1. Requests from the ICC and WFTU for representation.

The CHAIRMAN proposed, that the Secretariat invite the International Chamber of Commerce and the World Federation of Trade Unions to submit in writing their views on questions upon which they wished to consult the Committee. When these views had been received the question could be considered further. This was agreed.

2. General Statements of Members.

MR. WILCOX (United States) explained that the chapter on restrictive business practices in the Charter had been included for the following reasons:

(a) Reducing barriers to international trade and dispensing with government-imposed quotas would be useless if these barriers could still be established by private enterprise. Cartels were sometimes more restrictive in this respect than tariffs or quotas.

(b) Public regulation of the flow of trade was a matter of public policy. Cartels, however, were private arrangements concluded irrespective of the interests of public policy.
(c) Cartels tended to establish prices higher than competitive prices. This meant fewer goods, less consumption and less employment. Monopoly was prejudicial to expanding employment and also hindered business enterprises from meeting new situations. Monopoly also resulted in smaller shares of the fruits of labour going to the producer of materials and the worker.

(d) Cartels put the brake on industrialization of undeveloped areas because:

(i) If agreements existed which set high minimum prices for equipment, this equipment would be more difficult to obtain.

(ii) Past experience had shown that cartels prevented the development of new competitive industries by various processes, e.g. deliberate dumping or boycott.

(iii) Cartel agreements sometimes formed obstacles to obtaining patent rights and technological aids for new industries.

(e) The chapter on cartels was an essential complement to the chapter on commodity arrangements.

He therefore proposed that an international agency be established to consider complaints regarding restrictive business practices and to recommend appropriate action. No action would be taken by this agency until a bona fide complaint was lodged. After the lodging of a complaint a public hearing would ensue, arguments for and against being considered. The agency would then recommend appropriate action. By these means an international code of business conduct sanctioned by public opinion would be built up. He concluded by emphasizing that to be effective this agency must be given definite powers and be regarded seriously.
Mr. FLETCHER (Australia) stated that he was approaching the subject of cartels cautiously as his knowledge of such business practices was based on hearsay rather than objective observations. Article 34 of the suggested charter enumerated many types of business practices presumed to be restrictive. He believed that few enterprises could dispense with some of the arrangements of paragraph 2 of that Article. There was a danger of establishing a supervising agency to make stereotyped decisions. He said that it was difficult to decide that one particular practice was injurious in all cases, illustrating this remark with examples from Australian litigation.

The Australian Government had frequently advised incipient industries to enter into private arrangements with experienced overseas manufacturers with a view to increasing production and efficiency. Were these arrangements to be classed as restrictive and hence suppressed, one of the objectives of the charter — industrial development — would be contravened.

He believed the American proposals would imply a greater supervision and suppression than was necessary, but stated that his attitude, based on little experience of the subject, would take a more definite shape in the light of future discussions.

Mr. BASTIAN (Luxembourg) stated that private international industrial agreements might under given circumstances help to attenuate crises, protect individual producers and the interests of small nations. They could, if properly organized, promote social peace by adapting supply to demand and by stabilizing prices, production and consequently employment.

He found the word "cartel" inadequate and unsatisfactory, because it could only be applied to a limited number of intermediary arrangements between the simple "gentlemen's agreement" and the "trust". International agreements might be defined as arrangements aiming at the co-operation of the industrial and commercial enterprises of various nations with a view to improving production and markets, suppressing certain general costs, seeking new outlets, regularizing rates of exchange and competition and developing technical progress. These aims were surely compatible with the purposes of the proposed International Trade Organization.
He deprecated international agreements which tended to bring about the following:

- An economically unjustified reduction of supply below the normal level of consumption.
- An excessive rise in prices.
- Boycotting producers or consumers, particularly when this tended to restrict access to food supplies.
- Unjustified discrimination against certain producers and/or consumers.
- Monopolizing technical inventions and natural resources.

Agreements were, on the other hand, justifiable when they sought to protect individual interests threatened by unbridled competition, economic crises and international disorder. Such agreements tended to increase production, improve quality, ensure harmonious distribution of manufactures, and even to bring about collaboration with consumers.

He was aware that industrialization had reduced prices. Industries had to be assured of a good regular output. Many industries were so interdependent that stoppage of one immediately involved disturbance in an allied field, thus producing an economic and social crisis.

Nations with small home markets, dependent on international markets, suffered extremely from cut-throat competition and dumping by other nations because the former generally had reduced custom tariffs of a fiscal nature.

He stated that the form which international commercial agreements assumed did not matter provided that these agreements were not of a secret nature. He believed such industrial agreements were permissible if they had the following aims:

1. Synchronizing supply and demand
2. Regularizing price fluctuations
3. Promoting technical progress
Inter-company agreements were frequently more pregnant of results than inter-governmental ones as could be seen from the history of the International Steel agreement. The ideal in view was the suppression, or at least the lowering, of customs barriers.

He denied that cartel agreements hindered technical progress and quoted the operation of the International Steel Agreement in support of his views.

Restrictive business practices were exceedingly valuable when they aimed at obviating cut-throat competition and stabilizing reasonable prices. Such practices did not suppress fair competition. In periods of boom they acted as a tolerating factor whilst in crises they were a means of recovery.

The chief aim of the ITO, namely social security through stable employment and remuneration, presupposed a certain stability of production. He believed that business agreements could play an important part in realizing this aim.

Luxembourg desired that commercial agreements be controlled. He believed that national legislation must provide for the prevention and suppression of abuses arising out of commercial agreements.

Mr. DU PARC (Belgium) supported the views of Mr. BASTIAN (Luxembourg). He also supported the sections of the suggested charter dealing with employment and international trade. He believed far more cases could be quoted to show commercial agreements had had a salutary effect than could be quoted to show the opposite effect. National and international supervision to ensure such agreements were beneficial was necessary.

He believed commercial agreements were primarily defensive rather than aimed at exaggerating prices and generally in the nation’s interest as they tended to stabilize prices, promote increased consumption and production. He quoted from the statistics of steel, coke, cement and other cartels.

He was very conscious of potential abuses in the cartel system and maintained that protective legislation must obtain in each country. In Belgium a draft law providing as follows had been tabled:-
1. Arrangements made in connection with national combines aiming at establishing joint economic regulation must be registered.

2. Every national combine of major importance to the country's economy must submit to the administration copies of the appropriate documents.

3. Every combine or national enterprise participating in an international combine must give notice to the administration of its participation therein.

4. The administration may impose on any industry regulations supported by a majority of that industry.

5. An absolute majority of the industry concerned must be in favour of the combine and it must be in the general interest.

Mr. MONTERO DE BAÇROS FILHO (Brazil) stated that legislative action had been taken in his country to punish restrictive practices and to free competition, in order to safeguard the national economy. Article 148 of the new Brazilian Constitution approved on 18 September last stated:-

"The abuse of economic power will be punished, whatsoever form it may take including trusts or groupings of individual enterprises, which aim to dominate national channels of trade, to eliminate free competition and to arbitrarily increase their own profits."

His country, which was in process of developing economically, had the best of reasons to distrust the effect of these practices on their national economy. Brazil was therefore generally in agreement with the United States proposals, and had put forward some suggestions in connection with Article 38 of the suggested charter for an international trade organization for the consideration of the Committee. The adoption of these principles in the project would bring into the international plane laws which had already been included in the Brazilian Code. He reserved the right to return to the subject and to put forward additions or modifications.
Mr. McGregor (Canada) stated that the business of Committees II and IV was the removal or reduction of restrictions imposed by Governments. The task of Committee III was the removal of restrictions imposed by private business interests. Private international combinations had prohibited or limited exports and imports, and imposed quantitative restrictions in the same manner as Governments.

It was not suggested that all restrictions imposed by private combinations affected injuriously the country subject to these restrictions, but such private power to impose injurious restrictions should be subject to some effective control.

Competition within cartelized industries was inadequate, nor could substitute commodities be depended on. Potential competition was not a sufficient deterrent and Government action to safeguard the interests of the consumer had proved no safeguard against injury by powerful groups operating outside its jurisdiction.

His Government assumed that other Governments represented would be sympathetic to a policy of joint action to curb private restrictive business practice, and it was his Government's sincere hope that in their consideration of private barriers to trade, they would be as successful as the other Committees in devising measures which would achieve the common objective.

He referred to the word "cartel" which one English writer had defined as "no longer an economic term but an epithet of approbrium". If the use of the word "cartel" was to be avoided, he considered more accurate the phrase "private international unduly restrictive business practices". The Canadian attitude was opposed to private international agreements which were unduly restrictive, and emphasis was laid on the word "unduly".
Canadian legislation had been designed to combat private international agreements, when less was known about international cartels than at present. An enquiry had been made a year or two ago to find out their effect on the Canadian economy, and what legislative steps were necessary to safeguard the Canadian public. Results of study would be found in "Canada and International Cartels," a few copies of which were available in English and French for the member of the Committee.

The report recommended that the Government of Canada should give its support to the establishment of an international agency to deal with cartels. This report had shown that some of the agreements examined stated that the Canadian market for certain goods belonged to some foreign producer. Outsiders had decided the kinds and qualities of goods Canada could import and the quantities and prices. Tariff reductions to attract other suppliers would have been ineffective, since these suppliers had agreed to stay out of the Canadian market in return for a monopoly in other areas. Although such a monopoly was offensive to Canadian law, no action could be taken in the courts, as the agreements had been made by foreigners domiciled outside Canada. Similarly, Canadian manufacturers had not been free to export certain goods because of agreements which confined them to the Canadian market.

It was his hope that the nations represented would combine to prevent such practices. He considered the international cartel to be an imported product that should be put on the prohibited list and other nations could rely on Canada to do her utmost to implement the terms of any inter-governmental agreement to restrain such policies.
The difficulty of defining the term "unduly restrictive" lay in securing uniformity of interpretation by even a majority of the countries in the proposed organization. An arrangement which was profitable to one country would be highly obnoxious to another country which suffered from it. The organization would have to avoid too rigid a formula which would defeat its own purposes and would be unenforceable. He thought that by building up a kind of international case law in this field they would gradually achieve a reasonably clear-cut definition of what all agreed should be prohibited. They would then have a body of law that would be enforceable because of the backing of public opinion.

Personally he was impressed by the degree of unanimity apparent among representatives. They all recognized that reprehensible things had been done by cartels; but they recognized no less the contributions they had made to scientific research and the stabilization of industries. It was their aim to attack improperly restrictive practices, and he considered joint efforts could eliminate such practices. His Government would not favour the registration of cartels and agreements, fearing such a measure would amount to licensing their activities.

He defined the attitude of Canada as one of lively interest in the problem with a desire for more light. He thought that any international convention that was agreed should provide adequate measures for examination of alleged offences and adequate measures for redress where offences had been proven. Also he was in favour of other positive preventive measures to restrict the acquisition and exercise of power by private international groups where there were indications that such power would be used to frustrate the objectives of the organization. Canada would give warm and wholehearted support to any policy which concentrated on abuses of cartelization, and which represented an organized effort to prevent practices of international combination or monopolies, which were unduly or unreasonably restrictive.

The Meeting rose at 6.05 p.m.