. One is that it is not necessarily to be assumed always that a state purchasing body will pay duty. In some countries it well may not. In that case you have to provide something which takes the place of the tariff that would have been paid had their been private trading. You may not actually in some cases get the tariff paid by the state purchasing enterprise on importations. It may be, as it were, collected through its accounts.

MR. JOHNSEN (New Zealand): In other words, it would have to make provision in its selling price to recoup itself for the duty
which would otherwise be obtained, and in that case you would get back to the fundamental issue, and that is the amount to be charged over and above the total cost.

THE CHAIRMAN: Is it not still a question of dissecting the margin so that some elements in it need not be negotiated about while others need? If one wants to have practical negotiation, it is desirable to simplify it as far as one can, and if there are certain elements which are generally recognised so that it is not necessary to negotiate about them, you greatly simplify the procedure if you exclude them, and that possibly might lead you to exclude the element of distributive costs.

MR. JOHNSEN (New Zealand): Personally, in practice I cannot see the question of costs of distribution entering into it as a factor.

THE CHAIRMAN: But one has to cover it in that case by some general principle which says that shall correspond to real costs and not be fancy figures.

MR. JOHNSEN (New Zealand): Would not that be a reflection on a state monopoly to suggest that it shall represent the actual?

THE CHAIRMAN: It does in that case come down to a sort of residual part of the margin which you negotiate about. One of those residual parts could be the tariff, and the other might perhaps be the profit, but all the other elements one would have thought it was unnecessary to negotiate about.

MR. JOHNSEN (New Zealand): My own opinion is that there is only one factor that could be considered, if the purpose of this article is to be achieved, and that is the margin between total costs, including all the elements that go to make up the total cost. We should spell those out as representing duty, distribution charges, internal taxation or anything else, and the selling price.

THE CHAIRMAN: I do not think that really there is any difference of substance here. I think everybody is really agreed.
Mr. Hawkins: Yes.

The Chairman: We have discussed paragraph 8, so that that brings us to the end of the Rapporteur's report. Are there any other points we can usefully discuss before we have the next instalment? We have already covered a number of general points. The last time we discussed satisfaction of demand.

The Rapporteur (Mr. Armstrong): I might say that in addition to the comments of the Czechoslovak Delegation, we have just received this morning Mr. Tung's observations on articles 26 and 27, and it will probably be necessary to work in the Czechoslovak and Chinese statements with regard to these matters.

The Chairman: Will that involve going back to articles 26 and re-discussing the text of it.

The Rapporteur (Mr. Armstrong): I do not know that it will involve much discussion. It is primarily a matter of interpretation. A general viewpoint, is it not?

Mr. Tung (China): Yes.

The Chairman: There is one matter raised by the Czechoslovak Delegate at the last meeting. I dare say it is covered in his observations to which the Rapporteur has referred. It had to do with the exclusively commercial state trading enterprises. I took him to mean such purely trading monopolies, and he wished to exclude monopolies whose function was, say, that of collecting internal revenue, and so on. I do not think we can profitably pursue that further in the absence of the Czechoslovak Delegate. Perhaps it may come up next time.

The Rapporteur (Mr. Armstrong): I think we could possibly reformulate and state in the report the points of substance which are raised with regard to Articles 26 and 27.
H.R. SOLOL (Czechoslovakia): I should be glad if this matter could be discussed in the presence of Mr. Auenthaler.

THE CHAIRMAN: I think this brings us to the end of what we can discuss now.

H.R. JOHNSEN (New Zealand): Shall we be able to have copies of the statements submitted by the Chinese Delegate and the Czechoslovak Delegates?

THE RAPPORTEUR (Mr. Armstrong): Yes.

THE CHAIRMAN: As regards the time of our next meeting, I think we must leave that to the Secretariat to arrange, because there is such a press of business before the Conference that it is a little difficult to fit in the meetings.

(The meeting rose at 12.38 p.m.)