

INTERNATIONAL TRADE ORGANIZATION

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTIETH CONGRESS

FIRST SESSION

ON

TRADE AGREEMENTS SYSTEM AND

PROPOSED INTERNATIONAL TRADE

ORGANIZATION CHARTER

PART 1

TESTIMONY

MARCH 20, 21, 24, 25, 26, 27, 29, 31, APRIL 1, 2, 3, 1947

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CHARTER OF UNITED NATIONS

Signed at San Francisco,

June 26, 1945

INTERNATIONAL COURT OF JUSTICE

15 Judges, chosen as individuals, each from different country. Decisions by majority vote. Scope: legal disputes referred to it voluntarily or by agreement.

GENERAL ASSEMBLY

51 countries, each with one vote.
Powers: discussion and recommendation.
Decisions by majority voting.

SECURITY COUNCIL

5 Permanent Members: U.S., U.K., USSR, France, China. 6 Non-Permanent Members with 2-yr. terms. Major decisions require unanimous vote of all Permanent Members plus two non-Permanent Members. Scope: matters affecting international peace and security.

ECONOMIC AND SOCIAL COUNCIL

18 countries elected by General Assembly for 3-yr. terms. Decision by majority vote. Scope: all economic and social matters necessary to maintain stability and well-being as a basis for peace; coordination of work of specialized agencies through consultation and recommendation.

SECRETARIAT

TRUSTEESHIP COUNCIL

Not yet established.

Specialized Agencies to be brought into relationship with United Nations.

FOOD AND AGRICULTURE ORGANIZATION

Created Oct. 1945 by 42 countries to make studies and recommendations on world food production, distribution and consumption, including nutrition.

INTERNATIONAL TRADE ORGANIZATION

To be created as a cooperative effort to remove artificial barriers to foreign trade and to expand international trade generally.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Created Dec. 1945 with present membership of 38 countries and subscribed capital of \$7.7 billion. Purpose to make or guarantee long term loans for reconstruction or development of resources of member countries.

INTERNATIONAL MONETARY FUND

Created Dec. 1945 with present membership of 39 countries and subscribed capital of \$7.4 billion. Purpose to promote stable exchange rates and to eliminate uneconomic restrictions on currency transfers.

INTERNATIONAL LABOR OFFICE

Created 1919 for cooperative improvement of world labor conditions.

OTHER SPECIALIZED AGENCIES

World Health Org.:
UN Educational Scientific and Cultural Org.:
International Civil Aviation.

June 1, 1946

INTERNATIONAL TRADE ORGANIZATION

THURSDAY, MARCH 20, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 2:30 p. m., pursuant to notice, in room 310 of the Senate Office Building, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Millikin (chairman), Bushfield, Hawkes, George, Connally, Johnson, and Lucas.

The CHAIRMAN. The hearing will please come to order.

The purpose of this hearing is to inquire into the relationship of the trade agreements system and the proposed International Trade Organization Charter. Congress is already in possession of considerable information as to the trade agreements system, but there seems to be very little information as to the proposed International Trade Organization. Therefore, the emphasis will probably be in the main on the International Trade Organization, although obviously the object of our inquiry requires examination into both.

I should like to say that we have a letter from Senator Vandenberg, chairman of the Foreign Relations Committee, dated March 12, 1947, which I shall read for the record. The letter is addressed to me as chairman of this committee [reading]:

MY DEAR SENATOR MILLIKIN: You have discussed with me from time to time your belief that the proposed Charter of the ITO (the proposed International Trade Organization) should be carefully reviewed ahead of the Geneva Conference so that the State Department may have the advance benefit of congressional suggestions regarding this vitally important matter. I am in complete agreement with you that it is highly advisable to pursue this course. It is a subject which falls particularly within the interest of the Senate Finance Committee. I sincerely hope you will pursue your purpose to have the whole subject matter carefully reviewed at once by your committee.

As chairman of the Foreign Relations Committee (which will have primary jurisdiction when the ITO agreements are completed), I would greatly welcome the advance advice of the Senate Finance Committee; and it should be advantageous to the State Department to know your committee's considered view in advance of the negotiations.

With warm personal regards and best wishes.

Cordially and faithfully,

A. H. VANDENBERG.

Our first witness will be Secretary Clayton.

Mr. Secretary, I assume that you wish to discuss the subject generally, and that later on when you have finished we will discuss the details of the proposed International Trade Organization Charter with Mr. Wilcox.

STATEMENT OF WILLIAM L. CLAYTON, UNDER SECRETARY OF STATE FOR ECONOMIC AFFAIRS

Mr. CLAYTON. Yes, sir; I would like to do that, Mr. Chairman.

Mr. Chairman and members of the committee, I have a short prepared statement which I would like to read for the record, and following that I would be glad to try to answer any questions that might be asked me about this subject.

The CHAIRMAN. I should say that this whole hearing has been called on short notice, with the idea of getting ahead with the business for the purposes stated in Senator Vandenberg's letter, and that will account perhaps for the Secretary's failure to have copies of his remarks and will perhaps account for other materials which will be missing for a few days.

Mr. CLAYTON. The machinery for international economic cooperation has not yet been completed. The International Bank for Reconstruction and Development and the International Monetary Fund which were created at Bretton Woods are ready for business. But the third and perhaps most essential part of the machinery for economic cooperation is the International Trade Organization which is now being created.

The broad purpose of the International Trade Organization is to aid in expanding the volume of international trade which is so essential to the prosperity of this country and other countries. The achievement of this purpose is essential to the successful operation of the Bretton Woods agreements, a fact that was specifically recognized by Congress in the act approving these agreements. Without the Trade Organization, a vital part of the machinery for economic cooperation would be missing.

The charter for an International Trade Organization was formulated by the Preparatory Committee for a World Conference on Trade and Employment, this Committee having been established by the Economic and Social Council of the United Nations. The present draft is the product of the first meeting of the Preparatory Committee held in London in October and November of last year. The Government officials who met at London were experts designated to formulate a draft for consideration by their respective governments and peoples. Neither this Government nor any other government is committed to the draft as it now stands.

The draft charter formulated at London has been widely studied by interested organizations and persons throughout this country. We recently completed hearings in seven cities in order to get the criticisms, suggestions, and views of those who have studied the draft. We have found that the need for an International Trade Organization is widely recognized and approved. We have received a large number of constructive and useful criticisms which we are now studying.

The Congress must eventually determine what part the United States is to play in this critically important field of economic cooperation, and what commitments the United States Government should undertake to this end. I am therefore very glad that the Committee has afforded an opportunity for consultation at this formative stage.

The charter of the International Trade Organization would, broadly speaking, do two things. In the first place, it would lay down the rules to be observed by member countries and set forth their obligations respecting measures affecting their trade with other members. In the second place, it would create an international body to facilitate the operation of these provisions and to promote such further action or agreements as will promote mutually profitable trade.

It is important to realize that we are not creating a superstate to instruct governments on how to conduct their external or internal economic affairs. We are proposing only that this trade body be created as part of the structure of the United Nations to serve as a medium for consultation to facilitate the carrying out of commitments which would be agreed to in advance by the governments concerned and which would be set forth in the articles of agreement that constitute the charter of the organization.

Heretofore nations have acted unilaterally in taking action vitally affecting their economic relations with other countries. When other countries were hurt by such action, as was usually the case, they retaliated and in the end all were hurt and all were mad. The International Trade Organization is to be a forum where such actions can be discussed around the conference table before they are finally taken just as contemplated political and military actions are discussed in other organizations of the United Nations which have been set up for that purpose.

I should now like to comment briefly on the draft of the charter now before you.

The general purposes of the organization are set forth in chapter I. I do not think that many people would find fault with the objectives. Such disagreements as there are relate to the means for attaining these ends.

One possible exception is the stated objective of reducing tariffs and other trade barriers and the elimination of all forms of discriminatory treatment in international commerce. There are, of course, differences of opinion on this subject.

This stated objective, however, reflects the policy laid down in the existing law of the United States. It is the same as that of the Hull trade agreements program as authorized by the Congress in the Trade Agreements Act.

In my opinion, the carrying out of this purpose on a selective, product by product, basis in accordance with the carefully devised procedures developed during 13 years of experience with the Trade Agreements Act, is indispensable to economic recovery in the world and to our own prosperity.

The statement on this subject in the purposes of the organization has, however, no operative effect. The steps for carrying out this purpose are laid down in a later section of the charter to which I shall presently refer.

Chapter II, relating to membership, looks toward world-wide participation in the organization.

Chapter III relates to employment. This chapter gives recognition to the fact that trade may be seriously affected by changes in the level of business activity and employment in important member countries. In recognition of the importance of this fact, members obligate them-

selves to take action designed to achieve and maintain full and productive employment and high and stable levels of effective demand within their own jurisdiction.

The term "full and productive employment" is defined in the report of the preparatory committee as meaning the maintenance of useful employment opportunities for all those able and willing to work. As you know this is the language of our own Employment Act of 1946. Neither the organization nor any member is given any right to dictate what measures a country will take to this end. The obligation of each member is to take measures "appropriate to its political, economic and social institutions." The end in view is exactly the same as that of our own Employment Act of 1946.

I may just add, at this point, Mr. Chairman, that the responsibilities in connection with this chapter relating to employment devolve upon the economic and social council direct instead of the International Trade Organization.

Chapter IV covers the subject of economic development..

This chapter did not appear in the original United States draft which was used as a basis for the discussions in the London meeting. It was added because a number of the underdeveloped countries felt that provisions dealing explicitly with this subject are a necessary and proper part of an International Trade Charter.

The chapter recognizes the importance to all countries of bringing about industrial and general economic development everywhere and in particular in those countries whose resources are as yet relatively underdeveloped.

The chapter provides for relaxation of commitments with respect to tariffs and restrictions on imports, in particular cases, with the approval of exporting countries affected after negotiations with them, and with the permission of the trade organization.

The procedure is such that there cannot be any general and wide-spread application of restrictions on trade to protect industries in underdeveloped countries which have no real prospect of developing and which would only be a burden on consumers and work injury to foreign exporters.

You will understand at once, Mr. Chairman, what is meant by that, that is intended there shall be no encouragement in the way of protection of industries not properly suited to the countries where they are expected to be established. If the industry is not an efficient one, it is not a natural one and cannot, in time, compete without heavy protection. The intention here is that such an industry should not have protection to get established because in the end it would only be a burden on the consumers and on others involved.

Senator HAWKES. May I interrupt to ask who is going to determine whether that industry is one that should be kept alive or not?

Mr. CLAYTON. To begin with, Senator Hawkes, we are dealing primarily with the establishment of new industries in underdeveloped countries. This chapter was inserted on the request of countries that feel that largely in the next few years they should develop their industries, as for example, India, certain South American countries, and other countries that have not developed to any considerable extent.

Senator BUSHFIELD. Do you mean to say, Mr. Secretary, that it has no application to our own United States?

Mr. CLAYTON. Not this particular section; no, sir. It applies particularly to underdeveloped countries. The main obligation in the charter, gentlemen, is to negotiate trade agreements for reduction of tariffs and the elimination of restrictions and discriminations. Nobody can say under this charter, or in this organization, how much or how far tariffs should be reduced. That remains within the province of each individual country. There is an obligation to negotiate.

Senator HAWKES. May I pursue that other question? You did not answer my question. Who is going to determine that an industry should or should not be started in that country?

Mr. CLAYTON. Certainly the International Trade Organization will not determine it.

Senator HAWKES. Well, who will?

Mr. CLAYTON. The people involved, the country and the people who are building the industry. If it is a Government industry, the Government will determine it. If it is private, the private people will determine it.

Senator HAWKES. In other words, if they determine it contrary to the will of the International Trade Organization or suggestions that come from there, then they cannot have any protection; is that right?

Mr. CLAYTON. No, sir; there is no authority here to absolutely deny the protection to them. There are, however, provisions for consultation, examination, and in some cases for negotiation where the protective measures which they might want to take are in conflict with other provisions of the Charter. It is stated here as a general principle, Senator Hawkes, that protection to industries that are not located naturally with respect to the resources of raw materials, labor, markets, and other relevant methods should not be established with protection that is expected to be continued for any length of time. This chapter has to do primarily with the establishment of new industries in underdeveloped countries.

Senator HAWKES. I think I, in general, would agree that industries that have no chance of survival and development should not be started, but my point was, I was trying to find out who was going to tell them whether they can or cannot.

Mr. CLAYTON. That authority is not lodged in any central body; the organization comes in only in case of conflict with other provisions of the charter and then generally to assist in finding a solution to the difficulty.

The CHAIRMAN. That subject will receive a very thorough sifting when we come to the consideration of the details of the charter.

Mr. CLAYTON. I was going to say that Mr. Wilcox can go into that matter. Mr. Wilcox is Director of the Office of International Trade Policy, of the Department of State, and had more to do with the initial draft of this charter and in the handling of the matter at the London Conference in October and November than anybody in the Department of State. He can discuss these details, Senator Hawkes, much more competently than I can.

The CHAIRMAN. I think that there are many matters to be gone into in connection with that charter; at least as far as I am concerned, they will be very thoroughly sifted.

Mr. CLAYTON. In those cases in which there is a sound basis for developing an industry in an underdeveloped country, it seems to me to be in our own interest that steps of one kind or another be taken

to facilitate such development. Of course, as you know, gentlemen, this country has its best trade in the most highly developed countries. England has always been one of our greatest customers, and Canada, a country with only 12,000,000 people, is our greatest single customer today. We all know that considering Canada's size and its population it is highly developed industrially. They bought nearly 1½ billion dollars worth of goods from us last year.

To the extent that the resources of any country are developed, wealth is created in which we and all other countries are bound to share through the processes of trade.

Chapter V on general commercial policy is the core of the charter.

From our standpoint, the most important provisions in chapter V are those relating to quantitative restrictions. The basic provision on this subject is that there shall be no quantitative restrictions on trade, such as quotas, licensing systems, and similar measures of quantitative control.

This provision is of crucial importance for the development of United States and world trade. Quantitative controls are rigid devices which arbitrarily cut off trade and lend themselves to trade diversion and discrimination. They involve a maximum of interference with the operations of private traders by Government officials, who decide what quantities shall be bought and from what sources they shall come. Quantitative controls mean the regimentation of trade.

The abolition of quantitative restrictions will do more to bring about the expansion of our trade and the trade of other countries than any other single step that can be taken in the field of commercial policy.

Senator BUSHFIELD. Mr. Secretary, have we quantitative restrictions now on food products?

Mr. CLAYTON. On imports, you mean?

Senator BUSHFIELD. On exports.

Mr. CLAYTON. I do not think that we have any quantitative restrictions on imports of food. We have a few quantitative restrictions at the present time, but we have never used the system in this country to any considerable extent. It is being used now in foreign countries to a very great extent. They have substituted it largely for tariffs. It is a much more effective way of strangling trade than tariffs.

The CHAIRMAN. The President just yesterday sent us a message urging us to continue export controls on certain items, so the practice to which Senator Bushfield refers is not alien to this country.

Mr. CLAYTON. However, that has to do with the control of exports in times of scarcity, the thing the President has recommended. We are speaking here of quantitative restrictions on imports, to cut down the sales of other countries to the country that is making the restriction.

The CHAIRMAN. The basic principle; is it not the same?

Mr. CLAYTON. The principle is entirely different, Senator Millikin. Quantitative restrictions may be imposed on imports for various reasons. If they are retained for any considerable length of time, it is nearly always for protective reasons. I mean it is to protect home industries. We do not put on restrictions on exports to protect home industries.

The CHAIRMAN. That is precisely what we are doing it for. The President in his message pointed out that we have a great shortage

problem in this country, and that in order to keep a reasonable amount of goods available for our domestic needs, we must necessarily continue export restrictions.

Mr. CLAYTON. Senator Millikin, we are using the word "protection" in a different sense. I am using it in the sense of protecting an industry against competition, and you are using it in the sense of protecting an industry by keeping a sufficient supply of raw material, which is different.

The CHAIRMAN. I accept your distinction, but in the larger sense, both have certain impacts on foreign trade.

Mr. CLAYTON. Yes; they have.

The CHAIRMAN. And in the larger sense, I suggest under your theory, which I am not arguing one way or the other, that an export limitation may be just as detrimental to foreign trade objectives to which you subscribe as an import restriction might be.

Mr. CLAYTON. It is possible that it would be, but the motives surrounding the imposition of it would be entirely different.

The CHAIRMAN. In both cases they would be using the method, loosely speaking, because of "protective motives."

Mr. CLAYTON. However, protective in an entirely different sense in the two cases. We do not object at all, and I do not think anybody can object in a scarcity situation to putting a control on the exportation of steel, say.

If you have not got enough steel in the country to supply the basic industries of the country, and you restrict the export of steel, that is so that your economy may continue to operate at a certain level; but to put on an embargo on the importation of steel, for example, to protect the steel mills of the country is an entirely different purpose, and the latter purpose is the one that we think is very destructive of trade.

The CHAIRMAN. When we come to that part of the charter, we are going into that very thoroughly, but in response to Senator Bushfield's question, it should be stated generally at least, at this point, that we have a number of import quotas ourselves which I assume, in the end, under the progression of this plan, would have to be abolished if the spirit of the plan is met.

Mr. CLAYTON. We have some, Senator Millikin, but we have relatively very few as compared to the rest of the world.

The CHAIRMAN. Well, we have sugar quotas, for example.

Mr. CLAYTON. We have sugar quotas.

The CHAIRMAN. And wool quotas?

Mr. CLAYTON. I did not know that we had any on wool. We have some on cotton, because it is related to an agricultural program, and sugar is of the same character, but we have extremely few import quotas in this country, very few, and they generally have been applied because they were necessary to some other program.

The CHAIRMAN. I do not want to delay you on your presentation, but merely in passing, there is always a similar reason urged for any restriction of that kind by any country which maintains it.

Mr. CLAYTON. Yes. Mr. Wilcox, when he comes on, will explain in detail if you wish him to do so, the handling of this chapter, the provisions in this chapter about quotas. We know that the quotas cannot be suddenly removed. We know that, and that is not contemplated.

There is a general principle set up here, and the plan is to work as fast as may be to attain the time when the quota system may be discontinued.

Under present conditions, quantitative controls are applied throughout most of the world in one form or another and for one reason or another. To get rid of them is a major aim of our foreign policy. I just want to say there that we have to think of this matter from two aspects. I say, one is, we might for certain reasons want to put on import controls, but we have to remember that our export trade last year amounted to about \$10,000,000,000. Of this, commercial exports were \$8,000,000,000 and we have to cope with import controls in all of the countries of the world against that trade. We have to think about that trade and not think only about what import quotas may mean in the way of protection of our domestic industries for the domestic market. We have got to think what import quotas mean in the way of cutting down our exports to all parts of the world, if they are applied in other countries.

It must be recognized, however, that under present conditions, we cannot get rid of all quantitative restrictions at once. The rule against such restrictions must of necessity be qualified by a number of exceptions. It is unfortunate that this must be so, but under present conditions it is necessary.

The most important exception is that which permits countries faced with a shortage of foreign exchange to limit imports to what they can pay for. This exception is necessary because countries which were devastated or whose economies were disrupted by the war are not now, and for some time will not be, in a position to earn, by exports or otherwise, the foreign exchange necessary to pay for all that they would like to import. Imports must, therefore, be rationed. Such countries must for the time being do without imported luxuries and other non-essentials in order that available foreign exchange may be spent on food, raw materials, equipment and other things which they must have to live and to reconstruct their economies. This necessarily requires a strict limitation on the importation of products which they can do without.

The Draft Charter, therefore, includes rather elaborate and complicated provisions on balance of payments matters which parallel provisions in the Monetary Fund Agreement. In essence, their purpose is to permit import restrictions for so long, and only so long, as a country's balance of payments position requires. The provisions in the charter are designed to ensure that these restrictions will come off when they are no longer needed. One of the most important functions of the Trade Organization in consultation with the Monetary Fund will be to keep the situation of each country under review to see that this is done.

I would only add by way of general comment of these provisions that only by the expansion of international trade to the maximum extent of every country's ability to do so can these balance of payments restrictions be gotten rid of. It is only as countries in financial difficulty are able to export and obtain foreign exchange that they will be able to relax the restrictions imposed for balance of payments reasons. The proposed charter not only obligates countries to remove such restrictions as soon as they are able, but provides the means of doing so at a much earlier date than would otherwise be possible.

Without a charter along the lines of the present draft, balance of payments restrictions on imports would tend to create vested interests and would become permanently imbedded for protective reasons.

The CHAIRMAN. Would you mind repeating that?

Mr. CLAYTON. Without a charter along the lines of the present draft, or without the action that is expected to be taken under the charter, balance of payments restrictions on imports would tend to create vested interests, and would become permanently imbedded for protective reasons.

The CHAIRMAN. What you are saying is that either via monetary exchange or via the restrictive devices that you have been suggesting, you can control world trade?

Mr. CLAYTON. That is right.

The CHAIRMAN. You can do it one way or the other?

Mr. CLAYTON. You can kill it almost by those devices, and the point that I am trying to make here, Mr. Chairman, is that there are many countries today which are compelled to put on these restrictions. They simply cannot let their people buy everything they want to buy. They cannot let them buy all of the automobiles and all of the refrigerators and radios they want to buy, because the country may have only enough foreign exchange to pay for the food and the raw materials and the things they must have to live. Therefore, they must put on those restrictions.

However, we look forward to the time when their situation may be such that they can remove those restrictions and let their people have more freedom to purchase, but the trouble is, if you have them there too long and you do not have some arrangement for removing them, they become imbedded in the economy and they will stay there because meantime you have had vested interests built up that want to use them for protective reasons and not for the reason that they were originally proposed.

Senar Lucas. What is that arrangement, Mr. Clayton, for removing those restrictions?

Mr. CLAYTON. Senator Lucas, it is provided here in this International Trade Organization that these quantitative restrictions and import quota systems and so on must be done away with in time.

Senator LUCAS. Does that depend upon the good faith of each government that goes into this International Trade Organization?

Mr. CLAYTON. Of course, in the end, any agreement of any international agreement depends on the good faith of the people who enter into it; but there are certain principles that are stated here, with reference to quantitative restrictions, and certain exceptions that are permitted for certain lengths of time. However, the idea is that they must be removed as soon as possible. And if they are put on for balance of payments reasons, why, obviously, when a country gets in position where it no longer has a balance of payments problem, they should remove them.

Senator LUCAS. If you do not have this kind of an organization, you have no check of any kind, and there is no responsibility upon any nation whatsoever to remove these restrictions if they did not want to?

Mr. CLAYTON. That is right. This is an organization that is supposed to keep watch over matters like that, and call representatives of government in for discussion and consultation and to try to get rid

of these restrictions that sprang up during the war, and many of which still remain, to get rid of them as quick as return to anything like normal conditions will permit.

Senator CONNALLY. Has the organization any power to enforce these where they cannot get agreements?

Mr. CLAYTON. I do not think, Senator Connally, that they have got any real power to force them.

Senator CONNALLY. It is more consultation and persuasion and argument?

Mr. CLAYTON. It is consultation and discussion. There are, perhaps, certain sanctions that can be taken in connection with it, and when Mr. Wilcox gets on the stand, why he will be able to go into those for you in full.

The CHAIRMAN. Mr. Secretary, I believe it should be developed at this point that so far as these monetary controls are concerned, it is the aim of this organization to bring itself into relationship with the Monetary Fund.

Mr. CLAYTON. Absolutely.

The CHAIRMAN. And that the Monetary Fund under its charter does have control over the exchange.

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. And the theory of this organization is that by bringing them together into some sort of liaison, they will not work at cross purposes, and will work harmoniously to achieve the objectives to which you have referred; is that correct?

Mr. CLAYTON. That is correct, exactly. I believe I am correct in saying that it is even contemplated here that all of the members of this organization shall undertake membership in the Monetary Fund or enter into special exchange agreements with the organization if they are not members of the fund.

The CHAIRMAN. There is such a provision?

Mr. CLAYTON. Yes, there is a provision of that kind, and there will be the closest liaison between the ITO and the International Monetary Fund. There would have to be.

Without a charter along the lines of the present draft, the balance of payment restrictions on imports would tend to create vested interests and would become permanently impeded for protective reasons. Our trades would have to face these rigid restrictions on their activities throughout a large part of the world for years to come.

The chapter on commercial policy also provides that member countries shall enter into negotiations looking to the reduction of tariffs and the elimination of preferences.

The procedures to be followed in these negotiations are in accordance with those developed during our long experience in the administration of the Trade Agreements Act. As in the case of previous trade-agreement negotiations under the authority of the Trade Agreements Act, these negotiations will involve no horizontal reductions of all tariffs. Tariff concessions will be considered selectively, on a product-by-product basis, after full examination of the position and needs of the producers concerned.

You will note particularly that the draft contains the so-called escape clause, article 34, under which concessions which cause or threaten serious injury to domestic producers may be withdrawn or modified.

That is a very important provision, Mr. Chairman, of that chapter.

Senator BUSHFIELD. Under what provision is that clause provided?

Mr. CLAYTON. In chapter 5, the commercial policy chapter, it is provided that in all these trade agreements there may be inserted a so-called escape clause by which, if it develops that a concession causes or threatens serious injury to a domestic producer, the country of that producer may notify the other country that that concession is withdrawn or is modified.

Senator BUSHFIELD. That would be determined by the State Department?

Mr. CLAYTON. The new procedure, Senator, that has been set up for that, in accordance with a recent Executive order of the President, provides that in this country any producer who feels that he has a complaint because he is seriously injured or threatened with serious injury because of a concession in a tariff on imports, may so state to the Tariff Commission which will investigate the matter, and if they think that there should be a hearing on the subject they will call a hearing and that will be a public hearing at which this producer may state his case and bring his witnesses. After full consideration of the matter, the whole matter, the Tariff Commission will then make a recommendation to the President.

The Trade Agreements Act puts all the authority in the President, so that the Tariff Commission would make its recommendation to the President as to what he should do under the circumstances and then he would act.

Senator BUSHFIELD. Thank you.

Senator GEORGE. Mr. Chairman, I have a question.

The CHAIRMAN. Please ask it, Senator.

Senator GEORGE. The "escape clause" was first used in Mexico?

Mr. CLAYTON. That is right. We first put it in the Mexican agreement, and in the summer of 1945, when the Trade Agreements Act was up for extension by the Congress, I made a commitment for the State Department and for the Trade Agreements Committee that in every future trade agreement we would insert a clause along the same lines as the escape clause in the Mexican agreement, and we will do that.

Senator GEORGE. Yes, sir.

Mr. CLAYTON. I mean, quite aside from the International Trade Organization.

The CHAIRMAN. The improvement in the power is in having the Tariff Commission police the operation under the escape clause?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. To keep in touch with what is happening in this domestic market as a result of imports and to bring the matter directly to the attention of the President when any import seriously injures or threatens serious injury to any domestic industry?

Mr. CLAYTON. Yes sir. That was a procedure which we agreed to on the suggestion of you Senator Millikin and Senator Vandenberg, and it was incorporated in this recent executive order of the President and it will be done in the future.

Senator LUCAS. I presume every other nation has a similar clause.

Mr. CLAYTON. It will be in every trade agreement that we will make with any country, and it is in this International Trade Organization

Charter. I am sure that in the future, particularly if the Charter is adopted, every trade agreement that is entered into by any country will have a clause of that character.

The CHAIRMAN. I think Senator LUCAS means that it is a two-way road.

Mr. CLAYTON. Certainly, it has to be reciprocal.

Senator HAWKES. Mr. Chairman, I want to say here that the escape clause is necessary but it has a lot of danger in connection with it. In other words, the thing, as far as I am concerned, that I am interested in doing, is avoiding getting this country into fixes where they have to escape. It is all right to talk about an escape clause, but now you know, Mr. Secretary, that if you escape here, the other countries can do this, and there is ill-will created and that is not what we want. We want to think ahead in this country and we want to stop doing things that will make it necessary for the President to say, "I have to exercise this escape clause and that escape clause," and there is no better way to create ill-will and enmity than to get yourself into a fix.

They put money, millions of dollars maybe, into plants and have gotten ready to do business, and then you say, "April fool, we have to escape; we were wrong and now we want to get out."

That is the thing I am vitally interested in, to see that this country does not get into a fix where we ill-advisedly get into things and then utilize an escape to get out.

Mr. CLAYTON. Well, Senator Hawkes, we are very hopeful because of the very thorough investigation made in these matters, there will be very few occasions on which the escape clause will have to be used. We do think that there are chances for error and there are chances for mistakes in almost anything we do in this world. We do think the escape clause is a useful thing to have in the provisions in case subsequent developments should show that we had made a mistake, and that will give to the producers the means by which they may have it corrected.

Senator HAWKES. I say, Mr. Secretary, that I think it is vitally necessary to have the escape clause, but I hope that we will not rely on the escape clause and let it lead us into a lot of traps.

Mr. CLAYTON. I agree fully with you.

Senator CONNALLY. The necessity for the escape clause is that if situations arise that are not foreseeable, they can be taken care of.

Mr. CLAYTON. That is right.

Senator CONNALLY. They may be all right when you make the agreement; but later on, if circumstances are so altered that you may feel like you have to use the escape clause, you have it there.

Mr. CLAYTON. That is correct.

Senator BUSHFIELD. But that would only be used when the industry could show that they should get out?

Mr. CLAYTON. When the producer can show that they have been seriously injured, or are threatened with serious injury, then we can avail ourselves of the escape clause.

The CHAIRMAN. It can also be on the initiative of the Tariff Commission and on the initiative of the President?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. The relief is not tied completely to a complaint by a producer?

Mr. CLAYTON. That is right. It is not tied completely to that, but it is the expectation that he would be the person, the first one to speak.

Senator HAWKES. He will be the first fellow to squeal, and you can bank on that; and then he is to sell his bill of goods to the Tariff Commission, and so forth, to get relief.

Here is what I want, Mr. Secretary, because I know you are interested in doing the same thing that I am interested in doing. I just want to say that there is such an opportunity to make mistakes by proceeding too rapidly at the present time because there is no one in this world—I would like to see the color of the man's eyes that would tell me that he knows the cost of anything in the United States or anywhere else in the world under present conditions. And that is what I hope that you and your group that go to Geneva will keep in mind, and will not be led into doing things, the unknown and uncertain things in the world; that we will have to keep using the escape clause and have accusations of bad faith and accusations that you would not play the game after you had agreed to them, and all that sort of business.

Mr. CLAYTON. I can assure you that we are approaching the whole matter with a full understanding of the seriousness of it. We are trying to prepare ourselves in a proper way and to make as few mistakes as it is humanly possible to make.

As you say, the world is, of course, in a very uncertain state at present; and it is difficult to put your finger on anything with any certainty at the present time. But we have a great deal at stake in this program. We exported last year over \$3,000,000,000 worth of farm products from this country. It looks like we will raise this coming year, this present year, 1,200,000,000 bushels of wheat, which is about twice as much as we can consume. We will probably export in this present crop-year \$1,000,000,000 worth of grain. You take that amount of wheat—at \$2 a bushel it means over \$2,000,000,000. This means something to this country.

We would like, if we can, with a lot of these foreign countries that before the war had exorbitant tariffs on the importation of wheat—Italy and Germany, particularly, and France to a lesser degree, and some of the other countries—we would like as far as we can to see that those exorbitant tariffs are not reimposed, and if we can continue to sell our wheat in the markets of the world we can only do it if we take some goods of the other fellow.

Senator LUCAS. Would not that very uncertainty that the Senator from New Jersey talks about be stabilized through this kind of organization?

Mr. CLAYTON. Certainly; that is the only way we can stabilize—through increased international trade by the removal of these restrictions.

So that we have a great deal at stake. That \$3,000,000,000 of farm products that we exported last year, Senator Hawkes, amounted to over \$500 in every farm family in the United States.

Senator BUSBY. Going back to a question I asked a while ago, we do have a limitation on the exportation of wheat.

Mr. CLAYTON. I think that we may have some limitations with regard to the destination of wheat. We, of course, are exporting wheat at a rate that we never exported before in our history. We may

export about 400,000,000 bushels of wheat this year, and I do not believe we ever did that before. I believe that before the war it ran 50, 75, and 100 million bushels, and oftentimes not as much as that.

The CHAIRMAN. Mr. Secretary, I hope your optimism on foreign markets for the continued sale of our surplus wheat holds up. But I would be a little cautious about the trades you make on that basis. After the last war we were heavy exporters, and necessarily so, because the wheat lands of the devastated countries were not in production. And necessarily now because they are not in production. But once they get going, that wheat comes back very rapidly and it may be that the wheat growers of other countries would no more permit imports of wheat than we would permit imports of wheat if we were not in short supply.

Mr. CLAYTON. The main difficulty after the First World War, Senator Millikin, was that countries, like Germany and Italy, that wanted to get ready for another war put on such heavy tariffs on importation of wheat that in Germany and Italy bread was two or three times what it was in the United States, because the price of wheat was very, very high. France put on a considerable tariff against the importation of wheat. It was done primarily not to protect the wheat producer but to enable the building up of the bread supply of the countries so that they would be prepared for war.

The CHAIRMAN. I suggest—I am not now going to debate it with you—but I suggest that in France it was put on to protect the wheat farmer.

Mr. CLAYTON. I think you are right. In France that was the reason, but in Germany and Italy it was to increase greatly the production locally so that they would be independent.

Senator CONNALLY. As a matter of fact, to do both.

Mr. CLAYTON. Of course, it does both, Senator Connally. It was by protecting the local producer that they got the production up so high. They stimulated the local production and it made them independent of imports.

I should like also to draw attention to the provisions relating to the important and difficult question of state trading. As the Charter is intended to be world-wide in application, its provisions are designed to meet the needs not only of private enterprise countries but also socialized states, and all shades in between.

The articles on state trading seek to obtain from state trading countries commitments under which they will make their full contribution to the world trade and to the elimination of discriminations in the conduct of that trade. This is a relatively new aspect of commercial policy, and provisions dealing with state trading operations have not been adequately tested by experience.

In their present form these articles lay down the principles to govern the operation of state trading countries. These principles will be difficult to administer, at least in the early stages. As cases arise, however, and there is continuous consultation concerning their application, a body of case law should develop which will define with greater precision the rules for the conduct of the commercial relations between state trading and other countries.

The CHAIRMAN. Mr. Secretary?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. When we get to Dr. Wilcox we shall go into that very thoroughly, but perhaps we should give it a once-over right now.

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. Originally it was represented that this organization was being projected in order to break down trade by government monopolies and state-controlled trade. I suggest that the provisions of this Charter appease that kind of trade.

Mr. CLAYTON. Well, let me explain.

The CHAIRMAN. In other words, you have adjusted yourself to the situation instead of breaking it down. I suggest that tentatively, because perhaps fuller explanations may give it a different aspect.

Mr. CLAYTON. Senator Millikin, you, of course, are right. I do not know that the word "appeasing" is exactly the right word. We are realistic and we know we are up against that with quite a few countries, and we have tried to frame here conditions which will cover that kind of trading. We provide that countries which do state trading shall do so on a nondiscriminatory basis and shall confine their purchases to commercial considerations.

The CHAIRMAN. But, Mr. Secretary, within their political system there necessarily inheres a lack of freedom of trade.

Mr. CLAYTON. Oh, yes; a lack of freedom of trade. We do not like it, we do not like that system at all, but we realize that we are going to have to do business with countries like that.

You take Great Britain—they are doing quite a bit of state trading themselves. The countries that do it completely do an extremely small part of the international trade of the world. Russia and all her satellite countries will do less than 5 percent of the international trade of the world, so it is not significant from that point of view; but we find it being done. As we say here, there are a lot of shades in between a completely socialized state trading nation and the nation, like the United States, that conducts its trade on a free enterprise basis. There are a lot of shades in between.

Britain is one of them. They do a good deal of their importing—all their cotton imports are done by the Government. We do not like that, but there is nothing we can do about it right now.

We are hoping, Senator Millikin, in time, if we just keep driving away at this problem of trying to get the world back on a free enterprise basis and trying to get them to live up to decent international rules of conduct and international trade, that that system will decline in significance and importance. We certainly hope so.

The CHAIRMAN. For present purposes I am merely dropping the hint that perhaps the Charter, by accommodating itself to those things, encourages them.

Senator CONNALLY. May I ask a question?

The CHAIRMAN. Proceed, sir.

Senator CONNALLY. Mr. Clayton, a commodity as a commodity is the same commodity whether it is handled by a state trading system or a private concern.

Mr. CLAYTON. That is right.

Senator CONNALLY. As I gathered from your testimony, you have rather accepted conditions as you found them and are trying to adjust your program to them instead of trying to go out with one fell swoop to revise the trade of the world?

Mr. CLAYTON. That is right.

Senator CONNALLY. I am not in sympathy with these monopolistic concerns, whether at home or abroad, but I realize that you have to face the facts.

The CHAIRMAN. I made my comment, Senator, because at least in one stage of the development of the propaganda for this organization it was suggested that this would be an instrument for breaking down that sort of thing, and my sole point is that by recognizing and adjusting the Charter to it, we do not help break it down—perhaps we encourage it.

Senator CONNALLY. On the other hand, I think there is some basis for freedom of trade; that this will bring about a complication with those State agencies that will make them more likely to accommodate themselves to the system that you are setting up than otherwise.

The CHAIRMAN. I should also like to suggest, if I understand your scheme, that the ultimate that you are driving at is free trade. I do not mean free trade in the sense of tariff theory, but freedom of trade under certain traffic regulations between individual purchasers and individual sellers.

Mr. CLAYTON. That is correct.

The CHAIRMAN. And, obviously, you cannot have that if on one side you have to channel all your business through a State agency.

Mr. CLAYTON. We cannot have it completely until that system changes.

I would just like to say, Senator Millikin, that a very large proportion of the trade of the world is still done by private people.

Senator BUSHFIELD. Have you any hopes of breaking down the socialistic system?

Mr. CLAYTON. I think our system in the United States is so far superior to any other that in time these other systems, which are largely the products of two great world wars, will give way to ours, and that they will return to this system that is used in the United States.

Senator BUSHFIELD. I agree with you, but I wonder if those other countries will agree with us.

Mr. CLAYTON. No, they would not, but I think the force of circumstances will bring them into line in time. We are going to help in every way we can.

Senator LUCAS. There is a great opportunity, it seems to me, through this kind of organization, for the countries of the world to become better acquainted with the system that exists in this country, and it is only through this kind of organization that you will ever be able to break down what you are talking about, even though you have to accept it momentarily.

Mr. CLAYTON. That is what we think.

Senator HAWKES. Mr. Chairman, I would like to say that while I agree with Mr. Clayton about our system being the best system in the world, I do not think there is any thinking American today who does not realize that right inside our own boundaries our system is under attack. I think we have something to think about in getting our own house in order. I think it is a tremendous problem.

I just want to repeat that Mark Twain said something once that I think is worth remembering. "Once upon a time there was a man who tried to do too much—and he did it."

Mr. CLAYTON. That is pretty good.

The CHAIRMAN. Proceed, Mr. Secretary.

Mr. CLAYTON. Chapter 6 deals with restrictive business practices, in other words, cartels.

The provisions in chapter 6 aimed at restrictive business practices are essential to the program for trade expansion. Action by governments to bring about greater freedom of international trade can be frustrated by restrictive agreements by private monopolistic groups.

The chapter would make a good start in applying in the international field, with the cooperation of other member governments, the philosophy embodied in our own legislation on this subject.

The operations of international cartels have in the past frequently closed off foreign markets to our exporters and denied our importers and consumers access to products at reasonable prices. While our domestic trade has been protected from these abuses by our antitrust laws, our interest in foreign markets and sources of supply has suffered because of the lack of similar protection in foreign countries. The trade charter would make very substantial progress in the direction of preventing participation by nationals of all countries in practices in which our own traders are forbidden to engage.

The draft charter does not go as far in outlawing restrictive business practices as we should have liked. In view, however, of the widely prevailing philosophy in other countries on this subject, the general acceptance of these provisions would represent a great forward step in the right direction.

It will be noted that under article 44 our own national statute would remain fully effective.

I would like to say that that is one of the subjects that I thought we were going to have the greatest difficulty in coming to agreement with other countries in London, and I was very agreeably surprised to find that we eventually did come to a fairly satisfactory agreement.

I am sure you gentlemen all know that the cartel system, the international cartel system, is much more prevalent in Europe than it is in the Western Hemisphere. There are many countries over there that believe in the cartel system, and we had some difficulty in arriving at this agreement, but we finally worked it out. In brief it provides that in case a country is suffering from the practices of a cartel, they are to so advise the International Trade Organization, and the organization is to take cognizance of their complaint, are to make an investigation of it, and they are to inform the member country where the cartel has its principal site, of the complaint, and that country is supposed to take action under its laws, its existing laws, and if it has no existing laws to deal with the subject, it is expected that it would enact legislation which would deal with it.

In brief, that is the provision.

Senator HAWKES. Mr. Clayton, suppose they do not have any laws and suppose they do not take any action to establish laws, then where does it leave us?

Mr. CLAYTON. It leaves us just where we started except that you can advertise the thing to the world. You can make the world fully familiar with the activity of that organization, what it is doing, and the bad effects of it, and you can advertise also that the country where it has its headquarters does not do anything about it.

I think, Senator Hawkes, that even if you cannot take any definite or positive action in some of these matters, this organization can inform the world about them, and I think there is a great deal of benefit in that.

Senator HAWKES. You still think there is a great deal of force in moral suasion?

Mr. CLAYTON. I do.

The CHAIRMAN. Am I correct, Mr. Secretary, that private cartels are banished or discouraged under the scheme and that the scheme does provide for intergovernmental cartels?

Mr. CLAYTON. Perhaps you would call it a cartel. It does provide, and I will come to it, what we call the intercommodity arrangements having to do with primary commodities.

The CHAIRMAN. As far as there is anything beneficent in the cartels, you are adopting it into an intergovernmental arrangement.

Mr. CLAYTON. Governmental only and not private.

Senator HAWKES. May I interrupt right there and ask you what hope you have for the cartel in the hands of government and the politicians as compared to the cartel in the hands of a private group?

Mr. CLAYTON. There are other differences here, Senator Hawkes, besides the difference between a private cartel and a governmental one.

The intergovernmental commodity arrangements have only to do with primary commodities, things like cotton and wheat and sugar and coffee and things of that character. They do not have to do with chemicals and steel and things of that kind which ordinarily lend themselves to cartel arrangements. These intergovernmental commodity arrangements are to protect the primary producers of commodities.

There is a very great difference in the character of the two things besides the difference that one is private and the other is governmental.

Chapter VII deals with intergovernmental commodity arrangements. The subject of commodity agreements is one on which there have been wide differences of view and much controversy. The provisions in the draft charter take a middle-of-the-road course on this subject. These provisions recognize that in some circumstances commodity arrangements may be necessary.

In the case of certain primary products, chronic conditions of over-supply may result in serious and long-protracted difficulties for large numbers of producers. To the extent that distress conditions of this kind affect a substantial part of the producers of the country, the market of that country for the products of other countries is reduced.

Despite the fact that commodity arrangements result in a more or less rigid control of trade and an undesirable degree of regimentation of both production and trade, there may be circumstances in which commodity arrangements become virtually indispensable. In such circumstances the draft charter would permit the negotiation of such arrangements in accordance with the procedural requirements and principles which the charter lays down.

On the other hand, the procedures and principles outlined in this chapter are designed to confine the negotiations of such agreements to those cases in which the need for them is clearly established.

Let me say that these intergovernmental commodity agreements are recognized only in cases of burdensome surpluses, and in the making of the agreement consuming countries must have equitable repre-

sensation and must take part in the formulation of policies respecting exports and imports and prices and that sort of thing. In other words, in your formulation of intergovernmental commodity agreements under this ITO, it will have to be done both by the consuming and producing countries.

Senator LUCAS. Is my assumption correct on that, that the commodity arrangements which you are talking about which you have described here are somewhat in the nature of a cartel solely designed to protect the producers of some given commodity while, on the other hand, the cartel as I have understood it was one that was designed to really deny the consumers what they were entitled to?

Mr. CLAYTON. I think you put your finger on it. Ordinarily, the cartels that we know about have arrangements regarding prices and markets between a handful of great corporations producing not primary commodities. Tin, for example, has always been a subject for cartels. The tin cartel involved may be three countries, three or four countries, and a dozen producers perhaps. There may have been more than that, but relatively few.

Senator LUCAS. They held it within their own hands to the detriment of the public in general and with the primary thought of profit?

Mr. CLAYTON. Right. These intergovernmental commodity arrangements are contemplated to protect millions, literally millions, of producers. In the United States we have 8,000,000 farm families. We have 2,000,000 farm families producing cotton. And first of all it would be entered into by governments, not by individuals for private profit. It would be entered into by governments and for the protection of primary producers, of millions and millions of people.

Senator LUCAS. I hope they are not designated as cartels.

Mr. CLAYTON. I beg your pardon?

Senator LUCAS. I hope they are not designated as cartels.

Mr. CLAYTON. They are commodity agreements.

Senator GEORGE. They are not cartels.

Our coffee problem, we are still sticking to the machinery that we had during the war because there may come a time when we may be confronted by an overproduction of coffee in the coffee-producing countries to the detriment of the people in this country who process and sell it and use it.

Mr. CLAYTON. Senator George, you have mentioned an intergovernmental commodity agreement that I believe was the first of its kind that was ever made, in that it did take into account producers as well as consumers. As you know, that arrangement was entered into by the United States and 14 coffee-producing countries in Central and South America. I think that is the only one of that kind that was ever made. That is the kind of agreement contemplated here, one that would be entered into by consumers as well as producers.

Senator LUCAS. I can think of nothing that would be of more detriment to the program than to have it generally understood that these were cartel arrangements.

Mr. CLAYTON. No, they are not.

Senator LUCAS. I know they are not, but it was suggested that they were possible cartels.

Mr. CLAYTON. We refer to them as intergovernmental commodity arrangements.

The **CHAIRMAN**. I do not want to quarrel with the name you have on them, but what you propose does have something of a cartel about it. First, it goes to the control of production; secondly, it goes to some control of distribution; and, thirdly, it goes to control of price. So, you have the three basic principles of a cartel in what you call an inter-governmental commodity arrangement, and I am not quarreling about the term.

Senator **CONNALLY**. Of course, Senator, we have good trusts and bad trusts. This is a good one, and a cartel is a bad one.

Mr. **CLAYTON**. Of course, "cartel" generally carries a connotation of something evil. As a general thing, as he said, they are generally made by fellows who do not care about the consumer. Now, the consumer interests are taken into account in this thing and I think it takes away from it that evil connotation.

With respect to the chapter on organization, the form of the organizational machinery established in the ITO is less important than the commitments member governments are willing to undertake on the substantive matters to which I have referred. These substantive undertakings are of more pressing urgency and significance. However, there is an interdependence between the substantive provisions of the charter and the organizational provisions. This fact warrants your examination of the provisions of the chapter on organization.

I have attempted in this statement to mention only the more important provisions in the draft charter. Whatever the detailed provisions may be to which this and other governments give their ultimate approval, I am fully convinced of the indispensability of an organization functioning under articles of agreement along the lines of the present draft charter. Without this, none of the machinery for international economic cooperation can work effectively, if it will work at all. And I want to emphasize that if the machinery for economic cooperation does not work, the machinery for international cooperation in other fields will eventually and inevitably break down.

Political questions arise between nations now and then; economic contacts and relationships are of hourly occurrence between most nations in the world. Most real differences between nations have their origin in economic causes. Seeds of future conflicts have often been planted in the failure to adjust such difference promptly and equitably.

Moreover, there is a very close relationship between economic and political questions. This has recently been strikingly illustrated. The President in his recent address to the joint session of Congress on the Greek and Turkish situation, said that the seeds of totalitarian regimes are nurtured by misery and want; that they spread and grow in the evil soil of poverty and strife; and that they reach their full growth when the hope of people for a better life has died. The President said, therefore, that our help to the countries concerned should be primarily through economic and financial aid which is essential to economic stability and orderly political processes.

For the time being, we must give direct financial help. But we should move as rapidly as possible in completing arrangements for international economic cooperation which will enable countries requiring assistance to get on their feet as quickly as possible. In this way we can, in time, accomplish our purposes not only without cost but with positive advantage to ourselves. This is so because the ex-

pansion of international trade through cooperation with other countries will greatly increase the prosperity of the United States.

Thank you.

The CHAIRMAN. Mr. Secretary, I am going to ask you a number of questions. If I ask you any which you would rather have referred to Dr. Wilcox, please let me know.

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. First, I would like to expand on a point which Senator Connally raised a while ago.

This organization will be under the United Nations Charter; will it not?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. It will be a specialized agency under the Economic and Social Council?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. It will have no powers that are not granted by the Charter of the United Nations, is that correct?

Mr. CLAYTON. It will certainly have no powers that are not granted by its own charter, and I assume that they will all be consistent, certainly, with the powers granted by the United Nations Charter.

The CHAIRMAN. Surely the subordinate agency cannot rise to higher sources of power than the United Nations Organization itself?

Mr. CLAYTON. It might be spelled out in a little more detail.

The CHAIRMAN. But if spelled out in more detail, it would have to conform to the United Nations?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. Let me read from chapter IX of the Charter of the United Nations, article 55. [Reading:]

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based upon respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote.—

three listed purposes to which I am sure there is no sharp objection. [Reading:]

ARTICLE 55. All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

ARTICLE 57. (1) The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

(2) Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

I assume this to be one of those specialized agencies.

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. I continue reading:

ARTICLE 58. The Organization shall make recommendation for the coordination of the policies and activities of the specialized agencies.

ARTICLE 59. The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

ARTICLE 60. Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

This is a little tedious, but I think that I am developing a very important point which will help us all through the later discussion of this matter.

CHAPTER X. THE ECONOMIC AND SOCIAL COUNCIL

ARTICLE 61. (1) The Economic and Social Council shall consist of eighteen members of the United Nations elected by the General Assembly.

(2) Subject to the provisions of paragraph (3), six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate reelection.

(3) At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

(4) Each member of the Economic and Social Council shall have one representative.

ARTICLE 62. (1) The Economic and Social Council may make or initiate studies and reports, with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

(2) It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

(3) It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

(4) It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

ARTICLE 63. (1) The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

(2) It may coordinate the activities of the specialized agencies through consultation with and recommendation to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

ARTICLE 64. (1) The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

(2) It may communicate its observations on these reports to the General Assembly.

ARTICLE 65. The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

ARTICLE 66. (1) The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

(2) It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

(3) It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

Article 67 has voting provisions. Article 68 has provisions dealing with the setting up of commissions in economic and social fields for the promotion of human rights. [Reading.]

ARTICLE 69. The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

At the time the United Nations Charter was before the Senate, we had an interpretation of those chapters both by the Secretary of State and in the hearings on the Charter. I should like to read you briefly from the interpretation of the Secretary of State. It was dated, as you recall, June 26, 1945, in the Secretary's report to the President on the

results of the San Francisco Conference. I am reading from page 115 of this particular compilation of material, as follows:

The statement of purposes is followed by article 56, which reads as follows:

"All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

The Secretary of State is now discussing these two chapters, IX and X, in the United Nations Charter:

No corresponding provision occurs in the Dumbarton Oaks text. Early in the Conference the Delegation of Australia introduced a lengthy amendment which would pledge all members of the Organization "to take action both national and international for the purpose of securing for all peoples, including their own, improved labor standards, economic advancement, social security, and employment for all who seek it," and to report annually upon steps taken in the fulfillment of the pledge.

These are objectives which have the full support of the Government and the people of the United States. The United States Government has repeatedly demonstrated its desire for international cooperation toward the achievement of steadily rising levels of economic activity, free from disruptive fluctuations, throughout the world. Thus, the United States Delegation deemed it perfectly appropriate for the member states to pledge themselves to cooperate with the organization for the achievement of these purposes.

On the other hand, the view was advanced that the further element in the Australian proposal calling for national action separate from the international organization went beyond the proper scope of the Charter of an international organization and possibly even infringed on the domestic jurisdiction of member states in committing them to a particular philosophy of the relationship between the government and the individual.

The pledge as finally adopted was worded to eliminate such possible interpretation. It pledges the various countries to cooperate with the organization by joint and separate action in the achievement of the economic and social objectives of the organization without infringing upon their right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes.

To remove all possible doubt on this score, the following statement was unanimously approved and included in the record of the Conference (report of the Rapporteur of Committee 3 of Commission II):

"The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of member states."

It was no simple matter to hammer out these issues and to reach complete agreement among the 50 participating nations. The final results, however, justify the effort. The Charter opens the way for international cooperation in the economic, social, and related fields on a scale unknown in the past. And it safeguards at the same time the right of nations to live their own lives free from unwarranted interference.

The CHAIRMAN. While the Senate Foreign Relations Committee was conducting the hearings on the Charter under the chairmanship of Senator Connally, Mr. Pasvolosky was the technical expert for the State Department. Senator Connally permitted me to ask Mr. Pasvolosky some questions with reference to Chapters 9 and 10 of the Charter of the United Nations, and wherever the question occurs here, it is my question, and the answers are Mr. Pasvolosky's. I am reading from page 309 of the report of the hearings on the Charter, as put out by the Senate Foreign Relations Committee:

Senator MILLIKIN. I notice several reiterations of the thought of the Charter that the Organization shall not interfere with domestic affairs of any country. How can you get into these social questions and economic questions without conducting investigations and making inquiries in the various countries?

Mr. PASVOLOSKY. Senator, the Charter provides that the Assembly shall have the right to initiate or make studies in all of these economic or social fields. It is provided that the Economic and Social Council, through its commissions and

its staff, would be assembling information in the fields that would be necessary for the performance of its duties. It is provided that the Economic and Social Council would arrange for reports from the specialized agencies, and presumably would arrange for receiving any kind of information that it might need. The Economic and Social Council is also given the power to make arrangements with the member states for reports as to steps taken to give effect to recommendations.

Senator MILLIKIN. Might the activities of the Organization concern themselves with, for example, wage rates and working conditions in different countries?

Mr. PASVOLSKY. The question of what matters the Organization would be concerned with would depend upon whether or not they had international repercussions. This Organization is concerned with international problems. International problems may arise out of all sorts of circumstances.

Senator MILLIKIN. Could the Organization concern itself with tariff policies of the various countries?

Mr. PASVOLSKY. The Organization would of course consider questions that arose out of tariff or commercial policies. But it is very important to note here that the Economic and Social Council can make recommendations to government generally, rather than to specific governments.

Senator MILLIKIN. Only to governments generally?

Mr. PASVOLSKY. Yes.

Senator MILLIKIN. The reports and recommendations naturally might refer to specific governments?

Mr. PASVOLSKY. Oh, they might refer to specific conditions, naturally.

Senator MILLIKIN. They would have to be built up out of investigations made of or in specific countries?

Mr. PASVOLSKY. Yes.

Senator MILLIKIN. Would such an organization concern itself with the various forms of discrimination which countries maintain for themselves, bloc currency, subsidies to merchant marine, and things of that kind?

Mr. PASVOLSKY. I should think that the Organization would wish to discuss and consider that. It might even make recommendations on any matters which affect international, economic, or social relations. The League of Nations did. The International Labor Office has done that. This new Organization being created will be doing a great deal of that.

Senator MILLIKIN. A recommendation along any of those lines, under the basic theory of the whole Organization, would have a powerful effect against an offending nation, would it not?

Mr. PASVOLSKY. The whole document is based on the assumption that recommendations by an agency of this sort would have considerable effect.

Senator MILLIKIN. Let me invite your attention, Doctor, to the fact that we are relatively a "have" nation, in a world of "have not" nations. Might we not find a great number of recommendations focused against us that could finally engender a lot of ill will and might lead to serious difficulties, assuming we did not care to correct them under the recommendations?

Mr. PASVOLSKY. Well, I do not think that there would any more ill-will engendered by the fact that a discussion of that sort takes place. Recommendations would be made to nations in general that certain practices would not be tolerated.

Senator MILLIKIN. Are you not providing means whereby complaints may be focused against ourselves in an official way?

Mr. PASVOLSKY. Complaints can be made at any time and in any way. What is important is that we are providing here a mechanism by means of which maladjustments can be corrected and, therefore, fewer complaints made.

Senator MILLIKIN. Would the investigation of racial discriminations be within the jurisdiction of this body.

Mr. PASVOLSKY. Insofar, I imagine, as the Organization takes over the function of making studies and recommendations on human rights, it may wish to make studies in those fields and make pronouncements.

Senator VANDENBERG. At that point I wish you would reemphasize what you read from the Commission report specifically applying the exemption of domestic matters to the Social and Economic Council.

Mr. PASVOLSKY. I will read that paragraph again.

Senator VANDENBERG. Yes, please.

Mr. PASVOLSKY (reading):

"The members of Committee 8 of Commission II are in full agreement that nothing contained in chapter IX can be construed as giving authority to the Organisation to intervene in the domestic affairs of member states."

The CHAIRMAN. And, furthermore, whether they do involves no compulsion whatever, but is in the nature of recommendations to the states, and the states are perfectly free to take such recommendations or reject them.

Mr. PASVOLSKY. Quite right.

The CHAIRMAN. That colloquy continues.

Senator CONNALLY. Mr. Chairman, may I interrupt?

The CHAIRMAN. Yes.

Senator CONNALLY. You do not quote it, but there is another clause in the Charter that specifically denies to the United Nations any right to intervene in the domestic affairs of any nation.

The CHAIRMAN. Senator, I am grateful to you for calling that to my attention.

Senator CONNALLY. It was specific. We had a good deal to do with putting it in, I will say that. It is early in the Charter, section 2 of article—I cannot put my hand on it now.

The CHAIRMAN. But there was an even fuller development of the interpretative statement that the one which I have read, all to the same point.

Now, Mr. Secretary, what I am leading to is this: Under the interpretation of the Charter by the Secretary of State to the President, under the interpretation of the Charter by the Delegates at San Francisco, and under the interpretation of the Charter developed from State Department witnesses, by members of the committee and others at the hearings, it is very clear that anything done under the authority of the Social and Economic Council can have nothing other than recommendatory power, do you agree with that?

Mr. CLAYTON. Well, I do not pretend to be able to speak with authority on that, Senator Millikin, because I have not been a student of the United Nations Charter. I have been so busy with other things that I have not had opportunity to study that as carefully as I should like, but my idea would be that that may be correct.

The CHAIRMAN. Then, if that be correct, we have a very simple point of reference for studying the specific provisions of the Charter to see whether anything exceeds the authority which such an organization could have?

Mr. CLAYTON. Yes, I believe so.

The CHAIRMAN. And it would follow that if there is anything in the Charter which does exceed that authority, which goes beyond recommendatory force, that it is either null and void or should be eliminated from the Charter?

Mr. CLAYTON. That would follow.

Senator CONNALLY. Mr. Chairman, may I interrupt?

The CHAIRMAN. Yes.

Senator CONNALLY. Here is article 2, section 7, of the United Nations Charter, which reads as follows:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Member to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Senator HAWKES. Mr. Chairman, may I ask Senator Connally, because he spent a great deal of time on this United Nations Charter, is there not a provision that says in there something to the effect that anything that jeopardizes the peace of the world becomes the business of the United Nations and the Security Council?

Let me follow through just a moment. The distinguished Under Secretary of State has stated that economic problems are the problems that lead to the wars and create the havoc that we have had since time immemorial. If that be so, and economic problems jeopardize the safety, security, and peace of the world, has not the United Nations a right to step in and do what it sees fit to do in connection with an internal problem of any nation signatory to the Charter?

Senator CONNALLY. Is your question directed to me?

Senator HAWKES. Yes.

Senator CONNALLY. I just quoted you that paragraph. It exempts chapter VII, and chapter VII is the one on the Security Council.

Now, while economic matters may be the source of a good many conflicts that eventuate in war, we do not deal with them in the Charter until they get to that point. We do not go back to the fountainhead where the stream originates, but it must get to the point where there is threat to the peace or breach of the peace or an act of aggression, before the Security Council steps in and takes cognizance of the matter, so I do not think your question could be answered "Yes;" I think it would be answered, "No."

Senator HAWKES. I would think that the thing was out of our hands to answer yes or no. I think that the nations signatory to the United Nations, the Security Council would determine the issue that I have just brought up. I do not think we would have anything to say about it.

The CHAIRMAN. Senator, may I suggest to you that we are dealing with a specialized agency operating under the Charter of the United Nations. So, as far as the authority of the Economic and Social Council is concerned, by what has been read here you can see very clearly that it has no authority and of course no subordinate agency could have any greater authority than to make recommendations. That goes to the heart and core of our inquiry, and I bring it out at this point, as sort of notice to you, Doctor (addressing Dr. Clair Wilcox) that every grant of power in this proposed Charter will be weighed and tested by the question whether it is recommendatory or whether it goes beyond recommendation.

Now, Mr. Secretary, you are familiar with the charge that you are sending to Geneva a large number of men. As I recall it, you are sending about 60.

Mr. CLAYTON. More than that. I think it may be around 80 to 100.

The CHAIRMAN. That you are sending a large number of men to Geneva who are immature, or who have had no practical experience in life and, therefore, are not qualified to do the trading that is required to be done if we are to do good business in connection with these trade-agreement negotiations, and the same point is made as to the negotiators in connection with this Charter.

You will recall that I asked you only a short time ago—and I am not critical if you do not have the information today—to provide me with the names of the persons who are going to Geneva, with biographies of those persons. May I ask, has that material been prepared?

Mr. WILCOX. That will be here today or tomorrow morning.

Mr. CLAYTON. I signed a letter and sent it up about noon today.

The CHAIRMAN. That came in at noon but I did not find the material in there.

Mr. CLAYTON. We were sending it up in sections and it ought to be in your hands tomorrow morning.

The CHAIRMAN. I want to emphasize again that the Secretary has not had much opportunity to provide the material I requested, and if it is not here right now there can be no charge of lack of cooperation on that score, but may we get on that as soon as possible?

Mr. CLAYTON. Yes.

The CHAIRMAN. I assume that the biographies will in the main speak for themselves?

Mr. CLAYTON. Yes.

The CHAIRMAN. Would you like at this time to make any general comment on that subject and tell us about that part of the personnel that is going over there that you consider to be especially qualified in terms of practical experience to do the job?

Mr. CLAYTON. Well, I do not know exactly, Senator Millikin, in this connection, what is meant by "practical experience." A great number of the men that we are sending will have had a great deal of experience in just exactly this type of work. The people they will be trading with will not be businessmen, they will be Government men, just as they are.

I am going there as the head of the delegation, but I do not expect to be there all the time.

The CHAIRMAN. I hope you go there, because everybody regards you as a good businessman.

Senator CONNALLY. Also as a good governmental man.

Mr. CLAYTON. Thank you, Senators.

I will stay as long as necessary and will have to determine that later. Of course, Mr. Wilcox will be there all the time and he will be in charge.

The CHAIRMAN. As to both the trade agreements and the Charter?

Mr. CLAYTON. Yes, to both; Mr. Wilcox attended the United States Delegation to the London Conference which started on the 15th of last October and lasted to the end of November; that was a meeting of 18 nations called by the Economic and Social Council as a preparatory commission to make an initial start at the charter of the International Trade Organization.

I think you will probably recall that the newspapers said, when the conference was finished, that our delegation achieved a very great success at that conference and got about nine-tenths of what they went there expecting to get in connection with the preliminary draft of the charter.

I consider Mr. Wilcox a man entirely competent to take charge of that work.

The CHAIRMAN. The criticism goes to the point which I am not now arguing that the men you are sending there are men of splendid culture and splendid theoretical training but they have never wrestled with practical business problems.

Are you sending any outstanding businessmen there who are also technically qualified to do this job?

Mr. CLAYTON. No, sir; we are not sending any outstanding businessmen as such. I am sure some of these men are outstanding businessmen. We are sending Government officials not only from the State Department but from some of the other departments that have been

loaned to us. They are men who have lived with this problem of the trade agreements question not only in the past in connection with many of them, in regard to trade agreements before, but throughout many of them have been very closely identified, actively identified, with the Committee for Reciprocity Information in the hearings that we have been conducting, or did conduct for a matter of 2 or 3 weeks just recently, getting ready for that Geneva meeting.

You understand the way it is set up, Senator? We have a Committee for Reciprocity Information. We divided it into five panels. Last November we gave public notice of the fact that we were going to negotiate these agreements. We published the list of commodities that would be involved, we asked producers to file briefs and state their objections, if any, to any consideration of any reductions in tariff on those commodities, and we later invited them to come and orally present their cases.

Those briefs were carefully studied by these men, and those men who studied the briefs heard the panels and heard the witnesses. They will make the recommendations to the committee. In other words, they are men who have lived with this problem.

I think we have an awfully good team, that is my judgment.

The CHAIRMAN. The biographies which you will supply will give the answers as to the points which I raised, for whatever weight those points may have.

Mr. CLAYTON. Yes, sir; they will.

We should bear in mind, I think, that this Geneva Conference is one where the negotiations will be intergovernmental, and the people that we are sending are Government people, and they will deal with government people from the other countries.

The CHAIRMAN. Abstaining from argument on the point, many businessmen say, "Of course, you are dealing among Government people, but you are also dealing with subject matters that mean our life or death," and their point is that this should not be in the hands of theoreticians but at least there should be some stiffening of the personnel by men who know the technique of the negotiations and techniques of tariff and who have the happy additional qualification of business experience.

Let me ask you this: This charge is also made—Senator Hawkes has touched on that—that you will put undue weight on the operation of the escape clauses, and, therefore, you will feel at liberty to take greater chances in the negotiation of the agreements than you would otherwise take if you did not have the escape-clause mechanism.

Just as a side comment, I will recall to you that Senator Vandenberg and I urged the same sort of intervention by the Tariff Commission in the preagreement stage as is provided for the postagreement stage, but that was not accepted, and I am not now complaining about that.

The point that is made here is that because of the existence of the escape-clause procedure, without the existence of that preagreement protection that we may be inclined to take chances in making the agreements that we would otherwise not take.

Those who make that criticism also point out that the escape clause does not give complete protection because an industry might be ruined by the time you might go through the procedures and get a corrective declaration by the President.

Will you give us your comments on that?

Mr. CLAYTON. Mr. Chairman, the escape clause is a kind of supreme court, and I do not suppose any judge other than perhaps the supreme court would be able to say to what extent his decision in the case would be colored by the feeling that his decision was not the final decision and that it would be or could be reviewed by a higher court.

I would not say that the fact that there is an escape clause would not, to some extent affect the judgment of some of us. I certainly would not say that it would not.

However, I think that it would be very easy to exaggerate, the feeling to the extent to which it might affect it, because obviously we all want to be right, we do not want to be shown up later that we have been wrong. That will be our compelling motive to make right decisions, always knowing that if we make a wrong decision we will be shown up as having made a wrong decision.

The CHAIRMAN. Can you assure us here, Mr. Secretary, that doubts will be resolved in favor of our domestic interests?

Mr. CLAYTON. Senator Millikin, I just do not know. When you say domestic interests, we have them on both sides.

The CHAIRMAN. I mean our domestic producing interests.

Mr. CLAYTON. Are you speaking about the ones who want protection?

The CHAIRMAN. Yes.

Mr. CLAYTON. We have also interests that have to be protected, these farmers which I have pointed out before.

The CHAIRMAN. I am trying to get what your standard will be and what your rule of action will be. I would be a little more comfortable if you gave me the answer that there would be a decision in favor of our domestic producers.

Mr. CLAYTON. I can only tell you that we have made a very careful and painstaking investigation of all these commodities that are the subject of negotiation. All of the information that producers care to bring to our attention is considered.

We have listened carefully to the witnesses. Heretofore there has been a good deal of complaint about that matter.

Witnesses have said in the past that it was all a perfunctory proceeding and that while they were allowed to state their case, the people on the panel did not seem to pay much attention and appear to have their minds made up. We went over that matter very carefully in the State Department and saw to it that nobody could really make that charge. We are sure that we have conducted the hearings this year in this case in such manner that no one can criticize.

On the contrary, we have letters complimenting us on the way the hearings were held.

We have taken all of this information, the briefs and testimony, and so on, and we have digested it as best we can, and we are going to make the best decisions we can.

Senator Millikin, it is in a field that nobody can be certain. It is a field that depends on so many imponderables that we cannot be certain. You cannot be certain that you have not made a decision that will not hurt anybody.

The CHAIRMAN. My question was a simple one. Will you resolve the doubts in favor of our productive industries at home.

Mr. CLAYTON. I am sorry. I want to answer you absolutely truthfully, but I just cannot say that we would in every case, because there are doubts that arise. There is a group that has to make this decision, and it is a great committee, and it is composed of representatives of seven governmental agencies.

They get together and they take all this evidence and testimony, and recommendations of the Committee For Reciprocity Information, and they have to make the recommendation to the President, and the President is the final authority in saying as to what extent we may go in making a tariff concession.

The CHAIRMAN. I did not get an answer to the question I asked a moment ago.

My question was whether you will take increased chances by virtue of the escape-clause procedure.

Mr. CLAYTON. Well, I do not think we will, but as I said to you at the time, I do not think anybody can just say absolutely to what extent his mind may be influenced by some knowledge of that kind. No judge, if a judge has to pass sentence on a man for guilt of murder or something of that kind, knows exactly to what extent his decision will be influenced under the facts and knowledge that it can be appealed to another court.

The Chairman. He may have difficulty relating the facts and he may have difficulty applying the exact principle, but theoretically he operates under standards which the law has laid down.

Mr. CLAYTON. That is right, Senator.

The CHAIRMAN. Have you completed your answer?

Mr. CLAYTON. I was just going to say that there are in those cases, as you know very well, being a lawyer, a great deal of doubt, because you have in a great many cases, split decisions.

The CHAIRMAN. Of course.

Mr. CLAYTON. The Senators will bear me out that in cases of doubt of that kind, certain presumptions often enable you to resolve it in favor of one or the other of the parties.

Senator HAWKES. May I ask a question?

The CHAIRMAN. Go ahead, please.

Senator HAWKES. When you get through over at Geneva, is this International Trade Organization Charter going to be a completed, finished thing, or are you going to get to a certain point where you have a possible meeting of the minds and are we any of us going to have anything further to say about this back home?

Mr. CLAYTON. This meeting at Geneva, Senator Hawkes, is the second meeting of the preparatory commission. When they finish their work, the charter will then have to be referred to the Conference that has been called by the Economic and Social Council, a world conference on trade and employment.

That will be held some time in the fall, and that is the final Conference at which all of the United Nations will take part.

Then, in the final analysis, this charter will be referred to the Congress of the United States, so, as far as we are concerned, and I assume that other countries will take similar action—

Senator HAWKES. In other words, after it has gone to this final meeting, it still comes back to the whole Congress?

Mr. CLAYTON. That I do not know.

Senator HAWKES. Well, it comes back to one or the other or both branches.

Mr. CLAYTON. In the case of Bretton Woods it went through both.

The CHAIRMAN. It came here as a treaty.

Senator HAWKES. May I proceed just a minute further, Mr. Chairman?

I have been here long enough to know that when this thing goes through these three meetings and comes back to the Congress that there is not one chance in a hundred of its being turned down no matter what any individual Senator or Congressman may think because they are going to have the same argument and the same thing that has been said over again, it should not have any substance to it, but it does, that we had to do this because it is right. This is the part of the picture of the whole and you do not want to disrupt the peace of the whole world.

What I am sorry about is this: I know your business experience, and I know you, Mr. Clayton, very well, and I know that if you and I were doing this as heads of a great business and were sending our best heads over there to build this very thing, that you are talking about, that we would send them over there and then we would have them come back with something that could be accepted and you and I would be sitting down with them as heads of that business, and we would decide whether we could go through with that thing.

I am sure that you know that I am deeply interested in doing decent things with the reciprocal situation as regards the rest of the world.

The only thing I am trying to do is to preserve this great country of ours, which is the only place where the lamp of liberty is burning so that you can see it.

I do not know if there is a way, but if there were a way in which you could have the cooperation of people here who are glad to cooperate with you before we get our foot so deep in the thing that we cannot pull it out—that is what I am trying to prevent.

The CHAIRMAN. Senator, may I suggest that that is the precise purpose of this hearing, to have the full facts developed prior to the time this jells.

Senator HAWKES. I wish you could have the full facts developed, but I never knew the full facts to be developed prior to their jelling.

The CHAIRMAN. I can assure you that the full facts will be developed if you stay here long enough.

Senator HAWKES. I hope I will not have to stick around too long.

The CHAIRMAN. You may have to stick along for some time.

Senator HAWKES. Article XXXV in the Charter of the United Nations reads as follows:

The Security Council may investigate any dispute or any situation—
mark those words—

which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

That goes back to my point as to whether this Organization, as part of the whole program can go into the private affairs of any nation.

Senator GEORGE. Senator, I would say that we have already agreed to the ratification of the charter and it authorizes precisely that whether you set up this Organization or not.

Senator HAWKES. Yes, Senator.

Senator GEORGE. This organization might be an instrumentality by which you would get certain things.

Senator HAWKES. I am trying to show that they can do that thing whether it comes from the ratification of the United Nations, or the Security Council. The fact is that they can do it.

Senator CONNALLY. Mr. Clayton, no matter what you put in your agreement, we do not have to swallow it when it comes back to the Congress?

Mr. CLAYTON. Yes, sir.

Senator HAWKES. What have we not swallowed up to date? Name me one thing that we have not swallowed in connection with this world program and I would say you are right.

Senator CONNALLY. It could have been rejected if you had enough votes to reject it. Of course, we cannot let 1 or 2 Senators dictate the whole thing out of 96 Senators.

The CHAIRMAN. I am assuming that as a result of this inquiry that the Senate would perhaps have opportunity to give advice on the subject, or express an opinion. I am assuming that you would be glad to conform to that prior to the final jelling of this thing, and thus prevent our being presented with a fait accompli—with something that might be very embarrassing?

Mr. CLAYTON. Senator, you will not only have an opportunity, but we would welcome any suggestions and views on the thing.

I would like to say to Senator Hawkes that we have taken the greatest care and gone a very long way to try to get the opinion of everybody who would have an opinion on a matter of this kind in the formulation of this charter. We have been at work on this thing for nearly 2 years, and, Senator Hawkes, we have submitted this charter to every important association and organization in the country, the N. A. M., the United States Chamber of Commerce, and the Bankers Association, and they have all taken it very seriously and taken great interest in it, and we have discussed this matter with them, and in addition to that we held hearings in seven cities in the United States. We advertised them in advance and invited everybody who had an opinion on this subject, and we sent out many copies of the charter in advance.

The CHAIRMAN. You have just completed giving the public an opportunity to express itself, and now you are at the beginning of giving Congress the opportunity to express itself.

Mr. CLAYTON. That is right.

The CHAIRMAN. That is the precise purpose of this hearing.

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. Senator Hawkes has raised an interesting point which will be of interest to a number of Senators.

Would you mind giving us an opinion of someone in your Department as to whether this will come back as something for approval by both Houses of Congress, or whether it will come back as a treaty?

Mr. CLAYTON. Mr. Secretary, there has been a lot of talk around that we are the sole nation that has any real interest in this International Trade Organization; that we are the inventors of it; that we are the enthusiastic promoters of it, and that whatever interest there is in other countries is a sort of "oats bag" interest.

It is pointed out in that connection that this Charter, the promulgation of it, and the tentative approvals of it which so far have been forthcoming were connected with lease-lend, with the British loan, with other loans, all of them more or less tied together, having the effect, as I say, of holding out a sort of "outs bag" to bring in a certain measure of cooperation by other countries.

Now, would you be good enough to give us the time sequence of the development of this charter, and the consummation, we will say, of the British loan, the consummation of other loans and the final clean-up of our lease-lend agreements?

Mr. CLAYTON. Well, we did not have the Charter ready at the time we negotiated the British loan, but we did have a document which embodied most of the subjects which are dealt with in the Charter and we did go over that with the British in great detail, and we got substantial agreement from them on the objectives stated in that document.

The CHAIRMAN. May I interrupt?

British agreement is similar to our own; it is a tentative agreement?

Mr. CLAYTON. That is right.

The CHAIRMAN. That is true as to the other 16 nations too?

Mr. CLAYTON. That is right. However, none of us are bound.

The CHAIRMAN. It is not jelled, so far as anyone is concerned?

Mr. CLAYTON. That is correct.

The CHAIRMAN. The reason I asked the question is that I noticed the sequence which you developed in some of the explanations of this charter which shows that the Charter was discussed and proposed at the time the British loan was pending, at the time our clean-up lease-lend agreement with England was pending, and at the time our other loans were pending with other countries.

Can you give us a chronology on that?

Mr. CLAYTON. As I say, we discussed this thing. I do not think we had the Charter at that time. The British loan started in September 1945, and we discussed this document in connection with those negotiations and we got substantial agreement from the British on practically everything in the document (exhibit IX-A).

We negotiated the loan to France following that, in the spring of 1946, about a year ago.

The CHAIRMAN. France got its loan after this subject had been raised with France?

Mr. CLAYTON. This subject was raised with them in connection with the negotiations with settlement of lend-lease, and the loan and everything else (exhibit IX-E).

There are many countries where the matter has been discussed that do not borrow from us, and have not borrowed from us and have not had lend-lease from us, South American countries.

The CHAIRMAN. Would you say that the principal countries do have very intimate financial dealings with us?

Mr. CLAYTON. Oh, yes. The principal trading countries like France, Belgium, Holland, and Italy, and countries of that kind.

The CHAIRMAN. Let me put it this way: What countries other than the United States are really as enthusiastic about this as we are?

Mr. CLAYTON. I think perhaps Belgium and Norway and countries of that character are perhaps more enthusiastic than we are. The

international trade of Norway, they have a larger proportion of exports to their total trade than any country in the world, I believe. I believe it is about 60 percent export; 60 percent international trade.

Belgium has very large international trade. When you find countries that depend on international trade, you will find them even more enthusiastic than we are. The British, as a matter of fact, Mr. Chairman, depend on international trade more than we do, and I think, as far as the objective is concerned, they are more enthusiastic in this than we are.

The CHAIRMAN. Mr. Secretary, I do not now take issue with you. Later on we will have some testimony on that subject, but I remember reading English journals which were published currently with the first approach on this subject, which indicated a very sharp division of opinion among English economists, and among English politicians.

I may be off on this, but as I recall it, the London Economist was severely critical about this. Am I right about that, Mr. Wilcox?

Mr. WILCOX. That is true.

The CHAIRMAN. And other liberal organs were critical. I think the Tories were also very critical. There was a rather curious combination of conservative and liberal adverse opinion.

Mr. CLAYTON. You are exactly right. There was a great deal of difference of opinion in England about it, but the difference of opinion arose that there were certain groups in England who felt that they should not do anything to disturb Empire preferences; that they should continue Empire preferences and continue bilateral arrangements, and so plan and restrict the arrangements of Great Britain in international trade that they would have complete control of it.

That, of course, was the position of many extreme left parties in England.

The CHAIRMAN. Since the time that Great Britain committed itself to this plan, would you mind mentioning the bilateral agreements to which it has committed itself?

Mr. CLAYTON. Since when?

The CHAIRMAN. Since then.

Mr. CLAYTON. I think there are very few.

The CHAIRMAN. I think you will find a whole series subsequent to the time that Great Britain committed itself to this.

Mr. CLAYTON. May I say that whatever financial bilateral agreements she may have made before or since will all have to fall in July because of the simple fact of Great Britain's agreement that 1 year after the Congress ratified the British loan, Britain would make all sterling from current earnings convertible; that destroys the main part of these financial agreements.

The CHAIRMAN. Do you have the slightest doubt in your mind but that Great Britain will have to ask for relief on that?

Mr. CLAYTON. I do not think she will ask for relief, but that she will go through with that; that is my opinion.

The CHAIRMAN. Do you not believe that if Great Britain does not ask for relief we ourselves will suggest relief? The English economists are all agreed that the purpose of the British loan has been frustrated; that the money so far has been used for consumptive purposes rather than for rehabilitation purposes that were contemplated?

Mr. CLAYTON. Excuse me, Mr. Chairman—it was to be used for consumptive purposes, not for rehabilitation. Britain found herself

in the position where she had to continue heavy import of foods and raw materials before she could expand and reconvert.

The CHAIRMAN. It was to overcome her adverse balance of trade for a limited period of time, plus the solution of her sterling situation.

Mr. CLAYTON. The loan was granted so that Britain could take care of the balance of deficit which arose from the food that she imported and the raw materials imported, it was a loan granted to Britain so that she could continue to eat and work. It has been used for that purpose and so far as I know, no other purpose.

I am not expressing any opinion about repayment or interest or request for deferment or anything of that kind on that subject, but I am only saying that I believe that Britain is going through with her agreement, so far as I know. I have not been advised to the contrary, and it is my opinion that she will go through with it to convert her sterling from current earnings.

The CHAIRMAN. You remember that I requested that we be supplied with the British bilateral agreements?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. And also with copies of whatever agreements are obtainable between Russia and her satellite countries having to do with trade.

The British bilateral agreements go to the point whether Britain subsequent to the time that she pledged herself to this, and has followed practices which are in conflict with the pledge.

Mr. CLAYTON. She only agreed that as of July 1947, she would make sterling convertible, and that provision nullifies, in effect, all financial bilateral agreements because they rest on this: That as the other countries with which Britain makes the agreement, ships goods to Britain and accumulates sterling balances, the agreement contemplates that those balances shall be held there to purchase goods in Britain.

Beginning this July Britain has agreed with us, and so far as I know, she will carry it out that all sterling from that time on earned in Britain will be convertible and that means that such agreements fail.

The CHAIRMAN. What about the goods exchanged? You have exchange agreements which buttress the exchange of goods, and the exchange of goods can stand even though you solve the monetary exchange difficulty.

Mr. CLAYTON. She does not make agreements, Mr. Chairman, so far as I know, to swap shoes or textile goods for copper. She does not make that kind of agreement. The bilateral agreement as made provides that for a certain number of million pounds of sterling that that sterling will be placed at the credit of that country and kept frozen until that country buys goods with it. They do it in terms of money and not in terms of goods.

Now, if Britain, beginning in July, converts all of that sterling into dollars, it lets the supplying countries spend their money wherever they please.

The CHAIRMAN. I think we can best defer this.

Senator GEORGE. That agreement only applies to the current earnings.

Mr. CLAYTON. That is correct.

Senator GEORGE. Anything accumulated in a reserve, or anything of that kind.

Mr. CLAYTON. That is right.

Senator GEORGE. For instance, if Turkey had 52 millions sterling she would be able—

Mr. CLAYTON. Britain has agreed to convert.

Senator GEORGE. Under our loan agreement, she would not be compelled to do it.

Mr. CLAYTON. That is right. Under our agreement, she is compelled to convert beginning in July.

The CHAIRMAN. Mr. Secretary, in the organization part of the Charter, you provide for an executive committee and you provide for a conference, the conference being the top body and the executive committee performing the usual functions of that kind of committee.

What will be our voting representation in the executive committee and in the council?

Mr. CLAYTON. Well, there is a conference, and there is an executive board and there are three commissions and the voting representation as tentatively agreed upon, shall be that each nation has one vote.

There was a minority report, or a minority opinion, at any rate, in the London conference which felt that the votes should be weighted, but the decision up until now, is that each country shall have one vote just as in many other international organizations, of course.

Senator GEORGE. Mr. Clayton, with reference to the question—it is not so extremely important to my way of thinking but has some bearing as propounded by Senator Hawkes, I believe—as to whether or not this final agreement would come back to the Congress; that is both Houses, or the one House alone; it would be obvious since you are dealing with tariffs, setting up machinery that may effect duties and since you also have in contemplation an organization that will have to be supported by the Congress as a whole, that the ultimate agreement would probably come back to both Houses rather than the Senate?

Mr. CLAYTON. That is my feeling, but I do not know that definitely.

The CHAIRMAN. My question was merely to get a definite position from the State Department as to one way or the other. I think we could decide right now that it could not be handled by the executive.

Mr. CLAYTON. That is right.

The CHAIRMAN. What percentage of the total world trade do we have?

Mr. CLAYTON. It is a very high percentage at the present time, of course.

Last year it totaled to about \$15,000,000,000; \$10,000,000,000 exports and \$5,000,000,000 imports. It was a total of about \$15,000,000,000.

We just do not have the figures with us.

The CHAIRMAN. Give me a rough shot at our percentage of the total

Mr. CLAYTON. At the present time?

The CHAIRMAN. At the present time, and then give me a prewar figure.

Mr. CLAYTON. My guess would be that at present it is from one-fourth to one half. Our total would be about a fourth to a half that of the world.

The CHAIRMAN. Exports and imports of total world trade?

Mr. CLAYTON. Prewar it was somewhere around 10 or 12 percent.

The CHAIRMAN. Is it our State Department's position that we

should have only one vote on the Executive Council and one vote on the General Council?

Mr. CLAYTON. Mr. Chairman, I am sorry, but I cannot answer that question.

Mr. WILCOX. The original proposal put forward by the United States was one country, one vote. No decision has been taken on that in the Preparatory Committee or in the Interim Drafting Committee.

The CHAIRMAN. What would be our position in connection with the further development of this business? Will we go for one, or will we insist upon a weighted position?

Mr. CLAYTON. Senator Millikin, it seems to me that in an organization where you do not put in any capital, and, as you know the international monetary fund we have a weighted position because we put in capital there—in an organization of a general character where you do not subscribe capital and it is an international organization, it seems to me that that should not demand a weighted position.

The CHAIRMAN. Even if we do not put in capital, I suggest that there are sanctions in this agreement, and it might be argued that a nation that contributes one-half of the world's trade, or call it one-quarter if you wish, should not have sanctions directed against it without having a weighted vote in the organization.

Mr. CLAYTON. Well, I do not think there are any sanctions here that we can seriously object to. Mr. Wilcox will go into those in detail with you.

Senator HAWKES. Mr. Chairman, might I say that I agree with you in what you just said, very emphatically. While I realize what Mr. Clayton, as Secretary has in mind, at the same time you are putting the future welfare of billions of dollars worth of industry into this picture, and certainly you and I, as individuals, would not make a deal with some fellow who had one-thousandth part of what we had, to have an equal vote as to what was going to happen in an organization that we would belong to.

I do not know how you would weight that thing. I know it is a difficult thing to weight, but at the same time here is the garden market of the world and we are putting it into partnership with the rest of the world and we are saying to the other 17 countries that they can vote sanctions and we are also incurring the ill will for not being as generous as some of these people may think we should be.

Senator CONNALLY. On the other hand, Mr. Clayton, is it not true that the United States is already the subject of international jealousy, and if we would insist on a larger proportion of voting, it might further increase that hostility to us and would result in a disadvantage to us rather than an advantage?

Mr. CLAYTON. I think it would. Our influence in an organization of that kind would always be very great. I do not think we need a weighted provision.

It is a situation, Senator Hawkes, which would be changing constantly. While perhaps we have the large proportion of international trade today, that may not continue, of course.

As other countries get into production, our percentage will, of course, go down. It is a thing that would not be static like, for example, our contributions to the International Bank and Fund. They are fixed there where we have a right to demand, and we did demand and we got a weighted voting provision.

The CHAIRMAN. May we assume, Mr. Secretary, that it is a fact that the United States, so far, has been for one vote in the Executive Committee and in the Conference?

Mr. CLAYTON. Yes, sir; that is right.

Mr. CHAIRMAN. May we assume, for the purposes of this inquiry, that that will continue to be a fact?

Mr. CLAYTON. Yes, sir, Senator; I think we ought to do it that way.

Mr. WILCOX. There is a third possibility, Senator, of weighted voting on particular problems in the organization rather than weighted voting on every problem which would be a compromise between the two.

The CHAIRMAN. Has the formula been evolved?

Mr. WILCOX. It has been explored, but there is no final position on it.

The CHAIRMAN. Is it on paper?

Mr. WILCOX. We do have something on paper.

The CHAIRMAN. Is it secret?

Mr. WILCOX. We will make it available to you, Senator.

The CHAIRMAN. Will you bring it along?

Senator HAWKES. Mr. Chairman, has it been discussed with any of the nations that are going to this meeting in Geneva, this problem that you are talking about?

Mr. WILCOX. Yes.

Senator HAWKES. All of them or just some?

Mr. WILCOX. All of them.

Senator HAWKES. Do you care to tell us the reaction in that discussion?

Mr. WILCOX. Most of the other nations are not enthusiastic about a system of weighted voting that would give the United States a much heavier vote than the others. (The United States formula for weighted voting appears as exhibit XVI.)

Senator HAWKES. That is what I would assume, Mr. Chairman.

The CHAIRMAN. Mr. Secretary, what percentage of world trade is now covered by existing trade agreements?

Mr. CLAYTON. I believe that on the basis of prewar trade that about 65 percent of our exports went to countries with which we had agreements, trade agreements, and something like 67 percent of our imports came from countries with which we had trade agreements. I do not know what the figures would be on last year's.

The CHAIRMAN. If and when you complete the new crop of agreements, what will be the percentage of world trade covered by agreements to which we are parties?

Mr. CLAYTON. That would be difficult to tell. With a number of these countries we already have agreements.

As you know, we have with Great Britain an agreement, with France, and with a number of countries that we are negotiating with at Geneva, we already have agreements.

The CHAIRMAN. Give me an estimate of what percentage would be completed by agreement.

Mr. CLAYTON. Senator, that would be impossible to tell. There is no certainty that we are going to make agreements.

The CHAIRMAN. I am assuming that we do.

Can we say it this way? By all odds, the great part of world trade would be covered by those agreements?

Mr. CLAYTON. Yes, sir. If we make agreements with these 18 countries, the greater proportion of world trade would be covered.

The CHAIRMAN. Why then can we not cover the objectives of this charter in our reciprocal trade agreements rather than by this added mechanism?

Mr. CLAYTON. Well, we think we need the charter. There are so many things involved here besides reduction of tariffs because you have the arrangement for intergovernmental commodity agreements, you have the cartel arrangement, and you create there, as I said in this statement, a forum before which nations can come and discuss and consult regarding their international problems.

I think that is highly important. We have a forum that nations can go to and discuss their political problems, their political and military problems in the United States, and I think it is just as important that we have such a forum for economic problems, so I think that this has a much greater significance than just simply the trade agreements aspect of it.

The CHAIRMAN. I asked a question of Dr. Wilcox as to those parts of the Charter which will be included as a matter of course in our trade agreements.

Mr. CLAYTON. Yes, sir. He is getting that up.

The CHAIRMAN. That will probably give the answer to the question I asked you.

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. In other words, that part of the proposed charter which you believe can be taken care of by the medium of trade agreements will be included in the trade agreements?

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. We will explore that fully with Dr. Wilcox.

Let me ask you another question:

Who is the spiritual father of this Charter? In whose head did it first blossom?

Mr. CLAYTON. It is one of those things that it is difficult to say just who was the first man that ever thought of it.

The CHAIRMAN. Spontaneous combustion?

Mr. CLAYTON. I feel sure, Senator Millikin, that while Mr. Hull devoted his attention, during all the time that he was in office, to this trade agreements matter, that he must have had in mind that at sometime an international trade organization was necessary.

The CHAIRMAN. You think the first gleam was in his eye? You have a good daddy for it.

Mr. CLAYTON. I would think so.

The CHAIRMAN. Who have been the subsequent formulators of it, aside from Dr. Wilcox?

Mr. CLAYTON. Well, we have, of course, in the economic section of the State Department quite a few very able fellows.

Harry Hawkins, who was Mr. Hull's right-hand man for years on economic matters and on trade agreement matters has had a great deal to do with the creation of this Charter and the formulation of it, and the negotiations.

He was in attendance with Mr. Wilcox throughout the London meeting and he is going to be with us at Geneva, and I suppose next to Mr. Wilcox he had more to do with it than anybody.

The CHAIRMAN. Mr. Secretary, I understand that tomorrow you will not be available; will you be available off and on next week?

Mr. CLAYTON. Senator Millikin, I think that I am going before the House Foreign Affairs Committee and I have promised Mr. Knutson that I would go before his committee on Monday on the hearings on the trade agreements program, but I was told today that they will probably be held only during the morning, and I could come here in the afternoon if you wish me to do so.

The CHAIRMAN. Then we may feel at liberty to recall you if there is need?

Mr. CLAYTON. Yes, sir; I promised Mr. Knutson sometime ago that I would be available if necessary, for several days starting Monday, but, as I say, I think that is only for morning sessions.

The CHAIRMAN. Any questions?

Senator CONNALLY. No questions.

Senator GEORGE. I have nothing.

The CHAIRMAN. We will start at 10:30 tomorrow morning, Dr. Wilcox.

(Thereupon, at 5:12 p. m., the committee adjourned until 10:30 a. m. of the following day, Friday, March 21, 1947.)

INTERNATIONAL TRADE ORGANIZATION

FRIDAY, MARCH 21, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in room 310 of the Senate Office Building, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Millikin (chairman), Brewster, Hawkes, George, Johnson of Colorado, and Lucas.

The CHAIRMAN. The committee will come to order.

Dr. Wilcox. please.

STATEMENT OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE

The CHAIRMAN. Doctor, will you state your full name and give us a pretty good briefing on yourself?

Mr. WILCOX. My name is Clair Wilcox, and I am Director of the Office of International Trade Policy of the Department of State.

Do you wish a statement on my past positions and experience?

The CHAIRMAN. We would like to know your qualifications and your history during your mature life.

Mr. WILCOX. I did my undergraduate work at the University of Pennsylvania, I took my master's degree at Ohio State University, I took my doctor's degree at the University of Pennsylvania in 1927.

I have taught economics at Lafayette College, Ohio Wesleyan University, the University of Pennsylvania, and Swarthmore College.

I have at various times been active in journalism. I wrote editorials for the St. Louis Post-Dispatch between 1930 and 1935.

I was on the editorial staff of Fortune Magazine in the summer of 1934.

Between 1943 and 1945 I wrote special economic articles for the Sunday magazine of the New York Times.

At various times I have held positions in State and Federal Governments. I was secretary of the Pennsylvania State Parole Commission in 1926-27; that was the joint commission of the Pennsylvania State Legislature on the parole problem.

My first position in Washington was under the Hoover administration when I was Director of Research for the National Commission on Law Observance and Enforcement, better known as the Wickersham Commission.

I was a member of the Advisory Council of the National Recovery Administration, the NRA.

I was consulting economist to the Social Security Board in 1936. I had the designation of economic expert with the Temporary National Economic Committee in 1939-40. I wrote one of the monographs of that committee on competition and monopoly in American industry.

The CHAIRMAN. What was the name of that committee?

Mr. WILCOX. The Temporary National Economic Committee, Senator O'Mahoney's committee.

The CHAIRMAN. Oh, yes.

Mr. WILCOX. I was director of the Industrial Materials Division in the Office of Price Administration in 1942 and 1943.

I have been chairman of the Conference on Price Research of the National Bureau of Economic Research.

I am a member of the executive committee of the American Economic Association.

I came to the State Department 2 years ago in March 1945 and have held my present position since July 1, 1945.

The CHAIRMAN. Have you had any business experience?

Mr. WILCOX. No, sir.

The CHAIRMAN. Do you wish to make a general statement before we get into the details of the proposed charter?

Mr. WILCOX. I should like, if it pleases the committee, to speak briefly on the historical background of this project and then if it would be helpful to indicate what appear to me to be the central provisions of the charter and the relationship of the other provisions to them.

The CHAIRMAN. Go ahead, sir.

Mr. WILCOX. Mr. Chairman, in your questioning of Mr. Clayton yesterday afternoon, you asked as to the origin of this program.

The CHAIRMAN. Can you hear back there now?

If you could pick up your voice, please.

Mr. WILCOX. In your questioning of Mr. Clayton yesterday afternoon you asked who was the spiritual father of the International Trade Organization. I should like to submit for the record certain statements that have been made by Mr. Cordell Hull.

The first appears in the Congressional Record for February 21, 1919, and in that statement in the House the then Congressman Hull said that since February 1916 he had been urging the establishment of a permanent international trade agreement congress, and I quote as follows:

* * * for the purpose of establishing a permanent international trade agreement congress, the function of which should comprise the consideration of all international trade methods, practices, and policies of an unfair, unequal, and objectionable nature, and to formulate agreements eliminating and avoiding such methods and policies in the future.

The CHAIRMAN. The British have a Trade Commission, do they not?

Mr. WILCOX. Well, the British have a Board of Trade which is similar to our Department of Commerce in its functions.

The CHAIRMAN. Does it not have a larger function than the Department of Commerce?

Mr. WILCOX. I think that it carries some functions that go beyond our Department of Commerce. It is concerned with both domestic and foreign commerce.

The CHAIRMAN. I see. Proceed, sir.

Mr. WILCOX. At that time Mr. Hull introduced a resolution [reading]:

That the President be requested to propose to the governments of all commercial nations that at the close of the present European war an international trade conference shall be held in the city of Washington for the purpose of establishing a permanent international trade agreement congress, the function and duty of such congress to comprise the consideration of all international trade methods, practices, and policies which in their effects are reasonably calculated to create dangerous and destructive commercial controversies or bitter economic wars and to formulate treaty agreements with respect thereto, designed to eliminate, prevent, and avoid the injurious results and dangerous possibilities of economic warfare and to promote fair and friendly trade relations among all the nations of the world.

Then, in the Congressional Record for December 21, 1925, Mr. Hull was speaking of the British rubber agreement and in the course of that discussion, he said [reading]:

I have for several years been offering the suggestion of an international trade organization in the form of a resolution, sometimes by itself and sometimes in conjunction with other proposals. This is the third remedy that is open to this country—

in connection with the problem he had been discussing—

which is an international trade organization to take up the more rank discriminations and the more unfair trade practices, such as those now under consideration, and by mutual agreement permanently to eliminate, abandon, and abolish that kind of conduct. This policy is sound, timely, and feasible, and had it been in operation since 1922, we would not now be subjected to this hold-up. It would have been avoided.

Then, Mr. Hull made a statement on December 7, 1945, one paragraph of which follows [reading]:

Over a period of some three decades I have pointed out that the world needs an international organization for promoting, on a sound and nondiscriminatory basis, mutually profitably trade among all nations, and for preventing economic warfare which so often leads to physical combat. Unfortunately, in the interval between the two wars, the world followed down the road of destructive commercial conflict.

I should like, if I may, briefly to indicate the later official documents in their chronological sequence that give the background of this proposal. I shall not take the time of the committee to read from them in detail, but merely to identify them.

The CHAIRMAN. Before you do that, who has been the major draftsman and originator of the charter which is before us?

Mr. WILCOX. I think it would be difficult to answer that question in terms of any individual.

The work on the charter, the actual work on the development of the proposals and the subsequent charter has been carried on by a series of interdepartmental committees on which has been represented the Departments of State, Treasury, Commerce, Agriculture, the Tariff Commission, the Department of Labor, and on some of them the Department of Justice and other agencies of the Government.

The CHAIRMAN. Who was the spark plug?

Mr. WILCOX. They have functioned successively under the chairmanship of Mr. Myron Taylor, Mr. Dean Acheson, and William L. Clayton.

The CHAIRMAN. Who developed the outlines and who indicated to these working committees the subjects they were to work on?

I mean, it is perfectly evident, Doctor, that you cannot take a charter like this and just have it originate by spontaneous combustion. Someone has spearheaded it and had the over-all idea. Someone has had an agenda of work, someone has had the scheme, and who was that?

Mr. WILCOX. This work was begun in 1942, I believe actively in 1943. It had been under way for 2 years when I came into the Department. I would be unable to put my finger on one man and say, "This is his idea."

I think it would be possible by going back over the minutes of these committees to reconstruct a historical statement in answer to that question.

The CHAIRMAN. I see the repetition of a statement through the literature that a group of experts did the job but it is always cloaked in anonymity, we are not given much of a picture as to the personnel involved.

Are you content to leave the matter that way or do you wish to give us some personalities who have spearheaded this thing, who have had something to do with the basic conceptions of the charter?

Mr. WILCOX. Well, if all of the names of the people involved were to be listed, it would run into, I suppose, hundreds who have participated in these various committees at these various times. The responsibility has been successively, I believe, that of Mr. Taylor, Mr. Acheson, and Mr. Clayton.

The CHAIRMAN. Who have been the acting men immediately under them?

Mr. WILCOX. I cannot tell you offhand who the people would have been previous to my participation in the work.

Mr. Hawkins, who is now our Minister to London, was one of my predecessors in the office I now occupy and he participated.

My immediate predecessor was Mr. Bernard Haley, and I followed in this office, but this has never been an enterprise exclusively of the State Department.

The CHAIRMAN. All that I am driving at is that someone at some time must have taken the dream of Mr. Hull and formulized it and distributed it around for somebody to do some work on it.

Can we identify that person?

Mr. WILCOX. As far as I know, Mr. Chairman, we cannot do that any more than we can say who invented the automobile.

The CHAIRMAN. This, then, is a sort of spontaneous combustion among experts and technicians in the State Department?

Mr. WILCOX. No, sir; not in the State Department.

This has always been a development through the structure of inter-departmental committees. There were subcommittees also.

Since 1944 the top committee has been the Executive Committee on Economic Foreign Policy under the chairmanship first of Mr. Acheson, and then of Mr. Clayton.

There have been subcommittees on each of the particular problems that are taken up in the charter—on commercial policy, on restrictive business practices, on commodity policy, on organization, and so on.

The recommendations of those subcommittees have gone to the executive committee for examination and final action and that is the

way the original proposals were constructed, and that is the way in which the draft of the charter which amplified those proposals was developed.

The CHAIRMAN. Who were the leaders, who assigned the work? The subcommittee does not generate itself and start doing something. Somebody else tells it to go to work along some kind of predetermined line.

Mr. WILCOX. Well, the executive committee set up the subcommittees, voted on their terms of reference, and thereby gave them their assignment.

The CHAIRMAN. Who was on the executive committee?

Mr. WILCOX. The executive committee has had members from the departments I named. The membership over a period of 5 years has been a changing one.

The CHAIRMAN. And who is the director general or the spark plug, as I said, that touched off the executive committee?

Mr. WILCOX. Well, the chairman of the executive committee has been most recently Mr. Clayton, and the secretary was Mr. Robert Carr. He handled the secretariat of the committee.

Senator BREWSTER. I think we may be approaching this on a simple and countryside way. It may be modesty on the part of the witness or concern whether internal jealousies might arise if he mentioned names.

Are the minutes of these meetings available?

Mr. WILCOX. We could prepare a list.

Senator BREWSTER. I am asking you whether there are minutes of all these meetings?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. Would they be available to the committee or representatives of the committee for study?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. I think if you would have competent gentlemen look those over, you would discover who was the spark plug, but I think that is the only satisfactory way you can get a solution to this \$64 question.

The CHAIRMAN. I rather expected that Dr. Wilcox would put the crown on himself.

Mr. WILCOX. Mr. Chairman, this project was under way from 1942 in detailed preparation for 3 years before I joined the Department of State or had anything to do with it.

Senator JOHNSON of Colorado. Was Mr. Clayton in the Department when you came in? He came in in 1945, did he not?

Mr. WILCOX. He invited me into the Department.

Senator JOHNSON of Colorado. How long had he been in there before he issued you that invitation?

Mr. WILCOX. Well, a number of months, I cannot tell you exactly.

Senator JOHNSON of Colorado. It must have been in 1945, was it not?

Mr. WILCOX. I do not know the precise date.

Senator JOHNSON. When did you come in?

Mr. WILCOX. I came in in March of 1945. I do not know the precise date when Mr. Clayton came.

Senator JOHNSON. But it must have been in 1945.

Mr. WILCOX. I am not sure. It may have been late 1944.

Senator JOHNSON. It is not important except that Mr. Clayton came into the picture long after it was initiated and he could not have been one of the originators?

Mr. WILCOX. That is right.

Senator JOHNSON. He could not have been the spark plug.

Mr. WILCOX. He is now. I think it is possible to give you a list of all of the committees that have worked on this, all of the members, and who has been the chairman, and who have been the members of each of these committees all the time and in addition all of the minutes of these committees.

The CHAIRMAN. That list would not be relevant. So far as I am concerned, we will let the matter rest in anonymity.

Mr. WILCOX. May I suggest that if you were to put a man to work on examining the minutes of these committees, I do not believe that you would come out with a single person to whom you could attribute predominant responsibility for the development of the charter.

The CHAIRMAN. I do not want to go deeply into it, but are there any historic precedents for this sort of organization?

Mr. WILCOX. Well, I think similar work was done through committees in the original development of the product of the United Nations Charter. I was not in the Department at the time, but I believe that the structure was a committee on political organization and a committee on economic organization.

The CHAIRMAN. I do not believe I made myself clear.

Is there any precedent for an operating organization similar to the one proposed in the charter we are considering?

Has the world ever known anything of that kind before?

Mr. WILCOX. Similar to the International Trade Organization?

The CHAIRMAN. Yes.

Mr. WILCOX. Why yes, I should say so. There is the International Bank, there is the International Monetary Fund, and there is the Provisional Civil Aviation Organization.

The CHAIRMAN. Was there ever an international organization similar to this one, the proposed International Trade Organization?

Mr. WILCOX. Well, they operate in different fields from this one.

The CHAIRMAN. I understand that.

Has the world ever known an organization similar to the one which we are considering here, the proposed International Trade Organization?

Mr. WILCOX. There has never been such an organization in the field of international commercial policy, no, sir.

The CHAIRMAN. You had some matters you wished to develop; will you proceed with them?

Mr. WILCOX. I merely wished to present for the record the historical sequence of documents on the trade organization.

The first is the reference in the fourth point of the Atlantic Charter, dated August 14, 1941.

The second is article 7 of the mutual aid, lend-lease, agreement signed in February 1942.

The third is the statement of purposes in the articles of agreement of the International Monetary Fund and the International Bank.

Senator BREWSTER. Doctor, is it the idea to put these in the record?

Mr. WILCOX. I have marked relevant passages.

Senator BREWSTER. Are they very extended? Could you read them so they would be in the record at this point? I am interested in your approach.

Mr. WILCOX. I could do so.

The CHAIRMAN. I think it would be a good idea because if you do not, I had intended to put the relevant excerpts in myself.

Mr. WILCOX. All right, I should be very glad to do so.

The fourth paragraph of the Atlantic Charter reads as follows:

They—

that is, the Governments of the United States and United Kingdom—will endeavor with due respect for their existing obligations to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity.

Senator LUCAS. What is the date of that?

Mr. WILCOX. That is August 14, 1941.

Senator BREWSTER. What validity do you concede that has at this time?

Mr. WILCOX. I am presenting it merely as an indication of the origin, the historical origin, of an international trade organization.

Senator BREWSTER. You are of the belief that that was in a sense when it was conceived?

Mr. WILCOX. I should say so.

Apparently Mr. Hull had the idea much earlier than this.

Senator BREWSTER. Did the other countries subsequently subscribe to that?

I am asking that to reflect my recollection. Did Russia, China, and France ultimately subscribe?

Mr. WILCOX. The United States of America, the United Kingdom, Russia, Canada, Costa Rica, and so forth. It is a long list.

Senator BREWSTER. They all subscribed to that statement of principles subsequently?

Mr. WILCOX. That is right.

Senator BREWSTER. Was there not some statement later that it was merely a scrap of paper and that it did not really exist?

I do not want to take too much time on this.

Mr. WILCOX. That may have been said. There is a printed text here issued by the Government in 1942, by the Government Printing Office.

Senator BREWSTER. Do you recall the episode I refer to when it was indicated that this was not really in the nature of an agreement but was merely a matter of conversation?

Mr. WILCOX. No, sir, I do not.

There is a text to which these governments have subscribed.

Senator BREWSTER. An official document in our archives showing their subscribing to this document?

Mr. WILCOX. I would assume that there must be.

Senator BREWSTER. I would be glad if you would check that and if your statement is not correct, let us know.

Mr. WILCOX. All right.

(The Department of State subsequently submitted the following statement:)

THE ATLANTIC CHARTER—ONE OF THE SOURCES OF THE ITO

In tracing the history of the development of the proposed International Trade Charter before the Senate Committee on Finance, Mr. Wilcox, Director of the Office of International Trade Policy, Department of State, mentioned, among other things, the economic clauses of the Atlantic Charter as one of the sources of this proposal. At this point some question was raised concerning the nature or validity of the Atlantic Charter.

This question no doubt arises from a misconception of a statement made by the late President Roosevelt in a press conference on December 19, 1944. The late President made a statement to the effect that the Atlantic Charter had not been signed as a formal document at the time (August 1941) it was agreed to by Mr. Churchill and himself. However, Mr. Roosevelt in the same press conference also pointed out that the Charter had been agreed to by the Prime Minister and himself at that time and likewise that the obligations of the Charter had subsequently been subscribed to by all of the United Nations in the Declaration by United Nations, which was formally signed at Washington on January 1, 1942.

The fact that the Atlantic Charter was not formally signed and sealed on August 14, 1941, as is customarily done in the case of treaties between nations, has no relevancy to the point which Mr. Wilcox was making before the Senate committee, namely, that the economic clauses of that historic statement of principles constitute one of the sources from which the proposed International Trade Charter draws its inspiration. Other sources or bases of the Trade Charter are found in the other documents mentioned by Mr. Wilcox, including the Declaration by United Nations of January 1, 1942 (which was signed by all the United Nations, as previously indicated) and the considerable number of master lend-lease agreements, beginning with the agreement with the United Kingdom signed February 28, 1942. Article VII of the master lend-lease agreements, it may be noted, specifically reaffirms the pledge of the signatory countries directed "to the attainment of all of the economic objectives set forth in the joint declaration made on August 14, 1941, by the President of the United States of America and the Prime Minister of the United Kingdom."

(March 31, 1947.)

The CHAIRMAN. I would like to ask one question, as to what you are reading from now and what you read from the other documents, you are not claiming that they support this particular proposed organization?

Mr. WILCOX. Not in detail; no, sir. I am merely trying to trace the historical background.

The CHAIRMAN. I think it is very valuable that it be in the record, but I want to make it clear, if we are in agreement, that you are not arguing what you are reading from now and what you will read from is an endorsement of this particular organization?

Mr. WILCOX. It is not.

The relevant section of the mutual-aid agreements reads as follows—

Senator BREWSTER. Is this an agreement or our active part?

Mr. WILCOX. This is the mutual-aid agreement between the United States and the United Kingdom, and the same provision was contained in others [reading]:

The settlement shall include provision for agreed action by the United States of America and the United Kingdom, open to participation by all other countries of like mind, directed to the expansion, by appropriate international and domestic measures, of production, employment, and the exchange and consumption of goods, which are the material foundations of the liberty and welfare of all peoples; the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers; and, in gen-

eral, to the attainment of all the economic objectives set forth in the joint declaration made on August 14, 1941, by the President of the United States of America and the Prime Minister of the United Kingdom.

Senator BREWSTER. Now, would it be relevant if you should insert in connection with that the provision of Lend-Lease, the statute, which seemed to either authorize or not authorize so extended an agreement? I assume that that may be one of the questions that may be raised.

Mr. WILCOX. I do not have that here but it can be obtained.

Senator BREWSTER. May that be inserted? I think it would be a matter to consider in regard to whether they would go to supporting an agreement of this character.

The CHAIRMAN. It will be done.

Senator LUCAS. If I understand this correctly, all you are attempting to do is to trace the historical background of this thing from the beginning?

Mr. WILCOX. That is right.

Senator LUCAS. And nothing you are saying now definitely binds or completely supports the charter that is before this committee. It is merely tracing one thing after another and all of them put together seem to bear on the charter?

Mr. WILCOX. That is right, Senator.

I am not suggesting, as the Chairman pointed out, that these provisions bind the United States in the details of this charter at all but merely explaining the historical background of the development of the project.

Senator BREWSTER. You did not mean to indicate any doubt of the relevancy of the provision that I speak of?

Senator LUCAS. All of it is relevant.

Senator BREWSTER. I think it would, coming in at this point, support the general development.

Mr. WILCOX. The third item is the statement of purposes in Article 1 of the Articles of Agreement of the International Monetary Fund.

The second point reads as follows:

To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

Senator LUCAS. What date is that?

Mr. WILCOX. This was in 1944.

The final act, I think, was signed the first of July 1944, and adopted by Congress, I believe, in the fall of 1945.

A similar statement appears in the statement of purposes of the articles of agreement of the International Bank for Reconstruction and Development.

Article I, the third paragraph, reads as follows:

To promote the long-range balanced growth of trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories.

There was adopted by the conference at Bretton Woods a resolution which appears on pages 114 and 115 of the Final Act of the Monetary and Financial Conference, which reads as follows:

Whereas in Article I of the Articles of Agreement of the International Monetary Fund it is stated that one of the principal purposes of the fund is to facilitate the

expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy;

Whereas it is recognized that the complete attainment of this and other purposes and objectives stated in the Agreement cannot be achieved through the instrumentality of the Fund alone; therefore

The United Nations Monetary and Financial Conference recommends to the participating Governments that, in addition to implementing the specific monetary and financial measures which were the subject of this Conference, they seek, with a view to creating in the field of international economic relations conditions necessary for the attainment of the purposes of the Fund and of the broader primary objectives of economic policy, to reach agreement as soon as possible on ways and means whereby they may best—

(1) reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations;

(2) bring about the orderly marketing of staple commodities at prices fair to the producer and consumer alike;

(3) deal with the special problems of international concern which will arise from the cessation of production for war purposes; and

(4) facilitate by cooperative effort the harmonization of national policies of Member states designed to promote and maintain high levels of employment and progressively rising standards of living.

The CHAIRMAN. Dr. Wilcox, Senator Brewster a while ago referred to the basic authority for the negotiation of lease-lend agreements. It may be appropriate for me to read the part of that act which the Senator had in mind. I am reading from section 3 (b) of the Lease-Lend Act, Public Law 11, Seventy-seventh Congress, approved March 11, 1941:

The terms and conditions upon which any such foreign government receives the aid authorized under subsection (a) shall be those which the President deems satisfactory and the benefits to the United States may be payment or repayment in kind or property or any other direct or indirect benefits which the President deems satisfactory: *Provided, however,* That nothing in this paragraph shall be construed to authorize the President to assume or incur any obligation on the part of the United States with respect to postwar economic policy, postwar military policy, or any postwar policy involving international relations except in accordance with established constitutional procedure.

Senator BREWSTER. Would you agree, Doctor, that obviated any conclusions as to the effect of any agreement negotiated under that section 3 (b) as affecting in any way or as dealing with postwar problems?

Mr. WILCOX. There is no question about that.

Senator BREWSTER. So the items you have quoted become the expressions of opinion of one or more individuals but constitutes no obligation of any character, legal, moral, or equitable upon the United States Government to implement the suggestions which you have been giving out here in these previous quotations?

Mr. WILCOX. I would not wish to question that statement here.

I am not trying to make the point that we are bound.

Senator BREWSTER. I just wanted to know that our minds were operating all in one.

Mr. WILCOX. The next item has to do with the Proposals for Expansion of World Trade and Employment—

Senator BREWSTER. I think it would have improved your scholastic stature if you had included that in connection with your quotations.

(The Department of State subsequently submitted the following statement:)

The mutual-aid agreement between the United States and the United Kingdom containing the text of article VII relating to postwar economic policy, was con-

cluded on February 23, 1942. Other mutual-aid agreements containing substantially the same text of article VII were subsequently concluded.

Until April 18, 1945, that is to say, during the period in which these agreements were negotiated, section 3 (b) of the Lend-Lease Act provided as follows:

"The terms and conditions upon which any such foreign government receives the aid authorized under subsection (a) shall be those which the President deems satisfactory, and the benefits to the United States may be payment or repayment in kind or property or any other direct or indirect benefits which the President deems satisfactory."

Effective April 18, 1945, section 3 (b) of the Lend-Lease Act, quoted above, was amended to include the following proviso: "*Provided, however,* That nothing in this paragraph shall be construed to authorize the President to assume or incur any obligation on the part of the United States with respect to postwar economic policy, postwar military policy, or any postwar policy involving international relations except in accordance with established constitutional procedure."

Mr. WILCOX. The next item is Proposals for Expansion of World Trade and Employment, developed by a technical staff within the Government of the United States and published in November 1945.

(The Proposals for Expansion of World Trade and Employment appear as Exhibit I.)

This was the first detailed presentation of the American Proposals for an International Trade Organization. This appeared at the same time as the Anglo-American financial and commercial agreements and those agreements contained a joint statement on commercial policy in which the Government of the United Kingdom expressed its full agreement on all important points.

"This is a rather long statement and I shall not try to read the whole thing.

The CHAIRMAN. Doctor, it will be in the printed record. We will see that it gets in the printed record.

Mr. WILCOX. Thank you, Mr. Chairman.

(The statement referred to is as follows:)

UNDERSTANDING REACHED ON COMMERCIAL POLICY—JOINT STATEMENT BY THE UNITED STATES AND THE UNITED KINGDOM

The Secretary of State of the United States has made public today a document setting forth certain "Proposals for Consideration by an International Conference on Trade and Employment". These proposals have the endorsement of the Executive branch of the Government of the United States and have been submitted to other Governments as a basis for discussion preliminary to the holding of such a conference.

Equally, the Government of the United Kingdom is in full agreement on all important points in these proposals and accepts them as a basis for international discussion; and it will, in common with the United States Government, use its best endeavors to bring such discussions to a successful conclusion, in the light of the views expressed by other countries.

The two Governments have also agreed upon the procedures for the international negotiation and implementation of these proposals. To this end they have undertaken to begin preliminary negotiations at an early date between themselves and with other countries for the purpose of developing concrete arrangements to carry out these proposals, including definitive measures for the relaxation of trade barriers of all kinds.

These negotiations will relate to tariffs and preferences, quantitative restrictions, subsidies, state trading, cartels, and other types of trade barriers treated in the document published by the United States and referred to above. The negotiations will proceed in accordance with the principles laid down in that document.

The CHAIRMAN. I invite your attention to the colloquy we were having yesterday following the charge that interest in this organization was induced on the "feedbag" principle.

This organization was proposed to the British at a time when they were trying to get the British loan of \$3,750,000,000. Were the proposals sort of an integral part of the loan?

Mr. WILCOX. May I make just one comment on that point, Senator?

The CHAIRMAN. I am not now sponsoring the "feedbag" motive but it should be explored because we will hear about it in the Senate.

Mr. WILCOX. I believe there were preliminary conferences on the establishment of an International Trade Organization with the Government of the United Kingdom in 1943. It is true that when the discussions concerning the Anglo-American financial agreement were under way that they were an inseparable part of those discussions, this whole field of commercial policy.

The CHAIRMAN. Do you mind if I read into the record at this point some statements from the President's twenty-second report to Congress on lease-lend operations for the period ended December 31, 1945?

On pages 8 and 9 of the pamphlet which I have, appears the following [reading]:

The lend-lease settlement with the United Kingdom was made therefore not merely as a concluding chapter of our wartime financial history but also as a part of the opening of the program of the United States to establish sound peacetime international economic relations. This program looks toward the achievement of a high level of international commerce and employment through reductions in barriers to international trade and participation in financial measures such as the International Bank and International Monetary Fund. These measures constituting part of our program for world peace will enable trade to revive and to develop in the international markets.

As part of the program a financial agreement providing for the proposed loan of 3.75 billion to the United Kingdom was negotiated concurrently with the lend-lease settlement. The terms of this agreement if the loan is approved by Congress provides for removal by the United Kingdom of all exchange on current transactions with the United States for free convertibility of sterling in dollars within the sterling area within a year after approval of the loan and elimination of discrimination against the United States in respect of import restrictions applied by the United Kingdom.

In addition, while the terms of the proposed loan and of the lend-lease settlement were being negotiated, the United States secured from the British the adherence to and support of the Proposals for Expansion of World Trade and Employment.

The CHAIRMAN. Those are the proposals to which you just referred, am I correct?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. I continue as follows:

This undertaking by the British will go far to assure the acceptance of these proposals by other members of the United Nations as a basis for an enlarged flow of trade among nations. Consequently, the British acceptance of these proposals can be counted as a tremendous and tangible benefit which comes to the United States as part of the lend-lease settlement in conformity of article 7 of the master lend-lease agreement. The United States and the United Kingdom have recently concluded satisfactory agreements in the fields of telecommunications and commercial aviation which were also negotiated within the spirit of article 7. While these agreements are of real benefit to the United States in respect to the future, the principal contribution from the aid furnished to the United Kingdom under lend-lease was the strengthening of the British forces for the common victory over the Fascist powers.

If what I have read has relevancy, it is to the point that this proposed organization was a part and was made a part by us of very important financial matters of vital interest to Great Britain.

Senator BREWSTER. Now you refer to a proposal for expansion, I think the term was.

This document which I have here refers to proposals for consideration by an international council for trade and employment.

Do I understand it is the same thing?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. The terminology is different?

Mr. WILCOX. In the document which bears on the cover: "Proposals for Expansion of World Trade and Employment," after a preface, on page 8 there appear details under the heading: "Proposals for Consideration by an International Conference on Trade and Employment." It is the same document.

Senator BREWSTER. One of the subsidiary headings under the broader title you speak of?

Mr. WILCOX. The document to which the British-American statement refers is on pages 8 to 28 of this longer document with which they were then working in typescript.

Senator BREWSTER. This one here is the joint statement issued at the time of settlement of the commercial and financial agreements?

The second item is what is termed an understanding reached, a commercial policy joint statement by the United States and United Kingdom which was a purely executive arrangement on which the negotiations would proceed in accordance with the principles laid down in this document. That document—do they mean this one you referred to?

Mr. WILCOX. They mean the last 20 pages of the pamphlet headed "Proposals."

The CHAIRMAN. Doctor, awhile ago you gave an exact quotation on the British attitude toward the instant proposal; do you remember what that one was?

Senator BREWSTER. I have that here.

Do you have more copies of that available?

Mr. WILCOX. I do not believe I have any here, but they are readily available.

The CHAIRMAN. The quotation I have reference to is one that the doctor himself read awhile ago.

Mr. WILCOX. In regard to full agreement on all important points in the proposal, is that what you mean?

The CHAIRMAN. I think so.

Mr. WILCOX. I did not read the rest of it, but I will read the whole paragraph.

The CHAIRMAN. That is what I had in mind.

Now, what was the date of that?

Mr. WILCOX. That was December 6, 1945.

The CHAIRMAN. Now, is that a part of the joint statement by the United States and United Kingdom following the lease-lend settlement?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. In that same document, in paragraph 2, a statement occurs, and I am reading as follows:

They—

the two Governments—

have also taken full cognizance of the general obligations assumed by them in article VII of the mutual-aid agreement of February 23, 1942, and the under-

standings agreed upon this day with regard to commercial policy. Pursuant to this settlement, both Governments will continue to discuss arrangements for agreed action for the attainment of the economic objectives referred to in article VII of the mutual-aid agreements.

If I have any point in what I have quoted, it is that the British Government has in effect simply agreed to continue discussion of these matters; that it has not completely committed itself to this proposed organization.

Mr. WILCOX. That is perfectly true.

The positions of the two Governments are identical.

Senator BREWSTER. In other words, they both mutually agree to go forward with discussion and that the negotiations would proceed on the general terms outlined but that, naturally, each reserved full freedom of action.

Mr. WILCOX. That is true.

The CHAIRMAN. Proceed, sir.

Mr. WILCOX. Now, I have here statements similar to—differing in detail, but similar to—the joint United States-United Kingdom statement which I have read with respect to certain other governments.

Now, I do not think it would be worth while to read through the texts of these in detail, but I can name the countries and submit them for the record.

The CHAIRMAN. If you please.

Mr. WILCOX. Belgium, October 19, 1945; Greece, January 25, 1946; Poland, April 24, 1946; France, May 28, 1946; Turkey, May 29, 1946.

Senator BREWSTER. Were these others the settlement of lend-lease? Were they incident to those settlements?

Mr. WILCOX. Not all of them.

Senator BREWSTER. Turkey was what attracted my attention; because they were not eligible for lend-lease, were they?

Mr. WILCOX. They were all exchanges of notes with reference to future negotiations with respect to international commercial policy and a statement that neither country will take action until these negotiations occur which would prejudice the negotiations.

The CHAIRMAN. Doctor, when you finish that, I believe it would be a good idea to get into the record as promptly as possible the names of the countries which are members of the preparatory committee working on this. (See p. 60.)

Mr. WILCOX. I shall be glad to do so.

Senator BREWSTER. Were those incident to some other negotiations, either loans or settlements, or something of that nature?

Mr. WILCOX. They were generally incident to other economic discussions; yes, sir.

Senator BREWSTER. We made a loan to Turkey, did we not, at one time, for \$25,000,000 or something of that kind?

Mr. WILCOX. I believe so.

Senator BREWSTER. Was it incidental to that that we got this statement? I think it has relevance. I do not remember the terminology that the chairman used. I believe he said "feedbag theory."

Mr. WILCOX. I believe that most of these are incident to financial settlements.

The next one is Czechoslovakia, November 19, 1946, and that is a pure exchange of notes.

Senator BREWSTER. I think when you put these quotations in, if you would include with it a statement of what the particular nature

of the transaction was at the time this was made, that would indicate at least in general terms. If we were advancing them \$25,000,000, \$50,000,000, or \$100,000,000 at the time, they naturally were inclined to be pretty agreeable in this conversation, and I think to the extent that affected their attitude or arrangements it might have some significance.

Mr. WILCOX. The last of these items is the Netherlands, December 5, 1946. The character of this statement appears in the text in every case.

Senator BREWSTER. Yes.

Mr. WILCOX. The next item is the resolution——

Senator BREWSTER (interposing). Do we have those as exhibits, distinct from the record?

The CHAIRMAN. I am familiar with what the doctor is reading from, and in the printed record we will have quite a little matter that we will not develop fully during the hearing.

Senator BREWSTER. If this could be an appendix, and have the documents as appendixes, it would save the record somewhat so that the record will read much more rapidly, as we simply have the citations and excerpts.

The CHAIRMAN. We will fix the record up after we finish in here. Go ahead, Doctor.

(The texts of the agreements with the countries mentioned appear in exhibit IX.)

Mr. WILCOX. The next item is the resolution of the Economic and Social Council, dated March 5, 1946, regarding the calling of an international conference on trade and employment.

(The resolution is as follows:)

ECONOMIC AND SOCIAL COUNCIL

RESOLUTION REGARDING THE CALLING OF AN INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

The Economic and Social Council, considering it essential that the cooperative economic measures already taken be supplemented by further international measures dealing directly with trade barriers and discriminations which stand in the way of an expansion of multilateral trade and by an undertaking on the part of nations to seek full employment.

1. Decides to call an International Conference on Trade and Employment, in the latter part of 1946, for the purpose of promoting the expansion of production, exchange, and consumption of goods;

2. Constitutes a Preparatory Committee to elaborate an annotated draft agenda, including a draft convention, for consideration by the Conference, taking into account suggestions which may be submitted to it by the Economic and Social Council or by any Member of the United Nations;

3. Suggests, as a basis of discussion for the Preparatory Committee, that the agenda include the following topics:

(a) International agreement relating to the achievement and maintenance of high and stable levels of employment and economic activity.

(b) International agreement relating to regulations, restrictions, and discriminations affecting international trade.

(c) International agreement relating to restrictive business practices.

(d) International agreement relating to inter-governmental commodity arrangements.

(e) Establishment of an international trade organization, as a specialized agency of the United Nations, having responsibilities in the fields of (b), (c), and (d) above;

4. Requests the Preparatory Committee, when considering the foregoing items, to take into account the special conditions which prevail in countries whose manufacturing industry is still in its initial stages of development, and the

questions that arise in connection with commodities which are subject to special problems of adjustment in international markets;

5. Requests the Preparatory Committee to report to a subsequent session of the Council recommendations regarding the date and place of the Conference and the agenda (including a draft convention) and also what States, if any, not Members of the United Nations, should be invited to the Conference on Trade and Employment;

6. Appoints as Members of the Preparatory Committee the representatives of the Governments of the following countries: Australia, Belgium, Luxembourg, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Netherlands, New Zealand, Norway, South Africa, USSR the United States of America, and the United Kingdom.¹

This resolution, I believe, is also reproduced in the report of the Preparatory Committee, which the members of this committee have. But this is the next item in chronological order.

After the issuance of the proposals, this interdepartmental committee structure went to work on the development of a "Suggested Charter" which was purely an American document. When it was published, it was published solely on the authority of this Government, and no other government had stated that it was committed to it in any way.

This document was sent on July 24, 1946, to the Speaker of the House, the President pro tem of the Senate, the majority leader of the House, the majority leader of the Senate, the chairmen of the Foreign Relations Committees in the House and Senate, and the ranking minority members of the Foreign Relations Committees in the House and Senate.

I have here a copy of the letter of transmittal with which it was sent, to the chairman of the Foreign Relations Committee of the Senate which I shall file.

(The letter is as follows:)

Confidential.

JULY 24, 1946.

The Honorable TOM CONNALLY,
United States Senate.

MY DEAR SENATOR CONNALLY: You will recall that at the time of the conversations which led up to the signature of the financial agreement with the United Kingdom last December, the Department of State published a document entitled "Proposals for Expansion of World Trade and Employment." At that time the British Government, in a statement accompanying the financial agreement, indicated that it was "in full agreement on all important points in these proposals and accepts them as a basis for international discussion; and it will, in common with the United States Government, use its best endeavors to bring such discussions to a successful conclusion, in the light of the views expressed by other countries."

In statements before the committees of the Senate and the House of Representatives considering the legislation to implement the financial agreement, and during the debates on that legislation in both branches of the Congress, it was made clear that the ability of the British Government to implement its agreement with the substance of the Proposals for Expansion of World Trade and Employment was closely linked with the approval of the financial agreement. The possibility of achieving general acceptance and adoption of these proposals, which we consider essential to the revival and stimulation of international trade on a multilateral, nondiscriminatory basis, was also dependent on the outcome in the Congress of the British financial agreement.

In the months since the issuance of the proposals and the signature of the British-loan agreement, an interdepartmental organization has been actively engaged in the task of translating into more specific terms the rather broad principles set forth in the proposals, for study and comment by our own people as well as by other governments. Work on the first draft of this document has now

¹ These nineteen nations became the "Eighteen Nations" by reason of Russia's non-attendance at meetings of the Preparatory Commission.

been completed, and a copy is enclosed. The document is set up in the form of a draft charter of an International Trade Organization, comprising not only our present ideas regarding the structure of such an organization but also our views on the questions of substance which the member nations of such an organization should agree upon in the fields of governmental restrictions on international trade, private barriers to trade, national employment policies as they affect trade, and commodity problems.

The United Nations Economic and Social Council, on February 18, 1946, in anticipation of the proposed International Conference on Trade and Employment, which it is hoped may convene in the late summer or early fall of 1947, appointed a group of 18 countries, including the United States, as a Preparatory Committee for that Conference. The first meeting of the Preparatory Committee is scheduled for London on October 15.

We are in process of circulating copies of the enclosed document for study by the other nations which will meet with us in the Preparatory Committee at London in October. We also propose at an early date to publish this document and give it as wide circulation as possible in order to stimulate discussion of the important issues involved and to obtain the views of interested individuals and organizations. Following consideration by our own people and other countries, it is hoped that there will emerge in the next several months a draft charter for final action at the International Trade Conference. The instrument resulting from that Conference would be presented to the Congress for approval, late in 1947 or early in 1948.

After you have had an opportunity to study the enclosed document, I will be happy either to have your comments in writing or to arrange for whatever discussion you may wish to have upon the contents.

In substance the enclosed document does not go beyond the proposals issued last December and which were discussed with various members of the Congress at that time. The issues involved are of the highest importance, affecting the economic welfare of every citizen of our country. I sincerely believe that the adoption of the program here proposed will make an important contribution to economic security and hence to the peace of the world.

Sincerely yours,
For the Secretary of State:

W. L. CLAYTON,
Assistant Secretary.

Enclosure: Suggested draft of a charter for an International Trade Organization of the United Nations.

Mr. WILCOX. This draft was published on September 2, 1946, and that is the Suggested Charter for an International Trade Organization of the United Nations. That is purely a United States document. It is the first draft of a charter. You might call it the Washington draft. Of course, it has now been superseded.

(The suggested charter appears as exhibit III.)

Senator LUCAS. What was that last statement, sir?

Mr. WILCOX. The Washington draft has now been superseded by two subsequent drafts.

The CHAIRMAN. That was the draft put in the mill at London for consideration at the United Nations?

Mr. WILCOX. That is right, sir.

The CHAIRMAN. That is the draft that has touched off the subsequent proceedings by the nations?

Mr. WILCOX. That is true.

Senator BREWSTER. What was the date of that?

Mr. WILCOX. It was published September 20, 1946.

I have here a copy also of the release that was given out at the time it was published which contains a summary of the draft.

The CHAIRMAN. When did you start your public hearings?

Mr. WILCOX. The public hearings were not held on that draft. They were held on the London draft.

The CHAIRMAN. Exactly.

Mr. WILCOX. They were in February and early March 1947.

The CHAIRMAN. And this matter has not been brought before the Congress until these hearings commenced?

Mr. WILCOX. That is true. Not formally.

The next item is a preliminary draft of a Charter for the International Trade Organization of the United Nations. This may be called the London draft, and this draft has been published. This particular copy was published by the Department of State in December 1946. And this, therefore, is available for public distribution and public discussion.

The London draft appears as exhibit IV-B.)

The CHAIRMAN. This is the draft which we will use for our working purposes here with such testimony as we may have on possible further modifications on it. Am I correct?

Mr. WILCOX. That is true.²

I wanted to make the point of the difference in the status of this draft and the next one.

The CHAIRMAN. All right.

Mr. WILCOX. The other relevant documents, which I think your committee has, are the Report of the First Session of the Preparatory Committee in London in October 1946 [exhibit IV-A], the Official Report of the United States Delegation to the First Meeting of the Preparatory Committee [exhibit IV-D], and finally, the Report of the Drafting Committee of the Preparatory Committee of the United Nations Conference on Trade and Employment, which met in New York, from January 20 to February 25, 1947. (See appendix.) This we might call the New York draft, and it is the third and latest draft of the charter, and this is the report of the subcommittee to the Preparatory Committee.

The Preparatory Committee has not yet received this report; and the report, therefore, has not been made public. The members of your committee, however, have copies of it; and I think where sections of it are relevant in our discussion, we may refer to such matters without difficulty.

But, as a matter of courtesy, I do not think that this report, as it stands, should be given to the public or given to the press or made public at the present time.

The CHAIRMAN. When we get through with these preliminary matters, Doctor, we will get into a detailed examination of the proposed charter.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. And as we do that, I hope that you will give us as much illumination on the subsequent developments as you can, and I hope you will do that automatically, for if you do not, the Chair and possibly other members of the committee will develop some of those matters.

Mr. WILCOX. I think we are perfectly free to do that, Senator.

The only thing that I would ask, as a matter of courtesy, is that since the members of the subcommittee are not making this public, we do not do so.

The CHAIRMAN. We will adhere to the proprieties, and at the same time get the information we want.

² Subsequently it was agreed to use the more recent "New York draft," subject to the restrictions, there would be no publication of the Commentaries, the Interim Drafting Committee.

Mr. WILCOX. That is exactly what we wish.

Senator BREWSTER. I assume that this report will go to the meeting of the Conference. Is that now slated for April?

Mr. WILCOX. April 10; yes, sir.

Senator BREWSTER. So that it is expected it will be made public at that time.

Mr. WILCOX. I do not know. This is a subcommittee report to a committee of the United Nations. There undoubtedly will come out of that second meeting of the full committee another draft which will change this in detail, perhaps substantially.

Senator BREWSTER. Do you mean the main committee will not accept the subcommittee's report, in all likelihood?

Mr. WILCOX. Well, there are a number of points in here on which there are alternative drafts, or on which there are reservations, and the report that comes out of the Geneva meeting will certainly differ from this, and this particular subcommittee report may not ever be published.

Senator BREWSTER. These changes were the results of instructions developed out of the London Conference?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. Were those public?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. So that, in general, we know that the London draft was to be revised in accordance with certain instructions that were developed at that time and the only question is how the drafting committee would undertake to implement those contemplated arrangements?

Mr. WILCOX. Yes, sir. There are no important differences in substance here. Where there is any difference of importance to your inquiry, I think we are perfectly free to discuss it.

Well, that completes the tracing of the chronology, Mr. Chairman.

Senator JOHNSON. Mr. Chairman, may I ask Dr. Wilcox why, in the tracing of the family tree and the ancestry of the charter of the ITO, he has not referred to the reciprocal trade agreements in any way. Is it not a fact that this is merely an outgrowth of the reciprocal trade agreements?

Mr. WILCOX. Well, Senator, it goes a great deal further than that, because it covers a number of matters that are not covered in the trade agreement program at all.

Senator JOHNSON. The preamble to the trade agreements is along this same line and much more closely related to the objectives than any of these other incidental things you have mentioned this morning.

Mr. WILCOX. Well, the objectives of the two are certainly similar. The charter, however, as you know, goes into questions of international combines and cartels and international commodity agreement matters and other matters not covered in the Trade Agreements Act.

Senator BREWSTER. I call your attention, Doctor, to the statement of the United States Tariff Commission commenting on this on page 8, where they say:

Invitations were issued by the United States to 15 nations to enter into negotiations with the United States under the Trade Agreements Act for the reduction of barriers to trade.

They apparently thought that the authority for these negotiations was under the Trade Agreements Act.

Now, I understand you to feel that they take in a great deal more territory.

Mr. WILCOX. Invitations were issued to the trade agreement negotiations in December 1945. The first meeting of the Economic and Social Council of the United Nations did not occur until January 1946. At that meeting, the Economic and Social Council voted to set up this Preparatory Committee to work on the charter for an International Trade Organization.

Senator BREWSTER. They go on to state here:

Three additional countries were added to this list subsequent to the meeting of the Economic and Social Council of the United Nations in February 1946.

Apparently it was in February instead of January, or perhaps it ran over.

Mr. WILCOX. The meeting convened in January and ran into February; yes, sir.

Senator BREWSTER. But that is all a part of the one paragraph, apparently proceeding on the theory at this point in their view that it was under the Trade Agreements Act. Is that in conflict with your conception?

Mr. WILCOX. The Economic and Social Council appointed to the Preparatory Committee the same countries to which the United States had extended invitations to enter into trade agreement negotiations.

The chairman suggested a moment ago that the names of those countries should be in the record. They were: the United Kingdom, Canada, Australia, New Zealand, South Africa, India, France, the Netherlands, Belgium-Luxemburg; Czechoslovakia, Cuba, Brazil, China, and the Soviet Union.

Then, there were added, as a result of the Economic and Social Council meeting, Chile, Norway, and Lebanon.

Senator BREWSTER. Now, in developing this question of paternity, I understood that you move out from under the Trade Agreements Act now, although that was what they referred to, over to the Economic and Social Council of the United Nations, as really the body which created this committee, which has developed this draft from this point on, so that it moves out of the sphere of the United States legislation into the sphere of the general power of the President and the State Department to discuss trade arrangements and other matters.

Mr. WILCOX. The preparation of the charter from the date of that meeting of the Economic and Social Council on becomes a project of the United Nations; yes, sir.

Senator BREWSTER. Again quoting from this comment of the Tariff Commission, the final paragraph, I would like to know whether this fully conforms with the understanding—

Senator LUCAS. What date is that, Senator Brewster?

Senator BREWSTER. This is March 1947. That is right now.
[Reading:]

It should be clearly understood that the present draft charter represents the work of the group of experts which met at London, no one of whom, although designated by his government, had any authority to commit that government even tentatively to any of the charter provisions.

Mr. WILCOX. That is true.

Senator BREWSTER. That is quite correct?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Have you finished, Doctor?

Mr. WILCOX. I have finished tracing the background, and if it pleases the committee, I shall be happy to indicate what seems to me to be the logical relationships of the sections of the charter.

The CHAIRMAN. We will come to that a little later. We will take them up article by article.

Mr. WILCOX. I understand that, Senator. What I had in mind was not going into detail on any of the articles, but indicating how they are related to each other.

The CHAIRMAN. Yes; go ahead, Doctor.

Mr. WILCOX. From our point of view, the heart of the charter—and I am speaking now with reference to this preliminary draft, the London draft—the heart of the charter is in chapter V on commercial policy.

Article 24, on the reduction of tariffs and the elimination of preferences: I would point out that this does not condemn tariffs as a matter of principle. What it does is merely to commit members of the organization to enter into negotiations directed toward the reduction of tariffs and the elimination of preferences and sets up certain procedures to be followed in those negotiations.

Related to this is article 34, which appears on page 29 of this document, which contains the so-called escape clause which, in the Executive order of the President, is to be included in future reciprocal trade agreements to be entered into by the United States.

The article referred to is as follows [reading]:

ARTICLE 34. EMERGENCY ACTION ON IMPORTS OF PARTICULAR PRODUCTS

1. If, as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products (or, in the case of a product which is the subject of a concession with respect to a preference, is being imported under such conditions as to cause or threaten serious injury to producers in a territory which receives or received such preference), the Member shall be free to suspend the obligation in respect of such product in whole or in part, or to withdraw or modify the concession to the extent and for such time as may be necessary to prevent such injury.

2. Before any Member shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical and exceptional circumstances such action may be taken provisionally without prior consultation, Provided that consultation shall be effected immediately following upon the taking of such action.

3. If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action, shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than sixty days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, of such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In cases of abuse the Organization may authorize an affected Member to suspend obligations or concessions in addition to those which may be substantially equivalent to the action originally taken.

Mr. WILCOX. This article in this form, if it were to be accepted by other nations, would involve a commitment on the part of all of them to the American escape clause.

Article 14, related to this same problem, provides for the extension of general most-favored-nation treatment by each of the participating governments. But I would call your attention particularly to the proposal of the United States in article 36, which would contemplate a change in our long-standing practice with respect to this question of most-favored-nation treatment.

What is contemplated in the American proposal here is that after the International Trade Organization had been in existence for a period of a year and all nations eligible to join had been given an opportunity to do so, thereafter most-favored-nation treatment would be confined, in general, to members of the Organization and would not be extended to countries outside the Organization.

(The article referred to is as follows:)

ARTICLE 36

[At its First Session, the Preparatory Committee decided to leave Article 36 for consideration at a later stage. The Drafting Committee did not discuss this Article.]

The text of this Article, as given in the United States Draft Charter, is reproduced below for reference:

"1. No Member shall seek exclusive or preferential advantages for its trade in the territory of any non-Member which would result, directly or indirectly, in discrimination in that territory against the trade of any other Member.

"2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member shall be contractually entitled to any of the benefits of this Charter.

"3. With regard to countries which, although eligible for membership, have not become Members or have withdrawn from the Organization, no Member shall, except with the concurrence of the Organization, apply to the trade of such countries the tariff reductions effected by such Member pursuant to Article 18. This paragraph shall become effective upon the expiration of one year from the date on which the Organization is established: Provided, That this period may be extended by the Organization for further periods not to exceed six months each.

"4. Members undertake to review any international obligations they may have which would prevent them from giving full effect to paragraphs 1 and 2 of this Article and, if necessary for that purpose, to terminate such obligations either by agreement or in accordance with their terms."

The CHAIRMAN. It is contemplated, in other words, to monopolize the benefits of the Organization?

Mr. WILCOX. It is contemplated, Senator, that nobody should be allowed to take a free ride. That those who get the benefits of the Organization should also assume its responsibilities.

Senator BREWSTER. Well, you are predicating this on the fellows outside who do not join, so they do not get the benefits?

Mr. WILCOX. Countries that did not join would not get the benefits.

Senator BREWSTER. But I am speaking now of the benefits of their other arrangements. Of course, if they were not members of the Organization they would not get the benefits of the Organization. If they had preceding agreements with us, that would be in a different status?

Mr. WILCOX. If they were not members of the Organization, they would not get extended to them by members of the Organization most-favored-nation treatment.

Senator BREWSTER. In other words, we are forming a club and exclude from the benefits of our previous agreements those who do not elect to join the club?

Mr. WILCOX. That is about right.

Senator BREWSTER. Now, do our reciprocal trade arrangements all have a year's clause in them?

Mr. WILCOX. Almost all of them can be altered on 6 months' notice.

Senator BREWSTER. Altered but not canceled?

Mr. WILCOX. They can be canceled on 6 months' notice.

Senator BREWSTER. So that we presumably would have to give that notice to all those who had not come in that unless they did enter the Organization within the year, they could no longer enjoy the benefits of our agreement with us under the reciprocal trade?

Mr. WILCOX. That is about correct.

Senator HAWKES. Mr. Chairman, may I ask this question: Is that prohibitory? Positive? Absolute?

In other words, if we are a member of this International Trade Organization and a certain nation did not come in and we found it greatly to our advantage to make a reciprocal trade agreement with them and give them the most-favored-nation privilege, do I understand we are absolutely prohibited from doing that in acting in our own behalf by this International Trade Agreement?

Mr. WILCOX. We would be if we agreed to it, yes, sir.

Senator BREWSTER. You have one exception. Except with the concurrence of the Organization. If you could get the approval.

Mr. WILCOX. Yes, sir.

Senator HAWKES. Of course, you can do anything with complete approval, but what I am asking, and he has answered my questions, is that we would be prohibited from making a deal tremendously favorable to us and favorable to another country in giving them the most-favored-nation clause unless they joined this Organization and provided we were members of the Organization.

Mr. WILCOX. We would be prohibited in an arrangement with such another country from agreeing to give them most-favored-nation treatment in any other agreements we had; yes, sir, if we agreed to this.

Senator HAWKES. You realize that might work a very great hardship on us.

Mr. WILCOX. This would be applied, Senator, to every member of the Organization.

Senator HAWKES. Yes, I understand that, but there might be some peculiar circumstances where we would find it very much to our interest to make a deal with some country that was not a member of this International Trade Organization and if we are prohibited from doing it, it might work to our detriment.

Let us put it this way: if we could only do it on the basis of our giving them most-favored-nation treatment, and we are prohibited from giving them that most-favored-nation treatment, then we would be denied the privilege of doing something that might be tremendously beneficial to our country.

Mr. WILCOX. I would assume, Senator, that if this provision that we have proposed here were agreed to and adopted, that there would not be any country that would not be a member of the Organization, because it would be to their interest to join.

Senator BREWSTER. This is going a little beyond. Both of you refer to it as the most-favored-nation treatment, and the actual provision is that no member shall apply to the trade of such countries the tariff reductions effected by such member pursuant to article 24. In other

words, you not only could not give him most-favored-nation treatment, but you could not even reduce your tariffs.

You could not say, "I will give you a tariff reduction on certain items." If you had already given them under the most-favored-nation treatment; is that correct?

Mr. WILCOX. That may be correct.

The CHAIRMAN. Dr. Wilcox, there will be a more logical place for the full development of the theme we are on now.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. But taking a quick shot at it, do you think that the discriminations of the type which have been mentioned and developed just now are conducive to peace?

Mr. WILCOX. Discriminations?

The CHAIRMAN. Of course, there is an obvious discrimination when you exclude some one from trading with us.

Let me bring to your attention that one of the alleged causes for the war between Japan and China was China's maintenance of boycotts against trade with Japan.

Mr. WILCOX. In this case, sir, membership in the Organization is completely open. If you had an exclusive organization with such a clause, there would be a basis for objection on the part of the excluded country; but when you have open membership and a country says, "You are discriminating against me," the answer is "Come on in."

The CHAIRMAN. If this organization were in existence and a nation preferred not to join, its choice presumably would be dictated by compelling considerations of self-interest. Assuming that nation had important trade either in quantity or because of the nature of the goods in which it traded. Under such circumstances, Doctor, could not the kind of discrimination we have been discussing engender ill will and possibly jeopardize peace?

Mr. WILCOX. I do not see how it could, Senator, as long as membership is perfectly open and the terms of membership are agreed to and reasonable.

The CHAIRMAN. So far as your basic thesis is concerned, that this sort of organization will advance the cause of peace, is there not coupled with it that there must be no discrimination between nations in trade? Is that not an unavoidable part of your thesis that this kind of an organization would promote peace?

Mr. WILCOX. If all nations eligible to join the Organization joined the Organization, there would be no discrimination among nations.

The CHAIRMAN. Exactly.

Senator HAWKES. In other words, Mr. Chairman, if all nations will do what this International Trade Organization wants to impose upon them and comply with the rules of this thing, there would be no discrimination; but it is very conceivable to me that a nation might not want to join this International Trade Organization and yet it might be equipped to do something new that we do not even know about now, and we might very much want to trade with that nation and get the benefit of that new thing they are producing; but unless they join this International Trade Organization, we would be prohibited from doing it.

The thing that might be necessary to do this to bring about a relationship which we desired, we might not be able to do.

Senator BREWSTER. Is this not practically a closed shop?

Mr. WILCOX. With an open union; yes, Senator.

The CHAIRMAN. Have you ever pondered on the precedence for this Organization that can be found in the Medieval Guild and the Hanseatic League?

Mr. WILCOX. No, sir.

The CHAIRMAN. Let me suggest that between now and Monday, or whenever we start next week, that you take a look at those two institutions and also some of the old Mediterranean trade arrangements and perhaps we may reach some conclusions as to the durability of closed shop organizations of that kind.

Go ahead, Doctor.

Senator LUCAS. May I ask if Russia has participated in all these meetings?

Mr. WILCOX. The Soviet Union was a member of the Economic and Social Council at the time when the resolution setting up the Preparatory Committee was passed. And they were named as one of the members of the Preparatory Committee and they voted for the resolution. They did not attend the meeting of the Committee in London when it met. They did not attend the meeting of the subcommittee, the drafting committee, in New York.

Senator BREWSTER. Where they members?

Mr. WILCOX. Yes; they did not attend.

The CHAIRMAN. Have you finished this part of your discussion, Doctor?

Mr. WILCOX. Not quite.

The CHAIRMAN. Go ahead, please. Pardon me, Senator.

Senator LUCAS. I want to ask one further question: Was the delegate from Russia appointed on that subcommittee at the London meeting and did not appear?

Mr. WILCOX. The subcommittee was to consist of the same countries that belonged to the Committee itself, and each country was to appoint its own delegate. Russia did not do so.

Senator JOHNSON. There is nothing new in the principle of exclusion. The principle of exclusion was in the reciprocal trade agreements. We did not have to extend the benefits to nations that we did not consider most-favored nations, and we did exclude nations under the reciprocal trade agreement's most-favored-nations clause. So the principle is not new.

Senator LUCAS. It has been the tariff policy for a good while.

Senator HAWKES. Mr. Chairman, I think there is a vast difference here.

If I understand what Senator Johnson is aiming at, under the reciprocal trade arrangements, there was not anything specific in any one of them that kept us from making any kind of agreement with any other nation that we might want or wish to on any basis as we chose to and saw fit to make.

Then if it were on a better basis than the reciprocal trade agreements with other countries under the most-favored-nation clause, they came down to that basis.

Senator JOHNSON. Yes; but we did not extend benefits to nations we did not want to extend benefits to.

Senator BREWSTER. We had the right to give it to anyone at any time. We are in the driver's seat, where now we surrender that to the organization. It may be advisable, but that is the legal effect.

Senator HAWKES. Mr. Chairman, that is the very point I wanted to bring out.

In the case you are talking about, Senator Johnson, we still had the right to change our position. If this goes into effect, we have not the right to change our position even if it is deemed very important that we should without the consent of all of the members of the International Trade Organization. Is that a correct statement?

Mr. WILCOX. It does not require a complete vote. It is a simple majority vote.

Senator BREWSTER. It is just the consent of the Organization which could be achieved by a majority vote.

Mr. WILCOX. That is right.

(The Department of State subsequently submitted the following statement:)

The principle that the most-favored-nation clause should not apply to benefits granted under multilateral economic agreements which are generally open to all has not only been recognized by committees of the League of Nations as an equitable principle, but has been incorporated in a treaty approved by the Senate. The relevant provisions of this treaty¹ are as follows:

"The High Contracting Parties, desirous of encouraging the development of economic relations among the peoples of the world by means of multilateral conventions, the benefits of which ought not to inure to countries which refuse to assume the obligations thereof; and desirous also, while reaffirming as a fundamental doctrine the policy of equality of treatment, to develop such policy in a manner harmonious with the development of general economic rapprochement in which every country shall do its part; have decided to enter into an agreement for these purposes, as set forth in the following articles:

ARTICLE I

"The High Contracting Parties, with respect to their relations with one another, will not, except as provided in Article II hereof, invoke the obligations of the most-favored-nation clause for the purpose of obtaining from Parties to multilateral conventions of the type hereinafter stated, the advantages or benefits enjoyed by the Parties thereto.

"The multilateral economic conventions contemplated in this article are those which are of general applicability, which include a trade area of substantial size, which have as their objective the liberalization and promotion of international trade or other international economic intercourse, and which are open to adoption by all countries.

"ARTICLE II

"Notwithstanding the stipulation of Article I, any High Contracting Party may demand, from a State with which it maintains a treaty containing the most-favored-nation clause, the fulfillment of that clause insofar as such High Contracting Party accords *in fact* to such State the benefits which it claims."

The CHAIRMAN. Proceed, Doctor, please.

Mr. WILCOX. The next related sections are articles 15 to 23, and I would call your attention to the fact that articles 15 to 23, as they appear in this draft, are in the form originally suggested by the United States. Those articles have been developed further in the Drafting Committee meeting in New York City, and when we come to discuss them, I think we may wish to transfer our discussion to the New York draft. These are related to the indirect methods by which the benefits that nations would get from trade concessions, one to the other, might be dissipated through procedural or administrative devices. That is, they are deemed essential to protect the tariff concessions.

¹ Agreement between the United States of America and other Powers on the Non-Application of Most-Favored Nation Clause in Respect of Certain Multilateral Economic Conventions, Treaty Series No. 898.

The next section of major importance, and really the heart of the charter, is section C, which relates to quantitative restrictions and exchange controls.

You will want to go into this in some detail. The only thing I want to say here is that there is a contrast between the treatment of tariffs and the treatment of quantitative restrictions.

The charter does not say the tariffs are bad in principle. What it says is that there shall be negotiation.

The Charter does say that quantitative restrictions are bad in principle, that there should be a general rule against import and export quota systems, and having laid down this general rule, what it does is to list specific exceptions to the general rule.

Senator BREWSTER. Could you give me the page of that?

Mr. WILCOX. That is on pages 15 to 24.

The CHAIRMAN. Does the differentiation that you name between tariff, as a matter of principle, and the restrictions of the type you have mentioned as a matter of principle, arise out of the fact that tariffs, after all, in many instances, are not effective trade barriers, that they can be surmounted, whereas a quota system is a definite measurable limitation on the type of trade which you believe should be furthered?

Mr. WILCOX. Well, it is that. It is more than that, Senator. It would be our view that the control of the movement of goods between countries through tariffs is entirely consistent with the preservation of a private trading system, that the imposition of detailed administrative regulations by all countries is not consistent with preservation of what we would call a free enterprise system.

That is, under a tariff system, the volume of exports and the volume of imports, the sources of imports, the destination of exports for any country, is determined by the free choice of private traders. When you have tariffs, anybody who wants to buy the goods and pay the duties can get the goods. There is flexibility in such a system. Trade can shift from place to place and the volume of trade can grow and decline, as businessmen make a free choice.

Under a quota system, however, the total volume of trade, exports and imports, is determined by public officials, and the destination of exports and the sources of imports are determined by bargains made by the public officials, and there is no flexibility in the system. There is complete rigidity in the system, and if as the result of such a system you have to limit the amount of your exports or imports, you are faced with the necessity of allocation.

That is, if you permit less exports than your domestic traders want to sell abroad, you have got to allocate foreign markets among private enterprises in the country. If you admit under a quota less in the way of imports than your domestic industry wants to take, then you have to allocate your imported commodities among domestic industries and that has to be done by the Government.

The CHAIRMAN. The end question remaining is whether, instead of allowing the individual nations to establish their own quota systems on export and import, they prefer to forego that and confer the right on an international organization. Does it not come to that?

Mr. WILCOX. It is not proposed in this charter that such a right should be conferred on an international organization.

The CHAIRMAN. Will not this paragraph have a certain measure of control over the exceptions which you have provided in the charter?

Mr. WILCOX. Yes.

The CHAIRMAN. You do not abolish those things completely?

Mr. WILCOX. That is right.

The CHAIRMAN. You state an ultimate aim of abolishing them?

Mr. WILCOX. That is right.

The CHAIRMAN. But your exceptions cover a multitude of cases, and when those exceptions come into operation, they will be policed by an international organization rather than by the nations directly involved; is that not correct?

Mr. WILCOX. One thing should be clear, Senator. The International Trade Organization would not itself have the power to say how much any country should export, how much it should import, to whom it should export, from whom it should import, or in what quantities. There is nothing in the charter that would give it any such power.

Senator BREWSTER. Doctor, would it not have the power to determine whether or not the action of any given government was within the terms of the exceptions provided in this document?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. Would that not be the same thing?

Mr. WILCOX. No, sir.

Senator BREWSTER. Let us take as a practical illustration, cotton. We have import quotas on cotton, do we not, now?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. Which are very restrictive, so that very little cotton can be imported. If we should allege that the importation of cotton came within one of the exceptions here, and took action to that end, the International Organization would have the final determination as to whether we were within the limitations laid down in the document, would they not?

Mr. WILCOX. Only if a question were raised.

Senator BREWSTER. Let us assume it would be. People who would like to get the cotton and people who would like to sell it, they would both raise the question.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. The International Organization would have to determine whether the United States Government was within the exceptions provided for in this document.

Mr. WILCOX. If it were questioned, that determination would have to be made.

Senator BREWSTER. Let us take the other end of it. The state trading provision. There are exceptions to that, I apprehend, state trading?

Mr. WILCOX. No, sir; I do not think so.

Senator BREWSTER. You mean that is absolutely forbidden?

Mr. WILCOX. No; it is not forbidden.

Senator BREWSTER. Well, I noticed provisions here.

The CHAIRMAN. Senator, if I may interrupt, I think the Charter conforms to state trading and trading by monopoly governments.

Senator HAWKES. It frowns on it but does not prohibit it.

The CHAIRMAN. It frowns on it but accepts it.

Senator HAWKES. That is right.

Mr. WILCOX. I do not think so, Senator.

The CHAIRMAN. It is like sin.

Mr. WILCOX. I do not think there is anything in the text of the Charter that frowns on it.

I know you want some detail and I will not push it further.

The CHAIRMAN. We will pursue it further later on.

Senator BREWSTER. We will confine ourselves simply to quota arrangement.

Our future action in this country with relation to the importation of cotton would be controlled by whether or not we could establish that it would come within the exceptions contemplated in this document as to quantitative restriction.

Mr. WILCOX. Yes, sir; if that were ever questioned. The exceptions have been established as you shall see when you analyze this in detail.

Senator BREWSTER. Yes.

Mr. WILCOX. To take care of that particular case.

Senator BREWSTER. Yes.

Mr. WILCOX. Our concern here is that quota controls are a much more serious threat to the future trade of the United States, at least as the present developments in the world indicate, than is state trading.

Senator BREWSTER. Well, your provision on state trading certainly provides for the nondiscriminatory administration of it.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. That is quite a restriction, that the government, in buying cotton, shall buy it on an entirely nondiscriminatory basis.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. So, in that respect, state trading is restricted?

Mr. WILCOX. Yes, sir.

Senator JOHNSON. Mr. Chairman, may I ask Dr. Wilcox if, under the provisions of this Charter, the quota system upon which the sugar industry has been stabilized would be prohibited.

Mr. WILCOX. It would not be prohibited; no, sir.

Senator JOHNSON. What is your authority for saying that?

Mr. WILCOX. It would come within one of the permitted exceptions. It has been under the terms of a commodity agreement.

Senator JOHNSON. That will be specifically spelled out as an exception?

Mr. WILCOX. It is specifically spelled out as an exception, except that the word "sugar" does not appear. But the case is certainly described and any comparable cases covered in the exceptions.

Senator JOHNSON. Will you make reference to the language that does that? You do not need to read it if it is long.

Mr. WILCOX. Article 25, paragraph (d).

Senator BREWSTER. Paragraph (d)?

Mr. WILCOX. Yes, sir; page 16.

Senator JOHNSON. Export or import quotas imposed under inter-governmental commodity arrangements included in the provisions of chapter VII?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. Did you say (d) or (e)?

Mr. WILCOX. (a), (b), (c), (d).

Senator BREWSTER. (d).

The CHAIRMAN. It should be noted, Senator Johnson, that that ties into one of the features of this Charter, the inter-governmental commodity agreement system.

Senator Johnson, do you wish to pursue that further?

Senator JOHNSON. No; I just wanted to be sure.

The CHAIRMAN. Dr. Wilcox, yesterday I believe we reached a complete meeting of mind that the proposed Charter will come back to the Congress, either as a treaty or to be considered by both Houses of Congress.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. That it would not be handled by straight executive agreement.

Mr. WILCOX. No, sir.

The CHAIRMAN. And that I believe you agreed to have some legal authority in the Department of State give us an opinion as to which it should be.

Mr. WILCOX. I think the legal adviser will be prepared to testify to that point.

The CHAIRMAN. Let me invite your attention to the report of the first session of the Preparatory Committee of the United Nations Conference on Trade and Employment, page 51, toward the bottom of the page on the right-hand side, where you set up mechanics for an interim organization of the type contemplated by the Charter.

It is significant, and if you do not mind, I will read it into the record.

SECTION K—TENTATIVE AND PARTIAL DRAFT OUTLINE OF GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments in respect of which this Agreement is signed:

Having been named by the Economic and Social Council of the United Nations to prepare, for the consideration of the International Conference on Trade and Employment, a Charter for an International Trade Organization of the United Nations;

Having, as the Preparatory Committee for the Conference, recommended to the Conference the provisions of such a Charter, the text of which is set forth in the Report of the Preparatory Committee; and

Being desirous of furthering the objective of the Conference by providing an example of concrete achievement capable of generalization to all countries on equitable terms;

Have, through their respective Plenipotentiaries, agreed as follows:

ARTICLE I

1. During the life of the Agreement each signatory government shall make effective in respect of each other signatory government the provisions described below of the Charter for an International Trade Organization of the United Nations recommended in the report of the Preparatory Committee.

(There would follow a list of the articles to be included in the Agreement.)

2. Functions entrusted to the proposed International Trade Organization under any of the provisions of the Charter incorporated in this Agreement by virtue of paragraph 1 of this Article shall, pending the establishment of the Organization, be carried out by a provisional international agency consisting of delegates appointed by the signatory governments.

ARTICLE II

With regard to Articles 24, 32, and 33 of the Charter, which relate to negotiations for

1. The reduction of tariffs and the elimination of tariff preferences, and

2. Parallel action by state-trading enterprises, the signatory governments declare that they have, by virtue of Article III of this Agreement, taken this step

towards fulfillment of the obligations of these Articles in respect of themselves and that they stand ready, in conformity with the spirit of these Articles, to undertake similar negotiations with such other governments as may desire to become members of the International Trade Organization.

ARTICLE III

Each signatory government shall accord to the commerce of the customs territories of the other signatory governments the treatment provided for in the appropriate Schedule annexed to this Agreement and made an integral part thereof.

ARTICLE IV

(This Article would set forth the general exceptions provided for in Article 37 of the Charter.)

ARTICLE V

(This Article would reproduce the provisions of Article 88 of the Charter relating to territorial application.)

ARTICLE VI

(This article would permit revision of the Agreement, by agreement among the signatories, if necessary or desirable in order to take account of changes in the Charter effected by the International Conference on Trade and Employment.)

ARTICLE VII

(This Article would provide for the entry into force of this Agreement, its duration, and its termination. The Agreement would remain initially in force for three years. If not terminated at the end of the three-year period (which would require a six months' prior notice), it would remain in force thereafter, subject to termination on six months' notice.

There would be a number of purely technical and of purely legal provisions.)

The CHAIRMAN. As I understand it, it is intended to enter into that agreement at the conclusion of your trade agreements negotiation; is that correct?

Mr. WILCOX. That is a draft, of course. Nobody has agreed to that as yet and that particular wording has been superseded in the report of the New York committee which you have. Although I do not think it changes or alters the point that you are making.

The CHAIRMAN. My point is, what is your legal authority for entering into an agreement of that kind without bringing it to the Congress first.

Mr. WILCOX. Well, this would be a trade agreement and the only text of the Charter that would be included in it would be the type of material that always is included in trade agreements, which is necessary to protect the tariff concessions. That is, if a country makes a concession to us in its tariff, on goods that we are exporting to it, we do not want to leave a loophole whereby they can destroy the value of this concession by uncontrolled or unregulated employment of import quotas or similar devices.

The CHAIRMAN. To put it another way, Doctor, is it correct to say you are setting up a provisional charter pending the acceptance of the main Charter? If that is not the purpose, what is the point?

Mr. WILCOX. No, sir; it does not. I do not know what the comparative number of the articles are, but it does not set up the trade organization. It does not include any of the restrictive business practices. It does not include the commodity arrangements, and so on, and so on.

It includes comparable text for the purpose of safeguarding the tariff concessions.

The CHAIRMAN. Well, it seems very clear to me from the language which I have read that you contemplate a practical duplication of the Charter.

Mr. WILCOX. It is similar wording, sir, with respect to the particular provisions that would be included, yes.

The CHAIRMAN. Well, now, are you in a position to know what those provisions will be?

Mr. WILCOX. Yes; that is, I know what the suggestion is.

The CHAIRMAN. May we have those put on record so that we can determine whether you are setting up a provisional charter or whether you are setting up something which would not have to come back to Congress.

Mr. WILCOX. Article 4, "Maintenance of domestic employment."

Article 13, "Government assistance to economic development."

Article 14, "General most-favored-nation agreement."

The CHAIRMAN. Yes.

Mr. WILCOX. Article 15, "National treatment of internal tax regulation."

In the Charter, I think it is 16, "Freedom of transit."

Article 17, "Antidumping and countervailing duties."

Senator HAWKES. What document are you reading from there?

Mr. WILCOX. I am reading from the report of the drafting committee of the Preparatory Committee.

Senator HAWKES. What page?

Mr. WILCOX. And the material appears beginning on page 65.

The CHAIRMAN. Go ahead, Doctor.

Mr. WILCOX. Article 17, "Antidumping and countervailing duties."

Article 16, "Tariff valuation."

Article 19, "Customs formalities."

Article 21, "Publication and administration of trade regulations."

Article 25, "General elimination of quantitative restrictions."

Article 26, "Restrictions to safeguard the balance of payments."

Article 27, "Nondiscriminatory administration of quantitative regulations."

Article 28, "Exceptions from the rule of nondiscrimination."

Article 29, "Exchange arrangements."

Article 30, "Subsidies."

Article 31, "Nondiscriminatory administration of state-trading enterprises."

Article 34, "Emergency action on imports of particular products."

That is the escape clause.

Article 35, "Consultation, nullification, or impairment."

Article 37, "General exceptions."

Article 38, "Territorial application, frontier traffic, customs,

" (The text of the General Agreement on Tariffs and Trade is in exhibit XXI.)

CHAIRMAN. Doctor, from what you have read, it is very apparent you are setting up an international control organization at the heart of your proposed organization, and I ask you is your legal authority for doing that?

W. Well, the sections that I have read—

AN. I will put it this way: Would you contend that you do that under the Reciprocal Trades Act?

W. Well, Senator, instead of setting up one instrument which the members would agree it would

be possible to enter into a separate reciprocal trade agreement with each of the countries involved.

The CHAIRMAN. You intend to do that, do you not?

Mr. WILCOX. It is purely a matter of convenience and how much paper you use to write it out.

The CHAIRMAN. All right. Let us keep our minds on my end point, which is, What is your legal authority for anything committing this country to this provisional organization pending the acceptance by the Congress of the charter itself?

Let me go back to my premise, if you have got to bring the charter back here for approval, and you have agreed that you must, by what theory can you do the same thing without bringing it back here for approval?

Mr. WILCOX. This does not set up a provisional international organization. It does set up an interim committee of the countries that would be signatory to the agreement.

The CHAIRMAN. Well, is it not provisional in nature? It will expire as soon as you have your charter?

Mr. WILCOX. That is true.

The CHAIRMAN. And it is intended to cover the gap?

Mr. WILCOX. That is true.

The CHAIRMAN. Between the time you conclude your trade agreements and the effective time of the formal organization, is that not correct?

Mr. WILCOX. That is true.

The CHAIRMAN. So that you are doing provisionally, without the consent of Congress, in substance, the same thing that you have admitted must have the consent of Congress?

Mr. WILCOX. Only a part of it.

The CHAIRMAN. And if in part why not all of it? I mean, where do you draw the line of distinction between what you must bring back to Congress and what you need not bring back to Congress.

Mr. WILCOX. Well, Senator, I am venturing beyond my competence here on this point, since I am not a constitutional lawyer, and I think you might wish the legal adviser to testify.

The CHAIRMAN. I think it very important that we have this cleared up.

Mr. WILCOX. Yes.

The CHAIRMAN. Because, if the Congress feels it should have the main charter come back to it as a treaty or for the approval of both Houses, surely it would not abandon the right to have something which does the same thing come back to it.

Mr. WILCOX. Well, suppose, Senator, that we were to enter into a series of bilateral reciprocal trade agreements each of which contained provisions limiting the freedom of the other contracting parties. Those in effect prevent evasion of the tariff concessions that they have made to us, by using other types of restrictive devices. Would this question apply?

The CHAIRMAN. Well, you are arguing that by evasion you could keep this subject from coming back to Congress. I do not care to front that kind of argument, and I should not think you would.

Mr. WILCOX. We made no such suggestion. We have 28 reciprocal trade arrangements and all of them, in general, contain provisions which are designed to prevent an escape from a commitment with

respect to one type of trade practice by resorting to another type of trade practice.

The CHAIRMAN. I think the answer to your question, in general terms, is that when you make a trade agreement under Reciprocal Trades Act, you make it in accordance with what you conceive to be legal authority you have under the act.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. But I challenge you to produce to the committee legal authority to enter into this provisional world organization with the power which you have described without the consent of Congress. That is the whole point.

Senator HAWKES. Mr. Chairman, may I inject the question there on top of the one that you have stated, what authority have the other countries that are going to Geneva to bind themselves provisionally as the chairman is thinking you are binding us? Have they got that authority?

I am told in a great many cases, even reciprocal trade agreements have to go back to legislative bodies for approval and it depends on the law of the particular country.

Mr. WILCOX. It depends on the law of the particular country.

Senator HAWKES. There are a great many cases where the law requires that reciprocal trade agreements you make with given countries must be approved by the legislative bodies.

Mr. WILCOX. Yes, sir.

Senator HAWKES. What authority have these other people to come to Geneva and enter into this provisional agreement and have it binding upon them? Are we going to find ourselves with something binding upon us that is not binding upon other nations?

Mr. WILCOX. No, sir. They will operate under their respective laws and procedures. If their laws require ratification of any sort of agreement entered into, they will have to accept such ratification.

Senator HAWKES. Mr. Chairman, may I proceed just a minute, because the very thing we are talking about now is the thing I accentuated in my own way last night. That is, if we do not watch out, we will have a provisional agreement that we can not get out of without creating antagonisms and bitterness.

The CHAIRMAN. And which we have no right to enter.

Senator HAWKES. And which we have no right to enter at all.

The CHAIRMAN. Dr. Wilcox, it is apparent to me that the question has caught you by surprise. Let us meet here again at 2 o'clock, and perhaps you can give us further illumination on the subject.

Is that all right?

Mr. WILCOX. Very well.

Senator JOHNSON. Mr. Chairman?

The CHAIRMAN. Pardon me. Senator Johnson?

Senator JOHNSON. Before we break up, I should like to ask the Chairman if he has some expert in this committee who can go through this article 7, which contains about seven pages of obscure and very difficult language, together with paragraph (d) on page 16, and tell this committee exactly what happens to the domestic sugar-beet industry.

In reading these pages over, I am at a complete loss to understand how the sugar industry is exempted from the restrictions on quotas.

The CHAIRMAN. Senator Johnson, we have a summary of the charter prepared by the State Department. We have a summary of the

charter prepared by the Tariff Commission. We have a summary of the charter prepared by the legislative reference service. And none of those summaries have any enlightenment to your specific question, and I think the only way we can get it is when we get down to the questions and consideration of these individual provisions, which we will do, and just hammer it out here, sentence by sentence, and paragraph by paragraph, until we get the real meaning of what this thing is.

Senator JOHNSON. There seem to be many contradictory provisions in here which would make it impractical or impossible to work out such a quota system as we have now existing in the sugar industry.

The CHAIRMAN. The provisions of the charter, I believe, are difficult for the layman to understand, and I hope before we have finished here, that we have reduced those difficulties to the layman's understanding, because I am as much interested in what you are talking about now as my distinguished senior colleague.

Senator JOHNSON. I know that you are.

The CHAIRMAN. We will find that out, Senator, before we get through.

We will now recess until 2 o'clock.

(Thereupon, at 12:35 p. m., a recess was taken until 2 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p. m., upon the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

STATEMENT OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE—Resumed

The CHAIRMAN. Before lunch, Doctor, we were discussing your authority for entering into the provisional arrangement which we outlined. Have you had any further thoughts on that?

Mr. WILCOX. Well, Senator, the executive branch of the Government would not at Geneva enter into any arrangement which was beyond its authority, including that provided for by the Reciprocal Agreements Act. Any part of this program that would go beyond that authority would be referred to the Congress.

Now, as to the legal question of what is and is not specifically within the executive authority, I should be grateful if you would refer your questions to the legal adviser of the Department, Mr. Fahy. I understand that he is to appear on some related questions.

The CHAIRMAN. I do not want to take the responsibility for referring the question to anyone else. All that I want is some authoritative opinion from the State Department whether it does or does not feel that it is warranted in going ahead with this provisional organization.

If you can tell us, fine, but if you want to bring someone else up to tell us, we will be delighted to hear his testimony.

Mr. WILCOX. We shall ask the legal adviser to testify on that point.

The CHAIRMAN. You will see that we got that testimony?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. I will be delighted to arrange for the time for the witness to appear.

Doctor, how many nations do you ultimately figure will be in this Organization?

Mr. WILCOX. Well, the Organization will be open to adherence by all nations, and I would hesitate to predict how many nations will voluntarily adhere to it.

The CHAIRMAN. Would it be a reasonable assumption that assuming the Organization gets under way you will have, roughly, as many members as there are members of the United Nations?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. How large a technical staff would be involved in maintaining the Organization?

Mr. WILCOX. I do not know. I do not know that any estimates have been made.

The CHAIRMAN. You may have noticed several times during the United Nations deliberations, that the mounting cost of all of these specialized agencies has become a matter of concern to some of the delegates.

I believe Senator Vandenberg has had considerable to say on that subject. When you consider the range of this draft and think of what it would involve in the way of personnel, it is easy to be concerned about that. I believe you would do well to give us some kind of an estimate as to what kind of staff would be required to do the things that are contemplated by the draft.

Will you try to get us something of that kind?

Mr. WILCOX. I think we might prepare some sort of an estimate on that. Certainly, the financial commitment involved would be much smaller than in the case of the fund or the bank. It would be merely the administrative or secretarial staff.

The CHAIRMAN. That would be a very sizable affair, considering the projected activities. Anyway, do the best you can to give us the estimate of the size of personnel and the estimate of the cost of maintaining it.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Am I correct in the assumption that since this proposed Organization, is one of subsidiary agencies of the United Nations, that its fate is more or less committed to that of the United Nations and that it will stand or fall with the United Nations?

Mr. WILCOX. Well, it could stand on its own feet, according to the terms of its own instrument.

If the United Nations were to fail, I think it is quite possible that many of the other international organizations, specialized agencies, might also fail.

The CHAIRMAN. Probably it might involve a reshuffling of the membership? I am not sounding any gloomy predictions here, but I am trying to develop whether this could have independent life aside from the United Nations, and I assume that if there were a reshuffling of the membership of the United Nations, there would probably have to be a reshuffling in the membership of this organization.

Mr. WILCOX. Of course, the organization would not draw its authority from the United Nations Organization. That is, this is to be distinguished from the commissions or committees of the United Nations which the United Nations have authority to set up. This

would be set up, according to its own basic instrument, and would derive its power from the voluntary adherence of individual governments. It would be brought into relation with the United Nations in the same way that the other specialized agencies are brought into relation. There would be an instrument between this organization and the United Nations defining the character of their relationship.

The CHAIRMAN. Well, your charter would ultimately be analyzed by the United Nations so that the United Nations might determine whether it is an organization consistent with its own authority?

Mr. WILCOX. In the same way that they would enter into arrangements with the International Labor Organization or the bank or the fund or any of the other specialized agencies.

The CHAIRMAN. The way is definitely outlined in that part of the Charter which I read to you yesterday. The United Nations contemplate an organization of this kind. It made provision in its Charter for it, and it made a provision for an organization of this kind to bring itself into relationship with the United Nations, and I assume that that is what you are going to do, is it not?

Mr. WILCOX. That is right.

The CHAIRMAN. Have you brought those bilateral agreements to which we have referred?

Mr. WILCOX. We will not be able to have the memorandum on that in your hands until the first of the week. That was the one item on your list that I told you would take a good bit of digging to get together.

The CHAIRMAN. I asked for what you might consider relevant world trade and monetary statistics. Are you prepared to go ahead with that?

Mr. WILCOX. Those should be ready today. I do not have them here at the moment.

The CHAIRMAN. Do you care to say anything further than you have said as to the interest of other nations in the promotion of this venture?

Mr. WILCOX. Well, there were 17 nations involved.

The CHAIRMAN. May I indicate to you as a preface why I think that is relevant. Without going into details and relying on what is in the minds of all of us, we have learned that if there is not a genuine interest of nations which join an organization, and if there is not identity of purpose, and if there is not a complete intent to cooperate, the organization runs into very grave trouble. That is the relevancy of the questions which I have repeated several times to determine the interests of other nations in this Organization, whether it is a placid interest, whether it is in a sense coerced interest, or whether it is an enthusiastic interest, and whether there is a real meeting of the minds in the desire for such an organization.

Mr. WILCOX. Well, there were 17 nations present at the meeting of the Preparatory Committee in London. Before that, the resolution setting up the Preparatory Committee was adopted unanimously by the Economic and Social Council where there were 18 nations present. It is not entirely the same group, there is some overlap.

I should say that there was in the London meeting, no dissent on the part of any nation whatsoever, from the idea of setting up a world trade organization. I think they all recognize the desirability of having such an organization and I should say there was considerable

enthusiasm about the progress that was made in the drafting of the charter.

There were differences of opinion as to detailed provisions, as will appear in the record, but I do not believe that in that group there is any dissent from the nature of the project.

In addition to that, a number of other nations have urged their inclusion in the Committee. It has seemed, I believe, to the Economic and Social Council, that it would be difficult to expand the membership of the Preparatory Committee at this time; that it would become unworkable; that there would be no place to stop if other countries were added, but a number of other countries had expressed a very active interest in the project.

As I indicated this morning, I have no clear intimation—or perhaps I should say no intimation at all—as to what the attitude of the Soviet Union may be.

The CHAIRMAN. I merely wish to bring to your attention that you have described the matter in rather passive and unenthusiastic terms yourself. You have phrased your answer in terms of lack of dissent, that is what I mean.

I am content to allow the record to rest there, but in view of the testimony of yesterday, I thought that you might want to buttress that up a bit.

Mr. WILCOX. I do not wish to attribute to any other country any position beyond that which that country would voluntarily wish to take.

The CHAIRMAN. How often and in what manner will the Congress of the United States have the opportunity to review the operation of this Organization once it gets going?

Mr. WILCOX. Well, in this Organization, as in any other international organization, I assume that the Congress, by statute, would determine the character of the participation of this Government with reference to personnel and appropriations, continued adherence, and so forth, so that there always would be a check in that respect.

The CHAIRMAN. You have in mind a sort of enabling statute?

Mr. WILCOX. I should think there would have to be an enabling statute; yes.

The CHAIRMAN. In which the Congress would have an opportunity to do as it did in connection with the United Nations to put some controls on the actions at least of its own representatives?

Mr. WILCOX. Yes.

The CHAIRMAN. Shall we get to the charter itself?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. I believe it would be orderly, although it may be tedious, if in each case we read that which we are discussing so that the reader may see exactly what the discussion relates to.

Do you wish to read chapter I, article 1, or shall I read it, or shall we have the clerk read it?

Mr. WILCOX. Chapter I, article 1, relates to the statement of general purposes, and that appears in the London report in the terms of the original American suggestion. It has been redrafted in the New York report.

The CHAIRMAN. Perhaps we had better proceed with the London version and then indicate the changes made by the New York report.

Mr. WILCOX. We can do that. I think there is a little reorganization in sequence here, and it may be confusing, and I think it might be simpler to read the New York statement.

The CHAIRMAN. How often will we turn from the New York statement to the London statement? I would like to find some orderly way to carry this out.

Mr. WILCOX. There are two principal places here where the difference is important, one is in article I and the other is in chapter V, section 8.

The CHAIRMAN. Will you refer me to the page in the New York version?

Mr. WILCOX. Page 3.

The CHAIRMAN. All right, go ahead.

We are now reading from the New York version.

Mr. WILCOX (reading):

CHAPTER I. PURPOSES

ARTICLE I. GENERAL PURPOSES

In pursuance of the determination of the United Nations to create conditions of economic and social progress essential to world peace, the States party to this charter hereby establish an International Trade Organization through which they will work for the fulfillment of the purposes set out hereunder:

1. To promote national and international action:

(a) Designed to realize the objectives set forth in the Charter of the United Nations and particularly in Article 55 (a) thereof, namely, higher standards of living, full employment, and conditions of economic and social progress and development;

(b) For the expansion of the production, exchange, and consumption of goods, for the achievement and maintenance in all countries of high and steadily rising levels of effective demand and real income, for the development of the economic resources of the world, and for the reduction of tariffs and other trade barriers and the elimination of all forms of discriminatory treatment in international commerce;

(c) To avoid excessive fluctuations in world trade and contribute to a balanced and expanding world economy.

2. To further the enjoyment by all Member countries, on equal terms, of access to the markets, products, and productive facilities which are needed for their economic prosperity and development.

3. To encourage and assist the industrial and general economic development of Member countries, particularly of those still in the early stages of industrial development.

4. To facilitate the solution of problems in the field of international trade, employment and economic development through consultation and collaboration among Members.

5. To enable Members, by increasing the opportunities for their trade and economic development on a mutually advantageous basis, to avoid recourse to measures would disrupt world commerce, reduce productive employment, or retard economic progress.

The CHAIRMAN. Do you wish to comment on that, or do you wish me to question?

Mr. WILCOX. I have no comment.

The CHAIRMAN. I notice all through the charter a major aim is the reduction of tariffs. I believe you have made it clear that you do not contemplate a willy-nilly reduction of tariffs; that reduction of tariffs merely for reduction's sake, is not the aim of the organization, am I correct in that?

Mr. WILCOX. In every case, the reduction of tariffs is tied to the removal of other trade barriers and the elimination of all forms of discrimination; yes, sir.

The CHAIRMAN. And is it contemplated that there shall be reduction of tariffs if the doing of that seriously injures the domestic economy or seriously injures any affected industry?

Mr. WILCOX. The only commitment here is a commitment to enter into negotiations. Every country may enter into those negotiations according to its own laws and procedures.

The CHAIRMAN. Yes.

Mr. WILCOX. And it is contemplated that such negotiations will be on a selective basis.

The CHAIRMAN. And the reduction of tariffs will be on a selective basis?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. This charter does not commit itself to an indiscriminate reduction or tariffs merely for the sake of reducing tariffs?

Mr. WILCOX. No, sir. There is no commitment here for a lateral indiscriminate cut.

The CHAIRMAN. Or is there any commitment here for achieving the same thing by selective whittling?

Mr. WILCOX. There is no commitment here to include any particular commodity in any tariff bargain.

The CHAIRMAN. Let me put it to you this way, Doctor: I find no place in the charter a rounded definition of a legitimate tariff reduction. Is that an inadvertent omission or does it come from the inherent difficulty of the subject—why is it?

Mr. WILCOX. I do not think any effort has been made to specify, to tie the hands of any country to specify, that certain reductions would be legitimate or certain reductions would be illegitimate.

The CHAIRMAN. Would there be any pressure by the organization to cause the reduction of a tariff that would seriously injure the economy of any member or that would seriously injure any affected domestic interest?

Mr. WILCOX. Well, as you know, Mr. Chairman, that is safeguarded by the inclusion of the escape clause with reference to the effect of tariff action on domestic interests.

The CHAIRMAN. That would not be a complete answer, from my viewpoint. I am striking at the initial approach to the subject and not as to the method for avoiding harm from the operations of the organization.

Mr. WILCOX. Would you repeat your question?

The CHAIRMAN. Will the Organization exert pressures, cause the reduction of any tariff anywhere, which would seriously injure the domestic economy of a member, or seriously injure an affected industry of a member?

Mr. WILCOX. I cannot see that the Organization, as this is drafted, would be given any authority to exert pressure for the reduction of any particular tariff anywhere, whether or not it would cause injury.

The CHAIRMAN. Let me put it to you in end terms. Is there any theory or philosophy in this Organization, leading to free trade?

Mr. WILCOX. No, I should say not. I do not think that any of the nations participating in the framing of this, or the Government of the United States, believes that free trade is practicable or obtainable or I should say desirable.

The CHAIRMAN. I notice under paragraph numbered 1, subparagraph (c), the following language:

To avoid excessive fluctuations in world trade and contribute to a balanced and expanding world economy.

Please give us some idea as to exactly what the Organization will do to achieve that objective. How; for example, could the organization be effective in avoiding excessive fluctuations in world trade. I am not intimating it cannot be done, but I am trying to find out what steps it is going to take to bring that about.

Mr. WILCOX. It is possible that the statement of purposes or objectives suggest more than the Organization would be able to achieve.

There are, I should say, three possible ways in which it might contribute to that or in which the plan in the charter might contribute. One is the commitment on the part of each country to seek within its own jurisdiction to achieve and maintain high and stable levels of employment.

The CHAIRMAN. What can the Organization do to bring that about?

Mr. WILCOX. The Organization, itself, is given no authority to do anything specific to bring that about.

The CHAIRMAN. Then what is the effectiveness of the Organization in that particular?

Mr. WILCOX. The Organization, as such, makes no contribution there.

The CHAIRMAN. So that as to this subparagraph (c), that is more or less an expression of a pious hope?

Mr. WILCOX. Let me suggest two other possibilities.

There is the possibility under the chapter dealing with commodity arrangements to have intergovernmental commodity agreements with respect to certain commodities of a temporary nature that might have a stabilizing influence.

The CHAIRMAN. Aside from that provision of the charter, you do not recall anything else in it that would work directly on the individual members to attain that objective?

Mr. WILCOX. A third possibility is that there would be less likelihood of the disruption of international trade by arbitrary, unheralded, or unannounced or undiscussed unilateral restraints on trade.

The CHAIRMAN. I believe you agree that it does no good to sit around the table and say, "Boys, we must avoid excessive fluctuations in world trade," unless you have an affirmative program that will at least mitigate fluctuations of that kind. What I am driving at is, what do you intend to do about it?

You have mentioned that the commodity agreements provisions may have that effect, and of course if they meet their intended purpose, they would have that effect.

What else is there?

Mr. WILCOX. Well, the general agreement among nations is that they will not suddenly, without consultation, without prior announcement, impose obstacles to impede the flow of trade.

The CHAIRMAN. What happens to them if they do impose obstacles?

Mr. WILCOX. They will have agreed to certain agreements here, and if they did so, they would be in violation of those agreements.

The CHAIRMAN. And then what?

Mr. WILCOX. Well, if they violated the agreement, the only sanction that the charter provides is that the other members of the Organization could withdraw from the violator the concessions that they had made to him. The Organization, itself, would have no power to apply any penalty.

The CHAIRMAN. Of course, the withdrawal might be a sizable penalty, might it not?

Mr. WILCOX. Yes, but that penalty would be applied by individual nations.

The CHAIRMAN. But under this charter?

Mr. WILCOX. Yes, but it would be voluntary on them whether they chose to do so. The Organization could not require them to do so.

The CHAIRMAN. But if they are to carry out the spirit of the organization, if they do not keep the Organization completely naked of substance, they would do so, would they not?

Mr. WILCOX. I would think so.

The CHAIRMAN. Otherwise, you would have nothing left to your plan.

Mr. WILCOX. That is right. The case would be of a country that had erected a barrier against the United States in violation of its commitments and the United States would then desire to in effect retaliate by removing some concessions that had been made to that nation; that is the character of that sanction.

The CHAIRMAN. You have retaliation which includes excommunication?

Mr. WILCOX. No. As the charter is drafted now, no. As the Charter is made now, there is no provision for excommunication. The only sanction in it is voluntary retaliation.

The CHAIRMAN. And then through the operation of that sanction you are to that extent doing the very thing that you set up the Organization to avoid?

Mr. WILCOX. Yes, sir, except that it is so drafted, and I think this will come out when you come to that point, as to place a limit on the extent of retaliation so that it does not degenerate into economic warfare. At least that is the attempt.

Senator HAWKES. May I ask a question?

The CHAIRMAN. Certainly, Senator.

Senator HAWKES. What is that limit upon retaliation?

Mr. WILCOX. That if a country withdraws the concessions that it has made to us that we may withdraw equivalent concessions that we have made to them.

Senator HAWKES. Only equivalent concessions?

Mr. WILCOX. Equivalent concessions.

Senator HAWKES. It is limited to equivalent concessions?

Mr. WILCOX. That is right.

Senator HAWKES. How about some of the other countries, can they withdraw equivalent concessions?

Mr. WILCOX. You mean if we have violated?

Senator HAWKES. Let us put it the way you have been talking about it. If they do not like what we have done, they can withdraw equivalent concessions under the charter?

Mr. WILCOX. That is right.

Senator HAWKES. Can any other countries do the same thing to us because of that thing that A did not like. I thought they could, as I read the charter.

Mr. WILCOX. I am not sure that I get your point, Senator.

Senator HAWKES. What I am trying to find out is, under this charter, is there any way in which a group of nations could band together so that if Nation "A" did not like something we had done they would withdraw equivalent concessions from us and they could be joined by X, Y, and Z, so as to put extra pressure on us?

Mr. WILCOX. I believe the answer to that is "yes," is it not?

Senator HAWKES. My recollection is, yes.

Mr. WILCOX. I think under article 35 of this draft, it would be true that the organization could permit more than one member to withdraw a concession if more than one member were affected, but in that case, assuming it were the United States in question, the United States could then withdraw from the organization within 60 days; or any other country in a similar position could do so.

Senator HAWKES. Do we withdraw within 60 days prior to 3 years?

Mr. WILCOX. Yes, at any time that sanction is applied.

Senator HAWKES. Then, in other words, if there is anything that happens in there, of a nature that any one does not like, they can withdraw with 60 days' notice?

Mr. WILCOX. If a retaliatory action has been taken against them, they can then withdraw, yes.

Senator HAWKES. That is the only way in which they can withdraw prior to 3 years?

Mr. WILCOX. I think that is right.

The CHAIRMAN. With reference to article 35, I am reading the last sentence of it:

The Organization, if it considers the case serious enough to justify such action, may authorize a Member or Members to suspend the application to any other Member or Members of such specified obligations or concessions under this Chapter as may be appropriate in the circumstances. If such obligations or concessions are in fact suspended, any affected Member shall then be free, not later than 60 days after such action is taken, to withdraw from the Organization upon the expiration of 60 days from the day on which written notice of such withdrawal is received by the Organization.

Senator HAWKES. That is what I had in mind.

The CHAIRMAN. Under chapter I, paragraph 3, appears the language as follows:

To encourage and assist the industrial and general economic development of Member countries, particularly of those still in the early stages of industrial development.

That is dealt with in detail later on?

Mr. WILCOX. Chapter IV.

The CHAIRMAN. There is no reason why we should go into that now. My question goes to this: Did you change chapter IV substantially at New York City?

Mr. WILCOX. There have been some changes but not important changes in substance.

The CHAIRMAN. Is chapter II a complete text of the New York draft?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Would you mind reading it, Doctor?

Mr. WILCOX (reading) :

CHAPTER II. MEMBERSHIP

ARTICLE 2

The original Members of the Organization shall be those countries represented at the United Nations Conference on Trade and Employment whose Governments accept this charter by 194 or, in the event that this charter has not entered into force by that date, those countries whose Governments agree to bring this charter into force, pursuant to the proviso to paragraph 3 of Article 88.

The CHAIRMAN. Perhaps we had better refer to that.

Mr. WILCOX. Article 88.

Senator GEORGE. What page is that on, Doctor?

Mr. WILCOX. Page 52 [reading] :

Provided that, if this Charter shall not have entered into force by 194 , any of the governments which have made effective the General Agreement on Tariffs and Trade dated ----- 194 , together with any other governments represented at the United Nations Conference on Trade and Employment, may agree to bring this Charter into force among themselves in accordance with arrangements which they may agree upon.

The CHAIRMAN. What page of the New York draft?

Mr. WILCOX. Page 52. It is at the bottom of the first column and goes over to the top of the second column. [Reading:]

Any instrument of acceptance deposited with the Secretary-General of the United Nations shall be taken as covering both procedures for bringing this Charter into force, unless it expressly provides to the contrary or is withdrawn.

To return to chapter II, paragraph 2 of article 2, it reads as follows:

Subject to the approval of the Conference, membership in the Organization shall be open to other countries whose Governments accept this charter.

3. The Conference shall establish procedures which will open a membership in the Organization to the United Nations on behalf of the Trust Territories for which the United Nations is the administering authority.

The CHAIRMAN. Referring to paragraph 2 that you have just read, what will be the standard for approval or rejection of applying members?

Mr. WILCOX. I suppose that is to be developed by the Conference. I do not think it is laid down in the document.

The CHAIRMAN. Do you think there is any point in putting it in the document?

Mr. WILCOX. No, I think it might be left open to the members of the organization to determine after the organization is set up.

The CHAIRMAN. With reference to paragraph 3, whether or not a trust territory comes under your organization will primarily be a matter of concern for the United Nations Organization, will it not?

Mr. WILCOX. Yes; I should think so.

The CHAIRMAN. In other words, you are not setting up any separate body of law in respect to trust territories inconsistent with the provisions of Charter of the United Nations relative to the subject?

Mr. WILCOX. The point is that there might be a territory which would otherwise be excluded from membership that might by this device be accorded representation.

The CHAIRMAN. Is the New York draft on chapter III a complete text?

Mr. WILCOX. Yes, sir; it is a complete text.

The CHAIRMAN. We will not have to refer back to the London draft?

Mr. WILCOX. No.

Senator, the New York draft is complete; there is no article left out of it.

The CHAIRMAN. I see. Well, that simplifies it.

Go ahead, sir.

Mr. WILCOX (reading):

CHAPTER III. EMPLOYMENT, EFFECTIVE DEMAND AND ECONOMIC ACTIVITY

ARTICLE 3. IMPORTANCE OF EMPLOYMENT IN RELATION TO THE PURPOSES OF THIS CHARTER

1. The Members recognize that the avoidance of unemployment or under-employment through the achievement and maintenance in each country of useful employment opportunities for those able and willing to work, and of a high and steadily rising effective demand for goods and services is not of domestic concern alone, but is a necessary condition for the expansion of international trade, for the well-being of other countries, and in general for the realization of the purposes of this Charter.

Senator HAWKES. May I ask you, Dr. Wilcox, why do we say "for those able and willing to work"?

Mr. WILCOX. Because we took that wording from the Employment Act of 1946 which was passed by the Congress of the United States.

Senator HAWKES. Do you think that is a good clause to be in there? I think that everybody that is able to work ought to have to work. I mean this very seriously. I think if we are going to try to fix this world up so that only those who are willing to work are compelled to work, that we are just going into a complete 100 percent socialization of the whole world. We are going to be a mongrel part of a mongrel world. I think that is an aim that is far too great for any of us to seek at the present time. That belongs to the millennium.

I am serious about this, Mr. Chairman. I would like to say that I do not understand why we use the words "those able and willing to work."

Do you not feel that you should work?

The CHAIRMAN. I would not compel any man to work.

Senator HAWKES. Would you hand him as much as the next fellow?

The CHAIRMAN. Oh, no; there is a vast difference between the two.

Mr. WILCOX. I continue [reading]:

2. Members agree that, while the achievement and maintenance of effective demand and employment must depend primarily on domestic measures, such measures should be assisted by the regular exchange of information and views among Members and, so far as possible, should be supplemented by international action sponsored by the Economic and Social Council of the United Nations and carried out in collaboration with the appropriate intergovernmental organizations acting within their respective spheres and consistently with the terms and purposes of their basic instruments.

ARTICLE 4. MAINTENANCE OF DOMESTIC EMPLOYMENT

1. Each Member shall take action designed to achieve and maintain full and productive employment and high and stable levels of effective demand within its own jurisdiction through measures appropriate to its political, economic, and social institutions.

2. Measures to sustain employment and demand shall be consistent with the other purposes and provisions of this charter and in the choice of such measures each Member shall seek to avoid creating balance-of-payments difficulties for other Members.

ARTICLE 5. FAIR LABOUR STANDARDS

Each Member, recognizing that all countries have a common interest in the maintenance of fair labour standards, related to national productivity, shall take whatever action may be appropriate and feasible to eliminate substandard conditions of labour in production for export and generally throughout its jurisdiction.

ARTICLE 6. THE REMOVAL OF MALADJUSTMENTS IN THE BALANCE OF PAYMENTS

Members agree that, in case of a fundamental disequilibrium in their balance of payments involving other countries in persistent balance-of-payments difficulties, which handicap them in maintaining employment, they will make their full contribution to action designed to correct the maladjustment.

ARTICLE 7. SAFEGUARDS FOR MEMBERS SUBJECT TO EXTERNAL DEFLATIONARY PRESSURE

The Organization shall have regard, in the exercise of its functions as defined elsewhere in this charter, to the need of Members to take action within the provisions of this charter to safeguard their economies against deflationary pressure in the event of a serious or abrupt decline in the effective demand of other countries.

ARTICLE 8. CONSULTATION AND EXCHANGE OF INFORMATION ON MATTERS RELATING TO EMPLOYMENT

The Members and the Organization shall participate in arrangements made, or sponsored by the Economic and Social Council of the United Nations, including arrangements with appropriate intergovernmental organizations:

(a) For the systematic collection, analysis, and exchange of information on domestic employment problems, trends, and policies, including as far as possible information relating to national income, demand, and the balance of payments;

(b) For consultation with a view to concerted action on the part of governments and intergovernmental organizations in the field of employment policies.

That next to the last line there should come out because that is misprinted.

The CHAIRMAN. Does that complete that chapter?

Mr. WILCOX. That completes that chapter, I think.

The CHAIRMAN. Let us then go back to article 3, paragraph 1.

I believe you will agree that heretofore the matter of domestic employment has been exclusively a matter of domestic concern. Are we in agreement on that?

Mr. WILCOX. That depends on how you define the term "concern." It has been exclusively a matter of domestic authority and it would continue under the charter to be a matter of domestic authority; but the policies of individual States may have international consequences.

The CHAIRMAN. Of course, that is true, but here we are setting up an international organization and we are saying to that international organization that employment which heretofore has been exclusively a matter of domestic concern is now a matter which has to do with the expansion of international trade, it has to do with the well-being of other countries, it has to do with the realization of the purposes of the charter, and, therefore, if there is any sense in it at all, it becomes a matter of concern for this international organization.

Mr. WILCOX. Therefore, it becomes a matter of international concern.

The CHAIRMAN. Yes; it becomes a matter of international concern, and that international concern is lodged in this international organization.

Mr. WILCOX. No, sir, it is not.

The CHAIRMAN. Then what is the purpose of the paragraph and what is the purpose of the succeeding paragraphs on the same subject?

Mr. WILCOX. The International Trade Organization, as it is envisaged, of itself, performs no function with reference to the maintenance of employment.

The CHAIRMAN. You state here that that would be the concern of the Economic and Social Council?

Mr. WILCOX. That is right.

The CHAIRMAN. You remember yesterday that the functions of that Council are recommendatory and have no force beyond that.

Mr. WILCOX. Yes.

The CHAIRMAN. And do you agree that there is nothing in this charter that is intended to give the Organization, by their set-up, any authority to deal with employment matters with any of the member countries?

Mr. WILCOX. That is right.

The CHAIRMAN. All right; let us proceed to paragraph 2.

Here you have a definite statement that members agree to something. They agree that while the achievement and maintenance of effective demand and employment must depend primarily on domestic measures, such measures should be assisted by the regular exchange of information and views among members and, so far as possible, should be supplemented by international action sponsored by the Economic and Social Council of the United Nations, and so forth.

I believe we have to go at this time for a vote.

We will adjourn at this time until Monday at 10:30 in the morning.

(Thereupon, at 3 p. m., the committee adjourned until 10:30 a. m. Monday, March 24, 1947.)

INTERNATIONAL TRADE ORGANIZATION

MONDAY, MARCH 24, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in room 310 of the Senate Office Building, Hon. Eugene D. Millikin (chairman), presiding.

Present: Senators Millikin (chairman), Brewster, Hawkes, Martin, and Johnson of Colorado.

The CHAIRMAN. The committee will come to order.

We will resume with Dr. Wilcox.

STATEMENT OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE, WASHINGTON, D. C.—Resumed

The CHAIRMAN. Dr. Wilcox, do you remember whether we had read into the record all of chapter III?

Mr. WILCOX. All of chapter III; yes, sir.

The CHAIRMAN. Let me invite your attention, Doctor, to paragraph 1 of article 3. It is declared there, and I quote:

The members recognize that the avoidance of unemployment or underemployment through the achievement and maintenance in each country of useful employment opportunities for those able and willing to work, and of a high and steadily rising effective demand for goods and services is not of domestic concern alone, but is a necessary condition for the expansion of international trade, for the well-being of other countries, and in general for the realization of the purposes of this charter.

I wish you would be good enough to explore for us what the Organization proposes to do about it. If these things are a necessary condition, then something definite must be done about it, or the Organization's operations are futile.

Would you mind taking that slant of it and giving us the benefit of your comment?

Mr. WILCOX. The Organization itself would have no positive function in this field. Article 4, for instance, relates entirely to what individual countries would do and so does article 5 and article 8, which has to do with the exchange of information on matters relating to employment, and would assign the function to the Economic and Social Council or other international agencies operating under the Council.

The only articles here that are relevant to the functions of the Organization, the only one, I should say, is article 7. Article 7 is really a cross reference to chapter V, the section on commercial policy.

The CHAIRMAN. Then would you mind stating again what is the purpose of this declaration in the charter?

Mr. WILCOX. Well, to make the question a little broader, why have anything on employment in the charter.

The CHAIRMAN. Yes, if you wish.

Mr. WILCOX. I think the answer to that, Senator, is that other countries, I should say practically all countries, when we say to them that we should like to establish a trading system in the world that is conducive to the maintenance of private trade and to freer trading relationships between nations, the reply would be, "We cannot take the commitments involved in that as long as there is danger of great instability in business and great instability in volume of trade."

They say, "If we are going to be confronted with the possibility of sharp and sudden reduction in the demand for our exports we must then be in a position to impose restrictions on our trade so as to insulate ourselves or isolate ourselves against instability elsewhere in the world."

Although they do not say so explicitly, what they are talking about is the economy of the United States. I mean, the general line of thought is that the United States is such a large factor in the world economy in the total of its sales and in the total of its purchases that extreme instability in the volume of production in the American economy would be such that the other nations of the world would not want to be interdependent with us.

The CHAIRMAN. Is that another way of saying that this organization puts on the back of the United States the responsibility for maintaining economic stability all over the world?

Mr. WILCOX. No; I do not say that this organization does so. I think I would go further than that and say that there is no way of avoiding that.

Our magnitude in the world trade and production is such that we are a bigger factor in it than anybody else, and what happens here is of more importance than what happens in any other country.

The CHAIRMAN. Let us assume the correctness of that. The point goes to whether or not we maintain, within our own grasp, the means with which we will meet our responsibility or whether we will delegate it to an international organization; is that not the question?

Mr. WILCOX. Precisely, and the answer is that we retain it within our own grasp.

The CHAIRMAN. If we retain it within our own grasp, then what is the usefulness of the International Organization?

Mr. WILCOX. The International Organization, the trade organization in itself, will not perform any function which will guarantee or provide stability of production. No such function is assigned to this Organization.

The CHAIRMAN. But you feel that through the aggregate of its operations, it will have a tendency to stabilize?

Mr. WILCOX. Yes; I think you could go that far.

The CHAIRMAN. I am trying, Doctor, to find out just what is the usefulness of this Organization under the statements that you made.

Mr. WILCOX. I am talking about the functions of the Organization as contrasted with the functions of individual countries or other international organizations.

The CHAIRMAN. Yes.

Mr. WILCOX. Now, the only function that is assigned to other international organizations is the collection, analysis, and exchange of information. Now, that would not go far in itself toward providing stability, but at least it will provide information on the basis of which policies might be adopted.

The main reliance here is on action taken by individual States under their own laws and procedures and economic systems within their own jurisdiction.

The CHAIRMAN. Now, paragraph 2 of article 3 refers to measures which will assist in the achievement and maintenance of effective demand and employment and it also refers to supplemental measures by international action.

Now, can you tell us exactly what is in mind as to the nature of the assistance and the nature of the supplemental actions?

Mr. WILCOX. Well, it says specifically on assistance "by the regular exchange of information and views."

The CHAIRMAN. Yes.

Mr. WILCOX. I think that answers that point.

As to supplemental action, it refers to the Economic and Social Council and the appropriate intergovernmental organizations acting within their specific spheres consistently with the terms and purposes of their basic instruments, so that there is nothing here that goes beyond the functions assigned specifically to individual organizations by their own instruments.

The CHAIRMAN. So, as far as we have gone, you are making a reference of the problem to the Economic and Social Council?

Mr. WILCOX. That is correct, that is true.

The CHAIRMAN. Is that not somewhat in the nature of a gratuity?

Mr. WILCOX. I suppose it is, since they have that jurisdiction already.

The CHAIRMAN. In other words, perhaps there is no real necessity for that provision?

Mr. WILCOX. I do not think it is necessary, I think it exists already.

The CHAIRMAN. I notice the reference in article 3, paragraph 2, to the desirability of maintaining a consistent relation between what is done and the terms and purposes of "basic instruments."

Just what are those basic instruments?

Mr. WILCOX. Well, it would be the Articles of Agreement of the International Monetary Fund, the Articles of Agreement of the Bank for Reconstruction and Development, or the constitutions or charters of any of the specialized agencies or the Charter of the United Nations.

The CHAIRMAN. Are basic instruments contemplated other than those that are in existence at the present time?

Mr. WILCOX. Not in this program they are not. It is conceivable that at some later time there may be an organization set up which is not now envisaged.

The CHAIRMAN. I think there will be a more appropriate point later on to ask you what opportunity the Congress will have to review the offshoot agreements that result from the operations of the proposed Organization. However, I believe we had better defer that until we get something that bears on it specifically.

Now, in paragraph 1 of article 4, it says:

Each member shall take action designed to achieve and maintain full and productive employment and high and stable levels of effective demand within its own jurisdiction through measures appropriate to its political, economic, and social institutions.

Do the words "effective demand" relate to general domestic effective demand or are they related to effective demand for imports?

Mr. WILCOX. I should say both. The total of demand. The emphasis is on stability.

The CHAIRMAN. Then your answer carries with it the proposition that under the new organization there will be an affirmative duty of the member nations to resist self-sufficiency and to preserve effective import demand?

Mr. WILCOX. I think that is explicit, Senator; yes.

The CHAIRMAN. That, of course, is a very significant feature of the Organization if you are correct about that. In other words, I do not want you to make a profligate answer on that.

Mr. WILCOX. No; it seems to me that the implication of this is that the effort shall be to maintain the total of production. This does not say so, but really the significant thing here is stability in production, and the employment and the demand which are mentioned here are byproducts.

The CHAIRMAN. If a nation were to set about deliberately making itself as self-sufficient as any nation can be—I am speaking economically—it would, under what you have said, be in violation of the Organization?

Mr. WILCOX. Not under this particular paragraph, but it would violate the purpose and the spirit of the whole Charter, I think, yes.

The CHAIRMAN. I think it is an appropriate point to develop.

Mr. WILCOX. A part of the fundamental philosophy is to avoid, prevent, or retard the tendency toward economic isolationism, country by country.

The CHAIRMAN. Yes.

If, for example, the United States, which I assume is perhaps as self-sufficient a nation, relatively speaking, as any, were to set about on a deliberate course to make itself completely self-sufficient, with the exception, of course, of some odd items, that would be in violation of the Charter?

Mr. WILCOX. I amend one point that you made. I think there is one nation that is more nearly self-sufficient than the United States, and that is the Soviet Union, but certainly we are more nearly self-sufficient than the United Kingdom, Belgium, Holland, and so forth.

The CHAIRMAN. The Soviet Union promotes its self-sufficiency; does it not?

Mr. WILCOX. I assume that that will be its policy.

The CHAIRMAN. That has been its policy in the past?

Mr. WILCOX. Yes.

The CHAIRMAN. It has gone into international trade only to the extent it had to?

Mr. WILCOX. That is right.

The CHAIRMAN. It did not encourage indiscriminate imports and it did not encourage indiscriminate exports?

Mr. WILCOX. I would say that it would be a policy of a collectivist centrally planned system to isolate itself from the rest of the world so that it could avoid international economic complications.

The CHAIRMAN. I would suggest that it is necessary to do so if it is to survive.

Senator MARTIN. May I interrupt, Mr. Chairman?

The CHAIRMAN. You may, Senator Martin.

Senator MARTIN. Do you not believe, Doctor, that Russia's great handicap or economic isolation is the failure to have the know-how among the laboring classes?

Mr. WILCOX. They have a great geographic area, a great variety of resources, and a large population, and the thing they lack primarily is technology; yes, sir.

Senator MARTIN. And they are dropping off in that because of collectivism? Here, in the United States, by reason of free competitive enterprise, we have built up the greatest know-how in the history of the world.

Now, we lack a lot of natural resources, but our know-how is the greatest in the history of civilization, is that correct?

Mr. WILCOX. Yes, sir.

Senator MARTIN. And the stabilization of the world probably depends on the continuation of that know-how here in the United States?

Mr. WILCOX. Yes, sir.

Senator MARTIN. We agree, then.

Mr. WILCOX. I do not believe I fully answered your question, Senator Millikin.

Let me say this: If it were the purpose of the United States to achieve the maximum possible isolation from the other countries of the western world, we should not go ahead with this project.

The CHAIRMAN. Yes; I think that is very clear. I should add that my inquiry did not indicate any policy known to me to do anything of that kind.

The war did demonstrate that by development of synthetics in this country, that if we wish to, we can close substantially the gap in our self-sufficiency. I suppose that a determination of that kind; that is, to become completely self-sufficient so far as possible, would be a last-stand measure of desperation in a world completely disorganized and unintegrated.

Mr. WILCOX. But that is the extreme alternative to this program.

The CHAIRMAN. I quite agree.

The purpose of my questions was not to promote that degree of self-sufficiency, but rather to use it as a reference point to determine exactly what is intended in this Organization.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Now, in paragraph 1, you will note the mandatory language [reading]:

each member shall take action designed to achieve and maintain full and productive employment and high and stable levels of effective demand—

and so forth.

What action shall we take?

Mr. WILCOX. That is entirely up to us. This would be a commitment voluntarily entered into by member states if they did enter into

it, and all that the commitment is, is that action shall be taken which is designed to achieve these purposes.

The nature of the action is for the individual state to determine, and it is not asked to guarantee that that action will be effective. It would be impossible, as a matter of fact, to guarantee its effectiveness.

The CHAIRMAN. Doctor, is the mandate, which as I read it is unequivocal, to take action for the achievement of those purposes through measures of its political, economic, and social choice?

Mr. WILCOX. That is right.

The CHAIRMAN. The duty is not mitigated?

Mr. WILCOX. That is right.

The CHAIRMAN. The duty is there, but each nation has a choice of means?

Mr. WILCOX. That is right.

The CHAIRMAN. And if the International Organization looked into the countries to see what they are doing, it would not be sufficient, as I read this language, for a nation to say that we are not doing anything. It would have to say, if it were not doing anything, that it has no means appropriate to its institutions with which to do it. The answer to that, of course, would be an argument as to whether it did or did not have; is that not correct?

Mr. WILCOX. Yes; I think that is right.

The CHAIRMAN. Now, I can see from the language that I have read here that some one had a very wise regard for the history of our Full Employment Act, is that correct, Doctor?

Mr. WILCOX. That is true.

The CHAIRMAN. In other words, this country refused to accept the full implications of a full employment policy, because it was the opinion of those who resisted that policy, that that kind of full employment means full regimentation. Therefore, we mitigated the bill which first came before us, which would have regimented us, to something less than that. But it could not be denied that we do have a choice of measures if we wish to use them from the Federal governmental standpoint that would have effect as to full employment.

Mr. WILCOX. Certainly, we would have a choice.

The CHAIRMAN. And so we would have an obligation.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. And if we did not pursue that obligation, we would be subject to international criticism and, I assume, subject to some kind of sanctions, is that not correct?

Mr. WILCOX. Well, we would be subject to criticism. It is inconceivable to me, Senator, however, that this country will not voluntarily, of its own accord, without any regard to the existence of this Charter, or this Organization, attempt to maintain stability. I cannot imagine anybody deliberately taking the position that we do not intend to try to maintain stability in the United States.

The CHAIRMAN. I think there, Doctor, you get into a vast field of disagreement as to how you are going to do it, as to the degree of intervention by the Federal Government.

Mr. WILCOX. Quite so.

The CHAIRMAN. There is one school of thought which takes the position that that sort of intervention should be minimized and should be brought into play only in cases of great national emergency. There

is another school of thought to the effect that it should be in existence all the time.

I may point out to you that we had a National Planning Commission, and that that Commission, under the development of public opinion, was wiped out and so far as I know there is not a single mourner with a tear in his eye at the present time.

Mr. WILCOX. Well, you also set up under the Employment Act of 1946, a Council of Advisers to the President, and a joint committee of the two Houses.

The CHAIRMAN. I have read the first report of that Council and it confines itself to the philosophical discussion of economics; it does not engage in planning.

Am I correct in that?

Mr. WILCOX. Yes; I think so. There is a joint committee of the two Houses of Congress on the economic report, and if the suggestions made in the economic report are accepted, it would be carried out.

The CHAIRMAN. Compliance with the employment features of the Charter would mean that the nations will be compelled to adopt national planning systems whether or not they want to?

Mr. WILCOX. No, sir.

The CHAIRMAN. It does not?

Mr. WILCOX. No, sir; I do not think so.

There is some question as to the meaning of the word "planning." Whether or not you have a planning commission, you plan. Whenever you lay out your budget program, you plan. You cannot escape it.

I should say that there is no conceivable way for the Federal Government to withdraw completely from this area because fiscal policy is a Federal matter, and monetary policy is a Federal matter.

Let me say explicitly, there is nothing in here that involves commitment to deficit spending for make-work employment.

The CHAIRMAN. Is there anything in here which explicitly negatives that?

Mr. WILCOX. No, sir.

The CHAIRMAN. Would it not be a good idea to put something like that in here to negative that?

Mr. WILCOX. I do not believe so, sir, because if some other State, some other country, desires to pursue a different policy, I am not sure that we should have any international organization dictating what that internal policy should be. The whole emphasis here has been to avoid dictation of internal policy by the international instrument.

Senator MARTIN. May I ask a question at this point?

The CHAIRMAN. Senator Martin.

Senator MARTIN. If some arrangement of this kind is to be successful, would it not be necessary to have an international economic policy that will keep the member nations sound financially?

Mr. WILCOX. Well, I would assume that in the Bank and the Fund, there are provisions which will contribute to that, but I do not think they can assure it.

Senator MARTIN. For example, up to the present time, the distress that we have in so many countries of the world is a result of an unsound economic and financial policy. For example, Germany, Italy, and France, and of course it is only a very few years ago that Russia was on a sound financial basis. We owned many of their bonds here

in the United States, and they were considered as an investment almost next to bonds of the United States.

All of us would like to see trade among nations without restriction. We would like to see a living standard comparable to that of the United States, but that can only be attained by a sound economic system in all of the countries involved.

Now, if we are going to permit deficit financing, that, eventually, carried far enough, means the collapse of our form of government and the taking up a socialistic pattern of government, is that not correct?

Mr. WILCOX. Yes, sir; but if you would give to an international agency any power to say what the internal monetary or fiscal policies of individual states would be, it would mean that they would have that power not only over the internal policies of other countries, but also over the internal policies of the United States, and I do not believe it would be acceptable to this Government to grant any international agency any such authority.

Senator MARTIN. I agree with you, and I am on that side.

I would like to ask you another question. If we would go into a thing of this kind, what is the plan of policing it to see that other nations live up to the agreement?

Mr. WILCOX. Well, with respect to certain specific commitments that are involved here, the only sanction that exists is the sanction of permitting what amounts to retaliation; that is, we might, in trade agreements, have made a concession to another country and that other country violates its agreement in certain respects, it violates its commitments. We make a complaint to the Trade Organization and it is found that they have, indeed, violated. We are then permitted to withdraw, from that country, concessions that we have made to it, and that would be true of any country.

However, the Organization itself has no sanctions that it can apply.

Senator MARTIN. You see what I am getting at. Here, in America, we may decide on a 40-hour week. A competitive country may decide on 60 hours, and if they have an equal know-how to America, they will out-produce us and then you would get the economic equilibrium out of balance.

Mr. WILCOX. Well, there is nothing in this organization that would control the situation you mention.

Senator JOHNSON of Colorado. May I ask a question?

The CHAIRMAN. Proceed, Senator.

Senator JOHNSON of Colorado. Dr. Wilcox, is not one of the great dangers in a program such as you have outlined that unemployment will be encouraged in the United States by its adoption, and is not this proposal thrown in here as an argument that this document encourages employment? Is not that the real purpose of it? To get away from this argument that if we take down all trade barriers, and if we permit countries with slave labor and near slave labor, sub-standard labor, to ship into this country freely, without protection to our own labor, that we will have widespread unemployment? That is one of the arguments, at least. This is an attempt to answer the argument without any change whatsoever in the program.

Mr. WILCOX. I am afraid I do not follow your reasoning, Senator.

In the first place, it is not proposed to remove all barriers to trade. Senator JOHNSON of Colorado. Well, perhaps not all, perhaps not 100 percent, but the objective is just as near 100 percent as you can get it.

Mr. WILCOX. It is a long way from 100 percent, Senator. If this program were all carried through, there would still be substantial barriers to trade between nations.

What it would really do would be to check the tendency toward increasing barriers to trade and reduce them somewhat, but this program would not produce a free trade system, as far as I can see, at any time.

Senator JOHNSON of Colorado. Then what is its objective?

Mr. WILCOX. Fundamentally, the objective of this program is, Senator, to preserve a world trading system which is consistent with the preservation of private enterprise and to check the present tendency toward the development of a world trading system in which it will be difficult if not impossible for private enterprise to endorse.

Senator JOHNSON of Colorado. You are not going to repeal the laws of supply and demand in any degree?

Mr. WILCOX. No, sir; I do not think it is possible to repeal the laws of supply and demand.

The CHAIRMAN. Doctor, may I suggest that it might be argued from a review of all of the provisions of the charter, that you aim to share unemployment over the world?

Mr. WILCOX. It might be argued, but I do not think the argument would be valid.

The CHAIRMAN. I think that when we come to the next section, we may see some indication of support for that kind of argument.

Mr. WILCOX. I shall be glad to consider it at that point, Senator.

The CHAIRMAN. Now, a while ago—and I am going to hang on to this until we get it clear, because we will be asked about it in the Senate, and it is very important—I was probing to find out exactly what our obligation would be to maintain full and productive employment at a high and stable level of effective demand within our own jurisdiction.

We discussed the contrasting theories of laissez faire, if you wish, with a completely planned economy and I called to your notice that we had reversed what may have been a tendency to a planned economy when we got rid of the National Planning Commission. I do not mean to get into any political business, but the election last November indicated that the people do not want a powerful centralized regimenting government.

You said that many measures of this Government have to do with employment. Of course, you are entirely correct, and the examples that you cited are background measures. They have to do with advancing the general public welfare. Any measure that we pass here which advances the public welfare, presumably advances employment opportunities. At least, we can make an argument to that effect.

I am talking in terms of our direct obligation to meet the terms of this provision.

What would we have to do in the Federal Government to meet that obligation, remembering, please, that it says that we shall take action

appropriate to our political, economic, and social institutions, which is a very wide field.

What is contemplated that we shall do to meet that obligation?

Mr. WILCOX. It is contemplated that you shall do what the Congress of the United States decides to do.

The CHAIRMAN. If the Congress of the United States should decide to do nothing by way of direct measures, would we be meeting our obligation under the charter?

Mr. WILCOX. I should say that such things, for instance, as sound fiscal policy, sound monetary policy, the maintenance of competition through antitrust, and so forth, are just as logically related to the cause of the maintenance of industrial stability as would be, let us say, a "make work" program and it probably can be argued that they are more sound.

The CHAIRMAN. Is that another way of saying that the continuance, generally speaking, of our past legislative policies as to background measures to improve the public welfare, would meet this mandatory language? Measures of the type that you have mentioned?

Mr. WILCOX. Well, that is a rather sweeping generalization, Senator, I would assume that there would be changes in detail, in the body of legislation, in the economic area from time to time.

But to sum it up, this does not impose any obligation upon the United States or any other country to adopt any specific measures or any specific method of accomplishing the purpose.

The CHAIRMAN. I agree. I agree entirely, but that does not meet the provision that we shall take action "designed to achieve and maintain full and productive employment and high and stable levels of effective demand within its own jurisdiction through measures appropriate to its political, economic, and social institutions."

Let us assume that we went into a state of very bad unemployment in this country. That, of course, would affect our imports, would it not? That would affect the exporting capacities of other nations, would it not?

Now, what would this International Organization have the right to say to us? What could it demand of us in the way of performance of the obligation that we are here assuming to take action "designed to achieve and maintain full and productive employment," and so forth?

Mr. WILCOX. The Organization would not have the right to say anything to us or to demand any particular action of us. Members of the Organization, however, might argue that we had not lifted a finger, that we had not made any effort of any kind whatsoever to avoid that situation. It is inconceivable to me that this Government would not make any effort of any kind to avoid severe and protracted unemployment.

The CHAIRMAN. I quite agree with you, but you have now stated that the members of the Organization, as contrasted with the Organization itself, would have a complaint and would be entitled to say, for example, "You have taken some measures, but they have not in our opinion been designed to achieve and maintain full and productive employment."

Mr. WILCOX. That is right, and our answer to that is that in our opinion, they are designed to accomplish that purpose. This paragraph leaves the matter to our judgment.

The CHAIRMAN. Then we have full and complete control over what we shall do?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. If we do anything.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. We must do something?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. I think we are getting to a clear point here of definition. If we did nothing whatever, we would be subject to criticism by the members of the Organization.

Mr. WILCOX. By the members, yes.

The CHAIRMAN. If we did anything at all, which in our judgment was appropriate to our political and economic and social institutions, whether or not it was actually adequate, no one would have a complaint?

Mr. WILCOX. That is right.

The CHAIRMAN. Is that correct?

Mr. WILCOX. That is right.

The CHAIRMAN. Well, then, what is the purpose of the direction? If each member retains within itself full discretion over the subject, why talk about it in the charter? Will not each member continue to do so just as it has in the past?

Mr. WILCOX. Well, I think you are probably right.

Senator JOHNSON of Colorado. Mr. Chairman, I wanted to follow up with my question just a moment ago.

The CHAIRMAN. Yes, Senator Johnson.

Senator JOHNSON of Colorado. I think the answer now is plain that this is merely campaign oratory, flag waving. It is something to catch the flies with. We would be able to say, "Now, certainly this Organization is not going to encourage unemployment in this country. This Organization is going to encourage employment and full employment."

I do not ask you to agree with my conclusions, but I cannot escape them.

The CHAIRMAN. Do you wish to comment, Doctor?

Mr. WILCOX. No comment.

The CHAIRMAN. Senator Hawkes?

Senator HAWKES. Mr. Chairman, you covered most of what I had in mind with this exception, that even though the Organization has no power to stop us from doing those things which are necessary to solve our own problems, and even though we say the members of the Organization have no right to criticize us, the question still remains in my mind, will they criticize us, whether they have a right to do it or not, and thereby defeat the objectives that we have?

I would like to hear Dr. Wilcox' comments on that. Lots of times, Dr. Wilcox, people have no right to criticize you, and most of the wars are started on no rights, and yet they are started, and many times people have no right to criticize you, and yet they do, and you create ill will by doing certain things.

What I am trying to find out is, if your answer to the chairman is correct, why have this thing in there at all?

Mr. WILCOX. Well, I could not say that countries will never criticize us even though they have no right to do so. And I do not

believe that this makes a substantive addition to the situation that you would have in this country without it.

The CHAIRMAN. In other words, it is of no effect?

Mr. WILCOX. Well, it is of this effect, Senator: Other countries lay some store by this statement of policy. I do not think in substance it adds anything.

Senator HAWKES. Mr. Chairman, that answers my question right there. You have answered my question perfectly. If other countries lay store by this thing and they take stock in it and believe it is a valuable thing, and yet you say we are not bound by it in case of certain conditions, then I come right back to what I said that those countries, regardless of whether they have a right to criticize us, and a right to feel antagonistic, if they place stock in the thing, they are going to be antagonistic. If we say we are not going on with it, we are going to do certain things that were not contemplated at the time of the agreement, and we are going to do it in self-preservation.

Mr. WILCOX. I did not say we were not bound by it, Senator. I said that all this does is bind us to do something that we are inevitably going to do anyway.

Senator HAWKES. Yes. But, Doctor, we may not be going to do it in the way that other countries think we ought to do it.

Mr. WILCOX. In that case, they have no basis for action whatever.

Senator BREWSTER. May I interrupt at that point?

The CHAIRMAN. Senator Brewster.

Senator BREWSTER. This may have been covered, and if so, the chairman will stop me, but what intrigues me is the second clause which seems definitely to limit the scope of the measures we may take when it says, in article 4, section 2 [reading]:

Measures to sustain employment and demand shall be consistent with the other purposes and provisions of this Charter.

In the verbiage of the street, that is a mouthful, because, as you will agree, there is a whole lot in this document as to the purposes and the provisions and we are not at liberty to determine what we think may be best in accordance with our own problem, and our own economic situation, and our own economic ideas.

We have got, Mr. Chairman, this [reading]:

Shall be consistent with the other purposes and provisions.

If the actions are not consistent in the thought of the majority, we certainly are in a somewhat embarrassing position, are we not?

Mr. WILCOX. If the charter did not say that, if the paragraph did not say that, it would nullify every other word in the document.

Senator BREWSTER. Then we come to the point that we have got to take action, and that action must be consistent with the rest of this document.

Mr. WILCOX. That is right.

Senator BREWSTER. So we are obligated, if this means anything—to proceed in conformity with the general provisions and purposes. Purpose is a very broad word—of the charter.

Mr. WILCOX. That is true.

Senator BREWSTER. Further [reading]:

and in the choice of such measures each member shall seek to avoid creating balance-of-payments difficulties for other members.

That is perhaps somewhat less restrictive, but it certainly is, to some extent, restrictive. I mean, we have got to be careful that we do not create balance-of-payments difficulties.

That means that we do not erect barriers that will make it difficult for them to pay for what they buy. That is the implication.

The CHAIRMAN. May I add a supplementary observation, Senator? Senator BREWSTER. Yes, sir.

The CHAIRMAN. I think it goes to the heart of this whole proposition. It says, in effect, we have got to control our exports.

Senator BREWSTER. Yes.

The CHAIRMAN. We have got to plan our exports in a way so that the other fellow's exchange will not be put into disequilibrium.

Senator BREWSTER. You could either plan exports to imports. You have got to plan them both.

The CHAIRMAN. I hope you will give us a full comment on that, Doctor.

Senator BREWSTER. Yes.

Mr. WILCOX. I do not think it says that, Senator. We are prohibited from putting duties on exports by the Constitution, I believe.

The CHAIRMAN. I am not thinking of that at all.

Senator BREWSTER. We are controlling exports right now, are we not?

Mr. WILCOX. That is right.

Senator BREWSTER. So there is no question about our power to control exports, is there?

Mr. WILCOX. That is true.

Senator BREWSTER. Now, will this further focus his question and mine: That this involves a planned economy?

Mr. WILCOX. No, sir; it does not. The whole purpose is precisely the opposite. This whole document is based upon an effort to retain in the world an economic system which responds primarily to free markets insofar as it is possible to do so, but it does necessarily involve compromises with the situations that exist everywhere else on the face of the earth.

Senator BREWSTER. How do you control balance of payments, then? How do you control it without controlling the economy?

Mr. WILCOX. All this says is that in adopting measures for the maintenance of domestic stability, countries will seek to avoid the selection of those measures that would make it difficult for other countries to maintain stability.

Senator BREWSTER. Now, implement that with respect to current problems.

Mr. WILCOX. Well, I would assume that it would mean that you do not try to maintain domestic stability in an individual case, let us say, by raising a tariff which would then create unemployment abroad or by imposing a new export subsidy that would deprive industry abroad of a market suddenly. But there is no difference in substance here with what is in the rest of the charter. Those specific things are spelled out in detail in the fifth chapter.

Senator HAWKES. Mr. Chairman, may I ask a question right there in connection with Senator Brewster's question?

How would unemployment in this country have to be related to unemployment in other countries under this provision? In other

words, to what point would we have to go not to be accused of bad faith in seeking to do these things that the charter says we are going to do? Is that clear to you?

In other words, if we have got unemployment in this country, can we take the steps to solve that thing even though they have got unemployment in other countries that they may think is worse than the unemployment in this country? That is what I have got in my mind. Or will we be accused of bad faith if we do anything that brings down the average of employment all over the world or with the countries we are dealing with?

Mr. WILCOX. The answer to the first part of your question is "yes." If we have unemployment in this country, we can take steps to reduce it, or, better, to avoid it. There is no question about that.

Senator HAWKES. I understand, but that is only a minor part of the answer to the question. Suppose there is unemployment in this country, and in these other countries party to this agreement, that they think is as bad or worse than the unemployment in this country: Will we be putting ourselves into a world condition where we cannot do these things that are necessary to put our people in better employment than the other countries may find themselves from time to time without being accused of violation of the spirit of this agreement, even if we do not violate the letter?

Mr. WILCOX. Certainly not, except insofar as we take specific commitments on specific points. This paragraph we are discussing here is nothing but a cross reference to the fifth chapter of the document, and it says that this article is not to be taken as a nullification of what else is in the document.

Senator BREWSTER. Let us take this question, Doctor: we do not have to go to the fifth. Let us go to article 6 here [reading]:

Members agree—

Here we agree to something.

Mr. WILCOX. Yes, sir.

Senator BREWSTER (reading):

Members agree that, in case of a fundamental disequilibrium in their balance of payments involving other countries in persistent balance-of-payments difficulties, which handicap them in maintaining employment—

now, we recognize that that is an existing difficulty, do we not? That is exactly what is happening now with our \$10,000,000,000 exports and \$8,000,000,000 imports. All other countries are having difficulty in paying us, are they not? So we face a condition right now such as is envisioned in article 6, is that correct?

Mr. WILCOX. Well, you have the word "persistent."

Senator BREWSTER. Well, it is going to persist for some time unless something is done.

Mr. WILCOX. That is true.

Senator BREWSTER. Now, we agree that we will make our full contribution to action designed to correct the maladjustment. That is an agreement, is it not?

Mr. WILCOX. That is right.

Senator BREWSTER. We obligate ourselves to take action that will assist other countries in securing the means by which they may pay for the things that they secure from us, is that right?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. So that perhaps I will modify my planned economy to say this does envision a planned economy so far as our exports and imports are concerned. It may be a very good thing.

Mr. WILCOX. I do not believe it does, sir.

Senator BREWSTER. You do not think so. How do you reconcile that?

Mr. WILCOX. Let me state article 6 in the simplest possible terms.

Senator BREWSTER. Very well.

Mr. WILCOX. What it says is that trade is a two-way street.

Senator BREWSTER. That is right.

Mr. WILCOX. What it says is that, as far as we are concerned, we cannot indefinitely continue to export at the rate of \$10,000,000,000 and import at the rate of \$5,000,000,000 unless we give it away or lend it.

Senator BREWSTER. That is right.

Mr. WILCOX. Now, that, it seems to me, is inescapable.

Senator BREWSTER. I agree with you in the economic implication of that, and I look forward to our seeking a solution in our own interest, but I do not want to be handicapped by being told that we are limited by the agreements we have made with others in the latitude of our action.

Mr. WILCOX. Well, on that point, Senator, the report of the Committee at London says [reading]:

The particular measures that should be adopted should of course be left to the government concerned to determine.

Senator BREWSTER. What about the other purposes and provisions of the chapter? That is, article 4, section 2. That, you say, does not mean anything?

Mr. WILCOX. Of the charter. That adds nothing substantively to what exists in the rest of the charter.

Senator BREWSTER. Well, you just read an interpretation by the committee which said that each country was to determine it.

Mr. WILCOX. That is an interpretation of article 6.

Senator BREWSTER. Well, article 4, section 2, certainly says that the measures we take shall be consistent with the other purposes and provisions so to that extent we are limited.

Mr. WILCOX. That is right.

Senator BREWSTER. That is right?

Mr. WILCOX. If we voluntarily accede to the rest of the charter.

Senator BREWSTER. That is right.

The CHAIRMAN. Doctor, is this not the way in which a nation avoids a disequilibrium in its exchange? It either cuts down imports or it increases exports, or it ships gold if it has it or it borrows money in terms of exchange which it needs or which it can use for such exchange into money which it needs. Are there any other ways?

Mr. WILCOX. Those are the principal ways. There are services and immigrant remittances and tourist travel, but the principal ones are what you stated.

The CHAIRMAN. Senator Brewster suggests that altering the exchange rate might have the same effect.

Mr. WILCOX. Yes.

The CHAIRMAN. Of course it would have. Now, let us see if we can break these four paragraphs down that we have been discussing in

articles 4, 5, and 6, into some sort of consistent relationship if that is possible.

In paragraph 1, we have got to do something to maintain full and productive employment. That means that we have available a high quota of goods for export, does it not?

Mr. WILCOX. Well, yes. A large quantity of goods for export.

The CHAIRMAN. Well, Doctor, your basic thesis for the promotion of your trade agreements is that they will expand our export market, and that in doing so, it will aid full employment?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. So is not the reverse true that full employment is necessary to large exports, and does not export and import history show that is true?

Mr. WILCOX. Yes.

The CHAIRMAN. Now, let us assume that we have achieved this goal of full employment that means we have a good quota of goods available for export. Some other country, or a group of countries to which we export, find themselves in balance-of-payments difficulties, or they find themselves in exchange disequilibrium. Why? Because they are importing more goods than they have the money to pay for and they do not have within their own resources gold to export, or they cannot borrow the money, or they find themselves in a position where they cannot increase their exports, or they are in mechanistic exchange difficulties.

Now, if those countries find themselves in that position, obviously we have got to reduce our exports to them if we perform our pledges under these paragraphs: is that not true?

Mr. WILCOX. Ultimately we have got to reduce our exports to them, period.

The CHAIRMAN. All right. We reduce the exports to them which is another way of saying, using a phrase which for a time was used so heavily and is no longer used very much, we have got then to stop exporting unemployment; is that correct?

Or the other country has got to stop importing unemployment, which is another way of saying it has got to stop importing.

Now, then, what specifically are we supposed to do under this combination of paragraphs, assuming full employment in the first instance, a large quota of material available for export in the face of exchange disequilibrium in the countries which take our goods? What exactly are we supposed to do?

Mr. WILCOX. You have spoken several times, Senator, of an export quota?

The CHAIRMAN. By "quota" I now mean an amount of goods available for export. I am not speaking of quotas in the restrictive sense.

Mr. WILCOX. Quite so. Under those circumstances, what can we do?

The CHAIRMAN. Yes.

Mr. WILCOX. We can import more or export less or lend or give away.

The CHAIRMAN. That is right.

Mr. WILCOX. And that would be true if these words had never been written on paper. There is no way we can escape it.

The CHAIRMAN. That is right. So that the words are not essential to the protection of the world's economic interests in these respects.

But secondly, if we adhere to our pledges here, we must take affirmative action along the lines that you have indicated. We either export less, we import more, we loan them money, which is merely a temporary remedy because, in the end, if we want to get it back we have to take in goods, and we may not take them today but we have to take them tomorrow or some time, or we give them our surpluses; is that not correct?

Mr. WILCOX. Fundamentally; yes.

The CHAIRMAN. Now, to achieve those four things, or any of them, how can we avoid a planned economy?

Mr. WILCOX. Well, Senator, you are carrying me to the conclusion which I am unwilling to accept; namely, that in the world that exists today, it is impossible for the United States to avoid a planned economy. Now, that may be true, but it does seem to me that this country should make every effort within its power to maintain a free trading system. We may be defeated. We may not be successful, but at least we should make the attempt.

The CHAIRMAN. Doctor, I agree 100 percent with what you have said, but what you have said, I suggest, does not coincide with what these four paragraphs say.

Now, you either perform the pledges that are made here by governmental action or through the aggregate of private trading.

Now, tell me how you bring the private trader into relation with those four paragraphs. What can the private trader do to achieve full and productive employment except insofar as his own little business is concerned?

What can he do to avoid the creation of balance-of-payments difficulties?

What can he do to eliminate substandard conditions of labor except in his own little sphere?

What can he do to correct maladjustments in balance of trade?

It is either going to be by the Government or it is going to be by the private trader or by both. In other words, Doctor, I respectfully suggest you have not given us a clear picture of what we must do to keep our pledges under these four paragraphs, and I suggest, for discussion's sake, that if we keep these pledges we have got to control, for example, our exports, and to that extent we have to have a planned economy.

I suggest also that it is inconsistent to have full employment and at the same time control your exports without further inconsistency that would violate your major thesis in the promotion of trade agreements.

Give me your reactions to that, please.

Mr. WILCOX. Well, there are a number of points there and I am not sure I can keep them all in mind.

The CHAIRMAN. Well, let us take them one at a time.

If we are going to help country X in getting out of an exchange disequilibrium that is caused, let us say, by the imports which it takes from us, what do we have to do about that to meet our pledge here?

Mr. WILCOX. Well, on the point of public versus private action, even where private action is the answer, it takes place under the rules of the game that the Government lays down.

But there is the possibility, for instance, of encouraging private foreign investment. Of obtaining, let us say, conditions in the relation-

ship of lenders here, and borrowers abroad, which are congenial to private investment, as opposed to Government investment.

So it is not entirely a matter of governmental action.

The CHAIRMAN. I agree that we should do that, but that, I respectfully suggest, also encourages governmental action, domestic and international. Are there not provisions for that?

Mr. WILCOX. I think so.

The CHAIRMAN. Yes; of course. All right, let us come back to the point I am driving at. We have entered into trade agreements in order to increase our exports. We have achieved full employment, as we have now. We can absorb everything we want to here, roughly speaking, at the present time. But let us get out of this present abnormal condition and get to the time where we have got full employment in this country, a great amount of articles ready for export, with disequilibrium in exchange in the countries which can take those exports or want them. What do we do about it?

Mr. WILCOX. Well, I am sorry, Senator. I cannot do anything but come back to the A, B, C of the problem. We take imports or we lend.

The CHAIRMAN. We have to increase our imports, even though from a selective standpoint we may not want to import. We may not need them. Or we have to lend, or we have to give them our surpluses. Are those the alternatives proposed by this charter?

Mr. WILCOX. Fundamentally, that is what it comes down to.

The CHAIRMAN. And fundamentally, it would be that way even if nothing was here said in the charter?

Mr. WILCOX. That is right.

The CHAIRMAN. So again I ask you, What is the effectiveness of the charter so far as those provisions are concerned?

Mr. WILCOX. I do not think it adds substantively to the condition that exists in the world.

The CHAIRMAN. Now, Senator Johnson raised the question of unemployment. Will you agree with me on this: a country that takes excessive imports contributes to its own unemployment, does it not?

Mr. WILCOX. I do not know how you would say when imports are excessive.

The CHAIRMAN. Assume that they are excessive. We do not have to go into the circumstances that would characterize something as excessive. Let us assume they are excessive.

Mr. WILCOX. I am not sure I would agree with your statement at all. The period in which the United States has had the smallest importation has been the period when it has had most unemployment. When it has had large importation it has always had best employment.

The CHAIRMAN. Is it not true that our best exports and best imports have coincided with the state of our domestic prosperity?

Mr. WILCOX. Right.

The CHAIRMAN. Now, let us get back to our knitting:

A country imports more than its economy permits it to absorb. And it get into exchange difficulties. It may be importing stuff which it does not need. It may be importing stuff which it could produce itself under some circumstances.

When it does so, it adds to its own unemployment, does it not? Assume it. I am not asking you to say that that is true in any particular case, but take the assumptions that I have laid out.

Mr. WILCOX. Well, all right, let us assume it. I am not quite clear on the point.

The CHAIRMAN. Of course, Doctor, that is the whole theory of the protective tariff, is it not? The theory of the protective tariff is to enable a country to admit those things which it wants to admit and exclude those things which it does not want to admit? Is that not the theory of a protective tariff?

Mr. WILCOX. Yes; but I do not think it is possible to say that any import creates unemployment, ~~that as soon as you import things~~ people are thrown out of work.

The CHAIRMAN. I do not say that they automatically create that situation, but I say that selectively it can happen.

Mr. WILCOX. In an individual case, it can happen.

The CHAIRMAN. Or in a group of individual cases. Maybe not all the way across the board, but in a group of individual cases.

Senator BREWSTER. May I suggest that every unemployment is individual.

The CHAIRMAN. Of course, it all comes to an aggregate unemployment.

Senator BREWSTER. Yes.

The CHAIRMAN. Which I suggest may be very heavy because of indiscriminate imports. But passing that, assuming that a country does import stuff which it cannot afford, assuming that it imports things it does not need, and in doing so it upsets its whole fiscal policy, assuming that it imports things which it itself could make—if it imports things which it itself can make, clearly there it is adding to its own unemployment, is it not?

Mr. WILCOX. Oh, I would not agree with that at all.

The CHAIRMAN. What happens, Doctor? What happens in that kind of case?

Mr. WILCOX. Well, we import coffee from Latin America.

The CHAIRMAN. But we do not grow it here.

Mr. WILCOX. I wonder if we could not if we had hothouses.

The CHAIRMAN. Maybe we could but we do not.

Mr. WILCOX. But what is the difference in principle?

The CHAIRMAN. As I see it the very statement of the thing shows a difference in principle between the import of something which you need or want, and cannot produce yourself, and something which perhaps you do not need but do want and which you can produce yourself.

Does not the statement of it show a difference?

Mr. WILCOX. Well, this goes back to the so-called theory of comparative cost in international trade. You produce the things that you can produce most efficiently.

The CHAIRMAN. Let us simplify it. Let us say these imports into this fictitious country we are talking about, have demoralized its fiscal position, have made it insolvent fiscally. Would that improve or would that lessen employment in that country?

Mr. WILCOX. Well, I think it is possible for an unbalanced trade situation to be bad for a country, of course.

The CHAIRMAN. May I make my final point: to the extent that we control our exports to a country of that kind, we are doing it, I suggest, for the precise purpose of sharing unemployment because to the extent we do not export, when we are able to, we are making unemployment in this country. To the extent we withhold, in the

manner suggested, we are sharing the unemployment of the other country.

Mr. WILCOX. How do we avoid that, Senator?

The CHAIRMAN. I am not saying that it can be avoided. I am talking about the method which this charter sets up to avoid it.

Mr. WILCOX. The charter does not set up new methods in this article.

The CHAIRMAN. The charter adds nothing, does it?

Mr. WILCOX. What we are talking about here is the situation that actually exists in the world of practical affairs today and cannot be sidestepped or avoided in any way I know.

Senator BREWSTER. It is a condition and not a theory.

Mr. WILCOX. I would say so.

The CHAIRMAN. But I suggest there is this difference: normally, under peacetime concepts, nations do not assume obligations. They handle themselves according to their own self-interest.

Here, the nations are assuming obligations.

In connection with the point which I have been driving at, they are assuming the obligation to share unemployment. Maybe not, but I do not believe you have told us why not, Doctor.

Senator BREWSTER. Well, do you want to comment on that?

Mr. WILCOX. Well, insofar as it is impossible in the nature of economic relations that exist in the world to avoid the sharing of unemployment, the answer is "Yes." But there is nothing in this charter that changes that situation.

Senator BREWSTER. Well, let us see now: this charter either obligates us to something or it does not. Which?

Mr. WILCOX. In this particular respect, in the articles you are discussing here, it obligates us to nothing except what we would do in any case.

The CHAIRMAN. That is article 4, paragraphs 1 and 2?

Mr. WILCOX. Articles 4 and 6.

The CHAIRMAN. Article 5 and article 6, is that correct?

Mr. WILCOX. So far you have discussed only 4 and 6.

The CHAIRMAN. Yes. Article 4 and article 6. Proceed.

Senator BREWSTER. Well, your qualification is what I think Theodore Roosevelt used to call "weasel words."

Mr. WILCOX. How so?

Senator BREWSTER. You said yes, and then you said it only obligates us to something we would do in any event.

I am sure you recognize you immediately open up the whole field again.

It is your contemplation that in the exercise of our enlightened self-interest, if our Congress and our administration were intelligent enough, they would do precisely what you think we are obligated to do under this, is that right?

Mr. WILCOX. Yes.

Senator BREWSTER. Now, if we were not so enlightened, and we were short-sighted or limited, we would immediately find ourselves restricted. If people should have a different point of view than that which you support regarding international trade and economy. Is that not so?

In other words, we are binding ourselves to a certain theory regarding international economics which you believe is sound.

Mr. WILCOX. I am not sure that I get the force of your question.

Senator BREWSTER. Well, you have said that in the exercise of our enlightened self-interest, we would do precisely what we are obligated to do under this charter.

Mr. WILCOX. Well, I think we are doing what we are obligated to do under article 4, paragraph 1, in the exercise of enlightened self-interest.

Senator BREWSTER. Or that we should do it. Perhaps you should say that, that we should do it.

Mr. WILCOX. Well, I think we certainly shall do it.

Senator BREWSTER. Well, I think if you read the history of America for a century and a half, you certainly find that the original international economic philosophy of it has changed at various times. The wind has changed.

Mr. WILCOX. I spoke of article 4, paragraph 1. I do not believe anybody is going to run for office in the United States on the platform that he intends to produce and maintain unemployment in this country.

Senator BREWSTER. Well, if you want to confine yourself to article 4, section 1, all right, but you cannot confine yourself to that.

Mr. WILCOX. Quite so.

Senator BREWSTER. You have got to read section 2.

Mr. WILCOX. All right. In section 2, there is no substance other than the substance that exists elsewhere in the charter.

Senator BREWSTER. Well, that is saying a lot.

Mr. WILCOX. Certainly, but that is what you propose to examine, I think, at some detail.

Senator BREWSTER. Yes, but certainly there must be something in all this. Let us see. There are 75 pages. There must be something substantial or substantive in this, is there not?

Mr. WILCOX. There is, yes.

Senator BREWSTER. So that we are committing ourselves to carry out this program in accordance with the other purposes and provisions of this charter.

Mr. WILCOX. Quite so.

Senator BREWSTER. So that we are bound to proceed along certain lines.

Mr. WILCOX. Quite so.

Senator BREWSTER. Now, hitherto, in a century and a half we have had full liberty of action ourselves subject only to the treaties and trade agreements which we have made which could be denounced in determining our course, but we are here confining ourselves to a certain philosophy of procedure in solving what we all recognize is a very great problem.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. That is right.

Now, the United States occupies a unique position today in the economy of the world, is that right?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. The United Nations were complimentary enough to suggest they thought that we represented some 50 percent of the productive possibilities on the earth.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. Was that not the idea?

Mr. WILCOX. I believe so.

Senator BREWSTER. Now, the question comes up: How far we should involve ourselves in commitments with many other nations whose economic position is so radically at variance with our own?

Let us put it this way: the haves and the have nots. That we who happen to be in the eyes of the world the "have" nation, assume that we are going to be both humanitarian and intelligent, are we not? You assume that?

Mr. WILCOX. Yes. All right.

Senator BREWSTER. Now, if that is true, then if our statesmen are wise enough, they will do precisely what you envision, but suppose this country should feel that you were wrong and those who share your point of view, and we are then committed for a substantial period to a course which does not seem, we will then assume, consistent with the interests of our country.

Mr. WILCOX. I said in reply to a question from the chairman before you came in, Senator, that if it is the purpose of this country to isolate itself from the rest of the western world, we shall never adhere to this charter. Certainly so.

Senator BREWSTER. Do you mean to imply by that that there is no other course, no middle ground, that we either take this charter or we go isolationist?

Mr. WILCOX. Well, not precisely what is here, but some such program as this, as far as I know.

Senator BREWSTER. Why are you not ready still to trust the intelligence of the Congress and the country to follow the course which you believe we should follow in our own self-interest irrespective of this charter?

Mr. WILCOX. There is not only the Congress of the United States involved, but there are the parliaments of every other country on earth, or where they do not have representative governments, the dictators.

Senator BREWSTER. The point which I am making is that the United States is in a unique position at this time, and for the immediate future we happen to have a unique economic position.

Mr. WILCOX. Right.

Senator BREWSTER. And we hope and believe that we will exercise that position for the good of ourselves and of the world.

Mr. WILCOX. Right.

Senator BREWSTER. Now, we simply ask other nations to trust us in that, but when we make an agreement with 15 or 20 or 50 of them to adopt a certain program for the solution, and it does not happen to work out, we are going to be in the unfortunate position of being compelled to repudiate and withdraw, and I think that without using the extreme terms of internationalist or isolationist, and those are just epithets, that we must recognize that this is quite a profoundly important decision that we are asked to consider.

Mr. WILCOX. I agree with you, Senator. It seems to me that this thing cannot be looked at in a vacuum. It has got to be considered in terms of the situation that actually exists in the world today, and the situation that does exist as you have indicated is a condition of serious disruption and impoverishment of other economies, great political uncertainty, a rapid trend in the direction of regimentation and collectivism, and the question is, How does this country meet that?

Senator BREWSTER. Yes.

Mr. WILCOX. Do we meet that by standing off alone and not making any effort to influence what happens in the rest of the world?

Senator BREWSTER. You, of course, do not mean to intimate that anyone seriously suggests that. I mean, I do not know of anyone who talks that language.

Mr. WILCOX. Well, what is the alternative?

Senator BREWSTER. Well, I do not want to litter up this record here, but my own idea, which I have discussed with many, is a foreign-trade board that shall have affirmative rather than merely the negative functions which now prevail with a tariff commission, and it shall be their duty in the interest of exactly what you envision, to develop our foreign trade for the purpose of maintaining our own domestic economy and of helping in the economies of the world just to the extent that is consistent with our own problem.

That, I may say, was a proposal that was submitted to the Congress 6 years ago but apparently never received any serious consideration, but which I think is the way America should approach this very challenging problem, that I agree with you exists.

Mr. WILCOX. Well, Senator, would the foreign-trade board plan involve no attempt to get any commitments from other countries with respect to their restrictions or trade, but merely accept a world in which trade is regimented through import and export quotas, and so on, and be set up to carry on negotiations with the quota officials of other countries and to allocate orders among American producers and allocate imports, and so on?

Senator BREWSTER. Well, of course, my feeling is that possibly this is somewhat too idealistic a concept and that since we are a rich uncle with 50 percent of these productive resources, that in the interest not only of ourselves, to whom we are primarily responsible, but also in the interest of the world, that we face the issue and save the children from dissipating what we happen, in a century and a half to have accumulated. That is what I fear, and I would rather trust America than to trust the 50 other countries who are in great distress.

And you know when a fellow is hungry, he may eat up the seed corn, and that is catastrophe for everyone.

That is the condition in the world today.

I have looked in a good many corners of the world and it has already taken place.

Mr. WILCOX. Of course, Senator, I think we are undoubtedly strong enough so that we could take care of ourselves pretty well in detailed intergovernmental bargaining on trade, if that is the way trade is going to be conducted. It would be at some cost financially, but we could do it.

But the thing that bothers me about it is where it leads us in terms of the regimentation of our own economy.

Senator BREWSTER. Now, let us see this: you see, in the exercise of our own enlightened self-interest, you think we should proceed along the line, anyway, to stimulate a world economy. Is that not equally true of all these other countries?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. That they should proceed, too. Now, is this not also true: that under our concept the increasing development of

democratic institutions in the world is the only hope for progress or for peace?

Mr. WILCOX. Yes, sir.

Senator BREWSTER. You agree with that.

Now, we cannot feed the world. You would agree to that. By that I mean everything. That our resources are not adequate to do that.

Mr. WILCOX. We cannot do the whole job, certainly.

Senator BREWSTER. Well, the whole job. We are less than 10 per cent of the world.

Now, the only thing we can do is to set them an example of progress in order that they may go in and do likewise, and help them with capital goods and other things so that they can develop a productive economy with our own.

Mr. WILCOX. Principally, yes.

Senator BREWSTER. That is the way. The only question is to what extent the teacher shall let the children rule. And I say that advisedly, because we have apparently made a success of this thing in the last century. It is to what extent the teacher is going to let the children sit in and run the school.

Mr. Harold Laski said that our economic system was moribund, and the more quickly abandoned, the better the country. I do not think England and Russia have demonstrated the right to tell us how our economic system should be run, when England only produces one-half as much per capita and Russia one-fourth.

Now, all these other countries want to sit in and have us say, "All right, boys, we will let you sit in on the decision."

Mr. WILCOX. I agree with your approach, Senator, and it is because I do agree with what you say about the virtue of our basic system that it seems to me that we should not, without a struggle, surrender in advance and adopt the same methods that these other countries are using.

Senator BREWSTER. Then, what we differ on is not the objective, but the method. You feel this is the best way to achieve what we both agree is desirable for a free economy, and the only question is whether this is the best way to do it.

You asked me, how do I propose to do it?

Mr. WILCOX. This Charter, Senator, is not perfect. It is an approach. It is the only alternative that is under consideration by the nations at the present time, to detailed regimentation and intergovernmental bargaining on trade.

Senator BREWSTER. Well, I do not know that I would go quite that far. I mean, that assumes quite a bit. Certainly, another method of approach has prevailed up to this time. For a century and a half, we have not had this. We have tried to meet this problem.

Mr. WILCOX. Yes, but we have got a different world than we had in the last century and a half.

Senator BREWSTER. I agree with you but that does not necessarily prove that this is the only answer.

Mr. WILCOX. No, I do not think it is the only answer. I would say some such approach as this is necessary. I would not claim perfection for this particular document.

The CHAIRMAN. Shall we come back to the text? Doctor, with reference to what we will do to contribute to action designed to correct

maladjustment in balances of payments, a while ago I gave you a postulate that took us beyond the present upset condition of the world.

Now, let us take a look at it as it is. Is there any nation in the world that is in a position to maintain its trade relations in a state of balance without our aid?

Mr. WILCOX. Well, I suppose the answer to that is "Yes." To answer it completely, it would be necessary to go over the balance of trade figures for all countries.

The CHAIRMAN. Let us assume that perhaps the question is too broad. Let us take the British Empire. The British Empire is in a state of disequilibrium as far as balance of trade is concerned, is it not?

Mr. WILCOX. Well, the United Kingdom is, yes.

The CHAIRMAN. We made the United Kingdom a loan of the type we considered awhile ago.

Mr. WILCOX. That is right.

The CHAIRMAN. In order that it might, to some extent, bring its exchange in balance—its state of trade in balance. Is that not correct?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. What will be the principal countries that will accept our exports?

Mr. WILCOX. Well, our exports go all over the world.

The CHAIRMAN. Yes.

Mr. WILCOX. Our largest customer, I think, is Canada, and next to that the United Kingdom. We can get those figures.

The CHAIRMAN. Yes. So that as to the principal part of our exports, when we export under our present conditions in the world, we are adding to exchange disequilibrium, are we not?

Mr. WILCOX. Perhaps.

The CHAIRMAN. And to remedy that we will have to take more imports?

Mr. WILCOX. Ultimately.

The CHAIRMAN. We will have to make loans which, if repayable, will be repaid by imports?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Or we will have to give the goods away or we will have to increase out of proportion our share of the burden of the Monetary Fund and the International Bank, and so forth, to keep that angle of it in order?

Mr. WILCOX. I do not think we should overlook the possibilities of tourist travel which, in time, conceivably, might run \$1,000,000,000 or \$1,500,000,000 or \$2,000,000,000.

The CHAIRMAN. That is always an invisible item of great importance.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. But at the present time, I doubt whether our tourist travel to these foreign countries has the significance it used to have.

Mr. WILCOX. That is true at present.

Senator BREWSTER. Pardon me at that point. I do not want that to pass unchallenged. I think the tourist travel is the way to solve this in the next five or ten years.

The CHAIRMAN. I am not challenging that is an ultimate answer. I am dealing with the situation of the world today. I am driving at the point that under the world as it is today, every time we export, roughly speaking, with some exceptions, we are aiding in the exchange disequilibrium which we have to make good on in the end, or give the stuff away; is that not correct?

Mr. WILCOX. Well, ultimately, we have to lend or buy, yes.

Senator BREWSTER. By way of gifts.

Mr. WILCOX. I do not think we are planning gifts.

The CHAIRMAN. Yes.

Now, I would like to probe the practical workings of these projects. I assume this central organization will keep close track of the state of exchange between nations?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Under its contact with the Monetary Fund, and the International Bank, and the Export-Import Bank, and through Central Bank statistics and so forth and so on?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. So that the Organization will have some kind of idea as to what is the state of disequilibrium, wherever it exists. That will be fluctuating?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. By its very nature.

We have pledged and the other members have pledged that they will make full contribution to action designed to correct those maladjustments.

Now, let us present that in relation to the private trader. How can he make forward contracts under those circumstances? How does he know whether he will be permitted to complete his exports? How does he know what the state of exchange will be? How can he proceed in the business of world trade with all the possibilities of these paragraphs hanging over his head?

Mr. WILCOX. These paragraphs do not change the position of the private trader at all. The private trader is in a condition of uncertainty in a world in which trade is unbalanced, and the possibilities of national action to change the rules of the game always exist.

The CHAIRMAN. So that once more the private trader is under the same hazards that he has always been under?

Mr. WILCOX. In this respect, yes.

The CHAIRMAN. His prospects are as good and as bad, so far as unforeseen changes are concerned, as they would be without this organization?

Mr. WILCOX. Oh, no, I would not say that. When you get into the provisions of the commercial policy chapter, it seems to me the private trader has a somewhat more dependable world in which to operate than he would have without it.

The CHAIRMAN. I am directing my attention now exclusively to the exchange and balance maladjustments. How can the private trader know what these countries are going to do to satisfy their obligation under these paragraphs? How can he possibly estimate that? How can he possibly acquaint himself with the state of maladjustment of all these countries?

Mr. WILCOX. Well, that certainly will have been facilitated because it is provided that the organization will collect and assemble and

analyze and publish balance-of-payment figures which would give a central place where private traders can get information on the exchange situation and trade regulations and matters such as that.

The CHAIRMAN. Then the private trader in the future, as in the past, in making his forward contracts, will have to use his own judgment as to whether the franc or the dollar or sterling, or whatever it may be, will have a reasonable degree of stability at the time he must pay.

Mr. WILCOX. Well, he will have to use his judgment but he will be operating in a situation, insofar as these countries belong to the Monetary Fund, in which there are rules of the game and they will not take arbitrary action unannounced.

The CHAIRMAN. Does that not point up the precise difference? In the old days, the private trader was subject to the aggregate uncontrolled influences of hundreds or thousands of factors against which he took his chances.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Here you are endeavoring to mitigate those chances by control. Is that what you are trying to do?

Mr. WILCOX. Well, the illustration was used, I believe, that this would be within the jurisdiction of the International Monetary Fund.

The CHAIRMAN. Yes.

Mr. WILCOX. But the answer to the question then would be "Yes."

The CHAIRMAN. Again, we will make a very affirmative pledge on that subject?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. No matter where the mechanics of it may be deposited, we are making, and every member is making, some very, very definite pledges on the subject.

Now, once more, are those pledges supposed to bind or are they merely moral precepts which each country may judge itself on its own conscience and act accordingly?

Mr. WILCOX. Those pledges are binding, so far as they go. And what we have been talking about is how far they go.

The CHAIRMAN. Yes.

Now, what do other member countries do to avoid disequilibrium in a world in which we are the great creditor nation and most of the nations of the world are made up of debtor nations?

What do they do to prevent these disequilibriums?

Are they, for example, supposed to restrict imports? Are they, for example, supposed to come and borrow money from us? What are they supposed to do?

Mr. WILCOX. Of course, what they do under the circumstances is the opposite of what we do.

The CHAIRMAN. Yes.

Mr. WILCOX. And when you get into the commercial policy chapter, you will analyze with some detail the possibilities of using import restrictions in cases of balance-of-payments difficulties. Yes, sir.

The CHAIRMAN. So that when they start out under the circumstances, to keep the pledges of these paragraphs we have been considering, they have no alternative except, one, to restrict their imports; two, to increase their exports; or, three, to come and borrow money from us to tide them over temporarily until theoretically they can get their

exports into this country, and thus redress their maladjustment in the balance of trade?

Mr. WILCOX. Well, they also have the alternative of rectifying their national economic difficulty that may leave them in this balance-of-payment situation.

The CHAIRMAN. Yes, but that goes to this whole problem of getting this world back on its feet.

Mr. WILCOX. That is right.

The CHAIRMAN. I am trying to keep this thing on a smaller focus. We, on our part, would have to restrict our exports to countries that were in trouble, or we would have to loan them money. They, on their part, would have to persuade us to take increased imports, if they were able to deliver them to us, or would have to come and solicit the temporary alleviation which results from borrowing from us, or they would have to persuade us to make gift grants in aid.

Does it come to that, roughly?

Mr. WILCOX. The only other suggestion that I find in the report of the Committee is that such countries might undertake to check a flight of capital from their currencies.

The CHAIRMAN. The conventional ways of doing that, will you state them, please?

Senator BREWSTER. Controls.

Mr. WILCOX. Certainly, controls.

The CHAIRMAN. The very things we have been discussing?

Mr. WILCOX. That is right.

The CHAIRMAN. May I ask just one more question.

What, then, would you say are the measures which other countries will have to take to do their part in completing the pledge of preventing these maladjustments?

Mr. WILCOX. In general, as you outlined them.

The CHAIRMAN. Senator Brewster?

Senator BREWSTER. I would like to consider practical illustrations without indicating any invidious comment. Who would decide whether Britain bought \$200,000,000 worth of American tobacco and \$100,000,000 worth of American movie films when they were in disequilibrium?

Mr. WILCOX. Well, when they had the right to control imports they would decide as to the total quantity that could come in. That is, the Government would decide it.

Senator BREWSTER. They are doing that right now, are they not?

Mr. WILCOX. That is right.

Senator BREWSTER. They do not allow any dollar exchange except for imports that they approve. That is right, is it not?

Mr. WILCOX. Yes. Within that total limit, private purchasers in the United Kingdom would decide what films they wanted to buy from what company, and so on.

Senator BREWSTER. Yes, but that is not true of cotton?

Mr. WILCOX. No, sir; that is handled by the State.

Senator BREWSTER. And that is the biggest item in our export to Britain, is it not?

Mr. WILCOX. I am not sure of the figures there, Senator.

Senator BREWSTER. It is very large, is it not?

Mr. WILCOX. It is large.

Senator BREWSTER. Who would decide where England would buy the cotton?

Mr. WILCOX. Well, insofar as trade is in the hands of the State anywhere, the State trading agency decides where it will buy.

Senator BREWSTER. But this charter imposes certain restrictions, does it not, on that?

Mr. WILCOX. On State trading?

Senator BREWSTER. On the exercise of the power of State trading.

Mr. WILCOX. Yes. It lays down certain rules as to how State trading agencies should conduct themselves.

Senator BREWSTER. I read language, and I presume we will come to it, which would very definitely lay down rules under which that would be carried on.

Mr. WILCOX. That is right.

Senator BREWSTER. Which might mean that American cotton would not be any longer eligible.

Mr. WILCOX. No; I do not believe that and do not see where you get that. The general rule there is nondiscrimination.

Senator BREWSTER. That is right, and also against dumping, is it not?

Mr. WILCOX. Yes; I think it is the usual rule about countervailing duties; yes.

Senator BREWSTER. And subsidies for export?

Mr. WILCOX. Yes; there are regulations on that.

Senator BREWSTER. Yes. And the only way our cotton business is carried on today is by the subsidies for export, is it not?

Mr. WILCOX. Well, exportation is subsidized; yes.

Senator BREWSTER. Well, would the cotton be exported, if it were not?

Mr. WILCOX. Not as long as you have disparity in prices.

Senator BREWSTER. That is right.

The CHAIRMAN. Doctor, you have a statement I would like to question you on in paragraph 1 of article 4.

Mr. WILCOX. May I finish that point first?

The CHAIRMAN. Surely.

Mr. WILCOX. Export subsidies are not forbidden by the charter. Certain rules are laid down. You will get into that when you come to that point.

Senator BREWSTER. You mean they do contemplate possible continuation of export subsidies?

Mr. WILCOX. There is a general rule laid down condemning export subsidies, and then there are certain exceptions outlined.

Senator BREWSTER. Do those take care of the cotton situation, for instance?

Mr. WILCOX. If you had an international commodity agreement. In the first place the rule does not apply for 3 years, and if there is a burdensome surplus situation, that lends itself to a commodity agreement, effort may be made to achieve a commodity agreement. Then if a commodity agreement is not concluded or is not operative, the subsidy may be continued.

Senator BREWSTER. Well, I assume when we come to those provisions, you will go into them somewhat more fully, on sugar, which Senator Johnson spoke of the other day, and cotton, two of our big items.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. I read the provisions, and I certainly would need a Philadelphia lawyer to explain what they meant.

At the proper time, I gather we will have a fairly full exploration of that question, because we want to know what the impact would be on these various existing arrangements.

Mr. WILCOX. Yes, sir.

Senator BREWSTER. We want to look out for our cotton friends down south, of course, and our sugar people in Colorado, to see that they are properly cared for.

The CHAIRMAN. I hope, Senator, your solicitude continues and burgeons.

Down in article 4, paragraph 1, there is a reference to maintenance of levels of effective demand. I assume that that not only has the narrow purpose of keeping business going domestically, but also has the thought of maintaining high levels of demand that will permit the importation of goods; is that correct?

Mr. WILCOX. I think you made that point before, Senator, and I said yes.

The CHAIRMAN. Now, on article 5, having to do with fair labor standards, let me read that for the purpose of the record. We have sort of glanced that over.

Mr. WILCOX. Yes, sir.

The CHAIRMAN (reading):

Each member, recognizing that all countries have a common interest in the maintenance of fair labor standards, related to national productivity, shall take whatever action may be appropriate and feasible to eliminate substandard conditions of labor in production for export and generally throughout its jurisdiction.

Where you refer to common interest you are not speaking of a legal interest, I take it?

Mr. WILCOX. No.

The CHAIRMAN. You are assuming a sentimental interest or a moral interest, or what kind of an interest, less than a legal interest, are you referring to?

Mr. WILCOX. Oh, I suppose social, humanitarian, economic.

The CHAIRMAN. But not an enforceable interest?

Mr. WILCOX. No, sir.

The CHAIRMAN. I notice the mandatory language that [reading]: each member * * * shall take whatever action may be appropriate and feasible to eliminate substandard conditions of labor in production for export and generally throughout its jurisdiction.

What specifically would we be called upon to do to meet that requirement?

Mr. WILCOX. To take whatever action may be appropriate and feasible.

The CHAIRMAN. We would be making a definite pledge to do that within in this country?

Mr. WILCOX. May I give you a little background on that provision?

The CHAIRMAN. I wish you would.

Mr. WILCOX. That was not in the original American proposals. It was introduced in a much more elaborate form by one of the other governments. The delegation of the United States took the position that it did not belong in the charter, that this was properly a matter for the International Labor Organization.

Senator BREWSTER. Would you be at liberty to state what country that was?

Mr. WILCOX. It is not in the public record. I shall be glad to tell you, Senator.

Senator BREWSTER. I am sorry.

Mr. WILCOX. But we were voted down on that point, and it was included. I have been interested to observe that the inclusion of this provision has been hailed with great enthusiasm by the National Association of Manufacturers, the United States Chamber of Commerce, and the United States Associates of the International Chamber of Commerce (exhibit VI).

Senator BREWSTER. That is presumably because of what it would signify if it meant something in raising labor conditions in other countries?

Mr. WILCOX. The labor standards in the United States, of course, are the highest in any country in the world, and in general, this commitment would have greater significance for any other country in the world than it would for us. That is, it would mean what they would take whatever action was appropriate and feasible to eliminate substandard conditions of labor.

The final phase is in production for export, and that is the point that these business organizations in the United States believe would be highly desirable.

The CHAIRMAN. That would give us in addition to our domestic standards under the commerce clause, a new standard for foreign commerce, with new laws to cover it?

Mr. WILCOX. Well, it would be purely national legislation, and insofar as there were national legislation, it would involve an effort on the part of other countries, to raise their levels so that they would more nearly approach ours.

The CHAIRMAN. And would it involve an effort on their part to agitate a continuing higher standard in this country?

I am not saying that that might not be desirable, but I am just trying to get the effect of it.

That would be to increase our costs in this country and therefore make more accessible their own exports into this country.

Mr. WILCOX. That is a new idea to me, Senator.

Senator BREWSTER. You never supposed that the British were opposed to the La Follette Seamen Act, did you?

Mr. WILCOX. No, sir.

Senator BREWSTER. I think that is a perfect illustration.

Senator JOHNSON. Mr. Chairman?

The CHAIRMAN. Senator Johnson.

Senator JOHNSON. May I ask Dr. Wilcox this question: Under this provision—and so far article 5 seems to me to be the most wholesome provision in the charter that I have come across up to the present moment—under this provision would it be possible, without offending any other country, to lay down the same standards, fair-labor standards, that we apply to our own production?

In other words, we do not permit commerce in the United States unless it is produced under high labor standards. However, when we bring goods in from abroad, they do not have to meet that test. They move in our commerce freely regardless of the wages paid or the conditions of production.

Now, my question is, under this provision, could we pass a law in the Congress requiring all foreign production to meet the same standards that our own production must meet without being offensive to any other nation, and would that be entirely in keeping with the purposes and objectives of the charter?

Mr. WILCOX. No; I do not think we could do that, Senator. I do not think that this article goes anywhere near that far.

Senator JOHNSON. Well, I regret to hear you say that, because then this article 5 becomes just another campaign oratory provision, and is meaningless and of no effect so far as the United States is concerned.

Senator BREWSTER. Would you, Doctor, now, outside the charter, from your economic philosophy, be opposed to any provision which would say that foreign imports to this country should conform to the restrictions which we impose on our own interstate commerce?

Mr. WILCOX. What legislation do you have in mind? The minimum wage and hour law?

Senator JOHNSON. That is right.

Senator BREWSTER. I take it that is what he was referring to, the minimum wage law.

Mr. WILCOX. And that we try to impose our legislation on other countries?

Senator BREWSTER. No. No; we just say if you want to come into the United States, why, you will have to equalize with the people of the United States.

Mr. WILCOX. That is, we will not import anything from any country unless they have a 40-hour maximum workweek and a 40-cent-an-hour minimum wage?

Senator JOHNSON. We will deny commerce to them; yes.

Mr. WILCOX. Then I do not think we would import anything, gentlemen.

Senator BREWSTER. That, certainly, is a tribute to our economy.

Mr. WILCOX. Yes; I think it is.

Senator BREWSTER. Of course, that is the whole theory of the protective tariff, not to prohibit but to equalize. That is, that if they do bring it in, then the difference in the cost of production shall be imposed so that the American production is placed on a parity with the foreigner. I understand that is a principle in which you do not believe?

Mr. WILCOX. Yes; I think that is a correct statement.

Senator BREWSTER. Now, Secretary Wallace, in connection with synthetic rubber, and the cost of it, which is in excess of the natural rubber production of the Dutch East Indies, brought that up, and it seems to me the \$64 question was the reason natural rubber was cheaper than synthetic was because they pay the fellows out there 15 cents a day.

Mr. WILCOX. Yes.

Senator BREWSTER. What would be the impact of this upon that situation? You would agree that was substandard, would you not?

Mr. WILCOX. The impact of this would be the commitment of the Dutch Government to take action for the purpose of raising those standards.

Senator BREWSTER. And you believe that feasible?

Mr. WILCOX. If it is said that no other country will take that in good faith, and therefore that any commitment they take is meaning-

less. I think that that is too sweeping. I think if some of the other countries take this commitment they will take it in good faith and will take some action.

The CHAIRMAN. Have the Dutch subscribed to this?

Mr. WILCOX. Of course, nobody has subscribed to it as yet.

The CHAIRMAN. Are they members?

Mr. WILCOX. They are members of the Preparatory Committee.

The CHAIRMAN. And they have agreed to this provision so far?

Mr. WILCOX. I think so; yes. I do not remember just who voted how.

Senator BREWSTER. They did not take exception?

Mr. WILCOX. They did not take exception, so far as I know.

The CHAIRMAN. Doctor, the other day we developed the fact that this is an organization subordinate to the United Nations, a specialized agency under the Economic and Social Council that under the intent of the Charter, the Economic and Social Council shall have no power other than recommendatory powers.

Let me invite your attention to the three mandates here.

Article 4, paragraph 1, says each member "shall" take action designed to achieve and maintain certain things.

Paragraph 2 states measures to assist employment and demand "shall" be consistent.

Article 5 states that the members "shall" take whatever action may be appropriate and feasible, and so forth.

Article 6 states the members "agree," and so forth.

Senator BREWSTER. Now, they "agree."

The CHAIRMAN. The members agree that, in case of a fundamental disequilibrium in their balance of payments involving other countries in persistent balance of payment difficulties, which handicap them in maintaining employment, they will make their full contribution to action designed to correct the maladjustment.

How do you reconcile these mandatory provisions with the recommendatory nature of the basic document under which you are operating?

Mr. WILCOX. The International Trade Organization would be a specialized agency. It would draw its authority from the agreement of the governments that adhere to its charter. The same as the bank or the fund or any of these other specialized agencies do. It would not be a subordinate commission or committee of the United Nations. It would be brought into relationship with the United Nations, according to the terms of a document agreed upon by the United Nations, and the trade organization.

The CHAIRMAN. Under your theory, while having a relation to the United Nations, it would be a sort of independent agency resting on its own separate charter?

Mr. WILCOX. That is true. It should be distinguished from the Economic and Social Council or the Commissions of the Economic and Social Council, or the other subcommittees. It is not in the same category.

The CHAIRMAN. Then, since its powers exceed those of the Economic and Social Council, under the documentation that we gave the point the other day, then I assume that this charter will be brought back for consideration as a treaty, just as the United Nations was brought here for consideration as a treaty; is that correct?

Mr. WILCOX. As Mr. Clayton indicated the other day, Mr. Fahy will come here to testify on that precise point. I am not a lawyer and that is beyond my competence.

The CHAIRMAN. Is he waiting our call, or will he come at your convenience?

Mr. WILCOX. Either one, sir. I am willing to stay as long as you want me; we can put him on later, or we can interrupt this and put him on.

The CHAIRMAN. I think it would be interesting to have him this afternoon, say, at 2:30, or is the notice too short?

Mr. WILCOX. I think that is rather short notice. Perhaps tomorrow would be possible.

The CHAIRMAN. Tomorrow morning at 10:30?

Mr. WILCOX. All right.

The CHAIRMAN. There was another question that you were going to have him enlighten us on. What was that?

Mr. WILCOX. I think there were three or four questions, Senator, that were related, and we have made a list of them and Mr. Fahy will come to testify.

The CHAIRMAN. Well, he will be here at 10:30 in the morning, and if not, you will let me know?

Mr. WILCOX. Yes, sir. I will let you know.

The CHAIRMAN. We will stand recessed until 2:30.

(Thereupon, at 12:43 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., upon the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

STATEMENT OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE—Resumed

The CHAIRMAN. Doctor, let me invite your attention to article VII, the heading of which is "Safeguards for members subject to internal deflationary pressure," and the body of which reads as follows:

The Organization shall have regard, in the exercise of its functions as defined elsewhere in this charter, to the need of members to take action within the provisions of this charter to safeguard their economies against deflationary pressure in the event of a serious or abrupt decline in the effective demand of other countries.

What do the words "shall have regard" mean in operation? Do they just think about it, or regard it, or do they do something about it?

Mr. WILCOX. It really refers to the provisions of chapter V and in particular the provisions with respect to quantitative restrictions, import quotas and exchange control.

The CHAIRMAN. But the words "as defined elsewhere in this charter" modifies "in the exercise of its functions"?

Mr. WILCOX. That is right.

The CHAIRMAN. They do not modify the words "shall have regard"?

Mr. WILCOX. It seems to me the only synonym for that it "shall have in mind" or "shall take into consideration."

The CHAIRMAN. It means no more than that?

Mr. WILCOX. No.

The CHAIRMAN. Will you give us examples of deflationary pressures resulting from serious or abrupt decline in the effective demands of other countries?

Mr. WILCOX. Well, specifically, if there were a sudden and sharp depression, say, in the United States, it would result in a contraction of our orders for foreign goods, particularly foreign raw materials. The effect of that would be a decline in the volume of industrial activity in the country that otherwise would have sold those goods and that would have a deflationary effect.

The CHAIRMAN. And that country, in the manner provided in the charter would have the right to safeguard its economy from those effects?

Mr. WILCOX. In the manner provided in chapter V.

The CHAIRMAN. Give us a rough sketch by the way of anticipation of the manner in which the charter will provide for that.

Mr. WILCOX. Well, that country would be permitted, if there were an imminent threat to its monetary reserves which could be demonstrated as such to the satisfaction of the International Monetary Fund and International Trade Organization, it would be permitted to employ import quotas.

The CHAIRMAN. It would be permitted to raise tariffs?

Mr. WILCOX. No. It would be permitted to raise any tariffs that it had not bound in a trade agreement, yes.

The CHAIRMAN. There are some provisions in the charter which will even authorize breach of a trade agreement under special circumstances, are there not?

Mr. WILCOX. Well, in chapter IV, relating to economic development, yes, but I think otherwise the only resource would be giving notice and denouncing.

The CHAIRMAN. Now, Great Britain, as I recall it, has set a goal of export business of 175 percent of their prewar goal and she is now reaching about 110 percent, as I recall it.

Does that situation have any repercussion as far as this particular clause is concerned?

In other words, she is not importing into this country as much as she expected. She is not importing anywhere as much as she expected to.

Mr. WILCOX. I do not see the relation of that situation to this article.

The CHAIRMAN. Is that not deflationary?

Mr. WILCOX. You mean her failure to achieve as much as she had hoped to achieve in the way of an increase in exports?

The CHAIRMAN. That is right.

Mr. WILCOX. I do not believe that would be covered by this article. This is confined to a serious or abrupt decline in the effective demand of the country.

The case that you gave is the failure to increase as much as they hoped.

The CHAIRMAN. I think your point is well taken.

Am I roughly correct on my figures as to British expectations as to export trade and as to what she has actually achieved?

Mr. WILCOX. The original statement was that she would have to increase imports in money terms by 75 percent, but I believe the present goal runs about 40 or 45 percent.

The CHAIRMAN. I think they are running substantially behind.

Is this another one of those clauses where the members should think about something but do not necessarily have to do anything?

Mr. WILCOX. No; this is a clause in which the Organization thinks about it. This is a direction to the Organization.

The CHAIRMAN. Now, the organization thinks about it, and after thinking about it, what does it do about it?

Mr. WILCOX. The answer to that is in the fifth chapter.

The CHAIRMAN. In the fifth chapter?

Mr. WILCOX. That is, other countries, in our discussion of this charter, have made a great deal of the problem of employment. They have said that the United States is concerned primarily with restoring a freer trading system in the world, "That is all you are thinking about."

They say that is a negative approach to the problem. "What you need is a positive approach to the problem."

The positive approach to the problem is the approach to employment, but when you come right down to it, down to the issue of what they would do, they do not propose giving to any international organization any affirmative function for the provision of employment.

It comes down to the point that what they are really talking about is the question of whether they will or will not have freedom, or how much freedom they will have, to impose import quotas.

So that what appears here with reference to this subject in this chapter really refers back to the question of import quotas which I suggested the other day is the central problem in the charter.

The CHAIRMAN. Now, the British economists make it very clear that the fate of Great Britain, and I think of others, that the fate of the world is more or less dependent upon the maintenance of a prosperous economy in this country.

I am correct in that, am I not?

Mr. WILCOX. Yes, I should say so.

The CHAIRMAN. Now, let us assume that by design or just by undesigned depression in this country, our market for imports dried up.

Now, just exactly what would the Organization do about that, or what could it do about that so far as other member nations are concerned, and as far as we are concerned?

Mr. WILCOX. If the effect of that were to throw other nations into balance-of-payments difficulties at any time, as this is envisaged, they would then receive the right under the terms of the charter to protect their economies by imposing import quotas.

The CHAIRMAN. That would be a right granted by the Organization?

Mr. WILCOX. Well, it goes a little beyond that. There are certain stipulations in that chapter under which they would have the right to do so without consulting the Organization initially and they might consult thereafter.

Of course, any nation then could say that they were doing this in violation of the provisions and then the question would come up as to whether retaliation were permitted.

The CHAIRMAN. Now, then, let's see if we cannot pump a little more specific meaning into that word "regard."

Let us suppose that our import market dried up. It says the Organization shall have regard for the situation of members in that kind of contingency. What regard does it have for that? What is proposed? What is its function?

Mr. WILCOX. Well, a member that wants to impose quantitative restrictions for balance of payments reasons, can go to the organization and present its case, and if the Organization says, after consultation with the Fund if the Organization and the Fund agree that this country is in imminent danger of a loss of necessary monetary reserves, it can then say, "For this time and to this extent you may impose import quotas."

If it does that, no member can complain that the country has violated its commitments under the charter.

Now I think that is the only decision in the making of which this direction would have significance; that is, the Organization in making that decision would have regard of the fact that a sudden and abrupt decline in foreign demand might necessitate the imposition of import quotas in a country.

I do not think that this particular article adds anything to what is in chapter V.

When you get into chapter V, you will want to examine that pretty carefully but it is really a cross-reference.

The CHAIRMAN. Taking the language strictly, is the member in that kind of a case limited exclusively to the action which the charter sets up for safeguarding a member under those circumstances?

Mr. WILCOX. Well, one possibility would be exchange action and it is limited as to exchange action if it is a member of the Fund under the terms of the Fund.

The second possibility is import quotas and the charter sets up provisions with respect to the use of import quotas.

The third possibility would be to raise a tariff.

Now, if it has not been covered in a trade agreement, it is perfectly free to put on a tariff, but if it has bound that tariff, it would not be free to do that. However, it could withdraw from the agreement according to its terms on due notice.

The CHAIRMAN. What I am getting at is, that prior to this last war, we saw the development of a number of new techniques, monetary control, and trade restrictions, and barter, and so forth.

Are the safeguarding measures limited to those which are prescribed in the charter, or if a member can think of a new way to safeguard itself, is it at liberty to do so even if that method is not proscribed in the charter?

In other words, are you trying to shut off the invention of new techniques for national safeguarding.

Mr. WILCOX. We may have caught that.

If, according to article 35 on nullification or impairment, if any member should consider that any other member has adopted a measure, whether or not it conflicts with the terms of this charter, or that any situation has arisen which has the effect of nullifying or impairing any object of this charter, the member concerned shall give sympathetic consideration to written representations, and so on.

Then, there is provision for the application of sanctions there.

So, I think an effort is made to catch evasions of the rules by the invention of new devices, but the principal devices that have been used in the past are covered in the text.

The CHAIRMAN. The article which we are discussing refers to legitimate safeguards, those which are provided in the charter.

Would it be possible to have a legitimate safeguard that is not provided in the charter?

The reason I raise the question is, as I said before, we had a lot of new inventions on so-called safeguarding procedure before this last war. Are we now in a position that we know all of them and can provide against all of them?

Mr. WILCOX. I do not think that point is caught in the draft, Senator. I think the wording of the draft is directed at new devices and the section that I refer to is aimed to catch the use of any other device as an evasion but there is nothing in here that would provide a sanction for some new device to accomplish this purpose.

The CHAIRMAN. Now, the prelude to article 8 reads as follows:

The Members and the Organization shall participate in arrangements made or sponsored by the Economic and Social Council of the United Nations, including arrangements with appropriate inter-governmental organizations.

By what authority does this particular Organization bind the members to participate in arrangements made or sponsored by the Economic and Social Council?

Mr. WILCOX. Only by their agreement to this article.

The CHAIRMAN. And is that a blank check agreement?

Mr. WILCOX. Well, there is a colon there and the things in which they agree to participate are definitely specified; that is, statistical interchange.

The CHAIRMAN. I notice that paragraph (b) says:

For consultation with a view to concerted action on the part of government and inter-governmental organization in the field of employment policy.

Mr. WILCOX. That is right, for consultation.

The CHAIRMAN. I keep continuously curious as to the authority of this Organization in defining the relationship of its members to the Social and Economic Council.

I wonder if you are not presuming too much.

Mr. WILCOX. Of course the purpose here really is to indicate that this material in the main belongs outside of the jurisdiction of the Trade Organization.

It does say that the Trade Organization itself may participate in this statistical work.

The CHAIRMAN. Give us some examples of the concerted action that may be taken under the circumstances mentioned?

Mr. WILCOX. Well, the only commitment is to consultation. I do not know what would come out of the consultation.

The CHAIRMAN. Nothing more?

Mr. WILCOX. For consultation.

The CHAIRMAN. With a view to concerted action?

Now, would the consultation bind a program of concerted action?

Mr. WILCOX. Obviously not.

The CHAIRMAN. So that you can say without equivocation that insofar as that subparagraph (b) is concerned, there is nothing binding except as to concerted action?

Mr. WILCOX. That is right.

The CHAIRMAN. There is no pledge there to agree to anything?

Mr. WILCOX. No.

The CHAIRMAN. Is there a pledge that a majority of the votes under any circumstances laid down under the charter would bind non-consenting members to the agreement?

Mr. WILCOX. No.

The CHAIRMAN. Chapter IV, article 9, reads as follows:

The Members recognize that the industrial and general economic development of all countries and particularly those of which resources are as yet relatively undeveloped, will improve opportunities for employment, and enhance the productivity of labor, increase the demands for goods and services, contribute ultimately to economic stability, expand international trade, and raise levels of real income, thus strengthening the ties of international understanding and accord.

How will those matters which are specified contribute ultimately to economic stability?

What I have in mind is that your greatest instability in this world is in highly industrialized countries.

Mr. WILCOX. I think you are quite right, sir.

The CHAIRMAN. What, then, do we do to take the 'junk out of this statement?

Mr. WILCOX. I think it ought to be amended.

The CHAIRMAN. I am very very glad to have you say that.

For example, we have just finished disposing of two problems resulting from the industrialization of nations, to wit: Japan and Germany, and their industrialization in no way helped the peace of the earth.

As Senator Johnson said this morning, I think that is one of those mouth-filling, and, in this case, deceptive phrases.

Will you run a foreword in your next conference on that?

Mr. WILCOX. As a matter of fact, Senator, this was a slip. I did get it out of the committee report, but I did not get it out of the text itself.

The CHAIRMAN. Article 10 has a subhead: "Development of Domestic Resources and Productivity."

It reads as follows:

Recognizing that all countries have a common interest in the productive use of the world's human and material resources, Members shall take action designed progressively to develop industrial and other economic resources and to raise standards of productivity within their jurisdictions through measures compatible with the other provisions of this Charter.

Does the reference to a "common interest" mean a legal interest; or is it a sort of every-man-is-his-brother's-keeper interest?

What is the common interest that we have in humans all over the world and in material resources all over the world, and so forth?

Mr. WILCOX. I am not sure that I get the point of the question of whether the question of interest is a legal interest.

I think the answer to that is "No."

The CHAIRMAN. Then what is the nature of that common interest so far as we can define it and make something out of it if we can, that is measurable?

Mr. WILCOX. Well, we have observed that our best markets have always been in countries that have achieved a considerable degree of industrialization; that standards of living are highest in countries that are relatively more advanced economically; that when you have prosperous economies all over the world with trade among them,

people in each of the countries involved are better off than when you have a few countries developed and many undeveloped and living on a poverty level.

The CHAIRMAN. Would you say that the standard of living in Japan was a praiseworthy standard?

Mr. WILCOX. Pretty low.

The CHAIRMAN. So that does not always follow, does it?

Mr. WILCOX. Of course, I think there is a tendency to make too much of the idea that industrialization on the part of many countries, as contrasted to general economic development. Certainly I think it is pretty obvious that economic development may be agricultural, or mineral, rather than the development of factories; that may be conducive to a higher level of living and a larger volume of trade.

The CHAIRMAN. You say that the pressure of this paragraph that we are discussing is to outlaw nomadic and agrarian economies?

Mr. WILCOX. Well, I do not think that this represents any imposition on our part of an obligation on such people to industrialize. All of these people everywhere in the world are bent on industrialization. You see this chapter was not in our original draft. As you know, this has come as a result of a pressing desire from the less-developed countries of the world to advance the level of their production.

The CHAIRMAN. Of course, and may I suggest, at our cost.

Mr. WILCOX. How?

The CHAIRMAN. Where are they going to get the money and where are they going to get the materials.

Mr. WILCOX. There is nothing in this chapter that commits us to provide the money or the materials.

The CHAIRMAN. Then again, we have a pious hope?

Mr. WILCOX. No, there is something more than that.

The CHAIRMAN. Let us find out exactly what that is.

The language is [reading]:

Recognizing that all countries have a common interest in the productive use of the world's human and material resources, Members shall take action designed progressively to develop industrial and other economic resources and to raise standards of productivity within their jurisdictions through measures compatible with the other provisions of this Charter.

I cannot tell just what that means but I hope you will tell us.

Pick out a country and say what is its obligation. Pick out one of these countries that you say has a crying need to industrialize itself and tell us how they view that.

Mr. WILCOX. Well, this would be a recognition of a purpose on the part of an undeveloped country to take action within its own jurisdiction to develop its resources. What might it do?

Well, I suppose it could dam up rivers and produce electric power or, I suppose it could increase the fertility of its soil, it could irrigate and reclaim dead land, and so on.

The CHAIRMAN. Dams on the Yangtse?

Mr. WILCOX. Conceivably.

The CHAIRMAN. Industrialize India? Bring in cotton on the southern shores of the Mediterranean?

Mr. WILCOX. There is no limit to, or no specification as to the particular type of development. That is within the choice of the individual country.

The CHAIRMAN. But the duty is fastened upon each of those individual countries to develop its industrial and other economic resources and to raise the standards of productivity.

I invite your attention to the fact that that is not invitational language, it is not in the language of hope. It is mandatory language that they shall do that.

Mr. WILCOX. That is right.

The CHAIRMAN. How does that work? How is that going to work? What will China's project be when she signs this charter and reads that provision? Will she say: "Well, folks, we have to do something about this. We had better get a project and hand something to this organization or take up something with the other members of it."

Just what happens?

Mr. WILCOX. There is nothing that they hand to the organization or take up with the other members.

The CHAIRMAN. It is a responsibility imposed by the organization upon each member?

Mr. WILCOX. It is not imposed by the organization; it is a commitment into which the members of the organization voluntarily enter as to their own policy.

The CHAIRMAN. I think you are right.

However, they have agreed to do the things which we have mentioned?

Mr. WILCOX. That is right.

The CHAIRMAN. And again, I ask you, where do these subindustrial nations, these poverty stricken countries, these devastated countries, where do they get the money and the material to meet the obligation which they have taken to improve themselves?

Mr. WILCOX. Well, there is nothing in the charter which says where they get it. The Trade Organization has no money to lend them.

The CHAIRMAN. Will you make three guesses?

Mr. WILCOX. In one guess I would answer your question, but that is not in this charter.

Senator BREWSTER. There is only one source of very extensive capital resources now?

Mr. WILCOX. Of course there is the possible action of the International Bank for Reconstruction and Development. The other possible source of capital funds on any large scale obviously is the United States, but there is no commitment here on the part of the United States either through the action of private concerns or Government agencies to provide countries with capital.

The CHAIRMAN. Now, these have no limitation here. This provision is not limited to substandard countries, this is a general obligation on all countries?

Mr. WILCOX. That is true.

The CHAIRMAN. What do we do to meet our obligation?

Mr. WILCOX. Of course, this chapter was intended to relate to the economic development of relatively undeveloped countries.

The CHAIRMAN. It does not say so, Doctor.

Mr. WILCOX. It does not say so, and I think it may be wise to amend it to that effect.

The CHAIRMAN. Will you carry a forward on that? Would it be the State Department's job to do that?

Mr. WILCOX. Well, I do not want to give an answer on that offhand but that was the intent.

The CHAIRMAN. Of course it would be helpful if and when the Senate considers the subject, if it knew what the State Department wishes to achieve on its own initiative. Perhaps when we get through with the hearings here, you may feel it advisable to give us a list of things that the hearings have developed and matters that might be strengthened, and where the State Department would take the initiative in strengthening or correcting.

I think that is one spot where clearly there should be some amplification.

What is this "common interest" that we have in the human resources of all the other nations of the earth. Is that a sort of ethical prescription?

Mr. WILCOX. No, I should say that labor power is as important to production as raw materials.

The CHAIRMAN. I quite agree with you, but what are we going to do about it and what is the obligation which is assumed here with respect to human resources.

Mr. WILCOX. The specific measures that any country would adopt are not limited or contained or confined or outlined here.

The CHAIRMAN. Then this again comes down to where the individual member has complete control as to whether it will or will not do anything?

Mr. WILCOX. That is right.

Well, yes, I think so, but it seems to me that it can be assumed that all undeveloped countries wish to undertake to promote their economic development. In view of the great pressure that comes from these countries for recognition of the principle of industrial development, the idea that this might be an obligation put on them unwillingly, is one that has never occurred to me before.

The CHAIRMAN. Do you not believe that some of the nations of this earth just want to go on in their own way as they have been going on, nomadic nations which cover a great portion of the earth, the nations that have no developed agricultural interests, not to mention industrial interests? Are they trying to get industrialized?

Mr. WILCOX. Yes, I think most of them are. I do not know, it might be possible with a searching party somewhere to find a nomadic people somewhere that does not want to have a factory in the country.

Senator BREWSTER. What about the Arabs?

Mr. WILCOX. Well, the only middle eastern country that was a member of this committee was Lebanon.

The CHAIRMAN. Well, Lebanon, its chief product is pistachio nuts.

Mr. WILCOX. They want factories.

Senator HAWKES. Are they willing to do things to get the factories or do they want some other energetic nation to get them for them?

The CHAIRMAN. Doctor, if you will excuse us, we will have to go to vote, but I hope we can be back.

(A short recess was taken.)

The CHAIRMAN. Doctor, I believe you had some matters that you wished to put into the record?

Mr. WILCOX. Yes, thank you.

During the hearings Friday, the chairman asked for estimates as to the possible personnel of the International Trade Organization.

I present here for the record an estimate on possible personnel and costs, which is purely a guess made in the State Department on the basis of the suggested functions of the organization and the staff and cost of comparable organizations carried on on that scale.

The CHAIRMAN. This is headed "Estimates of personnel and costs of ITO in initial year" and reads as follows:

A. ESTIMATES

1. Personnel: It is estimated that the ITO Secretariat would consist of a total of 400 persons, of whom 100 would be officials, 100 would be language experts and technicians, and 200 would be clerical.

2. Budget: The best available estimate for the initial year of the ITO is \$1,800,000. This figure is arrived at by taking the experience of the first budget of the Food and Agriculture Organization which amounted to \$5,000,000.

On the basis of this estimated budget, the United States share of the expenses of the ITO in its initial year would be between \$1,700,000 and \$1,800,000. This estimate of United States contribution is based on the policy enunciated by Senator Vandenberg for the United States Delegation to the past meeting of the General Assembly, to wit, that under normal conditions, no single nation should pay more than one-third of the expenses of any intergovernmental organization.

B. CERTAIN CONSIDERATIONS INVOLVED IN PREPARING THE FOREGOING ESTIMATES

1. Since the ITO does not yet exist in any form, there is no budget available. Furthermore, at the first meeting of the Preparatory Committee for an International Conference on Trade and Employment there was no detailed consideration of the questions of budget or personnel.

2. No scale of national contributions can be developed until the Organization exists in some form. The final scale of contributions will, of course, be affected by the number of countries which join.

3. In the final analysis, the cost of the Organization will depend, in part, on the provisions of the charter as adopted by the International Conference in the fall of 1947.

The chairman had also asked for a report as to informal hearings on the proposed charter for International Trade Organization, which were held at seven cities at the beginning of February and the early part of March.

We have submitted a copy of that report for each member of the committee and I also submit one for the record.

(The materials submitted appear as exhibit V.)

The CHAIRMAN. Is that a digest report?

Mr. WILCOX. That digests and summarizes.

The CHAIRMAN. Pros and cons?

Mr. WILCOX. Mostly the cons, sir. It makes a general statement about the positions taken and then it enumerates specific suggestions for amendments. In that connection I would suggest to you that perhaps the most complete analyses of the charter have been made by the United States Chambers of Commerce, the United States Associates of the International Chamber of Commerce, the National Association of Manufacturers, and the National Foreign Trade Council.

(See exhibit VII, for comparison of "London" and "New York" drafts of charter.)

Not all of those agencies testified at these hearings and the committee may be interested in getting from them copies of the material they have submitted to us. I have discussed the detail of the charter at length with committees of all four of these organizations and they

have many specific suggestions to make for possible amendments at particular points.

The CHAIRMAN. The United States Chamber of Commerce?

Mr. WILCOX. The United States Chamber of Commerce (exhibit VI-A), the United States Associates of the International Chamber of Commerce (exhibit VI-D), the National Association of Manufacturers (exhibit VI-B), and the National Foreign Trade Council (exhibit VI-C).

In that connection I should like, if I may, for the record to submit a story from The New York Times of today, page 1, under the heading of "Business Backs U. S. in Stand on Trade."

This is based on interviews by Russell Porter with those four organizations.

(The article referred to is as follows.)

[From the New York Times of March 24, 1947]

BUSINESS BACKS U. S. IN STAND ON TRADE—TRUMAN CALL FOR FREE SYSTEM AT APRIL PARLEY IN GENEVA WINS GENERAL SUPPORT

(By Russell Porter)

Despite much detailed criticism and inner conflict, the American business community as a whole strongly supports the principles and objectives of the Truman administration's program for the Geneva Conference scheduled to open on April 10.

The conference will bring together the 18 principal trading nations of the world, outside of Russia, to adopt the charter of an International Trade Organization and to negotiate reciprocal trade agreements.

Businessmen here expect the principal issue to lie in the fundamental differences between the American concept of freer world trade, with an expanding economy based upon maximum encouragement of free enterprise and competition, and the British and European preference for socialization and cartelization. Some have described the problem as a world-wide antitrust law versus cartelization.

Whether American business will support the results of the conference when they come before Congress for ratification appears to depend upon the extent to which its criticisms and recommendations are followed and to which American economic interests are protected.

These conclusions stand out in answers to questions submitted by this reporter to the principal national organizations of business men interested in foreign trade. These organizations are the National Association of Manufacturers, the Chamber of Commerce of the United States, the United States Associates of the International Chamber of Commerce, and the National Foreign Trade Council.

Although there are differences of opinion here on the tariff, international commodity agreements, and numerous other problems, American business in general wants to see trade barriers reduced, private and intergovernmental cartels outlawed or drastically regulated, and import and export quotas, currency controls, and other restrictions on world trade removed.

It also wants foreign investments protected, a code of rules set up for non-discriminatory multilateral trade, state trading organizations kept from crushing private enterprise, and a way left open to Russia to join if she decides to cooperate.

It believes in the necessity of preserving free enterprise as the only system productive enough to solve the world economic problem. An expanding world economy, based upon the American system, it holds, not only will open world markets to American goods but also will benefit other countries by stimulating their production and raising their standard of living, and will lay the foundation for a just and durable peace.

Businessmen believe that President Truman's recent declaration of American leadership in world-wide defense of free enterprise as well as democracy against communism, and in the economic reconstruction of the non-Communist world, has materially strengthened the hand of the American delegation at Geneva.

Although Canada probably will be the only other Government at Geneva that really believes in private enterprise, it is felt that the demonstration of economic

strength inherent in the new Truman doctrine, plus the implication that countries with economic freedom may get preference in loans, may be persuasive in some cases.

FEAR OF COMMUNISM TO COUNT

Businessmen also count on the moral leadership of the United States to win followers. Pressure for solution of the problems at Geneva is expected to come also from the spectre of Russian communism in the background. The Soviet Union has refused to take part in this and other efforts at international economic cooperation. To the extent that Geneva fails, it is recognized, communism will gain, and to the extent that it succeeds communism will lose ground.

This consideration is also expected to affect the attitude of American business toward any compromise agreement that seeks to reconcile the American concept of a dynamic world economy and the British idea of a stable one.

In any such compromise, it is anticipated, there may have to be another "inside" compromise to reconcile the major American policy of freer world trade, supported by business in general, with the demand of certain groups within business and certain labor and farm groups, for protection against foreign competition resulting from tariff cuts.

On the tariff issue there is considerable difference of opinion among businessmen, just as there is in labor unions and farm organizations and in both major political parties.

Some favor high tariffs, some low tariffs. There is widespread agreement, however, in the principle that the United States, as the world's greatest creditor nation, has a responsibility for leadership in attempting to free international trade of needless barriers.

At the same time it is generally recognized that the national economy has developed behind tariff walls during a period of more than a century and that it may be impossible, as a practical matter, despite the theoretical merits of free trade, to eliminate all tariffs within the foreseeable future.

It is also realized that, regardless of anything we do, some other nations probably will maintain trade barriers against us, and some probably will try to take advantage of any concessions we make in the way of tariff adjustments.

Many businessmen have become convinced that the United States cannot continue indefinitely to export substantial amounts of goods by extending credit and loans to other countries with which to pay for them. They realize this is tantamount to giving the money away in the long run. We must accept larger imports than we have in the past, which means lower tariffs, they say, in order to supply dollars with which other countries can buy our exports. The United States, they point out, cannot be impoverished by bringing in wealth from other countries.

Manufacturers with good prospects for export trade are inclined to take this view. So are such agricultural interests as cotton, tobacco, and fruits, which need large export markets.

These manufacturers who fear competing imports—mining groups such as zinc and lead, and agricultural groups like cattle and wool—fear their interests will be sacrificed in the trade-agreement negotiations. They want the United States delegations to grant concessions only to the principal supplier and to get "equivalent" concessions for everything given.

NEED FOR MATERIALS CITED

Some who favor tariff cuts point out that this country's supplies of raw materials were depleted during the war and need replenishment both from the standpoint of national security and reducing costs of production for industry.

There is also a wide divergence of opinion on international commodity agreements. Some want them all outlawed, some would permit them only on agricultural commodities, and others would have them regulated to protect the interests of consuming nations.

At the hearings on the ITO, conducted recently in New York, Chicago, San Francisco, and other commercial centers, the charter met with varied receptions from business interests. In general foreign-trading groups gave their whole-hearted support in principle, although many specific changes were proposed.

While the State Department has stressed the section of the charter that would reduce quotas and other "quantitative" devices that restrict imports—which other countries have found more effective than tariffs and have used much more

extensively than the United States—American industrialists have complained that the Government has been too free with promises to reduce tariffs and not active enough in getting equivalent reductions in foreign types of restrictions.

Some businessmen say the hearings gave the public the impression that opposition to tariff cuts was much more widespread than it actually is. They point out that particular groups which feel penalized by tariff cuts are likely to be more articulate than consumers who benefit from a lower cost of living due to the imports or even than producers who benefit from the reciprocal relaxation of foreign-trade barriers.

STATEMENTS GIVE POSITIONS

Various specific criticisms and recommendations are made in statements describing the positions of the organizations surveyed.

Robert R. Watson, chairman of the board of directors, made the following statement on behalf of the National Association of Manufacturers:

"The NAM for 4 years has advocated creation of some sort of an international trade organization. It would be a step forward to have international standards for the carrying on of international trade, with all nations and their citizens subject to the same rules. The association hopes it will be able to endorse the proposed International Trade Organization as it may be developed at the Geneva Conference.

"The attitude which American industry and the United States should take with reference to the ITO charter must await the outcome of the Geneva Conference.

"We know only that the present draft charter for the ITO needs improvements before it would merit approval as a whole, and to prevent possible failure and futility.

"Specifically, the charter should be revised to condemn both private and inter-governmental cartels, and clearly to disapprove of quotas, quantitative restrictions, and subsidies as methods of peacetime foreign-trade control."

The NAM is standing on the tariff position taken by Ira Mosher, chairman of the executive committee, in testimony before a congressional committee 2 years ago favoring "gradual" reductions, to a point that would maximize production and consumption under competitive conditions in the United States, at a pace that does not unduly disrupt domestic trade and employment.

The Chamber of Commerce of the United States has declared its approval of the objectives of an International Trade Organization. Its statement says:

"The development of a common code for the conduct of international trade, based on the principle of nondiscriminatory multilateral economic relations, with the elimination of barriers and unnecessarily restrictive practice, is essential for ensuring a high and expanding level of income both at home and abroad for the establishment of economic foundations of enduring peace."

By a referendum which ended in the summer of 1940 the chamber voted for continuance of the policy of the Trade Agreement Acts with one proviso. This was that there should be adequate safeguards, including ample public notice, open hearings, and "escape" clauses. The last-named called for modification or withdrawal of concessions in case of unforeseen developments, in order to prevent serious injury to domestic producers.

This is in line with the chamber's traditional support of "reasonable" protection for all forms of industry and agriculture which may be subject to destructive foreign competition.

Committees of the United States Associates of the International Chamber of Commerce have endorsed the general purposes of the ITO, but have found fault with certain provisions.

A committee headed by Reeve Schley, president of the American-Russian Chamber of Commerce, found that the state trading provisions of the draft charter, with some strengthening, would offer a basis for bringing state monopolies within the framework of a multilateral trading system. It is suggested that each member state be required to supply information necessary to determine whether its operations conform to the rules.

In order to prevent giving to state trading organizations a status in free-enterprise countries that private traders do not enjoy, it is recommended that governments do business in foreign countries only through duly qualified corporations that waive any claim to immunity from process and pay taxes on business done, and with officers and personnel having no diplomatic or other privileges not possessed by private traders.

Robert M. Gaylord, president of the Ingersoll Milling Machine Co., is chairman of a committee that found certain parts of the draft disappointing to those who believe competitive enterprise can best expand world trade. This group points out that the draft contemplates international trade by governments through commodity agreements and thus tends to foster monopoly. Operation of commodity agreements, according to the committee, will prove they should be abandoned.

The National Foreign Trade Council, after more than a year's study by a special committee, has endorsed the general objectives of the ITO in a document recommending, with certain reservations, American adherence to the proposed charter.

It has stated its belief that a comprehensive multilateral world trading system, guided by a code of fair international commercial conduct, would operate as greatly to the advantage of foreign countries as to that of the United States.

"Governmental barriers and discriminations hampering or destructive to trade, and governmental actions detrimental to direct foreign investments and industrial development," the council says, "are the alternatives that will confront the United States and other countries unless the Geneva Conference and subsequent or related steps bring about conditions allowing international commercial relations to thrive and expand.

"Selective reductions in American tariffs on a reciprocal basis presumably are to be consummated at Geneva," it added. "If other countries are to have the opportunity to share more widely in the American market and to participate in American financial assistance, they should not only be willing to effectuate policies which will result in their adherence to a multilateral, nondiscriminatory world trading system based on the most-favored-nation principle but also assure protection to American investments and property."

The CHAIRMAN. In the absence of the reporter, I asked you whether those nations which committed themselves to this charter, whether they will thereafter be privileged to allow their economies to remain static and to allow their resources to remain undeveloped and I believe your answer was no?

Mr. WILCOX. That is right.

The CHAIRMAN. May not a nation which is a member of this organization elect to conserve its economic resources, its basic raw materials in the sense of not developing them?

Mr. WILCOX. Yes, it may. I think there is some specific reference in the exceptions to chapter V. [Reading:]

Nothing in Chapter V of this Charter shall be construed to prevent the adoption or enforcement by any member of measures relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restrictions on domestic production or consumption.

The CHAIRMAN. Would those measures be tied to the two propositions which you have just mentioned? I mean, could a nation not lock up its resources if it wished to out of its own domestic sovereignty?

Mr. WILCOX. There is nothing in the charter that would prevent a nation from conserving particular resources.

The CHAIRMAN. I wish that we could take it for granted with a feeling of certainty that this article does relate to substandard countries rather than to countries which have advanced.

Mr. WILCOX. This is article X?

The CHAIRMAN. Yes.

Mr. WILCOX. That is the intention and perhaps it can be made explicit.

The CHAIRMAN. Am I correct in this, that article 11, called "Plans for Economic Development," article 1, that paragraph is now article 10?

Mr. WILCOX. Well, we have been reading, Senator, from the New York draft, I think.

The CHAIRMAN. That is right.

Mr. WILCOX. Do you want to know how that compares?

The CHAIRMAN. I notice the comment on article 11 says [reading]:

This paragraph has just been deleted by its substance being transferred to the new Article 10.

We have just finished working on the new article 10?

Mr. WILCOX. That is right.

The CHAIRMAN. So we may omit for present purposes this article 1 or article 11, may we not?

Mr. WILCOX. That is right, that has disappeared.

The CHAIRMAN. So we can get to paragraph 2?

Mr. WILCOX. That is right.

The CHAIRMAN. Paragraph 2 reads as follows:

The Organization, upon the request of any Member, shall advise such Member concerning its plan for economic development and shall, within the competence and resources of the Organization and on terms to be agreed, provide such Member with technical assistance in completing its plans and carrying out its programs or arrange for the provision of such assistance. The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members and appropriate intergovernmental organizations relating to the encouragement of the industrial and general economic development of Member countries.

What might the nature of those plans be, Doctor?

Mr. WILCOX. I think I should say first, that it is my understanding that this question of whether the organization would provide such advice was referred to the Economic and Social Council by the Preparatory Committee and that the Economic and Social Council had this referred to it as a matter of jurisdiction after it had originally been put in square brackets by the Preparatory Committee.

The Economic and Social Council said to remove the brackets and to leave it in, but to change "shall" to "may," so that it will now read:

The Organization, upon the request of any Member, may advise—
instead of—

shall—

in both cases.

The CHAIRMAN. Now, what would be the nature of the plans which are contemplated by that paragraph?

Mr. WILCOX. I do not know precisely what advice the Organization would give any member concerning its particular developmental plans.

The CHAIRMAN. What is the scope of the jurisdiction? Let us assume the Organization has been set up.

Now, here is a paragraph that apparently fastens on the Organization some sort of duty to do some planning. How does it measure its duty? How does it determine its jurisdiction?

Mr. WILCOX. If no member requests it to do so, it gives no advice at all. It gives advice only on request.

And, secondly, the member brings up its own plans for development, and the organization may then provide a staff or assemble a commission and study those plans for development and give the country advice.

The CHAIRMAN. I invite your attention to the second sentence which states [reading]:

The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to members and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of member countries.

In that instance, it does not have to await the request of a member?

Mr. WILCOX. That is right.

The CHAIRMAN. So, what will the resources of the Organization be? What has been contemplated in the discussion? What will be the nature of the plan? Will there be a pool of technicians?

Mr. WILCOX. I should think not.

The CHAIRMAN. I wish we could put some kind of measure on that and give us some kind of an idea of just what is in mind.

Mr. WILCOX. I think your questions on this point go much further than the thinking on the matter has gone.

The CHAIRMAN. Well, do you think there should be a provision in the charter that exceeds the thinking on the subject?

Mr. WILCOX. Well, I think it is impossible to say in advance precisely what plans will be developed by all the undeveloped countries in the world, for their economic development, or precisely what the Organization would say about those plans, when they were asked to pass judgment on them.

The CHAIRMAN. Well, tell me, Doctor, what activated the writing of that section? Some one did not just sit down and write that section without having something in mind. At least, I like to think that was not the case.

Mr. WILCOX. Well, I am afraid you are asking me for more than I can give you. I cannot lay out detailed specifications for the economic development of undeveloped countries in general.

The CHAIRMAN. All right. Now, the Organization, upon the request of the country of X, shall advise X country concerning its plans, the Organization's plans, for economic development and shall, within the competence and resources of the Organization and on terms to be agreed, provide such member with technical assistance in completing its plans and carrying out its program or arrange for the provision of such assistance. Does that not mean that the Organization is to start making plans for the economic development of member nations?

Mr. WILCOX. No; I do not think so.

The CHAIRMAN. Well, now, let us take the language. [Reading:]

The Organization, upon the request of any member, may advise such member concerning its plans.

It must be the Organization's plans. Why should the Organization know about the member's plans, and why should the Organization be giving the member advice as to the member's plan?

Mr. WILCOX. What you are concerned about is the antecedent of the pronoun "it."

The CHAIRMAN. Let us determine that.

Mr. WILCOX. It relates to the noun "member" not "Organization."

The CHAIRMAN. Then we have something which is absurd. Let us read it that way.

The Organization, upon the request of any member, may advise such member concerning the member's plan for economic development.

Mr. WILCOX. I do not see the absurdity. A country in the process of industrial development draws up certain plans and they say, "We are a small country. We do not have experts. We do not have people to tell us about developmental projects in general. We want advice."

And they come to the Organization and say, "Can you dish up some people here who will give us some advice? Please do. Here are our plans."

And the Organization conceivably gets the services of people who can give advice and they look at those plans, and they say, "In this respect, it does not look so good. Maybe this would be better."

The CHAIRMAN. Right there, let us go to the rest of the language. The country X, as you say, has dished up its plans to the Organization.

Now, the language goes on, "and shall." Does that relate to the member or to the Organization?

Mr. WILCOX. "And may."

The CHAIRMAN. "And may." Is that the Organization or the member?

Mr. WILCOX. The Organization may advise and may provide. It relates to the Organization.

The CHAIRMAN. Well, now, does the member dish up to the Organization something that is within the competence and resources of the Organization?

I do not think you have solved the "it" problem yet, Doctor.

Mr. WILCOX. Well, this may be badly drafted, but I do not think the meaning is as obscure as you suggest.

The Organization, upon the request of any member, may advise such member concerning the member's plan for economic development and may, within the competence and resources of the Organization, and on terms to be agreed, provide such member with technical assistance in completing the member's plans and carrying out the member's program or arrange for the provision of such assistance.

The CHAIRMAN. The interpretation brings me back where I started. Then it is contemplated that the Organization shall have competence and resources to deal with that sort of help?

Mr. WILCOX. Well, it certainly cannot provide any assistance that goes beyond the competence and resources that it has.

The CHAIRMAN. Well, it would be an entirely futile thing to put that kind of language here unless it is contemplated that the Organization shall have competence and resources.

Mr. WILCOX. To provide advice; yes, sir.

The CHAIRMAN. So it must be contemplated that this Organization shall have competence and resources to give that type of advice.

And then we go on from there and the Organization also provides the members with technical assistance, in completing its plans and carrying out its programs, the members' programs, or arranges for the provision of such assistance.

So the Organization functions, if there is any sense in that at all, not passively. It must have a staff for the purpose. It must have skills for the purpose. It must have technical resources. It must, I assume, have monetary resources.

Mr. WILCOX. Of course, it does not follow that it has to have a permanent staff of experts working on such a problem. It may assemble, for instance, a number of specialists on a particular problem,

give them that particular assignment, and when they finish that assignment, they are through.

I do not know just what was the pattern of the FAO mission to Greece, but I do not believe that they consisted of permanent staff members of the Food and Agricultural Organization, but that it was purely an ad hoc group that made a particular report on a particular problem.

The CHAIRMAN. Yes; but let us take the likelihood of the situation. I believe we developed a while ago that there will be a large demand by member nations for the improvement of their industrial condition.

Mr. WILCOX. Yes.

The CHAIRMAN. So that means there will be many of these dishes that are presented to the Organization. Whether you meet them on an ad hoc basis or whether you have a permanent organization, you will have a continuous problem there, I suggest.

Mr. WILCOX. I do not know how many nations would ask the Organization to give them such advice. It is perfectly clear that large numbers of nations have a desire to industrialize, but how many of them would go to the Organization and say, "Send us a technical mission to criticize our developmental program." I do not see how you can anticipate that.

The CHAIRMAN. Doctor, is this not certain: If the nation wanted the cooperative help of the Organization, it would certainly submit its plans?

Mr. WILCOX. Well, there is just one kind of help that the Organization can give them.

The CHAIRMAN. That is what I want to find out.

Mr. WILCOX. That is in article 13.

The CHAIRMAN. What is that? Can you give us a rough summary of what that help is?

Mr. WILCOX. Well, do you want to jump to that, or do you want to go through 12 first?

The CHAIRMAN. No; I do not want to jump to that. If you are not prepared to give us a rough summary of what that help is, we should wait until we come to it.

Mr. WILCOX. I think we ought to go step by step.

The CHAIRMAN. I do not want to get out of order.

Mr. WILCOX. All right.

The CHAIRMAN. And we agreed that there will be some sort of a central organization. There will be some personnel, to whom these member nations that want the type of assistance that we have been discussing, can go to and ask for the assistance.

Mr. WILCOX. Yes; the way is open to the establishment of a commission on economic development within the Trade Organization. Although it is not specifically provided for in the organizational chapter.

The CHAIRMAN. And there is room there, under the specific language used, and I refer to the word "resources," to equip that organization with, let us say, money.

Mr. WILCOX. Yes.

The CHAIRMAN. To go ahead with that kind of job.

Mr. WILCOX. Yes.

The CHAIRMAN. So that possibility is not excluded?

Mr. WILCOX. That is right.

The CHAIRMAN. Under the language used, the possibility is not excluded of a policy of technical assistance?

Mr. WILCOX. No; it is not excluded.

The CHAIRMAN. No. And so, taking it by and large, you have here an authorization for a sort of international planning commission on the type of works which are contemplated here.

Mr. WILCOX. Well, I suppose you could call it that; yes.

The CHAIRMAN. Well, I am willing to have you apply a less opprobrious epithet.

Mr. WILCOX. I would rather you did, because the word "planning" is supposed to be a bad word, although we are all engaged in it all the time.

The CHAIRMAN. Let us find a less opprobrious epithet. There could be an organization there available with money and technical ability ready to give these member nations aid, if they ask it, or under the second sentence we discussed a while ago, available to make affirmative recommendations to the member nations.

Mr. WILCOX. When you say "money" they would not make any loans. They would conceivably have some personnel.

The CHAIRMAN. You say, Doctor, they would not, but that is not precluded by the language. If they have the resources to—

Mr. WILCOX. No. No. They give advice and they give technical assistance. Now, I think it is open to question how the term "technical assistance" would be interpreted, and I think perhaps that should be tightened up, but "within its resources," is merely within the budgetary provision for personnel. This is not a lending agency.

The CHAIRMAN. This first sentence, then, you would say without any if's, but's, or maybe's, is limited to technical advice and possibly technical assistance?

Mr. WILCOX. That is right.

The CHAIRMAN. It could not be construed under any circumstances to go into the actual supply of material or the actual loan of money?

Mr. WILCOX. No, sir.

The CHAIRMAN. And if that language or any part of this plan is not clear on that, there would be no objection to clarifying it; is that correct?

Mr. WILCOX. Yes. Also, "on terms to be agreed."

The CHAIRMAN. That is right.

Mr. WILCOX. That has been inserted for the purpose of pointing out that the country would be required to pay for the assistance it received.

The CHAIRMAN. Well, it might be agreed that they should not.

Mr. WILCOX. Yes.

The CHAIRMAN. Yes. Now, it is said [reading]:

The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to members and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of member countries.

Would the Organization be at liberty, on its own initiative to consult with and make recommendations to the United States on those matters?

Mr. WILCOX. Well, as far as the wording goes, I should think the answer is "Yes."

The CHAIRMAN. Is that the intent?

Mr. WILCOX. I do not see any bar to it. That is purely consultation and recommendation.

The CHAIRMAN. Do you not think that that can be or might become a very offensive form of interference?

Mr. WILCOX. Well, what does "consult with" mean? You do not consult with anybody unless he will sit down and talk with you.

The CHAIRMAN. Yes.

Mr. WILCOX. And you do it upon mutual agreement.

The CHAIRMAN. Yes; but here you are inviting that consultation.

Mr. WILCOX. Well, it says, "The Organization may consult."

The CHAIRMAN. Yes.

Mr. WILCOX. And the member may consult.

The CHAIRMAN. Yes.

Mr. WILCOX. And if they are both willing to do so, they have a consultation.

The CHAIRMAN. Well, of course, when the United States subscribes to this thing, and it subscribes to a sentence which contemplates consultation, it is not in a very good position to rebuff the offer of consultation, is it?

Mr. WILCOX. No; I should think if the Organization would write to the United States Government and say, "We want to consult with you," the Government would probably say, "All right, we will consult."

The CHAIRMAN. The Organization might say: "We do not like the way you are handling your general economic development. We have had a lot of bellyaching about it. The pressures on us have reached a point where we want to consult with you about it, and we want to make some recommendations."

Can you not conceive, Doctor, that that might be very offensive to the United States?

Mr. WILCOX. Not if the chapter is limited to undeveloped countries, because we would not fall within that definition.

The CHAIRMAN. There, again, you believe that it should be limited to countries of substandard development. How do you describe a country of that kind?

Mr. WILCOX. That is the purpose of it.

The CHAIRMAN. Well, anyway, may we take it that that paragraph, as it finally emerges, will be limited to substandard countries?

Mr. WILCOX. I think that might be done as a matter of fact for the whole chapter.

The CHAIRMAN. I think you would be achieving a very useful purpose if you did that.

Article 12 has the heading [reading]:

MEANS OF ECONOMIC DEVELOPMENT

1. Progressive economic development is dependent upon adequate supplies of capital funds, materials, equipment, advanced technology, trained workers, and managerial skill. Accordingly, the Members shall impose no unreasonable impediments that would prevent other Members from obtaining any such facilities for their economic development and shall cooperate in accordance with Article 11, within the limits of their power, in providing or arranging for the provision of such facilities.

2. Each Member, in its treatment of other Members and of business entities or persons within the jurisdiction of other Members which supply it with facilities for its industrial and general economic development, shall not only carry

out all relevant international obligations to which it may be subject or which it may undertake pursuant to subparagraph (c) of Article 61 or otherwise but also shall in general take no unreasonable action injurious to the interest of such other Members, business entities or persons.

3. Any Member, or with the authorization of a Member, any affected business entity or person within that Member's jurisdiction, may submit to the Organization a complaint that action by another Member is inconsistent with its obligations under this Article. The Organization may, without prejudice to the application of Article 35, request the Members concerned to enter into consultation with a view to reaching a mutually satisfactory settlement and may lend its good offices to this end.

Going back to paragraph No. 1, Doctor, what would be an unreasonable impediment; would you give us some examples of that?

Mr. WILCOX. I do not know how to answer that.

The CHAIRMAN. Who would decide whether it was an unreasonable impediment?

Mr. WILCOX. Well, the only mechanism that is provided here is a complaint by a member, and a consultation. Now, beyond that, in article 35, they might go to the point where a country would be allowed to withhold concessions made in a trade agreement as a penalty. And in that case, the decision would be a decision of the Organization and could be appealed, I assume, as a justiciable issue to the international court of justice, after the conference agrees.

The CHAIRMAN. Only after the conference agrees.

Mr. WILCOX. Yes.

The CHAIRMAN. In other words, you cannot go to the international court unless the conference gives you the right?

Mr. WILCOX. In this case, yes.

The CHAIRMAN. Is it a majority vote or a two-thirds vote?

Mr. WILCOX. Majority.

The CHAIRMAN. We have one vote in the conference?

Mr. WILCOX. The question is open.

The CHAIRMAN. Will the State Department insist that we have more?

Mr. WILCOX. Well, I think we will go into that pretty thoroughly when we get to the voting section.

The CHAIRMAN. Heretofore, the State Department has been content that we have one vote?

Mr. WILCOX. That was the original proposal.

The CHAIRMAN. That was the original proposal and we made that proposal?

Mr. WILCOX. That is right.

The CHAIRMAN. Now, coming back to this "unreasonable impediments"; give me some example of unreasonable impediments that would prevent other members from obtaining facilities for their economic development.

Mr. WILCOX. Oh, I suppose if we would put on an export embargo for the purpose of preventing the development of another country, they could say that that was an unreasonable impediment.

The CHAIRMAN. If we, for whatever reason, decided not to export needed electrical machinery, for example, what would that be? Suppose that country needed turbines for a power dam, and we had them and would not export them. Would that be an unreasonable impediment?

Mr. WILCOX. Well, if private concerns in this country did not voluntarily make sales, it would not be an unreasonable impediment.

It would be only if the Government prevented them from making sales which they wanted to make, that it might be an unreasonable impediment imposed by the Government.

The CHAIRMAN. That might take the form of export restrictions?

Mr. WILCOX. Yes.

The CHAIRMAN. Embargoes or something like that?

Mr. WILCOX. That is right.

The CHAIRMAN. Was that not specifically discussed in any of the drafting conferences as to what was meant by the words?

Mr. WILCOX. You mean what would and would not be an unreasonable impediment?

The CHAIRMAN. Yes.

Mr. WILCOX. No.

The CHAIRMAN. It strikes me that those are pretty carefully selected words. They must have some preordained content.

Mr. WILCOX. The purpose of this section, as it developed, was to get away from any obligation on the part of the highly developed country to provide upon its own account capital or capital goods or resources or anything else to countries that were in the process of development.

In the course of the discussion, the undeveloped countries urged rather strongly that, as a matter of proper international relations, the highly developed countries should recognize an obligation to supply capital and capital goods and technology and so on, to the less developed countries.

The United States delegation would not agree to any such commitment or to the recognition of any such obligation. The most it would agree to was that the provision of such facilities was a matter for private trade and the most we would commit ourselves, in the likely undevelopment of this program, would be that we would not impose unreasonable impediments on private sellers if they chose to make such sales.

The CHAIRMAN. At one time we had a law called the "Johnson Act," as I recall it, which forbade international loans to nations which had defaulted private obligations to us.

Mr. WILCOX. Yes.

The CHAIRMAN. If we were to pass a law of that kind, or a law imposing general restrictions against making foreign loans, would that be an unreasonable impediment?

Mr. WILCOX. You mean if we would forbid our private capitalists to make foreign investments?

The CHAIRMAN. Yes, under some standard, of course.

Mr. WILCOX. In the case of the Johnson Act, of course, it was the sale of Government securities.

The CHAIRMAN. That is right.

Mr. WILCOX. And we did not forbid our investors to make direct foreign business investments.

The CHAIRMAN. I think that is correct.

Mr. WILCOX. Well, I do not know how to answer that. It might be regarded as an unreasonable impediment if we would forbid private business entities in this country to make direct investments in particular countries abroad. I am not sure. It is a possibility.

The CHAIRMAN. Well, suppose that we enacted a law or adopted a policy whereby we would not put any Federal money into any

other country. Suppose we said, "We have already committed \$20,000,000,000."

Mr. WILCOX. No, no.

The CHAIRMAN. To foreign investment, subject to all the risks and vagaries of fortune, which afflict the world at the present time.

"We have done enough. We are not going to make any more foreign contributions of any kind."

Suppose something like that were done by law? Would that be an unreasonable impediment?

Mr. WILCOX. You would not have to pass a law to do that. You just do not have to make the loan.

The CHAIRMAN. But then when you provide money you might want to restrict future expenditures of it.

Mr. WILCOX. It seems to me it is perfectly clear that the United States could say, "We are through lending. We are not going to lend any more." And that would not be a violation of this.

The CHAIRMAN. But it says [reading]:

progressive economic development is dependent upon adequate supplies of capital funds, materials, equipment, advanced technology, trained workers, and managerial skill.

Where are they going to get these adequate funds? The very condition they find themselves in, the fact that they are substandard countries economically, indicates that they do not have capital funds. They have to go out and get them.

Therefore, is it not reasonable that under the scheme of this thing, if a country puts impediments upon their getting capital funds, that country is violating the language and intent of the Charter?

Mr. WILCOX. If we say "We are not going to give you a loan," we are not imposing an unreasonable impediment on their situation.

The CHAIRMAN. Yes.

Mr. WILCOX. If we say, "We deny you access to the private money market. We will not let anybody in this country invest any money in your country," that might conceivably be regarded as an unreasonable impediment.

The CHAIRMAN. Well, now, I think there will be a lot of curiosity about that unreasonable impediment business.

Mr. WILCOX. Yes.

The CHAIRMAN. Let me suggest that you roll that around in your mind and come back with further illustrations about what "unreasonable impediments" would be.

Mr. WILCOX. Yes, sir.

(The State Department subsequently submitted this statement.)

PROTECTION AGAINST HARMFUL MEASURES IN THE FIELD OF ECONOMIC DEVELOPMENT

During the hearings by the Senate Committee on Finance on the draft charter for an International Trade Organization, Senator Millikin requested that examples be given illustrating the types of actions which might be precluded by paragraphs 1 and 2 of article 12 (enjoining members of the ITO against measures harmful to the interests of members seeking facilities for their development or to the interests of members, business entities, and persons providing such facilities).

The following examples are given for the purpose of illustrating the types of unreasonable action which might be taken (a) by countries to impede the economic development of other countries and (b) by countries receiving assistance from other countries in their economic development. Since the question of

whether or not a particular measure would be contrary to the provisions of paragraphs 1 and 2 of article 12 can only be decided in the light of all the circumstances in a specific case, it should be understood that the following hypothetical examples are for illustrative purposes only, without commitment as to whether particular cases involving certain of the elements listed below would be held to be contrary to the provisions of the charter.

A. Examples of unreasonable impediments utilized by supplying countries on

1. *Capital funds.*—Prohibition or restriction by a given country on export of funds from it for use in development of a specific industry in another country which might become competitive with the industry of the capital-exporting country in the markets of the capital-receiving or capital-exporting country or in the world market.

2. *Materials.*—Unreasonably high taxes on export of a raw material such as tin ore in order to discourage its export except in processed or finished form.

3. *Equipment.*—Prohibitions or restrictions by one country on the export of equipment, such as watch-making machinery, in order to prevent or hinder other countries from competing with it in the manufacture and sale of the finished product, in this instance watches.

4. *Advanced technology.*—Refusal to permit the licensing of a patent for production of a particular commodity in order to prevent the possible development of a competitive industry abroad.

5. *Trained workers and managerial skill.*—An advanced country's preventing or hindering its trained workers and managerial personnel from being employed in a less industrialized country for fear of developing in the latter an industry that might become competitive with a similar industry in the advanced country; or, conversely, an advanced country's preventing or hindering nationals from coming to the advanced country for specific industrial training.

B. Examples of unreasonable actions injurious to other members and foreign nationals or business entities, supplying developmental assistance

1. Confiscation of property of foreign nationals without prompt and adequate compensation.

2. Preventing or hindering foreign nationals from joining local associations when membership in such associations is a prerequisite for doing business in the particular country.

3. Exorbitant entry fees discouraging entry of commercial travelers.

4. Restrictions preventing or unreasonably hindering entry of samples and advertising matter.

5. Restrictions preventing or unreasonably hindering acquisition or leasing by foreign nationals of property for commercial or manufacturing purposes.

6. Restrictions on foreign nationals and firms preventing or hindering them from gaining access to local courts.

The CHAIRMAN. Now, in paragraph 2, we say here [reading]:

Each member, in its treatment of other members and of business entities or persons within the jurisdiction of other members which supply with facilities for its industrial and general economic development—

and may I ask at that point, when we talk about facilities, are we talking about physical equipment? What do they mean by "facilities"? Is that for its industrial and general economic development?

Mr. WILCOX. I should say it refers back to the first sentence of the article.

In the second sentence, it refers to "such facilities."

The CHAIRMAN. Yes.

Mr. WILCOX. And then, at the end of the paragraph, it refers to "such facilities."

The CHAIRMAN. I assume that all goes back to the capital funds, materials, equipment, advanced technology, trained workers and managerial skill.

Mr. WILCOX. That is right.

The CHAIRMAN. Following on through with paragraph 2, you finally come down again to the injunction that no member shall take,

unreasonable action injurious to the interests of such other members, business entities, or persons.

What would be an unreasonable action? Is that sort of a "Do unto your neighbor as you would be done by" or is it something measurable?

Mr. WILCOX. Well, I should say that if an American corporation invested money in country X, and developed an industry there, and country X then seized that plant and provided no compensation or inadequate compensation for it, that that action would be unreasonable.

The CHAIRMAN. And you would try the issue of unreasonableness? Who would try the issue?

Mr. WILCOX. Well, of course, this sort of thing, Senator, in most cases, would be handled under our structure of bilateral treaties of friendship, commerce, and navigation, or the so-called treaties of establishment, where we have such treaties.

We are in the process, of course, of extending and strengthening and modernizing our structure of commercial treaties.

Now, what this says is that members shall not only carry out all relevant international obligations to which they may be subject, and that covers again our commercial treaty structure, as to the treatment of American enterprise abroad, or which it may undertake pursuant to subparagraph (c) of article 61, and it is provided there that there may be developed within the Organization standards for the treatment of private capital in foreign countries, private enterprise, and capital abroad, and in addition to both of those, it also shall, in general, take no unreasonable action injurious to the interests of such other members, business entities, of persons.

Now, then, what that does is two things: (1) It provides you with a basis for raising an issue through the trade organization with such prestige as taking the action internationally may involve, rather than directly with the country in question; and, (2), it would be operative in any case in which we do not have a commercial treaty.

The CHAIRMAN. Now, then, what does the Organization do about it? What does it do in the case of an unreasonable impediment? What does it do in case of unreasonable action that you are talking about now?

Mr. WILCOX. One thing that is provided in consultation with a view to reaching a mutually satisfactory settlement.

The CHAIRMAN. Yes; the consultation has been had and nothing has happened. Then what?

Mr. WILCOX. It also says without prejudice to the application of article 35, and in that case you have got the possibility of the application of such sanctions as are permitted.

The CHAIRMAN. So that this is more than just a proclamation of good intent and that the boys shall behave themselves.

Mr. WILCOX. Yes.

The CHAIRMAN. These things will have to be judged by some one, by the Organization, or by the International Court.

Mr. WILCOX. That is right.

The CHAIRMAN. And there are sanctions for the recreant party.

Without getting too deeply into article 35, could we outline those sanctions?

Mr. WILCOX. The Organization may authorize a member or members to suspend the application to any other member or members of

such specified obligation or concessions under this chapter as may be appropriate in the circumstances.

The CHAIRMAN. Is that the place in the charter that I was referring to, I think, this morning, where an existing agreement can be breached by authority of the Organization?

Mr. WILCOX. This would involve that, yes. This would involve the possible withdrawal of concessions made to the offending party.

The CHAIRMAN. In an agreement between those two parties.

Mr. WILCOX. Yes.

The CHAIRMAN. That is pretty strong medicine, is it not?

Mr. WILCOX. Well, it depends on how far it is carried. It says, such specified obligations or concessions.

The CHAIRMAN. The Organization itself could authorize that?

Mr. WILCOX. Yes, sir.

Mr. CHAIRMAN. And the members having agreed to it, then have to abide the consequences?

Mr. WILCOX. That is correct.

The CHAIRMAN. So the Organization would have to adjudge whether unreasonable impediments had been imposed and also whether unreasonable actions injurious to the interests of other members had been inflicted.

Mr. WILCOX. That is right.

The CHAIRMAN. Article 13 has the heading [reading]:

GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT

1. The members recognize that special governmental assistance may be required in order to promote the establishment or reconstruction of particular industries and that such assistance may take the form of protective measures. At the same time they recognize that an unwise use of such measures would impose undue burdens on their own economies, unwarranted restrictions on international trade and might increase unnecessarily the difficulties of adjustment for the economies of other countries.

2 (a) If a Member, in the interest of its programme of economic development, considers it desirable to adopt any protective measure which would conflict with any other provision of this Charter, or with any obligation which the Member has assumed through negotiations with any other Member or Members pursuant to Chapter V, it shall so notify the Organization and shall transmit to the Organization a written statement of the considerations in support of the adoption of the proposed measure. The Organization shall then promptly examine the proposed measure in the light of the provisions of this Chapter and other relevant provisions of this Charter, the considerations presented by the applicant Member, the views presented by the other Members which will be substantially affected by the proposed measure and such criteria as to productivity and other factors as it may establish, taking into account the stage of economic development or reconstruction of the applicant Member.

(b) If, as a result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure which would be inconsistent with any obligation that the applicant Member has assumed through negotiations with any other Member or Members pursuant to Chapter V or which would tend to nullify or impair the benefit to such other Member or Members of any such obligation, the Organization shall sponsor and assist in negotiations between the applicant Member and the other Members or Members which would be substantially affected, with a view to obtaining substantial agreement. Upon such agreement being reached the Organization may release the applicant Member from the obligation in question or from any other relevant obligation under this Charter, subject to such limitations as may have been agreed upon in the negotiations between the Members concerned or such further limitations as the Organization may impose.

(c) If, as a result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure, other than those provided for in sub-paragraph (b), which would be inconsistent with any other provision of this Charter, the Organization may release the applicant Member from any obligation under such provisions, subject to such limitations as the Organization may impose—"

Mr. WILCOX. That is the end of that chapter, Senator. There is a misprint there.

The CHAIRMAN. The rest is comment, is it not?

Mr. WILCOX. The rest is comment.

The CHAIRMAN. Yes. Now, going back to paragraph 1, could you give us some examples to illuminate that a little bit?

Mr. WILCOX. Well, that is the familiar case of a new industry in an undeveloped country that cannot get on its feet without artificial aid.

The CHAIRMAN. Artificial aid meaning what?

Mr. WILCOX. Well, of course, all of these undeveloped countries argue that you cannot have industrial development without having artificial help from the Government. That new industries cannot get on their feet under their own strength.

The CHAIRMAN. Tariffs, for example?

Mr. WILCOX. And what they argue is that the way you set up a new industry is to shelter it from competition from abroad.

The CHAIRMAN. And then the paragraph goes on to recognize that the doing of that could be an unwise use of power?

Mr. WILCOX. No.

The CHAIRMAN. It could impose undue burdens on the country's own economy. It could consist of an unwarranted restriction on international trade. And it might increase unnecessarily the difficulty of adjustment for the economies of other countries?

Mr. WILCOX. Not quite what you said, Senator. An unwise use of such measure would do these other things.

The CHAIRMAN. Yes. If I did not say that, I wanted to say that.

Mr. WILCOX. I thought your suggestion was that any use would be unwise.

The CHAIRMAN. No, I did not mean that. I think largely to the contrary.

Now, take that sentence [reading]:

At the same time they—

the members—

recognize that an unwise use of such measures would impose undue burdens on their own economies, unwarranted restrictions on international trade and might increase unnecessarily the difficulties of adjustment for the economies of other countries.

Is that not a prelude philosophy to further development of the theme that the measures which a country might adopt for its own economic protection are subject to international review and action?

Mr. WILCOX. No; I do not think so. I think you get into the works of this when you come to paragraph 2.

The CHAIRMAN. Yes.

Mr. WILCOX. This is really a preamble to paragraph 2.

The CHAIRMAN. That is what I say, it is a philosophical preamble to what follows.

Mr. WILCOX. Yes.

The CHAIRMAN. And the purpose of the philosophy is to give a basis for international intervention or interference or control or influence in what has heretofore been regarded as primarily a matter of domestic concern; is that not correct?

Mr. WILCOX. Well, not quite. May I give you an exposition of paragraph 2?

The CHAIRMAN. Yes; I wish you would.

Mr. WILCOX. As far as the charter is concerned, a country that wishes to proceed with the development of new industries and wishes to give them artificial assistance has open to it, first, the possibility of subsidy. There is no rule against the use of subsidy, and there is no question about their freedom to do that.

Secondly, if it has not bound the tariff on the product in question in a trade agreement, or if it has not bound duty-free treatment, it is perfectly free to impose a new tariff or to raise an old tariff. But there are two possibilities under which that country would not be free to take protective action.

One possibility is that it has voluntarily, in a trade agreement, said, "We bind duty-free treatment of this goods we are buying from the United States," say, or "We bind a tariff at this level," or "We reduce a tariff to this level."

It enters into that commitment voluntarily. It is a commitment that it has under a trade agreement.

Now, during the life of the agreement, it is not free to impose a tariff or raise a tariff on that article unless it violates the agreement.

The other possibility is the possibility of imposing an import quota on a commodity with respect to which there is no trade agreement, a commodity that is not included in the trade agreement.

But there is in chapter V of the charter, a general rule against the use of import quotas.

Now, if the country voluntarily accedes to the charter and that rule, it would have an obligation which it had entered into voluntarily.

Now, this paragraph 2 of article 13 opens up the possibilities that such a country may get agreement or permission to be released from such an obligation in such cases. It does not give the Organization full authority over the character of the economic development of that country.

The Organization cannot say to the country, "You ought to develop this industry instead of this other"; but the country comes to the Organization and says, "In this case, we have made a promise that we will not use particular sorts of protective devices. Now, however, we want to develop this industry and in order to develop this industry, we would like to have a release from this promise."

Then the Organization says to them, "All right, let us see your case."

And then it says, "We will go and talk with the countries to whom you made that promise, and we will see if they are willing that you be released from that promise that you made voluntarily so that you can develop that industry."

And then they consult with the other countries involved.

Now, if it is a promise that they made in a trade agreement, they must go to the countries involved in that agreement and get their substantial agreement to the release.

If it is a promise that they did not make in a trade agreement, if it is an article that is not covered in a trade agreement, then all the Organization has to do is to consult with the other countries whose trade would be affected, and it may then, on its own authority, grant a release subject to such limitations as it may impose. I think that is the wording.

The CHAIRMAN. Well, then, without this charter and these provisions, a nation that had not bound itself against any of those actions, would be free to take them without anyone's consent, would it not?

Mr. WILCOX. Well, certainly a nation that had not bound itself would be free.

The CHAIRMAN. Of course.

Mr. WILCOX. Yes.

The CHAIRMAN. And this imposes a restriction on that freedom. If the member is a member of your Organization.

Mr. WILCOX. No. What imposes a restriction on the freedom is not this article but the accession by the country to the other provisions of the charter.

The CHAIRMAN. I thought I said that. So that, as the matter stands now, outside of the field that has been committed by individual trade agreements, a nation is free to adopt such protective devices as it sees fit to do.

Mr. WILCOX. Except import quotas.

The CHAIRMAN. Well, outside of this Organization.

Mr. WILCOX. Yes, aside from this, that is true.

The CHAIRMAN. This charter sets up a new restriction in that field?

Mr. WILCOX. That is right.

The CHAIRMAN. And in the field where the nation has committed itself to certain obligations via trade agreements, it sets up a contract-breaking mechanism; is that not true?

Mr. WILCOX. With the consent of the countries with whom the contract has been made.

The CHAIRMAN. Let us see if it does not go further than that, Doctor. Of course, any time the parties to a contract agree that the contract may be breached, that can be done without going into an organization of this kind, can it not?

Mr. WILCOX. Yes.

The CHAIRMAN. So there is nothing new about that. If these provisions stopped right there, they would represent just complete surplussage for obviously we can step into any country with which we had made a trade agreement and if we can get agreement, we can nullify it or modify it in any way we see fit.

So, there must be something more to this than that. It says [reading]:

Upon such agreement being reached, the Organization may release the applicant member from the obligation in question or from any other relevant obligation under this Charter, subject to such limitations as may have been agreed upon in the negotiations between the members concerned or such further limitations as the Organization may impose.

So, so far, it does not rest strictly upon agreement between the parties. The Organization itself may impose different and additional obligations.

Mr. WILCOX. Yes, but the Organization does not release them unless the parties agree.

The CHAIRMAN. But the Organization can impose additional qualifications to the release?

Mr. WILCOX. That is right. I should say as to the extent and severity and duration of the restrictions that the developing country would be allowed to impose.

The CHAIRMAN. So that it is more than merely what the parties themselves agree to?

Mr. WILCOX. That is right.

The CHAIRMAN. The Organization itself can add additional considerations for the release.

Mr. WILCOX. That is right.

The CHAIRMAN. That is right. Now, then, the language goes on to say [reading]:

If, as a result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure, other than those provided for in sub-paragraph (b)—

Mr. WILCOX. (b) covers the trade agreement case and (c) covers the nontrade agreement article.

The CHAIRMAN. All right. [Reading:]

which would be inconsistent with any other provisions of this Charter, the Organization may release the applicant Member for any obligation under such provision, subject to such limitations as the Organization may impose.

Mr. WILCOX. That is right.

The CHAIRMAN. Again, it goes beyond mere agreement between the parties.

Mr. WILCOX. Yes. In this case, in both cases, the Organization consults with the affected parties.

The CHAIRMAN. Yes.

Mr. WILCOX. In the first case, it has to get consent before there is a release. In the second case, it secures an opinion and on its own responsibility may grant a release.

The difference between the two cases being that under (b), you have a separate instrument, a trade agreement, and under (c), all that you have is the charter itself.

The CHAIRMAN. There is a provision here for contract breaking by the authority of the Organization, is there not?

Mr. WILCOX. No, sir. Well, wait a minute. As far as the trade agreement is concerned, no. If you mean release from obligations under the charter, I do not think you could call that a break-down of a contract, if this provision is in the charter. It is all part of one document.

The CHAIRMAN. They can be released from charter obligation?

Mr. WILCOX. That is right.

The CHAIRMAN. At the same time, the Organization could relieve them from a trade agreement obligation?

Mr. WILCOX. No. But through this mechanism they may obtain relief from such an organization.

The CHAIRMAN. That is what I am talking about. So you have got a mechanism here that looks toward a breaking of a trade agreement under the circumstances specified.

Mr. WILCOX. In the same sense that our own escape clause looks toward the breaking of a trade agreement, yes.

The CHAIRMAN. And the Organization is the medium for accomplishing that rather than the direct independent negotiations of the parties as would be the case at the present time?

Mr. WILCOX. Yes. I think there is nothing in this that would bar direct negotiation. It does not prohibit direct negotiation and it does not contemplate direct negotiation?

Mr. WILCOX. That is right.

The CHAIRMAN. So I assume considering those two forks of the thing, that it means that you should follow the procedure that is set up here.

Mr. WILCOX. That is right.

The CHAIRMAN. Now, where the Organization itself enters to secure such an agreement, that would be the consideration for the agreement?

Suppose that this country and Great Britain have a trade agreement and one or the other countries find it onerous, and wants to break it, and the Organization steps in and it tries to arrange a breach. Businessmen, business countries, are willing to breach for a quid pro quo.

Mr. WILCOX. Well, in the first place, if the chapter is confined to undeveloped countries, neither the United States nor the United Kingdom would have a case under it.

The CHAIRMAN. Well, may I assume again that this chapter will be confined to undeveloped countries?

Mr. WILCOX. Well, the discussion of this provision raises precisely that question.

The CHAIRMAN. Well, I suppose if we leave the record stand as it is at this point, we do not know what the final provision in the charter will be on that so far as the State Department's attitude is concerned.

Mr. WILCOX. Well, as I said, this was written to meet the case of the undeveloped country, but it was written in general language. Now, if the whole chapter were to be limited to the undeveloped country, this approach would be available only to such countries.

The CHAIRMAN. I am trying to illuminate this as we go along and always so far as the United States is concerned.

By limiting it to undeveloped countries, we have taken an easy out so far as this country is concerned, but the defects of it, if there are any defects in it, still remain, so far as the undeveloped countries are concerned. They might have some views against any organization having the power to influence a breach of their contracts.

Mr. WILCOX. Let us take an illustration that does not raise that point at all, to take your own illustration.

The CHAIRMAN. You want to make it easy, Doctor.

Mr. WILCOX. Let us take India.

The CHAIRMAN. Go ahead.

Mr. WILCOX. Rather than the United Kingdom let us say that India has made an agreement with us in a trade agreement and India wants to develop that particular industry, and then India, therefore, comes to the International Trade Organization and says, "We would like to get a release from that obligation."

And they consult us and we say, "All right, for this length of time to this extent."

And the Trade Organization releases India under those circumstances.

Now, your question is, What do we get out of that?

The CHAIRMAN. That is right.

Mr. WILCOX. We do not get any direct quid pro quo in that case.

The CHAIRMAN. Could not this Organization require, as a part of the negotiations, that we should get a direct quid pro quo?

Mr. WILCOX. Well, we might require it. I mean, we might say, "We do not give you this release unless this concession that we have given you is removed." Is that not true?

The CHAIRMAN. Yes.

Mr. WILCOX. But we do not have to do that. It is up to us.

The CHAIRMAN. Now, then, let us take that last sentence again [reading]:

Upon such agreement being reached, the Organization may release the applicant Member from the obligation in question or from any other relevant obligation under this Charter, subject of such limitations as may have been agreed upon in the negotiations between the Members concerned or such further limitations as the Organization may impose.

In other words, if the parties agree, the Organization itself may impose further limitations upon the agreement of the parties?

Mr. WILCOX. Further limitations, yes.

The CHAIRMAN. Yes.

Mr. WILCOX. That is designed, I think, to make (b) and (c) parallel.

The CHAIRMAN. Yes. But it makes them parallel in a great grant of power to the Organization.

Mr. WILCOX. Well, the great grant of power is to limit the extent of the escape from these obligations.

The CHAIRMAN. But if the two people agree on an escape, and you put it in the hands of a third person to burden the escape; you are giving that third person a great grant of power.

Mr. WILCOX. Would it be your judgment, Senator, that that sentence was inappropriate? That that should not be done?

The CHAIRMAN. Well, I can hardly answer that until I have some kind of an example of what is in mind, and we have not had it yet. Perhaps on further reflection, maybe by reference to the minutes that led to this sentence, we might be able to get a little illumination as to what was in mind, and if we knew what was in mind, we might be able to circumscribe it and state it in a way so that it will cover the cases that are in mind.

On the assumption, and I do not think we are ready yet to abandon the assumption, that this language is intended to include countries like the United States, or developed industrial nations, let us test the practicality of it. Suppose that we want to breach some trade agreement that we have with Great Britain. We have put a most-favored-nation clause in that agreement so that a wide variety of countries, every country we also have a trade agreement with, has an interest in that agreement with Great Britain, has it not?

Will this Organization start consulting every one of the countries with whom we have a trade agreement?

Mr. WILCOX. No.

The CHAIRMAN. It says so.

Mr. WILCOX. Every country substantially interested in the trade, in the particular commodity.

The CHAIRMAN. That is right.

Mr. WILCOX. That would not be every country with which we had an agreement.

The CHAIRMAN. I quite agree. I am happy for the correction. We would consult with every country that would be affected.

Mr. WILCOX. Yes.

The CHAIRMAN. That might be a considerable number of countries?

Mr. WILCOX. Every country substantially affected.

The CHAIRMAN. Every country substantially affected, and that might be a considerable number of countries.

Now, let us consider the time element involved. Would that not be a terrifically cumbersome thing by reason of the time element involved, the difficulty of getting people together and negotiating and trying to get their consent? Would not the original relief that this holds out disappear because it would bog down in delay and probably would not be worth anything after it had been obtained?

Mr. WILCOX. Well, I think there might be some delay involved in the process, yes, sir. It is a little difficult for me to envision the case of the United States of America in the guise of an undeveloped country asking for relief from obligations so that it can have some manufacturing.

The CHAIRMAN. I was very careful to state the assumptions which we are not entitled to abandon that this does not apply exclusively to nondeveloped countries. So far as we are concerned, if we tried to get a breach through this mechanism, or if Great Britain tried to get a breach through this mechanism, or if any of the other great powers tried to get a breach through this mechanism, it would involve a very, very long time lag, would it not?

Mr. WILCOX. It would involve some time lag; yes.

The CHAIRMAN. And perhaps a direct negotiation between the two countries concerned, even though it had glaring repercussions on other countries, might be the best approach, so far as that type of country is concerned.

Mr. WILCOX. Yes. I think perhaps the country that was seeking this release might feel that its case would be improved if it presented it through the Trade Organization instead of going direct to the other country to which it had made a commitment.

The CHAIRMAN. Well, let us take the underdeveloped country. Would you say Brazil is an underdeveloped country, industrially?

Mr. WILCOX. Yes.

The CHAIRMAN. Brazil sends coffee all over the world. I assume that it has many, many trade agreements on the subject of coffee. Am I correct in that?

Mr. WILCOX. Well, I do not know what you mean by trade agreement there. It certainly does sell coffee all over the world.

The CHAIRMAN. And does it not have agreements with respect to its import and export business with other countries?

Mr. WILCOX. Coffee is on the free list here, I believe. I am told they have a good many agreements on coffee.

The CHAIRMAN. Yes. Of course they would have. So Brazil, then, an underdeveloped country, would have the same time difficulty and I suggest that just as a matter of principle we should be as solicitous in getting up this kind of organization to protect Brazil against harmful time lags, as we should be in protecting ourselves.

If you were to ask for my counsel on this thing, I would say that it needs a lot of clarification, and perhaps a lot of restriction and perhaps elimination.

Mr. WILCOX. You puzzle me there, Senator. I understand what you mean by "clarification," but I do not understand what you mean by "elimination."

The CHAIRMAN. I think when you prescribe a procedure for breaching an agreement between two countries by a body which is not a judicial body in the first instance, at least, which is not operating on judicial standards, I think you are getting off into a lot of troubled waters.

Mr. WILCOX. I see.

The CHAIRMAN. And I am not so sure that you are not off on something which even if it worked and worked well, if it were adequately prescribed, would be a good thing.

But my notion on that is entirely tentative.

Why do you not think on it some more and you may have some further thoughts on it?

Mr. WILCOX. Well, I should appreciate an opportunity to pursue this further with you outside the committee some time.

The CHAIRMAN. All right. We will do that.

We will meet tomorrow morning at 10:30 in the Foreign Relations room, in the Capitol.

(Thereupon, at 5 p. m., an adjournment was taken until 10:30 a. m., Tuesday, March 25, 1947, in the Foreign Relations Committee room, the Capitol.)

INTERNATIONAL TRADE ORGANIZATIONS

TUESDAY, MARCH 25, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment in the Foreign Relations Committee room, the Capitol, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Millikin (chairman), Martin, and Johnson of Colorado.

Present also: Representative Gearhart.

The CHAIRMAN. The meeting will come to order.

Is Mr. Fahy here?

STATEMENT OF CHARLES FAHY, LEGAL ADVISER, DEPARTMENT OF STATE, WASHINGTON, D. C.

The CHAIRMAN. State your full name and position with the Government.

Mr. FAHY. Charles Fahy, legal adviser, State Department.

The CHAIRMAN. Go ahead, sir.

Mr. FAHY. Senator, I have been advised that one of the problems which has concerned the committee is whether or not the proposed International Trade Organization, the charter, went beyond the powers of the Economic and Social Council under the United Nations Charter, and if so, whether that brought into question the legality of the proposed ITO charter.

I would like to state the legal position there as I am convinced that it is.

First, referring to the provisions of the United Nations Charter regarding the Economic and Social Council, so far as here relevant, contained in chapters IX and X. Article 56 provides [reading]:

All Members—

that is, the nations who constitute the United Nations—

pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Now, article 55 states the purposes to be as follows [reading]:

The United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development.

Also, it shall promote solutions of international economic, social, health, and related problems; and international cultural and educational cooperation.

Article 57 of the Charter is quite important on the present question. It refers to the various specialized agencies, and I emphasize the following because it is important, and reads:

The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

Then comes a divisions as follows [reading]:

The Organization—

that is, the United Nations—

shall make recommendations for the coordination of the policies and activities of the specialized agencies.

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

The Economic and Social Council may enter into agreements with any of the agencies referred to in article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. The agreements are subject to approval by the Assembly.

Finally, we have article 63 which reads as follows:

It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Now, the scheme there contemplated left it free for the sovereign members of the United Nations to establish agencies as the Charter says, by intergovernmental agreement. The individual members of the United Nations, unless in some respect inconsistent with obligations assumed by acceptance of the Charter, are as free as they ever were to enter into treaties with other nations.

The proposed charter of the International Trade Organization would be an international compact or treaty standing for its validity on the power of the respective governments who enter into it, exercising their authority as governments. It cannot be thought that the Government of the United States was restricted by the charter from entering into trade agreements with other nations if authorized under the Constitution and statutes to do so. The relevant provisions of the United Nations Charter do impose upon the United Nations, as an organization, through the Economic and Social Council and through the member governments, the obligation to further the ends of economic and social progress and to improve conditions; that is the sole participation here of the United Nations.

Through the provisions of the Charter, it is placing its encouragement and using its medium for the promotion of the objectives stated in chapter X of the United Nations Charter, but the International Trade Organization Charter is being worked out in its terms by the independent action of the sovereign nations concerned in the negotiations.

I might illustrate the relationship, for example, of the United Nations to conventions entered into by the members of the United Nations. For example, in the field of atomic energy, in connection with the purposes of the Charter relating to disarmament, one of the pur-

poses as to which the charter states the General Assembly shall go into the principles regarding that matter, there are, as is well known, negotiations, discussions, proposals, with respect to international control, but the scheme contemplates from the beginning that what is agreed to depends upon an international agreement by the member governments within the framework of their own constitutional processes.

The United Nations is encouraging and giving impetus to progress in that direction through its own organization, in that case through both the General Assembly and the Security Council. It is not itself, unless granted that power by separate international agreement, the operating agency.

There are other illustrations that may be given. For example, the proposal now pending before the Senate for adherence by the United States to the International Refugee Organization. This is in the form of a convention or international agreement worked out with the assistance and through the medium afforded by the United Nations Organization, but depending for its operating responsibilities upon the provisions of the international agreement itself assented to by each of the members who do adhere to it under their own sovereign powers and constitutional processes.

Unless there are some questions about that, Mr. Chairman, I think I will rest on that statement of my conception of it.

The CHAIRMAN. Mr. Fahy, do you regard the organization as a sort of autonomous government within itself?

Mr. FAHY. No, sir; I would not go that far.

The CHAIRMAN. You say that it is a subordinate agency to the United Nations Organization?

Mr. FAHY. No, sir; I would not. I would say it is a specialized agency.

The CHAIRMAN. That is the intention, to make it a specialized agency?

Mr. FAHY. I suppose that it is. It will be brought into relationship with the United Nations as a specialized agency.

The CHAIRMAN. Mr. Hawkins, is there any question about bringing this organization under the United Nations as a specialized agency?

Mr. HAWKINS. That is the intention, I think.

The CHAIRMAN. Now, in taking that position as a specialized agency under the Economic and Social Council, how can the subordinate agency have greater power than the main agency?

Mr. FAHY. But there, Senator, it is not a subordinate agency, it is a specialized agency within the meaning of the Charter, when it negotiates the agreement for its relationship with the United Nations, as an independent agency.

Now, the terms under which it is related to the United Nations depend upon the terms of the agreement worked out between the organization, the specialized agency, and the United Nations.

So, "subordinate" is not quite the word.

The CHAIRMAN. But can the United Nations lift itself beyond its own powers by making an agreement with a specialized agency which operates as a satellite to the main organization?

Mr. FAHY. The United Nations cannot, by its own boot straps, lift itself beyond the terms of the Charter.

The CHAIRMAN. Yes, sir.

Mr. FAHY. A specialized agency is not limited by the terms of the charter. It may govern its relationships with the United Nations by the terms in an agreement with the United Nations.

Now, in making that agreement, the United Nations is bound by the Charter. The operation of the specialized agency is not limited to what the United Nations can do, it is determined by the agreement which the members of that specialized agency make among themselves as independent states.

The CHAIRMAN. It is your contention that from the time this Organization becomes effective, so far as the joining by the signatory members is concerned, that it will have the powers set forth in the charter?

Mr. FAHY. In its own charter.

The CHAIRMAN. Whether or not those powers exceed those granted to the United Nations in the same subject matter?

Mr. FAHY. That is correct.

The CHAIRMAN. Review again, please, your theory for that.

Mr. FAHY. The power of the United Nations in this field is in those several articles which I read from the Charter of the United Nations, and it is to recommend, for the coordination of policies and activities of specialized agencies, it is to promote high standards of living conditions, of economic and social progress, and the solution of international economic, social, health, and related problems.

This particular International Trade Organization was originally initiated by the United Nations; let us assume that it was originally initiated by the United Nations, because the United Nations is in the picture with respect to the Trade Organization. The United Nations would have authority to ask, request, or recommend to any group of nations which the United Nations thought played the dominant part in this field that they form an International Trade Organization.

Now, that would not be beyond the power of the United Nations—to instigate or promote or encourage such an international compact leading to an International Trade Organization.

The compact between the nations resulting in the operating body is free then to have in its organization such terms for its own operations as the nations themselves, parties to it, are willing and agree upon.

The CHAIRMAN. You contend that they could be inconsistent?

Mr. FAHY. No, sir; I would not say that, not that they could be inconsistent with the purposes of the United Nations Charter. In the operation they can be independent, except as the Organizations themselves, that is, the United Nations and the specialized agency, agree in the governing of their relationship between each other.

The CHAIRMAN. It was the intention that the Economic and Social Council should have no powers other than those that might be recommendatory?

Mr. FAHY. That is right.

The CHAIRMAN. Therefore, if this satellite organization, or this specialized organization, however you wish to characterize it, has greater than recommendatory power, is it consistent with the provisions of the Charter?

Mr. FAHY. Yes, Senator.

The CHAIRMAN. Explain that.

Mr. FAHY. As you state, the power of the Economic and Social Council is recommendatory, it has the power, therefore, to recommend the creation of such an organization, such a trade organization.

The CHAIRMAN. Are you saying now that it has a power to recommend an organization having greater powers than it has itself?

Mr. FAHY. Yes, sir; greater than recommendatory. The fact that the Economic and Social Council is limited to the power of recommendation does not limit the power of the Organization which it recommends should be created. The powers of the Organization created between the United States and other nations need not be limited to recommendatory power, although the Economic and Social Council power, speaking generally now, is itself limited to such matters as promotion of such organizations which are operating and not merely recommendatory.

The CHAIRMAN. Let us run through some of these articles of the Charter. I read article 55:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

(b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Now, I assume that the purposes of the proposed Organization fit those purposes without any serious conflict?

Mr. FAHY. Fits certain of those economic clauses.

The CHAIRMAN. So this is the type of organization that is contemplated by the statement of these purposes?

Mr. FAHY. The Trade Organization includes some of these purposes but not all, I would not say.

The CHAIRMAN. Let us see whether they are not all in here.

Mr. FAHY. I was thinking of health, for example.

The CHAIRMAN. Well, I say this is a larger blanket. Under the blanket is completely covered the Organization that we are talking about.

Mr. FAHY. I am sorry; yes, sir.

The CHAIRMAN. Article 56 reads:

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Now, is it not correct to say that the achievement of the purposes, those limitations which operate on the principal body, shall be principal limitations on the subordinate or satellite bodies?

Mr. FAHY. Yes.

May I interrupt you a moment, Senator?

The CHAIRMAN. Surely.

Mr. FAHY. The Congress of the United States, for example, passes a law authorizing the President to enter into trade agreements under certain standards. Now, the Senate or the Congress does not function with respect to the details.

The CHAIRMAN. That is right; it sets up the standards.

Mr. FAHY. The President enters into a trade agreement and sets forth the details.

The CHAIRMAN. Yes.

Mr. FAHY. And through the executive branch of the Government, those details are carried out.

The CHAIRMAN. Is there any contention that the President can set up a trade agreement that is not founded on the Trade Agreements Act?

Mr. FAHY. No, sir; unless he has other powers under the Constitution.

The CHAIRMAN. For our present purposes, we are not considering a strict Executive agreement; it is in no part a part of this discussion.

Mr. FAHY. No, sir; I think not.

The CHAIRMAN. So the President must find a constitutional or legal basis for whatever agreement he makes, and when he makes an agreement, he finds it in the Trade Agreements Act?

Mr. FAHY. That is correct; but the President's power is not limited, by analogy, to the recommendation of action.

The CHAIRMAN. The President gets such powers as the Congress delegates to him.

Mr. FAHY. Yes.

The CHAIRMAN. Now, perhaps, the analogy here is that any associated or satellite or subordinated agency gets its powers which are provided in this over-all Constitution, to wit, the Constitution of the United Nations?

Article 57 reads:

The various specialized agencies—

This is one of them; is it not?

Mr. FAHY. It might become one.

The CHAIRMAN. Are you assuming the possibility that this organization may not become a specialized agency of the United Nations?

Mr. FAHY. Yes, if a satisfactory agreement between the United Nations and the Organization is not arrived at; it is an outside possibility.

The CHAIRMAN. Is that the considered viewpoint of the State Department?

Mr. FAHY. The viewpoint of the State Department is that it shall become a part.

The CHAIRMAN. All that you are saying is that it might be handled a different way?

Mr. FAHY. That is right.

The CHAIRMAN. Are you saying that there is even a contingent plan to handle it a different way?

Mr. FAHY. No, sir.

The CHAIRMAN. So you are indulging in a speculation of abstract possibilities?

Mr. FAHY. No, it is more than that, Senator. Such an organization could be established under multilateral trade agreements without the United Nations.

The CHAIRMAN. Well, we will reach that in our next chapter. That involves another question that has been referred to you, but I think it is very important that right here and now we determine whether this proposed organization is going to be the type of organization con-

templated by the United Nations and will become related to the United Nations in the way prescribed in the United Nations Charter, or whether it is intended as an alternate contingency to bring it back here as something else.

Mr. FAHY. It is intended, as you first stated, to be brought into relationship with the United Nations.

The CHAIRMAN. We can lay that aside and not concern ourselves any more with it, or must that be a contingency to be brought to the Senate?

Mr. FAHY. I think the correct theory is that the power of the nations to enter into such an organization depends upon their own power and not upon the United Nations. The United Nations Charter, however, sets forth purposes and a means of relating such an organization in the way we are following.

The CHAIRMAN. I do want to get it double-riveted right here and now whether this matter will be brought back to us as a separate matter, operating as an independent body, or whether it will come back here as the type of organization which is envisaged in the United Nations Charter.

Mr. FAHY. I think if I were in your position, Senator, I would look upon it in this way: Here is an organization that is to be formed which, from the standpoint of the United States, must be satisfactory on its own.

Now, the purpose is that it shall be brought into relationship under the Charter with the United Nations in furtherance of the purposes of chapters IX and X of the United Nations Charter.

The CHAIRMAN. You are saying now that it will come back here as a part of the United Nations Organization?

Mr. FAHY. It is intended that it shall become an integral part. Now, that brings in the chronology.

The CHAIRMAN. I cannot accept your thesis from the standpoint of the Senate that this matter should be considered strictly on its own. I doubt whether there is any intent of the Senate to permit splintered, disconnected organizations.

I do not know any better way in which you could destroy the Charter than to start a lot of independent agencies floating around with greater powers than the United Nations has itself.

Mr. FAHY. I said it is the intention to bring it in.

The CHAIRMAN. You do not intend that it have greater powers than those which the United Nations Charter has?

Mr. FAHY. Yes, I do. I say that the Organization has powers—I mean the Trade Organization—has powers which are greater than those which the United Nations has. The United Nations cannot reduce duties. It can promote, encourage, coordinate an organization agreed to by international compact which has those powers.

The CHAIRMAN. Which, under your theory, might have greater powers than the main organization itself has?

Mr. FAHY. In operation, but not inconsistent with the purposes of the United Nations.

The CHAIRMAN. The end effect of that, I suggest, is to make the side shows more important than the main tent.

Mr. FAHY. Oh, no; I think not, Senator.

The CHAIRMAN. You will have a lot of sword swallowing acts going on here, and two-headed women, three-headed cow acts going on there, independent of the main organization. Pretty soon you will not have the main organization at all. You will have to look in a dozen different places and finally there will be so much overlapping and so much confusion that you will be unable to find the source of power.

Mr. FAHY. One looks to the agreement which is negotiated for the source of the power. One looks to the United Nations Charter for the source of the power of the United Nations.

As much as I am devoted to the United Nations as the keystone of our foreign policy, I cannot say, as a lawyer, that the United Nations can do the detailed things which are contemplated that such a trade agreement organization can do.

I might add that a purpose of the agreements between the United Nations and specialized agencies is to prevent the confusion and overlapping to which you refer.

The CHAIRMAN. Mr. Fahy, let me suggest to you that I have been trying to voice my own opinion—strictly my own opinion—that the Senate of the United States will not authorize the set-up of a lot of autonomous agencies running around loose with a greater power than the United Nations, and I have been trying unsuccessfully to lead you into a recognition of that, hoping that your path would be smoothed in the Senate.

Mr. FAHY. I understand.

The CHAIRMAN. But I do not want to lead you away from your honest, intellectual opinion as a lawyer.

Mr. FAHY. Yes. It turns upon what each of us means by "power." If we construe power to mean that it is within the power of the United Nations to promote, encourage, and enter into relationships with an organization that has the purposes of the ITO, I entirely agree.

The CHAIRMAN. Will you permit me to clarify that under my mental operation?

I am reading from the report of the Secretary of State to the President, on the Charter of the United Nations, dated June 26, 1945. I shall read from page 116 of this particular print, as follows:

On the other hand, the view was advanced that the further element in the Australian proposal calling for national action separate from the international organization went beyond the proper scope of the charter of an international organization and possibly even infringed on the domestic jurisdiction of member states in committing them to a particular philosophy of the relationship between the government and the individual.

The pledge as finally adopted was worded to eliminate such possible interpretation. It pledges the various countries to cooperate with the Organization by joint and separate action in the achievement of the economic and social objectives of the Organization without infringing upon their right to order their national affairs according to their own best ability, in their own way, and in accordance with their own political and economic institutions and processes.

To remove all possible doubt on this score, the following statement was unanimously approved and included in the record of the Conference (Report of the Rapporteur of Committee 3 of Commission II):

"The members of Committee 3 of Commission II are in full agreement that nothing contained in chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of member states."

It was no simple matter to hammer out these issues and to reach complete agreement among the 50 participating nations. The final results, however, justify the effort. The Charter opens the way for international cooperation in the economic, social, and related fields on a scale unknown in the past. And it safeguards at the same time the right of nations to live their own lives free from unwarranted interference.

Now, let me read you the practical interpretations given the Charter at the time the Charter was under hearing before the Senate Foreign Relations Committee, before the Senate ratified the treaty.

I am reading from page 309 of those hearings:

Mr. PASVOLSKY. We come next to another set of related chapters, the three chapters beginning with XI and going through XII and XIII. These chapters deal with the problems of non-self-governing territories.

Senator MILLIKIN. Before we get to those chapters, may I ask a question?

The CHAIRMAN. Senator Millikin?

Senator MILLIKIN. I notice several reiterations of the thought of the Charter that the Organization shall not interfere with domestic affairs of any country. How can you get into these social questions and economic questions without conducting investigations and making inquiries in the various countries?

Mr. PASVOLSKY. Senator, the Charter provides that the Assembly shall have the right to initiate or make studies in all of these economic or social fields. It is provided that the Economic and Social Council, through its commissions and its staff, would be assembling information in the fields that would be necessary for the performance of its duties. It is provided that the Economic and Social Council would arrange for reports from the specialized agencies, and presumably would arrange for receiving any kind of information that it might need. The Economic and Social Council is also given the power to make arrangements with the member states for reports as to steps taken to give effect to recommendations.

Senator MILLIKIN. Might the activities of the Organization concern themselves with, for example, wage rates and working conditions in different countries?

Mr. PASVOLSKY. The question of what matters the Organization would be concerned with would depend upon whether or not they had international repercussions. This Organization is concerned with international problems. International problems may arise out of all sorts of circumstances.

Senator MILLIKIN. Could the Organization concern itself with tariff policies of the various countries?

Mr. PASVOLSKY. The Organization would, of course, consider questions that arose out of tariff or commercial policies. But it is very important to note here that the Economic and Social Council can make recommendations to government generally, rather than to specific governments.

Senator MILLIKIN. Only to governments generally?

Mr. PASVOLSKY. Yes.

Senator MILLIKIN. The reports and recommendations naturally might refer to specific governments?

Mr. PASVOLSKY. Oh, they might refer to specific conditions; naturally.

Senator MILLIKIN. They would have to be built up out of investigations made of or in specific countries?

Mr. PASVOLSKY. Yes.

Senator MILLIKIN. Would such an organization concern itself with the various forms of discrimination which countries maintain for themselves: bloc currency, subsidies to merchant marine, and things of that kind?

Mr. PASVOLSKY. I should think that the Organization would wish to discuss and consider that. It might even make recommendations on any matters which affect international economic or social relations. The League of Nations did. The International Labor Office has done that. This new Organization being created will be doing a great deal of that.

Senator MILLIKIN. A recommendation along any of those lines, under the basic theory of the whole Organization, would have a powerful effect against an offending nation, would it not?

Mr. PASVOLSKY. The whole document is based on the assumption that recommendations by an agency of this sort would have considerable effect.

Senator MILLIKIN. Let me invite your attention, Doctor, to the fact that we are relatively a "have" nation, in a world of "have not" nations. Might we not find a great number of recommendations focused against us that could finally engender a lot of ill will and might lead to serious difficulties, assuming we did not care to correct them under the recommendations?

Mr. PASVOLSKY. Well, I do not think that there would be any more ill will engendered by the fact that a discussion of that sort takes place. Recommendations would be made to nations in general that certain practices would not be tolerated.

Senator MILLIKIN. Are you not providing means whereby complaints may be focused against ourselves in an official way?

Mr. PASVOLSKY. Complaints can be made at any time and in any way. What is important is that we are providing here a mechanism by means of which maladjustments can be corrected and, therefore, fewer complaints made.

Senator MILLIKIN. Would the investigation of racial discriminations be within the jurisdiction of this body?

Mr. PASVOLSKY. Insofar, I imagine, as the Organization takes over the function of making studies and recommendations on human rights, it may wish to make studies in those fields and make pronouncements.

Senator VANDENBERG. At that point I wish you would reemphasize what you read from the Commission report specifically applying the exemption of domestic matters to the Social and Economic Council.

Mr. PASVOLSKY. I will read that paragraph again.

Senator VANDENBERG. Yes, please.

Mr. PASVOLSKY (reading): "The members of Committee 8 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of Member States."

The CHAIRMAN. And, furthermore, whether they do involves no compulsion whatever, but is in the nature of recommendations to the States, and the States are perfectly free to take such recommendations or reject them.

Mr. PASVOLSKY. Quite right.

The CHAIRMAN. There is the limit of the power in the Charter of the United Nations over the field touched upon by the Organization that we are discussing.

Now, it is your contention that this Organization, being a related organization and the kind of organization contemplated in the charter, can have greater powers than the United Nations itself?

Mr. FAHY. If you let me define my use of the word "power."

The CHAIRMAN. Let us limit it to recommendations as opposed to sanctions.

Mr. FAHY. Yes, sir.

The CHAIRMAN. Let us take it from this standpoint, because I do not think it will be denied that the proposed organization has sanctions in it.

Mr. FAHY. The proposed Trade Organization.

The CHAIRMAN. That is what I am talking about.

Mr. FAHY. The proposed Trade Organization will have provisions under which separate nations, members of it, might agree under their own independent responsibility to take action which is binding upon them, which is not limited to recommendation; that is the way I will put it. But, that can only be done, Senator, if the United States, through its own constitutional processes, binds itself; that is what I mean by more than the power of the United Nations.

As is exposed in the parts that you read, the Economic and Social Council of the United Nations is limited to recommendation. I would add to recommendation, coordination and promotion—the other words of the charter. I think in the testimony the word "recommendation" was used as a short cut for that and kindred kinds of responsibility, but a treaty between the United States and England and France and any other number of nations, might bind the United States to do more than a recommendatory action, and an organization set up under compact may have relations with the United Nations.

The CHAIRMAN. Do those article contemplate the type of organization which we have here?

Mr. FAHY. Yes.

The CHAIRMAN. And, as you said a while ago, it is contemplated that this Organization shall be brought into the relationship contemplated by those two chapters of the United Nations Charter?

Mr. FAHY. Yes, sir.

The CHAIRMAN. Now, let us get to the crux of the matter.

Let us assume your theory. Let us assume, to my mind, a subordinate organization, and to your mind a somewhat independent related autonomous organization, let us assume that your theory is correct without any admission on my part that it is. Let us assume that in this Organization, related as it is to the United Nations, that you can put in provisions that go beyond the powers of the United Nations itself.

Now, I will ask you, How was the United Nations Charter brought back to Congress; was it brought back as a treaty or was it brought back as an agreement which might be voted upon by both Houses?

Mr. FAHY. As a treaty.

The CHAIRMAN. And was so approved?

Mr. FAHY. Yes, sir.

The CHAIRMAN. Does it not follow that if you set up an agency with greater powers than those set up in the treaty, that you will have to bring it back?

Mr. FAHY. No, sir.

The CHAIRMAN. Will you explain that?

Mr. FAHY. The fact that the Charter was subjected to two-thirds vote and the advice and consent rule under the Constitution does not mean that this Organization necessarily must be approved in the same manner. I will explain why I think that is true, but before I do so, I want to state very clearly, Senator, that I am not suggesting that it not be brought back to the Senate for two-thirds advice and consent.

The CHAIRMAN. May I interrupt without disrupting your continuity?

Whether or not it comes back that way or whether it comes back for action by both Houses, is something that both Houses will want to know about before it comes back, so let us reach an agreement as to how it is coming back.

Mr. FAHY. I was going to say something along that line.

That is an open question, as far as I am concerned. That decision, I do not think, need depend on a legal determination and I suppose will be, as the Senator suggests, made in consultation with the leaders of the respective Houses before the final method is adopted. On the legal point, I said "No," for this reason: the provisions with respect to trade agreements, that type of agreements between ourselves and other nations, historically from the very beginning, have been included among the agreements which have been considered valid if authorized by the concurrent vote of the two Houses (exhibit XVIII-C).

The CHAIRMAN. I would like to challenge that head-on. I would like to suggest to you that prior to the time of the Reciprocal Trade Agreement Act—and I am not arguing its merits now—the more or less uniform course of this Government was to bind its trade agreements in treaties.

Mr. FAHY. Mr. Chairman, I would like to submit some data to you on that, but I think that is not correct. I may be mistaken.

(Mr. Fahy subsequently submitted the material which appears as exhibit XI.)

The CHAIRMAN. I may be mistaken also, but I have given some study to it.

Mr. FAHY. I know you have.

The CHAIRMAN. Let me put it this way: If not invariably, very often our trade agreements, consisting of more or less routine matters, were incorporated in conventions or treaties; is that correct?

Mr. FAHY. I thought not, Senator.

The CHAIRMAN. By "trade agreements," I mean things having to do with customs practices, and consular proceedings.

If there is any question about that, all I have to do is to send over to my office for some six volumes on treaties.

Mr. FAHY. That is true.

The CHAIRMAN. Customs, duties, and consular matters.

Mr. FAHY. That is true.

The CHAIRMAN. The whole subject of trade.

Mr. FAHY. But paralleling that, there has been, from the very beginning, a series of acts of Congress authorizing the President to take action in this general field.

The CHAIRMAN. Of course, because the Constitution gives the Congress, which means both Houses of Congress, specific jurisdiction over duties, customs matters, and foreign trade.

Mr. FAHY. And foreign trade.

The CHAIRMAN. Therefore, it is within the general jurisdiction of Congress to delegate the administration of its power to the President. The proper distinction, I suggest, is that when we go beyond these conventional matters and commence to surrender sovereignty, that is the point where the proper field of treaty comes in.

Mr. FAHY. Due to the fact, as the Senator points out, that the Congress, under the Constitution—not the Senate alone—has broad powers in this area, and due to the fact that the President, under the Constitution, has broad powers in the conduct of foreign affairs, the combination of those two powers, as I understand, by which the Government as a whole conducts its business, leads to the conclusion that if the Congress as a whole, having those broad powers in this field, approves or acts in combination with the President's exercise of his powers in the field of foreign affairs it would be valid under the Constitution.

The CHAIRMAN. Of course, you will agree with me that the President's powers as such are independent of the powers delegated to him by the Congress in administrative matters. Also, I believe you will agree that there is no more fruitful subject of difference of opinion than the scope of Presidential power. For present purposes, we need not consider that, because the President, as you have stated, is not going to act under any real or assumed power to complete a purely Executive agreement on this subject.

Mr. FAHY. No, sir. The charter will be submitted.

The CHAIRMAN. So we can pass that and limit ourselves to the powers of Congress.

I am simply suggesting to you that despite the fact that the Congress has jurisdiction over these matters, that whenever you come to a matter where there is a substantial disparagement of our sovereignty, wherever you come to a matter where sanctions may be in-

voked against the United States by an international body, then I respectfully suggest that you have probably entered the legitimate field for treaties.

All I am trying to find out now, whether under your theory, which I regret has been advanced here, will this matter come back as a treaty, or will it come back for the attention of both Houses?

Mr. FAHY. I do not know, Senator.

The CHAIRMAN. I hope that before this committee makes up its report, that we may have the statement of the State Department policy on that subject. It will be very important and I am sure that Congressman Gearhart will confirm that it will be important to the House and I am sure it will be important to the Senate. Do you not agree, Senator Johnson?

Senator JOHNSON. Yes, sir. We will want to know.

The CHAIRMAN. We will want to know the facts.

Senator JOHNSON. We will want to know the facts, because we will want to know whether we are surrendering any of our sovereign powers or whether this is within the limitations of changes in duties and tariffs.

The CHAIRMAN. Exactly.

Mr. FAHY. Yes.

Now, Senator, you read a rather lengthy explanation when the Charter of the United Nations was before the Senate, and you have indicated to some degree that you regret that I take a position which is somewhat inconsistent with your conception of our relationship to the United Nations.

The CHAIRMAN. Only because I think it will add to your difficulties, not to mine.

Mr. FAHY. Let me enlarge on that a little bit because I am convinced in my own mind and I think that I can convince you that nothing that I have said in this matter in any way either derogates from the position which you read with respect to the United Nations or to the place that the United Nations should hold in the consideration of these matters by the Senate.

The statement of the President, which you read, refers to coordination of joint and several action by the United Nations.

The CHAIRMAN. And it emphasizes the recommendatory limitations of the Economic and Social Council.

Mr. FAHY. That was Mr. Pasvolsky's statement, but the President spoke of joint and several action. This is joint action of nations, several action of nations which is not precluded under the charter.

The CHAIRMAN. I believe you are under some misconception as to what I read; it was the Secretary's report. Let me read from the bottom of page 115:

To remove all possible doubt on this score, the following statement was unanimously approved and included in the record of the Conference (report of the Rapporteur of Committee 8 of Commission II).

This is not the hearing before the Foreign Relations Committee of the Senate, this is the Secretary of State's report to the President, and it came before the Senate and we relied upon it as we relied upon the hearings for interpretation.

Mr. FAHY. Yes, sir.

The CHAIRMAN. And any judicial body would rely on those sources or interpretations. I continue the quotation, as follows:

The Members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of Member states.

It was no simple matter to hammer out these issues and to reach complete agreement among the 50 participating nations. The final results, however, justify the effort. The Charter opens the way for international cooperation in the economic, social, and related fields on a scale unknown in the past. And it safeguards at the same time the right of nations to live their own lives free from unwarranted interference.

Now, let me at that point say that at the end of the last session of Congress when we were considering adhering to the International Court of Justice, we reserved jurisdiction on domestic matters, and let me suggest also that heretofore customs and duties under international law have been considered as domestic matters.

Mr. FAHY. But subject to treaty.

The CHAIRMAN. Subject to treaty, of course.

Mr. FAHEY. That is what is proposed here.

The CHAIRMAN. You can bring anything you want to in here as a treaty.

There is not much limit to what we can do in our treaty making.

Mr. FAHY. That is what I wanted to clear up, Senator. The fact that the Charter says—

The CHAIRMAN. But the corollary to that is that you cannot do by acts of less formality the same thing that should be done by the treaty where you are disparaging the sovereignty of your own country. That is the proper field of a treaty.

Mr. FAHY. I think there is no disparagement of sovereignty involved. But there are two points which the Senator mentions. Relying on the domestic-jurisdiction provision of the Charter, that is a limitation upon what the United Nations might do. There is nothing in that provision which prevents the United States from continuing as it has throughout its history to enter into international agreements with respect to trade and duties and imports and embargoes. So that the domestic-jurisdiction clause is not relevant to that kind of action.

The CHAIRMAN. Let me ask you this: Passing the question of power, passing the question of what we could do if we wanted to, by treaty, as a matter of policy and as a matter of good faith, and in consideration of our pledges so far as the United Nations are concerned, should we commence to set up offshoot organizations that have greater power than the United Nations itself?

Mr. FAHY. We should, in my opinion, Senator—

The CHAIRMAN. Is it not perfectly clear that by that process of cannibalization pretty soon you do not have a United Nations Organization, if we have one now?

Mr. FAHY. We should do nothing, unless it is terribly important, to diminish the prestige of the United Nations, but we do not, Senator. Rather to the contrary, when we go forward, under the encouragement and recommendation of the United Nations itself, and try to make more broad in its scope trade agreements which heretofore have not been so much on a multilateral as a bilateral basis.

The CHAIRMAN. I would not deny the right of—

Mr. FAHY. There is no derogation to the United Nations there at all. Indeed, chapter X of the Charter of the United Nations, in creating the Economic and Social Council, had the purpose of promoting economic development which includes carrying on the thing that is here being sought to be done.

Now, that is not creating in any invidious sense a lot of satellites which sap the strength of the United Nations. It is instituting, in the complex situation of the world, organizations which are not inconsistent with the United Nations, by which the nations can promote the purposes of the Charter of the United Nations, and at the same time so far as we are concerned, promote the purposes in which the United States is interested as the greatest commercial nation in the world.

Now then, the second point which you made, that if it is true that this organization will have operating powers under treaty which lift the matter out of the so-called domestic jurisdiction clause of the Charter, must it not be treated with such dignity as to require two-thirds approval of the Senate? That was the second point. I say not necessarily, because I cannot read the history of the United States in the international field with respect to matters kindred to this, without being convinced that if the two Houses of Congress approved such a negotiation made by the executive branch of the Government it would be valid under the Constitution.

There is a choice of method—I am not suggesting how it should be done for one moment, I am laying aside the question of policy, maybe it should come to the Senate, but I am speaking simply as a matter of constitutional law—I am convinced in my own mind, from the course of our history and the course of Congress in the matter in relation to the powers of the Executive commingled with the powers of the Congress that that exercise of the full power of Government would be considered valid under the Constitution.

And the provision of the Constitution which says that the President may make treaties by and with the advice and consent of the Senate, from practice and history which surely we are not going to attempt to repeal now, is not exclusive in the international compact area of validity. If so, much that we have done in the past, and with the full approval of Congress, both Houses, was unconstitutional, and I do not think that can be said.

The CHAIRMAN. I am not arguing against the proper powers of both Houses of Congress in the constitutional sphere that has been committed to them.

Mr. FAHY. That includes foreign trade.

The CHAIRMAN. I believe you will agree with me that there are many twilight zones as to whether a matter should properly be considered as a treaty, or wheter it should be submitted to the action of both Houses of Congress. But I am suggesting to you that when the United Nations Charter, with less power in it than this organization, came here as a treaty, surely an organization with greater powers should follow the same course if there is any consistency, or any wisdom of policy, in any of our actions.

Mr. FAHY. But with greater power, you say. But look how broad was the scope of the full powers of the United Nations under the Charter, and, in adhering, what a step that was in United States history.

Now, if ever there was a matter that was to be submitted to the Senate within the meaning of the Constitution, there it was. But because this Trade Organization might have some power which the Economic and Social Council does not have, does not mean that this Trade Organization has more solemn powers than the United Nations.

The CHAIRMAN. Mr. Fahy, it was represented to us again and again, and I can bring you the speeches that were made in the Senate, I can bring you the speeches from the executive department, that foresaw and declared that the chapters having to do with the Economic and Social Council might ultimately develop into the most important chapters of the United Nations Charter.

Mr. FAHY. And I agree.

The CHAIRMAN. Is it not clear that, the United Nations, if it succeeds, will succeed on a peacetime basis?

Mr. FAHY. Yes.

The CHAIRMAN. And when it is on a peacetime basis, the things of importance are those that have to do with economics and social affairs.

Mr. FAHY. I agree entirely with that.

The CHAIRMAN. All right. So I am simply resisting any suggestion that there may be in what you have said that would tend to belittle the overriding importance of those two chapters in the United Nations Charter.

Mr. FAHY. I do not intend to do that. I am in entire agreement with you, Senator, that in the long run the best hope of peace is the world-wide improvement of economic, social, and political matters.

The CHAIRMAN. We accepted chapters 9 and 10 on the representations that the powers therein mentioned would be exercised only on a recommendatory basis. Now I am suggesting that if you set up a satellite, or a related, or an autonomous organization covering the same field, that perhaps should be brought back here as a treaty.

But we cannot conclude the debate on that here.

What I want is a statement from the State Department as to whether it will bring it back as a treaty, or for the action of both Houses of Congress. Will you try to get us that kind of a statement before we bring this matter to the attention of the Senate?

Mr. FAHY. I will communicate that to the Secretary.

The CHAIRMAN. All I ask you to do is try.

Mr. FAHY. Yes, sir.

(The letter was later received for the record.)

APRIL 8, 1947.

HON. EUGENE D. MILLIKIN,

Chairman, Committee on Finance, United States Senate.

MY DEAR SENATOR MILLIKIN: Mr. Fahy has informed me of your request, made during his appearance before the Committee on Finance on March 25, that the committee be advised as to whether the proposed charter for an International Trade Organization will be submitted to the Senate as a treaty for its advice and consent or to both Houses of the Congress for appropriate legislation.

As you are aware, the forthcoming meeting at Geneva is a meeting of the second session of the Preparatory Committee of 18 countries, established by the Economic and Social Council of the United Nations to prepare a draft charter for consideration by an International (World) Conference on Trade and Employment. At the end of the Geneva session, the Preparatory Committee will submit the draft charter to the Economic and Social Council which, presumably, will thereafter fix the date and place of the World Conference. Upon completion of the work of the World Conference, the charter will be referred

to the governments of the world for acceptance in accordance with their respective constitutional processes. In the case of the United States, the charter will be submitted to the Congress. However, in view of the steps outlined above which have yet to be taken, no decision has been made as to the form in which congressional approval will be asked. You will appreciate that a determination on this issue may very well be affected by the manner in which the discussions yet to be held proceed, and even more by the exact nature of the provisions which emerge from those discussions.

I should like to assure you that this matter will be further discussed by the Department with both the President and the Congress, with a view toward determining the appropriate manner in which congressional approval should be sought.

Sincerely yours,

DEAN ACHESON, *Acting Secretary.*

The CHAIRMAN. Now we had another legal question. The Charter provides for a provisional organization roughly similar to that of the Charter itself, to act in the interim between the end of the conference at Geneva and the coming into full effect of the proposed charter.

I suggested, in order to develop an opinion on it, that there is no authority whatever for entering into that agreement, that it is not authorized by the Charter of the United Nations, that it cannot be fairly implied from the Reciprocal Trades Act, that its powers are so great, extraordinary and unprecedented, that no power to do a thing of that kind could be implied in any agency of Government.

Mr. FAHY. I rely primarily there upon the Trade Agreements Act of 1934, as amended. The principal basis on which I would rely there is this: That that act is congressional authorization to the President to enter into agreements with other governments and instrumentalities thereof.

Now, you first have the question, which I understand the committee has been concerned about, whether the Act authorizes multilateral agreements. Assuming for the moment that it does, and a multilateral trade agreement is entered into, containing detailed schedules of duties and concessions; and tariff provisions, or comparable provisions, customs provisions, it follows that the Government of the United States on its part, and other governments on their part, have to have some administrative machinery or means of, I use it reluctantly "policing" the agreement. It could be done on our part by the President designating the proper officials in the Government as representatives for the United States.

The CHAIRMAN. He has designated the Tariff Commission in a recent Executive order to police a certain part of the system.

Mr. FAHY. Yes, in arriving at the right conclusion on the merits of each of those concessions that are made. But a multilateral agreement needs some administration.

Now, this interim committee is that.

The CHAIRMAN. May I interrupt? What multilateral agreement are you speaking of? This particular multilateral agreement, the Charter, will not be in existence until after the provisional organization ends its life.

Mr. FAHY. I thought, Senator, you were speaking of the terms in the proposed draft agreement, which is as contemplated—I am not speaking of the Charter, but in addition there was a proposed draft

reciprocal trade agreement. It was a committee created in that agreement which I understood you were speaking of.

The CHAIRMAN. No, Mr. Fahy.

Mr. FAHY. Was I incorrect in that?

The CHAIRMAN. We have here a provision, that from the time that we end our reciprocal trade agreements negotiations at Geneva until this proposed charter comes into effect, there shall be a provisional organization having roughly the same powers that the Organization will have when this proposed charter does come into effect.

Mr. FAHY. It will have some of the same powers.

The CHAIRMAN. Almost all of them. We will go into that.

Let me put my proposition to you in terms of an assumption. Assuming that the proposed provisional Organization has roughly the same powers with all or some of the same sanctions that the main Organization will have when it comes into being, what is the authority for entering into that provisional agreement without the consent of Congress, either of both Houses or of the Senate, as a treaty?

Under the theory which you have advanced, if the President can do that under the Trade Agreements Act, I suggest to you, sir, that he can do the same thing so far as the main charter is concerned. Why bother with the Congress at all?

Mr. FAHY. Answering your question as you put it, I should say it is very doubtful at the present to do what you suggest. But I think if in Geneva, under the existing legislation, the Trade Agreements Act, there is entered into aside from the charter which is to be submitted and sent to Congress, a trade agreement presently authorized by acts of Congress, an interim committee, if that trade agreement is multilateral, may be created to assist in the administration of that trade agreement.

The CHAIRMAN. Mr. Fahy, you are assuming a case that is somewhat different from the exact proposal which is before us. The exact proposal which is before us is to set up a provisional organization in most respects similar to the ultimate organization. But there is no proposal to bring that provisional government back to the Congress for any form of consent.

Mr. FAHY. No. It goes out of existence if Congress approves the permanent one.

The CHAIRMAN. So the question is, by what authority is such provisional organization entered into?

To put it another way, if we must have the consent of Congress in one form or another to make the main agreement effective, on what theory can we enter into a provisional interim government having roughly the same powers without going through the same steps?

Mr. FAHY. I think if it had roughly the same powers, the same procedure should be followed. But the proposed agreement, as distinct from the charter, under which the committee, the interim committee would be set up, omits from it most of the provisions of the charter, and particularly those provisions of the charter which are more removed from the business of the Trade Agreement Act, that is, customs and duties.

I should say this to the committee regarding that agreement: It is purely a working draft as it is printed now. I have had no connection with the drafting of that agreement, but I know the Department's

position on it. It has not been even tentatively agreed to by the United States. It takes as a basis of discussion certain provisions of the Charter and moves them over into the proposed trade agreement trying to limit, through some approximation, those thus transferred into the trade agreement to those closely related to the authority granted in the Trade Agreement Act.

Those provisions will need very careful going over by the United States before it is willing to accede to them under existing authority in the Trade Agreement Act. They have to be reviewed under the light of sound judgment as to what is permissible without further authorization of Congress.

The CHAIRMAN. Of course, Mr. Fahy, what this committee would like to know is whether the State Department will give its assent at Geneva to going ahead with that provisional government as it has been proposed and as has been set out in the documents which have been supplied us.

Mr. FAHY. I can say this much now, Senator, that in the form in which it has been proposed, including, by reference, bodily, so many provisions of the proposed charter of the more permanent organization, it will not be approved—not in the form in which it now is.

Certain reservations were specifically made when it was originally drafted as a working paper. It is still a working paper. We have analyzed the provisions in terms of existing laws of the United States. I would be glad to leave with the committee a memorandum.

Some of them certainly, I think, are not presently authorized by the laws of the United States. I must say, however, that I am sure the Senator will recognize, the President himself has powers in this field which are distinct from acts of Congress. He has included, for example, in the recent Executive order provision that all agreements entered into must include a most favored nations clause.

The CHAIRMAN. That is clearly pursuant to the reciprocal trades agreement. There is clear authority for that.

Mr. FAHY. I think it is.

Now, such an article as that is in this proposed agreement. There are other articles in the proposed agreement which are entirely consistent with the present United States policy, as has been approved by Congress. There are others that might not be.

The CHAIRMAN. All that we can go on, is to take a look at it the way it has been submitted to us.

Mr. FAHY. Of course.

The CHAIRMAN. Will the State Department furnish us with some sort of a statement deleting what it considers to be the questionable matters so that we will know what will come up for negotiation in Geneva? May we count on that?

Mr. FAHY. Senator, all of it, being in the working instrument which has been distributed, I suppose will come up for negotiation. But we can give you our position with respect to them.

The CHAIRMAN. That is exactly what we want. We want to know what position the State Department will take as to that proposed provisional plan with especial respect to those provisions which it will insist be deleted, and those provisions which it will continue to promote.

Mr. FAHY. I suppose the State Department would probably want some qualification, to safeguard its bargaining power at Geneva, that

there should not be published now just what its position is going to be on each of these provisions. But we will give you a memorandum, Senator, analyzing it from the standpoint of what we see as present authority, and if it does not fill what you think you should have, we will endeavor to supplement it.

The **CHAIRMAN**. What we want to know is what the position of the State Department will be, whether you will continue to promote such an arrangement at all; second, if you intend to promote such an arrangement, what the clauses of it will be, which is another way of saying what clauses in the proposals now existing that you will insist be deleted.

Will you give us that, please?

Mr. **FAHY**. Yes. I think I can say now that it is the present position of the Department that some interim organization will be supported, but the powers that it has is still a subject of negotiations.

The **CHAIRMAN**. You realize we are helpless to analyze something that is not before us. We are helpless to analyze an agreement that may have serious important deletions before it finally comes upon for approval in Geneva.

Mr. **FAHY**. It is now being negotiated under the President's powers to negotiate, principally the powers which Congress has given to the President in the Trade Agreements Act. That is, the obligations should not exceed those powers. That is what it is. You want to know the position on particular provisions.

The **CHAIRMAN**. Without any commitment as to details, I think you might find some support in the Reciprocal Trades Act for some provisions in a provisional arrangement. But when you fall back upon the President's general powers, as President of the United States, there you get into an enormous field of controversy and it would be profitless for us to go into that here.

Have you any other observations, Mr. Fahy?

Mr. **FAHY**. No, sir. Nothing else, thank you.

The **CHAIRMAN**. Mr. Harry Hawkins?

STATEMENT OF HARRY HAWKINS, ECONOMIC COUNSELOR, AMERICAN EMBASSY, LONDON, ENGLAND

Mr. **HAWKINS**. Yes, sir.

The **CHAIRMAN**. Mr. Hawkins, I believe you are taking over in the absence of Dr. Wilcox?

Mr. **HAWKINS**. That is right.

The **CHAIRMAN**. We are now approaching chapter 5, on customs, quotas, restrictions, and limitations of all kinds, so I believe it would be profitable if you would give us the benefit of a sort of capsule review of world trade conditions.

What countries, for example, are prepared to export, what they want to import, the monetary difficulties involved in exportation and importation, the difficulties inherent in the disorganization of nations which formerly had an important part in world trade. Those are merely suggestions. Take your own head on it and give us some general information.

Mr. **HAWKINS**. Senator, I had not thought of making a statement on that particular subject but I will do my best.

The CHAIRMAN. Go ahead. If you say anything that you should not say, we will let you correct the record.

Mr. HAWKINS. I would say the major difficulty in connection with foreign trade, our foreign trade and that of other countries, arises out of the balance of payment difficulties in which many countries are in.

As long as those balance of payment difficulties exist their ability to relax restrictions on trade is very seriously impaired. Take, for example, the position of the United Kingdom.

The CHAIRMAN. Would you permit me an interruption bearing on the point that you are developing? I have a statement here pursuant to a request for information from the Department of Commerce, that was sent to the committee by Thomas Blaisdell, Jr., Assistant to the Secretary, for International Trade. One part of the material attached to the letter is "A summary of import license and exchange control regulations of principal foreign countries."

I believe it would be helpful to the record if we got that in right now, and I believe it is right along the line you are talking about.

(The information referred to is as follows:)

DEPARTMENT OF COMMERCE,
OFFICE OF INTERNATIONAL TRADE,
AREAS BRANCH.
March 1947.

SUMMARY OF IMPORT LICENSE AND EXCHANGE CONTROL REGULATIONS
IN PRINCIPAL FOREIGN COUNTRIES

In many countries foreign goods may not be imported unless covered by an import permit which must be obtained by the importer and in certain cases must have been granted before the order for the goods has been placed. Also in many countries, due to the extreme scarcity of foreign exchange, particularly dollar exchange, the authorities require that an exchange permit be obtained before the goods may be paid for. Before shipping his goods, the exporter should make certain that the importer has obtained these permits, if required. He should insist upon being advised as to the numbers of the documents.

The following tabulation of the import and exchange permits required in foreign countries has been prepared as a guide to exporters regarding these regulations. More detailed information may be obtained by writing the Areas Branch, Office of International Trade of the Department of Commerce.

| Country | Is import permit necessary? | Is exchange permit required? |
|--------------------------|--|---|
| Argentina..... | No, except for a selected list of commodities. Certain products are subject to import quota. | Yes, for all imports. |
| Australia..... | Yes..... | Yes. |
| Austria..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Belgium..... | Yes, for about one-fourth of the customs tariff. ¹ | Yes. |
| Belgian Congo..... | Yes..... | Yes. |
| Bolivia..... | Yes..... | No. Import permit ² carries the right to foreign exchange. |
| Brazil..... | For rubber goods, jute bags, and used machinery only. | Yes. ¹ |
| Bermuda..... | | |
| British East Africa..... | | |
| British Malaya..... | | |
| British West Africa..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| British West Indies..... | | |
| British Guiana..... | | |
| British Honduras..... | | |
| Bulgaria..... | Yes..... | Yes. |
| Burma..... | Yes..... | Yes. |
| Canada..... | For certain products only. ¹ | Yes, freely granted for imports from the United States. |
| Ceylon..... | No..... | Yes. |

¹ See footnotes at end of table.

| Country | Is import permit necessary? | Is exchange permit required? |
|-----------------------------|--|---|
| Chile..... | Yes; must be obtained prior to shipment of goods. | Yes; in the form of a notation on the import permit. |
| China..... | Yes. Certain goods are also subject to quota allocation. ¹ | Yes. Exchange is made available through approved banks for licensed imports. ⁴ |
| Colombia..... | Yes; monthly quotas..... | No. Import permit carries the right to foreign exchange. |
| Costa Rica..... | No; except for goods subject to United States export control. | Yes. Foreign exchange is rationed. |
| Cuba..... | No..... | No. |
| Czechoslovakia..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Denmark..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Dominican Republic..... | No..... | No. |
| Ecuador..... | Yes; must be presented in order to obtain the consular invoice. | Yes. Import permit carries the right to foreign exchange (Central Bank of Ecuador). |
| Egypt..... | Yes. Unlicensed imports are subject to confiscation. | Yes. Import permit carries the right to foreign exchange. |
| Eire..... | For a few products only ¹ | Yes. |
| El Salvador..... | No..... | No. |
| Finland..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| France..... | Yes; obtainable for "essentials" only. | Yes. Issued simultaneously with the import permit. |
| French Colonies..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Germany..... | No private trade..... | No private trade. |
| Greece..... | Yes. Permits granted only for limited number of essential products. | Yes. Import permit does not carry the right to foreign exchange. |
| Guatemala..... | No..... | No. |
| Haiti..... | No..... | No. |
| Honduras..... | For radios, radio parts and transmitters only. | Yes. |
| Hong Kong..... | Yes..... | Yes. A permit to purchase foreign exchange must be obtained from the Finance Department prior to the granting of an import permit by the Hong Kong Customs authorities. |
| Hungary..... | Yes..... | Yes. |
| Iceland..... | Yes..... | Yes. Unless otherwise stated or the permit carries the right to foreign exchange. |
| India..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Iran..... | Yes, except for a few products ¹ | Yes. |
| Iraq..... | Yes. Goods exported before a license is obtained are confiscated. | Yes. Permits are obtained through licensed dealers. |
| Italy..... | Yes..... | Yes, through the Bank of Italy or its agents. ⁴ |
| Japan..... | No private trade..... | No private trade. |
| Korea..... | do..... | do. |
| Liberia..... | For arms and ammunitions only (See Belgium) | No. |
| Luxembourg..... | Yes, for certain products ¹ | No. |
| Mexico..... | Yes..... | Yes. |
| Morocco (French)..... | Yes..... | Yes. |
| Netherland East Indies..... | Yes, for the few nongovernment purchases. ¹ | Yes. |
| Netherland West Indies..... | Yes, quota system..... | Yes. |
| Netherlands..... | Yes..... | Yes. |
| Newfoundland..... | No, except for food products..... | Yes. Import permit carries the right to foreign exchange. |
| New Zealand..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Nicaragua..... | No, except for luxury or "Superfluous goods." An import recommendation is necessary for goods subject to United States export control. | No. |
| Northern Rhodesia..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Norway..... | Yes..... | Yes. Import permit carries the right to foreign exchange. |
| Palestine..... | Yes. Goods exported before the importer obtains the import permit will be confiscated. | Yes. Import permit carries the right to foreign exchange. |
| Panama..... | No..... | No. |
| Paraguay..... | No..... | Yes. ¹ |
| Peru..... | Yes..... | Yes. |
| Philippines..... | No..... | No. ¹ |
| Poland..... | Yes..... | Yes. |

See footnotes at end of table.

| Country | Is import permit necessary? | Is exchange permit required? |
|--------------------------------------|---|---|
| Portugal | No, except for a few products ¹ . . . | Yes. Usually granted for United States goods, except for goods similar to. ² |
| Portuguese Colonies (except Angola). | Yes | |
| Angola | No, except certain products ¹ . . . | Yes. |
| Rumanda | Yes | |
| Saudi Arabia. | No | No. |
| Siam | No. Import licenses have been discontinued. | Yes. Exchange will be granted, if available, to cover priority imports. |
| Spain | Yes | The necessary import permit does not necessarily carry the right to foreign exchange. |
| Southern Rhodesia | No, except for a few products ¹ . . . | Yes. |
| Spanish colonies | Yes | Same as Spain. |
| Spanish Zone of Morocco. | do | Do. |
| Sweden | Yes, for foods and for a wide range of other products. ¹ | Yes; nominal exchange control in operation. |
| Switzerland | Yes | Yes. Import permit carries the right to foreign exchange. |
| Syria and Lebanon. | do | Yes. |
| Tangier | No | No. |
| Turkey. | Yes | Yes. Special exchange license from the control office. |
| Union of South Africa. | No, except for a few products | Yes. Exchange permits are easily obtained. |
| United Kingdom. | Yes, except for a few products ¹ . . . | Yes. |
| Uruguay. | Yes | No. Import permit carries the right to foreign exchange. |
| U. S. S. R. | Yes. Importing government agencies responsible for securing own permit. | Yes. All exchange allocated by U. S. S. R. State Bank upon receipt of import permit. |
| Venezuela. | No, except for 18 tariff items ¹ . . . | Import permit when required, authorizes foreign exchange. |
| Yugoslavia. | Yes | Yes. |

¹ American exporters may obtain information regarding the import controls on their products by writing the Areas Branch or one of the field offices of the Department of Commerce.

² All exchange transactions amounting to more than 20,000 cruzeros require an exchange permit from the Banco do Brazil.

³ See Foreign Commerce Weekly for Jan. 4, 1947, for details of China's import controls.

⁴ See Foreign Commerce Weekly for Jan. 24, 1947, for details of China's exchange controls.

⁵ The Importers pay 100 lire to \$1 for his exchange, and also pay into the Italian Treasury 125 lire for each 100 lire paid for his imports as a subsidy for exports.

⁶ Except for purchases by the oil companies, trade is handled by the Government.

⁷ Importers must conclude a contract for purchase of exchange with the Bank of Paraguay before purchasing abroad.

⁸ A foreign funds control office is established in Manila, but blanket licenses are issued to banks for exchange transactions by bona fide firms.

⁹ Drafts, in some cases, are liquidated by escudo checks on Portugal.

Senator JOHNSON. It looks like the world is full of isolationists.

The CHAIRMAN. It is full of isolationists, and of course, the problem is how this charter is going to break that down.

Mr. HAWKINS. Would you want me to continue with my statement?

The CHAIRMAN. If you please.

Mr. HAWKINS. What you read illustrates the point that I was going to make, that the great difficulty in developing international trade for the next few years arises from the balance of payments difficulties.

In the statement you read, the exchange permit is a very common requirement.

The motive for the restriction in the case of an exchange control is financial. That is why it is put on. It is to ration available foreign-exchange earnings.

The point I would like to make is that while that is its purpose, its effect is protective. It cannot help but be, when imports are restricted to conserve foreign exchange because a product is available at home, it necessarily protects the industry that is producing that product.

That is one of the serious consequences of a long-run nature, from the standpoint of the development of our own foreign trade, with which we need to concern ourselves.

Take the position of a country like the United Kingdom, which is a major country, and has balance of payments difficulties in a very acute form. Here is substantially its external financial position. I would like to give you the picture in very round figures.

Prewar Britain imported about 800,000,000 pounds sterling worth of goods. Now, for that country, and in varying degrees it is true of any country—

The CHAIRMAN. Is that the British Empire?

Mr. HAWKINS. The United Kingdom only.

—the amount of imports is a very close index of British living standards. That is what people consume, because they depend so largely upon foreign sources of supply, food, raw materials, nearly everything.

They earn that 800,000,000 pounds sterling worth of goods in this way; again these are very rough figures, but I am sure they are substantially right: They exported goods worth 500,000,000 pounds sterling, they earned 200,000,000 pounds sterling from foreign investments, and they earned 100,000,000 pounds sterling from shipping earnings, making 800,000,000 pounds.

The other items I am just canceling out, for example, the figure of imports was a little more than that, and there were earnings to offset it, like earnings on insurance, and that sort of thing.

When the war came along, particularly after lend-lease, the British converted very fully to direct production for war purposes, shells, and other materials that went directly into the war, and they pretty well abandoned their export markets. In other words, they did not need to try to earn foreign exchange to finance their needed imports because lend-lease made it up, and this enabled them to convert more fully to war production. The result was that when the war ended their exports were way down. They were running at the rate of only about a third, prewar. That 500,000,000 pounds sterling that they earned by exports had shrunk, and at the end of the war was running at the rate of about a third of that figure.

They had also liquidated foreign investments during the war, in the early part of the war particularly, so that the return from foreign investments was down another 100,000,000.

Consequently at the end of the war their foreign exchange earnings were falling short of the amount necessary to earn that 800,000,000, by some 400 or 500 million pounds sterling.

They needed time to recover their export trade, which is the big item in their earnings. That involved reconversion from a pretty fully converted production, which would take time, and they had to recover their export contacts and export outlets. Time was required for that.

The other item, the loss from foreign investments, was a permanent loss. That had to be made good by increased exports, over and above what they were previously.

Now, as I said, it would require a good deal of time, several years, to recover their foreign markets on that scale. In the meantime, the American and Canadian loans would tide them over.

The CHAIRMAN. The British loan?

Mr. HAWKINS. The Canadian loan, too.

The deficit, at the time of the loan negotiations, their estimated deficit for the first year, 1946—the negotiations were in 1945—was 750,000,000 pounds and they figured on a deficit in their balance of payments for the next 2 years of about 500,000,000 pounds more, making 1,250,000,000 pounds. That large estimate of the expected deficit, in relation to the other figures I have given you, is to a large extent explained by the higher price levels, postwar as compared to prewar.

Now, taking the United Kingdom as a more or less typical case all I am getting to is this: They cannot import freely. They cannot say "We will take off all our restrictions and let people import all the luxuries they like."

They cannot do it because they would soon use up the loan. It would not cover the gap until they can get their accounts into balance, and then they would be in a bad way.

The CHAIRMAN. If I may interrupt here; they are using the loan for pure consumptive necessities, at least as to a part of it, rather than for rehabilitation that they had in mind.

Mr. HAWKINS. A great part of it, certainly. I have not the exact figure. A great part of it certainly goes for the daily things of life that they are consuming.

The CHAIRMAN. That is what I am talking about.

Mr. HAWKINS. I just want to add a few words more. A country in Britain's condition has no choice but to ration imports. In other words, they have to use the foreign exchange available to them to buy the kind of things they must have and to put restrictions on the importation of the kind of things they can do without.

The CHAIRMAN. Mr. Hawkins, it follows from that that wherever a nation has that difficulty or a comparable difficulty relative to its own resources, that the hoped for exports resulting from our trade agreements, and from the operation of this charter, may not materialize to the full extent which the enthusiasts claim.

Mr. HAWKINS. This is my next point, Senator. I am trying to give you an accurate picture of the nature of the problem. It has a bearing on the charter, and the role that the charter would play.

I said a little while ago that exchange restrictions—the restrictions put on purely for balanced-payments returns—have a protective effect. They tend to build up vested interest behind them. The effect of that, if nothing were done and no commitments were taken, would be to establish vested interests which would be very hard to get rid of, and restrictions on trade would stay on for a very long time. Our interest in that, of course, is its effect on our foreign markets.

Now, in the charter, the basic provisions bearing on this, are these: The charter would prohibit quantitative restrictions in principle. That includes import restriction put on for exchange reasons.

The charter would outlaw quantitative restrictions but would permit them for balance-of-payments reasons as long as they are necessary, and no longer.

Looking at it from our narrow point of view—and other countries interested in foreign markets have the same point of view—the aim is to insure, by international commitment, that the restrictions put

on for balance-of-payments reasons come off as soon as the need for that purpose is passed, and that they should not be retained for protective reasons.

The CHAIRMAN. Is this a convenient place for me to intervene?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. In the end you have to find a basic solution within every country, I suggest. I suggest that the exchange maladjustment of the country, of course, may get to be a cause for further maladjustment, but in the main the existence of an exchange maladjustment is simply a symptom of maladjustment of the economy of the particular country. Do you agree with me on that?

Mr. HAWKINS. Yes, basically that is true, I think.

The CHAIRMAN. I concede gladly that these exchange maladjustments may themselves work a vicious circle of harm. They may be a cause for further trouble. But basically, when a country finds itself with a maladjustment in its exchange, I suggest it is because of some internal maladjustment in its economy or in its fiscal policies, possibly its political policies. Are we in agreement that far?

Mr. HAWKINS. Yes. But, of course, there is an additional reason. There may be in difficulties in a country's external relations. Trade relations would get it into difficulty.

The CHAIRMAN. Yes. I am coming to that.

Generally speaking, if a country is short in its exchange position, it is because it has been importing more than it has been exporting. Is that not correct?

Mr. HAWKINS. Not necessarily so. Great Britain customarily imported a great deal more than it exported.

The CHAIRMAN. It made up the balance.

Mr. HAWKINS. It made it up with invisible items.

The CHAIRMAN. It had invisible balancing items, such as the ones you pointed out, insurance, carrier charges, and so forth and so on.

Mr. HAWKINS. They are very important there; 300,000,000 pounds.

The CHAIRMAN. I am not disparaging the importance of those items.

So that if you are dealing with the thing basically, if you want to bring these nations into a state of exchange balance, you have to bring each one of them into a state of balance between export and import, do you not?

Mr. HAWKINS. Not exact balance, Senator. It depends again on your invisible items.

The CHAIRMAN. I understand that.

Mr. HAWKINS. They make a big difference.

The CHAIRMAN. I understand that. To my mind, because you call them "invisible" does not alter their character.

Mr. HAWKINS. True.

The CHAIRMAN. If an item evidences itself on a set of books, that may be the only thing that will meet the naked eye unless you probe a whole lot deeper.

Mr. HAWKINS. The invisible items I am speaking of are very tangible things. They mean a lot of foreign exchange to some countries.

The CHAIRMAN. I do not think there is any difference at all on that.

But in one way or another, through the export or import of tangible or intangible items, if a country wishes to cure its exchange maladjustment, it must work on those basic factors, must it not?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Now then, taking this whole list of countries, and I suppose that list that I read to you includes every important country in the world, with the exception of ourselves, you cannot solve those exchange maladjustments unless, as to those countries, they can increase their exports, or decrease their imports or borrow money as a temporary stop-gap. What other method would you suggest?

Mr. HAWKINS. There is a variant of two that you mentioned. You said increase exports, and reduce imports. You could increase both.

The CHAIRMAN. That is right. But both must increase in a way to bring them both in balance.

Mr. HAWKINS. Yes.

The CHAIRMAN. Now, how are these countries going to do that? If they are broke, they cannot build up internal export industry. The only way you can do that is to loan them facilities, or loan them the money, to help them get on their feet. Is that right?

Mr. HAWKINS. Well, they need help, a good many of them. A good many of the difficulties, the kind that we are speaking of, particularly in the continental countries, as well as United Kingdom, are due to the effects of the war and the complete disruption of their economy, and their productive facilities. They are having trouble getting back into production so that they can resume exports.

The CHAIRMAN. That is right.

We are in entire agreement on that. I am talking now about what they must do, nation by nation. I suggest we can get ourselves into a lot of confusion by over-all thinking. After all, this is a problem that must break down into nation by nation consideration.

What do these maladjusted nations do to increase their exports or to decrease their imports. They must import in order to increase their exports. They have to import machinery, they have to import capital, they have to import technical skill, before they can make a start at exports.

Now, apply that same thing, if it is a valid analysis, to all of these nations that we have taken a look at, and the question arises, Mr. Hawkins, who pays the bill? Now, is all of that going to land in our lap? If not in our lap, in whose lap does it land?

Mr. HAWKINS. I would like to answer the first part of that question, Senator.

The CHAIRMAN. All right.

Mr. HAWKINS. You cannot take it in general. You must look at the case of the particular country. The things countries have to do will differ because the positions differ.

In the case of the United Kingdom it is pretty clear: They have to get their exports back.

The CHAIRMAN. And to do that they have to import the things necessary to rehabilitate their industry. Is that not correct?

Mr. HAWKINS. They have to import some things. It is an industrial country. It can manufacture a good deal of its own equipment. Of course, they do have to import raw materials, they always have.

But I do not think, to take that concrete case—I do not see how anything lands in our lap. We have helped them, yes, by means of a loan. But that is going to be repaid. It is not a loss to us.

The CHAIRMAN. Of course, there might be a differing opinion as to whether they repay when we loan them money.

Now, take the problem in each one of the countries that we have noted. It either has to get the facilities with which it can build up its export trade, or it has to borrow money, or it has to do any one of the number of things that we have discussed, and where, in the final analysis is it going to get the wherewithal? Where is it going to get these facilities? Where is it going to get its credit? How is it going to cure its fundamental condition so that exchange, being a symptom, will be a healthy symptom instead of a symptom of maladjustment?

Mr. HAWKINS. I cannot answer that in general, Senator. As I said I think you have to look at it in the case of each country. The situations differ.

The CHAIRMAN. I agree with you.

Now let us take the next step. What will this charter do to remove the maladjustments and to bring those countries into a fair state of balance?

Mr. HAWKINS. In many cases they need markets, bigger markets. There is of course the prior need of reconstruction and getting into a position of supplying the markets. Up to now the problem has been one of production. But assuming that one way or another they are able to recover their production, they must find markets.

The CHAIRMAN. You are indulging in a very big assumption there. You are assuming now that they are in position to export.

Mr. HAWKINS. Yes.

The CHAIRMAN. I think you have to consider first how are they going to get into that position.

Mr. HAWKINS. They have to reconstruct their industries and that may involve borrowing, to buy equipment, or it may, as in the case of the British, involve borrowing in order to live while they are getting production reconverted.

The CHAIRMAN. Is there any source for that kind of help except this country?

Mr. HAWKINS. Yes, there is the International Bank. That is what it is for, for reconstruction.

The CHAIRMAN. Of course, if all of these countries went to the bank to try to achieve the fundamental correction that we are talking about, the bank would not stand up, not very long, would it?

Mr. HAWKINS. Well, it probably would not be able to supply all the pressing demands. But it could at least help materially.

The CHAIRMAN. What is the capital of the bank? About \$10 billion?

Mr. HAWKINS. I have not the figure in mind.

Senator JOHNSON. It is less than that.

The CHAIRMAN. I suggest to you that the bank, the resources of the banks, would be just a drop in the bucket against the whole problem.

Mr. HAWKINS. Of course, they can operate by guaranteeing loans. However, the answer to your question is that there is that other source, and it might be worth while to consider how much capital might be made available through it. I am not familiar enough with this operation to be able to say much about it.

The United States is another source. The only large one, virtually. Canada has made loans. There are a few others.

The CHAIRMAN. But the United States would be the principal place to provide the assistance necessary for getting the basic economies of

all of these countries that we have noted that are operating under limitations, into healthy condition, so that they will be in position to protect their exchange situations. Is that right?

Mr. HAWKINS. I believe that is right.

The CHAIRMAN. Go ahead.

Mr. HAWKINS. Going back a step, we were talking about countries getting into position to produce. Now the question is where are the markets?

The CHAIRMAN. Let me take you to one further proposition. Roughly speaking, is there a single one of these nations that will give up its quotas and its licenses and its other productive devices, until it does remedy its basic situation to an extent where it is able to protect itself?

Mr. HAWKINS. Well, the answer to that I think would have to be "no," if you would have an unqualified answer.

I would like to say—

The CHAIRMAN. The next question is, What can the charter that we are discussing do to correct those basic conditions in order to get the countries in position where they can export, and where they can import on a healthy basis?

Mr. HAWKINS. The primary purpose—it is not the purpose of the charter to provide money; to provide funds for reconstruction.

The CHAIRMAN. That is right.

Mr. HAWKINS. That is not its purpose. That would be done by other agencies or other countries.

I was going to say that the next thing that is needed, when you get into the phase where they have recovered their production, the next requirement—is markets.

The CHAIRMAN. You suggest that when they reach—

Mr. HAWKINS. That is where the charter comes in.

The CHAIRMAN. Yes, Mr. Hawkins, but when they reach that position, when, roughly speaking, the economy of the world, the economy of the individual nations, is in a state of reasonable balance, and in reasonable health, I suggest for your comment that this kind of an organization would not then be necessary.

I suggest for your further comment that during the period of time that these individual nations are bringing themselves to that state, the charter may be totally ineffective in helping them get there.

Mr. HAWKINS. If you do nothing, if there is no provision for international agreement and cooperation to deal with the problem of trade, in other words, if you had no charter or no provisions similar to what is in this charter, it would take a very long while—much longer—to recover, because the trade, world trade, would not expand, it would contract. And the reason it would contract is that if there are no limitations on the amount of protection that can be afforded by a country to domestic interests, that protection tends almost inherently and naturally to mount. It mounts under the natural pressures of the interests concerned. The result would be a very considerable contraction rather than an expansion of trade. An expansion of trade is necessary to supply the markets which are essential to the full recovery of all countries.

The CHAIRMAN. I think you are projecting yourself to the point where the need for remedy would not be so great. My question is,

what can the charter do to help these countries which are not able to export, and which must limit their imports? What will the charter do to remedy those fundamental disequilibriums all the way across the face of the earth?

Mr. HAWKINS. The function of the charter is not to provide funds that are necessary for the reconstruction of production, which is the state we are now in. That is the function of another specialized agency.

The CHAIRMAN. So that the charter's function, as you visualize it, will commence to make itself felt to best advantage when we get through, when we get past, if we do, the present maladjustments all over the world, of imports and exports and foreign trade generally, and exchange problems and political problems, and so forth, and so on.

Mr. HAWKINS. It is awfully hard, Senator, to generalize to that extent. The recovery will be not all of a sudden all over the world. It will be at a different rate in different countries.

Now, as a country recovers, if world market conditions are right, it then will be able to expand its exports and this will help it complete its recovery.

I possibly should not have generalized to the extent of saying the world is now in the phase of reconstruction. In a very general sense that is true, but some countries are coming ahead at a much greater rate than others.

The CHAIRMAN. So far as the conversation we have been having is concerned, and the problems that are described by it, what is there that cannot be done by the trade agreements mechanics as distinguished from the charter mechanics?

Mr. HAWKINS. The trade agreements could do a great deal. The United States trade agreements program that it has had in the past, involved negotiations by the United States with each foreign country—

The CHAIRMAN. Yes; and its benefits are generalized.

Mr. HAWKINS. Yes. Now, what it does not do—it does not result in trade agreements between each of those foreign countries, all of which would result to our advantage in several ways. We get the benefit of the concessions made, but there is more than that. Just to the extent that an agreement between country A and B increases, B's opportunities to export to A, it has more foreign exchange—it has more money to spend—and will probably spend some of it here.

The CHAIRMAN. What percentage of world trade is covered by existing foreign trade agreements?

Mr. HAWKINS. World trade?

The CHAIRMAN. Yes.

Mr. HAWKINS. I could not tell you that, sir. It is about sixty-odd percent of our trade. I do not know the world trade figure.

The CHAIRMAN. And when we complete the projected trade agreements, will we not at that time have the world trade pretty well subject to those agreements through direct agreements and through generalized benefits?

Mr. HAWKINS. Yes; that is the point I was trying to make.

The CHAIRMAN. In other words, any one of these countries here, when we get through with these agreements that we are going to make, and if it does not discriminate against us will be able, for ex-

ample, to export to this country at the lowest rate negotiated with any country. Is that not correct?

Mr. HAWKINS. That is right. And the same thing is true with the other countries.

The CHAIRMAN. So why not solve the problems we have been discussing by your trade agreements in existence, and by those projected?

Mr. HAWKINS. Because we want other countries to negotiate with still other countries, to reduce rates.

Mr. Hull, as you remember, frequently urged during the "thirties" that other countries adopt programs similar to ours.

The CHAIRMAN. But Mr. Hawkins, I suggest that there is such a thing as overrefining a problem, trying to get perfection out of human relations.

If, we, the principal importing and exporting nation, have those agreements with the other nations which occupy most of the rest of the field, have we not reached the bulk of our problem? Must we go to extraordinary and unprecedented lengths to cover the small remaining field?

Mr. HAWKINS. I want to get clear on the first part of your question. You said if the United States negotiates with principal countries?

The CHAIRMAN. Yes; and they negotiate with us. Now then, by virtue of that fact we have covered the bulk of world trade, and we have also generalized benefits for all the rest of the world, why have we not solved our problem?

Mr. HAWKINS. You would not have covered the bulk of the world trade. We would have covered the bulk of our trade with the world. But you would not have covered the bulk of the trade represented by the trade of foreign countries with each other, which is of very great importance to us.

The CHAIRMAN. Will you bring to us the figures on over-all world trade, and the part of the field occupied by the nations with which we do have agreements, and what the situation will be after we have completed our projected agreements?

(Mr. Hawkins later supplied the following:)

On the basis of data for 1938, the most recent year for which trade statistics are available for most of the countries of the world:

1. The trade of the United States with the countries with which trade agreements were concluded made up about 13 percent of total world trade;
2. The trade between the countries members of the Preparatory Committee which will meet in Geneva in April 1947 made up at least 45 percent of total world trade.

The CHAIRMAN. I believe we have already had testimony, Mr. Hawkins, indicating that when this program has been finished the great bulk of over-all world trade will have been subjected to trade agreements.

Mr. HAWKINS. Yes; if it were to work out a full 100 percent.

The CHAIRMAN. If that should turn out to be correct, when we get the figures before us, just as a practical matter, what is the necessity for reaching for these refinements in the less important fields of the subject? Can they not be considered as hair that goes with the hide?

Mr. HAWKINS. I am not clear as to what you mean by refinements. If you mean that we should not reach or attempt to get other countries of the world to negotiate with each other as well as with us, I would

not consider that as refinement. I would consider that very important.

The CHAIRMAN. As to that lesser field that would remain unoccupied, that I suggest could be covered just by a continuance of the trade-agreements mechanisms, by the pressures which the more important countries are in position to exert on the less important countries in encouraging them to enter into trade agreements.

Mr. HAWKINS. It would be a little difficult for the United States to apply pressure of that kind, for example, to bring about trade agreements similar to ours, between the United Kingdom or France, with other countries. I assume in making your suggestion you have in mind getting two or three of the main countries to do the same thing that we have been doing.

The CHAIRMAN. I suggest that any of these smaller countries must, of necessity, do business, for example, either with us or with the British Empire, or with three or four of the other most important nations, and that if that limited group of important nations have a definite program as between themselves, then by the very nature of their strength, by the very nature of the part of the field that they occupy, the rest will have to come along.

That, if I may suggest it, was the secret of the predominance in the world of sterling for a long time. That, I suggest, is the secret of the present predominance of the dollar.

Mr. HAWKINS. I do not think, Senator, that it meets this point: That unless you can get nations generally, or as many of them as you can get, to agree to get rid of the type of restrictions that you were speaking of, that they will, for a long, long time, get rid of them.

I think that what you need is to try now, before those things get set, before the vested interests are created behind them, to get commitments that they will be taken off when the external financial position of the country—

The CHAIRMAN. Is not that the function, and is that not the result of the extension of the trade-agreements system?

Mr. HAWKINS. That is the function, yes, as regards commitments by the United States with other countries.

The CHAIRMAN. If you lead the principal countries of the earth into that system, does it not follow that the rest will have to come in as a matter of self-interest?

Mr. HAWKINS. I do not think it does, Senator.

The CHAIRMAN. If they do not come in then the question is, and this will be answered by your figures when you produce them, what difference will it make, how important will the omission be?

I suggest we recess until 2:30.

(Whereupon, at 1 p. m., a recess was taken, to reconvene at 2:30 p. m.).

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., upon the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

**STATEMENT OF HARRY HAWKINS, ECONOMIC COUNSELOR,
AMERICAN EMBASSY, LONDON, ENGLAND—Resumed**

The CHAIRMAN. If agreeable to you, Mr. Hawkins, we will come right to chapter V and consider the terms of it in detail. Chapter V is entitled "General Commercial Policy." [Reading:]

SECTION A. GENERAL COMMERCIAL PROVISIONS, MOST-FAVORED-NATION TREATMENT

ARTICLE 14. GENERAL MOST-FAVORED-NATION TREATMENT

1. 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 in regard to which national treatment is provided for in Article 15—

To interpolate, article 15 simply sets out a series of desirable practices within each country so far as its treatment of other countries moving goods in transit, and so forth, is concerned; is that not correct?

Mr. HAWKINS. No, sir; it is more specific than that. That is the national treatment provision, which provides that, with respect to certain matters, the most important of which probably is internal taxes—

The CHAIRMAN. Thank you, very much. Resuming [reading]:

any advantage, favour, privilege or immunity granted by any Member 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 respectively.

2. The provision of paragraph 1 of this Article shall not be construed to require the elimination of any preferences in respect of customs duties or other charges imposed on importation, which do not exceed the preferences remaining in force after the negotiations contemplated in Article 24 and which fall within the following descriptions:

I think in that connection with this article 14 we should give very careful attention to article 24, because they must all be read together? [Reading:]

(a) Preferences in force exclusively (i) between two or more territories which on 1 July 1939 were connected by common sovereignty or relations of protection or suzerainty; or (ii) between two or more of the territories listed in Annexure A to this Charter. Each Member to which provision (i) applies shall provide a list of such territories which shall be incorporated in an annexure to this Charter.

(b) Preferences in force exclusively between the United States of America and the Republic of Cuba.

(c) Preferences in force on 1 July 1946 exclusively between neighboring countries.

Would you mind making any comments you care to on that article?

Mr. HAWKINS. The first paragraph is the standard most-favored-nation provision which has been included in many of our treaties and agreements. Its purposes is to prevent discrimination by one party against another, and in favor of a third.

I am just covering this in general outline, Senator.

The CHAIRMAN. All right.

Mr. HAWKINS. The second paragraph makes an exception to the operation of the most-favored-nation clause insofar as certain pref-

erences are concerned. The preferences concerned are those listed under (a), (b), and (c), but the language of paragraph 2 does not permanently except those preferences. It contemplates negotiations for their elimination under article 24, and then provides that if any are left after the negotiations they shall be excepted from the operation of the most-favored-nation clause, and may be retained.

The CHAIRMAN. If they fall within (b) and (c) ?

Mr. HAWKINS. Yes. Any preferences not falling within (a), (b), (c) would be abolished when the charter comes into effect, and there is no provision for negotiating them away.

The CHAIRMAN. Now as to the most-favored-nations clause, that is in our trade agreements ?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. It has been a part of American policy for a long time ?

Mr. HAWKINS. Since 1923; yes, sir.

The CHAIRMAN. Why would not the extension of the reciprocal trade system bring about benefits of that clause independent of the proposed organization ?

Mr. HAWKINS. It would give you a most-favored-nation treatment only in the countries with which you negotiated the agreements. This clause would assure the most-favored-nation treatment generally.

If you negotiate trade agreements or general agreements with every country in the world, you would get the same results.

The CHAIRMAN. So the same thing can be accomplished to the extent that you extend your most-favored-nation agreements ?

Mr. HAWKINS. Yes, sir; to that extent.

The CHAIRMAN. And as to the Nations not covered by the most-favored-nation agreements, they receive the benefits of generalization resulting from the agreements which have been negotiated ?

Mr. HAWKINS. Yes, sir. I want to be sure I have your question right. The countries with which we negotiate trade agreements which contain this clause would get the benefit of any concessions we made in another agreement.

The CHAIRMAN. Yes.

Mr. HAWKINS. You would get the benefit from the other party, of any concessions they made in agreements with other countries.

The CHAIRMAN. Let us assume we have trade agreements with countries (a), (b), and (c), and do not have them with (d), (e), and (f). Do countries (d), (e), and (f) receive any benefits of the provisions of the trade agreements which we have with countries (a), (b), and (c) ?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. What do they receive ?

Mr. HAWKINS. They get most-favored-nation treatment, many of them through our separate most-favored-nation treaties or agreements with them. In other words, you can have a most-favored-nation agreement which is not a trade agreement in the sense that it does not provide for any tariff reductions, it is simply a general undertaking.

The CHAIRMAN. Let us assume that this country does not have trade agreements with countries (d), (e), and (f). Are not countries (d), (e), and (f), privileged, assuming they do not discriminate against

us, to export their articles into this country on the terms granted in (a), (b), and (c)?

Mr. HAWKINS. Yes, sir. They get that by virtue of the Trade Agreements Act.

The CHAIRMAN. So that excepting for discrimination which would rule out the benefits to the nonparticipating nations, to the extent that you extend your reciprocal trade system, to that extent you have accomplished the purpose of the language we are now considering in article 1, and in addition we have given all of the other countries the generalized benefits.

Mr. HAWKINS. Yes, sir. That is right. There are two comments I would like to make on that.

First, of course, it works both ways. The countries to which you generalize, but with whom you do not have trade agreements, get, under the Trade Agreements Act, benefits of tariff reductions made by us only if it gives us the benefits of the duty reductions made by it.

The CHAIRMAN. In other words, that is not the discriminating action?

Mr. HAWKINS. That is right.

The CHAIRMAN. That happens even though we do not have an agreement with that country?

Mr. HAWKINS. That is right.

The CHAIRMAN. If it is going to have the advantage of generalized benefits in this country it must not discriminate against us in its own imports.

Mr. HAWKINS. Yes. The way it is worded in the law is that the reductions made in trade agreements shall be generalized, but that the President may find a country discriminating and suspend that benefit.

The provision regarding generalization goes a little beyond this. It permits denial of trade agreement benefits to countries whose other acts and policies are such as not to defeat the purposes of the act. So it is not limited, really, to the suspension of generalization in cases of discrimination.

The CHAIRMAN. Will you give us, for the benefit of the record, a list of those countries with which we do not have trade agreements, which would be entitled to generalized benefits so far as their imports into this country are concerned, and where we have put a bar against those imports, or against the generalized benefits on the ground that they have discriminated against us?

Mr. HAWKINS. Yes, sir.

(The information called for appears as exhibit XI.)

The CHAIRMAN. Are there many of those countries?

Mr. HAWKINS. No, sir; not of those denied trade benefits.

The CHAIRMAN. It is charged that we are subject to many, many discriminations by countries which take advantage of generalized benefits so far as we are concerned, and that we have not been diligent in protecting ourselves against their discrimination against our exports. Have you any comment to make on that?

Mr. HAWKINS. The powers given the President to suspend generalization have been used in a very limited number of cases. The only ones that I recall are Germany, prior to the war, and Australia for a time.

One of the reasons why the authority is not exercised is that the situation may be such that it would not do much good.

Prior to the war—you had it all through the war, also—when the international system of clearing broke down, a good many bilateral agreements were entered into of a barter sort. The question of whether the suspension would have been effective, of course, had to be considered.

The CHAIRMAN. You would not contend that the State Department has protected this country against all of the discriminations against our export trade inflicted by countries which have generalized benefits so far as the exports into this country are concerned?

Mr. HAWKINS. I am sure, Senator, that there are and have been discriminations by countries who were not penalized.

The CHAIRMAN. You recognize that as a criticism against this system?

Mr. HAWKINS. Yes, sir; I realize that. It is a question of whether the policy has been too lenient or not. That is a question that I think could be argued either way.

The CHAIRMAN. When you take the preference provisions which occur in paragraph 2 in relation to article 24, and the other article brought into 24 by reference, what is the net effective result so far as the elimination of preferences is concerned?

Mr. HAWKINS. That remains to be seen when we get into negotiations. It is impossible until you have had negotiations or gotten into them to know what the results will be as regards preferences.

There are preferential systems which operate to our considerable disadvantage—very serious disadvantage. I have in mind particularly the British imperial system, which we will certainly do our best to change radically under these provisions in the course of those negotiations.

The CHAIRMAN. Those are the most important adverse preferences; are they not?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. I should like to read into the record a part of the story appearing in the New York Times of Tuesday, March 25, 1947, page 4C, written by Michael L. Hoffman; the story deals with the attitude of Sir Stafford Cripps toward the trade parleys. It contains this paragraph [reading]:

Two cardinal principles from which Britain will not depart in negotiating for a new set of rules to govern world trade were laid down by Sir Stafford. They are, first, that Britain must retain her freedom to engage in bulk buying "operated under commercial and not political consideration," and second, that Britain must retain her freedom to plan imports so as to use her limited foreign exchange resources to the best national advantage.

Great Britain has never promised to eliminate her preferences?

Mr. HAWKINS. She has promised, definitely, to negotiate for their elimination.

The CHAIRMAN. I recall when we were working on Bretton Woods and other financial plans involving Great Britain, we had attempted to get definite promises that the preferential system would be eliminated, and we never have been able to get that kind of a promise. Does that coincide with your own information?

Mr. HAWKINS. Yes, sir. Of course, we have now a promise that we have not had before: that they are ready to put them on the block, so to speak.

The CHAIRMAN. They are ready to talk about it?

Mr. HAWKINS. They are ready to negotiate; the words are "negotiate for the elimination."

The CHAIRMAN. That still leaves agreement to be gained, does it not?

Mr. HAWKINS. It still leaves the agreement to be gained. I will say this, however: If they do not do pretty well toward getting rid of preferences, there will not be any agreement.

The CHAIRMAN. If they do not get rid of preferences, one of the greatest objectives of the Charter is futile.

Mr. HAWKINS. Yes, sir. When I say, Senator, "get rid of" I am thinking of not necessarily every last one of them, but the ones that count—the ones that hurt.

The CHAIRMAN. And the obverse of that is that we have to get rid of our own; is that correct?

Mr. HAWKINS. Not get rid of, necessarily. We, like the British, in order to get acceptance of a provision that preferences will be put on the block, so to speak, have, of course, to make the provision applicable to any preferences that we have, such as the Cuban preferences.

The CHAIRMAN. Let us review some of our preferences. We have Cuban preferences, Philippine preferences; do we have also Puerto Rican preferences?

Mr. HAWKINS. Puerto Rico is part of the customs territory, sir. It would not be involved.

The CHAIRMAN. What other preferences have we?

Mr. HAWKINS. I believe there are slight preferences to the Virgin Islands, also, I think, and Guam has its own separate tariff and is not part of the customs territory. I think that is all.

The CHAIRMAN. Just last year we entered into a trade law with the Philippines contemplating a long-term continuance of preferences. How can we, in good faith, get rid of those?

Mr. HAWKINS. The act itself, and the agreement with the Philippines, provides for the elimination of those preferences unilaterally. Our provision, I think, should be that that situation is taken care of. What we have done in the Philippine Islands is what is contemplated in this article.

Now, it is true that elimination is spread out over a pretty long period. Nevertheless the action is unilateral in a sense that we are taking it—we, and the Philippines—without getting anything from other countries for it. I still say that this should satisfy the requirements so far as the attitude of any foreign country toward them is concerned.

The CHAIRMAN. I do not quite follow you that we are not getting anything for that.

Mr. HAWKINS. Let us take this article as it applies to British preferences. They are not giving up their preferences except as a result of negotiations, all the way around with non-Empire countries. In those negotiations they hope in return for giving them up, to get the reduction of foreign tariffs and various other barriers to their trade. In other words, they get paid for giving them up.

In the case of the Philippines, under our present legislation, the preferences will be eliminated without any quid pro quo from any foreign country.

The CHAIRMAN. But there is a quid-pro quo for giving the preference.

Mr. HAWKINS. You mean between us and the Philippines?

The CHAIRMAN. Therefore there is a loss of quid pro quo if you terminate that.

Mr. HAWKINS. But we are not saying in regard to the Philippine preferences, under our present law and agreement, that we will get rid of these preferences only if some foreign country gives us and the Philippines something for doing so. We have arranged to take those preferences off over a period of years without such a return. It seems to me that that meets fully the requirements under this article.

The CHAIRMAN. In other words, what you are saying is that the case is not analogous; that our preferences stand on a noncriticizable basis, and the British preferences do stand on a criticizable basis?

Mr. HAWKINS. Yes; because there is no provision in their law or arrangements for getting rid of their preferences.

The CHAIRMAN. Does Great Britain accept our theory of the thing?

Mr. HAWKINS. We have not had anything in the nature of formal discussions, but I have said to them, informally, a number of times, exactly what I have said here.

The CHAIRMAN. You do not regard it as conceivable that we would end or abridge these preferences in our relations with Cuba, the Philippines—and what was the other?

Mr. HAWKINS. Virgin Islands.

The CHAIRMAN. In order to accommodate ourselves to this charter. Is that conceivable to you?

Mr. HAWKINS. We would not now be committed, just as I said a moment ago, the British are not committed, to do any particular thing. We are only committed to negotiate. How far you get in getting rid of the preferences depends on what you give.

We could not refuse, in good faith, to negotiate, and we should negotiate in good faith with the idea of reducing or eliminating the preferences. But that would have to be done with the full participation of both parties to the preferences, such as Cuba and the United States, to see to it that there were really compensating advantages for giving them up.

The CHAIRMAN. I must say that I do not get the force of this notion that something is accomplished if you negotiate.

Mr. HAWKINS. Nothing is, Senator, until you have negotiated.

The CHAIRMAN. And then nothing may result.

Mr. HAWKINS. It is conceivable if it does not—

The CHAIRMAN. So you simply agree to talk to each other?

Mr. HAWKINS. We agree to negotiate, and the intention is to negotiate, as provided in this article, for the purposes stated in the article. That is your intent. You go in with that object. It is conceivable that you can fail in your object. If you do, you do not have any general agreement.

The CHAIRMAN. Of course, if it were intended that we should succeed in the negotiations, the emphasis would not be put upon the obligation to negotiate but the obligation to achieve certain results.

Mr. HAWKINS. Yes.

The CHAIRMAN. And we scrupulously avoid the end point, which is the achievement of results.

Mr. HAWKINS. I am not sure I understand your point there.

The CHAIRMAN. You see the distinction between talking about something and doing something, do you not?

Mr. HAWKINS. Oh, yes.

The CHAIRMAN. That is my point.

Mr. HAWKINS. All we have done here is to state the intention, to accept the obligation to negotiate.

I agree with what you said to this extent, that in theory it would be possible to talk and have no result, in which case you have no agreement. I think that is highly unlikely, and I think it is purely theoretical, and I think results will come of the negotiations.

But it is, as you say, only an obligation to negotiate.

The CHAIRMAN. What percentage of world trade does Great Britain have?

Mr. HAWKINS. I could not tell you offhand.

The CHAIRMAN. Take a rough shot at it.

Mr. HAWKINS. It is very hard to do.

The CHAIRMAN. Thirty percent?

Mr. HAWKINS. No, sir. It would not be that high.

The CHAIRMAN. It is the next largest to our own, is it not?

Mr. HAWKINS. Yes, sir. I should think it is. That is speaking of the United Kingdom.

The CHAIRMAN. So that in the next largest field of foreign trade we have nothing definite to assure the elimination of British preferences.

Mr. HAWKINS. I think that can be overstated. In theory, you have not yet got absolute assurance that anything is going to happen to the British preferences. But in practical fact, something is going to happen, I am quite confident. If it did not happen, then this whole thing is in danger.

The CHAIRMAN. I am very glad to have your frank recognition of that, and it follows from that that if it is the judgment of the Congress that nothing is going to happen, then there is no sense in proceeding with this organization.

Mr. HAWKINS. The Congress will have a chance to judge that.

The CHAIRMAN. Exactly.

Mr. HAWKINS. What I mean, Senator, the Congress before it considers the charter, will have a chance, under this plan as laid out to judge what action has been taken.

The CHAIRMAN. Each individual Congressman will have the opportunity to reach his own conclusion as to whether the procedures called for in this charter will result in the elimination of the British preferences.

Mr. HAWKINS. No sir; I am not making myself clear. I will have to outline the plan here with the time factors involved.

What will happen at Geneva are two things: There will be negotiations on the Charter itself, the whole business, the Organization, all these other things; negotiations to formulate a draft. That draft will go back to Congress or the Senate, however that is decided. One article of that Charter in its present form, article 24, calls for negotiations for reduction of tariffs and elimination of preferences. The second thing that happens at Geneva will be actual negotiations on the

tariffs and preferences to produce a multilateral tariff or trade agreement among the countries which are members of the preparatory committee meeting at Geneva. That agreement will be completed, its contents will be known, and Congress can judge what action is actually going to be taken under article 24, as a result of the negotiations provided for in that article.

The CHAIRMAN. Then at the time the Charter comes before us we will know whether we will have succeeded in getting a definite agreement from Great Britain to eliminate her preferences.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. If we have not received that definite agreement then we may conclude that we will never receive it, or the more optimistic among us may say that perhaps at some time in the future we may receive it. Is that correct?

Mr. HAWKINS. If the general agreement on tariffs and trade fails at Geneva, Senator, I do not think Congress will see the Charter, because I do not believe there will be any.

The CHAIRMAN. In other words, it follows that if these preferences cannot be eliminated there is no point to the Charter. Is that correct?

Mr. HAWKINS. Yes; and the action contemplated on the tariffs. When you say eliminated, it does not necessarily follow that they will all be gone, but the parts that hurt will be gone. There is not any point in throwing away negotiating ammunition to the extent that you have it on preferences that are not important. In some cases it may be that a sufficient reduction in the margin of preference would be adequate.

The CHAIRMAN. But if the real substance of the preferences is not eliminated, there will be no point to the Charter and it will probably not come before the Congress.

Mr. HAWKINS. I should think that would be it.

The CHAIRMAN. For the sake of the record let us list the countries that are contemplated in A, B, and C of paragraph 2. What are the countries which, on July 1, 1939, were connected by common sovereignty or relation of protection, or sovereignty?

Mr. HAWKINS. That would include the French Empire, it would cover the United States and its possessions, it would cover the Dutch, Belgium.

The CHAIRMAN. France?

Mr. HAWKINS. Yes, France.

The CHAIRMAN. Spain?

Mr. HAWKINS. Yes. To the extent they have any—

The CHAIRMAN. Morocco?

Mr. HAWKINS. Yes.

The CHAIRMAN. What other countries?

Mr. HAWKINS. Those are all I think.

The CHAIRMAN. Did you mention Belgium?

Mr. HAWKINS. Yes.

The CHAIRMAN. Can you think of any others?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Then there is another subdivision that refers to territories listed in annexure A to this Charter.

Mr. HAWKINS. Yes.

The CHAIRMAN. What are those countries?

Mr. HAWKINS. Those are the British. The only reason for that annexure, Senator, is that the general definition does not quite fit the British position, so the countries are listed. They did not want for some reason, to have the general description apply, so they said they would just list them, and that is annexure A.

The CHAIRMAN. Those are the component parts of the British Empire. Is that right?

Mr. HAWKINS. Yes, sir. They are listed here.

The CHAIRMAN. Then we have those, our own relations, with the Republic of Cuba. Where do we cover our relations with the Philippines?

Mr. HAWKINS. That is under point 1 of (A).

The CHAIRMAN. And we cover our relations with Hawaii?

Mr. HAWKINS. That is customs territory.

The CHAIRMAN. Would that be under 1?

Mr. HAWKINS. It would not be involved.

The CHAIRMAN. Do we not have a sovereignty relationship there?

Mr. HAWKINS. Those preferences are not in question because Hawaii is a part of American customs territory.

The CHAIRMAN. The same answer applies to Puerto Rico?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Why did you pick July 1, 1946, as the terminating date in subparagraph C of paragraph 2?

Mr. HAWKINS. It was more or less as of the present. That paragraph was put in at the meeting in London in October, and we simply took the middle of the year we were in.

The CHAIRMAN. What are the preferences in force on July 1, 1946, exclusively between neighboring countries? Have you a list of those?

Mr. HAWKINS. I can get you a list. There are not a great number. Offhand I can mention a few. There is Chile—Peru. I think we could give you a list, Senator.

(The following information was subsequently submitted:)

According to information available to the Department of State, preferences, generally on selected products, were in force on July 1, 1946, exclusively between the following neighboring countries within the meaning of article 14, paragraph 2 (c), of the proposed charter for the International Trade Organization of the United Nations. The existence of these preferences is, of course, a matter for the countries involved to support.

Chile and Peru.

Colombia and Ecuador.

El Salvador and Honduras.

Palestine and the Lebanon-Syria customs union.

France and Andorra.

In addition, Russia has, for certain products, been extending preferences in regard to import duties or charges to Finland and all contiguous Asiatic countries. For certain other products, Russia is extending preferential treatment in respect of import duties or other charges to all contiguous Asiatic countries. For certain other products, Russia is extending preferential treatment in respect of import duties or other charges to all contiguous Asiatic countries except Japan and Manchukuo, provided that in each such products enter Russia over the common-land boundary or via the Caspian Sea. However, in view of the fact that actually all of Russia's foreign trade is carried on by the Government, these preferences have little, if any significance.

The CHAIRMAN. Do we have any relations with Canada or Mexico of this type?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Now I suggest we turn to 24, it being kept in mind that 14 remains effective as to everything that is not eliminated by 24. Is that correct?

Mr. HAWKINS. That is right.

The CHAIRMAN. And as sketched in 14?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. I will read article 24. The heading above article 24 is "Section B. Tariff and tariff preferences."

1. Each Member, other than a Member subject to the provisions of Article 33—and I interpolate to say that that relates to monopoly countries; does it not?

Mr. HAWKINS. Yes, countries with a complete monopoly of foreign trade.

The CHAIRMAN (continuing reading):

shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Members or Members directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of import tariff preferences. These negotiations shall proceed in accordance with the following rules:

(a) Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification or termination of existing international obligations except by agreement between the contracting parties, or failing that, by termination of such obligations in accordance with their terms.

(b) All negotiated reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of preference, and no margin of preference shall be increased.

(c) The binding or consolidation of low tariffs or of tariff-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

2. Each Member participating in negotiations pursuant to paragraph 1 shall keep the Organization informed of the progress thereof and shall transmit to the Organization a copy of the agreement or agreements incorporating the results of such negotiations.

3. If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1 of this article, such Member may refer the matter to the Organization, which shall make an investigation and make appropriate recommendations to the Members concerned. The Organization, if it finds that a Member has, without sufficient justification, having regard to the provisions of the Charter as a whole, failed to negotiate with such complaining Member in accordance with the requirements of paragraph 1 of this Article, may determine that the complaining Member, or in exceptional cases the Members of the Organization generally, shall, notwithstanding the provisions of Article 14, be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member, or the Members of the Organization generally as the case may be, may have negotiated pursuant to paragraph 1 of this Article. If such benefits are in fact withheld so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. The provisions of this paragraph shall operate in accordance with the provisions of Article 67.

The CHAIRMAN. I suggest, Mr. Hawkins, we might as well get article 67 in at this point.

By the way, and most respectfully, I wonder if this charter was ever submitted to a committee on style with the object of making it readable and understandable?

Mr. HAWKINS. A lot of the difficulty with it, Senator, has been the fact that it has been internationally discussed, and it rather tends to make hard reading. However, I think there is room for improvement.

The CHAIRMAN (reading) :

ARTICLE 67. TARIFF COMMITTEE

1. There shall be a Tariff Committee which shall act on behalf of the Organization in the making of recommendations and determinations pursuant to paragraph 3 of Article 24.

2. The Committee shall consist originally of those Members of the Organization which shall have made effective the General Agreement on Tariffs and Trade dated _____, 194____. Any other Member of the Organization shall be a member of the Committee when, in the judgment of the Committee, that member shall have completed negotiations pursuant to paragraph 1 of Article 24 comparable in scope or effect to those completed by the original members of the Committee.

3. Each member of the Committee shall have one vote (see Annexure B).

4. Decisions of the Committee pursuant to paragraphs 1 and 2 of this Article shall be taken by a two-thirds majority of its members and other decisions by a simple majority.

5. The Committee shall adopt its own rules of procedure, including provision for the election of its officers.

Now let us get back to article 24. Would you care to make some general comments on it, Mr. Hawkins?

Mr. HAWKINS. Basically it is an obligation to negotiate for the reduction—the substantial reduction—of tariffs. I should like, if I may, to try to indicate how it fits into the charter, and why it is as complicated as it is, and why the procedures are so complex.

The CHAIRMAN. I am wondering why these three articles could not have been consolidated.

Mr. HAWKINS. I think that they could have been, and could still be. I think the drafting could be improved if Articles 14 and 24 were consolidated, and I think it might help also if Article 67 were tied in more closely.

The CHAIRMAN. Very seriously, I think that one of the condemnatory features of this whole business is the fact that the average person would have the greatest difficulty in just reading this document.

Mr. HAWKINS. I am sure that is true.

The CHAIRMAN. It does seem to me, even though it is in a technical field, that it could be written in plain language.

Mr. HAWKINS. Senator, I agree that it is hard reading. It is complicated, and effort should be made to make it clear so that it can be more readily understood.

However, even when you have done that it will still be complicated because the subject is complicated. It is most complicated in the tariff aspects. I want to indicate just why that is.

The CHAIRMAN. Go ahead.

Mr. HAWKINS. You will notice that the other substantive provisions regarding trade barriers are spelled out. They are capable of being executed and carried out in accordance with their terms. For example, take the other main field, quotas. You can write into the charter a provision which can be carried out, simply saying that they are outlawed, and then you write in your exceptions, and they can be carried out.

Now, in other words, you can deal with your other trade restrictions by formula, because you are going so far in the direction of eradicating them. When you get to the tariff you cannot use the formula approved. You cannot write into this Charter just what every country is going to do on tariffs because you have to handle them selectively, product by product.

You cannot say, for example—you could say it, but nobody would—all tariffs shall be reduced by 50 percent. That you could write in. But it just cannot be done, it should not be done.

Under our Trade Agreements Act and our well-established policy, it could not be done, even if it were desirable to do it. The consequence is that in providing for commitments on the tariff, the only practicable obligation is a general obligation to negotiate. That is so because, as I have indicated, you have to draw up elaborate schedules, you have to consider your items product by product. Many items would not figure at all, on other items the rates would be bound, and on others the rate would be cut in varying degrees.

That is the explanation of the rather complicated nature of these provisions. Since other trade barriers are being dealt with, and the action to be taken regarding them is spelled out, it is felt desirable to essential that some specific action be taken concurrently in regard to tariffs. Hence the provision is made for negotiations among the countries of the Preparatory Committee—for the actual negotiation of tariff schedules among themselves.

In other words, the countries on the Preparatory Committee—the 18 countries—will negotiate at Geneva a multilateral trade agreement with its complicated, long tariff schedules. In doing so they are giving effect among themselves to the obligation, the general obligation, laid down in article 24, paragraph 1.

That agreement—the multilateral trade agreement among the 18 countries—will operate to a large extent as an independent agreement of the charter. It stands on its own feet.

What seems to confuse is the fact that the agreement will incorporate certain general provisions from the charter that are necessary to protect the schedules of tariff concessions, but it is an agreement that, as among the 18 countries, stands on its own feet, and represents the carrying out by those countries of the obligation under the first paragraph of article 24.

The CHAIRMAN. That is to say, the achievement of unconditional most-favored-nation treatment among those eighteen?

Mr. HAWKINS. No, sir. It is more than that. The multilateral trade agreement to be negotiated at Geneva will not involve mere equality of treatment, not merely provide for non-discrimination; it will in form, be much like our trade agreements, which have schedules of tariff reductions.

The CHAIRMAN. At some appropriate time I want to question you very closely on that. Is this the time?

Mr. HAWKINS. Any time you wish.

The CHAIRMAN. Now let us consider just the trade agreements. Let us forget the charter. Will we, at Geneva, negotiate 18, or any definite number, other than one, trade agreements?

Mr. HAWKINS. It will be one multilateral tariff or trade agreement.

The CHAIRMAN. Covering the 18 nations?

Mr. HAWKINS. Covering the 18 nations.

The CHAIRMAN. That will be the only trade agreement that will be negotiated?

Mr. HAWKINS. That will be the only agreement of that kind.

The CHAIRMAN. That is the trade agreement that we have been referring to as the proposed trade agreements at Geneva?

Mr. HAWKINS. That is right.

The CHAIRMAN. And nothing else is contemplated so far as trade agreements are concerned. Is that correct?

Mr. HAWKINS. That is correct. Yes, sir.

The CHAIRMAN. Now, that one agreement, applicable to 18 members, will differ from the bilateral trade agreements which are in effect at the present time, in what particulars?

Mr. HAWKINS. In no very important particular. That agreement—I will get to that in a minute, and you can judge for yourself whether it is important. If you can visualize the agreement, maybe the form of it, it will help.

Consider first a bilateral agreement.

In, say, a bilateral agreement between the United States and Canada, a basic provision of the agreement is one in which the United States agrees that the duties on a long list of products shall not exceed the rate specified opposite those products, and they represent either bindings or reductions in rates, that is to say, tariff concessions. The same thing would be done with regard to another list of products of importance in our exports to Canada. Tariff cuts or bindings; in other words, schedules of concessions on our exports.

Still speaking of bilateral agreements: Each of the bilateral agreements has certain so-called general provisions. Now, the basic purpose of those general provisions—the main purpose—is to protect the tariff concessions. For example, they will all have a clause, such as we have here in article 15, saying that there shall be national treatment in regard to taxation. You can see why that is necessary. If you did not do that you could offset the duty cut by simply putting on discriminatory internal tax.

Another general provision is that there shall be no quantitative restrictions on these products. Without getting into detail, there are cases where you can qualify that in the schedule itself.

We will have a number of provisions like that. That gives you the framework of the bilateral agreement.

Now, your Geneva agreement, your multilateral trade agreement, is exactly the same except you will have, instead of two schedules—one with the United States on products of interest to Canada, one by Canada on products of interest to the United States—you will have 16 more. Each of those schedules will cover products of interest to all of the other countries.

In other words, the Canadian schedule of concessions that comes out of Geneva will include tariff cuts or actions of one kind or another, on products of interest to all the other 18 countries.

The general provisions would be the same for all. And their purpose, the most essential purpose, is to protect those tariff schedules.

Now, we have talked this over internationally and the working papers that have been put out on it, suggest putting in a lot of other provisions, that are relevant and pertinent, and these provisions and others may be desirable.

The CHAIRMAN. There have been charges that you intend to put so much of the Charter into this multilateral agreement that if this Charter would not get by the Congress, you would achieve the same thing in your multilateral agreement.

Mr. HAWKINS. Senator, that is not correct.

The CHAIRMAN. Then I think the answer to that will be for you to supply us with the provisions that will go into the multilateral agreement except as to the schedules.

Can you do that?

Mr. HAWKINS. Yes, sir; we can give you the provisions which we think ought to go into the schedules.

The CHAIRMAN. You have reached no agreement among the 18 members as to what should go in?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Have you reached a partial agreement on that?

Mr. HAWKINS. There has been agreement only in the sense that there are some of the provisions that nobody raised any question about putting in.

The CHAIRMAN. Will you furnish us with the provisions that the State Department will recommend should go into that multilateral agreement?

Mr. HAWKINS. Yes, sir.

I think that would be the same as Mr. Fahy said he would put in.

The CHAIRMAN. We were talking this morning about that provisional organization, not that multilateral treaty. The two things are different, if I understand.

Mr. HAWKINS. You will have that provision also to consider, what you put in regarding a committee to administer certain of the provisions.

The CHAIRMAN. I think we have been talking about three things. I want to be sure that I am right about this. We have been talking about a multilateral trade agreement; we have been talking about a provisional organization made up of the same people who execute the multilateral trade agreement to go into a policing organization, if you wish to call it that, similar if not identical to the proposed organization to be effective until the proposed organization does become effective. Now, are we talking about those three things, or has it been kaleidoscoped into two?

Mr. HAWKINS. Well, one of them I am clear on. You want the general provisions of a substantive sort that the State Department thinks should go into the multilateral trade agreement.

The CHAIRMAN. That is right.

Mr. HAWKINS. The second thing is the statement of what the State Department thinks should go into the agreement as regards a committee.

The CHAIRMAN. The provisional organization.

Mr. HAWKINS. The third, I am not sure.

The CHAIRMAN. The third is the final charter organization itself.

Mr. HAWKINS. We can give you those provisions.

The CHAIRMAN. I am not sure yet that we are talking about the same things.

Mr. HAWKINS. We will be negotiating at Geneva, a multilateral trade agreement, to give effect to, and carry out the obligation of, those 18 countries in respect of article 24 of the Charter.

The CHAIRMAN. It will be a trade agreement?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. It will be a trade agreement tailored to the trade problems of 18 nations?

Mr. HAWKINS. That is right.

The CHAIRMAN. Instead of two, as usual?

Mr. HAWKINS. That is right.

The CHAIRMAN. We are clear on that.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. What else will there be at Geneva?

Mr. HAWKINS. Then there will be the formulation of a draft charter for consideration at a world conference after it is reported to the Economic and Social Council.

The CHAIRMAN. Yes, sir.

Mr. HAWKINS. Now, those are separate things. The trade agreement would be carried into effect, insofar as the United States is concerned, by executive action, under the power of the Trade Agreements Act.

You can only put into that trade agreement general provisions for which there is authority in the act, or general authority in the Executive.

That is what I think Mr. Fahy was speaking of this morning.

The CHAIRMAN. Hold up just 1 minute.

Mr. HAWKINS. Surely.

The CHAIRMAN. Here is what Mr. Fahy and I were talking about this morning, and I invite your attention to this blue London report called: "Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment," London, October, 1946, 25 cents in America, and 1 shilling and 3 pence in United Kingdom.

Page 51, down toward the bottom third of the right-hand column on page 51, appears the following [reading]:

SECTION K. TENTATIVE AND PARTIAL DRAFT OUTLINE OF GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments in respect of which this Agreement is signed:

Having been named by the Economic and Social Council of the United Nations to prepare, for the consideration of the International Conference on Trade and Employment, a Charter for an International Trade Organization of the United Nations—

I interpolate that is the Charter we are discussing here, is it not?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. I continue reading:

Having, as the Preparatory Committee for the Conference, recommended to the Conference the provisions of such a Charter, the text of which is set forth in the Report of the Preparatory Committee; and

Being desirous of furthering the objectives of the Conference by providing an example of concrete achievement capable of generalization to all countries on equitable terms;

Have, through their respective Plenipotentiaries, agreed as follows:

ARTICLE I

1. During the life of the Agreement each signatory government the provisions described below of the Charter for an International Trade Organization of the United Nations recommended in the report of the Preparatory Committee.

In other words, they are going to bring in certain provisions of the Charter that we have been introducing into that interim or provisional organization, am I correct?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. I continue reading:

2. Functions entrusted to the proposed International Trade Organization under any of the provisions of the Charter incorporated in this Agreement by virtue of paragraph 1 of this Article shall, pending the establishment of the Organization, be carried out by a provisional international agency consisting of delegates appointed by the signatory governments.

ARTICLE II

With regard to Articles 24, 32, and 33 of the Charter, which relates to negotiations for

1. The reduction of tariffs and the elimination of tariff preferences, and
2. Parallel action by state-trading enterprises, the signatory governments declare that they have, by virtue of Article III of this Agreement, taken this step toward fulfillment of the obligations of these Articles in respect of themselves and that they stand ready, in conformity with the spirit of these Articles, to undertake similar negotiations with such other governments as may desire to become members of the International Trade Organization.

ARTICLE III

Each signatory government shall accord to the commerce of the customs territories of the other signatory governments the treatment provided for in the appropriate Schedule annexed to this Agreement and made an integral part thereof.

ARTICLE IV

(This Article would set forth the general exceptions provided for in Article 37 of the Charter.)

ARTICLE V

(This Article would reproduce the provisions of Article 38 of the Charter relating to territorial application.)

ARTICLE VI

(This Article would permit revision of the Agreement, by agreement among the signatories, if necessary or desirable in order to take account of changes in the Charter reflected by the International Conference on Trade and Employment.)

ARTICLE VII

(This Article would provide for the entry into force of this Agreement, its duration, and its termination. The Agreement would remain initially in force for three years. If not terminated at the end of the three-year period (which would require six months' prior notice), it would remain in force thereafter, subject to termination on six months' notice. There would be a number of purely technical and of purely legal provisions.)

That is what I refer to as the provisional organization or, if you wish, the interim organization.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. And that is what Mr. Fahy and I were talking about this morning.

My understanding is that Mr. Fahy is going to tell us what provisions will be in here and what provisions will have to be deleted from those heretofore contemplated as going in there.

Those contemplated as going in there were described to us the other day by Dr. Wilcox. He listed them. I believe they are also set out

in full in that lighter blue document which I believe is the New York draft.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Are we together?

Mr. HAWKINS. Yes, sir.

I think our two assignments overlap, but in that way we will be sure to cover it.

The CHAIRMAN. You are going to give us those paragraphs which will be stock, which will be routine, which will be put into this multilateral agreement.

Mr. HAWKINS. Yes. To qualify that, I think we could give you our ideas on everything.

The CHAIRMAN. Exactly.

Mr. HAWKINS. We can work that out with Mr. Fahy.

The CHAIRMAN. In other words, this committee, when we hear from you and Mr. Fahy, will know what is going to be in the multilateral agreement aside from the schedules, and when we hear from Mr. Fahy, we will know what is going to be in this provisional organization.

Mr. HAWKINS. Provisional organization, Senator, I do not understand. You mean it will be in the general trade agreement, is that what you mean?

I think, Senator, between us, we will give you what you want, which will be our ideas of the draft of this general trade agreement, including the organizational phases; that is what he is going to do and we would give you our ideas as to the general provisions.

The CHAIRMAN. All right. If we get that, then we can get this question straightened out.

Mr. HAWKINS. I think we can take care of that without bothering you.

The CHAIRMAN. Thank you.

(The information supplied by the State Department appears as exhibit XX.)

The CHAIRMAN. All right, sir, go ahead.

Mr. HAWKINS. I think I was describing the form of the multilateral trade agreement.

The CHAIRMAN. That is right.

Mr. HAWKINS. Then we got on the substance of what would be in this group of provisions. I do not think that in the light of your discussions with Mr. Fahy, I need to comment on the committee that is contemplated there. He covered that and I can only say that its purpose is to administer certain of the provisions that would probably be in the multilateral trade agreement, which are of consequence to us. Just in case he does not cover it, I could illustrate it.

For example, one provision that will certainly be in it is the so-called escape clause, which provides that concessions might be withdrawn in the case of injury or threatened injury. Then the other party has a right of compensatory withdrawal of concessions.

There is a function there for a committee to make sure that the compensatory withdrawals do not go beyond what they should in order to offset the country that has invoked the escape clause. That is one illustration of why you need an organization.

The CHAIRMAN. The multilateral trade agreement which you have described finds its authority in the Reciprocal Trades Act?

Mr. HAWKINS. Yes, sir.

I do not know whether I need to say anything more in general.

If you have any questions in detail, I will try to answer them.

The CHAIRMAN. Let us start in, then, with article 24, paragraph 1. At the outset, reference is made to article 33, and the gist of that is that if a monopoly state wishes to export, it must grant imports of a specified amount.

Is that not a violation of the intent of the charter?

Mr. HAWKINS. Well, sir, article 33, I believe it is, is not agreed to. It was in our original draft, but it was not discussed at London but may possibly come up for discussion at Geneva. All that that article says is—

The CHAIRMAN. Read it into the record.

Mr. HAWKINS. Article 33 reads as follows:

EXPANSION OF TRADE BY COMPLETE STATE MONOPOLIES OF IMPORT TRADE

Any Member establishing or maintaining a complete or substantially complete monopoly of its import trade shall promote the expansion of its foreign trade with the other Members in consonance with the purposes of this Charter. To this end such Member shall negotiate with the other Members an arrangement under which, in conjunction with the granting of tariff concessions by such other Members, and in consideration of the other benefits of this Chapter, it shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon. This purchase arrangement shall be subject to periodic adjustment.

The exception in article 24—the reason for that exception—would be that the country with a complete monopoly of foreign trade would not be negotiating on tariffs.

The CHAIRMAN. Why would not a monopoly state be interested in getting its goods into other countries, and to get them in, of course, it must get by tariff walls and quota restrictions.

Mr. HAWKINS. Oh, yes; as regards its exports.

The exports would be subject to tariffs in foreign countries, just as any exports of a private company.

The CHAIRMAN. Would it receive most-favored-nation treatment?

Mr. HAWKINS. It would receive most-favored-nation treatment.

The CHAIRMAN. When it comes to imports, according to that provision, it need do no more than take in a certain agreed upon amount of stuff?

Mr. HAWKINS. That is right; a certain agreed upon amount.

The CHAIRMAN. Why favor that kind of state to that extent? Why give them a position that is enhanced above all other states?

Mr. HAWKINS. It is the only way—at least the only way any one has thought of—under which a country like the Soviet Union could participate in the Organization and under which the other members could avoid giving it a completely free ride.

In other words, it would get the benefit of the tariffs and other benefits granted by the other parties. And without an article of this kind, there would be no specific quid pro quo.

The CHAIRMAN. I suggest that you do not have to give them a completely free ride. When we make our trade agreements and have our most-favored-nation clause in them, we stipulate, in effect, that the generalized benefits do not go to the nations which discriminate against our trade.

If a monopoly state operates on a quota basis, so far as imports are concerned, it is discriminating against us and it need not be given our most-favored-nation treatment.

Mr. HAWKINS. If it is discriminating and you are satisfied that it is discriminating, that is true.

There is another article, article 31, which is intended to cover the treatment by a state-trading country of imports from other countries in order to avoid discriminating between them.

In other words, article 31 is the counterpart of the most-favored-nation clause insofar as monopolized trade is concerned. It is an obligation to buy abroad on a nondiscriminatory basis.

Other nations are doing two things: They are granting most-favored-nation treatment and, in addition to most-favored-nation treatment, special treatment in the form of lower trade barriers.

The CHAIRMAN. But to the extent that they are doing that, that is extended to other nations?

Mr. HAWKINS. Yes.

The CHAIRMAN. Including Russia?

Mr. HAWKINS. Yes.

The CHAIRMAN. Russia's reciprocal obligation, if I may suggest, is to take an agreed-upon amount of imports rather than to take imports that are not limited by quantity, as is the duty of the other members of the organization?

Mr. HAWKINS. Yes.

Under this charter, if Russian joined, it would have two obligations.

The CHAIRMAN. Yes.

Mr. HAWKINS. The counterpart of the obligations of the other parties: it would have to buy a certain total over-all amount, and it would have to buy in the best markets to avoid discrimination.

The CHAIRMAN. Yes; but by that qualification, it is enabled to exercise a tighter control over its imports than are the other members of this organization?

Mr. HAWKINS. That is true.

The CHAIRMAN. So that we afford to a type of trading nation which operates inconsistently with our principles, benefits greater than we give our own people?

Mr. HAWKINS. Not greater than our own people, Senator; it may be greater than we give to other countries.

The CHAIRMAN. Greater, if you please, in that way.

Do you feel that that is a defensible thing?

Mr. HAWKINS. I, naturally—and I think everyone who has ever worked in the field of commercial policy—is bound to have doubts about that particular article.

The CHAIRMAN. I am not aiming my shaft at Russian—make it Country X. Why give any nation, when we are trying to figure out a scheme that aims at the quality of treatment—why give any nation, and especially a nation which pursues trade practices which are, on the whole, contrary to equality of treatment, a preference?

Mr. HAWKINS. It is not a preference, really, in any deliberate sense. The purpose of article 33 is to impose some obligation to participate more largely in international trade on a country with a complete state monopoly, just as other nations are taking steps to create a larger foreign trade through the reduction of tariffs and quotas.

I think the question on article 33 that comes up immediately is, What alternative is there; otherwise there would be no obligation undertaken at all.

It is just a question of finding some formula, some commitment, that a complete state trading country undertakes.

Now, as to whether is it more favorable to them than the other provisions are to private trading countries, that would depend on how large the figure is that is negotiated.

The CHAIRMAN. Well, I think we have covered the essential points of that. I am still entirely unconvinced that it is a desirable provision, but maybe further reflection on it will give me more enlightenment.

Who decides whether the monopolistic nation had agreed to take in a stated quantity of goods sufficient to bring into being its *quid pro quo*—the right to export into these other countries on most-favored-nation terms?

Mr. HAWKINS. The other countries are negotiating on that point. I presume if this article were carried out, presumably the way it would be handled, the state trading country would make an offer of so many million dollars a year, and the other parties would suggest it was too low.

The CHAIRMAN. Would the monopoly state deal with the organization or try to satisfy each individual nation as between it and that individual nation?

Mr. HAWKINS. The article could be drawn either way.

The CHAIRMAN. It does not say at the present time; does it?

Mr. HAWKINS. No.

The CHAIRMAN. Does that article result from State Department sponsorship?

Mr. HAWKINS. It is the same as all the others—interdepartmental. It has been through the various interdepartmental committees.

The CHAIRMAN. I mean, was it proposed and was it brought into the London meeting and subsequent meeting by the State Department?

Mr. HAWKINS. It was in the original United States draft which went into the London meeting, but there was so much doubt about it that it was put into brackets and it was not discussed.

The CHAIRMAN. Could we have an opinion or statement from the State Department as to whether it will adhere to that provision or whether it will drop it?

Mr. HAWKINS. Yes, I see no reason why we could not give you a memorandum of the State Department's intentions.

The CHAIRMAN. I wish we could have it.

I think you will find a large number of persons in Congress who will have the same dubious feelings about it that I have.

Mr. HAWKINS. One reason why it did not come up at London was that the Soviet Union, which is the only complete state trading country, was not there. If the Soviet Union does not attend at Geneva, it may not come up there.

The CHAIRMAN. Does it come to this: That a monopoly state cannot, in good faith, join an organization of this kind, because so long as it operates the iron curtain there is no opportunity to determine cost and other factors which enter into what a fair tariff is and what is not a fair tariff?

Mr. HAWKINS. It is a real difficulty.

The CHAIRMAN. I suggest that it is an insuperable difficulty unless the countries other than the monopoly state are to operate blind.

Now, we have what seems to me to be a curious obligation. It says that [reading]:

each member, other than a member subject to the provision of article 33, shall upon the request of any other member or members enter into reciprocal and mutually advantageous negotiations with such other member or members directed to the substantial reduction of tariffs and other charges on imports and exports, and to the elimination of tariff preferences.

How can you mandate two people or two countries to enter into reciprocal and mutually advantageous negotiations?

You can require that they negotiate, but how can you require that they enter into mutually advantageous negotiations?

Mr. HAWKINS. It is a way, Senator, of qualifying or describing what the negotiations should be like. They must be mutually advantageous.

The value of the words to which we are referring is that no nation could demand of another nation that it, for example, make a particular tariff reduction in an agreement which was not advantageous to it.

The CHAIRMAN. Let us come back to my point.

How can you provide that two nations, or two people, or two groups shall enter into reciprocal and mutually advantageous negotiations? As I said before, you can require them to negotiate but whether it is mutually advantageous and whether it is reciprocal is a back-sight determination, depending on what they do when they negotiate; is that not correct?

Mr. HAWKINS. Yes, sir; but the purpose of the language is to make the point that the character of the negotiations shall be such as not to be disadvantageous to one of the parties.

The CHAIRMAN. Well, I suggest you cannot tell about that until after the negotiations have been concluded.

Mr. HAWKINS. No; this is only a general statement of what the intent is.

The CHAIRMAN. What you mean to say, then, is that they shall negotiate with the hope that their negotiations will result in something which is reciprocal and mutually advantageous?

Mr. HAWKINS. Yes. If they are otherwise, the obligation to negotiate does not hold.

The CHAIRMAN. Yes, but who judges that?

Mr. HAWKINS. Each party has to judge for themselves.

The CHAIRMAN. Country A demands that country B negotiate with it, and in serving notice, it says: "Let us negotiate reciprocally and to our mutual advantage."

Country B says: "We do not see anything reciprocal or anything mutually advantageous, therefore why negotiate?"

Mr. HAWKINS. I do not think that would be a proper construction. The obligation to negotiate is clear. There is an obligation.

The CHAIRMAN. All I am trying to get at, Mr. Hawkins, is that you can agree to negotiate, but how can you ask someone else to agree to negotiate on a "reciprocal and mutually advantageous" basis without having it in someone's power to determine whether the negotiation will be of that nature?

Mr. HAWKINS. If demands are made on a country which would not be advantageous to it—demands which if acceded to in an agreement, would not be advantageous—the country could defend its position on that ground and refuse to enter into the agreement.

The CHAIRMAN. But in the end, the Organization would have something to say about that, would it not?

Mr. HAWKINS. If the country were unreasonable in its position, yes.

The CHAIRMAN. So the answer is, the Organization would judge the nature of the negotiation as to whether it was an invitation to a mutually reciprocal and mutually advantageous agreement.

Mr. HAWKINS. Yes.

The CHAIRMAN. Let us follow through after that language. [Reading:]

Each member, other than a member subject to the provisions of Article 33, shall upon the request of any other member or members, enter into reciprocal and mutually advantageous negotiations with such other member or members directed to the substantial reduction—

I suppose that would be the same as saying, "the object of"?

Mr. HAWKINS. Yes.

The CHAIRMAN. I continue reading: *

the substantial reduction of tariffs and other charges on imports and exports and to the elimination of import tariff preferences. These negotiations shall proceed in accordance with the following rules.

Does that carry the implication that substantial reduction of tariffs and of other charges on imports and exports are always a desirable objective?

Mr. HAWKINS. Yes, sir. It does not mean that the reduction of a particular rate is necessarily a desirable objective, but it means that the general objective of reducing the level of tariff barriers to trade is a desirable objective.

The CHAIRMAN. Of course, each member is not interested in promoting a generality. Each member is interested in promoting a reduction of tariff of substantial interest to it.

Mr. HAWKINS. Yes.

The CHAIRMAN. So, does this paragraph provide, willy-nilly, that the reduction of a tariff, if one is invited to reduce, is something that should be granted?

Mr. HAWKINS. No, sir. What that paragraph is trying to say is that negotiation of trade agreements along the line of our trade agreements negotiated under the Trade Agreements Act is a desirable thing, but without saying that every rate for which a request is made for reduction has to be reduced.

The CHAIRMAN. We found this morning that nations throughout the world have exchange restrictions. I think you will find in that data that almost every nation has quota restrictions and tariff restrictions. Those are measures of self-protection, are they not?

Mr. HAWKINS. Most of them. The majority of them, I think, the exchange restrictions, are bona fide restrictions to protect the country's currency.

The CHAIRMAN. Then it would be a very wrong thing, would it not, to generalize in this plan the implication that the reduction of tariffs, the reduction of charges, the elimination of import charges in and of themselves, without regard to the circumstances, is a desirable objective?

Mr. HAWKINS. Yes, but this paragraph, Senator, does not relate at all to the quantitative controls, quotas, and exchange restrictions. Those are dealt with especially and dealt with by formula. This relates only to tariffs and to preferences.

The CHAIRMAN. All right.

Is the theory of that paragraph that all tariffs and all preferences are sinful, per se?

Mr. HAWKINS. No.

The CHAIRMAN. And, therefore, should come under reduction if some one requests the reduction?

Mr. HAWKINS. Not all tariffs, Senator. What it is saying is that the general level of tariffs in the world is too high and they ought to come down, but it does not say that every tariff has got to come down.

The CHAIRMAN. Paragraph 1 contemplates selective situations, because it ties itself to each member.

Now, country A starts or attempts a negotiation with country B directed to the substantial reduction of B's tariffs and other charges on its imports.

Mr. HAWKINS. Yes.

The CHAIRMAN. Unless country A succeeds in getting a reduction, has the negotiation been reciprocal and has it been mutually advantageous?

Mr. HAWKINS. No, not unless something is granted by B.

The CHAIRMAN. Well, B refuses and does not give the reduction, then it has not been mutually advantageous, right?

Mr. HAWKINS. Yes.

The CHAIRMAN. And yet there is an obligation, or is there, to enter into a mutually advantageous obligation?

Mr. HAWKINS. There is an obligation.

The CHAIRMAN. And if the results are not mutually advantageous, then what does the whole thing spell?

Mr. HAWKINS. Well, I do not think the assumption is right that they would not be. I think this should be clear, the country that accepts this obligation is accepting an obligation to negotiate regarding its tariff.

The CHAIRMAN. Yes.

Mr. HAWKINS. Now, it says, for the substantial reduction of tariffs there may be cases and countries whose tariffs are so low that a mere binding of that tariff would be regarded as a concession, but a country which enters this organization is committing itself to take action with regard to its tariff involving either reduction, or, in the case of a low tariff, maintaining it.

The CHAIRMAN. Then it is assumed that existing tariffs are too high?

Mr. HAWKINS. It is assumed generally that tariffs are too high; yes, sir.

The CHAIRMAN. In all countries?

Mr. HAWKINS. Generally throughout the world. There are some countries who relied on a quantitative restriction more than on tariffs.

If the quantitative restriction is taken off, they would be without anything.

The CHAIRMAN. "Binding" is another angle of the business which I wish to get into.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. What I wanted to bring out is that there is a general presumption under this organization that tariffs are too high, and that, therefore, they should be lowered, and that the member should have the opportunity of bringing about a lowering of them by having an opportunity to have the nation maintaining the tariff to negotiate a lowering?

Mr. HAWKINS. It is required to negotiate with a view to reduction, but not required to reduce every tariff.

The CHAIRMAN. But there is a presumption there that the tariff is too high, and then we must explore how that presumption will operate against the country which maintains that tariff when put up against negotiation?

Mr. HAWKINS. Yes, I think that is right.

The CHAIRMAN. I think that will appear from the reading of the article. Paragraph 1 (a) says [reading]:

Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification or termination of existing international obligations except by agreement between the contracting parties, or failing that, by termination of such obligations in accordance with their terms.

Will you explain what that means?

Mr. HAWKINS. Yes, sir.

A good many of the preferences that exist are so-called contractual preferences. The most important of them is the British Empire system.

The CHAIRMAN. Between the British Dominions and the United Kingdom?

Mr. HAWKINS. And between each other.

The CHAIRMAN. Yes.

Mr. HAWKINS. Those agreements provide that the margin of preference, that is to say, the difference between the rate that applies to foreign countries generally, and the rate that applies to imports from the beneficial country, shall not be reduced; that is, in an agreement contract.

The CHAIRMAN. Yes.

Mr. HAWKINS. Now, this article is saying, in the first part of it, that this obligation to negotiate for the elimination of preferences applies even in cases of contractual preferences, so that no country can say that this preference is untouchable because it has a contract with some other country. It is open to negotiations. It cannot be ruled out and kept out of the negotiations merely because of an existing contract with a third country. You could see that without a provision of that sort it might occur that we would go to country X, for example, and say that your preference on some product, say, fruit, for country Y, is too high and we want to cut it. They might conceivably say, "We are bound by contract."

They might not want to talk about it and this provision says that they will talk about it.

Now, the rest of the paragraph is a qualification of what you actually do about it after you have negotiated.

The CHAIRMAN. It seems to me that you go up the hill and then you march right down again.

Mr. HAWKINS. I do not think that is true, if you do not try to ascribe too much importance to the provision. All it says is that you shall not say that existence of a contract with a third country prevents you from negotiation.

Suppose that country X agrees to reduce a preference that we are interested in, it is saying that it is not required to violate its agreement with country Y. It has to get a modification of it. In other words, it has to get the consent of Y.

In the last part, it says that if the country that has the contractual right were really unreasonable and obstinate and the country that has given the preference nevertheless finds it to its advantage to give it up, there is a way out, you could terminate the whole agreement.

The CHAIRMAN. If the agreement permits.

Mr. HAWKINS. There is no trade agreement, Senator, I do not believe, that does not provide for its termination.

The CHAIRMAN. Then, there is a provision for termination if agreement cannot be reached?

Mr. HAWKINS. Not quite that.

The CHAIRMAN. It says [reading]:

or failing that, by termination of such obligations in accordance with their terms.

Mr. HAWKINS. It being understood that the action shall not require it [reading]:

except by agreement between the contracting parties, or, failing that, by termination of such obligations in accordance with their terms.

It envisages a possibility but it does not compel.

The CHAIRMAN. Well, that language is pretty clear, "Or failing that;" that is, failing agreement as to modification or termination, then termination in accordance with the agreement.

Mr. HAWKINS. Well, of course, on a certain assumption, it would have that effect.

Let us illustrate it. Country A has a contractual preference to country B, let us take that case.

The CHAIRMAN. Yes.

Mr. HAWKINS. Let us get some rates here. Let us suppose that A has agreed that it will charge 40 percent on imports from foreign countries but only 20 percent on imports from B.

The CHAIRMAN. That is right.

Mr. HAWKINS. It is a member of the same political organization.

Now, the United States negotiates with A about that rate; it is a tariff.

The CHAIRMAN. That is right.

Mr. HAWKINS. The United States says, "We want this tariff down to 20."

The CHAIRMAN. Might it say, "We want you to raise that rate to 40"?

Mr. HAWKINS. You could do it that way but the other is more usual and more likely. "We want you to reduce that to 20."

Let us suppose that Country A says, "Country B, we have got a request to reduce this rate."

Country B, not having been able to get anything from the country making the request, says, "I object to that."

Country A, nevertheless, says, "I am going to accede to that request." Then it has only two ways out. It either gets the agreement with B modified by agreement or else terminates it in accordance with its terms.

What is wrong with the arrangement, realistically speaking, is that A is probably not going to take so tough a position.

Country A is going to say that B should expect from other countries a lowering of tariffs on its products, so that there is some compensation for giving up the preference.

Now, that is probably the way it would work, and something of that sort would be done so that you would not face that difficult issue that you spoke of first.

The CHAIRMAN. Of course, the maintenance of British preferences does not rest on any kind of loose reasoning such as that that you have indulged in.

They regard those preferences as a vital part in the maintenance of their trade and their Empire.

How can we figure that one of the British Dominions would just cavalierly say, "Because we are getting some benefits elsewhere, we will give this up"? If that were the case, we would not have this knotty problem.

Mr. HAWKINS. There has been experience on this very point, Senator. I would not vouch for the exact details and the considerations involved, but we did have negotiations which illustrate the point.

We negotiated with the United Kingdom and Canada. In the agreement with United Kingdom, we asked for free entry on wheat. The duty on wheat, as I remember, was, I think, 4 shillings a quarter on foreign wheat, with free entry for Canadian wheat. We said we wanted that off. Canada had a contract, and Canada acceded and waived its rights under the contract, because we had at the same time negotiated an agreement with Canada, and Canada thought the whole deal was advantageous enough so that they could give up the preference they had in the United Kingdom.

The CHAIRMAN. Yes.

Mr. HAWKINS. That is the type of situation that you are dealing with in this paragraph.

The CHAIRMAN. But your language is not confined to cases of that type. Your language suggests that if the parties do not agree, then the contract shall be terminated in accordance with its terms.

Mr. HAWKINS. Let us take the case that I have given you and let us suppose that the Canadians had been extremely unreasonable; that even though the whole arrangement was good, they were intransigent.

The CHAIRMAN. Let us suppose the particular preference was very valuable to them.

Mr. HAWKINS. Yes.

The CHAIRMAN. And they saw no offsetting quid pro quo.

Mr. HAWKINS. Yes; and then also we must suppose that the agreement is important, and in that case, the United Kingdom, without the concession, cannot get agreement.

The CHAIRMAN. Yes.

Mr. HAWKINS. I would rather take my assumption of being unreasonable because that is the more likely case in which this last illustration would apply.

Under those conditions, that I cited, "A" could get an agreement terminated.

The CHAIRMAN. It could do it anyway. If the agreement provides opportunity for terminating, either party has opportunity to terminate.

Mr. HAWKINS. Yes.

The CHAIRMAN. What I am getting at rests on optional action. Does this compel the termination of the agreement if agreement can not be reached?

Mr. HAWKINS. That is all I am getting at now.

Senator, I think I can throw a little light on the reason for this language.

The CHAIRMAN. I wish you would.

Mr. HAWKINS. This last part, which more or less states the obvious, was adopted on the suggestion of some other countries to make it clear that you were not trying to do anything more here than to say that the existence of a contract should not stand in the way of negotiations.

The rest of the language there deals with cases which are pretty hypothetical.

The CHAIRMAN. The whole approach of that subclause (a) seems very unrealistic to me. Two nations have a valid agreement in which they set up preferences, presumably resting on valid consideration, and this paragraph goes on the assumption that while that contract is in force and effect an outside party may come in and compel one of the parties to the agreement to commence to negotiate with the end result, in one way or another, of destroying that existing valid agreement.

Is that it?

Mr. HAWKINS. All the article is trying to do is to establish the fact that when you negotiate, or approach a country in which to negotiate, on preferences, it is contractually bound to another country.

The CHAIRMAN. Yes.

Mr. HAWKINS. The article states that the mere existence of the contract will not be a bar to the negotiations.

The CHAIRMAN. A stranger to the contract has the right to say that the mere existence of a valid contract between the parties to the contract shall have no deterring effect. The stranger country, plus a country which is party to a preference can go right ahead and negotiate as though the preference contract did not exist and if agreement can not be reached for breach of the preference contract, then one of the parties to the preference contract must terminate it under its terminations provisions.

I do not believe that I understand your explanation.

Mr. HAWKINS. Well, Senator, the party that approaches the country giving the preference, which is provided for by a contract with a third country, is not a stranger in any real sense to that contract. He may be a stranger in a legal sense, but he has a real interest and very great legitimate interest in that contract which gave Canada a preference in the United Kingdom on wheat.

The CHAIRMAN. Without this charter plan, he would have no tangible interest of any kind. There would be a general interest as there is a general interest in every country in every other country's business, but it is the function of that provision to establish this new relationship whereby a stranger to a contract can come in and initiate steps to destroy it?

Mr. HAWKINS. Well, the countries that accept this include the beneficiaries of the preference, and if they agree to this provision, I do not see that there is any harm.

The CHAIRMAN. I am not now condemning it. I am trying now to find its meaning. Is that its meaning?

Mr. HAWKINS. Its meaning is simply that the existence of contractual preferences shall not stand in the way of negotiations pursuant to paragraph 1, directed to the elimination of preferences.

The CHAIRMAN. Without this organization plan, we went to the United Kingdom and said, "We do not like this preference between the United Kingdom and Canada," the United Kingdom would say, "Well, it is too bad. We have an agreement with Canada." The whole thing would drop there?

Mr. HAWKINS. Yes.

The CHAIRMAN. But under this plan, we go to the United Kingdom and say, "We do not like this," and the United Kingdom is under obligation to try to get out from under that preference by getting Canada to withdraw from its agreement or consent to its modification and if that does not result then the United Kingdom is obligated to terminate that agreement at the earliest opportunity in accordance with its terms?

Mr. HAWKINS. I think, Senator, that you are giving more value to the paragraph—a good deal more value—than I would.

The CHAIRMAN. Then I am misreading its language.

Mr. HAWKINS. I do not think that the real sense of paragraph (a) is much affected, if at all, by the language which follows the first comma.

The CHAIRMAN. Well, let us read it once more and we will pass on.
(Reading:)

Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences.

At the present time, they would be considered as standing in the way, is that correct?

Mr. HAWKINS (reading):

permitted to stand in the way of negotiations.

The CHAIRMAN. Prior to the effectiveness of this organization, a prior international commitment for preferences would be considered as standing in the way of negotiations to destroy preferences for the benefit of a stranger to the agreement?

Mr. HAWKINS. Yes.

The CHAIRMAN. So, the purpose of this is to establish a new rule which gives you at least a hunting license to break down a preference, if you can?

Mr. HAWKINS. That is right.

The preference is a contractual arrangement standing in the way unless, as was done in the case of the Canadian-United Kingdom Trade Agreement negotiations, they agreed that they would negotiate despite that.

The CHAIRMAN. It then goes on to say (reading):

It being understood that action resulting from such negotiation shall not require the modification or termination of existing international obligations except by agreement between the contracting parties.

Well, up to that point, you have a complete nullity. You have the right to talk about it, but up to that point, you can not compel any action of any kind, is that right, up to that point?

Mr. HAWKINS. Yes.

The CHAIRMAN. Now, then, if there is significance to what I have read so far, it derives from what I am going to read:

of failing that, by termination of such obligations in accordance with their terms.

Unless that means that upon the failure of the parties to the preference agreement to reach an agreement to modify or terminate the preference the party approached by the stranger to the agreement must invoke the termination provisions of the contract, it does not mean anything?

Mr. HAWKINS. I do not think, Senator, that the provision is of vital importance.

Senator HAWKES. Mr. Chairman, I have just come in, but I would like to know what those words do mean, if they do not mean what you say.

The CHAIRMAN. Yes.

Senator HAWKES. I would like to find out whether or not they are important or not.

What do the words [reading]:

or failing that, by termination of such obligations, in accordance with their terms—

mean?

The CHAIRMAN. Mr. Hawkins has already pointed out that all these termination agreements have termination machinery.

In other words, after the lapse of a certain time, or otherwise.

Senator HAWKES. Now, in these preference agreements, are you referring to the preference given by England to her various Colonies and Dominions, and so forth?

The CHAIRMAN. That is right.

Senator HAWKES. Is there anything else outside of that in the preference agreements?

The CHAIRMAN. Those were the ones we were talking about, and, of course, we have some preference agreements of our own with Cuba and the Philippines.

Senator HAWKES. Yes, may I ask a question?

The CHAIRMAN. Yes.

Senator HAWKES. Does that not mean that if the International Trade Organization tried to get us to discontinue or modify the preference agreement, we have given to the Philippines, and we refused to do it, failing that, then the preference agreement would have to terminate—well, let us say it has to terminate in accordance with the terms of the agreement now in existence, is that what it would mean, Mr. Hawkins?

Mr. HAWKINS. That goes back to the provisions of article 14 that we were discussing awhile ago. The obligation is to negotiate in this article for the elimination of the preferences listed in article 14.

Among those would be technically included the present Philippine preferences.

However, as I have stated before, those represent a special case, because the law and the agreement with the Philippines already provide for the carrying out of the elimination of preference over a period

of time, and for that reason, there is not the occasion for negotiating, or for any country asking for negotiation.

The law itself has provided for it.

Senator HAWKES. How do we know it would not become the subject of request from other nations who might think the thing was unfair as time goes on, asking us to modify that and to get out of the preference that we granted them by law?

You have to say there is a thing that is done by law, or a thing that is done by reciprocal trade agreement.

It does not say that, does it?

Mr. HAWKINS. I think the distinction is pretty clear.

Senator HAWKES. What makes it clear?

Mr. HAWKINS. The circumstances of the case.

Senator HAWKES. I know that is your judgment, but what is the other country going to think? That is where troubles rise. You may honestly think one thing and I may honestly think a different thing, how are you going to settle it?

Mr. HAWKINS. If there were a request by any country under that provision to negotiate regarding the Philippine preferences, we could only say that we have already taken steps to do what it is the purpose of the article to do.

It seems to me that that is clear.

Senator HAWKES. I will tell you what I want to do, Mr. Chairman. I do not want to interrupt, but I do want you to know that some of the best posted people in the country are a little dubious as to the answer given by Mr. Clayton in regard to these escape clauses.

The CHAIRMAN. Well, I would prefer to avoid that subject at this time.

Senator HAWKES. I do want to put this in the record from a very able man, one of the very ablest in the country, in which he says [reading]:

Secretary Clayton gave your committee wrong answer on escape clauses. See article XXXIV, second paragraph, last sentence in proviso International Trade Organization Charter which will govern after Geneva. Instead of escape this is a weapon of coercion.

I just want to say to you that I have read these things carefully and what he has in mind, there is a tremendous power to prevent our country from escaping even though we may have reason to escape.

The CHAIRMAN. Let us make a final effort to see if we can reach understanding as to the meaning of paragraphs 1 and 2.

Paragraph 1 gives each member the right to call upon any other member to enter negotiations directed to the substantial reduction or the elimination of import tariff preferences.

Am I right so far?

Mr. HAWKINS. Yes.

The CHAIRMAN (reading):

These negotiations shall proceed in accordance with the following rules:

"Prior international commitment shall not be permitted to stand in the way of negotiations with respect to tariff preferences."

Is that not simply saying that despite the fact that there is an agreement between two countries establishing tariff preferences that the type of negotiation contemplated in paragraph 1 shall go ahead anyhow?

Mr. HAWKINS. Yes.

The CHAIRMAN. Now, it goes on to say :

It being understood—

Of course there would be no point in going ahead with that unless there were some way to get rid of those preferences?

Mr. HAWKINS. That is right.

The CHAIRMAN. So it goes on to say :

action resulting from such negotiations shall not require the modification or termination of existing international obligations—

Now, if it stops right there, it would be completely senseless. Is that not correct?

Mr. HAWKINS. I think so.

The CHAIRMAN. But it goes on to say :

except by agreement between the contracting parties—

And, of course, if the contracting parties agree to abandon the tariff preference, why then you have gotten somewhere.

Now, you have to consider what happens if they do not agree. If they do not agree, then it goes on to say :

or failing that, by termination of such obligations in accordance with their terms.

My interpretation is that "such obligations" mean the obligation in accordance with the terms of the preference agreement; is that correct?

Mr. HAWKINS. That is right.

The CHAIRMAN. And without this procedure established in 1 and 2, there probably would not be any termination. In other words, the contract would continue to go on, according to its terms; is that right?

Mr. HAWKINS. Yes.

Of course, if the action does not result, that is to say, the party having the preference and the one contemplating it, there is no agreement, nothing happens.

The CHAIRMAN. One, to start a negotiation; two, a negotiation that will lead to a voluntary abandonment of a preference, or failing that, to the end of a preference by terminating the agreement. Is that not it?

Mr. HAWKINS. I think that is not quite right, Senator.

Senator HAWKES. What you mean, Senator, by the ending of the agreement by termination of the agreement in accordance with its terms of termination.

The CHAIRMAN. Exactly.

Senator HAWKES. You left that off this time, but that was what you mean.

The CHAIRMAN. Exactly.

Let me make it a little more concrete.

Let us assume that A and B have an agreement and, let us assume that it says that either party may terminate this agreement within 2 years from the time of notice.

Mr. HAWKINS. Yes.

Senator HAWKES. But not being terminated in that way, it will run for 20 years.

The CHAIRMAN. Exactly.

Senator HAWKES. Now, then, they have the right to terminate and your question is, would that party have to exercise that right of termination in 2 years, the short period under this agreement?

The CHAIRMAN. Yes.

Mr. HAWKINS. It would have to do it if it agreed to the action requested, but remember that you are not speaking here in terms of a whole preferential system considered at once.

This kind of question will come up on a particular item, a particular item such as wheat, under which Canada received a preference from the United Kingdom.

Now, in that kind of situation the United Kingdom is very likely to inquire whether Canada will assent before it takes the action. Canada's motive for assenting is that it is part of a negotiation out of which Canada might get benefit elsewhere.

The CHAIRMAN. That might happen, but I wish to make this point that that does not have to happen. Am I correct in saying that if the countries which have the preference agreement do not between themselves agree to surrender, or abandon the agreement, that then the country approached for negotiations by one of the member countries not a party to the agreement, must invoke the termination clause in that agreement?

Mr. HAWKINS. If the party that grants the preference is approached with a request that the preference be abolished, and it agrees that it will do it.

The CHAIRMAN. Yes.

Mr. HAWKINS. In other words, take the illustration that we used that the British would take off the duty on wheat. If it agreed to that with no consultation with Canada, or anything of the sort, then the only thing they would do would be to get Canada to agree to it, or to terminate the agreement.

The CHAIRMAN. Yes; but assuming that Great Britain and Canada did not agree, then would Great Britain have to invoke the termination clause?

Mr. HAWKINS. She would have to if she agreed to take that duty off.

The CHAIRMAN. Would she have to terminate the agreement?

Mr. HAWKINS. If she agreed to take the duty off and said, "We will do that," even though Canada objected.

The CHAIRMAN. You say "take the duty off," you mean the preference?

Mr. HAWKINS. It means the same thing.

The CHAIRMAN. Yes.

Mr. HAWKINS. The United Kingdom agrees to take the preference off. Canada objects to this. Yet the United Kingdom determines to go through with it. Then all the United Kingdom can do is to try to get Canada to agree to it, or terminate the contract with Canada.

The CHAIRMAN. But could Britain say, "We have tried to get Canada to agree to this, and Canada will not do it, and we are sorry and we must end the negotiation." Or would Great Britain be required to do it?

Mr. HAWKINS. Great Britain is not required to give a concession on that particular product, and in the circumstances that you are envisaging, there would certainly be conversation with Canada before it ever got to the point of actually throwing over the agreement.

The CHAIRMAN. I suggest, Mr. Hawkins that you are confusing practical procedure which may or may not happen with the definite provisions of this agreement, this provision of the Charter that we are talking about here.

The language is "or failing that"—that is, failing to reach agreement, "by termination of such obligation in accordance with their terms."

Now, it seems to me that that is clear and means what it says. Now, if I interpret what you say correctly, you say that may not happen, and I do not understand what language supports your theory.

Mr. HAWKINS. The only language in support is that it says, "action resulting from such negotiations."

Senator HAWKES. Mr. Hawkins, may I just say something here that if Great Britain and Canada and the United States or any other nation that we might use as an illustration in considering this section, were members and agreed to join this organization, then I ask you, how can they refuse if they fail to get together in a voluntary way and modify the thing by agreement among themselves; how can they refuse with this language here to terminate the obligation in accordance with their terms and at the earliest moment that the terms allow them to terminate?

Mr. HAWKINS. Well, Senator, all I can say to that is to quote the precise language, that is to say, "action resulting" between the party that has given the preference to the third country, negotiations between that country and the country that is trying to get rid of the preference. Now, if they do not find that they can get an agreement, then the rest of the thing does not follow.

Senator HAWKES. Now, listen: If I understand the English language, it means the directly opposite thing to what you are saying. They try to get together, and they fail. It says [reading]:

It being understood that action resulting from such negotiations shall not require the modification or termination of existing international obligations, except by agreement between the contracting parties.

Now, let us say that they fail, this language goes on and says:

or failing that—

meaning that they have failed, the thing shall be accomplished by termination of such obligation in accordance with their terms.

I just cannot see how a nation that is party to this International Trade Organization could refuse to terminate any preference, or modify it in accord with the request made by the Organization with this language in there. If they fail to get together voluntarily, then they might say, "Well, we refuse to do the thing voluntarily and cannot come into agreement," but there is a 2-year clause in here which the International Trade Organization would ask the nation to terminate in accordance with the terms.

Mr. HAWKINS. Senator, there is nothing in here that would permit the Trade Organization to order any action of that kind.

Senator HAWKES. It does not have to. It is ordered by the terms of the agreement.

Mr. HAWKINS. No; the obligation in this article is an obligation of each member to negotiate with other members. This question would come up in negotiations as between those members.

The CHAIRMAN. Mr. Hawkins, how do you interpret the words:

or failing that, by termination of such obligations in accordance with their terms—

What is the significance of those words to your mind?

Mr. HAWKINS. Well, just exactly what it says. If the party granting the preference which had contracted to a third country, decides to change it, decides, we will say, at our request, and the party with which it has a contract refuses to modify it, then having made the decision to go ahead with that, the first party must terminate the agreement.

The CHAIRMAN. When it makes the decision to ask the other party to abandon the agreement, when it makes that decision, then it must carry through with termination?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. That is your interpretation?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. In other words, it cannot make two decisions. It cannot decide that it will try to get the other country to abandon, and if the other country refuses to abandon, it then says, "Gentlemen, we made the effort and we are sorry but it did not work and the deals are off."

It cannot stop there. If it goes that far, then it must go ahead and terminate the agreement; is that your interpretation?

Mr. HAWKINS. Yes; if an agreement has been reached with us.

The thing that makes it a great deal more flexible than that is that a country that has extensive contractual relations is, as a practical matter, going to be careful, when it is discussing the question of abandoning a preference contractually bound to another country, to keep in touch with that other country and to try to avoid getting into a position in which the drastic action of canceling the whole agreement would be involved.

The CHAIRMAN. You are discussing diplomatic techniques. If the country wants to preserve the preference, if the country approached by the stranger to the contract wants to continue the preference, it will not ask the country with which it has the preference agreement, to abandon the agreement. Is that not correct?

Mr. HAWKINS. No.

The CHAIRMAN. Because if it does ask it and the country refuses, then it has bound itself under your theory to go ahead with termination; is that not correct?

Mr. HAWKINS. If it decides to eliminate the preference anyhow, that is right.

The CHAIRMAN. All right.

If the country refuses to ask the cancellation of the preference agreement, if it refuses to ask that, then has it complied with the spirit of negotiations prescribed here?

Mr. HAWKINS. The answer, I think, is no, but I want to be sure.

The CHAIRMAN. Do you mind if I make it just a little clearer?

Suppose that the country which has been approached by the stranger to the contract says, "Well, now, if I can get an agreement from the country with which I have the preference to forego it, why I am willing to play ball, but if I cannot get the agreement, I am not willing to invoke the termination."

A country that reaches that conclusion, and it might be a very sensible conclusion to reach, that kind of country will never carry the negotiations to the point where it asks, under your interpretation, the country with which it has an agreement to forego that agreement, will it?

Mr. HAWKINS. I think it will, Senator.

The CHAIRMAN. If it does, then under your theory it will have to take the next step and invoke the termination machinery and that is inconsistent with the purpose we have assumed.

Mr. HAWKINS. Could I just indicate the way these questions will come up?

The CHAIRMAN. Yes.

Mr. HAWKINS. They will not come up in general in the negotiating process, which is the agreed process. It will come up in particular items.

Now, let us suppose that it is a United Kingdom preference to Canada involved, and that that preference is important to the United States, and in the negotiating conference the United States says to the United Kingdom, "That is of great importance to us, and we want it done."

It may be that they either will not get any agreement with us at all, or they will not get as much as they otherwise would in the agreement.

Under those circumstances they are almost certain to approach Canada and say, "This contractual preference you have got with us is standing in the way of our agreement with the United States, and we wish you would modify it."

The CHAIRMAN. Yes.

Mr. HAWKINS. In this network of preferences, you have the reverse of that situation. Canada is giving preference to the United Kingdom in which the United Kingdom has a contractual right. The United Kingdom would say to Canada, "If you waive this one to help me through, I will waive the one that you want to get through."

The CHAIRMAN. Yes; that is the way it might work, but it does not have to work that way.

Mr. HAWKINS. Senator, in theory perhaps not, but I can only say inevitably it will.

The CHAIRMAN. We go to the United Kingdom, and we say we want to break down the preference on, say, automobiles. I do not know whether or not Canada makes automobiles. What would be the thing that we would go to them for?

Mr. HAWKINS. Various farm products.

The CHAIRMAN. We go to the United Kingdom and say, "Canada has a preference on farm products and we want to be put on parity, we want you to break down that preference."

The United Kingdom has to make a decision. It has to decide whether it wants to open up negotiation with Canada, to break down that preference with the chance that it will fail, and failing, terminate that agreement with Canada. Is that not its decision?

Mr. HAWKINS. Not upon the opening of negotiations. The termination of the agreement is not as a practical matter likely to be in the cards.

The CHAIRMAN. Let us assume a simple case where we go to the United Kingdom and say, "We want to equalize this situation as far as apples are concerned."

The United Kingdom says, "We have a preference agreement with Canada."

All right; this contemplates the possibility that the United Kingdom will say to Canada, "Let us modify this agreement, or let us terminate it," but if Canada says "no," having been approached by the United

Kingdom, then you must take the further step according to this language and terminate that agreement according to the termination provisions of it. Is that right?

Mr. HAWKINS. That is right, if the United Kingdom is going to go through with that concession.

The CHAIRMAN. Now, what I am asking you is if the United Kingdom, looking all the way to the end, and the possible invocation of that termination machinery, says, "Well, we do not want to do that; therefore we will not ask Canada in the first instance to modify the preference agreement, and by not asking her we escape the second barrel, to wit, termination of the agreement."

Would that be the type of negotiation contemplated by this charter?

Mr. HAWKINS. I do not think that they would have in mind at the stage to which you carried this, the termination of the agreement with Canada. They would certainly say that they are obligated to negotiate whether or not it is bound contractually.

The CHAIRMAN. If Canada says "No," then they must terminate?

Mr. HAWKINS. That commitment necessarily involves consultation with Canada and to get a waiver on that concession.

The CHAIRMAN. Yes.

Mr. HAWKINS. If the United Kingdom definitely made up its mind that no matter what happened, even if it wrecked its relations completely with Canada, and was going through with that concession, then, yes, it would have to terminate.

The CHAIRMAN. How could it avoid terminating if it opened the question with Canada and Canada said "No"?

Mr. HAWKINS. It could not, if it decided to go through with the concession that we asked for.

Senator, I just do not think that you can separate the legal considerations here from the practical considerations relating to how this is bound to work. There are so many steps in between the request of the United Kingdom for Canada's consent to take that duty off the apples. Canada is also negotiating.

Great Britain has a quid pro quo and they could say, "We have a contractual right on certain things in Canada and if you will give us this waiver on apples so we can get an agreement with the United States, we will give you a waiver on other things." That is the way it is bound to work.

The CHAIRMAN. But Canada has the choice of saying "No," and if it says "No," what would happen?

Mr. HAWKINS. There are two things that could happen. Great Britain could say to us, "We cannot cut the duty." The other thing would be that they could say, "We will cut the duty."

The CHAIRMAN. If it says, "We cannot cut the duty," do we not have the right to say, "O. K. Invoke your termination machinery"?

Mr. HAWKINS. No; I think we would say something different. I think we would say, "There will not be any agreement."

The CHAIRMAN. Let us assume that we could say that. Could we also say, "O. K., invoke your termination mechanism under the provisions of paragraph 1 (a) of article 24"?

Mr. HAWKINS. No.

The CHAIRMAN. Could we say that?

Mr. HAWKINS. No.

The CHAIRMAN. Would we have a right to say that?

Mr. HAWKINS. We would not have an enforceable right. We could suggest it, but what we would say to them, since it is their contract that they negotiated, "If you cannot give us this; no agreement."

That would provide an ample motive for Great Britain really using then some of the ammunition it has.

The CHAIRMAN. I think the difficulty we are having all the way through here, Mr. Hawkins, is the confusion between what you think will happen, as a matter of practice, and what the language of this charter says.

Now, all the things that you mentioned might happen, I can see that, but I am suggesting also that some other things might also happen.

I am suggesting to you that under this language, if under the case that you mentioned Great Britain said, "We cannot get Canada to agree," we would have the right to say, "All right; invoke your termination machinery."

Am I right or wrong on that, regardless of whether or not you think it might or might not happen?

Mr. HAWKINS. I think you are wrong.

The CHAIRMAN. Your objection is that as a matter of practice it will not happen that way?

Mr. HAWKINS. That is right.

The CHAIRMAN. Under the language of (1) (a) it might happen that way?

Mr. HAWKINS. I just want to be perfectly clear on that question, Senator, the way you put it.

You said, taking the case of apples, that we ask the United Kingdom to take that duty off or cut it.

The CHAIRMAN. That is right.

Mr. HAWKINS. And they refuse.

The CHAIRMAN. That is right.

Mr. HAWKINS. Your question is, then, can we say, "You terminate that agreement with Canada."

The CHAIRMAN. You are short circuiting a little bit. We go to the United Kingdom, and say, "We want you to take that preference off the apples."

The United Kingdom goes to Canada and says, "We want to remove this preference."

Canada says, "No."

Great Britain says to us, "Canada says, 'No.'"

Do we have the right to say to the United Kingdom, "You invoke the termination procedure provided in your contract agreement with Canada."

Mr. HAWKINS. I think not. I cannot ignore what the practical consequences would be.

The CHAIRMAN. We will never get through this Charter if you are going to construe it in the light of what you think practice will be. I am trying to find out the meaning of the words. If you do not agree with me that under the circumstances stated we could say to the United Kingdom, "You go ahead and invoke that termination machinery," then I ask you, Mr. Hawkins, what do the words mean? What do the words mean, "or failing that, by termination of such obligations in accordance with their terms"?

Mr. HAWKES. The sense of that is that there will be no violation. A country is not expected to violate its obligation where there is a contract.

The CHAIRMAN. Of course, it would not be a violation of a contract to call for its termination in accordance with its terms.

Mr. HAWKINS. No.

The CHAIRMAN. Do you preclude the possibility that Great Britain might have to terminate its contract with Canada if it got a "no" from Canada?

Mr. HAWKINS. No, I would not preclude that.

The CHAIRMAN. Is there a possibility of it being employed?

Mr. HAWKINS. Yes.

The CHAIRMAN. Keep off of the theoretical of what might happen because there are all the imaginable considerations involved. We cannot get any place with that, I suggest, Mr. Hawkins.

I am simply driving to the point that if Canada says "No," are we in a position, if we considered it wise, to say to Great Britain, "All right, you get rid of this preference by the machinery provided in your contract."

If you say we cannot do that, then I say, Are we precluded from doing that under that language?

Mr. HAWKINS. You are not precluded from asking.

The CHAIRMAN. But is Great Britain in a position to say, "No; we will not do it?"

Mr. HAWKINS. I think so.

The CHAIRMAN. Then I ask you, what does that language mean?

Mr. HAWKINS. As I said, it is only intended to show that a country is not intended to negotiate in complete disregard of its obligations.

Senator, I think the difficulty here is that you possibly are attaching more importance to that language than we are. Would you feel, and I hope you will not mind my asking this, since a good deal of value in these hearings is to give us a clue as to future attitudes, would you think that that language, after "it" in the third line should come out?

The CHAIRMAN. I have no opinion on that. I think if you have a way in that Charter of breaking down these preferences, then, of course, I think you have something that the world has been waiting for, and that we have been waiting for.

I am trying to determine whether you have found the way to do it, and when I pursue my questioning to the ultimate point that it must be done, even if it requires the termination of a preference agreement, you shrink from that.

Mr. HAWKINS. I do not shrink from it, but it is the language of the provision. What I am trying to avoid doing is claiming too much for that provision. I repeat, that the essence of that paragraph really is no more than this—

The CHAIRMAN. We can reach a very quick understanding on this, Mr. Hawkins as to those words [reading]:

or failing that, by termination of such obligations in accordance with their terms— if you say that in effect they are not in there, and that all that this (a) means is that the United Kingdom can ask for a modification, and if it does not get it, that is the end of it, "it is just too bad; we cannot fix up your apple situation"—if that is all this amounts to, why, O. K.

I am trying to find out if this thing has enough effectiveness so that it can go to the next step; to wit, if Canada will not agree, that we can demand that Great Britain go to Canada and invoke the machinery.

Mr. HAWKINS. I do not want to claim too much for that paragraph.

The CHAIRMAN. I wish you would indicate how much you do claim for it.

Mr. HAWKINS. I claim only this: What it gives is the right to insist that the preferential right on a product be made the subject of negotiations even though there is a contract with a third country which guarantees that margin.

The CHAIRMAN. That is very clear, but do you go further and say there is no way to break up that contract, to break up that preference, if the parties to the contract cannot agree to break it up?

Mr. HAWKINS. There is a way, in fact.

The CHAIRMAN. I am not talking about that now. I am talking about the language of this paragraph.

Mr. HAWKINS. I do not think so.

The CHAIRMAN. You do not think then that under the language of that paragraph that Great Britain could be required to terminate her preference contract with Canada in the case mentioned?

Mr. HAWKINS. I do not. They might be induced.

The CHAIRMAN. Then may I suggest that you have some language that might be considered very misleading in that first paragraph that ought to be cleared up.

Mr. HAWKINS. Senator, I did mention the fact that this was put in at London. I would not personally object to taking everything out in that paragraph after "preferences" in the third line. I cannot speak for the State Department, but I would have no objection to that.

The CHAIRMAN. If you do not take out the last part of clause (a), you are holding out an arguable hope that there is a definite mechanism for ending these British preferences and if we do not intend that, certainly it should be very clear.

Mr. HAWKINS. I am sure that you understand that when I suggest that to take that last part out would not be a serious loss from our point of view, I am not saying that by so doing you destroy the hope.

The CHAIRMAN. There again you are in the field of policy.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. In the field of this charter, if that clause does not mean what it says, it should be taken out.

Senator HAWKES. May I interrupt at this point?

The CHAIRMAN. Yes, Senator.

Senator HAWKES. I would like to say to Mr. Hawkins that some of the ablest men in England, including Mr. Churchill, feel very definitely, or have felt, up to a short time ago, that England cannot give up her preferences for her colonies and dominions and survive. Therefore, that becomes a very vital and important question.

Mr. HAWKINS. Yes.

Senator HAWKES. It was part of the British loan and part of everything that we have been doing over the past 2 or 3 years. If you simply have a clause in there saying nothing will be permitted to stand in the way of negotiations with respect to tariffs and preferences, then you are right back where you were, or have been for all time, are you not?

Mr. HAWKINS. No, sir; because what is agreed to here is that the preferences are subject to elimination by negotiation.

Senator HAWKES. But what is negotiation? You and I might negotiate for 50 years trying to eliminate something and if I felt that by eliminating that I would ruin myself, and you felt that I should eliminate it, we could still be negotiating 50 years from now without ever reaching an objective.

Mr. HAWKINS. It is true that your negotiations can fail. I think we can only judge that by the event.

The CHAIRMAN. Now, we come to article 1, subclause (b), which reads:

All negotiated reductions in most-favored-nation import tariffs shall operate automatically to reduce or eliminate margins of preference and no margin of preference shall be increased.

It is clear that the margins shall be reduced if the import tariff is reduced, but how much?

Mr. HAWKINS. The effect and purpose of that provision is simply this, that in the negotiating process, you formulate your requests on the basis of the most-favored-nation rate. When you ask for a reduction in that rate, the resulting margin, if any, is bound.

Senator HAWKES. What was that word?

Mr. HAWKINS. Bound. If you had a most-favored-nation rate, that is, a rate generally applying to foreign nations of 40, and a preferential rate of 20, that is 20 percent on imports from the preferred country, it merely means that in that case we would normally make our request on the most-favored-nation rate, and could ask that it be reduced to 20, after which there could be no preference.

The CHAIRMAN. If your request brought you above 20, what then?

Mr. HAWKINS. If you reduced the amount from 40 to, say, 25, then the maximum margin is 5.

The CHAIRMAN. What is the point of that clause?

Mr. HAWKINS. It is simplifying the negotiating process and rather attempting to put the emphasis on getting rid of preferences.

The CHAIRMAN. If the most-favored-nation rate is 30, and the preferential rate in a particular case is 20, it is obvious that if you get the most-favored-nation rate, and get 30, that the most favored nation is 20.

Mr. HAWKINS. If you ask for 20, that would eliminate the margin and that rate could not then be reduced and thereby restore a margin.

The CHAIRMAN. As it says, "No margin of preference shall be increased"?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. But what would prevent them from making a new preference agreement reducing the preference?

Mr. HAWKINS. After the negotiations have been completed, the first time you negotiate on preferences and establish these margins by the most-favored-nation rates, article 14 makes an exception only for those margins, if any, that remain, and that is all that is excepted, and, therefore, could not be increased.

The CHAIRMAN. The margin could not be increased. You would increase the margin by reducing the rate?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. And that would not be permitted?

Mr. HAWKINS. That would not be permitted.

The CHAIRMAN. Subclause (c) of article 24, paragraph 1, reads:

The binding or consolidation of low tariffs or of tariff-free treatment shall, in principle be regarded as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

I suggest to you that there are a number of unmeasurable words there. What is "low tariff"?

Mr. HAWKINS. It could not be defined. This is no more than a general statement of principle. The application of it would have to be settled in the negotiating process.

Senator HAWKES. Have you any standard by which you can measure a low tariff, or high tariff?

Mr. HAWKINS. No, sir; there is none that would be universally accepted. There are countries, most of which have been using quantitative restrictions, whose tariffs will average out pretty low, although their obstacles to trade are pretty great because of other measures.

This, in effect, recognizes that if countries in such a position can accede and agree to the general provision in wiping out other quantitative provisions and not have to hoist their tariffs for bargaining purposes, we can make progress.

The CHAIRMAN. I understand, but I am trying to understand how you apply it. First, are we agreed that there is no standard with which to measure the meaning of the words, "low tariff."

The words, "substantial reduction"—what is the substantial reduction?

Mr. HAWKINS. That would have to be settled in negotiating process.

The CHAIRMAN. And if not settled, you have no agreement?

Mr. HAWKINS. No agreement.

The CHAIRMAN. So that the effectiveness of that paragraph in the case of lack of agreement is very dubious, is it not?

Mr. HAWKINS. I would not say dubious, Senator. It is not intended to do more than call attention to the principle which should be observed in negotiations. In other words, a country under this paragraph would be entitled to argue. The argument would have to be listened to that the reductions offered are not as many as in the case of some of the other countries and that the binding rate ought to be recognized.

The CHAIRMAN. All right.

Country A says to country B, "Now, we are willing to bind the following low tariffs in our tariff system and for that we expect certain considerations from you."

The other fellow says, "Brother, I do not agree that you have low tariffs."

Unless they can reach agreement nothing happens?

Mr. HAWKINS. That is right.

The CHAIRMAN. At the other end of the scale, if they should agree that far, then they might not agree on what the quid pro quo should be, because they might not be able to agree on what would be a substantial reduction of high tariffs; is that right?

Mr. HAWKINS. That is right.

The CHAIRMAN. Let us assume a free list. We have a large free list, have we not?

Mr. HAWKINS. Yes.

Senator **HAWKES**. Three-quarters of all articles imported in the United States are on the free list.

The **CHAIRMAN**. Yes.

We would go to other countries and say that unless we get substantial concessions for keeping that free list in effect, we might put duty on those items; is that right? So, our forbearance to do that would be a legitimate consideration for securing a reduction in tariff from some other countries?

Mr. **HAWKINS**. That is right, Senator, but I would just like to qualify it in one minor respect.

You are not offering to cut or make bindings all the way across.

The **CHAIRMAN**. Make it one item.

Mr. **HAWKINS**. You make it one item, then your statement is entirely correct.

The **CHAIRMAN**. As I recall it, in the early stages of our reciprocal tariffs, we gave instructions to our representative in South American countries that unless we got more favorable tariff treatment in those countries, we might have to put duty on part of our free list.

There is nothing new about it, is there?

Mr. **HAWKINS**. I do not recall the precise case, but it is true that we bound coffee on the free list, for example, and got concessions from the other countries.

The **CHAIRMAN**. I think we did. I think at one time, Brazil maintained some very discriminatory tariffs against us, and I think we used the theory of this paragraph to secure an improvement of this situation.

Mr. **HAWKINS**. They were high tariffs, Senator.

The **CHAIRMAN**. I will accept the correction.

Senator **HAWKES**. Mr. Chairman, may I ask a question?

The **CHAIRMAN**. Surely.

Senator **HAWKES**. Is there anything in this document, this charter for the International Trade Organization, which can force any country that is a member to do anything against its will if that country chooses to cancel arrangements, change its tariff structure, or anything else; is there anything in this document other than reprisals and withdrawals of concessions of other nations that can be used to force the United States—let us put it specifically—to do, or continue doing, anything which it considers to be inimical to the best interests of our industry, business, and the country?

Mr. **HAWKINS**. Nothing except what we voluntarily agree by accepting specific commitments.

Senator **HAWKES**. I am saying, will we make any commitments from which we cannot get out from under? If, after we make those commitments, we find we have done something that is destructive of the United States. I am fully aware of the fact that other countries can withdraw concessions that they have made because we withdraw certain things. I am fully aware that other countries can put on excess withdrawals over and above what we have done, but the point that I am trying to get in my mind, and I do not have it yet, is whether there is anything in here that will bind us so that we cannot recover ourselves if you and other people who go to Geneva, or go to London or anywhere else make agreements that turn out to be very dangerous and inimical to our employment and the maintenance of the standard of living in the United States?

Mr. HAWKINS. There are no commitments, Senator, that you cannot get out of. It might take a little more time than you would like. In other words, there are provisions there that these commitments would run for 3 years.

In addition to that, there is an escape clause which permits quicker action in selective cases, but you can get out of the whole business as far as this multilateral trade agreement is concerned. You could give notice and get out of it entirely in 3 years.

Senator HAWKES. I thought you could get out in 30 days or 60 days under the escape clause.

Mr. HAWKINS. That 60-day clause is if there are penalties applied to you. I was speaking then of this multilateral trade agreement that we were speaking of this morning.

Senator HAWKES. Do I understand that we cannot get out of there if we found something that was causing injury and unemployment in the country because you people had to be wizards in doing this tremendous thing you are trying to do, and not make some mistakes?

You are trying to negotiate things right now at a time when nobody in this world knows the comparative cost of certain merchandise of all kinds of classes. You do not know what it is going to be a year from today, or 2 years from today, nor do they know what the cost in certain other countries is going to be a year or 2 years from today.

I have a statement, Mr. Chairman, in which the statement was made to me by the State Department, in which they say that there is no way of knowing what the cost of anything is going to be for the next 2 or 3 years.

That is why I am so serious about this. I am not smart.

I have been in business for 50 years and I am not smart enough to bind this country into the future under the conditions of high wages, strikes, union demands, storage of material, the giving away of hundreds of millions of dollars of stuff out of this country, which I approve of in many cases, although not all, but thereby shortening the supplies and creating artificial and unknown conditions.

I am saying to you, and I said to Mr. Clayton, and I have written him a letter and told him this, that I think the State Department handling these agreements has something very serious to consider in committing this Nation in this matter.

I am just as strong an advocate of fair and decent trading between our Nation and other nations as anybody else. It just stands to reason that we want to do business with the other nations of the world. But I am sure that no American wants to get involved in language that leads to misunderstanding and wake up to find that we have exported jobs.

I would like to read this, and I appreciate your letting me bring in this point in regard to the escape clause, article 34, section F, on page 29 of the charter:

Emergency provisions—

The CHAIRMAN. Is it a numbered paragraph?

Senator HAWKES. Section F, article 34.

The CHAIRMAN. Oh, yes. I have it.

Senator HAWKES. That paragraph reads:

If, as a result of unforeseen developments, and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such condi-

tion as to cause or threaten serious injury to domestic producers of like or directly competitive product (or, in the case of a product which is the subject of a concession with respect to a preference, is being imported under such condition as to cause or threaten serious injury to producers in a territory which receives or received such preference), the Member shall be free to suspend the obligation in respect of such product in whole or in part, or to withdraw or modify the concession to the extent and for such time as may be necessary to prevent such injury.

Now, clause 2 goes on to say:

Before any member shall take action pursuant to the provision of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical and exceptional circumstances, such action may be taken provisionally without prior consultation.

What does "provisionally" mean, and how long does it last, and what does it do?

Mr. HAWKINS. The sense of it, Senator, is that the general obligation is to consult in advance, but if you cannot do that you can take the action without complying with the obligation for advance consultation.

Senator HAWKES. Now, let me read the next paragraph and if you are not prepared to answer that question definitely this evening, I suggest to the chairman of this committee that we should have an answer from Mr. Clayton or somebody high up in the State Department.

Provided that consultation shall be effected immediately following up the taking of such action.

Now, you are going to have a consultation?

Mr. HAWKINS. Yes, sir.

Senator HAWKES. The next paragraph reads as follows:

If agreement among the interested members with respect to the action is not reached, the member which proposes to take or continue the action, shall, nevertheless, be free to do so, and if such action is taken or continued, the affected members shall then be free, not later than 60 days after such action is taken, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the member taking such action, of such substantially equivalent obligations or concessions under this chapter the suspension of which the applicant's organization does not disapprove.

Now, get this:

In cases of abuse, the Organization may authorize an affected member to suspend obligations or concessions in addition to those which may be substantially equivalent to the action originally taken.

The reason I am bringing that point up, Mr. Chairman, is to show that there is a coercive instrument established there which, if you have to do something through an escape clause to protect your country, if you do it, why then the organization can authorize the other members not to take an equivalent against you, but they can authorize affected members to suspend concessions or obligations in addition to those which may be substantially equivalent to the action originally taken.

I think you can see the point I am trying to make here.

The answer that you can get out by the escape clause any time you want is not a full answer as a protection because you can get

out any time to protect yourself, but if the penalty for getting out is going to be far in excess of what is a substantially equivalent consideration, why then you have placed yourself in a position where you can be forced to stay in until you have something in the United States which is ruined.

Does that bring to you what I am trying to get at?

The CHAIRMAN. You make yourself very clear, and I can assure you, Senator, that when we get to that part of it, we will sift every implication of it.

Senator HAWKES. I wonder if Mr. Hawkins cares to make any comment on it tonight, or is it too long to make a point fully now?

Mr. HAWKINS. No, I take it your fear has regard to the last sentence?

Senator HAWKES. That is the most penalizing sentence in the whole business.

Mr. HAWKINS. Let me give you the reason for it.

Remember that this clause will go into every agreement, it will go into the general agreement on tariffs and trade that we were speaking of this morning, and it will affect an awful lot of countries and a lot of them will get whatever liberty is allowed by the article.

Some country, conceivably might abuse the safeguard that is allowed by using it in unwarranted cases, being uncooperative when the matter is discussed with the other members in the Organization, and it is just possible that coercive action would be warranted; that is the only explanation I can make of it.

Senator HAWKES. May I ask you this question: -

Can you conceive in this confused world, can you conceive of the International Organization getting us into a certain situation and using this coercive power to keep us from exercising the right of withdrawal?

Mr. HAWKINS. No, sir.

Senator HAWKES. Or escape?

Mr. HAWKINS. No, sir, I would hope that we would act in complete good faith on it.

Senator HAWKES. Mr. Chairman, I would like to make one more comment.

I hope that our representatives who are going to Geneva, or wherever they may go in negotiating these reciprocal trade agreements, will use foresight and forethought in making them, and understand the consequences of the agreement they make and not rely too much on the ability to exercise the escape clause, because just as sure as you do with this coercive weapon, if it means what it says, why you will find that you have gotten into a situation where if you do withdraw, you create ill will rather than create the good will which comes from fair trading and doing things in such a way that if you made mistakes you could correct them without too much of a penalty.

The CHAIRMAN. Senator, along that line, you may be interested in reading Mr. Clayton's testimony the first day.

Senator HAWKES. I believe I was here all during the testimony.

The CHAIRMAN. I questioned him as to whether doubts would be resolved in favor of our domestic producers and he would not make a definite statement. I asked him whether any serious chances would be taken, and he negated that any serious chances would be taken, but I think he indicated that the escape clause would be utilized in correcting any mistakes made by taking chances.

Mr. Hawkins, let me invite your attention to article 24, subparagraph (c). We discussed what we could do in the way of securing concessions as a result of our tariff-free items.

What can the other fellow do to us with his tariff-free items?

Mr. HAWKINS. The same thing.

The CHAIRMAN. Give me the countries that have tariff-free lists and might thus be in a position to get us into tariff reduction bargains through the employment of those tariff-free items.

Mr. HAWKINS. Well, I could not tell you off-hand what the countries would be, probably classified as having low tariffs.

The CHAIRMAN. I am talking about free items.

Mr. HAWKINS. I do not know the relative extent of free items in other countries, but I think I could answer your question this way, that if a country has a really low tariff—and whether it is low or not depends on its restrictive effect on trade—and we can get it bound, we have a good bargain.

The CHAIRMAN. I prefer to pitch my question now on a free list.

Mr. HAWKINS. I see.

The CHAIRMAN. What countries have free lists of importance, who, by reason of having those free lists, would be in a position to come to us to negotiate reductions on the theory that their maintenance of a free list is a consideration for us to make substantial reductions in our tariff?

Mr. HAWKINS. Well, are you assuming that the bulk of the country's tariff, of the items in its list are on the free list, or assuming that it is an important product on the free list that they want to use?

The CHAIRMAN. Let us take an important product on the free list of some other country. That country comes to us and says, "Grant us a substantial reduction in something that we want to get into your country."

What are those situations that we have to look forward to? It seems to me that this clause should not be considered cavalierly. We can estimate what we can make out of our free list, but what can we plan on what the other fellow could do with his?

Mr. HAWKINS. There would always be items in which we would be interested, but to put it on a specific product, raw cotton is one in which we have bound the United Kingdom because the effect of it at that time was to prevent any possibility of a preference on it in favor of Empire cotton.

It was insurance. You cannot measure the value, but we just took out some insurance. What you give for that sort of thing is never possible to identify, because you do not match off items, one on each side against the other. What you try to do is get schedules on both sides which are generally equivalent.

The CHAIRMAN. I am trying to visualize the operation of this paragraph which says [reading]:

The binding or consolidation of low tariffs or of tariff-free treatment shall, in principle, be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

We have discussed how that may be a useful instrumentality in our hands, and I am trying to estimate how it may be used against us and I would like to have examples.

Mr. HAWKINS. It would be used against us in the way I indicated. If a product like raw cotton is duty free, it is in our interest to bind it. It will weigh in the general balance of the concessions on each side.

The CHAIRMAN. There must be a whole series of articles that we have had to think about in relation to the clause.

Mr. HAWKINS. There are none off-hand that I recall. Our production, of course, is tremendously varied. It is the type of production which is usually dutiable.

We are not primarily concerned with exporting raw materials.

I might find you some illustrations, but I cannot think of any right at the moment.

The CHAIRMAN. I wish, during the evening you would give that some thought.

I do not regard this as an inconsequential provision in this Charter, and although I can use my imagination as to what we might make out of it, I would like to know what the other fellow can make out of it against us. Surely that has been the subject of thought in the State Department. I believe it would be helpful to the record if you would have that illustrated.

Mr. HAWKINS. I will see what I can do about it.

These questions come up, and in the case of cotton there was that distinct possibility.

The CHAIRMAN. We will adjourn at this time, and meet at 10:30 in the morning, in this room.

(Thereupon, at 6 p. m., an adjournment was taken until 10:30 a. m., Wednesday, March 26, 1947.)

INTERNATIONAL TRADE ORGANIZATION

WEDNESDAY, MARCH 26, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in the Foreign Relations Committee room, the Capitol, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Millikin (chairman), Butler, Hawkes, Martin, and Johnson of Colorado.

The CHAIRMAN. The committee will come to order.

Mr. Hawkins?

STATEMENT OF HARRY HAWKINS, ECONOMIC COUNSELOR, AMERICAN EMBASSY, LONDON, ENGLAND—Resumed

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. At the end of the day yesterday, Mr. Hawkins, we were discussing what might be done with tariff-free items, how we might use them to advantage in our negotiations with other nations, and how they might use them to advantage in their negotiations with us.

The Chair suggested that the record would be helped if we could have some illustrations of what use the other nations might make of its tariff-free items. Have you any that any further thought?

Mr. HAWKINS. Some, Senator, in the limited time I have had. You asked me for illustrations. To be sure of getting the best ones would mean going through the tariff schedules of a good many countries, and there has not been time to do that.

However, I can give you these illustrations. In the case of the United Kingdom, wheat, hams, and corn are on the free list. We might very well want them bound, and the British might very well attach some value to the binding. But they might want too much for it.

Then there are certain minerals on the free list. I cannot give you the names. I just picked this up from the people in the Department. Certain minerals on the free list which might usefully, from our point of view, be bound, and for the nation concerned might be entitled to credit.

Another case is automobile certain parts, free of duty, in Canada. Since they are free of duty, and since they are a considerable item of trade, they might usefully be bound.

Those are all I have. I am sure there are a good many others, though.

The **CHAIRMAN**. Paragraph 2 of article 24 reads:

Each Member participating in negotiations pursuant to paragraph 1 shall keep the Organization informed of the progress thereof and shall transmit to the Organization a copy of the agreement or agreements incorporating the results of such negotiations.

I have no comment on that. Do you have any comment, Mr. Hawkins? The purpose of it seems evident to me.

Mr. **HAWKINS**. No, sir. I do not think it requires any comment.

The **CHAIRMAN**. Paragraph 3 of article 24 reads:

If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization, which shall make an investigation and make appropriate recommendations to the Members concerned. The Organization, if it finds that a Member has, without sufficient justification, having regard to the provisions of the Charter as a whole, failed to negotiate with such complaining Member in accordance with the requirements of paragraph 1 of this Article, may determine that the complaining Member, or in exceptional cases the Members of the Organization generally, shall, notwithstanding the provisions of Article 14, be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member, or the Members of the Organization generally as the case may be, may have negotiated pursuant to paragraph 1 of this Article. If such benefits are in fact withheld so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. The provisions of this paragraph shall operate in accordance with the provisions of Article 67.

To refresh our memories on this reference in paragraph 3 to paragraph 1 of the same article 24, let me read paragraph 1:

Each Member, other than a Member subject to the provisions of Article 33—and the members contemplated by article 33 are monopoly states—

shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Member or Members directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of import tariff preferences. These negotiations shall proceed in accordance with the following rules—

and a series of rules is set out.

Do you care to make any general comment on the purpose of paragraph 3?

Mr. **HAWKINS**. Yes, sir. I think it might be useful. I think in order to get an understanding of the purposes of paragraph 3 we need to consider the situation that would exist as of the time that this charter, including this paragraph, was adopted. Things are going to happen before that which will have a bearing on it.

You remember, as I said the other day, the purpose of article 24 is to provide for action on tariffs which would be generally equivalent to action taken with respect to other trade barriers, for action on tariffs that have to be negotiated selectively, as well as action on other trade barriers which are dealt with by formula in the carrier.

Now, one of the things, one of the two main things that will be done at Geneva is to try to give some substance to article 24 by the negotiation of a multilateral trade agreement among the countries participating in that meeting by way of implementing, as among themselves, article 24, and setting the standard of what is meant by substantial reductions.

The result of these negotiations, then, would be an agreement, multi-lateral agreement, among 16 or 18 countries, providing for the reduction of tariffs and complying with the obligations laid down in article 24 for the reduction of tariffs.

That agreement would come into effect independently of, and prior to, the adoption of the charter. It would be an executive agreement so far as we are concerned, negotiated under the executive authority. And so it would actually be in effect at the time the charter is adopted.

That means, for purposes of getting illustrations as to how this paragraph would work—

The CHAIRMAN. May I interrupt and ask whether you are speaking of an executive agreement in the sense that a trade agreement is an executive agreement?

Mr. HAWKINS. In that sense only.

The CHAIRMAN. In that sense only? In other words, the agreement would be an agreement as you consider it under the authority of the Reciprocal Trades Act?

Mr. HAWKINS. Yes, sir.

For purposes of explaining this article we would then have two groups of countries, two groups of member countries. You would have, you might say group A, which would consist of the members who are the parties to the multilateral trade agreement which carries out the terms under article 24 as among the countries participating in the agreement. Then you would have another group of member countries, which would be all others who join the charter, but who will not have taken action pursuant to article 24.

The primary purpose of paragraph 3 is to provide the mechanism whereby this other group of countries—other member countries—would take action; and to provide means for determining whether the action taken does comply with article 24; that is to say, whether it is substantially equivalent to the action taken by the 16 to 18 countries parties to the general agreement on tariffs and trade, which will be negotiated at Geneva and be in effect when the charter is adopted.

In other words, this first group of countries—the countries that have carried out the obligation in the general agreement on tariffs and trade—is one group. Other member countries who would have yet to do it, is the other group.

Now, you may get this kind of a case under paragraph 3. Let us take the case of a member country in this record group which has not yet negotiated any tariff reductions pursuant to this obligation. Let us suppose that one of the countries in, what I have called group A, requests in accordance with paragraph 1 that a country which has not yet complied with article 24 enter into negotiations.

Let us suppose that for some reason it fails to enter into negotiations within a reasonable period of time. If I can refer to the language of paragraph 3 of the article it will illustrate it. If any member—in the case I am using, any member of this group A that has completed its obligation—

considers that any other Member—

that is to say, any member who has adopted the obligation but has not yet implemented it by negotiation—

has failed within a reasonable period of time to fulfil its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization

which shall make an investigation and make appropriate recommendations to the Member concerned.

The case I am using is one in which a member country that has not yet carried out its obligation to negotiate for the reduction of tariffs, persistently refuses to do, without justification. In such a case members who have complied report to the Organization, and the Organization makes its investigation and recommendations.

I will read the relevant text:

If the Organization considers that any other Member—
in this case it is the member who has not carried out the obligation—
has failed to negotiate with such complaining Member—
that would be one of the members that has complied—
in accordance with the requirements of paragraph 1 of this Article, may determine—
that is the Organization may determine—

that the complaining Member or, in exceptional cases of the Members of the Organization generally, shall, notwithstanding the provisions of Article 14—
the most-favored-nation clause—

be entitled to withhold from the trade of the other member any of the tariff benefits which the complaining Member—

that is, the one who has complied—

or the members of the Organization generally as the case may be, may have negotiated pursuant to paragraph 1 of this Article.

The situation is that the member that has taken the obligation but does not take any steps to carry it out within a reasonable time, without adequate justification, may find that the other members who have complied have been released of their obligations to give the member complained of equal treatment; that such other members, are free to deny to the member that has not carried out its obligation under paragraph 1, the benefits of the tariff concessions that they have made under the charter.

This would put the member that has not complied in a rather difficult position. Consequently a remedy of some kind has to be provided. The one provided is that if that action is taken against him, he can withdraw from the Organization, on very short notice.

That is one type of case. I should like to give you the reverse of that, where the complaint is against one of the original group by a member that has not complied, but is trying to. Would you like to have me run through that?

The CHAIRMAN. I must say that I am a little confused about the original group as contrasted with some other group. Would you mind backing up again so that we can get that clear?

Mr. HAWKINS. The original group, I have classified all the member countries into two groups, and the first group, the original group as I called it, is the group that has actually carried out the negotiations in compliance with the obligation to reduce tariffs under paragraph 1. That original group—

The CHAIRMAN. Now we are taking a look forward, let us say, toward the end of the Geneva Conference.

Mr. HAWKINS. Yes.

The **CHAIRMAN**. And toward the end of the Geneva Conference there will be a certain number of nations who have attempted to comply with paragraph 1.

Mr. HAWKINS. That is right.

The **CHAIRMAN**. Or let us say, theoretically at least, that they have complied with paragraph 1. That is what you call the original group?

Mr. HAWKINS. That is right.

The **CHAIRMAN**. They will be identified out of, I assume, the 18 members who will be working on this thing?

Mr. HAWKINS. Yes. It would be either all 18 or such of them as come to agreement.

The **CHAIRMAN**. So that the over-all figure of 18 will determine the over-all limits of those who can come under the umbrella of original members.

Mr. HAWKINS. That is right.

The **CHAIRMAN**. Now the other members?

Mr. HAWKINS. They would be members who have adopted the charter, taken all the other obligations regarding quotas and so on, and taken the obligations to negotiate pursuant to paragraph 1 but who have not yet had a chance to do it.

The **CHAIRMAN**. Now give us a case which will fall within the latter category.

Mr. HAWKINS. If you would like, Senator, just let me give you the reference that ties that group in to the charter. It is in article 67, where that tie-in takes place. That agreement that I am speaking of is referred to there.

The **CHAIRMAN**. Article 67 makes this original group the judges in the matter?

Mr. HAWKINS. That is right. And the agreement referred to, the blank date, is the agreement to be negotiated at Geneva.

The **CHAIRMAN**. All right.

Mr. HAWKINS. Now the reverse of the case that I gave would be this: You have this original group of countries which have complied, and they are sitting in judgment upon the compliance of others. Here is another country that has joined the Organization, accepted all the obligations, including this obligation to negotiate, and let us suppose that it goes to one of the members of the original group and says, "I would like to negotiate an agreement." Let us suppose that the original member within a reasonable period does not do it, for one reason or another. The effect of that is that the original member is blocking, or might be charged with blocking the opportunity and ability of the other member to conform.

Therefore the member that is trying to comply with the obligations, and is being frustrated in the attempt by the refusal of the original member to negotiate, complains. Then you can follow this text down and see how it applies. I do not need to read it again, but it is the same approach.

The **CHAIRMAN**. I can see no reason why those who are not in what you term the original group, should be deprived of the privileges of the members of the original group.

Mr. HAWKINS. That is right.

The **CHAIRMAN**. I doubt whether you can hold any organization together on that kind of a principle.

Mr. HAWKINS. That is right. The member who is trying to comply with the obligation to negotiate for the reduction of tariffs, could complain.

The CHAIRMAN. Let us get into the detail of paragraph 3. I think it is important that we summarize again the exact obligations which are referred to in paragraph 3. They are the obligations under paragraph 1. We had a long discussion yesterday as to what are the obligations under paragraph 1, and, if you can do it, I believe it would be useful to the record if you will now recapitulate what you consider to be the obligations under paragraph 1.

Mr. HAWKINS. The obligations under paragraph 1 that any member assumes, is to enter into, on the request of another member, mutually advantageous negotiations for the substantial reduction of tariffs and other charges on imports and exports, or the elimination of tariff preferences.

In other words, the obligation is to negotiate upon request.

Just in passing, Senator, you were commenting on that language. It is awkward and might well be made more understandable if you said "enter into negotiations for mutually advantageous agreements" rather than to enter into mutually advantageous negotiations. I think some rephrasing of that would be desirable.

The CHAIRMAN. I would strongly suggest that you get that untangled. You are just adding unnecessary complications, raising a lot of unnecessary questions, just because of the position of your words.

Now, you stated the general obligation. Now give us the limitations on that obligation, or the expansions of it, as provided by subparagraphs A and B of paragraph 1 of article 24.

Mr. HAWKINS. I do not think, Senator—

The CHAIRMAN. What I am trying to get at now is the residue of interpretation in your mind as to subparagraph A, following our long discussion of the subject yesterday.

Mr. HAWKINS. Yes. The purpose and sense of paragraph A is to bring preferences within the scope of those negotiations contemplated in paragraph 1, even if there is contractual obligations regarding it.

As I indicated to you; Senator, I think a good deal of that language does nothing much more than confuse, and I think that the sense would be complete if you stopped at the first comma.

The CHAIRMAN. Is it your final thought that if the country which has a tariff preference arrangement with another country is unable to induce the other country to modify or abandon that preference arrangement, then the country that has been requested to negotiate must avail itself of the termination machinery of the preference contract?

Mr. HAWKINS. No. There is no obligation here on the party to terminate that preference contract. It can void that simply by not taking the action which would necessitate it. It may cost it something not to take that action because it may not get an agreement with a country that wants preferences modified, but it is not compelled to.

The CHAIRMAN. But if the country fails to take the preliminary action, to wit, to request the modification or termination of the existing preference agreement, then is it vulnerable on the ground that it has not exhausted all of its remedies to eventuate the purposes stated in paragraph 1?

Mr. HAWKINS. No, Senator. I do not think that we could accept the construction that if there is any obligation to terminate a contract.

Senator HAWKES. I missed that word. You do not think you could accept what?

Mr. HAWKINS. Accept the construction of this, that there is an obligation to terminate the contract.

The CHAIRMAN. In the light of this discussion, and the discussion yesterday, please give us a supposititious case, that will illuminate what you think are the obligations under 1 and 1 (a). Take it step by step. I cannot help but believe that these two paragraphs are very, very important.

Mr. HAWKINS. They certainly are.

The CHAIRMAN. We should have a clear understanding of the meaning. I think the best way we can develop your interpretation and meaning, is to have a case and follow it through, step by step, illustrating the obligations of the moving parties.

Mr. HAWKINS. I think I should not be using the names of countries for illustrative purposes to the extent that I have been doing, probably. I should like to correct the record and use letters instead of countries, if I could.

The CHAIRMAN. You will have the opportunity to correct the record, and feel at liberty to change the name of any specific country into letters when you get to that, except where there is no point in doing it. There have been some references to countries where it would be asinine to delete the names and put in initials. We will have to use a little judgment on that.

Mr. HAWKINS. The only point is, we use illustrations to get a point over and that may be invidious, where it is not intended.

The CHAIRMAN. That is right. Use initials for this purpose.

Mr. HAWKINS. Very well. But I can use the name of the United States. The United States is negotiating pursuant to this paragraph, we will say, with country A. Country A has a contractual preferential arrangement with country B. In other words, country A has guaranteed to maintain certain margins of preference in favor of country B.

The obligation which country A would assume here is upon request, to negotiate with the United States. We make the request. A is barred from saying—we would tell them, we are interested in their preferences—they barred from saying “we cannot talk to you about item such and such because we have a contractual commitment, and cannot talk about it, or negotiate on it.”

Let us suppose A's general rate, the rate applied to the United States is 40 and that the preference rate in favor of B is 20, making the contractual preference margin 20. The United States would ask country A to reduce that rate of 40 down to 20. This is in the course of the procedure under rule (b).

I am giving you now, Senator, the way it will work, and I think that is what you want.

The CHAIRMAN. Go ahead.

Mr. HAWKINS. Country A cannot do that unilaterally, it has to talk to B, and it will ask B's assent. Its line of reasoning would run somewhat in this way. It would say “we are in negotiations with the United States, it is an important agreement at stake here; the United States is bearing down heavily on this item; they are insisting on a reduction from 40 to 20; will you waive that preference, that contractual right?”

Country B will then look at it and will say, "Well, what do I get out of it?"

There are two things A can say. The first thing is, "You have some negotiations on with the United States," or if they do not have, A may say "You may have such negotiations later." If you will waive that preference so as to enable us to negotiate this valuable agreement with the United States, we, in turn, will waive our contractual rights to the preferences you are obligated to give us, in similar circumstances."

You can get two results out of that: B can refuse, or it can accede. If it accedes there is no difficulty. If it refuses, then A is in difficulty.

A is not obligated to cancel its contract, but A will have to weigh this question: Whether it would be worthwhile canceling it in order to get the agreement with the United States. It is not obligated to cancel the agreement with B.

Senator HAWKES. May I interrupt there? You say A is not obligated to cancel its preference contract with B, if they fail in their negotiations. Then where does that leave us as related to what we were talking about last night? When I left here last evening I thought this was the final terminology, in whatever section that was, for failing that, that then the country would have to cancel in accordance with the terms of the agreement. I felt, regardless of all that was said, that that meant that you would have to cancel in accordance with the terms.

Do you mean now that A would not have to take the unusual course of canceling in a different way than established by the terms, or that A would not have to take any course of cancellation, even if the terms of the agreement permitted it in 2 years or 3 years, or whatever it might be?

The CHAIRMAN. As I understand it, the witness is just now going to illuminate his understanding.

Senator HAWKES. But the reason I interrupted there, he said he would not have to do it.

The CHAIRMAN. He is giving us his interpretation.

Senator HAWKES. All right.

Mr. HAWKINS. In which case, if they did not do it, it might result in the failure of the negotiations with the United States.

The CHAIRMAN. You said that A would have a problem then.

Mr. HAWKINS. Yes.

The CHAIRMAN. B refuses to cancel.

Mr. HAWKINS. Refuses to waive.

The CHAIRMAN. A then, you said, would have a problem. Then you started to weigh the nature of the problem. Would you mind going ahead with that?

Senator HAWKES. My point is this, Mr. Chairman. He did not say that. He said A would not have to cancel. That is the point I am making. You will find in the minutes that A would not have to cancel.

The CHAIRMAN. I am not talking about what he said yesterday.

Senator HAWKES. I am talking about what he said just a minute ago.

The CHAIRMAN. Yes; he did say that, but can we listen to what he has to say about it?

Senator HAWKES. I listened for an hour yesterday.

The CHAIRMAN. That is why I brought it back, to put it in capsule form, without renewing the whole discussion again this morning.

Mr. HAWKINS. A has the choice of letting the negotiations with the United States fail. Let me qualify that a little. An agreement rarely turns on one item, so you have to make this realistic.

The CHAIRMAN. Of course.

Mr. HAWKINS. Or it has to, if it must get the agreement of the United States, cancel its contract. I had better not say "has to"; it has an alternative open to it. But there is nothing in there that compels it to take that alternative.

The CHAIRMAN. So that A is at liberty to consider its best interests at that point, and cancel or not cancel, as it sees fit.

Mr. HAWKINS. Yes.

The CHAIRMAN. Now, if it does not cancel, then does the United States have a complaint against A on the ground that it did not cancel?

Mr. HAWKINS. No. A has complied with the article which imposes an obligation to negotiate. It is not guaranteed that negotiations will succeed.

The CHAIRMAN. You will answer every question that is in my mind if you will answer the question: When A finds itself unable to secure a cancellation with B, and so informs the United States, and A, weighing all the pros and cons of the situation, decides not to cancel, when that decision has matured; and has been made known to the United States, has the United States then a complaint against A because it does not move in accordance with the termination machinery of the contract?

Mr. HAWKINS. It has not got a complaint. It has a remedy; the remedy is that it gives nothing to A, or else cuts down its offers very materially.

The CHAIRMAN. But it has no complaint against country A, because country A will not then proceed to invoke the termination machinery of the preference contract?

Mr. HAWKINS. That is correct.

The CHAIRMAN. Does that clear the matter as far as you are concerned, Senator?

Senator HAWKES. That clears the matter according to his statement, but it does not clear the matter according to me.

The CHAIRMAN. I am trying to get the State Department's interpretation, and if we now have it clearly, that is the objective toward which we are driving, I think we can move on.

Senator HAWKES. In other words, it means to me, Mr. Chairman, that all that whole clause of the section we talked about last night, means that they have a right to negotiate and do whatever they please after they get through.

The CHAIRMAN. Now, let us get to the detail of paragraph 3.

Are there any standards for the determination of what shall be the lapse of a reasonable period of time for the measurement of the failure referred to at the outset of that paragraph?

Mr. HAWKINS. No, Senator, I do not think they could be laid down.

The CHAIRMAN. That will be decided by the body contemplated in article 67?

Mr. HAWKINS. That is right.

The CHAIRMAN. And it would be decided under all of the circumstances and without any definite preordained standard of judgment?

Mr. HAWKINS. That is right.

The CHAIRMAN. Now, I believe we have sufficiently defined the word "obligation" under paragraph 1, at least I think it would be profitless to pursue it further. The paragraph goes on to say that the Organization shall make an investigation and shall make appropriate recommendations to the members concerned.

Again, is there any defined standard as to what would be an appropriate recommendation?

Mr. HAWKINS. No; I think not. It is the same sort of situation. The situation would differ, doubtless, for every country. The job to be done is merely to take a look at it and see what the trouble is.

The CHAIRMAN. And each case will be decided on its own bottom according to the facts as they appeal to those who happen to be judging the problem?

Mr. HAWKINS. That is right.

The CHAIRMAN. Now, again, we find the language—The Organization, if it finds that a member has sufficient justification—

Is it correct to say that there are no standards for a sufficient or insufficient justification?

Mr. HAWKINS. There are no standards there; no, sir.

The CHAIRMAN. I am mystified by the burden that is put upon the judges to bring their problem into relation with the provisions of the charter as a whole. I will not ask you what are the provisions of the charter as a whole, but sitting as a judge on the commission that will do the judging, what part of the charter does a man look to to get his mind in a state where he can judge this thing correctly?

Mr. HAWKINS. The clause that you are referring to, Senator, was not in the original draft; it was added at London, and I believe I can throw more light on its simply by saying why and at whose behest it was added.

The CHAIRMAN. All right; go ahead.

Mr. HAWKINS. There was worry on the part of some of the so-called underdeveloped countries about their ability to develop their industry. They claimed, and I think it is in general true of some of them, that their tariffs were low and that they would be obligated to take off quantitative restrictions or not put them on; that their state of development was such that account ought to be taken of their needs and difficulties if a question comes up under this paragraph.

Now, the clause was put in there because they asked that it be put in, and we saw no objection to it.

The CHAIRMAN. I should think that the explanation which you have given could reflect itself in the language of the provision. Those words, I respectfully suggest, mean absolutely nothing. A man has the duty of judging the situation but does not have a measuring stick with which to judge.

Mr. HAWKINS. Yes; I do not take exception to what you are saying on that language.

The CHAIRMAN. There is not any question but if the commission which will do the judging shall determine that there has been a breach of paragraph 1, that it may authorize the complaining member or the members of the Organization generally to withhold tariff benefits

and other contractual consideration from the member complained against?

Mr. HAWKINS. Only the tariff benefits, Senator.

The CHAIRMAN. Tariff benefits.

Mr. HAWKINS. There is no question about that.

Senator HAWKES. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Senator HAWKES. What other benefits are there?

Mr. HAWKINS. The general benefits regarding quantitative restrictions.

Senator HAWKES. Suppose they take away practically the only thing that they are all seeking to do, equalizing these tariffs that are a stimulant to trade. You cannot stimulate trade if you are going to penalize some very important nation and take away the important benefits to that nation for not doing something which it may feel after careful analysis would indicate that these negotiations would be dangerous and disastrous to business and industry of its country.

What is left after you take all of the benefits away? If you take excess benefits away and put a penalty on there then I ask you if it is conceivable in your mind that that nation would remain in the International Trade Organization regardless of anything else.

Mr. HAWKINS. I think, Senator, that depends on how far the countries go in availing themselves of the authorization to withhold benefits.

Senator HAWKES. You think they would just edge up to the coercion as far as they could without edging over the line so as to make the member get out. You feel they would edge up and put a little bit more on and a little bit more on until the nation succumbs and says, "We will be good boys even though it hurts."

Mr. HAWKINS. It would be up to the countries concerned to decide whether the withholding of benefits would hurt so much that the country affected would just have to get out of the whole business.

Senator HAWKES. Who is the judge, the people or the negotiators or the nation; how long is it going to take to get the facts?

Mr. HAWKINS. Well, the government of the nation would be the one that made the decision in accordance with whatever processes it might have for determining what the people of the nation wanted it to do.

Senator HAWKES. Mr. Hawkins, is it conceivable that the people of a nation if they knew all of the facts might want to terminate in 60 days, but it is further conceivable that the government and the negotiators of the reciprocal trade agreements could delay this process long enough so that the people could wake up to find out that the things that they were supposing had been done to properly protect the industry of this country, that they had been seriously injured in that period when we had failed to exercise the use of the escape clause, or do those things which are necessary to bring quickly to an end some practice or some unfair tariff action as to preserve the country and do it before we have gotten into a position of laying off thousands of workmen and finding that we were contributing substantially to unemployment in the country?

Mr. HAWKINS. I would say, Senator, in answer to your question, that if any government is really acting or failing to act in accordance

with the will of the people, or their interests, there is something wrong.

Senator HAWKES. But, Mr. Hawkins, you are missing my point. You must know that sometimes in America it takes 4 years for the people to wake up and find out what they want in government.

I am talking about what is going to happen to the business and industry of the United States if it cannot get quick action. Let me say this to you, I am not just talking for myself, but I am talking for some of the ablest men in the United States, and they are not isolationists. They are fine businessmen who have contributed to the business of this Nation, and they want to do business with foreign nations, but they want to do it in a practical way and they do not want to rebuild the whole world and rebuild it in 45 minutes.

You have not answered my question; do you not realize that certain things that would be very disastrous to this country could happen and could not be cured for 2 or 3 or 4 years?

Mr. HAWKINS. I do not think anything disastrous could happen to this Nation. I think the charter is so drawn as to be adjustable.

Senator HAWKES. Mr. Hawkins, let me say this to you, because I have no ill feeling on this at all. As we spent an hour on this thing last night with the distinguished chairman who I consider a very able lawyer and Senator, trying to find out what clause (a) under section 24 meant, and as far as I am concerned, I have not found out yet what it means, and if that be so, I leave it to you whether we can have misunderstandings with nations who are poor and downtrodden and looking for benefits.

Do not forget that, gentlemen, that there is not a nation outside the United States that is not looking for excess benefits under this Trade Organization and if anybody thinks that it not so, why I just want you to remember what I am saying.

The CHAIRMAN. Did you have a question?

Senator HAWKES. He answered my question.

The CHAIRMAN. Mr. Hawkins, the complaining member, under paragraph 3, may invoke the penalties provided, but also there is the language that members of the Organization generally, as the case may be, may also invoke the penalty. Give us an illustration of a case where that penalty might be invoked by other than the complaining member.

Mr. HAWKINS. Let us take the situation in which a member has accepted the obligation of paragraph 1 but has not taken action required to carry it out, has not, in other words, negotiated with other countries.

The Organization finds when it looks into the case that no reason is advanced, the delay has been very long and there is apparently no intention whatever to go forward with carrying out the obligation.

In such a case it is conceivable that the Organization would set aside the most-favored nation obligation of all the member nations and make it permissible to withhold all the benefits which they had given pursuant to this charter.

The CHAIRMAN. That would be the equivalent of a judgment of outlawry, as it were?

Mr. HAWKINS. Yes.

The **CHAIRMAN**. What would be the position of a nation which became outlawed under that process? What would be its position in international trade?

Mr. **HAWKINS**. It would have lost in the first place its most-favored-nation rights. It would no longer be assured of its right to the lowest rates.

The **CHAIRMAN**. Generally speaking, it would put the nation out of business as far as international trade is concerned?

Mr. **HAWKINS**. It would hurt it materially if the right were generally exercised.

The **CHAIRMAN**. I am assuming now that the penalty was generalized to, let us say, all of the member of the Organization except the recalcitrant member.

The recalcitrant member would be outlawed, in effect?

Mr. **HAWKINS**. Yes.

The **CHAIRMAN**. And I do not believe that you would argue against the proposition that that would be a most drastic penalty against the offending nation?

Mr. **HAWKINS**. It would be a drastic penalty which certainly should only be used in cases warranting the drastic action.

The **CHAIRMAN**. Of course, if the member did not like that under article 3, the member could withdraw from the Organization?

Mr. **HAWKINS**. That is right.

The **CHAIRMAN**. Which would complete the outlawry?

Mr. **HAWKINS**. I am not quite sure of the term.

The **CHAIRMAN**. In that case, it would be "forced" voluntary outlawry?

Mr. **HAWKINS**. It would be in the same position that any nation is that is not a member of an international organization, comprising most of the countries of the world.

The **CHAIRMAN**. That position generally would be that such a nation, if the penalty were invoked, would be excluded, roughly speaking, from international trade?

Mr. **HAWKINS**. Exclusion, I think, is a little strong. It would find itself and its trade rather handicapped.

The **CHAIRMAN**. It would be in a hell of a fix?

Mr. **HAWKINS**. That is right.

Senator **HAWKES**. I am sure that everyone here realizes that a nation that has gone into an organization and which has apparently agreed to the terms of the organization, and then finds itself exiled or put out of the organization, or forced to withdraw from the organization, is not in the same position as the nation which never went in. It will be spanked in a very much different way from the nation which has never been in.

I have been in business for a good many years and you cannot be in the same position.

Mr. **Chairman**, may I read something here that I think is very well stated?

The **CHAIRMAN**. You may, Senator.

Senator **HAWKES**. I read as follows:

First there may be universal agreement as to the usefulness of an organization having consultative and advisory functions which will collect, analyze, and publish information relating to international trade, but there may be great objection to creating a world bureaucracy for world planning and world control.

Second, it is well known, that many nations do not share the United States ideas about cartels. It seems proper to point out that in an international charter there should be clearly stated obligations which the participating nations will understand and then accept or reject. If it is to have the force of a multilateral convention, it should embody the opinions on which the nations agree and exclude or greatly minimize the points on which they do not.

Clear definitions are needed for many words and phrases, and lacking them, the meaning will be different to many people. There seems too much inclination to deal with very broad terms with important matters and then provide that some commission or group shall spell out in detail what is really intended. This is an extension of the so-called administrative law or government by decree.

The CHAIRMAN. Thank you, Senator.

Now, I think we should consider article 67 because that is the judging body. The heading is "Section C. Tariff Committee, Article 67," and then the further heading, "Tariff Committee."

Paragraph 1 reads:

There shall be a tariff committee which shall act on behalf of the organization in the making of recommendations and determinations pursuant to paragraph 3 of Article 24.

That is the paragraph which we have just been discussing.

2. The committee shall consist originally of those members of the organization which shall have made effective the general agreement on Tariffs and Trade dated (blank) 194 (blank). Any other member of the organization shall be a member of the committee when, in the judgment of the committee that member shall have completed negotiations pursuant to paragraph 1 of Article 24, comparable in scope or effect to those completed by the original members of the committee.

That Mr. Hawkins, is the multilateral agreement?

Mr. HAWKINS. Yes.

The CHAIRMAN. It continues:

3. Each member of the committee shall have one vote.

There is an asterisk, referring, I assume, to a note on that subject. Is that an open question?

Mr. HAWKINS. Yes, it refers to that annex.

The CHAIRMAN. I will ask you in more detail when we get to that. I continue reading, as follows:

4. Decisions of the committee pursuant to paragraphs 1 and 2 of this Article shall be taken by a two-thirds majority of its members and other decisions by a simple majority.

5. The committee shall adopt its own rules of procedure, including provision for the election of its officers.

The first question: Will this tariff committee continue to function in the way specified after the charter becomes effective?

Mr. HAWKINS. Yes.

The CHAIRMAN. It will?

Mr. HAWKINS. Yes.

The CHAIRMAN. And it will continue to consist of those 18 members or such lesser part of the 18 that enter into this multilateral trade agreement?

Mr. HAWKINS. Yes.

The CHAIRMAN. Is there any provision for taking into the committee, members other than those who have completed negotiations pursuant to paragraph 1 of article 24, comparable in scope or effect to those completed by the original members of the committee?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Now, this committee consisting of those 18 members, or such lesser numbers as may enter into the multilateral agreement, will then have the right to judge under whatever standards are here set out what other members may come into the judging committee; is that correct?

Mr. HAWKINS. That is correct.

The CHAIRMAN. What are the standards of judgment which that committee will use?

Let me make it a little more clear. It says the standard of judgment is that, in the judgment of the committee, additional members or potential members or potential members shall have completed negotiations comparable in scope or effect to those completed by the original members of the committee.

How can you judge that any agreements that do not relate to the identical subject matter are comparable in scope or effect?

Mr. HAWKINS. It cannot be done in a precise mathematical way. You could use average level of reductions; that is, the general ad valorem, but even that needs qualification. It is a matter of judgment.

The CHAIRMAN. That is a very flexible field of judgment?

Mr. HAWKINS. It is quite flexible.

The CHAIRMAN. And no one would know in advance whether by completing a negotiation, that would bring it into this judging body?

Mr. HAWKINS. Not definitely, but I suppose an inquiry by a member that had not complied with the obligation under paragraph 1 might elicit an opinion that if certain negotiations were completed, that would be regarded as adequate.

The CHAIRMAN. That would necessarily be informal?

Mr. HAWKINS. There is no procedure here for it. I think the rules of procedure could be elaborated to provide for it.

The CHAIRMAN. No provision for what may be called a declaratory judgment?

Mr. HAWKINS. No.

The CHAIRMAN. The effect of that article is to exercise a strong coercive pressure on members, who had not made these concessions, to make them in order to become a part of the judging committee; is that correct?

Mr. HAWKINS. That depends on how it is administered.

The CHAIRMAN. Sir?

Mr. HAWKINS. That depends on how it is administered.

The CHAIRMAN. Well, that is a part of the purpose of this committee?

Mr. HAWKINS. No, I should say that the purpose—

The CHAIRMAN. I do not mean the committee, I mean a part of the purpose.

Mr. HAWKINS. The purpose is simply to provide a means or mechanism for judgment.

The CHAIRMAN. Do you not believe it would have that effect?

Mr. HAWKINS. Not necessarily, sir.

The CHAIRMAN. Would it not be a natural desire of every member of the main organization to become a member of this judging organization?

Mr. HAWKINS. Yes, there would be that desire.

The CHAIRMAN. And this mechanism, therefore, would have the effect of exercising, let us say, a gentle persuasion on those other members to get in line?

I do not say that there is anything wrong in that.

Mr. HAWKINS. I know, but I want to be clear on that, Senator.

The coercive effect, if any, comes from paragraph 3 which permits denial of tariff benefits made under the charter. This is a matter of judgment as to whether, in fact, action taken by new countries that are complying with the article is equivalent, substantially, to what the original group of members have done.

The CHAIRMAN. This committee will have the power to outlaw a member?

Mr. HAWKINS. Yes, that power is there. If the committee were very rigid; it could be even unreasonable.

The CHAIRMAN. This committee will have the power to ride over previous trade agreements?

Mr. HAWKINS. Yes, it could set aside a most-favored-nation obligation. What overrides the previous agreements, of course, is the Charter itself which would override anything inconsistent.

The CHAIRMAN. I mean the committee is a part of the Charter.

First, the outlawry, and second, in abrogating in whole or in part agreements entered into by member nations?

Mr. HAWKINS. Yes.

The CHAIRMAN. What is the authority on which we enter into such an agreement?

Mr. HAWKINS. You mean the multilateral trade agreement?

The CHAIRMAN. What authority do we have to enter into a charter containing these provisions that we are talking about?

Mr. HAWKINS. These provisions will have to be approved. This is a permanent part of the charter.

The CHAIRMAN. They would have to come back for approval?

Mr. HAWKINS. Yes.

The CHAIRMAN. Would we have any authority to enter into an interim arrangement without the approval of Congress?

Mr. HAWKINS. That is the question that I think you were discussing with Mr. Fahy. I think it is really beyond my competence to pass on that question. That committee that you have in mind and which you discussed with Mr. Fahy is the committee set up in connection with the multilateral trade agreement.

The CHAIRMAN. Let me ask your opinion on this. In the absence of further approval of Congress, is there authority for setting up such a committee under the reciprocal trade act?

Mr. HAWKINS. You mean a committee of this kind?

The CHAIRMAN. Yes.

Mr. HAWKINS. I could not answer that, Senator.

The CHAIRMAN. I believe that that will be covered by Mr. Fahy's opinion.

Mr. HAWKINS. That is right.

The CHAIRMAN. Would you make a note that I would like to have his opinion directed specifically to that question?

Mr. HAWKINS. Yes.

The CHAIRMAN. Gentlemen, are there any further questions on article 24?

Senator HAWKES. I think you have covered the situation very thoroughly, but for the very great United States to have one vote on a committee which has the power, whether it intends to use it or not, it has the power to establish a global planned economy and even though we might withdraw after having been in the thing, we would find that we had injured ourselves for a long time in the matter of world trade.

I think you brought up the same thing the other day, and asked Mr. Clayton what was the theory of our having one vote with a little nation that might have 5 percent of the trade, or not even that. It is inconceivable to me that we should give this latitude, or approve it if it is exercised without approval in view of the fact that the United States of America is the garden market of the world, created by 158 years of industry, perseverance, saving, and thrift, and ingenuity, that we should go into any sort of organization and put that kind of ante on the table against the other things, and only have one vote. I just want to make that clear, that no businessman in the world that I ever knew would do it, and the United States is the biggest businessman in the world, and we should have a business sense of responsibility and not go into the humanitarian ideological field because it will work out to the detriment of the world in the end if we go down.

I feel very strongly on that point, Mr. Chairman.

The CHAIRMAN. Mr. Hawkins, is it a policy of the State Department that we shall have one vote?

Mr. HAWKINS. That is a question, Senator, that is under study at the present time. I do not know what the position will be on it.

The CHAIRMAN. We will know before we enter into negotiations at Geneva?

Mr. HAWKINS. I take it you will cover that later?

The CHAIRMAN. Then, let me say that I would like to have you take it up with the State Department as to whether we will have one vote or a weighted vote on the tariff committee contemplated by article 67, and we would like to have that as soon as possible. (See pp. 540, 542-544.)

Senator HAWKES. Mr. Chairman, would you not also like to have this information, because I am sure I would, that the delegation going to Geneva from the United States will know at least that there are some Senators who would like to have them conduct themselves over there in such a way that this thing is not considered a provisional agreement, and it is not considered as an agreement from which we cannot remove ourselves with good grace and without creating ill-will until such time as they bring the document here and we have a chance to study and analyze it and take such action as we deem wise.

The CHAIRMAN. Senator, the purpose of the hearing is to elicit facts and with all the facts before us, it will be up to the Senate to make recommendations and that certainly would be a recommendation to be considered at that time.

I think it would be out of order before we have concluded our factual inquiry to commence to deduce conclusions.

Senator HAWKES. Mr. Chairman, I am not concluding anything. What I am asking you is whether you would like to find out from the State Department whether they are going to take such action and conduct themselves over there in such a way that the people will not assume that we are bound whether we are or not; that is my point.

The CHAIRMAN. Senator, you are asking me for my own viewpoint? Senator HAWKES. Yes.

The CHAIRMAN. My own viewpoint is that when these hearings have been completed, that we study the facts and make recommendations under the facts as developed; that this hearing should be a factual inquiry; that we should be very careful not to make expressions of opinion before it is completed; that the inquiry should be so thorough that when it is concluded, we will be able to pass thorough judgment before they go to Geneva.

Senator HAWKES. Mr. Chairman, the only difference between you and myself is that here we are on March 26, and a large part of this delegation has already left for Geneva, and the rest of them will be gone in a very short time.

How long, Mr. Hawkins?

Mr. HAWKINS. I think about April 5 or 6.

Senator HAWKES. Well, then, they will not arrive there in time.

Hr. HAWKINS. They are flying.

The CHAIRMAN. Senator, I understand your point. I am hopeful, and I am sure that we will complete this inquiry in time so that if the Senate has any views on the subject, they will be transmitted to Geneva in time so that there will be no commitments contrary to the views of the Senate if the State Department has regard for such views.

Senator HAWKES. That is exactly the point I want to make.

The CHAIRMAN. That is the purpose of this inquiry. It is the first time in many, many years that there has been an attempt to make a thorough sifting of an international agreement prior to its presentation to the Senate and Congress as a fait accompli.

I hope this inquiry will be concluded; I know it will be concluded on a very thorough record in time to give opportunity to prevent anything jelling that is contrary to the wishes of the Senate and maybe of Congress as a whole.

Senator HAWKES. With the proviso that you put in.

The CHAIRMAN. What proviso?

Senator HAWKES. That is, provided they put in what the Senate thinks about it.

The CHAIRMAN. There you get into speculation. I think there will be a somewhat tender regard for what the Senate feels about it.

Senator BUTLER. Mr. Chairman, it has been impossible for some of us to attend because of other requirements. I assume that these proceedings will be printed in time so that we can all read up on it?

The CHAIRMAN. The proceedings will be printed up at the earliest possible moment. There is a complete recognition of the fact that we are going to have a conference at Geneva, and that it is advisable that our conferees there know our views on the subject before they have entered into unalterable commitments.

We pass to article 26, entitled "Restrictions to Safeguard the Balance of Payments."

Mr. HAWKINS. We had not known that you were going to get to that this morning, and Mr. Wilcox was going to answer the questions on that article.

I could make an attempt at it, but I think it would be better to have him here.

The CHAIRMAN. When will Dr. Wilcox be available?

Mr. HAWKINS. Any time you want him.

The CHAIRMAN. Will there be any exceptions to our going ahead in sequence?

Mr. HAWKINS. Twenty-five is the next article.

The CHAIRMAN. Thank you for the correction. I got a little ahead of myself.

Senator Hawkes has got me all steamed up here for haste.

Section C: Quantitative Restrictions and Exchange Control; Article 25: General Elimination of Quantitative Restrictions.

I read as follows:

1. Except as otherwise provided in this Charter, no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import licenses, or other measures, shall be instituted or maintained by any Member on the importation of any product of any other member country, or on the exportation or sale for export of any product destined for any other member country.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

(a) Prohibitions or restrictions on imports or exports instituted or maintained during the early postwar transitional period which are essential to: (i) The equitable distribution among the several consuming countries of products in short supply, whether such products are owned by private interests or by the Government of any Member; (ii) The maintenance of wartime price control by a Member country undergoing shortages subsequent to the war; (iii) The orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member country owing to the exigencies of the war, which it would be uneconomic to maintain in normal conditions provided that prohibitions or restrictions for this purpose may not be instituted by any Member after the day on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action.

Import and export prohibitions and restrictions instituted or maintained under subparagraph (a) shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than July 1, 1949, provided that this period may, with the concurrence of the Organization, be extended in respect of any product for further periods not to exceed six months each.

(b) Export prohibitions or restrictions temporarily applied to relieve critical shortages of foodstuffs or other essential products in the exporting Member country.

(c) Import and export prohibitions or restrictions necessary to the application of standards for the classification and grading of commodities in international trade. If, in the opinion of the Organization, the standards adopted by a Member under this subparagraph are likely to have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards provided that it shall not request the revision of standards internationally agreed under paragraph 6 of Article 22.

(d) Export or import quotas applied under regulatory intergovernmental commodity agreements concluded in accordance with the provisions of Chapter VII.

(e) Import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or (ii) to remove a temporary surplus of the like domestic product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level. Any Member imposing restrictions on the importation of any product pursuant to this subparagraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of the restrictions. In determining this proportion the Member shall pay due regard to the proportion prevailing during a previous

representative period and to any special factors which may have affected or may be affecting the trade in the product concerned. The Member shall consult with any other Members which are interested in the trade in question and which wish to initiate such consultations.

(f) Import and export prohibitions or restrictions on private trade for the purpose of establishing a new, or maintaining an existing, monopoly of trade for a state-trading enterprise operated under Articles 31, 32, or 33.

The CHAIRMAN. Mr. Hawkins, there are a lot of up and down hills in that one; would you mind giving us a preliminary clarification?

Mr. HAWKINS. Senator, I should first say that Mr. Wilcox was going to handle this whole section from here on.

The CHAIRMAN. Let me get that straight. Is this the section that Dr. Wilcox was going to handle?

Mr. HAWKINS. Yes.

The CHAIRMAN. I am perfectly willing to pass that, and I had passed that when you recalled me.

Mr. HAWKINS. This section on quantitative restriction is all together. I can give you an explanation.

The CHAIRMAN. How many articles are so related to article 25 that they should all be explained by the same person?

Mr. HAWKINS. They are all closely related, articles 25, 26, 27, 28, and 29. However, article 25 can be separated off.

This is the basic obligation regarding the nonapplication of quantitative restriction.

I will give you a bird's-eye view of it.

The CHAIRMAN. Do that.

Mr. HAWKINS. The exceptions are listed under 25 and then there is the more important exception which is dealt with in article 26, and the succeeding articles. Even though it is a separate article, it is an exception and the most important exception to the basic obligation of paragraph 1 of article 25.

The CHAIRMAN. Well, now, you can proceed, or we can go over until 2:30 this afternoon and have Dr. Wilcox here, just as you please. I will leave it to your conscience as to whether Dr. Wilcox or you is best able to handle that. I do not want you to be too modest.

Mr. HAWKINS. I do not like to waste the committee's time, and I would like to give you an explanation of this.

The CHAIRMAN. Let us go to it.

Mr. HAWKINS. I will try to get at the sense of it apart from the language.

The sense of the first paragraph is that in principle quantitative restrictions are forbidden. A quantitative restriction is self-explanatory, a restriction in quantity in one form or another.

A total quota could be set and that quota could be allocated among the countries or doled out by licenses, first come first served, or you could have what probably is the worst form, simply a law that products could only be imported under license.

The CHAIRMAN. We saw yesterday that almost every country in the world has some system, direct or indirect, of quantitative restrictions.

Mr. HAWKINS. Yes, sir.

Now, under a licensing system there may be no quota.

The CHAIRMAN. It comes to a quota in effect. There is no point in licensing individual shipments unless you have in mind a total quantity that you want to come in or have excluded.

The license is the method of controlling that?

Mr. HAWKINS. Yes.

Senator HAWKES. Mr. Chairman, is it the license method which is used for controlling variable quotas? Is not that a correct statement?

In other words, could not a nation say that under certain conditions the quota will be so-and-so, and under certain other conditions it will be so-and-so, but that variable quotas will be governed by the necessity of having the shipments licensed?

Mr. HAWKINS. If you have to have a quota system, the best one is the global quota which says that "X" million pounds can come in from all sources and then with the licensing system that does them out.

Then, there is the so-called allocated quota, where you fix the total amount and allot shares of that to the various supplying countries.

Those are the two main kinds. But then there is also the straight licensing system where it is on a hand-to-mouth basis, and importers may get licenses, and they may not. That is bad because there is so much room for discrimination by officials; they can hand them out to some countries and not to others.

Senator HAWKES. In other words, that system lends itself to corruption of people who are willing to be corrupted?

Mr. HAWKINS. That is right.

The CHAIRMAN. Go ahead and give us your bird's-eye view of that article.

Mr. HAWKINS. Yes, sir.

The second paragraph, paragraph 2, sets forth the exceptions to the obligation not to impose quantitative restrictions.

Paragraph (a) is directed at the unsettled situation in the postwar period. That period is defined here as running through until 1949 during which there may have to be quantitative restrictions in conflict with paragraph 1. Subparagraph (a) i relates to products in short supply. That necessarily involves a quantitative control since the trade is directed not according to competitive factors, but according to the greatest need.

Control is necessary where you have that situation and, therefore, you have to have exception for it.

The maintenance of wartime price control by a member country undergoing shortages subsequent to the war is covered by subparagraph (a) ii. The sense of that is that a country might be maintaining a price control while another country had no price control with the result that goods which were in short supply in the first country would go to the country with higher price. This provision would permit situations on exports of products under those conditions.

(a) iii relates to [reading]:

The orderly liquidation of temporary surpluses of stocks owned or controlled by the Government of any Member or of industry developed in any Member country.

Liquidation of Government-owned stocks owned by any member may involve some quantitative controls in connection with the liquidation of those surpluses. The provision there is that in case it is used, it would be after consultation with other interested members.

The last paragraph of paragraph (a), as I have already said, limits this transition period for the use of these exceptions to the period

until July 1, 1949, but with provision for taking a look at it at that time and see if it needs to be extended. [Reading:]

(b) Export prohibitions or restrictions temporarily applied to relieve critical shortages of foodstuffs or other essential products in the exporting Member country.

That is not a temporary exception, as you can see; it will run as long as the obligation runs. It is intended to apply in a situation, for example, where there is a famine and a country has to clamp down on the food exports.

I am sure you want to look at these exceptions from the viewpoint of whether they are tight enough. The words that help to tighten up this to the type of situation I have described are "to relieve critical shortages."

The CHAIRMAN. May I interrupt you for a moment?

At some stage of the examination in connection with this and succeeding articles, I am going to ask you to define exactly what kind of import quota is prohibited and under what circumstances it is prohibited.

It seems to me that we start out with a prohibition on import quotas and then we carve out so many exceptions that nothing is left.

Mr. HAWKINS. I would only suggest, as we go over it, that you examine closely the need for the particular exception and how great the scope really is. Some of these exceptions are purely technical; that is, no one would think of not including them.

This is one, if you can define it, to cover the case. I do not think anyone would raise objection.

The CHAIRMAN. I think it is our duty to determine the net effect of these provisions and if you have put out a general prohibition and then, in fact, you have carved out exceptions that cover every conceivable type of import restriction, what you have done in total effect is a nullity and I am not saying that you have done that, but I am very curious to find out whether you have done it, and I have a general impression that you have come mighty close to having done it. So carry that in the back of your mind to bring forward before we finish these exceptions.

Mr. HAWKINS. Senator, I can already, I think, point to the exception which is most sweeping; that is, article 26. That is and represents a very difficult problem and does cover a lot of territory. There is no question about it doing that.

The reason you have the following articles with all that language is primarily designed to hold down action under the exception and cut it off. That is why all those provisions are there in the three articles following article 26.

Subparagraph (c) is another exception on import and export prohibitions, or restrictions necessary to the application of standards for the classification and grading of commodities in international trade.

That covers, for example, prohibiting exportation of substandard goods that mar the reputation of the national product; that is one example.

You will note the drafters had a few worries about that being broad, and they added a second sentence: To have the organization watch it and try to hold it within its legitimate purpose.

The illustration that I have just given, I think, is a legitimate exception. Any country might use it, and for perfectly good commercial reasons, not greatly restrictive on trade. [Reading:]

(d) Export or import quotas applied under regulatory intergovernmental commodity agreements concluded in accordance with the provisions of Chapter VII.

The reason for having this exception is the technical one that under commodity agreements you have quotas.

The question of using commodity agreements is a question dealt with later on, but if you have them, you must have this exception.

Paragraph (e) is of more importance than any I have read so far. It permits import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate to restrict the quantities of like domestic products permitted to be marketed or produced or to remove a temporary surplus of the like domestic product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level.

Apart from our own laws and agricultural programs in the past, this, in general, seems to be a logical and necessary exception.

If a country is restricting domestic production, it cannot let imports come in and just take the market. In other words, if you cut down production you cannot let the amount you cut down be replaced by imports. The purpose of this is to scale down production and imports proportionately.

If you are going to restrict production, you have to have an exception like this.

The other case mentioned here is where the products are being removed from the market when there is a surplus situation and the products are being removed from the market by giving them away or selling them cheaply.

Programs like these, such as we have had in the past, require this exception.

There are some qualifications here upon the use of the provision in the latter part of that paragraph.

Paragraph (f) is [reading]:

Import and export prohibitions or restrictions on private trade for the purpose of establishing a new, or maintaining an existing, monopoly of trade for a state trading enterprise operated under Articles 31, 32, or 33.

The only question is this: If monopolistic or state trading is not prohibited by the Charter—and Mr. Wilcox explained what the approach was on that—this provision is a technical necessity. In other words, you cannot have a monopoly unless you have a restriction on trade by people other than the entity having the monopoly.

There are, in essence, the provision on quantitative restrictions, and all but one, I might say, of the exceptions. The remaining one is the one I mentioned, that covered by article 26 and the three following articles. (Quantitative Restrictions in Foreign Trade Imposed by the United States are listed in exhibit XIX-A.)

The CHAIRMAN. This may be another appropriate occasion to emphasize what I assume is the basic philosophy of this Charter, at least in one of its aspects: that taking the rules and the exceptions, so far as imports and exports are concerned—taking them all into consideration—there is a residue of import matters and a residue

of export matters which the Charter assumes is a matter of international consequence, and of such international consequence that the member nations are warranted in surrendering to an international organization what would otherwise be their individual control over those subject matters. Is that correct?

Mr. HAWKINS. Senator, I do not think it is quite correct to speak of surrendering the control to the Organization. I think as you go through these articles it will be well to note what the real function of the Organization is.

Basically the Charter is the same sort of thing as results when a country negotiates a treaty. The commitments are stated here. Each government that adheres takes those commitments. The function of the Organization—there is no delegation there, really, of any blanket power to the Organization. The Organization facilitates the administration of those undertakings.

The CHAIRMAN. I do not believe that you have refuted anything that I have said.

Mr. HAWKINS. Maybe I did not understand the point.

The CHAIRMAN. There is a residue of power which, if it were not delegated, if it were not surrendered, would adhere to the individual members, and be under their complete control. The purpose of the Charter is to raise a new international interest in those subjects and to provide the mechanics whereby that new international interest may be effectuated. Is that not correct?

Mr. HAWKINS. I think that is probably right.

The CHAIRMAN. There is nothing to the Organization if it does not have that purpose.

It will illustrate problems that concern us in this discussion if we put in the record a press release of March 25, 1947, of the Department of State, which shows the text of a note delivered by the American Legation of Stockholm to the Swedish Foreign Minister on March 24, 1947. The note deals with the import restrictions imposed by the Swedish Government on March 15, 1947.

I quote:

EXCELLENCY: I am instructed by my Government to inform you as follows:

The Government of the United States has taken note of the action of the Government of Sweden, announced in its communiqué of March 15, 1947, in imposing a general import prohibition, effective from 7:00 p. m., March 15, 1947, for the purpose of preventing a further decline in its foreign exchange reserves. The United States Government has also taken note of the fact that certain commodities not included in the import prohibition are placed on a so-called free list, and that included in this free list are chiefly raw materials, machinery, and other commodities essential to the Swedish economy, as well as commodities which will be imported in fulfillment of Sweden's bilateral trade agreement commitments.

The Government of the United States calls the attention of the Swedish Government to Article VII of the Reciprocal Trade Agreement entered into between the two countries on May 25, 1935, which provides that in the event that either party to the agreement proposes to change any of the provisions of Article VII, it shall give notice in writing to the other government and shall afford the other government thirty days after receipt of such notice to consult with it in respect to such action. Insofar as the import restrictions placed in force by the Swedish Government on March 15, 1947, affect the importation into Sweden of commodities listed in Schedule I of the Reciprocal Trade Agreement, the failure of the Swedish Government to give the United States Government thirty days' notice in writing constitutes a clear violation of paragraph VII of the Trade Agreement. Since the Government of Sweden has itself announced that so long ago as

December 19, 1946, it was informed by the Riksbank of the necessity of imposing some form of import control in view of the rapidly decreasing gold and foreign exchange holdings of the Riksbank, my Government feels that the Swedish Government had adequate opportunity of affording the United States Government the thirty-day advance notice required in the United States-Swedish Trade Agreement.

May I ask you at this point if Sweden is one of the 18 nations?

Mr. HAWKINS. No, sir; it is not.

The CHAIRMAN. To continue [reading]:

The Government of the United States cannot but strongly protest the implications of the announced program of the Swedish Government to permit the import of certain commodities into Sweden in fulfillment of its bilateral trade agreement commitments, while prohibiting or severely restricting the importation of the same or similar commodities from the United States. By this course of action the Swedish Government would appear to be adopting the position that it considers that its bilateral trade agreements must be honored and fulfilled at the expense of or in preference to its contractual obligations with countries with which it has no such bilateral agreements. This policy, if pursued, would lead to a complete break-down of multilateral nondiscriminatory trade among nations, the maintenance of which, in addition to being a principal tenet of the United States Government's foreign policy, is also an established principle of the Swedish Government, according to repeated pronouncements by its representatives. The United States Government must emphasize that it considers its Reciprocal Trade Agreement entered into with the Government of Sweden to be fully as binding upon the Swedish Government as any of that country's bilateral agreements. In fact the Reciprocal Trade Agreement, by reason of the date of its entering into force, is a prior commitment of the Swedish Government.

The United States Government feels constrained to call attention of the Swedish Government to the commitments and obligations entered into by Sweden in its Reciprocal Trade Agreement with the United States, particularly as those commitments are set forth in Article II of the agreement. That Article provides that in the event of the establishment of quotas or other import restrictions by either Government, it is agreed that in the allocation of the quantity of restricted goods which may be authorized for importation, the other country will be granted a share equivalent to the proportion of the trade which it would normally enjoy. Article II further provides that in the event either country establishes import restrictions, imports originating in the other country will be granted at least as favorable treatment as that granted to the same or similar goods originating in a third country. The United States Government must assume that the announced import licensing system of the Swedish Government will be administered in accordance with the provisions of Article II of the Reciprocal Trade Agreement, as well as in accordance with the general spirit and intent of that Agreement.

The United States Government reserves all rights, under Article XI of the Reciprocal Trade Agreement between the two countries, to make such further representations to the Swedish Government as the future operation of that Government's import licensing system may seem to require.

I put that into the record as a practical example of the day-by-day difficulties that this country and the State Department have in this field that we are now entering upon.

Unless you wish to comment on that, and I am not asking for any comment, suppose we recess until 2:30.

(Whereupon, at 12:30 p. m., a recess was taken, to reconvene at 2:30 p. m.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., upon the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

Before lunch we were discussing article 25, having to do with quantitative restrictions and exchange control.

Dr. Wilcox, do you wish to make any general observations on that article before we proceed to a detailed analysis of it?

STATEMENTS OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE, WASHINGTON, D. C. (Recalled); AND GEORGE BRONZ, SPECIAL ASSISTANT TO GENERAL COUNSEL, TREASURY DEPARTMENT, WASHINGTON, D. C.

Mr. WILCOX. If I may, I would like to make a general statement on this whole section, section C, on quantitative restrictions and exchange control, which covers articles 25 through 29.

This is one, I think, of the most important, one of the most difficult, certainly one of the most technical sections in the whole document. The complicated character of some of these provisions is attributable to the fact that an effort has been made here to establish a parallelism between the provisions of the Charter on import quotas and the provisions of the International Monetary Fund on exchange controls, so the form of the articles of agreement of the fund has to some extent dictated the form of the provisions in this section of the Charter.

At the present time a country that would not be free to make use of exchange restrictions is perfectly free to accomplish the same purpose by imposing import quotas, and the general effort that has been made here is to prevent the frustration of the purposes of the Fund in its control over exchange restrictions, by having resort to import quotas; and, conversely, to prevent the frustration of the purposes of this document with respect to import quotas by making use of exchange controls. That is the reason that it is written as it is.

My only other point would be that this section, as it is written cannot be said to abolish import quotas. What it does is to place limitations on the freedom of countries to resort to import quotas, but it does represent a compromise with existing trade situations and existing national policies in this field, and that compromise results in the provision of a number of exceptions to meet specific cases.

The pattern here is to lay down a general rule, then to enumerate specific exceptions which are defined and outlined in detail, and then, if a country goes beyond the use of quantitative restrictions permitted by those exceptions, it is subject to the sanctions that are provided, which have already been discussed.

The CHAIRMAN. Before lunch, Mr. Hawkins and I were discussing the impression that one might get from reading over this section that whatever was intended to be accomplished by the pronouncement of the principle is whittled away by the exceptions, and that if there is any residuum left, of prohibited practice, it is not easy to detect, or if it were detectable it could not be very important.

I suggested to Mr. Hawkins that we would be coming to that somewhere in the discussion of this section. Perhaps you can give us a summary answer to that right now. What is left, after you weigh the exceptions?

Mr. WILCOX. I think that that will appear as you go through the following articles, item by item. The answer is that everything is left except what is specifically excepted.

The CHAIRMAN. Of course. And what is left that is not specifically excepted?

Mr. WILCOX. I cannot answer the question without enumerating the exceptions.

The CHAIRMAN. I suppose that when we finally get through the section I shall want to know for my information that which does remain which is subject to the general prohibitions. But I suppose the best way to do that is to get at it, and see what is excepted from the principle, and for how long, and under what circumstances.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Am I correct in the assumption that paragraph 1 of article 25 is intended to strike directly at quota restrictions?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. And it is intended to exclude, for the purposes of the article, other types of restrictions?

Mr. WILCOX. That is right.

The CHAIRMAN. Paragraph 2, subclause (a), speaks of certain permitted exceptions during the early postwar transitional period. How will that period be measured?

Mr. WILCOX. At the end of the paragraph it says that [reading]:

These prohibitions and restrictions shall be removed as soon as the conditions giving rise to them shall cease, and in any event not later than July 1, 1949, provided that this period may, with the concurrence of the Organization, be extended in respect of any product for further periods not to exceed six months each.

The CHAIRMAN. The period of July 1, 1949, is just a date. No one can estimate now that we will be out of what we can call our postwar transitional period by that time. Do you agree?

Mr. WILCOX. And that is the reason for the provision of 6 months' extension.

The CHAIRMAN. The Organization will exercise the exclusive judgment as to whether or not there shall be further extensions.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. The continued maintenance of wartime price controls by a member, after the expiration of that postwar transitional period, would be condemned?

Mr. WILCOX. No. The maintenance of price control would not be condemned, but the utilization of import restrictions to implement that program would be; yes.

The CHAIRMAN. Might it not be impossible to maintain price controls if it were not accompanied by import quotas?

Mr. WILCOX. I think it would be difficult; yes.

The CHAIRMAN. So that there might be a very important conflict between an internal domestic policy as far as price control is concerned, and the provisions of this article?

Mr. WILCOX. That is right. This assumes the liquidation of wartime controls.

The CHAIRMAN. I notice the language in subclause (a) [reading]:

Provided that prohibitions or restrictions for this purpose may not be instituted by any Member after the day on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action.

What is the reason for that?

Mr. WILCOX. That qualifies only subparagraph (iii).

The CHAIRMAN. That is right. The orderly liquidation of temporary surpluses.

Let me put it this way: I believe it is a rather rosy expectation that temporary surpluses will have been disposed of by the time the charter comes into force, if it comes into force, within any period that has been estimated.

Mr. WILCOX. I cannot give you the reason for that proviso, Senator.

The CHAIRMAN. I notice that, of course, there is an exception tied to that. It says [reading]:

Except after consultation with other interested Members with a view to appropriate international action.

Mr. WILCOX. That would envisage a possible international agreement for the liquidation of accumulation stocks, where you had accumulations of stocks, wartime stocks in several countries.

The CHAIRMAN. That is another way of saying that the privilege of orderly liquidation ends when the charter comes into effect, unless appropriate international action extends it still further. Is that not right?

Mr. WILCOX. You might have as a result of such consultation, an agreement on a common plan of liquidation of stocks in more than one country.

The CHAIRMAN. Which you might not have.

Mr. WILCOX. Which you might not have, and still you could proceed with the liquidation.

The CHAIRMAN. That is what I do not quite understand from the language. Suppose we read that number 2 (a) (iii). [Reading:]

The orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member or of industries developed in any Member country owing to the exigencies of the war, which it would be uneconomic to maintain in normal conditions provided that the prohibitions or restrictions for this purpose may not be instituted by any Member after the day on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action.

Mr. WILCOX. I would assume this means that existing prohibitions or restrictions for this purpose may be continued, but that new prohibitions, for this purpose, may not be instituted except after consultation. The consultation has a view to appropriate international action, but if the international action does not eventuate from that I would assume that it is no bar to national action.

The CHAIRMAN. Do you not consider that arguable. Does it seem entirely clear to you?

Mr. WILCOX. Well, all it says is that they must consult before they impose new restrictions.

The CHAIRMAN. Going into it again, what the whole thing says, in effect, is that you cannot have a quota restriction except as to the following cases. One of the cases is the [reading]:

orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member or of industries developed in any Member country owing to the exigencies of the war, which it would be uneconomic to maintain in normal conditions provided that prohibitions or restrictions for this purpose may not be instituted by any Member after the day on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action.

Your position is that the latter exception refers to new prohibitions or restrictions?

Mr. WILCOX. I would assume so; yes, sir.

The CHAIRMAN. What effect would that provision have on our synthetic rubber plants, for example? We now work on a mixing principle, you remember. We import a limited amount of natural rubber and require its mixing with synthetic rubber, and of course, the synthetic rubber is an output of our wartime synthetic rubber plants.

Mr. WILCOX. I do not see that this particular provision would have any influence on that program at all. It relates to the disposition of stocks already accumulated.

The CHAIRMAN. Does it tie to the further condition that the particular activity which is saved by this exception, must be uneconomic to maintain in normal conditions?

Mr. WILCOX. That is merely a description of the accumulated surplus.

The CHAIRMAN. You do not think that that has any reference to the continued maintenance of our synthetic rubber plants or the maintenance of the raw materials necessary to operate them?

Mr. WILCOX. I cannot see that it does at all, Senator. If a country desires to maintain a surplus of any product, or plants built up during the war, it is perfectly free to do so.

The CHAIRMAN. How about our wool surplus stocks?

Mr. WILCOX. This would permit the use of quantitative restrictions in connection with the program of liquidating accumulated surplus stocks of wool.

The CHAIRMAN. And would there be a time limitation on that?

Mr. WILCOX. On July 1, 1949, or the period may be extended.

The CHAIRMAN. So that as to our wool stocks, which we did accumulate here, and which were surplus war stocks, and were accumulated for war purposes, the restriction as to imports would have to be relieved by July 1, 1949, if it were considered advisable to maintain those restrictions, or to maintain the surpluses.

Mr. WILCOX. Unless the liquidation of stocks were carried out under a commodity agreement under subparagraph (d).

The CHAIRMAN. That would require agreements between nations?

Mr. WILCOX. That is right.

The CHAIRMAN. In other words, that would be what we have referred to as one of the cartels, one of the authorized cartel agreements?

Mr. WILCOX. Yes.

The CHAIRMAN. So, except for whatever protection might be gotten from that kind of an arrangement, we would not be permitted to maintain wool import quotas for the purpose of protecting our surplus wool supplies beyond July 1, 1949, or as that might be further extended by international action.

Mr. WILCOX. Or subsequently under an intergovernmental commodity agreement; yes, sir.

The CHAIRMAN. Would the same apply to any surplus mineral stocks which we may have accumulated during the war?

Mr. WILCOX. Yes, I think the same principles would apply to any such accumulations.

The CHAIRMAN. I should think so.

There is a minor point in connection with the language of (a) 2. As one gets into this charter the consultations that are required mount and multiply, and after a while it is easy to get the picture that all these nations are doing, as members of this Organization, is consulting

with each other, everybody is consulting with everybody else. Every single step in here involves consultations. Could that not go to a point where it would get to be extremely burdensome?

Mr. WILCOX. Of course, governments are consulting with each other continuously at the present time.

The CHAIRMAN. Yes, but not on this burgeoning basis.

Mr. WILCOX. I think the general principle here is consultation between or among the countries, with respect to actions that would affect the interests of any of them, rather than individual action regardless of the consequences, without announcement, or without consultation, yes, sir.

The CHAIRMAN. There are so many consultations that each individual member of this organization has the privilege of initiating. I suggest that we would be involved in an enormous number of them because we probably would be the country which would be the most frequent target for the ambitions of the other members.

Mr. WILCOX. The question there, Senator, is whether you consult before the event or after the event.

The CHAIRMAN. Or at all.

Mr. WILCOX. If a nation takes action that does affect the interests of another nation, the second one is very likely to ask for consultation subsequently in any case.

The CHAIRMAN. That raises the basic question, I am not now arguing it, whether this Organization raises a new set of artificial interests, which makes necessary all of these consultations which I suggest might become very burdensome.

But I am not arguing that at all. At the present time, under existing conceptions of what may be done by a nation under its own power, and what may not be done, no one has a formal right to ask for a consultation, either before or after.

Mr. WILCOX. In fact, however, they do ask for consultation, whether there is any document that says they have a right.

The CHAIRMAN. The consultation can be denied without putting oneself in a position where one might be hailed before some other tribunal for some kind of punitive action.

Subparagraph (b) of paragraph 2 reads:

Export prohibitions or restrictions temporarily applied to relieve critical shortages of foodstuffs or other essential products in the exporting Member country.

Does that have any limitation of time on it at all?

Mr. WILCOX. There is no time limitation.

The CHAIRMAN. That may be considered as a permanent principle of the Organization without exception?

Mr. WILCOX. That is the shortage situation, allocation of commodities in short supply.

The CHAIRMAN. And that contemplates export?

Mr. WILCOX. That is right.

The CHAIRMAN. There are no whittling away exceptions to that anywhere in the Charter?

Mr. WILCOX. No. That is an absolute exception.

The CHAIRMAN. With reference to subparagraph (c) of paragraph 2:

Import and export prohibitions or restrictions necessary to the application of standards for the classification and grading of commodities in international trade.

Will you give us an example of what that is supposed to cover?

Mr. WILCOX. Wherever a nation has a system of classification or grading of any commodity, that it exports or imports, it may be necessary to provide that goods that do not conform to the classification or grade may not move in international trade, and this is merely designed to enable existing systems, national systems, of classification and grading, to be maintained.

The CHAIRMAN. That is a policing regulation?

Mr. WILCOX. An existing policing regulation which is excepted from this prohibition.

The CHAIRMAN. I notice it gives the organization some control over the exercise of that particular privilege. It says [reading]:

The Organization may request the Member to revise the standards provided that it shall not request the revision of standards internationally agreed under paragraph 6 of Article 22.

Do you anticipate any abuse of that power in the Organization?

Mr. WILCOX. This is designed to meet a case in which a country might use the first sentence as a method of trade restrictions beyond what were necessary, in order to enforce the language of the classifications.

The CHAIRMAN. The language says it may "request the Member to revise the standards." Must the member comply with the request?

Mr. WILCOX. No. There is nothing that requires him to do so.

The CHAIRMAN. And that is not intended?

Mr. WILCOX. No.

The CHAIRMAN. Subparagraph (d), paragraph 2 [reading]:

Export and import quotas applied under regulatory intergovernmental commodity agreements concluded in accordance with the provisions of Chapter VII.

Of course, that raises the question as to the merits of chapter VII, which I do not think we should settle by a glancing approach.

Mr. WILCOX. This is necessary, of course, for the purpose of the other chapter.

The CHAIRMAN. This would stand or fall on the virtues or faults of chapter VII?

Mr. WILCOX. That is right.

The CHAIRMAN. Subparagraph (e) of paragraph 2 [reading]:

Import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or (ii) to remove a temporary surplus of the like domestic product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level.

Stopping right there, I have a question which a Senator has asked me to put to you. It is: Would this section—and he is referring particularly to (e)—i, to wit:

to restrict the quantities of the like domestic product permitted to be marketed or produced—

would this section therefore operate as an automatic repeal of our quota protection on those commodities? He is speaking of cotton and wheat (exhibit XIX-C).

Mr. WILCOX. No. Not where you had a domestic program that would conform to this description. What it does is just the opposite. That is, if you have a domestic agricultural program which involves

restrictions on production or restrictions on marketing, as we had under the Agricultural Marketing Act, for instance, that program might be defeated by an increase of imports. As you restricted what you marketed domestically, more might come in from abroad, and it would defeat your domestic program.

The CHAIRMAN. That is right.

Mr. WILCOX. This exception permits you to maintain import quotas to implement such a domestic program.

The CHAIRMAN. But suppose that you did not restrict the quantities of domestic product, could you then maintain a quota on the foreign product?

Mr. WILCOX. You could if you had a commodity agreement.

The CHAIRMAN. An intergovernmental commodity agreement?

Mr. WILCOX. That is right.

The CHAIRMAN. Otherwise you could not?

Mr. WILCOX. Otherwise not.

The CHAIRMAN. In other words, if it should be congressional policy to limit the amount of copper that might come in, the amount of wool that might come in, the amount of rubber that might come in, if it were not tied to a restriction also on domestic production, it would be banned by the Charter?

Mr. WILCOX. If it were not tied to a restriction on domestic production, or sales, or under an intergovernmental commodity agreement, it would be banned.

The CHAIRMAN. Those are the four exceptions to the banning?

Mr. WILCOX. Well, two exceptions.

The CHAIRMAN. I thought you mentioned four.

Mr. WILCOX. First a restriction on domestic production or sales; second, an intergovernmental commodity agreement, otherwise it is banned.

The CHAIRMAN. Senator Johnson, we just developed a rather interesting feature of the Charter. It arises out of subclause (e) of paragraph 2, under article 25, having to do with general elimination of quantitative restrictions.

Your answer would apply to sugar or any other commodity?

Mr. WILCOX. Yes.

In the case of sugar, for instance, there has been a domestic quota system and there also has been an intergovernmental commodity agreement, so it would fall under both of those exceptions.

Senator JOHNSON. Would the terms of the domestic controls—and I refer to the amount of the allocation to domestic production—be considered by this authority?

Mr. WILCOX. Not by the International Trade Organization; no.

Senator JOHNSON. They could not concern themselves with whether we were allocating too much acreage to sugar beets, and too much acreage to cane, or too much production to either one of them? They could not enter into any consideration of allocations that we made?

Mr. WILCOX. The International Trade Organization would have no such authority.

Senator JOHNSON. It would be very ineffective, would it not?

Mr. WILCOX. It would not be effective in allocating production among countries, or within any country, because it would not have that power.

Senator JOHNSON. I do not care how ineffectual it is. I am not concerned about that. And I would think, from your testimony, that it would be very ineffectual, which pleases me very much.

The CHAIRMAN. We will come back to the same subject later on, Doctor.

Mr. WILCOX. All right.

Senator JOHNSON. If I may be permitted, Mr. Chairman. In other words, the sugar formula that we worked out for this country, for continental America, for our offshore production, and for foreign production, such as Cuba, is a very involved proposition, and, of course, sugar is a very difficult thing to handle. We have tried to handle it under high tariffs, and that did not work, and so we fell upon what is known as the Jones-Costigan plan of quotas and allocations. We have worked some order out of chaos, and it has worked very well, and very satisfactorily.

I hope that there is nothing in this proposal that is going to upset that sort of an orderly remedy for very great and distressing difficulties in the sugar industry.

Mr. WILCOX. What you have in the case of sugar are two things: A domestic statute and an intergovernmental commodity agreement, and the two are related, of course. You have to have the agreement in order to apply to the other countries that are in the plan, and our statute keys into the agreement.

Senator JOHNSON. Our statute is over-all, is it not? It came first.

Mr. WILCOX. We cannot, by a statute inside the United States, impose any regulation on production outside of the United States.

Senator JOHNSON. No, of course not. We do not want to.

Mr. WILCOX. No.

Senator JOHNSON. We are not concerned with that.

Mr. WILCOX. That is handled in the intergovernmental agreement on sugar.

Senator JOHNSON. That is another problem. That is a world problem, while ours is a domestic problem.

That is all. Thank you, Mr. Chairman.

The CHAIRMAN. Dr. Wilcox, Mr. Martin, of the Tariff Commission, has handed us a memorandum carrying the general heading "The ITO Charter and the United States sugar program." If you do not mind, I will read this into the record now, and will ask for your comments after I read it, and of course, if you want to take time to study it further I will give you another crack at it later on.

I quote:

Under the Sugar Act of 1937 the entire supply of sugar consumed in the United States is subject to quotas. (The President has authority under the Act to suspend quotas in case of emergency; in fact, the quotas have been suspended since 1942. However, this has no bearing on the rights or obligations which the United States would assume by adopting the ITO Charter as now drafted; the suspension is accordingly ignored in this memorandum.) Domestically produced sugar is subject to marketing quotas and imported sugar is subject to absolute import quotas.

Each year the Secretary of Agriculture estimates the prospective consumptive demand for sugar, and that quantity is prorated among the supplying areas according to a formula established by the law. The consumption estimate may be revised during the year because of changing conditions, with resultant revisions in the area allotments. If an area is unable to supply its full quota, the deficit is permitted to be supplied by certain other areas.

The law also provides for an excise tax on "manufactured sugar" produced in the United States and an equivalent import compensating tax. The tax is at the rate of $\frac{1}{2}$ cent per pound on a raw-sugar basis, and benefit payments are paid to United States farmers.

PERTINENT CHARTER PROVISIONS

The principal provisions relevant to an appraisal of the effect which adoption of the ITO Charter would have on the United States Sugar Program are Article 25 (quotas), Article 27 (nondiscriminatory administration of quotas), and Article 30 (subsidies).

Quotas: While Article 25 contains a general rule against the use of import quotas on the products of other Member countries, it permits (in paragraph 2 (e)) "import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate (1) to restrict the quantities of the like domestic product permitted to be marketed or produced * * *." Public notice must be given of the total quantity or value permitted entry in the quota period and the quota must not reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected if there were no quotas. "Due regard" must be paid to the proportion in a previous representative period and to special factors affecting the trade. Consultation on these matters is required with other interested Members if they so request.

Under our Sugar Program quotas are in effect on imports only when they are effective on domestic marketings, and it seems clear that import quotas are "necessary to the enforcement" of the domestic marketing program. (The absolute import quotas on Philippine sugars are imposed in conjunction with tariff preferences; they are effective without regard to domestic restrictions. If the Philippines join the ITO, we would apparently need to change our law to make these quotas ineffective during periods of suspended domestic restrictions; if the Philippines do not join, the special quotas on Philippine sugars could be continued as at present.)

Senator JOHNSON. We agreed to a treaty with the Philippines in regard to the amount of sugar that could come in from them. Now, would that treaty not be superior to ITO or to anything else?

The CHAIRMAN. It seems so to me.

Mr. WILCOX. I do not believe you finished the memorandum.

The CHAIRMAN. No. [Continues reading:]

The Charter language "imported in any form" assures that quotas can be imposed on refined sugar, even if it should be regarded as a manufactured product. Our law requires publication of the amount of the import quotas and they are based on a previous period which is generally regarded as reasonably representative. If another Member requested, we would need to consult regarding division of our market between domestic and imported sugars; if a convincing case were made that our statistical methods resulted in larger quotas for domestic sugar than could be obtained if the allotment were based on a previous representative period, we would apparently need to make an adjustment in favor of imports unless we could establish that relevant "special factors" warranted favoring domestic producers. The Charter contains no basis for defining such factors. It appears that the United States would not be able to justify quotas that had the effect of restricting imports of sugar so that domestic production could increase.

Article 27 is designed to prevent discrimination against other Members in the administration of import quotas (it is not concerned with the division of the market between domestic and foreign sources). It prohibits restrictions on the products of any Member unless like products from all other foreign countries are likewise restricted. It establishes standards for nondiscriminatory treatment. It does not seem likely that this Article would cause any material changes in our present system.

In general terms, accordingly, the Charter would permit the continuation of United States sugar quotas on the same basis as in the past, but not on a basis more favorable to domestic producers. The Charter would require us to consult with other interested Members regarding the details of our import quotas, but it seems unlikely that any major changes in our present operations would be called for.

Senator JOHNSON. Before you go to subsidies, Senator, in that paragraph it states [reading]:

in general terms, accordingly, the Charter would permit the continuation of United States sugar quotas on the same basis as in the past, but not on a basis more favorable to domestic producers.

Just what does that mean? Does that mean that in the future we could not allocate more production to our domestic producers?

The CHAIRMAN. That is the way I interpret it.

Mr. WILCOX. No, sir. The point that has not yet been covered in the memorandum—I do not know whether it is—is what might be agreed to under a commodity agreement.

The CHAIRMAN. Yes. But independent of the commodity agreement, out of our own power.

Mr. WILCOX. That is true.

The CHAIRMAN. If we increase our domestic allocations, impose further import quotas, we would be violating the charter, would we not?

Mr. WILCOX. There is one distinction to be made, and that is between an absolute quantity of production and relative production.

The CHAIRMAN. Yes.

Mr. WILCOX. You might have an increase in the absolute quantity of production that did not involve a relative increase in the domestic market.

The CHAIRMAN. But if you increased the percentage of domestic production as against the over-all total of domestic consumption, you would then be running afoul of the charter.

Mr. WILCOX. In the absence of the commodity agreement; yes, sir.

The CHAIRMAN. Which is another way of saying, Senator, as I see it, that we could not out of our own power in the future after we had gotten into that situation increase our domestic allocation.

Senator JOHNSON. Yes. As I would understand this, our relative production is frozen.

The CHAIRMAN. That is right. You could increase both with increasing population, or with increasing sugar consumption but you could not increase ours at the expense of the exporters.

Mr. WILCOX. You could not use an import quota for that purpose. That is it.

Senator JOHNSON. That is a pretty restrictive provision.

The CHAIRMAN. Continuing [reading]:

Subsidies: The benefit payments to farmers under the Sugar Act are in the class of production subsidies, covered by paragraph 1 of Article 30 of the Charter. No restriction is imposed on the use of such subsidies, the Members remaining free to determine for themselves how extensive they shall be. If production subsidies operate to increase exports or reduce imports, the I. T. O. must be notified of the details, and if the interests of another Member are seriously prejudiced, the Member paying the subsidy must be willing to discuss the possibility of limiting the subsidization.

Of course, that raises an enormous field of discussion and raises many aspects of what might be our future agricultural quotas for this country.

Mr. WILCOX. For every country.

The CHAIRMAN. Yes. Let us pass it for the time being. [Reading.]

If both our domestic marketing and import quotas for sugar continue to be based on performance in a previous representative period, it is difficult to see

how our benefit payments to farmers can have the effect of increasing exports or reducing imports. We do not, and probably will not, export any consequential amount of domestic sugar; our exports of sugar consist almost entirely of "draw-back sugar"—refined sugar on which a drawback of import duty is paid and for which credit is allowed on the import quotas. By the same token, it is difficult to see how our benefit payments can be said to prejudice the interests of other nations, as referred to in Article 30, paragraph 1.

The United States does not pay any export subsidy on sugar and it does not seem likely that an export subsidy will be proposed as part of our future sugar programs. The remaining paragraphs of Article 30 are accordingly not material to our domestic sugar problem.

It should be kept in mind that this memorandum deals exclusively with sugar, and I assume that the same answers might not be given if it were considering other products.

Mr. MARTIN. That is right, sir.

The CHAIRMAN. Continuing [reading]:

Commodity agreement: No mention has been made in the foregoing to the possibility of sugar being the subject of a commodity agreement under Chapter VII. Sugar is a commodity which is likely to be in surplus supply and therefore might be the subject of an international commodity agreement, in which case the terms of the Agreement, rather than the foregoing statement, would apply.

It may be noted that the United States has been participating in an International Sugar Agreement and that it has not interfered with our domestic sugar program. The same result may be expected if sugar is the subject of a commodity agreement under the Charter.

The CHAIRMAN. Dr. Wilcox, would you prefer to give this deliberate study before you comment on it?

Mr. WILCOX. As I have heard that, in its entirety, I think it is a substantially accurate statement.

The CHAIRMAN. If upon further study of it you find any difference of opinion, will you let us know?

Mr. WILCOX. Yes.

The CHAIRMAN. Senator Johnson, before we pass on, are you as clear as you want to be in this, as regards our minerals, sugar, and wool?

Senator JOHNSON. No, I am not convinced, but I do not see any way of improving my situation, so we might as well pass on.

The CHAIRMAN. Continuing to quote from subclause (e) of paragraph 2, of article 25:

Any member imposing restrictions in the importation of any product pursuant to this subparagraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (1) above shall not be such as will reduce the total imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of the restrictions.

How will it be determined whether that test has been met?

Mr. WILCOX. In determining this proportion the member shall pay due regard to the proportion prevailing during a previous representative period.

The CHAIRMAN. Which one?

Mr. WILCOX. That would be settled by consultation between members.

The CHAIRMAN. And if they did not agree it would not be settled? Would the Organization have any power in the matter?

Mr. WILCOX. I think not. It says:

the member shall consult with any other members which are interested, and which wish to initiate such consultation.

I do not believe there is any place in the document in which the Organization is given any power to make this specific action.

The CHAIRMAN. That is a pretty important part of the plan.

Mr. WILCOX. Paragraph 4 of article 37, on page 24, is relevant here [reading]:

With regard to restrictions applied in—

The CHAIRMAN. Are you reading?

Mr. WILCOX. Yes.

The CHAIRMAN. Mine reads differently. Will you give me the citation again?

Mr. BRONZ. Article 27, paragraph 4.

Mr. WILCOX. It reads:

4. With regard to restrictions applied in accordance with paragraph 2 (e) of Article 25, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restriction, Provided that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization, consult promptly with the other Member or the Organization regarding the need for an adjustment of the base period selected or for the reappraisal of the special factors involved.

The CHAIRMAN. Nothing more than consultation?

Mr. WILCOX. That is right.

The CHAIRMAN. Going on with the quote, article 25, paragraph 2 (e) [reading]:

In determining this proportion the Member shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned. The Member shall consult with any other Members which are interested in the trade in question and which wish to initiate such consultations.

Once more I call attention to the consultations. More consultations. They really mount up, until they become quite a problem before you get through with this draft.

Paragraph 2 (f) [reading]:

Import and export prohibitions or restrictions on private trade for the purpose of establishing a new, or maintaining an existing, monopoly of trade for a state-trading enterprise operated under Articles 31, 32, or 33.

What is the justification for the paragraph I have just now read?

Mr. WILCOX. Well, the charter applies both to private trade under public regulation and to public trade. It does not forbid state trading, and in a case where a government has given a public monopoly of trade in a certain product, for instance, tobacco, in France, it is necessary for that government to impose restrictions on private trade in that product in order to maintain its monopoly.

The CHAIRMAN. Is there anything in the charter intended to break down state monopolies, or does the charter accommodate itself completely to that?

Mr. WILCOX. The charter accommodates itself to state monopolies.

The CHAIRMAN. State monopolies are very common in Europe, are they not?

Mr. WILCOX. Yes.

The CHAIRMAN. You have tobacco monopolies, match monopolies, all sorts of monopolies.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. It is a common device over there. Is that not correct?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. And it has been a common device for a long, long time in the past. So I suppose that as a practical matter it would be very difficult to get them to forego these monopolies.

Mr. WILCOX. In some countries they are used very heavily for fiscal purposes.

The CHAIRMAN. Yes, they are good revenue producers. Matches, for instance. The match monopoly is an enormous revenue producer; so is the tobacco monopoly.

Mr. WILCOX. No effort is made in this document to obtain the liquidation of such undertakings.

The CHAIRMAN. What are the impacts on trade, as a result of those monopolies? International trade.

Does not the tax-raising incident itself add an element of unnatural cost to the product?

Mr. WILCOX. I should assume that if a state monopoly is to be a source of large revenue through raising the price of the product, that a smaller quantity of it will be sold.

The CHAIRMAN. That is right.

Mr. WILCOX. It is possible, for instance, that the price of tobacco in France is sufficiently high to cut down the total volume of consumption and to reduce the size of the market for the producers of tobacco.

The CHAIRMAN. Yet those institutions are so firmly rooted that they are probably beyond the remedial action of this Organization.

Mr. WILCOX. This Organization would have no authority whatsoever to recommend or even suggest to an individual state that it should not maintain such a state enterprise as the tobacco monopoly.

The CHAIRMAN. Of course the members who joined the Organization can agree to anything that want to, can they not?

Mr. WILCOX. They can agree to it?

The CHAIRMAN. What you are saying is that it is not suggested in this particular charter.

Mr. WILCOX. No, sir.

Senator JOHNSON. Before you go on, it should be said here that sugar is another commodity upon which heavy taxes are collected in most foreign countries. The tax is far above the value of the sugar.

The consumption of sugar is restricted by those means, purposely, I presume. It has a dual purpose: raising revenues and restricting the consumption of what they may consider a luxury.

There seems to be no restriction on that sort of an operation, but restrictions which affect us in trying to work out some sort of an orderly allocation of domestic and foreign sugars coming into our country.

Mr. WILCOX. There is nothing in this charter that would give the Organization or its members any power to intervene in the fiscal policies of any government.

The CHAIRMAN. Would not the collaboration of the Organization with International Monetary Fund have that effect?

Mr. WILCOX. The Organization itself could not say to any country, "You shall not impose this kind of a tax or you shall impose that kind of a tax." The problem the Senator was referring to was not touched here at all.

The CHAIRMAN. Senator Martin?

Senator MARTIN. As a matter of information, has there been, for example, among the States of the United States, any difficulty in trading where the State has monopolies, for example, on liquor, and another State does not have?

Mr. WILCOX. I do not think I can answer that question, Senator. I do not know.

Senator MARTIN. You understand there are several States that have a monopoly. What I was trying to illustrate, by what we have here in our own country, what the effect might be in our trading with countries that do maintain a monopoly on certain commodities like tobacco.

Mr. WILCOX. I have made no study of the State liquor systems.

The CHAIRMAN. Article 26, paragraph 1 [reading]:

The Members may need to use import restrictions as a means of safeguarding their external financial position and as a step toward the restoration of equilibrium in their balance of payments on a sound and lasting basis, particularly in view of their increased demand for imports needed to carry out their domestic employment, reconstruction, development, or social policies. Accordingly, notwithstanding the provisions of Article 25, any Member may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard its balance of payments and monetary reserves.

Dr. Wilcox, is that without limitation as to time?

Mr. WILCOX. That is without limitation as to time. It has to be read in connection with the next paragraph.

The CHAIRMAN. Paragraph 2 [reading]:

The use of import restrictions under paragraph 1 of this Article shall be subject to the following requirements:

(a) No member shall institute (or maintain) restrictions or intensify existing restrictions except to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in the level of its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. Due regard should be paid in each case to any special factors which may be affecting the level of the Member's reserves, to any commitments or other circumstances which may be affecting its need for reserves, and to any special credits or other resources which may be available to protect its reserves.

(b) The Members shall eliminate the restrictions when conditions would no longer justify their institution (or maintenance) under subparagraph (a), and shall relax them progressively as such conditions are approached.

(c) The Members shall not apply the restrictions in such a manner as to exclude completely imports of any class of goods.

3. (a) Any Member which is not applying restrictions under paragraphs 1 and 2 of this Article but which is considering the need for their institution, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the institution of such restrictions) consult with the Organization as to the nature of its balance-of-payments difficulties, the various corrective measures which may be available, and the possible effects of such measures on the economies of other Members. The Organization shall invite the International Monetary Fund to participate in the consultations. No members shall be required during such discussions to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt.

I believe it would be more practical for us to discuss this before going through all of it, and then come back to it again.

Mr. WILCOX. I think paragraphs 1 and 2 must be read together. You have already put those in the record.

The CHAIRMAN. Yesterday we put in the record a long list of nations which maintain both exchange restrictions and import license systems. Offhand I do not remember any nation which did not have one or the other.

All of the world, other than the United States, roughly speaking, is operating under those controls, is it not?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. What is the reason for that?

Mr. BRONZ. Many of the countries instituted their controls before the war, some of them dating back to the First World War. A great many of them date back to the depression years, 1929 to 1932 and 1933.

In general, the principal reason is that the country was unable to balance its international payments, and instituted controls to conserve its foreign exchange resources for whatever it considered the most essential imports.

The CHAIRMAN. Those controls do not proceed out of the malignant nature of the nations which impose them. They are established for self-protection, are they not?

Mr. BRONZ. Yes, sir. Now and then there are accusations of malignancy.

The CHAIRMAN. But as a general rule the nation puts on those devices, establishes those devices to protect itself?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Dr. Wilcox, what is there in this charter that will strike at the basic problems of the nations that require the imposition of those controls?

Mr. WILCOX. Well, the situation that gives rise to the imposition of these controls is an excess of imports over exports. The one fundamental contribution that the charter would make in the correction of that situation is through reduction of barriers to export trade among the member nations.

So that, with larger opportunities for making export sales, it should become increasing possible for nations, one by one, to balance their accounts, and the necessity for restricting their imports would decline and tend to disappear.

The CHAIRMAN. Basically, before the nation that imposes those restrictions can increase its exports, it must establish within itself those facilities necessary to make exports, must it not?

Mr. WILCOX. Well, there is no question at all that this does not solve all of the problems of economic reconstruction.

The CHAIRMAN. That is all I was trying to get at. There is no claim here that this charter will solve the basic problems of the member nations.

Mr. WILCOX. Except the one basic problem of access to markets.

The CHAIRMAN. And access to markets depends upon the nation's ability to produce the goods to get into the markets, does it not?

Mr. WILCOX. Access to markets—

The CHAIRMAN. If you have no goods to put into the market, you cannot get any access.

Mr. WILCOX. Access to markets depends upon the structure of national controls. Whether nations take advantage of their access depends on their ability to produce the goods.

The CHAIRMAN. Reasons for the imbalance that we were discussing are that these nations have gotten themselves into a state of disequilibrium in terms of exchange because they have imported more than they have exported; is that not true?

Mr. BRONZ. The difficulty prior to the war was, in many cases, that when some countries got into difficulties and raised controls against imports from other countries, they threw these other countries into difficulties, and the second group of countries were forced into exchange controls as a protective device.

The CHAIRMAN. But whether the chicken or the egg comes first, the end point is that these nations are in exchange difficulties because they have imported more than they have exported; is that not true? If they could export, they would redress the imbalance, would they not?

Mr. BRONZ. Yes. And the ITO might accomplish, or it is hoped it would accomplish, the removal of one difficulty to rehabilitation of that position, and that is providing freer access to markets. It would not redress their shortages of production, if that is their difficulty.

The CHAIRMAN. I am taking it in other terms; it would not redress their fundamental imbalance in their domestic economy.

Mr. BRONZ. If the fundamental imbalance is in the domestic economy, the ITO would not solve it. If the fundamental difficulty is that they have the production but have been shut out of foreign markets, the ITO might redress that.

The CHAIRMAN. Dr. Wilcox; are you prepared to give us information on the export potentialities of the other nations of the earth at the present time?

Mr. WILCOX. No; I do not think so.

The CHAIRMAN. Where can I get that information? We are talking about increasing exports and the blessing that will flow therefrom. What nations are ready to engage in these increased exports if the charter were in operation?

Mr. WILCOX. An answer to your question would require an economic survey of the world.

The CHAIRMAN. I assume that has been made by our Department of Commerce, for example.

Mr. WILCOX. It may be. We can make an inquiry.

The CHAIRMAN. Doctor, the fund itself is not in position to deal with the question of relative values of currencies unless the fund has a notion of the thing we are talking about. That is not a species of information that someone should have to go and collect today. Surely that has been in process of collection and evaluation by perhaps half a dozen governmental agencies. I am not critical of you because you have not got it in your hip-pocket, Doctor, but I would like a reference to some source where we can get it.

The Export-Import Bank cannot loan money on a rational basis to a country, unless it has some sort of estimate of recuperative ability of that country, some sort of estimate as to its present ability to produce and export. You, in your end of the business, cannot establish rational relations between currencies, unless you have some idea of what supports those relations.

I do not want a simple piece of desired information turned into something that is very esoteric, difficult, and mysterious. We are either gambling with these things, shooting "craps" for them, or we have some basis of knowledge on which to reach our judgment.

Mr. BRONZ. I think Dr. Wilcox was disturbed about the precise form of the question. It might be very difficult to predict now just when each country will have an exportable surplus of particular products. But there are, of course, statistics being gathered on the extent of recovery of production in different fields in each country of the world. The United Nations publishes a monthly statistical bulletin in which the statistics are more or less complete for different countries. The statistics for some countries are more complete than for others.

Of course, the Export-Import Bank and other agencies of the Government, at the time they consider a foreign loan, get a good deal of economic information together on the country's economic potentialities and its prospective ability to repay a loan.

The Monetary Fund has required or presumably will require various kinds of statistics which will tend to give information along those lines. I am not a statistician, and I would not like to suggest offhand which statistics would give you the closest to the information you want, Senator, but I am sure we could investigate that.

The CHAIRMAN. I think that there ought to be something in the record that will deal with this question of exports, because one of the great arguments for the charter is that it promotes exports. If you are making an argument for the promotion of something you should know at least what is the present status of the thing.

Can anyone tell us, Doctor, whether there are any articles on this earth available for export that cannot be exported at the present time because of the abuses that are dealt with here?

Mr. WILCOX. I suppose a study could be made of that, and some sort of a report made on it. What you are asking for, I take it, is country X has the possibility of production and exporting so many tons of product A and so many tons of product B and it wants to sell them in country Y but it cannot do so.

The CHAIRMAN. What I am suggesting is that we have a mechanism here to make it easy to export. I should think the case could be improved if it were shown that here is a country ready to export something, and it cannot export because of the abuses which we are trying to correct here.

Is there available that kind of a factual basis for this charter?

Mr. WILCOX. I think a study could be made to present such facts; yes, sir.

The CHAIRMAN. I would not ask for it. I would not ask that you do it. I am somewhat surprised that there is not something of that kind available.

Mr. WILCOX. At the present moment, of course, goods of every type are in short supply. There is a seller's market. Under these abnormal conditions, trade barriers are less significant than they have been or will be in normal times. Under normal circumstances, tariffs and quota systems do, in fact, obstruct trade. That is their purpose. If they did not have this effect, there would be no reason for having them.

The CHAIRMAN. Dr. Wilcox, while we have the gentleman here who is familiar with the fund, I should like to ask whether the fund has established the currency parities of member countries.

Mr. BRONZ. On December 18, 1946, the Monetary Fund announced the par values of the currencies of most of the member countries. There were a few countries whose parities were postponed pending

further consideration. I think they numbered some four or five, but all of the other countries have had par values established and announced (exhibit XVII).

The CHAIRMAN. Do you have information on the unofficial or black-market parities?

Mr. BRONZ. There is a good deal of information in the Treasury Department on various quoted rates on particular currencies here and there. Typically, those quoted rates which have been made a good deal of in newspapers have been rates for currency rather than banking transactions. Such rates have usually involved very small transactions and have not involved trade transactions which are the substantial ones.

The trade transactions are carried out at official rates.

The CHAIRMAN. There is a large bulk of internal trade transactions carried out in unofficial exchange?

Mr. BRONZ. Internal transactions within a country would be carried out in that country's currency.

The CHAIRMAN. And each trade would put his own value on it?

Mr. BRONZ. Yes, but that would not involve a relationship between that country's currency and any other country's currency.

The CHAIRMAN. I am asking whether they are sometimes ruled by unofficial exchange.

Mr. BRONZ. Normally, within a country that has an exchange control, as have most of the important countries outside of the United States, it is illegal for a resident of that country to deal in foreign exchange without a license and it is frequently required that all his foreign currency be turned in to the central bank, so if he is obeying the law he would only have the currency of the country within which he lives.

The CHAIRMAN. But is there not a very large field where people are not obeying the law and dollars are exchanging in foreign countries at parities entirely different from those established?

Mr. BRONZ. Yes; there are black markets. There are black markets in some countries. In some countries the black market is a bigger factor than in other countries.

The CHAIRMAN. That reflects what?

Mr. BRONZ. It reflects probably a guess on the future value of that country's currency as against the dollar or some other relatively stable currency.

The CHAIRMAN. At the present time, in the present state of world affairs, the parities which you have established have a considerable measure of uncertainty in them, have they not?

Mr. BRONZ. I suppose that is true; they involve a belief on the part of the country that it will be able to maintain the parity. The country has undertaken obligations under the Monetary Fund agreement not to change that parity more than is permitted by the agreement or approved by the fund.

So, without permission from the fund, it cannot change its parity by more than 10 percent (exhibit VIII-C).

The CHAIRMAN. How many currencies are there at the present time which have sufficient stability in them to be internationally useful for exchange purposes?

Mr. BRONZ. That is a very difficult question to answer.

Of course, the United States dollar is the universally acceptable currency. Other countries' currencies have a more or less limited acceptability. There is a good deal of international trading going on in sterling and some in other currencies. I do not think I could give you any list or precise delineation of those currencies.

The CHAIRMAN. Sterling has some value, has it not?

Mr. BRONZ. Oh, it has a great deal of value, and a great deal of the world's trade is carried on in sterling today.

The CHAIRMAN. Sweden's currency has relative stability, has it not?

Mr. BRONZ. Last summer, the Swedish currency was at a premium over the dollar and Sweden appreciated the official value of its currency. Recently, they have run into difficulties as indicated by the item you read into the record this morning.

The CHAIRMAN. How about Belgium?

Mr. BRONZ. Well, I hate to make any general statement about too many of the currencies without doing considerable investigation.

The CHAIRMAN. I do not want to embarrass you.

Mr. BRONZ. I think that the currency of Belgium is considered among the more stable of the European currencies.

The CHAIRMAN. When you get outside of perhaps half a dozen currencies, you find that they rest more or less on the arbitrary value assigned to them in those transactions that will support an arbitrary value; is that not true?

Mr. BRONZ. I do not think that could be said. An arbitrary value could not be maintained very long.

The CHAIRMAN. Your parities established by your fund, are arbitrary in that they are established by your fiat?

Mr. BRONZ. A particular value has been established.

The CHAIRMAN. They do not find their level in the market place?

Mr. BRONZ. Well, our currency is fixed at a set value in gold.

The CHAIRMAN. I am referring to a value which is established by a fiat.

Mr. BRONZ. I believe the value of every currency, including our own, is fixed by law.

The CHAIRMAN. Then you get into currencies that sustain their arbitrary value in exchange and trading with other currencies and you find other currencies which do not have that virtue, which drift off into black-market values and other standards of reference. Is that not correct?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. At the present time does not the universal existence of exchange limitations, such as we introduced into the record yesterday, show that, generally speaking, the world is in an extreme state of disequilibrium?

Mr. BRONZ. I would say the exchange controls reflect the fact that a country imposing them considers its currency vulnerable.

The CHAIRMAN. Yes. And when practically every country considers its currency vulnerable, does not that reflect what I called a moment ago an extreme state of disequilibrium?

Mr. BRONZ. I am not sure I would use that word.

The CHAIRMAN. Put it to me in your own words.

Mr. BRONZ. Well, it is undoubtedly true that, perhaps as an aftermath of the war more than anything else, a great many, perhaps a

majority, of the countries of the world are considerably below their prewar level of production; that the demand for imports over the world is generally at a very high level because of wartime shortages, and therefore, there are a great many countries which have difficulty in balancing their current payments and at the same time getting all the imports they would like to have to satisfy their domestic consumption requirements.

The CHAIRMAN. That goes to almost all countries, does it not?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Is it not true that the things that we have been discussing must be kept very strongly in mind when we come to the consideration of value factors in foreign trade?

Mr. BRONZ. Yes, if I understand what you mean, sir.

The CHAIRMAN. If you have currencies, the parities of which may not be realistically established, that is a factor to be taken into consideration when you are talking in terms of monetary values, it is not?

Mr. BRONZ. Well, the International Monetary Fund reviews the parities submitted by the various member countries and they accepted those which had been published.

The CHAIRMAN. They were self-proposed were they not?

Mr. BRONZ. They were proposed by the countries involved.

The CHAIRMAN. Did the fund make any substantial changes in any of them?

Mr. BRONZ. I do not know. I believe that most or all of the parities are the same as existed before their announcement by the fund.

The CHAIRMAN. Of course, a nation's self-interest in establishing its own parity would enter into the picture, would it not?

Mr. BRONZ. But there is also the self-interest in not wishing to have a parity established which cannot be changed without permission of the fund later.

The CHAIRMAN. You have several escape clauses in your Monetary Fund provisions which permit some escape?

Mr. BRONZ. On parities, it is a 10 percent change without permission.

The CHAIRMAN. Are there not some emergency clauses?

Mr. BRONZ. I do not believe so.

The CHAIRMAN. You mean you change 10 percent and then you are frozen?

Mr. BRONZ. Unless you get permission.

The CHAIRMAN. That is what I am talking about.

Mr. BRONZ. You can get permission.

The CHAIRMAN. But at the present time you establish these parities, generally speaking, on the individual nation's own estimate of the relative value of their currencies to the currencies of the rest of the nations?

Mr. BRONZ. Well, I could not undertake to say whether that is the stand the fund used in passing on the question.

The CHAIRMAN. As I recall it—I may be wrong on this—the law gives the member nations the privilege of setting their own parities in the first instance.

Mr. BRONZ. Of course, several countries, rather important, did not submit their exchange rates at that time. One example was the

Chinese currency and there has been no parity announced by the fund for the Chinese currency.

The CHAIRMAN. For example, there is no realistic relationship between our official rate in France and the going rate in France between the franc and the dollar. There is no realistic relationship between Italian money, officially rated, and unofficially rated, and I venture to say that you go all over Europe and, with a few exceptions, you will find the same condition prevailing.

Mr. BRONZ. At least all legal trade transactions between the United States and France and Italy are carried out at the official rate of exchange.

The CHAIRMAN. Of course.

Mr. BRONZ. It is well known, of course, that there is a currency black market.

The CHAIRMAN. Of course.

Mr. BRONZ. Which involves relatively small sums, much smaller than involved in the trade at official rates. I think economists would tell you—I am not an economist—that the rate at which currency passes hands in Paris is no necessary indication of the value of the franc at all.

The CHAIRMAN. I would not say that that is a necessary index to the value of the franc, nor would I say that the self-imposed parity is a necessary index. What I am suggesting is that in the end the parity values of the currencies will be symptoms of all of the factors arising out of the internal economy of the country; is that not correct?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. And they will have to find that level. If you perpetuate the parity of a nation's currency at an arbitrary level, you may be doing a disservice to the economy of that country?

Mr. BRONZ. The greatest disservice would be to the country which is itself perpetuating an unrealistic rate.

The CHAIRMAN. My sole reason for asking these questions was to develop that there is a great field for caution when we come to the part of this organization that deals in values. That is all I am developing.

Dr. WILCOX, supposing that a nation wanted to impose a quantitative restriction to conform to its own planned relationship between imports and domestic production without having direct relationship to exchange imbalances.

In other words, let us say that we have a total demand of X for a given article in this country.

As a part of our planned economy we want 75 percent of that to be supplied domestically and 25 percent of it from foreign sources, and that, therefore, we shall impose whatever import quota system may be necessary to sustain that division.

Without reference to an exchange situation, would that be contrary to the charter?

Mr. WILCOX. It would be contrary to the charter; yes.

The CHAIRMAN. The charter, therefore, definitely has as a part of its basic philosophy, the advisability of accepting imports?

Mr. WILCOX. Yes.

The CHAIRMAN. There is another fact, and I do not know whether I developed that with you or Mr. Hawkins, that the pressures of the

charter and the provisions of the charter are against the development of a self-sufficient economy.

Mr. WILCOX. And against the development of a planned economy as opposed to a price economy.

The CHAIRMAN. Yes.

I notice subclause (c) of paragraph 2, reads:

The Members shall not apply the restrictions in such a manner as to exclude completely imports of any class of goods.

That is another emphasis of the same thing?

Mr. WILCOX. The point of that is that a country that gets permission under this article to impose import restrictions must allow at least token imports of any product; that is, there cannot be a complete embargo.

The CHAIRMAN. Why is that? Why the maintenance of a token import?

Mr. WILCOX. Let us say some country abroad has the right to impose import quotas under this provision. It might completely exclude products from the United States that had previously been sold in that market, manufactured goods that bore a brand name and that product would disappear entirely out of display windows and out of shops, and that brand name could not be kept alive in that market, and that market might permanently be lost to the American producer with some domestic producer developing and advertising his brand name and taking its place.

So, the purpose is that market contacts may be kept alive, in the case of any product.

The CHAIRMAN. I draw from that that under the general philosophy of the plan that exporters have, to some extent a vested interest in their right to export?

Mr. WILCOX. Yes, I should say so.

The CHAIRMAN. Which is another way of saying that import nations must recognize that vested interest, if only to the extent of token imports?

Mr. WILCOX. Yes.

Under this, for instance, a nation could not, let us say, place an embargo on Buick automobiles so that no person in that country would ever see a Buick automobile.

The CHAIRMAN. Yes.

Does the paragraph that we are considering have reference to particular brands or does it have reference to a line of goods?

Specifically, would it refer to Buick automobiles, or would it refer to automobiles produced in the United States?

Mr. WILCOX. It would refer to automobiles produced in the United States.

The CHAIRMAN. The point being, to keep that mark "Made in America" in the country so that there would be some visual reminder that we had at some time exported in quantity and might again export in quantity?

Mr. WILCOX. That is right.

The CHAIRMAN. And the same thing would operate in reverse?

Mr. WILCOX. Yes.

The CHAIRMAN. With reference to paragraph (b), sub (b), of paragraph 3 of article 26, let me read that into the record:

The organization may at any time invite any Member applying import restrictions under paragraphs 1 and 2 of this Article to consult with it about the form or extent of the restrictions, and shall invite a Member substantially intensifying such restrictions to consult accordingly within thirty days. Members thus invited shall participate in such discussions. In the conduct of such discussions the Organization shall consult the International Monetary Fund and any other appropriate inter-Governmental organization, in particular with regard to the alternative methods available to the Member in question of meeting its balance-of-payments difficulties. The Organization shall, not later than two years from the day on which this Charter enters into force, review all restrictions existing on that day and still applied under paragraphs 1 and 2 of this Article at the time of the review.

Would you be good enough, Doctor, to give us some illustrations of that paragraph?

Mr. WILCOX. I think we had not discussed 3 (a), and I think we should discuss all of these together.

The CHAIRMAN. All right.

Mr. WILCOX. Paragraph 3 (a) reads:

Any member which is not applying restrictions under paragraphs 1 and 2 of this Article, but which is considering the need for their institution, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the institution of such restrictions) consult with the Organization—

No restrictions in existence now, new restrictions coming.

as to the nature of its balance-of-payment difficulties, the various corrective measures which may be available, and the possible effect of such measures on the economies of other members. The Organization shall invite the International Monetary Fund to participate in the consultations.

That means before any member imposes new restrictions it must go to the International Trade Organization for discussion and the Trade Organization invites the Fund into the discussion.

No member shall be required during such discussions to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt.

Paragraph (b) relates to the case of a member that is already applying such restrictions.

The CHAIRMAN. As to (a), considering the fact that almost every country is now running these restrictions, considering the probability that if this became effective, many of these nations would be before the Organization discussing their difficulties, all leading to either intensification or relaxation of the restrictions, would that not keep trade in a constant state of turmoil? How could a private trader protect himself?

Mr. WILCOX. Rather than the intensification and relaxation of them, it is the uncertainty that keeps trade in turmoil.

The CHAIRMAN. Is it not the possibility of change that works strongly against contracts?

Mr. WILCOX. Your alternatives are orderly change under accepted rules or completely chaotic change.

The CHAIRMAN. Your point being that either way the trader will be in some difficulty in estimating what will happen in the future?

Mr. WILCOX. Change is difficult in the case of forward contracts.

The CHAIRMAN. And those difficulties are enhanced and they will

continue to maintain until we can achieve a reasonable degree of stability all over the world?

Mr. WILCOX. That is right.

Mr. BRONZ. I should say, Senator, that the existence of the charter, with the statement of the standards under which a country can or cannot intensify or institute restrictions, would give more stability to a private trader in estimating what is apt to happen to his forward commitments.

At the present time each country is free to put on or take off such restrictions as it pleases without complying with any standards.

Now, under this article, at least the trader would know in a general sort of way whether a country is in balance-of-payments difficulties, and if he knows that country is not in balance-of-payment difficulties, he could feel secure that restrictions would not be unduly intensified or imposed.

The CHAIRMAN. That would not, however, go to the ultimate remedy of the basic imbalance. I mean the traders' apprehensions will have no effect on the corrections which countries may have to initiate within their own boundaries to get their economies into some sort of balance, which, in turn, would reflect itself in a more balanced situation as far as exchange is concerned?

Mr. BRONZ. That is correct, but the trader would know that if the country is not really in difficulty, it will not suddenly impose restrictions.

The CHAIRMAN. The trader will also know from information already in the record that almost every country in the world is in difficulties.

Mr. BRONZ. But we hope that that situation will gradually ease off.

The CHAIRMAN. I am not against any measures that will mitigate. I am merely asking what the measures might be and perhaps prevent overclaiming as to the alleged benefits.

Do you wish to discuss (b), Doctor?

Mr. WILCOX. Paragraph (b) is the case of existing restrictions. If any member intensifies existing restriction the organization shall invite the member to consult and in such consultations it shall include the International Monetary Fund and it shall be the purpose of such consultations to suggest possible alternative methods for meeting its balance-of-payment difficulties.

The CHAIRMAN. Up to that point, that is embracing nothing more than consultation?

Mr. WILCOX. That is right.

The CHAIRMAN. And up to that point possible exercise of the role of paterfamilias by the Organization?

Mr. WILCOX. That is right.

Now, the following sentence merely provides for a complete review two years from the day this charter enters into force of all restrictions existing on that date; that would be a study and a report as to the extent of restrictions still existing and as to their character.

The CHAIRMAN. As to paragraph (b), there is nothing there except consultation and review?

Mr. WILCOX. That is right.

The CHAIRMAN. That is all there is to that?

Mr. WILCOX. That is right.

The CHAIRMAN. Going just that far and considering the paragraph by itself?

Mr. WILCOX. That is right.

The CHAIRMAN. Give me an example of what the Organization, in collaboration with the Fund, might recommend to a member?

Mr. BRONZ. Well, there are a number of possibilities. One possibility is the devaluation of currency. The Organization might suggest that instead of applying import restrictions a country devalue its currency. That is one possibility.

The CHAIRMAN. They might say, "You just priced yourself out of the market"?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. And the Fund would have the power to authorize a change in the value of the money?

Mr. BRONZ. To authorize it, but I do not believe it has the power to compel it.

The CHAIRMAN. I am not saying "compel it." I mean, the member comes in and he is convinced, as a result of these consultations, that his currency is too high.

He comes in and says, "You have convinced me, and I want to put it on a new basis."

The member, with the Fund, could put it on a new basis?

Mr. BRONZ. Yes, sir. In drafting this paragraph, we emphasized the desirability of getting consultation before the country has committed itself to a program of import restrictions, because once a country has announced a program of restrictions, it is difficult to change.

Another possibility is a loan.

The CHAIRMAN. Who, under the normal course of events, would make the loan?

Mr. BRONZ. There are a number of sources. For example, there could be private floating of a bond issue in a foreign market. There is a possible loan from the International Bank for Reconstruction and Development. There are individual governments which have made loans, such as the United States and Canada, in recent years.

The CHAIRMAN. The bulk of that remedy would fall on the United States, either officially or on its citizens, or have you some new angels that you have been holding back on us?

Mr. BRONZ. The United States has provided in recent years most of the international financing.

The CHAIRMAN. You suggest to the Nation that it change the parity of its money. You suggest that it borrow some money. Borrowing the money is merely a temporary alleviation of its situation because it uses the borrowed money to import goods with which to make goods for export to get the money with which to pay back the loan.

Now, what else could he do?

Mr. BRONZ. He might import producers' goods, and so the improvement might be made permanent.

The CHAIRMAN. If he imported producers' goods, he would probably make the loan so he would be in a position to finance those goods which, in turn would enable him to finance his exports which, in turn, would enable him to pay back the loan?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. What else?

Mr. BRONZ. Well, another possibility might be to invite foreign financing in the form of investments rather than loans. Great Britain has liquidated part of the sterling balances held by other countries by disposing of its investments in those countries to local interests, and thereby reducing its foreign obligations to the other country.

The CHAIRMAN. Now, as to things which would be done through the primary impetus, or the primary authority of the Fund. The International Trade Organization would act as a sort of escort of troubled nations, to the Fund, and would sit there with the Fund, holding the hand of the troubled nation and trying to get it some help from the Fund in one way or another.

What would the International Trade Organization itself do in that kind of a case?

Mr. BRONZ. There would also be the consideration of whether the import controls proposed are going further than necessary.

The CHAIRMAN. Yes.

Mr. BRONZ. Or perhaps are in a poor form or poorly designed to achieve the aim desired.

The CHAIRMAN. The country itself would have a view on that.

Mr. BRONZ. It might or might not. The line of jurisdiction that is generally understood is that the Fund would concern itself with the financial side of it, the over-all balance of payments position, while the commercial position that might be involved would be the Trade Organization's responsibility.

For example, if a country came in and proposed to restrict imports by reducing its imports of automobiles 50 percent and reducing something else 20 percent, the International Trade Organization might, in consultation, say, "This would create serious difficulties for country B which exports a great many of the products on which you want to cut down. Could you not ease off your restrictions on this commodity and perhaps substitute a restriction on another commodity and not cause trouble for country B?"

That is the sort of thing that is envisaged.

The CHAIRMAN. I believe we have hit a good stopping point for the day, Doctor.

We will resume at 10:30 in the morning.

(Thereupon, at 4:55 p. m., a recess was taken until 10:30 a. m. of the following day, Thursday, March 27, 1947.)

INTERNATIONAL TRADE ORGANIZATION

THURSDAY, MARCH 27, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in the Foreign Relations Committee room, the Capitol, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senator Eugene D. Millikin (chairman).

The CHAIRMAN. The committee will come to order.

STATEMENT OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE, WASHINGTON, D. C. (Resumed); AND GEORGE BRONZ, SPECIAL ASSISTANT TO THE GENERAL COUNSEL, TREASURY DEPARTMENT, WASHINGTON, D. C. (Resumed)

The CHAIRMAN. Mr. Bronz, did you wish to make further comment on any of the subjects we were discussing yesterday?

Mr. BRONZ. Yes, sir.

At the end of the meeting yesterday afternoon, you asked a question with reference to article 26, section 3 (a).

Section 3 (a) provides that when a member is contemplating the imposition of quantitative restrictions, it is required to consult with the organization and the Fund as to the nature of its balance-of-payments difficulties, the measures which may be available for correcting them, and the possible effect of such measures on other members.

Section 3 (b) has a similar provision with reference to restrictions already in effect.

You asked what some of the measures might be that might be suggested by the Monetary Fund.

I am afraid that in testifying on the possible remedies for this situation of economic ill health, I mentioned some of the drastic possibilities in the nature of surgery, but neglected the "aspirin and a good rest" kind of remedies.

The CHAIRMAN. Let us take the aspirin.

Mr. BRONZ. The most obvious situation would arise when a country gets excited about a temporary imbalance in its international-payments situation, but after a consultation with the Fund, is convinced that the situation is not so bad, that it can stand a deficit for a while longer, and that it has enough in reserves to carry itself for some time, and perhaps it ought to wait for some time before it went to the drastic measuring of imposing import restrictions.

Secondly, if the country is a member of the Monetary Fund it would have the right under the Fund agreement to draw foreign exchange from the Fund and thus get out of temporary difficulties which are not too severe.

There is, of course, a third situation which is extremely important in this connection.

The CHAIRMAN. There is a definite limitation under the Fund as to the amount of foreign currencies that can be drawn, is there not?

Mr. BRONZ. Yes, but there is a fairly substantial drawing power.

The CHAIRMAN. You are directing your remarks to a small difficulty?

Mr. BRONZ. Yes, sir. The suggestions I made yesterday would be appropriate for the major difficulties.

The CHAIRMAN. Yes; yesterday, I believe you mentioned that if the difficulty were induced, or if it were contributed to by an overvaluation of a particular currency, it could be reduced in value under the mechanisms provided in the Fund?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. As I recall it, it can be reduced 10 percent after consultation with the Fund, but it could be reduced to any figure with the concurrence of the Fund?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Proceed.

Mr. BRONZ. In addition, there might be a situation where a country is really not in difficulties, but wants to impose import restrictions for other reasons, such as the protection of domestic industry from competition from abroad, and it might claim financial difficulties as an excuse for the import quotas. That, of course, is a situation which both the Trade Organization and the Fund would be in a position to detect and to point out that the country would not be following the requirements of the International Trade Organization Charter.

The CHAIRMAN. Give me an illustration where a nation would impose import restrictions for a purpose disassociated with its own self-protection.

Mr. BRONZ. Well, suppose a new automobile factory were being established in a country, costs were rather high, and it seemed unlikely that the company could succeed in its early years to sell its automobiles in competition with imported automobiles.

Conceivably, the country might claim a financial stringency, set up an import licensing system, and then license everything but automobiles freely.

The CHAIRMAN. Your point there is that it might be justified in imposing a restriction against automobiles, but would not be warranted in using automobiles as a general excuse for across-the-board restrictions?

Mr. BRONZ. The quantitative restriction should not be used solely for protection. There may be countries that would attempt to protect a domestic industry by setting up the mechanism of import controls.

The CHAIRMAN. It would be very easy to detect, would it not? We are talking from the standpoint of exchange imbalances.

Mr. BRONZ. Yes, sir.

The CHAIRMAN. That sort of imbalance would be easy to detect, would it not?

Mr. BRONZ. Well, there are arguable questions about how you treat items that enter into the calculation of an imbalance.

The CHAIRMAN. Pass that. You even have accountants arguing as to how to treat items in the balance sheet. Let us pass that.

The next thing would be to determine the state of balance of a nation by those skilled in that business, I imagine?

Mr. BRONZ. I imagine so. I am not skilled in that kind of computation.

The CHAIRMAN. Are either you or Dr. Wilcox prepared to put into the record the state of the trade balances of the 18 nations that will be in on these negotiations at Geneva?

Mr. BRONZ. I do not know. I would have to see whether the material is available.

The CHAIRMAN. Dr. Wilcox, do you have that material?

Mr. WILCOX. I do not have it here.

The CHAIRMAN. Will you supply it for us?

Mr. WILCOX. I doubt if it is available for all the countries involved, but we can see what is available and provide it.

Mr. BRONZ. A number of countries do not publish statistics as freely as we do. I believe the British have been publishing statistics on their balance of trade, but I am sure that many of the countries do not.

The CHAIRMAN. It strikes me as rather odd that the doctor would prescribe without knowing the symptoms of the patient.

Mr. BRONZ. The doctor would get the information.

Nations are required under the Fund agreement, and would be required under the International Trade Organization agreement to supply that sort of statistical information.

The CHAIRMAN. I hope the doctor finds out the symptoms before he prescribes the remedy and the patient has taken it.

I would like to have for entry into this record, the statistics on balance of trade of the 18 countries entering this agreement.

Mr. BRONZ. We would supply whatever is public of that character, but there are governments, I am sure, that do not publish that information.

The CHAIRMAN. Will that information not come before the conference?

Mr. BRONZ. I do not believe it would come before the Geneva Conference; it would come before the International Trade Organization when and if the subject came up.

The CHAIRMAN. I find it difficult to believe, not in the sense of doubting what you are saying, that we do not know the balance of trade difficulties, or the balance of trade strengths of the nations that we are inviting to accept this medicine.

Do I make myself clear on that?

Mr. BRONZ. Yes, sir.

There is a difference between the precise statistics and knowing in a general sort of way.

The CHAIRMAN. I'm not talking about the last penny.

What is this country's present balance of trade?

Mr. BRONZ. I believe in 1946 we exported some 10 billion dollars worth of goods, and imported in the vicinity of 5 billion.

The CHAIRMAN. Now, do we not have the same statistics on the other 17 countries?

Mr. BRONZ. I do not believe we have them on all of those countries.

The CHAIRMAN. Well, will you try to get it in timely fashion?

Mr. BRONZ. Yes, sir.
(The information is as follows:)

Foreign Trade of Various Countries, 1939 and 1946

[In millions of national currencies]

| Country | Monetary unit | 1939 | | 1946 | |
|-------------------------------------|----------------|----------|----------|---------|---------|
| | | Exports | Imports | Exports | Imports |
| Australia | £ Australia | 121.2 | 199.6 | 236.8 | 153.5 |
| Belgium-Luxemburg | Franc | 21,576 | 19,428 | 222,372 | 139,816 |
| Brazil | Cruzéiro | 8,619 | 4,980 | 116,586 | 11,327 |
| Canada | \$ Canada | 924 | 756 | 2,339 | 1,927 |
| Chile | Gold peso | 660 | 410 | 1,006 | 954 |
| China | Yuan | 4726.6 | 41,313.5 | N. A. | N. A. |
| Cuba | Peso | 147.6 | 105.6 | 5356.8 | 5266.6 |
| Czechoslovakia | Koruna | 410,236 | 8,388 | 14,310 | 10,339 |
| France | Franc | 31,596 | 43,788 | 101,400 | 231,096 |
| India | Rupee | 1,812 | 1,518 | 1,780 | 1,662 |
| Lebanon and Syria | Piaster | 2,928 | 7,081 | N. A. | N. A. |
| Netherlands | Guilder | 972 | 1,612 | 6,019 | 61,425 |
| New Zealand | £ New Zealand | 57.48 | 48.84 | 98.45 | 70.68 |
| Norway | Kroner | 894 | 1,368 | 1,202 | 2,130 |
| South Africa | £ South Africa | 98.3 | 92.9 | N. A. | N. A. |
| United Kingdom | £ sterling | 4470.4 | 4919.2 | 912.4 | 1,292.2 |
| Union of Soviet Socialist Republics | Ruble | 71,729.2 | 71,341.6 | N. A. | N. A. |

N. A.—Not available.

¹ Imports are in £ sterling.

² January-October.

³ January-November.

⁴ 1938.

⁵ January-September.

⁶ June-December.

⁷ 1937.

Source: Monthly Bulletin of Statistics, League of Nations and United Nations.

The CHAIRMAN. Now, while we are on the subject of the Fund, give us some illustrations of the actions which the Fund has taken since its establishment to correct the evils that it was set up to correct.

Mr. BRONZ. Well, the Fund has called upon the members to communicate to it the parities of their currencies in accordance with the Fund agreement.

Most of the members have done so, the parities have been announced, and the time for initial review of these parities has passed.

The Fund has been ready, I believe, since early this month, to do business.

The CHAIRMAN. Has the Fund taken any affirmative action to relieve disequilibriums in the exchange of any of its members?

Mr. BRONZ. The Fund's resources have been available since early this month.

The CHAIRMAN. I say, has the Fund taken any action?

Mr. BRONZ. As far as I know, I do not believe that any transactions have been consummated.

The CHAIRMAN. What, then, is the net accomplishment of the Fund to date?

Mr. BRONZ. Well, the Fund has established itself, is ready for business, and is available to meet difficulties that its members may encounter.

The CHAIRMAN. And when was it authorized by law?

Mr. BRONZ. The Fund was established by the signatures of sufficient countries in the last few days of 1945. (The articles of the Fund appear as exhibit VIII-C.)

The CHAIRMAN. And our approval was given when?

Mr. BRONZ. Our approval was given in the summer of 1945. We were the first country to approve.

The CHAIRMAN. It has been in existence almost 2 years?

Mr. BRONZ. It has been in existence a little over 1 year.

The CHAIRMAN. It has been authorized about 2 years?

Mr. BRONZ. That is right, as far as participation by the United States is concerned.

The CHAIRMAN. And that was in 1945?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Do you remember the exact date of the authority by Congress?

Mr. BRONZ. No, I do not.

The CHAIRMAN. Will you give us the reasons why the Fund has been operating in such slow motion?

Mr. BRONZ. Well, I am not familiar with all the details of the Fund's activities, but it has not seemed to me that they have been operating very slowly. The final signatures were appended to the agreement just a year and three months ago.

The first meeting of the Board of Governors was called in accordance with the agreement about a year ago.

The CHAIRMAN. The Bank which was authorized at the same time has not completed its organization, has it?

Mr. BRONZ. Yes, the Bank completed its organization about June of last year.

The CHAIRMAN. Does it have a president at the present time?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. How long?

Mr. BRONZ. The new president, Mr. McCloy, was elected a few weeks ago.

The CHAIRMAN. Is he the first?

Mr. BRONZ. He is the second.

The CHAIRMAN. Has there been any financing under the Bank?

Mr. BRONZ. I do not believe so.

The CHAIRMAN. Any public flotation of issues?

Mr. BRONZ. No, sir.

The CHAIRMAN. Can you give us any reason for that?

Mr. BRONZ. I could not say. I understand there is a considerable amount of preparation necessary. There has been an effort to secure state legislation that would permit trustees, savings banks, insurance companies, and similar institutions to invest in securities of the Bank. It takes time to get things through State legislatures when they meet at varying times.

The CHAIRMAN. You gave us our exports and imports for 1946?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Would you also supply for the record, the same figures starting in 1939 to and including 1945?

Mr. BRONZ. For the United States?

The CHAIRMAN. Yes.

Mr. BRONZ. Yes, sir.

The CHAIRMAN. That will be done then.

(The information is as follows:)

United States foreign trade, 1939 to 1946

[Millions of dollars]

| Year | Exports ¹ | Imports | Excess of exports | Year | Exports ¹ | Imports | Excess of exports |
|------|----------------------|---------|-------------------|------|----------------------|---------|-------------------|
| 1939 | 3,177 | 2,318 | 859 | 1943 | 12,965 | 3,381 | 9,584 |
| 1940 | 4,021 | 2,625 | 1,396 | 1944 | 14,259 | 3,919 | 10,340 |
| 1941 | 5,147 | 3,345 | 1,802 | 1945 | 9,806 | 1,136 | 8,670 |
| 1942 | 8,079 | 2,745 | 5,334 | 1946 | 9,742 | 4,935 | 4,807 |

¹ Includes lend-lease exports, 1941-46, and UNRRA exports, 1945-46.

Source: Monthly Summary of Foreign Commerce of the United States, Department of Commerce

The CHAIRMAN. Dr. Wilcox, I believe we have come to subparagraph (c) of paragraph 3 of article 26; is that correct?

Mr. WILCOX. That is correct.

The CHAIRMAN. Do you wish to make any comment?

Mr. WILCOX. When we do discuss it, I should like to discuss (c) and (d) together.

The CHAIRMAN. Supposing I read (c) and (d).

Mr. WILCOX. All right, sir.

The CHAIRMAN. Subparagraph (c) reads as follows:

Any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes under paragraphs 1 and 2 of this Article to maintain, intensify, or institute, for the maintenance, intensification, or institution of restrictions under specified future conditions. The Organization shall invite the International Monetary Fund to participate in the consultations. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or institution of restrictions by the Member in question insofar as the general extent, degree, and duration of the restrictions are concerned. To the extent to which such approval has been given, the action of the Member applying restrictions shall not be open to challenge under subparagraph (d) on the ground that such action is inconsistent with the provisions of paragraphs 1 and 2 of this Article.

(d) Any Member which considers that any other Member is applying import restrictions under paragraphs 1 and 2 of this Article in a manner inconsistent with the provisions of those paragraphs or of Articles 27 and 28, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organization. The Member applying the restrictions shall then participate in discussions of the reasons for its action. The Organization, if it is satisfied that there is a prima facie case that the complaining Member's interests are adversely affected may, after consultation with the International Monetary Fund on any matter falling within the competence of the Fund, and, if it considers it desirable, after submitting observations to the parties with the aim of achieving a satisfactory settlement of the matter in question, recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the provisions of paragraphs 1 and 2 of this Article or of Article 27 or 28 or in a manner which unnecessarily damages the interests of another Member. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Member or Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

Shall we read (e) also?

Mr. WILCOX. I think we might take up the discussion at this point.

The CHAIRMAN. All right.

Mr. WILCOX. May I refer to (d) first, and then go back to (e)?

The CHAIRMAN. Yes.

Mr. WILCOX. Subparagraph (d) is the case in which a member of the Organization is of the opinion that another member of the Organization is violating either the provision of the preceding articles, limiting the use of quantitative restrictions, or the provisions of the next two articles dealing with nondiscrimination in the administration of quantitative restriction.

The CHAIRMAN. Are we still dealing with restrictions for the purpose of preserving equilibrium in the exchange, or have we gone broader?

Mr. WILCOX. We are still on that.

The CHAIRMAN. All of that relates to that type of restriction?

Mr. WILCOX. That is right.

A member which takes the position that another member has violated these provisions, takes the matter to the Organization, and if the Organization finds that there is a prima facie case for proceeding, it calls the Fund into consultation and it may then submit recommendations to the parties concerned as to a solution of the matter, but if such recommendation is unavailing, and if the restrictions are not withdrawn or modified in accordance with the recommendation, then the complaining member or members shall be released from specific obligations toward the offending member.

The CHAIRMAN. Doctor, I do not want to cavil about it, but could not the release be made available to members who did not complain?

In other words, could not the Organization, out of its own initiative after hearing the facts say that the complaining member should be entitled to do this, that, or the other thing, and other members should also be entitled to do this, that, or the other thing?

Mr. WILCOX. I think your interpretation is correct because the text says, "Such other member or members," and everything that has preceded has been in the singular.

The CHAIRMAN. The preceding part refers to a complaining member?

Mr. WILCOX. That is right.

The CHAIRMAN. And this seems to be an enlargement for the purpose of granting relief, but not for the purpose of making complaints?

Mr. WILCOX. That is right.

The CHAIRMAN. I think it would be correct to say under the reasonable construction of the subparagraph, that if one member may make a complaint that the Organization probably would not kick out a complaint if it were made jointly by several members.

Mr. WILCOX. A complaint might be made certainly by more than one member, but I think that the proper construction of this paragraph would be that they might release noncomplaining members as well as complaining members.

The CHAIRMAN. It seems so to me.

Mr. WILCOX. Now, I would like to refer to paragraph (c), in connection with paragraph (d).

The CHAIRMAN. Before we do that, may I ask you this:

What could be the nature of the penalty or penalties that might be invoked against the violating member?

Mr. WILCOX. The primary penalty would be withdrawal of concessions granted to the offending member in the course of trading negotiations.

The CHAIRMAN. And such restrictions could be imposed by the complaining member and possibly others as the Organization might approve?

Mr. WILCOX. That is right.

The CHAIRMAN. That might go to the extent of a complete stoppage of trade?

Mr. WILCOX. Well, there is nothing in the text that would limit the extent.

The CHAIRMAN. It might authorize import quotas, or increase in import quotas, or increase in tariffs?

Mr. WILCOX. That is true.

One of the obligations of other members, toward the offending member, is not to use import quotas and they might be released from that obligation, and if they were released from that obligation, I think there is nothing in the text that would prevent a complete embargo. I think you are probably right.

The CHAIRMAN. The measure of what is possible is the measure of obligations under the Charter?

Mr. WILCOX. That is right.

The CHAIRMAN. The complaining member could be released of any or all of its obligations, under the Charter toward the offending country?

Mr. WILCOX. That is right.

Now, this is the case in which a member has not gone to the Organization before imposing the restriction.

Now, in order to avoid the prospect of the application to it of such a penalty as we have been discussing, paragraph (c) provides that a member, prior to imposing such restrictions, may go to the Organization for approval.

Now, they may ask for approval on one of two things:

One thing they may ask is that the imposition of specific restrictions be approved, and the other thing is that under specified conditions they might be permitted to impose restrictions if those conditions arise.

The CHAIRMAN. Now, I notice that the paragraph contemplates close collaboration between the Fund and the Organization in these matters?

Mr. WILCOX. That is right.

The CHAIRMAN. The language, after pointing that out, says [reading]:

As a result of such consultations, the Organization may approve in advance the maintenance, intensification, or institution of restriction by the members in question insofar as the general extent, degree, and duration of the restrictions are concerned.

Again I should like to ask, what particular type of restrictions are we talking about here?

Mr. WILCOX. The import quotas.

The CHAIRMAN. Import quotas?

Mr. WILCOX. Predominantly.

The CHAIRMAN. Predominantly.

Mr. WILCOX. But the section also offers export quotas.

The CHAIRMAN. But to the extent it involved directly an exchange restriction, that would go to the Fund for its decision?

Mr. WILCOX. That is right.

In the course of this consultation——

The CHAIRMAN. Pardon me; it says:

Insofar as the general extent, degree, and duration of the restrictions are concerned.

That is language of limitation. What is intended to be excluded by that language?

Mr. BRONZ. What we had in mind there was that this proceeding, or consultation, would involve only the member who asked permission and the organization.

The CHAIRMAN. I notice it does not go any broader than that.

Mr. BRONZ. But the danger that we foresaw was that a member might come in and get permission for specific restrictions without the organization realizing the impact of those restrictions on some other country. Thus, the provision was drafted so that the Organization would pass only upon the general extent, degree, and duration of the restrictions. Another country which might institute a proceeding under 4 (d) could show that its commercial interests were unnecessarily damaged even though the country imposing the import restrictions might have been authorized in advance to limit its imports to so many dollars per month.

The question of whether a country properly protecting its balance of payments ought to exclude coffee, which is the product of Brazil, or tea, which is a product of another country, might still be open to consideration upon a complaint under paragraph 3 (d).

The CHAIRMAN. Can you illustrate what an applicant member might ask?

Mr. BRONZ. Conceivably, the country might come in under paragraph 3 (c) and say, "We would like permission to institute import quotas whenever our balance of payments for so many consecutive months is unfavorable to the extent of so many dollars," and the Organization might authorize restrictions on that basis.

The CHAIRMAN. In connection with that request, there might not be a specific disclosure of the particular items on which the import quota might operate?

Mr. BRONZ. That is right.

The CHAIRMAN. So that the Organization would simply say, "O. K., so far as you have disclosed your situation, but when it comes to specific operation of your restrictions on any other members, we retain jurisdiction and may give appropriate remedy against that situation"?

Mr. BRONZ. Yes; and even if the applicant country wanted to disclose its proposed plan, the organization might say, "We do not want to see the details now, but we leave it open to any other country to show that it has been hurt by any action you may take under our general authorization".

The CHAIRMAN. I wonder if that is not a sloppy opportunity for countries to come in for all sorts of things and ask for the invoking of the next clause.

Mr. BRONZ. Well, the argument of the countries that asked for this clause was that they do not want to be in the situation of waiting until they are up against the gun on trouble, and not know where they stand. They want some opportunity to review their situation in advance of actually getting into trouble.

The CHAIRMAN. What would be the objection of specifying the exact nature of the restrictions they intend?

Mr. BRONZ. If you have the exact nature, you would have to invite all the countries which would be affected.

The CHAIRMAN. Does it not come to that in the end? You make this request, the organization grants this request, but in the end, what you do has impact on the other nations and you are bound to hurt somebody and in the end you are bound to invoke the next clause.

Mr. BRONZ. In the end you might have one country complaining instead of consulting all the countries.

The CHAIRMAN. Have you anything further, Dr. Wilcox?

Mr. WILCOX. The point of (c) is that to the extent which the Organization gives approval after consultation with the member, and the fund, other members cannot then challenge the use of restrictions by the member to whom the approval has been given.

The CHAIRMAN. Yes.

Mr. WILCOX. That is, the sanction in paragraph (d) does not apply.

The CHAIRMAN. There would have to be further procedure showing injury and further agreement that there had been injury?

Mr. WILCOX. That is right.

The CHAIRMAN. And the further recommendations of the Organization to do this, that, or the other thing, to obviate the injury?

Mr. WILCOX. That is right.

The CHAIRMAN. I will read paragraph (c).

Mr. WILCOX. That is paragraph (e), Senator.

The CHAIRMAN. That is right, paragraph (e), or article 26, and it reads:

The Organization, in reaching its determination under subparagraph (d) shall not recommend the withdrawal or general relaxation of restrictions on the ground that the existing or prospective balance of payments difficulties of the Member in question could be avoided by a change in that Member's domestic employment, reconstruction, development, or social policies. In carrying out such domestic policies, however, Members shall pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis.

That is a very interesting paragraph, Doctor, and I hope you comment on it rather fully.

Mr. WILCOX. Well, this is consistent with the provision elsewhere in the document that we have already discussed in some detail; that the Organization is not given authority to intervene in the domestic policies of the member states.

You recall when we discussed the chapter on employment, that point was made. This is different wording, but the intent is the same. Within its own jurisdiction, according to its political and economic system was the wording used there.

The CHAIRMAN. I doubt that you would take issue with me if I said that although the Organization may not make the type of direct intervention to which I think you are referring, if the whole pressure of all of the powers of the Organization, and of all of the commitments of the members did not shape domestic policies to some extent, there would be no effective results from the operation of the Organization?

Mr. WILCOX. Yes, I think it would influence domestic policies without any question, but there is a difference between that and the power to order.

The CHAIRMAN. The end result may be the same?

Mr. WILCOX. But it is a matter of voluntary choice on the part of the parliament of the country involved in the light of its judgment of the value of the whole program.

The CHAIRMAN. I suggest that even where there is voluntary choice, the whole aggregate of pressures operating on that voluntary choice may have the effect of eliminating the voluntary feature and bringing about a course of action precisely the same as though one were under compulsion.

Mr. WILCOX. I should say that statement goes too far, but there will be an influence certainly.

The CHAIRMAN. I am simply contending that the two things under the way they operate can bring one to exactly the same end point.

I do not eliminate completely the probability that under the voluntary choice that end result might not be reached.

Go ahead, sir.

Mr. WILCOX. Well, I think that is all I have to say on that point.

The last sentence is again a statement as to the approach of members toward the problem, but there is no mandatory requirement here.

The CHAIRMAN. There is quite a little philosophy in the plan moving toward the end of maintaining full employment, is there not?

Mr. WILCOX. Yes.

The CHAIRMAN. The distinction in your mind being that although that is a direction in which the Organization wishes the nations to move, it would not have the authority to come to Washington, for example, and hand us a bill and say, "Pass this bill, because, in our judgment, it would increase the employment in this country?"

Mr. WILCOX. Or to any other country.

The CHAIRMAN. Or to any other country, but, on the other hand, you would not preclude an aggregate of pressures that might bring us to the same kind of bill voluntarily, if you wish to use the word?

Mr. WILCOX. Well, insofar as a certain philosophy is in the public thinking, yes.

The CHAIRMAN. I think it would be completely accurate to say that this subparagraph (c) does not give the Organization the right to say, "You shall do certain things with respect to your domestic employment policies."

That is correct, is it not?

Mr. WILCOX. That is correct.

The CHAIRMAN. The same is correct as to reconstruction policies?

Mr. WILCOX. That is right.

The CHAIRMAN. We, of course, want all of the member nations to get ahead with this reconstruction policy because we will not have either sound exports or sound imports unless that is done, and I assume that one might cast up all of the various pressures of the whole plan and say that those certainly would have strong influence as to reconstruction policies, but, again, it is not intended that the Organization can come into a country and say, "You shall adopt this, that, or the other reconstruction policy"?

Mr. WILCOX. That is true on each of those points. It seems to me, in the wording here, that a rather simple point is unduly labored.

The CHAIRMAN. That is a matter of opinion, is it not?

Mr. WILCOX. Yes.

The CHAIRMAN. Now, then, the "reconstruction, development."

We have "reconstruction" and then a comma.

"Development" means general economic development?

Mr. WILCOX. Yes.

The CHAIRMAN. Then we come to the words "social policies."

The Organization, for example, would not be authorized to point out to Great Britain alleged deteriorations in its economic position, due to alleged social policies, and say, "You have to do something about this; you have to restore the Conservative Party, or abandon state socialism, or you have to institute a different type of social security," and so forth?

Mr. WILCOX. That is right. They could not say, "Well, your health insurance system is costing you too much," or "You should have a different type of employment system than you have."

The CHAIRMAN. Yes.

Each one of these matters that we are being tender about might be the root of the difficulty that we are trying to wrestle with?

Mr. WILCOX. Some of these things might contribute importantly to that difficulty.

The CHAIRMAN. And yet, we avoid dealing with them in a positive way, I assume, because that would be regarded, as a practical matter, as being an undue interference with what has been considered the internal independence of the nations?

Mr. WILCOX. Precisely.

The CHAIRMAN. How far shall I read in the next paragraph?

Mr. WILCOX. I think I might note, Senator, that there is wording similar to this in the articles of the Fund on the matters of domestic policy, social and political.

The CHAIRMAN. Yes.

Now, paragraph 4, article 26, reads:

In giving effect to the restrictions on imports under this Article, a Member may restrict imports of products according to their relative essentiality in such a way as to give priority to the importation of products required by its domestic employment reconstruction, development or social policies and programmes. In so doing the Member shall avoid all unnecessary damage to the commercial interests of other Members.

Should I stop there?

Mr. WILCOX. I think so. The next has to do with another point.

This article permits discrimination as among products, not as among countries.

The CHAIRMAN. Yes.

Mr. WILCOX. And it permits a country which is in balance-of-payments difficulties, and has freedom to impose import quotas to restrict importation of luxuries more stringently than it restricts importation of necessities.

The CHAIRMAN. There is no such limitation expressed?

Mr. WILCOX. Well, essentiality gives priority to essential products over less essential, or nonessential products.

The CHAIRMAN. That is according to the view of the particular country whether it is or is not essential?

Mr. WILCOX. That is right.

The CHAIRMAN. The Organization could not "ride herd" on that, could it?

Mr. WILCOX. No.

I think, in connection with that, we have to read the point we mentioned earlier.

The CHAIRMAN. Let me ask you as to the grammar involved, picking up about in the middle of the paragraph [reading]:

in such a way as to give priority to the importation of products required by its domestic reconstruction.

Should not there be a comma?

Mr. WILCOX. There should be a comma, yes.

The CHAIRMAN. So that a nation acting legitimately in pursuance of its own internal political or social policies could impose any restrictions it wanted to if it did it in a bona fide way, and not with a discoverable discriminatory intent in support of those particular policies?

Mr. WILCOX. No, that statement goes too far.

The CHAIRMAN. Now, I would like to have you limit it.

Mr. WILCOX. I shall avoid all unnecessary damage to the commercial interests of other members, but much more explicitly than that, it shall not exclude completely imports of any class of goods.

The CHAIRMAN. We went into that feature yesterday.

Mr. WILCOX. Yes.

The CHAIRMAN. Once more, does this paragraph apply solely to import quotas, or is this general?

Mr. WILCOX. This is import quotas.

The CHAIRMAN. It seems to me that that leaves a rather wide door of escape. You can hang most anything and make a pretty good argument for it—on a nation's domestic employment situation, reconstruction situation, its social policies and programs.

What would be excluded when you take them all together?

Mr. WILCOX. The typical case is the country that says, "Our exchange resources are limited; we have the authority here to control the total quantity of our imports and we want to use our resources for those things that are more essential."

The CHAIRMAN. Yes.

Mr. WILCOX. Predominately I should think the case is, "We want capital equipment and we want raw materials, and we do not want limited resources directed to consumer luxury goods while we are in this financial condition."

The CHAIRMAN. It is conceivable, I suggest, that a nation might pursue austerity programs to such a point where, in order to pick up the morale of its people, it might enter for a time into a deliberate period of luxury importations.

Mr. WILCOX. I should hope that the situation of many of these countries will advance to where they can do that.

The CHAIRMAN. That is not, Doctor, as farfetched as it seems.

If you will think of the morale situation in one of the great nations worsened by recent winter troubles, transportation blockades and intensification of austerities, even going beyond those of the war, and the grumbling and discontent that naturally has arisen it might be decided as very wise policy to let up a bit and let a few luxuries come in.

Mr. WILCOX. Yes. Well, what that would involve, if the country were in a position to do that, would be a lightening up on its imports of the more essential goods.

The CHAIRMAN. Yes.

Mr. WILCOX. And permitting an expanded import of luxury goods.

The CHAIRMAN. Since the judgment of essentiality is exclusively with the nation concerned, it can judge to be essential whatever it wishes, luxury or otherwise.

Mr. WILCOX. It can do so, yes.

Mr. BRONZ. There would be cases, obviously, going beyond the section. For example, take a country where coffee and tea are drunk about equally, and where import restrictions becomes necessary. If the country imposed a strict limitation on the importation of coffee, which came from Brazil, and allowed tea from China to come in completely unrestricted, Brazil might have a complaint that it was being discriminated against. On the other hand, in a nation of tea drinkers, a determination favoring tea might be justified.

The CHAIRMAN. That illustrates it perfectly. That is perhaps as good an illustration as we have had of the extent, which we must face squarely, of what might be termed the interference of this organization into what heretofore have been considered normal matters of choice for nations.

Mr. WILCOX. No.

The CHAIRMAN. If we can cut this organization so fine, cut its interpretation so fine, that a nation must give careful consideration to whether it is going to drink more or less tea, or more or less coffee to avoid running into an international difficulty, I suggest that you may bog down with absurdity and ridicule what you are trying to do.

Mr. BRONZ. Well, what I had in mind was not the organization substituting itself for the country's judgment. I was presupposing a situation where consumer demand in the country would be about equal for the two products, and the country, presumably, in discriminating against one, had in mind a trade discrimination against the country from which it came, for, possibly, currency reasons. I did not suggest international review on whether coffee or tea should be drunk in the country.

The CHAIRMAN. I suggest it would be highly advisable to make it very clear that no member is required to freeze its tastes as to anything, and that if it did, no other member would have a complaint and that the organization would not have jurisdiction.

I invite attention to the fact that the last sentence of paragraph 4 is another emphasis of the doctrine which seems to be set up by the Charter of the right of nations to export into other nations and the duty of nations to take imports from other nations.

I will read paragraph 5:

5. If there is persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall seek consultation with the International Monetary Fund. The Organization may then, in collaboration throughout with the Fund, initiate discussions to consider whether other measures might be taken, either by those members whose balances of payments are under pressure or by those members whose balances of payments are tending to be exceptionally favorable, or by any appropriate intergovernmental Organization, to remove the underlying causes of the disequilibrium. On the invitation of the Organization members shall participate in such discussions.

Would you mind illustrating that rather fully, Doctor?

Mr. WILCOX. Well, in the case that, under the previous provisions of this article, there should be permitted numerous applications of import restrictions by many countries, and that this should go on for

some time, what this provides is that the Organization and the Fund call into consultation the countries concerned to consider, and I assume, recommend remedies for the situation.

Now, that would be a recommendation to existing international organizations or to governments.

The CHAIRMAN. Let us bring the paragraph into relation with existing conditions.

Now, at the present time, there are persistent and widespread import restrictions, are there not?

Mr. WILCOX. Yes.

The CHAIRMAN. So that if this charter came into effect today, there would have to be a whole lot of consultation would there not?

Mr. WILCOX. Well, there would not at that time have been persistent restrictions under the article. I do not know from the text how soon this paragraph would come into operation, but I assume that some time would elapse for the accumulation of experience under the provisions of the article before such a new conference would be called.

The CHAIRMAN. I hope it is not the philosophy of this paragraph that the article itself will encourage persistent and widespread import restrictions.

Mr. WILCOX. I do not follow you.

The CHAIRMAN. It says, "If there is persistent and widespread application of import restrictions under this article."

Is it to be assumed that the article will cause persistent and widespread import restrictions?

Mr. WILCOX. No. I do not follow you there at all.

The CHAIRMAN. I should not think so. I think your language there is unhappy, but getting at the general meaning which I assume to be that if there are persistent and widespread import restrictions, the nations shall consult about it.

Mr. WILCOX. That is right.

The CHAIRMAN. That is the first part of it, is it not?

Mr. WILCOX. Really, what it says—

The CHAIRMAN. My further point was that it would call for a lot of consultation because the world, as has been shown in the record, I think, the world, indubitably, is full of persistent and widespread import restrictions.

Starting from there, we are going to have to start with a whole lot of consultation and there may be merit in it and there may not be.

Mr. WILCOX. Really, what it says, Senator, in effect, is that if this effort gradually to clear away import quota systems under this program should not succeed, then the Trade Organization, the Fund, the nations involved, undertake to consider what further steps shall be taken to meet the situation.

The CHAIRMAN. What, for example, do you foresee as the steps that might be taken where you have that persistent and widespread disequilibrium.

Mr. BRONZ. Well, to answer that question would involve speculation into the future. At the present time, most of the countries of the world that are in trouble are trying to do something about it. Those which were hurt primarily by the war have reconstruction programs and are trying to rebuild their economies. It is hoped that, within a reasonable time, these restrictions will be dropped one by one, and

that there will be a snowballing effect. As certain countries drop their restrictions, they will ease the situation of other countries, and, within not too long a time, most countries will be able to give up their import restrictions.

Now if conditions should go bad again, what this provision looks forward to is another conference to sit down and see what the countries think can be done about it. Just what solutions may develop at that time are pretty difficult to speculate about now.

The CHAIRMAN. Since the approval of the Fund, how many nations of the world have completed bilateral agreements?

Mr. BRONZ. Bilateral trade agreements?

The CHAIRMAN. Yes.

Mr. BRONZ. There have been quite a number of them. I do not know precisely the number.

The CHAIRMAN. So that, to that extent, the situation in the world has worsened despite the remedies available in the Fund?

Mr. BRONZ. I do not know that there are more bilateral trade agreements now than there were before the war. There are probably less. Of course, the bilateral trade agreements recently made, in most cases, replaced no trade at all between the countries involved, so that those agreements which have been made in recent months are not necessarily worsening the situation.

The CHAIRMAN. This is true, is it not: The bilateral trade agreement is the antithesis of what we are trying to do with this charter, is that not correct?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. But bilateral agreements have been burgeoning since we set up the Fund to stop them?

Mr. BRONZ. Well, the Fund was to stop currency bilateral and other discriminatory currency practices.

The CHAIRMAN. It was to stop bilateral agreements. Do you challenge me on that?

Mr. BRONZ. The fund was designed, among other things, to assist in that respect.

The CHAIRMAN. What the fund was designed to do was to take us to heaven in one jump, but I am talking about its more specific objective.

Mr. BRONZ. Well, Senator, I believe Mr. Wilcox, in the first day of his testimony, called attention to the resolution adopted by the Conference at Bretton Woods, which stated in substance, that the Fund alone could not do the job, that it would require similar international efforts to liberalize trade in order to accomplish the objectives.

The CHAIRMAN. There is this distinction: The Fund has a direct operative effect on exchange disequilibriums.

Mr. BRONZ. Yes, sir.

The CHAIRMAN. You have not yet demonstrated how this proposed organization will achieve that purpose. Do you challenge my statement that one of the main objectives of the Fund was to do away with bilateral agreements?

Mr. BRONZ. No, I do not challenge that statement, but I think it requires the further statement that the Fund, at its very inception, and the people who formulated the fund at Bretton Woods, recog-

nized that the Fund alone could not accomplish that purpose unless parallel action were taken in the field of international trade.

The CHAIRMAN. There was reference to that. I do not challenge that.

Mr. BRONZ. The resolution adopted by the Bretton Woods Conference, which I believe Mr. Wilcox read into the record of this hearing the other day—I have it before me—sets forth that understanding.

The CHAIRMAN. I am not challenging the proposition that by trade action a supplemental aid to the plan of Bretton Woods was contemplated.

Mr. BRONZ. Yes, sir.

The CHAIRMAN. I am not at all challenging that.

Mr. BRONZ. And that is what the International Trade Organization is proposed to accomplish.

Mr. WILCOX. Then you should have to say—

The CHAIRMAN. Just one moment. Let me see if I can find the majority report on the Fund.

Well, I will do my homework at a more appropriate time, but I am sure I can give you very definite references to the claim that the Fund was necessary to get rid of these bilateral agreements, and, of course, if it works, it should have a tendency in that direction.

I think it is relevant to keep in mind that since the time that the Fund could have become effective, that there has been a considerable mushrooming of bilateral agreements.

We had one yesterday between Sweden and Russia, that was read into the record.

I see a package here which I assume contains the actual copies of bilateral agreements and which is handed to the committee by the State Department at my request.

Mr. WILCOX. That is right. There is a rather lengthy memorandum there on different types of bilateral agreements and they are discussed by geographic area: The United Kingdom, Europe, eastern Europe, Latin America, the Far East. And then there are copies of texts of some of the most important bilateral agreements. Not a complete file, but examples, and it may be possible, if you are interested, to supply other texts in addition. (The material referred to appears as exhibit X.)

The CHAIRMAN. Yes, sir. I have not had the opportunity to examine the contents of the package, but from its size it appears that you have given me quite a little material for which I am grateful. I shall look it over and then we will talk about it later on.

Mr. BRONZ. Mr. Senator, I think it is only fair to say that the proponents of the Monetary Fund never claimed that all the world's ills would be solved overnight by the institution of the Fund.

The CHAIRMAN. If there is a single world ill that was not claimed as curable by the Fund, I would like to know what it is. If you feel seriously about that, read the hearings and read the debates.

Mr. BRONZ. Well, my recollection is that people testified that they hoped the Fund would help in various respects over the course of time, but it was not argued that the Fund would solve everything overnight.

The CHAIRMAN. All of those of us who took the position that it would not solve everything overnight were cast into utter and eternal darkness and we were labeled as being isolationists and vicious fel-

lows that had neither the interest of this country nor the world at heart.

Read the debates and read the records of the hearings, and I am quite sure you will agree with me.

But that is neither here nor there, except that it may be relevant to point out that these plans which have such admirable idealism behind them often do not work with the intended speed or efficacy. And I am trying not to engage in overstatement.

Doctor, with reference to paragraph 5, it is contemplated that members whose balances of payments are tending to be exceptionally favorable may do something to remove the underlying causes of exchange disequilibrium. What, for example, might they do?

Mr. WILCOX. Well, what is provided here is that the conference which is called by the Organization considers whether measures might be taken.

The CHAIRMAN. That is right.

Mr. WILCOX. Either by countries with favorable balances of payments, or by countries with unfavorable balances of payments.

The CHAIRMAN. Please give me some examples of what the nations with favorable balances might do.

Mr. WILCOX. Well, I think we went over that ground yesterday in another connection.

The CHAIRMAN. Yes, but I would like to illuminate this particular paragraph.

Mr. WILCOX. Private foreign lending, public foreign lending, increasing imports, those would be the main things.

The CHAIRMAN. Restriction of exports?

Mr. WILCOX. Possible removal of special encouragement to exports.

The CHAIRMAN. Paragraph 6 [reading]:

The Members recognize that in the early years of the Organization all of them will be confronted in varying degrees with problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this article or under article 28, take full account of the difficulties of postwar adjustment.

That is simply an injunction to be realistic in reaching a decision, is it not?

Mr. WILCOX. Yes. That is also, I think, drawn from the Articles of Agreement of the fund. The wording is not exactly the same, but the substance is.

The CHAIRMAN. Well, that is just another way of saying, "Do not get up into an ivory tower but when you make a decision, take a look all over the world and see the facts of life. Is that not right?"

Mr. WILCOX. Yes.

The CHAIRMAN. Paragraph 7 [reading]:

Throughout this section the phrase "import restrictions" includes the restriction of imports by state-trading enterprises to an extent greater than that which would be permissible under article 32.

Would you mind explaining that, Doctor?

Mr. WILCOX. Article 32 relates to state monopolies on individual products.

The CHAIRMAN. This seems to be a sort of an extension. They can go beyond that which is permissible in article 32. How far can they go beyond it? Just what is contemplated there?

Mr. WILCOX. Well, I assume that it is the intention of that paragraph to catch the State trading operations so that it is impossible to escape the provisions of section (c) on the grounds that what is involved is a state trading operation.

The CHAIRMAN. I read it somewhat differently. Let me read it again:

Throughout this section the phrase "import restrictions" includes the restriction of imports by state-trading enterprises to an extent greater than that which would be permissible under article 32.

Is that another way of saying that the provisions of this Article are available to state-trading enterprises, even though it gives them a greater privilege than they might have under article 32? Is that what is meant?

Mr. WILCOX. Under article 32 they can restrict imports to a certain extent. If they go beyond that extent, this article applies to them.

The CHAIRMAN. It does not take away from a state-trading enterprise any privilege that is offered any other nation in article 26?

Mr. WILCOX. No.

The CHAIRMAN. In other words, a state-trading enterprise stands on exactly the same footing, so far as article 26, is concerned, as any other member nation?

Mr. WILCOX. I think that is what it provides, yes, sir.

The CHAIRMAN. That is the purpose?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Under the theory of the charter, that would be a sensible provision and a sensible purpose, I think.

Mr. BRONZ. Article 32 was intended to set a rule for state-trading enterprises parallel to the mutual tariff reduction rule for private enterprise countries.

The CHAIRMAN. Yes.

Mr. BRONZ. Now, this paragraph 7 would give state-trading countries parallel rights under import restrictions with private enterprise countries.

The CHAIRMAN. Did I state it correctly a moment ago that this simply puts state-trading enterprises on the same footing as any other member nation, so far as this article is concerned?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Section 32 does not provide anything else. All right.

We come to article 27 entitled [reading]:

NONDISCRIMINATORY ADMINISTRATION OF QUANTITATIVE RESTRICTIONS

1. No prohibition or restrictions shall be applied by any member on the importation of any product of any other member country or on the exportation of any product destined for any other member country, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. Members shall observe the following provisions in applying import restrictions:

(a) The administration of the restrictions should be carried out in such a way as to result in a distribution of trade which approaches as closely as possible to the shares which the various member countries might be expected to obtain as the result of international competition in the absence of such restrictions.

(b) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article.

(c) In cases in which quotas are not practicable, the restrictions may be applied by means of import licenses or permits without a quota.

(d) Import licenses or permits, whether or not issued in connection with quotas shall not (save for purposes of operating quotas allocated in accordance with subparagraph (e) of this paragraph) require or provide that the license or permit be utilized for the importation of the product concerned from a particular country or source.

(e) In cases in which a quota is allocated among applying countries, the shares of the various supplying member countries should in principle be determined in accordance with commercial considerations such as price, quality, and customary sources of supply. For the purposes of appraising such commercial considerations, the member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the member concerned shall allot to member countries having a substantial interest in supplying the product, shares based upon the proportions, supplied by such member countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed, which would prevent any member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

3. (a) In cases where import licenses are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licenses granted over a past recent period and the distribution of such licenses among supplying countries. Provided, however, that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

(b) In the case of import restrictions involving the fixing of quotas, the Member applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry. Provided that they may be counted, so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary against the quantities permitted to be imported in the next following period or periods, and Provided further that if any Member customarily exempts from such restrictions products catered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this subparagraph.

(c) In the case of quotas allocated among supplying countries the Member applying the restriction shall promptly inform all other Members having an interest in supplying the product concerned of the shares in the quota, by quantity or value, currently allocated to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (c) of this Article or under paragraph 2 (e) of Article 25, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restriction. Provided that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization, consult promptly with the other member or the Organization regarding the need for an adjustment of the base period selected or for the reappraisal of the special factors involved.

5. The provisions of this Article shall apply to any tariff quota established or maintained by any Member and, in so far as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or restraints under paragraphs 3 and 4 of Article 15.

May we have an explanation of that article?

Mr. WILCOX. First, I should like to correct a misprint which appears in the text which you have read. Article 27, paragraph 2, subparagraph (e).

The CHAIRMAN. Yes.

Mr. WILCOX [reading]:

In cases in which a quota is allocated among applying countries—
should read: "supplying countries."

This article is operative, of course, only in the case of countries that have authority under the preceding articles to employ quantitative restrictions.

The CHAIRMAN. Does it go any further than that in any particular?

Mr. WILCOX. No, sir.

The CHAIRMAN. That was the first question I wanted to make very clear. This is simply carrying on what you conceive to be a rounded development of the whole subject.

Mr. WILCOX. If you do not have authority to use quantitative restrictions, this article does not apply. If you do have authority to do so, this relates to how you do it.

The CHAIRMAN. Yes.

Mr. WILCOX. And the purpose of the article is to promote multilateralism as opposed to bilateralism by laying down rules against discrimination. That is, the general principle is that in using import quotas, you do not discriminate among other countries giving a larger quota to one country and a smaller quota to another country for political or other reasons.

Now, if you are going to have import quotas at all, it is a very difficult thing to prevent discrimination in their administration and an effort is made here to lay down the different possible methods of administering an import quota system in the order of their desirability and it says, first, "This is the best way to do it, but if you cannot do it this way, this is the next best way to do it."

And so on down the line, and the sequence in which they are put up is first to try to avoid allocating your import quotas among sources of supply at all. That is, just having a global quota. Say what the total is that comes into the country but do not have the Government say where it comes from. This might be done by issuing licenses to private buyers that were unrestricted as to the sources of supply.

Now, if that is not practicable, the next possibility then is allocate, but if the Government is going to allocate these quotas among sources of supply of its imports, then it should seek to do so on the basis of commercial principles. That is matters such as price, quality, customary sources of supply, and that may be done through agreement among exporting countries, or if that is not practicable, by reference to the shares supplied in a previous representative period.

That determination of shares in a previous representative period is to be made by the member applying the import quota, but subject to consultation with the countries with respect to the shares accorded them if they wish to question the allocation that is given.

That is about the pattern of the article. That is the purpose of it.

The CHAIRMAN. As to paragraph 1 [reading]:

No prohibition or restriction shall be applied by any Member on the importation of any product of any other Member country or on the exportation of any

product destined for any other Member country, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

that is a statement of the policy of equality of treatment, is that not correct?

Mr. WILCOX. That is right.

The CHAIRMAN. Taking that paragraph by itself, it would require the abrogation of all bilateral agreements, that had the prohibited effect, would it not?

Mr. WILCOX. Well, there are all sorts of bilateral agreements.

The CHAIRMAN. Yes.

Mr. WILCOX. It would require the abrogation of any agreement that would be inconsistent with this.

The CHAIRMAN. Of course, it is not the main purpose of the type of bilateral agreement which we condemn to give an exclusive or a sharply limited exporting advantage or importing advantage.

Mr. WILCOX. That is right.

The CHAIRMAN. On mutually exporting and importing advantages, which other Nations do not have, so far as the two countries are concerned.

Mr. WILCOX. That is right. This is opposed to bilateralism in principle.

The CHAIRMAN. Yes; now, then, what is the practical effect of this paragraph? Will the Nations that enter into this agreement which have the type of bilateral agreements which are condemned, will they be required at once to abrogate them or what steps will they take to bring themselves into consonance with that paragraph?

Mr. WILCOX. Well, most of the bilateral trade agreements in existence at the present time are of short duration. There are a few that are running for long periods. Most of these arrangements arise out of a situation of exchange difficulty and a situation of severe shortage of goods, and efforts are made through these agreements by one country to insure itself a supply of particular goods that are in short supply.

It says, "We will give you a certain quantity. We will guarantee you export licenses on a certain quantity of particular goods that we have if you will give us the export license on a certain quantity of certain goods that you have," and most of these are of short duration arrangements.

The CHAIRMAN. All right.

Mr. WILCOX. Now, this charter, of course, is directed primarily toward the long run situation and most of the present agreements would have disappeared.

Now, it might be that these agreements would be superseded by similar agreements or extended, but most of those at present in effect would have disappeared before this were adopted.

The CHAIRMAN. Well, sir, this correct, is it not: if this is adopted, nations signatory could not enter into any bilateral agreements of the type we are discussing?

Mr. WILCOX. Yes.

The CHAIRMAN. Now, I adhere to my question: what are the provisions in the charter, or what are the procedures contemplated to bring to an end the bilateral agreements which have been entered into and which will be effective when the charter becomes effective?

Mr. WILCOX. Well, there are certain exceptions under article 28, which you will come to next, where such agreements are permitted, but I should say that unless they fall within the exceptions, they would have to be abrogated as the result of adherence to this charter.

The CHAIRMAN. In the interest of completeness at this point, will you refer to the provisions which would abrogate bilateral agreements when the charter becomes effective?

Mr. WILCOX. Well, it seems to me that adherence by the countries involved, to these very provisions, would require them to abrogate inconsistent bilateral undertakings.

The CHAIRMAN. Is that the theory on which you depend?

Mr. WILCOX. Yes.

The CHAIRMAN. Could you not argue with equal validity that the knowledge of the members of the Organization of the existence of the bilateral agreements, when this agreement is entered into, implies that they shall continue to exist according to their terms?

Mr. BRONZ. Well, it could be argued, but this would be a later international commitment which specifically forbids certain types of conduct, and it was generally understood that commercial practices inconsistent with the agreement would be ended when the agreement became effective.

The purpose of the International Trade Organization is to change certain commercial practices which are considered undesirable.

The CHAIRMAN. Then you rely exclusively on the rule of construction that you have announced?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. There is no express provision in here having the effect which I have described.

Mr. BRONZ. No, sir.

The CHAIRMAN. Supposing that one member of the Organization has a bilateral agreement with another nation which is not a member. What will be the obligation of the member of the Organization?

Mr. BRONZ. Well, the provisions of this charter would certainly be applicable to prohibit any discrimination in favor of a nonmember. There are provisions of the charter which would permit certain discriminations against nonmembers, but the general provisions of the charter forbidding any discrimination against other members of the Organization would, by that token, forbid any discrimination in favor of a nonmember of the Organization.

The CHAIRMAN. According to what you have just said, what would be the effect as to such bilateral agreements?

Mr. BRONZ. Well, if there were a bilateral agreement between a member of the Organization and a nonmember which resulted in giving a discriminatory preference to the nonmember of the Organization, the performance of that bilateral agreement would be forbidden by the charter.

The CHAIRMAN. On what theory can the charter forbid the operation of a contract between a member and a nonmember?

Mr. BRONZ. The effect would not be on the contract. But the obligation of the member joining the Organization would include an obligation to take such steps to remedy its foreign contractual obligations as to make it possible for it to fulfill its obligations under the charter.

The CHAIRMAN. For example, if there is a termination clause in the bilateral agreement of the type mentioned, the member nation would be obligated to invoke the termination clause?

Mr. BRONZ. I should think so. As a matter of fact, as Mr. Wilcox pointed out, these bilateral agreements are typically of short duration, for 1 year or less, and there is ample time before the charter is likely to become effective for countries which are contemplating membership in the International Trade Organization to protect their rights to get out from under bilateral trade agreements.

The CHAIRMAN. Are you prepared to say that there are no bilateral agreements to which a member might be party that do not have a life longer than 1 year?

Mr. BRONZ. No; I am not certain of that.

Mr. WILCOX. No, sir; some of them run beyond 1 year.

The CHAIRMAN. That is what I thought.

Mr. BRONZ. Also, some of these agreements contain the provision that they will be modified or altered if necessary at any time to make them consistent with any multilateral agreement hereinafter entered into between the parties concerned.

The CHAIRMAN. Yes; but that does not reach the point of a member nation having a bilateral agreement with a nonmember nation. I am basing myself on the fundamental proposition that if you and I have a contract, you cannot enter into another contract with Mr. Bronz whereby you have the right to cancel your contract with me. That depends entirely, I submit, on the contract itself.

Have we gone far enough with this to summarize it this way:

You figure that this will bring bilateral agreements to an end as between member nations because this is an overriding obligation; is that the first thing?

Mr. BRONZ. Well, I would imagine, as a matter of legal construction, that if two countries enter into a bilateral contract and later both enter into a multilateral agreement which was inconsistent, the latter would supersede the former.

The CHAIRMAN. Well, I gave you what might be an answer to that, but I am not pressing it. I am simply trying to get your theory.

Your theory is that this obligation would override obligations of the bilateral agreement and bring it to an end; is that right?

Mr. BRONZ. I should think when both countries sign the charter, that is true.

The CHAIRMAN. That is our starting point.

Now, as to bilateral agreements involving a member and a nonmember, how will those be disposed of?

Mr. BRONZ. It would be the responsibility of a country joining the ITO to review its own contractual obligations and see that it has brought them into consistency with whatever new obligations it proposes to undertake in the ITO.

The CHAIRMAN. But if the contract were such that it had no escape clause, the contract would continue to exist?

Mr. BRONZ. I presume so, as a matter of contractual law between the two countries that entered into the contract.

The CHAIRMAN. Now, will this paragraph strike at the preference contracts?

Mr. WILCOX. No; this is administration of import-quota systems. The preferential system is differential tariff rates.

The CHAIRMAN. This does not point at what we call preference agreements?

Mr. WILCOX. Of course; that is discrimination also.

The CHAIRMAN. Yes.

Mr. WILCOX. But there you are talking about tariff discrimination, and here we are talking about import-quota discrimination.

The CHAIRMAN. Yes. I suggest that there may be some gaps here in your enforcement procedure. You have a stated prohibition, but I think it is far from clear as far as we have gone.

Mr. WILCOX. With reference to existing contracts?

The CHAIRMAN. Yes.

Mr. WILCOX. Well, you have taken the case of a contract between a member and a nonmember which endures in time and I know of no really long-term contracts of this character. The longest term I can think of is one that runs for 5 years, and that contains a provision under which both of the parties agree to modify it to conform to any multilateral arrangement they enter. You have taken the case of a contract between a member and a nonmember. It runs for a long term of years, and it contains no provision for modification.

If there is such a case, it may not be handled, but I doubt very much if it would be possible to find one.

The CHAIRMAN. It might be well to review the bilateral agreement situation with that in mind.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Paragraph 2, subclause (a) [reading]:

The administration of the restrictions should be carried out in such a way as to result in a distribution of trade which approaches as closely as possible to the shares which the various member countries might be expected to obtain as the result of international competition in the absence of such restrictions.

How would you determine that share?

Mr. WILCOX. Well, that is really a preamble, I should say, to the specific provisions that follow, and is designed to explain their purpose.

The CHAIRMAN. Taking it by itself, would it not have the effect of establishing a frozen status quo?

Mr. WILCOX. No.

The CHAIRMAN. I mean, how could you determine it other than by looking at the past?

Mr. WILCOX. The share which might be expected to obtain as the result of international competition, I should think, would not be frozen but would be changing. I think the question to ask about that is, "Well, the principle is all right; how do you implement it?" And the answer to that is found in the succeeding paragraphs and the least desirable method of administering such a system—such an import-quota system—is found to be reference to the shares in a previous representative period.

The CHAIRMAN. Yes; and that is precisely what I am talking about.

Mr. WILCOX. That is right.

The CHAIRMAN. In making your prediction as to what may happen to competition in the future, your most stable element would be what has happened in the past, and after you have considered that, what would be the position of a nation coming in as a new competitor in a field?

Mr. WILCOX. Well, your point explains the reason why the past period is looked on as the least desirable method of administering an import quota system.

The CHAIRMAN. So that it will develop as we go along that there is flexibility enough in the plan to allow a new competitor to get an equitable cut of the business?

Mr. WILCOX. Well, there would be, in the preferred methods of administration.

The CHAIRMAN. Yes. All right; subclause (b) of paragraph 2 [reading]:

Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article.

What does that mean?

Mr. WILCOX. Well, this is a total quota for each class of goods which shall be publicly announced so that the country that is administering such a system does not maintain secrecy and give quotas to some people and not admit imports from other people.

The CHAIRMAN. And the method is provided later on for an equitable allocation of the commodity among supplying nations?

Mr. BRONZ. Not necessarily, sir. You might have a general quota saying so many units of a product may be admitted and still not allocate the quota among sources of supply.

The CHAIRMAN. In other words, the private trader could make his own deal wherever he saw fit?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. And the quota would operate when the total imports traded for by all of the importers reached a certain figure?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Yes. That points the difference between what you might say is an unregulated approach within the ceiling and an apportioned approach through some governmental agency of the importing nation?

Mr. BRONZ. Yes, sir.

The CHAIRMAN (reading):

(c) In cases in which quotas are not practicable, the restrictions may be applied by means of import licenses or permits without a quota.

That seems reasonably clear to me. Is there any explanation that you think should be given?

Mr. WILCOX. Not beyond this; it is self-explanatory, I think.

The CHAIRMAN (reading):

(d) Import licenses or permits, whether or not issued in connection with quotas shall not (save for purposes of operating quotas allocated in accordance with subparagraph (c) of this paragraph) require or provide that the license or permit be utilized for the importation of the product concerned from a particular country or source.

Mr. WILCOX. That is, you give a private trader, in the country that is operating such a system, a license to buy the product, but he can buy it anywhere he wants to. It does not say he has to buy from any particular country.

The CHAIRMAN. That is a privilege. A Nation could set up its own quota machinery, could make its own allocation to its own importers of the product affected, could it not?

Mr. WILCOX. Yes, as among its importers, it could allocate import licenses. It is not required to do so.

The CHAIRMAN. But I mean it could be done that way.

Mr. WILCOX. Yes.

The CHAIRMAN (reading):

(c) In cases in which a quota is allocated among applying countries, the shares of the various supplying Member countries should in principle be determined in accordance with commercial considerations such as price, quality, and customary sources of supply—

I think it was that phrase "customary sources of supply" that got me thinking about what would happen to new sources of supply.

Mr. WILCOX. That is right. This is what you do if it is impracticable, administratively, to use one of the previous methods that does not involve allocation as among other countries.

The CHAIRMAN. Who would determine the considerations of price, quality, and customary sources of supply? Is that for the individual nation, or would the Organization have any voice in the matter?

Mr. WILCOX. (reading):

the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned.

But in cases where it is not practicable for them to do so, the member itself shall allot quotas.

The CHAIRMAN. Does the member determine the practicability?

Mr. WILCOX. Yes. And so you come to the least desirable method of administering an import quota system which is the allocation of quotas by a country to imports from specific other countries for particular goods.

Mr. BRONZ. Well, Mr. Senator, the provision in the previous article—article 26, paragraph 3 (d)—permits any member country to make a complaint under this article 27 as well as under the previous article, that an import restriction is being administered in a fashion which unnecessarily damages its commercial interests.

So, while the initial determination made by the country applying the restriction, a complaint can be made if some other country feels it is being hurt.

The CHAIRMAN. The previous article carries over to this one for that purpose?

Mr. BRONZ. Yes; by its explicit terms, it is applicable to articles 27 and 28, as well as to article 26.

Mr. WILCOX. The whole point there of article 3 is publicity.

The CHAIRMAN. Just a moment. I want to look at this preceding article just a moment.

3 (a) In cases where import licenses are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licenses granted over a past recent period, and the distribution of such licenses among supplying countries: Provided, however, that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

The last proviso, I take it, applies to private traders?

Mr. WILCOX. Yes.

The CHAIRMAN. It seems to me that that paragraph does emphasize again for better or for worse the theory of the Charter that each

nation has an enforceable interest in the importations and exportations of every other nation.

Mr. WILCOX. Well, all this says is that a nation has a right to know whether it is being discriminated against.

The CHAIRMAN. Yes; for the purpose of informing that nation as to whether an interest which it has under the Charter is being violated.

Mr. WILCOX. I think that is implicit.

The CHAIRMAN. And if that interest is being violated, it has certain complaint machinery which it may invoke?

Mr. WILCOX. That is right.

The CHAIRMAN. And the Organization, as such, has certain sanction powers which we have already developed.

We will recess at this time until 2:30.

(Thereupon, at 12:36 p. m., a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., on the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

STATEMENTS OF HARRY HAWKINS AND GEORGE BRONZ (Resumed), AND JOHN M. LEDDY, ADVISER, DIVISION OF COMMERCIAL POLICY, STATE DEPARTMENT, WASHINGTON, D. C.

The CHAIRMAN. Mr. Hawkins, let me invite your attention to paragraph 3 (b) of article 27. Toward the end of the paragraph there is a proviso which reads:

Provided further, that if any Member customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this subparagraph.

I assume that there is quite a body of international practice that runs along that line?

Mr. HAWKINS. It is the customary United States practice, Senator, to allow 30 days before the application of administrative rulings of this kind. This is as much as to say that that would supersede shipments en route if you did that.

The CHAIRMAN. Paragraph 4 reads:

With regard to restrictions applied in accordance with paragraph 2 (c) of this Article or under paragraph 2 (e) of Article 25, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restriction, provided that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization, consult promptly with the other Member of the Organization regarding the need for an adjustment of the base period selected or for the reappraisal of the special factors involved.

Does this duty of consultation exhaust the duty of the member in the cases contemplated in that paragraph?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Are there any sanctions so far as that paragraph is concerned?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Does that come under the complaint provision we were discussing this morning?

Mr. HAWKINS. That complaint provision I think would relate only to the balance of payments.

Mr. BRONZ. The complaint procedure refers to article 27 but not to article 25, and the two subparagraphs which are quoted in paragraph 4 appear in those articles.

The CHAIRMAN. Well, then, would you mind explaining the circumstances under which the complaint procedure would be applicable under the paragraph?

Mr. BRONZ. Well, under paragraph 3 (d) of article 26, there is a complaint procedure which is applicable to actions taken under articles 26, 27, and 28. Apparently, a determination by a member under article 25 would have to come within the general complaint procedure in the charter, which appears in article 35, section 2.

The CHAIRMAN. Well, then, is it your considered opinion that the enforcement of this article does not just dangle on consultation but that a complaining party could go further?

Mr. BRONZ. I should think so; yes, sir.

The CHAIRMAN. Paragraph 5 reads:

The provisions of this Article shall apply to any tariff quota established or maintained by any Member and, insofar as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or requirements under paragraphs 3 and 4 of Article 15.

That, I take it, is just a general conforming provision?

Mr. HAWKINS. Yes, sir; the principles are the same in those cases.

The CHAIRMAN. Article 28, which is headed "Exceptions to the rule of nondiscrimination," paragraph 1 reads:

The provisions of this Section shall not preclude—

(a) restrictions with equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund;

(b) prohibitions or restrictions in accordance with paragraphs 2 (a) (1) or 2 (d) of Article 25;

(c) conditions attaching to exports which are necessary to ensure that an exporting Member country receives for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting Member country;

(d) restrictions in accordance with Article 20 which either (1) are applied against imports from other countries, but not as between themselves, by a group of territories having a common quota in the International Monetary Fund, provided that such restrictions are in all other respects consistent with Article 27, or (2) assist in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 27, a country whose economy has been disrupted by war;

(e) restrictions in accordance with Article 20 which both (1) provide a Member with additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraph 2 of Article 20, if its restrictions were consistent with Article 27, and (2) have equivalent effect to exchange restrictions which are permitted to that Member under the Articles of Agreement of the International Monetary Fund or under the terms of any special exchange agreement which may have been made between the Member and the Organization under Article 20, provided that a Member which is not applying restrictions on payments and transfers for current international transactions may apply import restrictions under (1) of this subparagraph in special circumstances and only with the prior approval of the Organization in agreement with the International Monetary Fund.

2. If the Organization finds after consultation with the International Monetary Fund on matters within the competence of the Fund, that import restrictions or exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided under this Article or in a manner which discriminates unnecessarily against the trade of another Member country, the Member shall within sixty days remove the discrimination or modify it as specified by the Organization, Provided that a Member may, if it so desires, consult with the Organization to obtain its prior approval for such discrimination under the procedure set forth in paragraph 3 (c) of Article 26, and to the extent that such approval is given, the discrimination shall not be open to challenge under this paragraph.

3. When three-quarters of the Members of the Organization have accepted the obligations of Sections 2, 3, and 4 of Article VIII of the Articles of Agreement of the International Monetary Fund, but in any event before 31 December 1951, the Organization shall review the operation of this Article, in consultation with the International Monetary Fund, with a view to the earliest possible elimination of any discrimination, under paragraphs 1 (e) (i) and (ii) of this Article, which restricts the expansion of world trade.

The CHAIRMAN. I respectfully suggest that that article is a classic of unclear exposition.

Would you mind making it clear?

Mr. HAWKINS. I leave that to Mr. BRONZ.

Mr. BRONZ. I will do my best, Senator.

The subject matter is very difficult and the attempt to achieve a close relationship with the Fund agreement makes it even more difficult.

Article 28 specifies certain exceptions to the rule of discrimination.

The CHAIRMAN. Nondiscrimination.

Mr. BRONZ. Nondiscrimination.

Under articles 25 and 26, import restrictions are permitted under certain circumstances. Article 27 provides that if there are import restrictions they must be nondiscriminatory, and article 28 specifies certain circumstances under which they may be discriminatory.

Now, let us take the particular instances where discrimination is permitted. Under subparagraph 1 (a), discriminatory import controls are permitted having equivalent effect to exchange restrictions authorized under the "scarce currencies" provision of the Monetary Fund agreement. If a currency is declared to be scarce by the fund, any member of the Fund is authorized to apply exchange restrictions discriminating against that currency. Subparagraph 1 (a) simply provides that import restrictions may be imposed to the same extent.

The CHAIRMAN. If a member wants a currency which is scarce, it may appeal to the Fund for a certain amount of help in getting that currency, may it not?

Mr. BRONZ. Well, the word "scarce" in the Fund agreement is a formal declaration that the currency is scarce and at such a time the Fund would presumably not be able to supply it any longer.

The CHAIRMAN. I see. In that case what happens to the country with the scarce exchange?

Mr. BRONZ. Other countries would be free to impose restrictions against it in order to conserve their limited supplies of the scarce currency.

The CHAIRMAN. That is to say, if dollars became scarce to the point where the Fund would so declare it the other members might impose restrictions against the United States?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Monetary restrictions and trade restrictions?

Mr. BRONZ. Under the monetary agreement they already have the right to impose exchange restrictions.

The CHAIRMAN. This would be a balancing clause to achieve a part of the same thing in trade?

Mr. BRONZ. It would make it administratively possible to use a trade control rather than an exchange control.

The CHAIRMAN. Which country in the foreseeable future is apt to have scarce exchange?

Mr. BRONZ. It is the hope that no country's exchange will be declared scarce by the Fund?

The CHAIRMAN. The currency that is apt to become scarce is the currency in greatest demand?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Which is that?

Mr. BRONZ. At the present time the United States dollar and one or two others.

The CHAIRMAN. Go ahead, please.

Mr. BRONZ. Subparagraph 1 (b) gives the second exception from the rule of nondiscrimination [reading]:

prohibitions or restrictions in accordance with paragraphs 2 (a) (i) or 2 (d) of Article 25.

Paragraph 2 (a) (i) of article 25 permits restrictions on imports or exports to accomplish equitable distribution of short-supply goods.

The CHAIRMAN. I am afraid I am called for a vote. Will you be comfortable until I return?

(A short recess was taken at this time.)

The CHAIRMAN. The committee will come to order.

Proceed, please, Mr. Bronz.

Mr. BRONZ. Article 28, subparagraph 1 (b) gives the second exception to the rule of nondiscrimination. It permits prohibitions or restrictions in accordance with paragraphs 2 (a) (i) or 2 (d) of article 25.

Now, to refer back to those provisions: Paragraph 2 (a) (i) of article 25 permits, during a postwar transitional period which is limited in time, restrictions essential to the equitable distribution of goods in short supply. Obviously, if you have an international allocation of short-supply products it is necessary to have discriminatory import or export restrictions.

The second exception is paragraph 2 (d) of article 25, which refers to the regulatory intergovernmental commodity agreements. Here again discriminatory controls are necessary.

Subparagraph 1 (c) provides that a country may require that its exports be paid for either in its own currency or the currency of any member of the International Monetary Fund which it may specify. Such a requirement would not be necessarily a country discrimination. A member country might say, "For export we will accept dollars, sterling, and Swiss Francs," or whatever currency it wished, and any country that had that currency might use it for the purchase of the goods.

The CHAIRMAN. What leeway is there for a private trader?

Mr. BRONZ. Under this provision the government could require that private traders sell only for specified currencies.

The CHAIRMAN. That is rather unprecedented for this country, is it not?

Mr. BRONZ. We have no such requirement, although in practice American exporters want dollars for their goods.

The CHAIRMAN. And in practice in our commerce with Europe through exchange transactions with central banks, it has usually come to that in substance, has it not?

Mr. BRONZ. Yes. In fact, Canada has a rule today requiring that payments for exports be made in United States dollars or sterling.

The CHAIRMAN. Is the effect of this subparagraph and the whole instrument, insofar as it bears on exchange, to intensify supervision and controls over exchange?

Mr. BRONZ. This provision would certainly not go any further than the rules in existence in most countries of the world today.

The CHAIRMAN. But it would require us possibly to set up some sort of clearing system?

Mr. BRONZ. No, it would permit us—

The CHAIRMAN (interposing). I do not mean "require us," but we would be at liberty to do it if we wanted to?

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Go ahead.

Mr. BRONZ. Subparagraph 1 (d) covers two exceptions, two additional exceptions, from the rule of nondiscrimination, both of which are taken almost verbatim from the Anglo-American financial agreement which was made at the time of our loan to the United Kingdom about 9 months ago.

First, if you have a group of territories which have a common quota in the International Monetary Fund, they are permitted to discriminate among themselves or in favor of themselves but not among countries outside. Now, of the groups of territories that have common quotas and are in the Monetary Fund, the largest group is the United Kingdom and a large number of its colonies, not including the Dominions. The Dominions are considered separate countries for purposes of the fund.

The CHAIRMAN. They do maintain discriminations?

Mr. BRONZ. Within the United Kingdom and its colonies and possessions I believe there are some discriminations.

The CHAIRMAN. There are discriminations between the United Kingdom and India, are there not?

Mr. BRONZ. India is considered a separate country in the fund and has a separate quota.

The CHAIRMAN. Is that grouping to which you refer elaborate?

Mr. BRONZ. Well, the United Kingdom territories take these three pages.

The CHAIRMAN. What else is there to it?

Mr. BRONZ. There is also a group of French territories, one Dutch colony, and one Belgian.

The CHAIRMAN. Do you have copies of that?

Mr. BRONZ. I can get copies. This is a publication of the International Monetary Fund called, Schedule of Par Values.

The CHAIRMAN. Let me suggest that you leave it with us, and we may put it in as an annex (exhibit XVII.)

Mr. BRONZ. Certainly.

So the groups of territories would include Britain and her colonies, France and its colonies, the Netherlands and the Netherlands West Indies, and Belgium and the Belgian Congo. Those territories, as long as they do not maintain discriminations among countries outside their groupings, may maintain discriminations among themselves, or in favor of themselves.

Subparagraph (1) (d) (ii) permits discriminatory restrictions to assist in the period until the end of 1951 by measures not involving substantial departure from article 27, a country whose economy has been disrupted by war.

Almost that precise language is in the Anglo-American Financial Agreement, permitting Britain to discriminate in favor of countries whose economies have been disrupted by the war.

The CHAIRMAN. How much substance does that remove from the prohibition?

Mr. BRONZ. Our feeling was that it would not be of great significance but it would permit here and there a country to have a discriminatory rule in favor of some country that has been particularly badly devastated.

The CHAIRMAN. Who judges the propriety of the measure?

Mr. BRONZ. The country itself in the first instance, but its decision would be subject to review by the Organization under paragraph 2 of article 28 and by complaint of a Member under subparagraph 3 (d) of Article 26.

The CHAIRMAN. And subject to a final judgment by the Organization on the complaint of a member?

Mr. BRONZ. Yes, sir.

Then subparagraph (e) is the tough one. This is subparagraph (e) of paragraph 1 of article 28, and it permits discriminations which must meet two tests. First, they must provide a member with additional imports above the maximum total of imports which it could afford in the light of the monetary reserve standards of article 26 if its restrictions were nondiscriminatory.

In other words, a country, reviewing its balance-of-payments situation and its monetary reserves, decides that it can afford to spend so much money in foreign exchange in the next year. If it permitted imports on a nondiscriminatory basis, various amounts are likely to come from different currency areas. This probable distribution of imports on a nondiscriminatory basis provides the measure of the anticipated drain on a country's foreign exchange assets. Subparagraph 1 (e) would permit the country to discriminate in order to secure more imports than it could afford—if the rule of nondiscrimination were strictly observed.

The CHAIRMAN. What is the basic philosophy of that?

Mr. BRONZ. Well, the principal reason for this provision is found in the difficulties presented by certain countries which pointed out that by their geographical situation and their normal trade channels they are forced to do business with other countries which are not members of the Monetary Fund and which, presumably, will not be on a convertible currency basis or at least have not obligated themselves to be on a convertible basis within a reasonable time. Therefore, their choice would be to stay out of the International Trade Organization entirely or to cut off their trade relations entirely with countries on the other

side of the fence. They felt they should not be forced into that situation and they could not foresee what their choice might be in that situation and that there would have to be some leeway which would permit countries who undertake obligations here to do some discriminating, perhaps some bilateral trading, with countries not in the International Trade Organization that are not in the Fund.

The tests we have set forth is that the discrimination should not cut off anyone else's business but is only permissible if it increases the total volume of imports into the country so discriminating.

The CHAIRMAN. But does that not magnify the exchange difficulties of that particular country?

Mr. BRONZ. It may or it may not.

The CHAIRMAN. What is the end result of that deviation? You would determine in the first place that a country is in disequilibrium, and if so it follows that it should restrict imports or at least it should not increase them. So, here you give it permission to increase its imports, which is bound to increase the disequilibrium.

Mr. BRONZ. No, sir, because it would use for additional imports not hard currencies but currencies which it could not use otherwise.

The CHAIRMAN. But it would still increase its debtor position?

Mr. BRONZ. Not necessarily, if its trade with the outside country were increased by the process; I mean, if the trade were two ways, it might very well be in balance with the country.

The CHAIRMAN. But that is not stated as a condition to the use of this provision?

Mr. BRONZ. No, sir.

The CHAIRMAN. Of course, if they were engaging in a balanced transaction with some country outside the fund, that would wash itself, it would make no difference in its net over-all effect.

Mr. BRONZ. Well, typically, countries dealing with a country having an inconvertible currency would certainly try to get as close to balance as they could and not get into an excess position on that currency.

The CHAIRMAN. There you get right up against what is the equivalent to a strict barter deal.

Mr. BRONZ. Yes, sir.

The CHAIRMAN. Because in most instances the inconvertible currency will have no demonstrable value, and having no demonstrable value the sharp trader, unless he is engaged purely in a currency speculation, reduces his bargain to terms of goods, does he not?

Mr. BRONZ. The tendency is in that direction.

The CHAIRMAN. Well, I suggest to you that unless this provides or contemplates that this extraneous trading shall be on an exchange basis, you are simply aggravating the situation of the fellow that you are trying to help.

Mr. BRONZ. The difficulty is that the country in such a situation will say that it is difficult to hold it to a precise balance because it cannot exactly foresee whether there will be a deficit or a surplus on the ledger.

The CHAIRMAN. Do you not see an opportunity for avoidance here?

Mr. BRONZ. As you recall, the restrictions must meet two tests.

The CHAIRMAN. Two tests?

Mr. BRONZ. This is one test, and then the next paragraph gives the other test. The country must meet both.

The CHAIRMAN. Yes.

Mr. BRONZ. The second test is that the restrictions must have equivalent effect to exchange restrictions which are permitted to that member under the Monetary Fund, so that only a country that maintains exchange restrictions under the Fund may practice this kind of discrimination.

The countries maintaining discriminations under the Fund would include those in the transition period plus those to whom the Fund might give permission to use restrictions after considering their financial needs. So, up to the proviso clause, you are dealing primarily with the situation during the next few years, with the transition period under the Fund under which countries who have not accepted convertibility of their currencies are permitted to maintain exchange restrictions. Under the Fund agreement a country during the transition period is perfectly free to discriminate in any way it pleases. There is no rule against discrimination in the Fund agreement during the transition period.

The International Trade Organization, therefore, in this provision, is tightening up a provision of the Fund and saying, "During this transitional period, even though the Fund says you may have any exchange restrictions you want, those restrictions must be nondiscriminatory unless you can show that you are increasing your total volume of imports by such a discrimination."

The CHAIRMAN. I do not understand the policy. I do not understand how you can improve a nation's exchange disequilibrium, assuming that it is short of a desirable currency, by increasing its imports, unless they in turn are balanced by exports or unless they are covered by loans or something of that kind.

Mr. BRONZ. Well, you do not improve a country's exchange position by increasing its imports, but you may improve its ability to consume. You may bring more products into the country without hurting its exchange position if you can permit some of these side, bilateral arrangements, during this temporary period when countries are still under transitional arrangements under the Fund.

The CHAIRMAN. It seems to me that is a rather extreme extension of the importation doctrine.

Mr. BRONZ. We felt that we had gotten it to about as limited a basis as we could. We certainly would welcome any suggestions for dealing with the problem that might tighten it up even further.

The CHAIRMAN. Well, I would not consider myself qualified to make any suggestions, but if I understand your explanation you are providing encouragement to evasion. So far I have not seen the point of it.

Mr. BRONZ. Suppose we take a situation like this: A country which is under the transitional arrangement and presumably, therefore, cannot afford freedom of exchange and freedom of import trade, has a balance of another country's currency which it acquired during some previous period, and which is an inconvertible currency. This provision would permit it to use up its old accumulation of that currency, otherwise inconvertible, and possibly useless, by getting some extra imports with it.

The CHAIRMAN. But the provision does not limit itself to cases of that kind.

Mr. BRONZ. No, it does not. But it does limit itself to cases where the country can show that it is spending all the money it can afford on a nondiscriminatory basis and then must show that the additional imports are over and above what it could afford in view of its financial situation.

The CHAIRMAN. Give me some more examples that will clarify why it should want to make imports of that character.

Mr. BRONZ. Well, here is a possible example. A country has an austerity regime and is limiting imports to essential products. The people of the country would like silk stockings or nylon stockings. If imports of nylons were permitted on a nondiscriminatory basis, probably American nylons would be the cheapest and the best in quality and would, therefore, on a nondiscriminatory basis, get the market.

This country says, "We cannot afford dollar exchange for nylons; we have allocated all the available dollars for more essential goods. But country B is making some silk or nylon stockings. True, they are not as good as American stockings and their price is higher, but we either have some of their currency that we do not have immediate need for, or we can get them to buy something which is in a luxury class within which they ordinarily would not buy under their austerity program."

You may have something of a barter deal, but the limitation is that it must be over and above what the country would be able to afford.

The CHAIRMAN. Is there enough of that in the world to warrant bothering with it in the Charter?

Mr. BRONZ. We cannot tell. At present so much of the trade in both essential and unessential goods is on a bilateral basis that we have no way of knowing, when the country is put under the limitations of the ITO and required to apportion, just how much would fit within the rule and how much would have to be segregated as an extra which would come under this special provision.

The CHAIRMAN. What I am driving at is, is the rule necessary for this charter, or is it a minor matter at best that had better be faced when you really come to it?

Mr. BRONZ. Well, it was the feeling of a number of countries that it is necessary. The provision, of course, would be of no advantage to the United States since we would not in the foreseeable future have any occasion to use such a procedure. It is entirely a question of how far we should resist the other countries who say they are in a difficult situation and should not be denied an opportunity to work out some way of getting extra luxuries without diminishing the volume of trade that would move in normal channels, and it was our feeling that this would not involve too large a deviation.

I might call attention to the last part of paragraph 3 of article 28, which calls for a review not later than 1951 to see whether this provision is necessary.

The CHAIRMAN. Go ahead, Mr. BRONZ.

Mr. BRONZ. Then the proviso clause takes care of the third situation.

Subparagraph (c) (ii) that we just referred to, it is limited to those countries which are permitted exchange restrictions under the fund agreement. Now, we have countries which are not imposing

exchange restrictions under the fund agreement which have convertible currencies, but feel that occasionally special occasions may arise where they might be justified in securing extra imports by a similar procedure. The proviso permits deviations in such exceptional situations, and here we have the tightest administrative control anywhere in the Charter. Such a country must have the prior approval of both the International Trade Organization and of the Monetary Fund.

The situation that we intended to cover was the situation that is specifically in terms covered in the Anglo-American Loan Agreement. The loan agreement provides that neither the Government of the United States nor the Government of the United Kingdom shall discriminate against each other in the use of quantitative import controls, and there are three exceptions. One of the exceptions is in a case in which the application of the rule of nondiscrimination would have the effect of preventing the country imposing such restrictions from utilizing inconvertible currencies accumulated up to December 31, 1946.

Now, the British have some inconvertible currencies of various countries which they have accumulated during past years. Britain is required under the financial agreement to give up its exchange controls on current transactions and go on a current basis in July of this year.

The CHAIRMAN. Will Great Britain make it?

Mr. BRONZ. Britain is so required under the loan agreement.

The CHAIRMAN. I mean, is there indication that she will or will not be able to make it?

Mr. BRONZ. I have seen newspaper discussion of the problem, but I have seen no official indication of the attitude of the British Government.

The CHAIRMAN. Go ahead, sir.

Mr. BRONZ. This proviso would permit Britain, as I say, under the most stringent conditions, despite the fact that it has a convertible currency and has no exchange controls, to secure some extra imports, for example, from a country whose currency she has accumulated over past periods. That is one case that the British discussed with us in London and which has already been covered in our own loan agreement with Britain.

The CHAIRMAN. Go ahead.

Mr. BRONZ. You inquired originally about the entire article?

The CHAIRMAN. Yes.

Mr. BRONZ. Paragraph 2 is the review provision, and it has a number of particularly significant features. One is that it does not require a complaint by a member. The Organization may act upon its own initiative in seeing whether discriminations are being practiced in contravention of the rules of the charter. In the second place, it provides that if the Organization finds that import restrictions or exchange restrictions on payments and transfers in connection with imports are being applied by a member in a discriminatory manner inconsistent with the provisions of the International Trade Organization, it can be required to end such discriminations. In other words, while the fund agreement has no requirement forbidding discrimination in the transitional period for countries which are permitted the transitional period, this ITO agreement for the first time would make discriminations in

exchange controls affecting current trade reviewable for consistency with the exceptions here.

In other words, the effort here is to create a parallelism between the rules governing exchange restrictions and the rules governing import restrictions, because exchange restrictions on current transactions and import quotas are simply two different administrative ways of doing the same thing. Neither may be discriminatory unless they come within the exceptions in paragraph 1.

The proviso clause in paragraph 2 is similar to article 26, paragraph 3 (c), which we discussed earlier. It would give a country opportunity to secure an advance opinion.

The CHAIRMAN. With reference to the penalty immediately preceding the proviso clause, what if the member refused to remove the discrimination or modify it within 60 days in the manner specified by the Organization?

Mr. BRONZ. Well, it would be violating its obligations under the charter, and article 35, which is the general provision covering violations of the charter—article 35, paragraph 2, would be applicable.

The CHAIRMAN. How important might the operation of that paragraph become?

Mr. BRONZ. Well, that is the general sanction, similar to the sanction that has been set forth more specifically in article 26, providing that the Organization can release other members from their obligations toward the offending member.

The CHAIRMAN. It high lights the importance of the voting weight of each member also?

Mr. BRONZ. Yes, the Organization would make its decision by whatever voting procedure is applicable, and that would be significant there.

The CHAIRMAN. You have paragraph 3.

Mr. BRONZ. Well, paragraph 3 is a recognition that subparagraph 1 (e) is an exception to the rule of nondiscrimination which is made necessary by the fact that so many countries of the world today do not have convertible currencies and freedom of exchange. Therefore, it provides that when three-quarters of the members of the International Trade Organization have given up their exchange restrictions under the fund, or by the end of 1951, whichever date is earlier, the Organization shall review the operation of the article with an eye to the earliest possible elimination of any discrimination under subparagraph (e) which may restrict the expansion of trade.

The CHAIRMAN. Would the Organization under those circumstances have the power to order something affirmative?

Mr. BRONZ. Presumably that paragraph would look toward an amendment of the International Trade Organization charter to eliminate or modify subsection 1 (e), as this draft reads. Any review under 3—well, it could look to two things: It could look to amendment of the charter, or it could look to possibly the enunciation of a policy as to how the Organization would pass upon instances of the use of subparagraph 1 (e).

The CHAIRMAN. The language limits it to review, looking to the elimination of certain discriminations. That in itself might not mean anything.

Mr. BRONZ. No; there would have to be action taken as a result of the review.

The CHAIRMAN. That is what I am getting at. Tell me again what would be the authority for taking action after the review. Where would you base yourself in the charter?

Mr. BRONZ. Two possibilities occur to me: One would be that an amendment would be made to the charter eliminating subparagraph 1 (c) at that time, if the review indicated that that would be desirable, or an amendment to it rather than its elimination; the second possibility might be that the Organization would announce a policy that it would follow in passing on particular cases coming before it, saying, "From our general review it is our opinion that situations of one character would tend to further the expansion of trade, and other types would not."

You would have the result of several years of experience under the subparagraph, and you might have an administrative announcement of policy. I am just speculating on what the Organization might do following such a review.

The CHAIRMAN. Are you content with the clarification which your comments may have given to this article?

Mr. BRONZ. I have done the best I can, sir.

The CHAIRMAN. After you look over the record, if you are not completely content, it might be a good idea to address the committee a communication interpreting and clarifying the article.

Mr. BRONZ. I am grateful for the opportunity. I will see whether the record seems to me to be self-explanatory.

The CHAIRMAN. It may be that you have done the best job that can be done about it. I would be less than candid with you if I did not say that I am not completely clear on the subject yet. However, that may be my fault.

Take a look at the transcript, and if you think you can better it, send us a letter, and if you do not, let it rest the way it is.

Mr. BRONZ. Thank you, sir.

If there is anything further that I can do now, I would be glad to do it.

The CHAIRMAN. I am quite sure that any Senator who studies this charter, who gets as far as article 28, would find himself much mystified, whereupon he will ask for explanations, and I would not want to say now that I am prepared to give them, and I would like to be in a position to do so.

Now, we have article 29, entitled "Exchange Arrangements," which reads:

1. The Organization shall seek cooperation with the International Monetary Fund to the end that the Organization and the Fund may pursue a coordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organization.

2. Members shall not seek by exchange action to frustrate the purposes of the Organization and shall not seek by trade action to frustrate the purposes of the International Monetary Fund.

3. In order to avoid the imposition of trade restrictions and discriminations through exchange techniques and in order to avoid the danger of conflicting jurisdiction between the Organization and the International Monetary Fund in exchange matters, Members of the Organization shall also undertake membership of the International Monetary Fund; *Provided*, That any country which is not a member of the International Monetary Fund may become a Member of the Organization if upon accepting this Charter it undertakes to enter, within a time to be determined by the Organization after consultation with the Interna-

tional Monetary Fund, into a special-exchange agreement with the Organization which would become part of its obligation under this Charter; *And provided further*, That a member of the Organization which ceases to be a member of the International Monetary Fund shall forthwith enter into a special-exchange agreement with the Organization which shall then become part of its obligation under this Charter.

4. A Member which has made such an agreement undertakes to furnish the Organization with the information which it may require, within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund, in order to carry out its functions relating to such agreement.

5. A special exchange agreement between a Member and the Organization under paragraph 3 of this Article must provide to the satisfaction of the Organization, collaborating throughout with the International Monetary Fund, that the purposes common to the Organization and the Fund will not be frustrated as a result of action in exchange matters by the Member in question.

6. The Organization shall seek and accept the opinion of the International Monetary Fund as to whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement and shall act in collaboration with the International Monetary Fund on all questions which may arise in the working of a special exchange agreement under this Article.

Do you wish to comment on that article?

Mr. BRONZ. Well, the purpose of the article is simply to provide for buttoning up matters of coordination between the International Trade Organization and the fund.

Paragraph 1 provides in general terms that the Organization shall seek cooperation with the fund to the end that they follow a coordinated policy on related matters.

Paragraph 2 is a general provision against evasive devices. Members shall not attempt to evade the International Trade Organization by exchange practices, or to evade the fund by trade practices.

Paragraph 3 provides generally that in order to avoid the difficulties of coordination between the two fields, members of the International Trade Organization should also be members of the fund.

The CHAIRMAN. Would you supply the record at this time with the names of the nations which are members to be in the Organization which are not members of the International Monetary Fund?

Mr. BRONZ. Well, this group of 18 countries that met at London and is to meet at Geneva is simply a committee. The proposal would be that most of the countries of the world would be invited to the International Trade Organization.

The CHAIRMAN. But among the 18?

Mr. BRONZ. Among the 18 it is my recollection that the U. S. S. R., Australia, New Zealand, and, I believe, Lebanon, are not members of the International Monetary Fund.

The CHAIRMAN. Would you mind checking that and letting us know?

Mr. BRONZ. Yes, sir. There have been newspaper reports that Australia is taking action to become a member of the fund.

The CHAIRMAN. How many nations remain out of the fund at the present time?

Mr. BRONZ. I can not give you the precise number. Of course, there are the enemy countries, and Russia has not become a member of the fund, and New Zealand and Australia.

The CHAIRMAN. Are the satellite nations of Russia members?

Mr. BRONZ. I think Poland is, but again I want to check.

The CHAIRMAN. Will you do that?

Mr. BRONZ. I do know Czechoslovakia is.

The CHAIRMAN. It is?

Mr. BRONZ. Yes; and I believe Yugoslavia is.

The CHAIRMAN. Will you let us know definitely?

Mr. BRONZ. Yes, sir. May I simply correct the record if my statement is incorrect?

The CHAIRMAN. Yes, sir.

By the way, is Sweden a member of the fund?

Mr. BRONZ. No, sir.

The CHAIRMAN. Can you tell me why not?

Mr. BRONZ. I believe the original invitations were extended to the United Nations, and I believe Sweden just became a member of the United Nations quite recently. I do not know what steps have been taken to urge Sweden to join the fund.

The CHAIRMAN. Would you mind letting us know about that also, whether or not Sweden has initiated efforts to become a member of the fund?

Mr. BRONZ. Yes, sir.

(Mr. Bronz supplied the following information for the record:)

NOTE.—Sweden has made no formal application for admission to the International Monetary Fund. However, there have been informal exploratory conversations with Swedish officials on the question.

Mr. BRONZ. The proviso clause in paragraph 3 was to meet this situation. Among the 17 countries present at London there were 3, I believe, that were not members of the Fund. They certainly did not welcome coercion to become members of the Fund in order to be in the International Trade Organization. On the other hand, a number of countries which are members of the fund pointed out quite properly that the International Trade Organization could not function properly if a country obligated itself not to use various trade devices but at the same time would be free, since it was not a member of the Fund, to use exchange devices.

The CHAIRMAN. As a practical matter, would not this special agreement have practically all the provisions of the Fund which are considered really to be effective?

Mr. BRONZ. That would have to be worked out. There are people who felt at London that the exchange agreement would have to include all of the burdens but none of the benefits of the Fund. There are others who felt that you might be able to work out an exchange agreement of more limited scope.

The CHAIRMAN. The regulatory features of the Fund, if not applicable, or if not introduced into this special exchange agreement, would make the special exchange agreement without much purpose, would it not?

Mr. BRONZ. Presumably you would have to introduce in the special exchange agreement at least the principal regulatory provisions, perhaps all or perhaps less than all. It was generally felt that this should be left to negotiation when the country sought membership in the International Trade Organization.

The CHAIRMAN. Mr. Hawkins, I do not believe I have requested a copy of the minutes showing the positions in full of the various countries in connection with the drafting of the New York draft. If I have not requested that, I would like to have that.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. The full minutes having to do with the New York draft. I am interested in determining the exact position of various nations with respect to certain of these matters, and it is my understanding that that would be found in those minutes.

Mr. HAWKINS. I do not know what provision was made regarding publication, but would this be for your own use and not go into the record?

The CHAIRMAN. I had understood that you did not want that put into the record unless it became absolutely necessary, or perhaps on further understanding, and I would treat it in that way until we had some further understanding. I should say that I do not regard the matter as one inherently warranting secrecy as far as this committee is concerned.

However, in the first phases of it I would act on it in that way and would not disclose it without consulting with you.

Mr. HAWKINS. The only thing is that matters of that sort are made public customarily only with the permission of the parties.

The CHAIRMAN. I surely would take it up with you again before revealing it.

Mr. HAWKINS. Yes, sir.

Mr. BRONZ. The remaining paragraphs of article 29 are simply implementing paragraphs to fill in details of obligations of a country under a special exchange agreement. It would be required to furnish information to the Organization equivalent to the information that a member to the Fund is obligated to supply. It would require a country, even though not a member of the Fund, to agree that the International Trade Organization would collaborate with the Fund in passing upon its exchange practices, and it would recognize that the International Trade Organization would look to the Monetary Fund for advice on questions of exchange which would be within the Fund's special competence.

The CHAIRMAN. Do you happen to know the reason why the countries which you have named or included among the 18 have not joined the Fund?

Mr. BRONZ. No, sir. In the case of Australia, I understand there has been a difference of opinion within the government and that the latest majority has been in favor of joining the Fund, and that, therefore, steps are in process in that direction.

I do not know precisely what New Zealand's reason is.

The CHAIRMAN. I take it we have completed these more or less tied-together articles?

Mr. BRONZ. May I add one item apropos of something you asked this morning when you inquired as to the representations that were made to your committee and to the Congress as to the Fund at the time it was before your committee. Your question was why we had to continue working toward the same objectives through another organization.

In the Bretton Woods Agreement Act, approved July 31, 1945, section 14 provides [reading]:

In the realization that additional measures of international economic cooperation are necessary to facilitate the expansion and balanced growth of international trade and render most effective the operations of the Fund and the Bank, it is hereby declared to be the policy of the United States to seek to bring

about further agreement and cooperation among nations and international bodies, as soon as possible, on ways and means which will best reduce obstacles to and restrictions upon international trade, eliminate unfair trade practices, promote mutually advantageous commercial relations, and otherwise facilitate the expansion and balanced growth of international trade and promote the stability of international economic relations.

I omitted the last sentence which is not necessary here.

The CHAIRMAN. I would not challenge that.

My point was that there was a great hope that the fund would eliminate bilateral agreements; that was my point.

Mr. BRONZ. Well, I read this section to indicate that the Congress in passing the Bretton Woods Act was fully cognizant that there was additional action necessary.

The CHAIRMAN. But you will not contend that it had this specific plan in mind?

Mr. BRONZ. I do not recall exactly the testimony before the committee at that time, but I am certain that within the executive department the outlines of the International Trade Organization were being formulated when this was before Congress.

The CHAIRMAN. I would not know anything about that, but I can assure you that the substance or the content of that plan has not been congressionally endorsed.

Mr. BRONZ. Not the details of the plan, but the idea of having international cooperation in trade.

The CHAIRMAN. The idea of doing something internationally in trade.

I am simply trying to ascertain whether you think that anything in connection with Bretton Woods constitutes an endorsement of this plan.

Mr. BRONZ. I simply wanted to point out that the Congress recognized that Bretton Woods would not be the last action taken in regard to international trade.

The CHAIRMAN. I have no argument on that.

Where did we leave off, Mr. Hawkins?

Mr. HAWKINS. The gap begins with article 15, I think.

The CHAIRMAN. When we started discussing the subject which we have just concluded, I suggested that at some stage of the proceedings it would become important to find out what trade discrimination practices remained or were banned after giving effect to all of the exceptions.

Are either of you gentlemen prepared to list those for us?

Mr. HAWKINS. You mean technically the discriminations; that is, action by a country favoring one country as against a third?

The CHAIRMAN. What I mean is that you are pronouncing, you are setting up, a prohibition against certain bad practices. Then you proceed to set up a whole series of exceptions. After you give weight to the exceptions, what is left to the prohibition?

Mr. HAWKINS. Article 26, and the kind of action that may be taken under that article, that is the balance-of-payments exception, will continue for some time and may be pretty widespread. In other countries we have now, and are going to have for the next few years certainly, import restrictions to protect their balance-of-payments positions despite the general rule against restrictions.

Now, the hope or aim of this charter is to provide that those balance-of-payments exceptions shall come off when the bona fide need for them is passed. When that is accomplished—and most of the machinery in the articles you have been discussing is designed to speed that up—when that is accomplished, the restrictions that would remain on, I think, would be very few compared to what they now are or what they would be without this provision in article 25 of the charter.

In other words, quotas, quantitative restrictions, are imposed for protective reasons; for the same reason that a tariff is imposed, and they would be prohibited.

The CHAIRMAN. You envision a time when quantitative restrictions could not be imposed, even though it would be demonstrably in the interest of a member nation to impose them?

Mr. HAWKINS. Yes, but of course frequently it can be shown that, taken by itself, a restriction imposed by a nation will benefit particular interests in that nation, but if the right to do it is given up, the general interest of the nation may be benefited through a similar obligation taken by other nations which prevents restrictions on that nation's exports.

The CHAIRMAN. But you look forward to the time when a nation will be able to set up what it considers to be essential protective measures so far as, let us say, import quotas are concerned?

Mr. HAWKINS. Yes, sir. You are speaking of import restrictions?

The CHAIRMAN. Yes.

Mr. HAWKINS. Which are banned in principle by this.

The CHAIRMAN. You have suggested that for that forbearance it would receive compensating considerations.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. But it would not be permitted to determine on its own whether the compensating considerations were adequate?

Mr. HAWKINS. No, sir. When a nation accepts this charter and accepts the obligations in the first paragraph of article 25, with the exceptions, it must weigh that question, whether what it gives up is more than compensated by what it gains.

Without attempting to argue it at length, from the point of view of a country like the United States, which has not used import restrictions to any extent, the answer seems to me pretty clear, because under this article we would get rid of restrictions all over the world, which have done very serious damage.

The import restrictions that our trade faces in foreign countries, have hurt us more, far more, than tariffs have.

The CHAIRMAN. Do you believe that this country will make a decision that would compel it to give up sugar quotas, for example?

Mr. HAWKINS. No.

The CHAIRMAN. Rubber quotas? Possibly wool quotas? Possibly certain metals quotas?

Mr. HAWKINS. I think that the qualification of the basic commitment which appears in the exceptions will save most of the situations that will certainly be difficult for us. Certainly it takes care of sugar.

The CHAIRMAN. The exceptions are supposed to eliminate themselves as time goes on. Is that not correct?

Mr. HAWKINS. Not that one, sir. When I was speaking of the ones that would eliminate themselves, I was speaking of the balance-of-payment exceptions. The one I just referred to, which is (e) of article 25, under which we could keep our sugar quotas, that is permanent, as long as the conditions are fulfilled. There must be domestic restrictions, too, as there are in that case.

That is permanent, and could be availed of 50 years from now, if this charter went into effect.

The CHAIRMAN. What would be left of our right to raise or lower tariffs according to our own judgment?

Mr. HAWKINS. We would not be able, for the first 3 years, after the agreement that is contemplated on tariffs had been concluded, to raise any of those rates that are specified in our schedule to that agreement, except under the escape clause.

As regards any product not included in any agreement, we are free; in other words, if we do not bind the rate, or, in other words, say that we will not increase it.

At the end of 3 years, insofar as products on which we have taken a commitment are concerned, the agreement can be reviewed then, can be revised, and might very well be, in some particulars, on some rates or on some products, and then you might go on for another 3-year stretch if you want to, or any other period you want to name. There is nothing mandatory on that.

The CHAIRMAN. Coming down to the present time, keeping in this transitional period, what remains as forbidden after you give effect to the exceptions?

Mr. HAWKINS. Any quantitative restrictions which have been imposed for protective purposes, and which cannot qualify as restrictions put on to meet a real balance-of-payments problem, or under the other exceptions.

The CHAIRMAN. All other restrictions are forbidden by the charter?

Mr. HAWKINS. Unless they are caught by these other exceptions, which have been explained.

As to what you would eliminate would be possible, probably, to get some estimate of what that is; or what that would amount to.

The CHAIRMAN. There is an oft repeated charge that you proclaim a fine idealism, and then you cut away its substance with exceptions. I think the best way to meet that is a specific statement of what is not cut away by exceptions. I wonder if we might not have something of that kind for the record?

Mr. HAWKINS. We can see what we can get. The Department of Commerce might be able to furnish some kind of a survey. It means looking at the restrictions that are on, what they are on for; and we might be able to throw some light on it.

The CHAIRMAN. I should think you could take the whole body of restrictions with which some governmental agency must be familiar, either the Department of Commerce, or your agency, apply the provisions of the charter to those, see what is eliminated by virtue of the exceptions, see what remains after you apply the exceptions, and if anything remains you at least have a partial answer to the charge that you are really not accomplishing anything through the force of your exceptions.

I must say that as far as we have gone the results seem to me rather thin, after you add up the effect of all your exceptions.

Mr. HAWKINS. Of course a study, of the sort you are speaking of, to be complete and thorough, would be vast, because what it requires is looking into the laws and regulations of every country, and the restrictions that are put on, and determining why they are on, and whether they come under the exceptions. It would be too big a job to get done in time to complete your record here, I am sure.

The CHAIRMAN. Let us recapitulate roughly, again.

If the United States, for example, decided that as a part of its policy, presumably to further the general welfare of this country, and not having relation to exchange difficulties, if it decided that it wanted to establish prohibitive tariffs it could not do so under the charter, could it?

Mr. HAWKINS. No, sir.

The CHAIRMAN. If it wanted to go into a policy of increasing tariffs it could not do so under the Charter?

Mr. HAWKINS. No, sir.

The CHAIRMAN. If it wanted to go into a policy of self-sufficiency, it could not do so under the charter, could it?

Mr. HAWKINS. No, sir.

The CHAIRMAN. If the United States wanted to put import quotas, wanted to establish a system of import quotas supplemental to its tariffs, or independent of its tariffs, and not related to exchange difficulties, it could not do so?

Mr. HAWKINS. No, sir.

The CHAIRMAN. To the extent of those features just mentioned the charter does establish some definite prohibition, does it not?

Mr. HAWKINS. It does, yes sir.

The CHAIRMAN. To the extent that the charter grants exceptions—and here again I think we had better generalize, because there may be some exceptions to that—but to the extent that the charter grants exceptions, those exceptions are reviewable by the Organization, and violation of them are subject to complaints, the Organization can hear the complaints, can review the situation, and in most instances request, rather, order relief.

Mr. HAWKINS. I would like to qualify the very last part of what you said. In most cases not order relief. It can authorize sanctions, you might say.

The CHAIRMAN. Authorize sanctions?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. The nature of the sanctions consist of excommunication from the Organization?

Mr. HAWKINS. No, sir. There is no provision for expulsion. The sanction consists of authorizing withholding the benefits granted under the charter from the offending country.

The CHAIRMAN. I thought we discussed yesterday a withdrawal provision which we then described as having the effect of outlawry?

Mr. HAWKINS. Yes. That point, Senator, was this: If sanctions are authorized against a member, for any reason, or for the reason specified—that only appears in certain places—the member against which the action is taken has a right of withdrawal on short notice. That is in paragraph 3 of article 24.

The CHAIRMAN. And there are provisions whereby the Organization, under certain circumstances, can allow a member or members to discriminate against an offending member.

Mr. HAWKINS. Yes, sir. That is pretty general where the sanction is applied, you see, because you withdraw the benefits from a particular country, which means discrimination against it.

The CHAIRMAN. For example, an agreed upon rate might be abrogated and raised for the benefit of a complaining nation, or members.

Mr. HAWKINS. I do not think, Senator, where there has been an agreement regarding rates, that that rate could be set aside.

The CHAIRMAN. I have a rather definite memory that some of the most favored nation provisions can be abrogated to punish a recalcitrant member, and to benefit a complaining member. I am quite sure I am right about that, Mr. Hawkins.

Mr. HAWKINS. Yes, I think that could be done.

The CHAIRMAN. Now, in that whole field of sanctions and remedies, and penalties, those are new and novel procedures?

Mr. HAWKINS. Not entirely.

The CHAIRMAN. I am continuing to pursue what is left in this plan after we allow for the exceptions. We developed three to four things which a nation cannot do, despite the exceptions, which is a new development under the charter.

Now, we have developed a series of sanctions and penalties which I am suggesting is something new. Am I correct in that?

Mr. HAWKINS. Yes, sir. We have had provisions in our trade agreements under which, under certain conditions, concessions can be withdrawn.

The CHAIRMAN. But we have never had a plan of this kind which, in this comprehensive manner organized a whole rounded series of benefits and penalties.

Mr. HAWKINS. No, sir.

The CHAIRMAN. Shall we pass to the place where we left off the other day? Was that article 15?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Had we discussed 15?

Mr. HAWKINS. No, sir. We stopped at 14.

The CHAIRMAN. Article 15 [reading]:

NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

1. The Members agree that neither internal taxes nor other internal charges nor internal laws, regulations or requirements should be used to afford protection directly or indirectly for any national product.

2. The products of any Member country imported into any other member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin.

3. The products of any member country imported into any other member country shall be accorded treatment no less favorable than that accorded to like products of national origin in respect of all laws, regulations, or requirements affecting their internal sale, offering for sale, transportation, distribution or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used, *Provided*, that any such requirement in force on the day of the signature of this charter may be continued until the expiration of 1 year from the day on which this Charter enters into force, which period may be extended in respect of

any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter. Requirements permitted to be maintained under the foregoing proviso shall be subject to negotiation in the manner provided for in respect of tariffs under Article 24.

4. The provisions of paragraphs 1 and 3 of this Article shall not be construed to prevent the application of internal laws, regulations, or requirements, other than taxes, relating to the distribution or exhibition of cinematograph films. Any laws, regulations, or requirements so applied shall, however, be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24.

5. The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale (nor for use in the production of goods for sale).

Would you care to comment on that article?

Mr. HAWKINS. Yes, Senator. In its general purpose, it is the same as provisions which, for many years, we have included in our commercial treaties and our trade agreements. It is based on the general theory that protection, when accorded, should be at the custom house at the time of the importation, so that traders would know better where they stand. Once they get by the customs house then the discrimination ends. That is the general purpose of it.

It deals not only with the internal taxes, as you will notice, but also with internal regulations which have a similar effect, such as the mixing requirement that is referred to in the third paragraph.

That is all I have to say in the way of a general comment.

The CHAIRMAN. With reference to paragraph 1, which reads:

The Members agree that neither internal taxes nor other internal charges nor internal laws, regulations, or requirements should be used to afford protection directly or indirectly for any national product.

We are coming to the subject of subsidies later, but supposing that an internal law had the effect of reducing the ceiling price of merchandise thus making it more difficult for exporters to compete in our market, would that be prohibited?

Mr. HAWKINS. Some measure other than a subsidy, you mean?

The CHAIRMAN. Any measure that had the effect, as a direct result of its operation, of reducing the prices of goods sold on our domestic market.

Mr. HAWKINS. Could I ask Mr. Leddy to answer that?

The CHAIRMAN. Yes.

Mr. LEDDY. No, I do not believe it would. The question of subsidies is in article 30. They are specifically permitted.

The CHAIRMAN. Would you say that this language would exclude that sort of thing?

Mr. LEDDY. I would say that the language would not cover the subsidies.

The CHAIRMAN. If there were some other device of favoritism established by law, which would reduce the price, would that be included in this language?

Mr. LEDDY. No, sir. I think if the effect would be to reduce the price of the domestic product, it is not intended to be covered by paragraph 1. I might say about paragraph 1, that it is a general principle, it is not a mandatory obligation. It is stated in terms more or less of a declaration of objective.

The specific things that are forbidden are dealt with in paragraphs 2 and 3.

The CHAIRMAN. It may be cavilling a little bit, but I suggest that any internal law that would have the effect of reducing prices would indirectly affect the competitive position of imports.

Mr. LEDDY. Yes, sir. I think that the paragraph is open to that conclusion.

The CHAIRMAN. It seems to me that paragraph 2 is clear, and that has always been our position, has it not?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. That has not always been the position of various foreign countries.

Mr. HAWKINS. No, sir. We have had difficulties in negotiations with other countries on that paragraph.

The CHAIRMAN. Paragraph 2 [reading]:

The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin.

Let me invite your attention to the second sentence of paragraph 3:

The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used—

At the present time we are restricting the amount of natural rubber that may be mixed in connection with our synthetic rubber. Would we be required to give up those regulations if this charter became effective.

Mr. HAWKINS. The proviso should be taken into account there, "*Provided*, That any such requirement in force," and so on.

The CHAIRMAN. They may be continued until the expiration of 1 year.

Mr. HAWKINS. Yes.

The CHAIRMAN. I will put the question, Could we continue that particular regulation longer than 1 year after the charter becomes effective?

Mr. HAWKINS. Possibly, under the rest of the provision.

The CHAIRMAN (reading):

If the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this charter.

Would you mind bringing that language into relation to the specific thing that we are talking about?

Mr. HAWKINS. That restriction that you speak of could remain in force 1 year after the charter takes effect. It could remain in effect indefinitely thereafter if the Organization concurs that it is less restrictive than, we will say, a direct subsidy, which would be a subsidy permitted under the charter.

The CHAIRMAN. As to that, or any other examples that we might think of, the decision there will be in the Organization?

Mr. HAWKINS. The decision for extending—

The CHAIRMAN. Beyond 1 year.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Would be in the Organization?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. In other words, if we wanted to continue that particular regulation longer than a year, after the adoption of the charter,

we would have to convince the Organization that if we did not do this we might, under the charter, do something even more restrictive. Is that right?

Mr. HAWKINS. Yes, sir; there is one point, Senator. I think it is pertinent, probably.

A mixing requirement for the manufacture of Army supplies would, I think, be permitted under a general reservation in a later article.

The CHAIRMAN. As I recall it there is a specific exception for Army supplies.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. The last sentence in paragraph 3 [reading]:

Requirements permitted to be maintained under the foregoing proviso shall be subject to negotiation in the manner provided for in respect of tariffs under article 24.

Would you mind developing the significance of that?

Mr. HAWKINS. Well, if there were a mixing requirement, such as some countries have regarding the proportion of domestic wheat used in the manufacture of flour, say, and the organization permitted it to continue as being less restrictive than something else they might do, it would be understood that any party that had an interest in it, could, in trade negotiations, bargain it away as a part of the concessions that that country would make in return for what it is getting. It merely leaves the way open for dealing with things that are of particular interest to some other country.

The CHAIRMAN. Those mixing agreements are also quite common in Europe, are they not?

Mr. HAWKINS. They are mixing requirements, sir; yes, sir.

The CHAIRMAN. Mixing requirements, I meant.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. France has a flour mixing requirement, has it not?

Mr. HAWKINS. I do not recall specifically whether France has or not. I know that a number of countries in Europe do have them. I believe the Scandinavian countries have mixing requirements for flour.

The CHAIRMAN. They are content to give those up under the Charter?

Mr. HAWKINS. They have been so far, Senator. Of course, we do not know what position they finally will take when we resume discussions of this. These provisions were formulated by experts without commitment. They will probably go back and talk to their governments, and may get different instructions. We do not know.

The CHAIRMAN. What is the reason for the cinematograph films language in paragraph 4?

Mr. HAWKINS. Certain countries have what virtually amounts to a quota on screen time, requiring that a certain proportion of the theater's screen time should be reserved for motion pictures domestically produced. That is put in this paragraph to enable them to retain such requirements.

The CHAIRMAN. How do you distinguish that in principle from other products?

Mr. HAWKINS. We do not. And I might say we have objected to this and will continue to object to it.

The CHAIRMAN. It certainly works as a restriction on our own film business, does it not?

Mr. HAWKINS. Yes, sir; we think it is entirely unjustifiable and have said so and will continue to do so.

The CHAIRMAN. Are we maintaining any restrictions on foreign films at the present time?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Did we at one time have a retaliatory restriction?

Mr. HAWKINS. Not to my knowledge; we have been very liberal in the treatment of foreign films. In fact, I believe there has been an attitude of encouragement in the showing of foreign films here on the part of our own film people.

The CHAIRMAN. Have we taken a strong position against this paragraph?

Mr. HAWKINS. We have; yes, sir.

The CHAIRMAN. If this violates the proprieties, do not answer it. What countries are supporting this provision?

Mr. HAWKINS. Quite a few; a good many countries want to develop motion-picture industries.

The CHAIRMAN. Italy at one time had a film business, but, of course, I suppose Italy is out of consideration at the present time as far as this Charter is concerned.

Mr. HAWKINS. Yes, for the time being.

The CHAIRMAN. Do any other European countries occur to you that have infant film businesses?

Mr. HAWKINS. Yes, sir; there are altogether too many of them, Senator. There is quite a tendency to try to develop local motion picture industries, the reason being that not having them, and being forced to use American pictures, which are on the average far better than others, rather touches the national pride and prestige.

The CHAIRMAN. Paragraph 5 reads:

The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale (nor for use in the production of goods for sale).

The United States has a "Buy American" Act requiring this Government to purchase American goods in connection with its public projects. Would that act be affected by this provision? (The terms of the "Buy American" Act are set forth in exhibit XIX-D.)

Mr. HAWKINS. No, sir.

The CHAIRMAN. What is the meaning of the parenthetical words "nor for use in the production of goods for sale"?

Mr. HAWKINS. Apparently in the drafting committee there was some doubt about that, and that is why it was put in brackets.

Mr. LEDDY. The purpose of the language in brackets is to prevent application of this exception to enterprises, for example, which purchase goods, process them, and then sell them in normal commercial channels.

The CHAIRMAN. They would be permitted to do that?

Mr. LEDDY. No, sir; that sort of an enterprise would have to give nondiscriminatory treatment.

The CHAIRMAN. Let me go through the language of that again. [Reading:]

The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale---

In other words, we would be permitted to maintain our "Buy American" Act.

Mr. LEDDY. Yes, sir.

The CHAIRMAN. Now then, does it not mean also that the provisions of this article shall not apply so far as use in the production of goods for sale is concerned?

Mr. LEDDY. No, sir; it means that if the Government purchases supplies, processes the materials into a finished product, and then sells that on the ordinary commercial market, that procedure does not come under this exception.

The CHAIRMAN. That would be prohibited?

Mr. LEDDY. That would be prohibited. That is to say, that kind of an operation would be subject to the provisions for national treatment.

The CHAIRMAN. I doubt if you said what you meant to say there.

Mr. LEDDY. If the supplies are for use of the production of goods for sale, then national treatment must be given. If they are not for use in the production of goods for sale, but are used by the Government, then, simply consumed—

The CHAIRMAN. Your explanation is very clear, but I am still hanging on to the thought that you have not said that in the parenthetical part of paragraph 5.

Mr. LEDDY. It states [reading]:

The provisions of the Article shall not apply to the procurement of supplies which are not to be used in the production of goods for sale.

If they are to be used in the production of goods for sale, then the provisions of the article shall apply.

I think what is of possible confusion is the double negative, the use of the double negative there.

The CHAIRMAN. I do not believe you said what you meant to say in that paragraph.

Article 18, entitled "Freedom of Transit." [Reading:]

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit." The provisions of this Article shall not apply to the operation of aircraft in transit.

While we are at it, would you mind developing a little bit the last sentence of that paragraph relating to aircraft?

Mr. HAWKINS. The only purpose, Senator, is to exclude aircraft in transit from the operation of the charter.

The CHAIRMAN. Aircraft would have its own code, international, under which it will operate?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Paragraph 2 [reading]:

There shall be freedom of transit through the Member countries via the routes most convenient for international transit for traffic in transit to or from other Member countries. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, or vessels or other means of transport.

Is any exception provided for during a time of emergency, short of war?

Mr. HAWKINS. There is a general exception, I think, that covers the case.

Mr. LEDDY. Article 37, page 31, subparagraph (e).

The CHAIRMAN. That subparagraph reads:

In time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member.

I think that answers completely what was in my mind.

Paragraph 3 [reading]:

Any Member may require that traffic in transit through its territory be entered at the proper customhouse, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

Would you mind giving us a few of the instances which called for the development of this rule?

Mr. HAWKINS. I do not know as I can give you specific cases, but there have been instances in which a government will charge a transit tax, it is a tax above and beyond what is necessary for the expenses involved, on goods passing in transit across that territory. This clause is aimed at preventing that.

The CHAIRMAN. Is there not also a discriminatory possibility in compelling one country to choose a longer route than another country?

Mr. HAWKINS. Of course, by taxing the traffic on the direct route—

The CHAIRMAN. There is a provision here that there shall not be the imposition of unnecessary delays or restrictions.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. If you compel one country to take a much longer route to move its merchandise in transit than you would another, there would be an unnecessary delay.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. What I have in mind are the complaints that come from Europe that some of the occupying countries are very arbitrary in their in-transit requirements.

Mr. HAWKINS. Yes, sir. Of course, an article of this kind is extremely vital to certain countries, those land-locked countries in Europe, which can be throttled by deviations from this kind of provision.

The CHAIRMAN. Paragraph 4 [reading]:

All charges and regulations imposed by Members on traffic to or from other Member countries shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, rules, and formalities in connexion with transit, each Member shall accord to traffic in transit to or from any other Member country treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.

6. Each Member shall accord to products which have been in transit through any other Member country treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through such other Member country. Any Member shall, however, be free to maintain its requirements of direct consignment (expedition directe) existing on the day of the signature of this Charter, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty, or has relation to the country's prescribed method of valuation for duty purposes.

May we have an explanation of the first sentence of that paragraph?

Mr. HAWKINS. Yes, sir.

An example would be that, say, Canada, could not discriminate in any way as between a shipment, we will say, from some country in Europe, if it moves by way of say, New York and then up to a point in Canada rather than coming direct to Montreal.

The CHAIRMAN. What is the practice that causes us to insert the provision?

Mr. HAWKINS. It is aimed at the thing that is excepted. I think here is a case, Senator, where the exception goes far toward spoiling the rule. This is something that needs to be discussed further.

The CHAIRMAN. I should think so.

Would you mind explaining the second sentence of the paragraph?

Mr. HAWKINS. In the first place, of course, the article as a whole has some residual value after you take cognizance of the exception, in that it prevents new discriminations in the future. It excepts only those in effect on the date of the signature of the Charter.

The exception would cover the exact case that I gave, where Canada, we will say, denies the benefit of preferential rates to an import from Britain if it comes through the United States. If it goes direct it gets the benefit.

The same sort of thing applies elsewhere in the Empire.

The CHAIRMAN. It is a device to aggrandize a particular country's own shipping and port charges?

Mr. HAWKINS. Yes, sir. Of course, there is this to be said: To the extent that you get rid of preferences, you tend to make this exception meaningless.

The CHAIRMAN. Are these provisions, paragraphs 1, 2, 3, 4, 5, and 6, generally acceptable to our own shippers and traders?

Mr. HAWKINS. Yes. The exception is not. But what we were after here, down to that exception, is very acceptable.

The CHAIRMAN. Article 17 [reading]:

ANTI-DUMPING AND COUNTERVAILING DUTIES

1. No antidumping duty or charge shall be imposed on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of the product exported from one country to another is less than (a) the comparable price for the like product to buyers in the domestic market of the exporting country, or, in the absence of such domestic price, either (b) the highest comparable price at which the like product is sold for export to any third country in the ordinary course of commerce, or (c) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit; with due allowance in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

No countervailing duty shall be imposed on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation. The term "countervailing duty" shall be understood to mean an additional duty imposed for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production, or exportation of any merchandise.

3. No product of any Member country imported into any other Member country shall be subject to antidumping or countervailing duty by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund of such duties or taxes.

4. No product of any Member country imported into any other Member country shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

5. No Member shall impose any antidumping or countervailing duty or charge on the importation of any product of other Member countries unless it determines that the effect of the dumping or subsidization, as the case may be, is such as materially to injure or threaten to injure an established domestic industry, or is such as to prevent the establishment of a domestic industry.

6. Nothing in this Article shall preclude Members, parties to a regulatory commodity agreement conforming to the principles of Chapter VII, from incorporating in such agreement provisions prohibiting, as between themselves, the use of antidumping duties in cases in which dumping, within the meaning of paragraph 1 of this Article, may be permitted under the terms of such an agreement.

Will you comment on that article, please?

Mr. HAWKINS. Its purposes, Senator, is to protect—one of its purposes is to protect—any duty concessions that may be agreed to.

If, for example, a foreign country agrees to bind the rate of duty, or reduce it, on imports of foreign products, and then proceeds to put on other kinds of duties, calling them antidumping duties, the concession is nullified.

Now, this is a definition of what you mean by "dumping duties," and any duties put on for dumping purposes must not go beyond them. There have been cases in which countries have entered into agreements for the reduction of tariffs, and then have arbitrarily put on so-called dumping duties without much regard to any rules at all. An article of this kind is important from that point of view.

These are substantially the provisions of the United States anti-dumping law. This definition conforms to our law. The whole article conforms to our own law with one exception: The provisions of section 203 of the Tariff Act which impose countervailing duties against foreign subsidies apply whether or not injury is shown.

In other words, no question of whether injury has taken place need be considered under our law. It applies more or less automatically.

Under this provision, paragraph 5, countervailing duties must not be imposed unless injury is shown. To that extent it would be a modification in our law, if Congress approved this Charter.

The CHAIRMAN. As to paragraph 1, you have three tests for measuring the margin of dumping. One goes to the comparable price of the like product in the domestic market of the exporting country. The other goes to the comparable price at which the other has sold, and the third goes to the cost of the product in the country of origin.

How can you figure the price, or the comparable price, or the cost of production in monopoly states, or state ownership, or socialistic states, or states with unstable currencies, and who does the figuring?

Mr. HAWKINS. The answer to the last part of your question is that the administrative authorities of the country applying the antidumping provisions do the figuring.

The CHAIRMAN. There is no appeal to the Organization as to this?

Mr. HAWKINS. Only in case of abuse or misuse of it, if complaint were made under that general impairment clause in article 35.

The CHAIRMAN. This, too, then, is subject to 35?

Mr. HAWKINS. Yes; the misuse of it would be.

The CHAIRMAN. Now as to the determination of the price, the comparable price, and the cost of production, in monopoly states, or socialistic states, or in states with unstable currencies.

Mr. HAWKINS. I do not believe that you could determine those costs in the first two categories. As to the costs in states with unstable currencies, I think that our own authorities must have figured out a way to do it, because I believe they are doing it, but I do not know how.

Mr. LEDDY. I should think you would be able to determine some price basis in the case of countries with unstable currencies. It may be difficult, but I think a basis could be found at a particular time.

It would be related, I should think, to particular shipments of goods so that you would have a particular time on which to base your estimate.

The CHAIRMAN. In that kind of a case, assuming we were imposing the restriction we might not want to be content with the official parity.

Mr. LEDDY. We would not be required to refer here to any official parity. We would have regard to what we thought were the actual conditions.

The CHAIRMAN. For this purpose if we wanted to look at the black market parity, we could do so.

Mr. LEDDY. If that were relevant, yes, sir.

The CHAIRMAN. But as to the monopoly states, and as to socialistic states having extensive state ownership, maintained or subsidized by taxation, do you believe, Mr. Hawkins, that it would be very difficult, if not impossible, to figure it out?

Mr. HAWKINS. Yes, sir; I believe it would. I have not talked with our Customs Bureau on the point, to find out what they would do. I think it would be impossible.

The CHAIRMAN. Obviously. But those states, under this charter, have the right to export; have they not?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. So that we would have to impose an antidumping duty if we felt it necessary—and I interject to say that that type of state is in an especially advantageous position to dump, because they do not have to give a great deal of consideration to costs. We would have to take our protection in a rather blind sort of way; would we not?

Mr. HAWKINS. Yes, sir.

I should like to say, Senator, this is not mandatory. You do not have to apply it. You are permitted to apply it if you conform to these principles.

The CHAIRMAN. Yes. But I can see where we might want to apply it. And if we did apply it we would have to be governed by the margins which are prescribed here, and the margins prescribed here, in two out of the three cases, are rather impossible to determine, and in the third case certainly very difficult, if not impossible, to determine.

Mr. HAWKINS. The only point, I think, that is worth making is that by this article we retain the defenses that we have under our present law for what they are worth, and they are, of course, applicable over a wide area.

The CHAIRMAN. In the early days of our tariff discussions in this country—let us fasten it a little closer—at the time of the tariff discussions during the McKinley era, some of the arguments against the tariff system used the example of typewriters and pointed out—I

forget the figures now—that the American citizen had to pay approximately, let us say, \$100 a typewriter, which same typewriter we sold in foreign countries for, let us say, \$50. Would that be a sample of dumping?

Mr. HAWKINS. Yes; I think that very likely would be caught by this definition of dumping that is set forth here.

The CHAIRMAN. And the margin formula there would be rather easy to apply.

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Does that not point up a distinction between the nature of our export trade and that of Great Britain, for example?

Our export trade represents about 10 percent of our entire trade; does it not?

Mr. HAWKINS. That, I believe, is the figure. I have not seen the latest figure.

The CHAIRMAN. Something like that, roughly?

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. So that our export trade is the tail to the dog. It is an incident to our domestic production.

We are in position, in disposing of our surplus, to do it to great advantage and at large discounts. If you are producing 100 units and 90 of them are needed for your domestic market, you may carry your overhead at their domestic price and the remaining 10 may therefore be sold abroad for a lesser price. Whereas a country like Great Britain which must export or die and which therefore has a larger percentage of export business cannot view that export part of its business as surplus and cannot write off the overhead attributable to it.

So in this dumping business we would have an advantage, at least as to some products, and this tends to wipe out that advantage, does it not?

Mr. HAWKINS. I doubt, Senator, whether that distinction that you are making between the attitude of our exporters and the British exporters—

The CHAIRMAN. The weakness in the case that I put to you is that I put an opprobrious epithet on my illustration.

We do not like that word dumping. We view it as something very wrong. Let us talk in terms of disposing of surplus.

Mr. HAWKINS. That is not what bothered me.

The CHAIRMAN. Now, does not an act of this kind tend to equalize that advantage? Does that not put us at a disadvantage?

Mr. HAWKINS. It would, Senator, on your premise, but I am in doubt 'ut your premise. I do not believe that the attitude of American exporters nowadays, in recent years, differs a great deal from the attitude of the British. Our exporters, at least all that I have been in contact with, and that is quite a few, are not merely treating their exports as a sort of an appendage to their domestic trade-- as something purely incidental. They are finding to an increasing extent that need for getting broader markets than we have even in this huge market, and they are attempting to build up more permanent kinds of trade than you would get by the sporadic shoving of the merchandise into the export market. You cannot do it that way successfully for very long.

So that I am inclined to doubt whether your premise is right.

The CHAIRMAN. It may be that I have carried it too far. Would you say that I am completely wrong in the distinction that I make between what is surplus to us, and what is a primary and principal business transaction for Great Britain?

Mr. HAWKINS. I think there is an element of truth in it, but it is a changing situation.

The CHAIRMAN. Let me put it this way: I can readily imagine that we might have a business in this country that would deal exclusively with exports, that would make nothing for domestic sale.

Now, of course, my case would be inapplicable to that sort of situation. I can conceive of a business that is in a middle course that sells half of its product on the domestic market and half of it in export.

I can conceive of the third case, the case of the kind I was talking about, where making that last unit does not cost a great deal; it goes into surplus, and you can afford to sell it cheaply.

Mr. HAWKINS. That is possible in some cases. But it is awfully hard to generalize about it, because we have industries, producers, a major part of whose production, as you say, goes abroad. Take fruits and things of that sort, as well as many manufactures that you know of.

So that they cannot adopt a capricious attitude toward their foreign business, as some undoubtedly have done.

The CHAIRMAN. In paragraph 2 it is said:

No countervailing duty shall be imposed on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation. The term "countervailing duty" shall be understood to mean an additional duty imposed for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production, or exportation of any merchandise.

I suggest that that is a very important paragraph as far as our own affairs are concerned. I would appreciate very much if you would discuss it in relation to the subsidy which is in our merchant marine, the subsidy which is in our agricultural products, and so forth.

Mr. HAWKINS. First, Senator, it would not apply to merchant marine subsidies by its terms. It deals with countervailing duties imposed on subsidized products. It would not apply to shipping subsidies.

Now, as to the relation of the countervailing duties to our own export—

The CHAIRMAN. Why did you exclude the merchant marine?

Mr. HAWKINS. Note the first two lines: "No countervailing duties shall be imposed on any product," and there is nothing else.

The CHAIRMAN. It goes on to say: "Of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation."

Mr. HAWKINS. Yes, sir.

The CHAIRMAN. Does this not include our merchant marine subsidy?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Does not merchant marine subsidy come under that language?

Mr. HAWKINS. No, sir.

The CHAIRMAN. Is it not an indirect subsidy?

Mr. HAWKINS. I think it might in a very remote way, be regarded as a subsidization of goods. But I feel sure that for purposes of applying countervailing duty laws it could not be regarded as an indirect subsidy.

The CHAIRMAN. I do not follow your reasoning on that. If I have something to sell in a foreign country, and I am enabled to sell it by reason of cheaper transportation rates, cheaper than I would otherwise, do I not have the benefit of a subsidy?

Mr. HAWKINS. Yes. But does the subsidy result in cheaper transportation rates?

The purpose of the subsidy is to offset, usually, the differences in operating and building costs.

The CHAIRMAN. Of course, if you did not have that subsidy your rates would have to be higher?

Mr. HAWKINS. No, sir. Not necessarily. Because they have to meet competitive foreign rates, and the effect would be that you would not have the American ships in service.

The CHAIRMAN. That is why we give the subsidy so that we can meet that rate. If we deny the subsidy our rate would be much higher than the rates of other shippers.

Mr. HAWKINS. I doubt that, Senator.

The CHAIRMAN. I think that is the basis for our merchant marine subsidies.

Mr. HAWKINS. I do not believe that the—I am getting a little out of my field here—but I do not believe that the United States shipping subsidies affect the rates, the shipping rates, ocean shipping rates, on imports and exports of the United States. I may possibly be wrong on that, but I think that is right.

The CHAIRMAN. I wish you would give that further thought. At least logically it seems to me that you are wrong. I suggest again that one of the reasons we subsidize our merchant marine is that it will be put in position to compete with foreign shipping which operates under lower wages, lower building costs, lower general operating costs.

Mr. HAWKINS. I think the proof might be found on the point, Senator, if there were any case in which a foreign country had put a countervailing duty on American export products, because of our shipping subsidies.

The CHAIRMAN. But would it not be warranted in doing so under this provision? That is exactly what I am driving at.

Mr. HAWKINS. I will look into it. Frankly, it does not worry me a great deal. We will look into it.

The CHAIRMAN. Would you say that it has relation to our parity prices, and our support prices in agricultural products?

Mr. HAWKINS. Wherever there is an export subsidy.

The CHAIRMAN. Must there be an export subsidy?

Mr. HAWKINS. Or subsidy.

The CHAIRMAN. We are in agreement it does not have to be a specified export subsidy.

Mr. HAWKINS. We are in agreement; yes.

The CHAIRMAN. If there is an inherent subsidy in it, it comes under the provision of the paragraph, does it not?

Mr. HAWKINS. That is right.

The CHAIRMAN. We have had direct subsidies, and I understand these are at the present time suspended except as to raw cotton and for potatoes, on butter, raw cotton, cotton products, prunes, corn, corn products, rice, wheat products, raisins, pork products, skim milk evaporated milk, semolina, Irish potatoes, tobacco, walnuts, wheat flour, wheat, pears. We have direct subsidies in the field of metals, antimony, copper, lead, zinc, petroleum. We have subsidies in petroleum, as far as stripper wells are concerned. (See exhibit XIX-B.)

What I am trying to get at is, will they subject us to countervailing duties?

Mr. HAWKINS. The point, Senator, is that this is a limitation on these countervailing duties. This is trying to hold it down to the amount of the duties, so that there would not be punitive duties put on because you are subsidizing.

The CHAIRMAN. I agree.

Mr. HAWKINS. We are very badly handicapped in striking out provisions of this kind because our own law provides for it. We are limited here to doing what our own law permits us to do.

But from the point of view that you are speaking, as to our own subsidization, this is some protection against excessive countervailing duties against us, for those reasons.

The CHAIRMAN. We could put our own countervailing duties on, and the other fellow could do the same, according to the formula outlined.

Mr. HAWKINS. Yes. We are trying to tie it down and limit it as much as possible.

The CHAIRMAN. Paragraph 3 [reading]:

No product of any Member country imported into any other Member country shall be subject to antidumping or countervailing duty by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund of such duties or taxes.

Would you mind explaining that?

Mr. HAWKINS. Could I ask Mr. Luddy to do that?

The CHAIRMAN. Yes.

Mr. LUDDY. It is almost a universal practice to exempt exported goods from domestic consumption taxation. For example, in the case of the United States we have an internal tax on liquors which does not apply to exported liquors.

Now, if—

The CHAIRMAN. The same is true of tobacco, is it not?

Mr. LUDDY. Yes.

Technically, a comparison under paragraph 1 of the domestic price of American liquor, and the export price, would reveal a dumping disparity because of the internal tax. This is simply to say that the internal tax, in such cases, for the exported products, does not pay the tax, shall be disregarded and no dumping duty may be imposed by reason of the disparity.

The CHAIRMAN. Paragraph 4 [reading]:

No product of any Member country imported into any other Member country shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

I think that is clear. Paragraph 5 [reading]:

No Member shall impose any antidumping or countervailing duty or charge on the importation of any product of other Member countries unless it determines that the effect of the dumping or subsidization, as the case may be, is such as materially to injure or threaten to injure an established domestic industry, or is such as to prevent the establishment of a domestic industry.

That is the first time that the injury principle has appeared in the Charter. We have it as a test for recourse to the escape clause so far as tariffs are concerned. That is the first time it has appeared as to any of these other features.

Did that arise out of any particular demand? Did we invent the conception? Is that an American conception?

Mr. HAWKINS. I might let Mr. Leddy answer that.

Mr. LEDDY. That is our present Antidumping Act of 1921, here extended to countervailing duties.

The CHAIRMAN. Paragraph 6 [reading]:

Nothing in this Article shall preclude Members, parties to a regulatory commodity agreement conforming to the principles of Chapter VII, from incorporating in such agreement provisions prohibiting, as between themselves, the use of anti-dumping duties in cases in which dumping, within the meaning of paragraph 1 of this Article, may be permitted under the terms of such an agreement.

Would you mind illustrating that paragraph?

Mr. LEDDY. Senator, I do not believe the paragraph adds anything to the charter. It was put in at the request of one or two of the delegations who thought that it might be of some use to them.

The point is this: That under commodity agreements in chapter VII, export subsidies may be permitted to continue. The product is one which is in burdensome world surplus, and which is affected by many existing export subsidy systems.

Now, if the product is subject to a regulatory commodity agreement which involves the use of import and export quotas, it may be desirable to provide in that agreement that the countries will not impose countervailing duties. It really is rather futile because, having agreed to a commodity agreement, and to accept such and such a quantity of imports under a quota, there would be no purpose in applying countervailing duties.

The CHAIRMAN. It seems to me to be just a gratuity.

Mr. LEDDY. Yes, sir. It is.

The CHAIRMAN. I believe that we have reached a good place to stop for the day.

The committee will be engaged tomorrow in another hearing, and so we will go over until 10:30 on Saturday morning.

I believe our hearing will be in the Senate finance room, but it might be well for anyone interested to check.

We are adjourned.

(Whereupon, at 5:30 p. m., the committee was adjourned, to reconvene on Saturday, March 29, 1947, at 10:30 a. m.)

INTERNATIONAL TRADE ORGANIZATION

SATURDAY, MARCH 29, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in room 312, Senate Office Building. Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Eugene D. Millikin (chairman), George, Connally, and Johnson of Colorado.

The CHAIRMAN. The committee will come to order.

STATEMENTS OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE, WASHINGTON, D. C., Resumed; AND JOHN M. LEDDY, ADVISER, DIVISION OF COMMERCIAL POLICY, STATE DEPARTMENT, WASHINGTON, D. C.—Resumed

The CHAIRMAN. Dr. Wilcox, we would appreciate a memo from your legal department showing the authority, if any, other than possibly by treaty, for delegation to an international body in which we shall have a minority vote of congressional jurisdiction over our foreign commerce, duties, imposts, and excises.

Mr. Wilcox. We will do that, sir.

(The information is as follows:)

During the hearings on the International Trade Organization before the Senate Finance Committee on March 29, Senator Millikin requested that the Department of State submit a memorandum setting forth the authority other than possibly by treaty, for delegating to an international body jurisdiction which Congress has over duties, imposts, and excises and our foreign commerce generally.

It is believed that this question rests upon a misapprehension, since the draft charter for an international trade organization does not delegate to the organization jurisdiction of this character. There is no power given to the Organization to compel any member to reduce any duty, impost, or excise or to prevent any member from raising any duty, impost, or excise.

The broad general functions of the Organization are specified in article 61. These include the collection, analysis, and publication of information, facilitation of consultation and the settlement of disputes among members, the making of recommendations and furnishing of advice and assistance to members, and cooperation with the United Nations and other intergovernmental organizations. Elsewhere in the charter functions relating to specific matters are also given to the Organization. Most of these relate to making studies, investigations, and recommendations or providing assistance to members. In some cases the Organization is authorized to request reports from members on various subjects. In a relatively few instances, the Organization is authorized to take action to release members from obligations assumed under the charter.

Article 24 of the Draft Charter is entitled "Reduction of Tariffs and Elimination of Preferences." Paragraph 1 of this article contains an undertaking by members to enter into negotiations directed toward the reduction of tariffs and the elimination of preferences. By paragraph 2, members agree to keep the Organization informed of the progress of such negotiations. Paragraph 3 of this article provides that if the Organization finds that a member has, without sufficient justification, failed to negotiate with another member in accordance with its obligations under paragraph 1, the Organization may determine that the "complaining Members * * * shall be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member * * * may have negotiated pursuant to paragraph 1 of this Article."

It will be observed that the Organization has no power to compel a member to reduce its duties under article 24. The most that the Organization can do is to release another member from its most-favored-nation obligations to the first member under article 14, but the decision whether or not to act (that is, to withhold tariff benefits) rests with the member governments and not with the Organization.

Basically, the same situation exists with respect to other provisions of the Charter which authorize the Organization to take action. For example, under paragraph 2 of article 35 the Organization may under certain circumstances authorize a member or members to suspend such obligations or concessions under the Charter or tariff agreements pursuant thereto as may be appropriate in the circumstances. Likewise, the last sentence of article 34 provides that "In cases of abuse the Organization may authorize an affected Member to suspend obligations or concessions * * *." The same situation applies to subparagraphs (b) and (c) of paragraph 2 of article 12, which provides that in certain cases, the Organization may release a member from obligations assumed under the Charter.

This is also true of paragraph 3 of article 66, under which the Organization may determine criteria and set up procedures for waiving, in exceptional circumstances, obligations of members under the Charter.

As in article 24, the functions of the Organization are limited in the foregoing cases to releasing a member from an obligation which it will have voluntarily assumed under or pursuant to the Charter, and it is not believed that any provision of this kind would justify a statement that there is a delegation to an international body of congressional jurisdiction over foreign commerce, duties, imposts, and excises.

Paragraph 2 of article 28 appears to be the only instance in the Charter where members agree to remove or modify import restriction as specified by the Organization. But even in this case, the situation is not fundamentally unlike the situations previously discussed. Article 26 permits a member to restrict imports "insofar as this is necessary to safeguard its balance of payments and monetary reserves," but members agree to eliminate the restrictions when conditions no longer justify their maintenance and to relax them progressively as such conditions are approached. Article 27 provides generally for the nondiscriminatory application of import restrictions, and article 28 provides certain exceptions to the rule of nondiscrimination. Paragraph 2 of article 28 provides that, if the Organization finds that the balance-of-payments restrictions are being applied by a member country in a discriminatory manner inconsistent with the exceptions or in a manner which discriminates unnecessarily against the trade of another member country, the first member shall remove or modify the discrimination as specified by the Organization.

This provision is of great importance to the United States as a means of securing the removal of discriminations by foreign countries against our exports. On the other hand, it has no practical significance whatever from the point of view of its application to congressional jurisdiction over our foreign commerce. The United States does not maintain, and will not maintain in the foreseeable future, restrictions "to safeguard its balance of payments." Hence, it is inconceivable that the power of the Organization to compel a member to remove unnecessary discriminations under this provision could be directed against the United States.

Moreover, there is a reasonable basis for taking the position that, in accepting the Charter, members will have agreed not to apply balance-of-payments restrictions in an unnecessarily discriminatory manner, and that the Organization is simply given the power to see to it that members applying such restrictions live up to their obligations and remove any unnecessary discriminations. Finally, it will be observed that this provision in no way relates to "duties, imposts, and excises," also that it does not require the removal of restrictions as such but only

the removal or modification of unnecessary discriminations in the application of restrictions.

One other article of the draft charter should also be examined in this connection, article 57, "Obligations of members regarding existing and proposed commodity arrangements." Paragraph 1 of this article provides that "Members shall conform with the decisions made by the Organization regarding their continued participation in any such intergovernmental commodity arrangement which, after review by the Organization, shall have been found to be inconsistent with the intentions of this Charter." Paragraph 2 provides that members shall conform with decisions made by the Organization regarding their continued participation in negotiations for a commodity arrangement in which they are engaged at the time of the entry into force of the Charter.

It is not believed that the situation in article 57 differs fundamentally from the cases discussed earlier in this memorandum. In chapter VII, particularly in articles 51 and 53, the member governments undertake that certain specified principles shall govern intergovernmental commodity arrangements in which they participate. Paragraph 1 of article 57 in effect merely provides that any commodity arrangement in existence at the time of entry into force of the Charter shall be reviewed to determine whether they conform to the principles laid down in the Charter, and if they do not, members are to discontinue their participation in such arrangements. The same principle is made applicable in the second paragraph with respect to negotiations (looking toward the conclusion of commodity arrangements) in progress at the time the Charter comes into force. Since members agree that all commodity arrangements in which they participate are to be governed by the principles laid down in the Charter, it is only logical to provide that such arrangements already in existence, or in the process of negotiation, at the time the Charter comes into force, should likewise conform to the principles laid down in the Charter. The Organization is merely given the function of seeing to it that members live up to the obligations assumed in the Charter. Finally, it will be noted that article 57 relates only to a transitional period, covering the situation with regard to commodity arrangements already in existence or being negotiated at the time the Charter becomes effective.

APRIL 7, 1947.

The CHAIRMAN. Doctor, I do not believe it has been amply developed why we are making this multilateral approach to the trade-agreement problem at Geneva. Would you mind commenting on that?

Mr. WILCOX. The Trade Agreements Act, as you know, was renewed in 1945. Since that renewal no trade agreements have been entered into. The planning of the use of that authority has been directed to the program that you have been examining here.

The CHAIRMAN. May I interrupt?

The complete program of multilateral treaties and the Charter?

Mr. WILCOX. That is right.

The difference between previous trade-agreement negotiations and this negotiation, I would say, is this: In previous trade-agreement negotiations there has been a negotiation with one other country at a time, and the results of that agreement have been generalized to other countries through the operation of the most-favored-nation clause. The United States has obtained in return concessions from one country.

Now in this approach it is hoped that we shall obtain concessions from 17 countries as a result of negotiations carried forward simultaneously.

The CHAIRMAN. Do we not get most-favored-nation treatment from the nations who get the benefit of our generalized concessions at the present time?

Mr. WILCOX. That is right.

The CHAIRMAN. So what is the advantage?

Mr. WILCOX. Well, not only are we here really carrying on simultaneously 17 trade-agreement negotiations with 17 different countries, but they will be carrying on negotiations with each other, and as a

result of those negotiations there will be reductions in tariffs and other trade barriers as between those countries, and the advantage of those reductions will be extended to us. That is, the simultaneous negotiation of this structure of agreements among all of the participants at this meeting is intended to remove barriers to trade and to open up trade to a larger extent than would simply a succession of bilateral negotiations.

The CHAIRMAN. But if the 18 members met and started to make bilateral trade agreements with each other wherever they could?

Mr. WILCOX. Yes.

The CHAIRMAN. And if they included the most-favored-nation clause, would we not get the same net effect?

Mr. WILCOX. Of course that is what is going to happen, Senator. In the process of these negotiations there will be actual negotiations between pairs of countries. We will negotiate with the country that is the principal supplier of a product to us, and they will negotiate with us with respect to a product of which we are their principal supplier, and that determines the pairs of countries that will carry on negotiations.

So that, what you will have, in fact, is bilateral negotiations, but you not only will have bilateral negotiations between the United States and each of 17 other countries but you will also have bilateral negotiations among all of those countries.

The CHAIRMAN. All that I am driving at, at the present, Doctor, is, why not let those processes go ahead, let those nations which can agree with each other agree on a bilateral basis instead of tossing the whole thing into one pot?

Mr. WILCOX. That is precisely the question I am trying to answer, Senator.

The CHAIRMAN. Excuse me.

Mr. WILCOX. As a result of the negotiations going on in other countries to which we are not directly a party with respect to products where we are not a principal supplier but we are, let us say, an important supplier, a secondary or tertiary supplier, there will be reductions in tariffs, and, through the operation of the most-favored-nation rule we will get the advantage of those reductions in tariffs as well as in the case of the products in which we are primarily interested.

The CHAIRMAN. Would we not get them anyhow through the existence of our most-favored-nation clause in the treaties which are already in existence and the bilateral agreements and through the operation of the most-favored-nation clause which is supposed to keep us from being discriminated against in the countries which take the generalization?

Mr. WILCOX. We would get them anyhow if these other countries did in fact meet and carry on these negotiations with one another.

The CHAIRMAN. That brings me to the question, just as a matter of procedure why could not all of the purposes that you have in mind be satisfied by getting those 18 nations together and starting them trading with each other on a bilateral basis.

Mr. WILCOX. But that is precisely what we are doing.

The CHAIRMAN. Yes, but then you culminate it into a jackpot affair in which all of the members sign one agreement in which they will put all of the schedules on which they have agreed as a result of the process which you have described, and I am trying to determine why

that way rather than following the conventional method of getting people around and negotiating the conventional trade agreements.

Mr. WILCOX. Well, the character of the instrument or instruments that result from this process is a matter to which I would not be inclined to attach overriding importance. It might be perfectly possible to embody the results of these bilateral negotiations in a series of bilateral agreements. It is more convenient to write the common terms; that is, the terms that would be common to all of the agreements—

The CHAIRMAN. Yes.

Mr. WILCOX. To write them down once and then append the schedules which result from the bilateral negotiations.

The CHAIRMAN. That could be done, and if the nations cooperated in doing that the end result would be the same as if they signed one multilateral agreement, would it not?

Mr. WILCOX. I think so; yes.

Senator JOHNSON. Well, Mr. Chairman, it seems to me that the strong argument for this approach is that it ties with the International Bank and with the Stabilization Fund, and really what we are doing here, as I understand, is forming another bloc, only much larger than the sterling bloc, but the folks who come into this plan, they can come in on a voluntary basis, they are entitled to benefit under the Stabilization Fund, and I do see considerable advantage in that kind of approach.

We already have the International Bank and the Stabilization Fund. Now, then, we ought to determine who is to be entitled to the benefits of those agencies, and it seems to me that it is necessary to form some sort of organization such as is contemplated here; that is the way I understand it, although I am not too clear on the whole program.

The CHAIRMAN. I am not critical at this time of the multilateral approach. I wanted to develop why they were doing it that way.

Let me ask you this: Is this approach an essential part of what we have been referring to as the provisional organizational plan?

Mr. WILCOX. Well, the Interim Trade Committee is designed as a committee to supervise the details of the agreement. Similar committees have been set up in connection with bilateral agreements in the past. They have been only two-country committees.

The CHAIRMAN. So that the provisional organization—

Mr. WILCOX. But I should say that the committee is a byproduct of the agreements rather than vice versa.

The CHAIRMAN. This question has been suggested, Doctor: If we give substantial cuts in connection with the negotiation of the new trade agreements, what will we have left of real substance for trading after we get into the charter?

Mr. WILCOX. Well, we would give cuts only in connection with products of which the other countries in this group were our principal suppliers. Now, there will be products of which they are not principal suppliers, that we would not include in our negotiations, but because the group is large and because the group consists of important countries, the products involved will include a large number of the more important products on which we would have authority to bargain.

The CHAIRMAN. Then, on those products, you will have pretty well expended your bargaining power by the time you get into the charter?

Mr. WILCOX. That depends on the bargaining, Senator.

The CHAIRMAN. It is not to be assumed for the moment that you would make an across-the-board 50-percent cut in all of our tariff rates?

Mr. WILCOX. No, sir; that is not the intention.

The CHAIRMAN. If we exercised the full power to make a 50-percent cut, we would then be down to what level of tariff?

Mr. WILCOX. Well, it would be 50 percent of the present level.

The CHAIRMAN. All right. If you cut it 50 percent of the present level, what have you left?

Mr. WILCOX. We have no bargaining power left at all under the terms of the Trade Agreements Act. If a 50-percent cut were made in any case, our power would be completely exhausted.

The CHAIRMAN. So that, on the assumption that you would make use of your full power at Geneva, you would enter the charter denuded of bargaining power?

Mr. WILCOX. In any such case, yes.

The CHAIRMAN. Let us assume that we are now in the charter—

Mr. WILCOX. May I complete my answer to your earlier question as to why the matter is approached in a simultaneous negotiation with many countries present?

Also part of the negotiation is the charter.

The CHAIRMAN. The two are tied together?

Mr. WILCOX. That is right.

The CHAIRMAN. If you did not have the charter in mind, you could just as well do it on the usual bilateral basis, which would be expedited perhaps by having all the countries interested in it around the table and doing a simultaneous job?

Mr. WILCOX. Even if we did not have the charter in mind, we would have the advantage of, let us say, facilitating the negotiations among the other members in which the United States was not directly involved but from which it would indirectly benefit.

The CHAIRMAN. Yes; but if we used our prestige to get them all together and provide them with this stimulation, they could accomplish the same end results by separate bilateral approaches?

Mr. WILCOX. Yes.

The CHAIRMAN. Through the operation of the most-favored-nation clause?

Mr. WILCOX. Senator, if this point is not adequately clarified, we should be glad to prepare and submit a memorandum laying it out in more detail.

The CHAIRMAN. I wish you would, because I am sure we are going to have questions on it.

Mr. WILCOX. We will be glad to do that.

The CHAIRMAN. That will be done.

(The information supplied by the State Department appears as Exhibit XX.)

The CHAIRMAN. Now, what will be the effect of the charter, assuming it to be in operation, on our present Reciprocal Trade Act and present reciprocal trade system?

Mr. WILCOX. The charter itself would have no effect on the Reciprocal Trade Agreements Act. Under the charter, any country is free to enter into the bargaining process according to its own laws or regulations in any way in which it pleases, and as far as any requirements

of the charter are concerned we might have our present law, or an amended law, or a different system of negotiation. The only commitment in the charter is that we negotiate.

The CHAIRMAN. Assuming that we go ahead at Geneva and enter into these agreements on a multilateral basis, then assuming that we come under the charter, will that have the effect of an indefinite extension of the 3-year limitation under which we have been working, so far as our trade-agreement system is concerned?

Mr. WILCOX. I am not sure that I get the point of this question. It does not obligate us to renew the Trade Agreements Act.

The CHAIRMAN. Well, but does it deprive Congress of the choice next year, for example, as to whether or not it will renew it?

Mr. WILCOX. No, sir; it leaves the United States perfectly free as to the method that it shall adopt.

The CHAIRMAN. I mean, could we next year say, "Let us abolish this reciprocal trade system." and do it, under the charter?

Mr. WILCOX. As far as the provisions of the charter are concerned, yes.

The CHAIRMAN. We could do that?

Mr. WILCOX. Yes.

The CHAIRMAN. But the provisions of the charter would bring about much the same result, would they not? In other words, the charter calls for negotiation if someone asks to negotiate, and calls for a continuous system of trade agreements, does it not?

Mr. WILCOX. Yes, but the methods of negotiation are perfectly open.

The CHAIRMAN. Well, then, if we wanted to, we could end the reciprocal trade system, stay in good faith in the charter, and accomplish perhaps the same purposes through the operation of the charter, and by that I mean through the requirement that we deal with the nations that want to negotiate with us?

Mr. WILCOX. Yes, sir.

However, with respect to the countries with whom we shall negotiate at Geneva, we should be in a position to say that we have fulfilled our obligations with respect to those countries, but of course there will be 40 other countries, perhaps, who might call upon us to negotiate.

The CHAIRMAN. On the assumption that we will go into the charter, I assume that these 3-year trade agreements will come to an end or come to a point where they will be extended. Will that go right on under the charter, or will the charter obviate any further attention?

Mr. WILCOX. These agreements will stand on their own feet according to their own terms, and I believe that under the law they all provide for denunciation on 6 months' notice at the end of 2½ years or on 6 months' notice thereafter by either party.

The CHAIRMAN. Under the charter, if we got out from under these trade agreements we could get the equivalent of them by asking the members for negotiations?

Mr. WILCOX. They would have the right to call for negotiations.

The CHAIRMAN. It would be very helpful, I am sure, to the committee, Doctor, if we could have a summary of all of the obligations under the charter, first, where enforcement will depend alone on the pledges of the members, and, secondly, a summary of obligations as to which enforcement will depend exclusively upon consultation; thirdly,

a summary of obligations which may be sanctioned by the members or by the organization or in any way subjected to penalties upon violation.

We have tried to develop that as we have gone along here, but I think it would be useful if we had the State Department's composite view on it. Maybe we have overlooked something.

Mr. WILCOX. We shall be glad to prepare that.

The CHAIRMAN. I think that would be very useful.

(The information is as follows:)

NATURE OF ENFORCEMENT IN THE NEW YORK DRAFT OF THE ITO CHARTER

The ITO Charter may be considered to provide three types of enforcement: (1) Enforcement depending only on the pledge made by Members in becoming a party to the charter to accept the commitment in question; (2) enforcement depending, not only on the pledge resulting from becoming a party to the charter but also on procedures for consultation, discussion, exchange of information and views, and similar arrangements; and (3) enforcement depending not only on the pledged word and possibly consultative arrangements but also on sanctions or penalties which the members are permitted to impose against other members. In every instance these sanctions or penalties provided by the charter consist only of the suspension of obligations or concessions which other members have undertaken with respect to the offending member. In general, such suspension of obligations and concessions is designed merely to redress the balance between those members which are carrying out the provisions and purposes of the charter and those which are not, and to prevent the anomaly of permitting a member which fails to fulfill the provisions and purposes of the charter to enjoy the same benefits thereunder as are enjoyed by members which carry out such provisions and purposes.

The following summary indicates provisions in the charter relating to enforcement which fall in categories (2) and (3) of the above classification, except as indicated below, enforcement of charter obligations depend only on the pledged word of the signatories.

A. CHARTER PROVISIONS FOR CONSULTATIVE AND SIMILAR ARRANGEMENTS TO ENFORCE CHARTER OBLIGATIONS¹

1. Article 12, paragraph 8 provides for consultation with reference to complaints by one member or an affected business entity or person thereof that another member is acting inconsistently with its obligations under article 12. The most important of these obligations are that members shall not impose unreasonable impediments preventing other members from obtaining facilities for their economic development, and that members receiving such developmental assistance shall not take unreasonable action injurious to the members or entities there of affording such assistance.

2. Article 13, paragraph 2, provides for exchange of views and consultation regarding protective measures which a country would like to adopt but which would conflict with other provisions of the charter or with obligations assumed through negotiations under chapter V, such as commitments to reduce or bind particular tariffs.

3. Article 18 provides that members shall review, upon the request of another member, the operation of their laws and regulations relating to tariff valuation in the light of the principles defined in article 18, and that the Organization may

¹ No attempt is made to list all the provisions of the charter which relate in some way to consultation or similar matters, but to include only those which can reasonably be considered as relating to the enforcement of other obligations under the charter. In some instances the articles and paragraphs which are included in the list provide for consultation in case of a possible violation or inability to carry out charter provisions; sometimes they relate more generally to matters of interpretation or application of other charter obligations; and in a few instances they provide the waiving of such obligations. The list does not include provisions where the undertaking for consultation or negotiation is the principle obligation, such as arts. 8 and 24; nor does it include general provisions relating to the functioning of various bodies of the International Trade Organization, such as arts. 2 and 81. Needless to say, border-line cases exist, and further study may require some changes in the present classification.

request from members reports on the steps they have taken to bring the operation of such laws and regulations in conformity with these principles.

4. Article 19, paragraph 2, provides for the review by one member, upon the request of another, of the operation of its customs, laws, and regulations, and authorizes the Organization to request from members reports on steps taken by them in this connection and also with respect to giving effect to the principles and objectives regarding customs formalities specified in article 19, paragraph 1.

5. Article 25, paragraph 2, provides for consultation with reference to the imposition of quantitative restrictions.

6. Article 26, paragraphs 3 and 5, provide for consultation with respect to restrictions to safeguard the balance of payments.

7. Article 27, paragraph 4, provides for consultation regarding the nondiscriminatory application of quantitative import restrictions. Paragraph 5 of this article has the effect of providing consultation with respect to export restrictions and internal regulations or requirements under paragraphs 3 and 4 of article 15.

8. Article 28 provides for consultation with reference to the imposition of import and exchange restrictions.

9. Article 29 provides for collaboration between the Organization and the International Monetary Fund with respect to exchange arrangements.

10. Article 30, paragraphs 1, 2, and 5, provide for consultation with reference to subsidies.

11. Article 34, paragraph 2, provides for consultation concerning emergency action on imports of particular products whose entry causes or threatens serious injury to domestic producers.

12. Article 35, paragraph 1, provides for adequate opportunity for consultation regarding generally all matters affecting the operation of chapter V on general commercial policy. Paragraph 2 provides for written representations, investigation, and consultation with intergovernmental organizations regarding matters which have the effect of nullifying or impairing any object of the charter.

13. Article 38, paragraph 3, provides for consultation with reference to the formation of customs unions. Paragraph 4 provides for consideration by the Organization of new preferential arrangements in exceptional circumstances.

14. Article 39, paragraph 2, subjects restrictive business practices to the complaints procedure defined in chapter VI of the charter.

15. Article 40 specifies the procedure to be followed with respect to complaints and conferences concerning restrictive business practices.

16. Article 41 provides for studies and conferences relating to restrictive business practices.

17. Article 42, paragraph 2, specifies obligations of members with reference to furnishing information and taking part in conferences relating to restrictive business practices.

18. Article 48 provides for studies to determine whether special difficulties may exist or may be expected to arise with regard to particular commodities.

19. Article 49 provides for conferences regarding particular primary commodities suffering special difficulties.

20. Article 50 provides for intergovernmental organizations to participate in the work of study groups and conferences relating to primary commodities.

21. Article 53, paragraph (a), provides for conferences regarding regulatory agreements.

22. Article 56 provides for the settlement of disputes concerning regulatory agreements through reference to the Commodity Council, Commodity Commission, or Executive Board of the ITO established under the charter.

23. Article 61, paragraphs (b) and (d), give the Organization the function of facilitating consultation among, and consulting with, members on all questions relating to the provisions of the charter.

24. Article 66, paragraph 3, provides that the Conference may by a two-thirds vote determine criteria and set up procedures for waiving, in exceptional circumstances, obligations of members under the charter.

25. Article 74 provides for consultation among the Commission on Commercial Policy, the Commission on Business Practices, and the Commodity Commission, established under the charter, in the exercise of their functions. Under articles 75-76 these Commissions are authorized to render advice and make recommendations and to conduct studies in their respective fields of activity.

26. Article 80, paragraph 2, provides for reference to the Executive Board and the Conference of questions or differences concerning the interpretation of the charter or arising out of its operation.

B. CHARTER PROVISIONS FOR SANCTIONS OR PENALTIES TO ENFORCE CHARTER OBLIGATIONS

1. Article 15, paragraph 3, specifies that internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed, or used may be continued for 1 year after the charter comes into force or for a longer period, provided that "the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this charter." The paragraph indicates further, however, that such requirements permitted to be maintained after the initial 1-year period "shall be subject to negotiation in the manner provided for in respect of tariffs under article 24." Article 15, paragraph 4, excepts laws and regulations relating to the distribution or exhibition of cinematograph films from the provisions of paragraphs 1 and 3 of the article but specifies that they will be subject to negotiation in the manner provided in article 24. The latter provides for withholding tariff benefits in the event of failure to fulfill obligations to negotiate regarding the reduction of trade barriers and the elimination of preferences in accordance with that article. This sanction might thus be invoked, if a member failed to fulfill its obligations regarding negotiation with respect to internal mixing requirements maintained under article 15 after the initial 1-year period provided therein, or with respect to laws and regulations relating to the distribution or exhibition of cinematograph films. As pointed out below, if the tariff benefits which are withheld from a member result in the application against that member of higher tariffs than would otherwise apply, the member may withdraw from the Organization.

2. Article 24, paragraph 3, provides for withholding tariff benefits in the event that a member should fail to fulfill its obligations to negotiate regarding the reduction of trade barriers and the elimination of preferences as specified in paragraph 1 of that article. If the tariff benefits which are withheld from a member result in the application against that member of higher tariffs than would otherwise apply, the member may withdraw from the Organization on 60 days' notice.

3. Article 26, paragraph 3, authorizes the Organization to release a member from its obligations toward another member which is applying restrictions to safeguard its balance of payments in a manner which is inconsistent with the provisions of paragraphs 1 and 2 of article 26 or of article 27 or 28 or in a manner which unnecessarily damages the interests of the first member.

4. Article 32, paragraph 1, provides that members maintaining State monopolies of individual products shall negotiate in the manner provided for under article 24 with regard to the matters specified in article 32 for the purpose of expanding trade in those products. As pointed out above, article 24 provides for withholding tariff benefits if the obligation to negotiate is not fulfilled, and this sanction could also be applied in the event of failure to negotiate in fulfillment of obligations under article 32. In the event the sanction is applied, the affected member, as indicated above, has the opportunity to withdraw if it wishes.

5. Article 34 defines the conditions under which a member may take action to suspend an obligation or concession to prevent the import of particular products in such quantities as to cause or threaten serious injury to domestic producers. If a member takes such action without the agreement of the interested members, the affected members are free to withdraw from the first member such obligations and concessions as the Organization authorizes.

6. Article 35, paragraph 2, provides for the suspension of obligations or concessions under chapter V by one member against another which is applying a measure nullifying or impairing any object of the charter. Thus, article 35 represents a sanction that may be invoked with respect to all obligations assumed under the charter. It should be noted, however, that a member against whom sanctions may have been imposed under article 35 is free to withdraw from the Organization on the expiration of 60 days' written notice.

April 15, 1947.

The CHAIRMAN. Are there any questions before we proceed to the detail of the charter?

Senator GEORGE. I have nothing.

The CHAIRMAN. Senator Connally?

Senator CONNALLY. No.

The CHAIRMAN. We were just starting on article 18, entitled, "Tariff Valuation."

It has been the custom in the analysis of the charter to keep the exact provisions on which we are working constantly in the record before us. Although it makes it a little tedious, I think it will be easier for the Senators to know what we are talking about if we proceed in that manner.

I am reading now from article 18, as follows:

1. The Members undertake to work toward the standardization, in so far as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering such cooperation, the Organization is authorized to investigate and recommend to Members such bases and methods for determining the value of products as would appear best suited to the needs of commerce and most capable of general adoption.

Doctor, what importance will relative values have in the negotiation of the trade agreements?

Mr. WILCOX. I do not understand the question?

The CHAIRMAN. What does clause 1 mean?

Mr. WILCOX. Clause 1 is a commitment to work toward a common basis of tariff valuation. The purpose of all the articles here, the ones that you were discussing Thursday afternoon and these—that is, articles 15 through 23—is simplification of the procedure in the interest of people who engage in trade, and they aim in general toward cutting through red tape and toward establishing uniformity among all the nations.

The CHAIRMAN. When you refer to value in that paragraph, you refer to value of commodities?

Mr. WILCOX. We are referring to value for the purpose of imposing duty.

The CHAIRMAN. Right.

Now, the question arises, in view of the unsettled state of the world, where the monetary values are unrealistic and where you have almost complete demoralization of economic systems, how can you establish dependable values, dependable enough to do the work which you have in mind?

Mr. WILCOX. Well, customs authorities are imposing and collecting customs duties every day in the week. They have to do it, and they do it upon some basis of valuation, whether they use the value of the product as sold in some foreign country, or the value of the product as sold for export from that country, or the value of the product or a comparable product in their own country. They have to use some basis of valuation on which to impose any ad valorem duty.

The CHAIRMAN. You might work it on the basis of goods in this country where you already have some standard of value.

Mr. WILCOX. But you actually have a standard of value abroad at any one moment.

The CHAIRMAN. That is what I am questioning.

Mr. WILCOX. And the fact that it fluctuates over a length of time is not relevant to the work of the customs administrator.

The CHAIRMAN. To the extent that value must be determined by costs, would it not be extremely difficult to establish the value of a product from these disorganized countries?

Mr. WILCOX. For this purpose I should think costs are irrelevant. The product may have been sold for export abroad at a price well above its cost or a price well below its cost.

The CHAIRMAN. Of course, if costs are irrelevant, then labor costs are irrelevant.

Mr. WILCOX. For this purpose.

The CHAIRMAN. We go to paragraph 2, which reads:

2. The Members recognize the validity of the general principles of tariff valuation set forth in the following subparagraphs, and they undertake to give effect to such principles, in respect of all products subject to duties, charges, or restrictions based upon or regulated in any manner by value, at the earliest practicable date. Moreover, they undertake, upon a request by another Member, to review the operation of any of their laws or regulations relating to value for duty purposes in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

Will the Organization do the reviewing?

Mr. WILCOX. Members [reading]:

undertake, upon a request by another Member, to review the operation of any of their laws or regulations—

The CHAIRMAN. Then what can the Organization do about it?

Mr. WILCOX. There is no sanction applied to this section. The Organization is authorized to request reports.

The CHAIRMAN. Are there any general provisions later on, or which we have discussed heretofore, that will carry on from that point and finally build up into a possible sanction?

Mr. WILCOX. Only the general provision with respect to nullification or impairment, nothing else.

The CHAIRMAN. The heading of that next unnumbered paragraph is "Alternative A," and reads:

The value for duty purposes of imported products should be based on the actual value of the kind of imported merchandise on which duty is assessed, or the nearest ascertainable equivalent of such value, and should not be based on the value of products of national origin or on arbitrary or fictitious valuations.

Why should not the value of a product be based on its value in terms of national origin?

Mr. WILCOX. Well, the proposal here is that there should be a uniform and simple standard of valuation and that that standard should be actual value and not some other value constructed for the purpose.

The CHAIRMAN. Heretofore, has there not been a strong valuation element in tariffs with a view to protecting our own labor scales against much lower labor scales in other countries?

Mr. WILCOX. Well, the height of protection is not here in question. This is purely a matter of customs administration.

The CHAIRMAN. Yes; but I do not think that disposes of the problem. Anything that comes to this country from another country has to funnel through customs and your end decisions are made by customs authorities, are they not?

Mr. WILCOX. No; the customs authorities do not determine the amount of the duty. As a matter of administration they evaluate the product in determining what an ad valorem duty would require in the way of a payment.

The CHAIRMAN. Duty is established by law?

Mr. WILCOX. That is right.

Senator CONNALLY. The value, however, affects the amount?

Mr. WILCOX. That is right.

The CHAIRMAN. You have no further comment on that provision?

Mr. WILCOX. No; I think not.

The CHAIRMAN. I am not clear as to why you exclude the value of products of national origin. How can you run an intelligent tariff system if you exclude the value of national origin?

Mr. WILCOX. This means that you calculate the base of your ad valorem duty at the price at which the actual merchandise was actually sold to a purchaser in the United States.

Senator GEORGE. Doctor, in making tariffs, this question of valuation is a tremendously important one on the question of the protection or the quantity of the protection given. There has always been a long, long fight, as you know, in tariffs between the selection of costs of production in the country of origin or the selling price of the country of origin or the selling price per export, and then, of course, there has always been a strong school of thought in this country among the high protectionist group who insisted on the value here in the United States, regardless of cost of production or sales price or what not.

Does this contemplate that you would get away from all those questions and try to work toward some standardized definition of value on which all customs would be based?

Mr. WILCOX. This point is toward agreement for all countries on the same basis of valuation.

Senator GEORGE. The same basis?

Mr. WILCOX. The same basis of valuation. All countries would base their valuation for the purpose of imposing duties on the same principle.

The primary purpose here is simplicity in the interest of traders, so they have a stable basis, and before they enter into arrangements to buy or sell goods they will know how the duties in all countries are going to be imposed.

The CHAIRMAN. Well, they can know that without having a standard basis all over the world.

Mr. WILCOX. In some cases I believe there is no single standard followed, but alternative standards may be followed at the discretion of the customs administrators.

Senator GEORGE. That is true in our own tariff laws, of course. In some you have production in the country of origin, and if that cannot be ascertained you have the comparable cost of similar articles or most nearly identical article or product that you can find in our own country.

Mr. WILCOX. Well, in this case the foreign trader says to us, "I do not know how to tell before I enter into an arrangement to import a commodity what the customs on that commodity will be, because I do not know what basis of valuation will be used."

Senator GEORGE. Then the primary purpose here is to have some standardization of the basis of the value?

Mr. WILCOX. That is right.

Senator GEORGE. Regardless of what method or value you actually adopt or approve finally?

Mr. WILCOX. This has nothing to do with the amount of the value or the height of the duty; it has to do merely with a common principle of valuation.

I wonder if Mr. Leddy would like to amplify.

Senator CONNALLY. Let me ask you a question first.

Under this provision is it expected that the foreign value will be the value—the seller's value—when he sells?

Mr. WILCOX. The price at which the goods are actually sold for export; that is right.

Senator CONNALLY. That is supposed to be the basis?

Mr. WILCOX. That is right.

Senator CONNALLY. Of course, they would not be sold here unless the seller thought he would get a higher price than he would get in his own country; is that not true?

Mr. WILCOX. At least as good a price.

Senator CONNALLY. At least as good a price. He would have an outlet and he would not want less than he could get in his own country.

Mr. WILCOX. Only in an emergency.

Senator CONNALLY. That is right.

Now, if you use the foreign base as a valuation, of course, when he comes in here, he adds to it whatever duty is assessable on that valuation?

Mr. WILCOX. That is right.

Senator CONNALLY. So that the domestic consumer would be paying foreign value plus the tariff which, according to my view, is what the tariff was designed to do. It was designed to give the domestic producer the differential between what the foreign goods were valued at and what they sell for here on this market. It is going to be very difficult for all these countries to talk about a basis and universal standard. One country may adopt one idea about the costs and another may adopt another.

Mr. WILCOX. Well, it is not cost that is suggested here but the actual price at which the goods actually were sold for export.

Senator CONNALLY. I understand that; that is what is meant by cost. They might sell in certain cases below their actual cost of production, yet the price is based on what they sell at to the importer.

Mr. WILCOX. That is it.

Senator CONNALLY. That is all.

Mr. LEDDY. I might illustrate it.

The primary basis of the American valuation system is the value of the goods in the country of origin, either for consumption there or for export to the United States. In some cases we base value on the so-called American selling price; that is to say, the value of the like product of United States origin.

This charter would require a change. We would have to eliminate the American selling price but we would not be prevented from adjusting the duty to the new basis of value.

In other words, the duty could be increased on those products. In other words, we are not here driving at protection; we are driving at the form of protection. To be sure it is reflected in the duty.

The CHAIRMAN. Then we would have to change our law, too?

Mr. LEDDY. To that extent.

I think the use of the American selling price is largely limited in the Tariff Act to coal-tar products and also some American selling

price valuations have been used in duties established under the Tariff Commission cost-of-production procedure.

The CHAIRMAN. They would move the whole thing back to the country of origin?

Mr. LEDDY. Yes, sir; but we could adjust the duty to that basis so that there would be no difference in the protection.

The CHAIRMAN. That causes me to raise the question again: With all of your unstable currencies and all the other instability, how can you calculate values on that basis?

Mr. LEDDY. Well, sir, we do it every day, I think, with regard to almost all of our imported products subject to ad valorem duties. I think also it should be explained that this article does not necessarily look toward action within the next year or so. These principles are to be given effect at the earliest practicable date, and I should think countries would be free to take into account circumstances that made action impracticable at a given time.

The CHAIRMAN. At the present time, if we are at a loss as to the value in the country of origin, we do have the alternative of checking the value against the value in the market place in this country.

Mr. LEDDY. The charter would not preclude that. We could still keep our present system of United States value where we are unable to check the value in the country of origin.

The CHAIRMAN. I understood you to say awhile ago that it would require a change in the law.

Mr. LEDDY. American selling price, sir, is the value not of the foreign product but of the like domestic product produced here; but we could use the basis of the value of the product as it sells in this market.

The CHAIRMAN. It may be that we would get some more light on that if we went through the rest of the alternatives.

Senator CONNALLY. I would like to ask a question.

The CHAIRMAN. Certainly, Senator.

Senator CONNALLY. You say that under this system we accept the foreign value, and yet you could so adjust tariff rates that it would not make any difference. How do you do that?

Mr. LEDDY. Well, there is nothing, sir, in this provision that prevents the adjustment of tariff rates to the new basis of valuation. All this does is ask that a basis, a particular basis, of valuation be used; that is, the actual value of the goods.

Now, if you have a different basis at the present time and adjust to the new basis, you may alter your tariff rate as you see fit. This does not require you to maintain the same rate of duty.

Senator CONNALLY. I understand that we can adjust the duties; is that not right?

Mr. LEDDY. That is right.

The CHAIRMAN. Is there not the pressure of the Charter against increase of tariffs?

Mr. LEDDY. I would say that there is a general presumption against it, but really this article is not directed at that point. All we are trying to do is to bring the protection into the duty in an open form.

The CHAIRMAN. It may not be directed at that point, but I am wondering if we are not building up an inconsistent thing. Are we not running against another provision which discourages increasing of tariffs?

Mr. LEDDY. I do not think so. The whole spirit of the Charter in dealing with the tariff is the selective process. No, sir; I should not think that any general rule on valuation would do that.

The CHAIRMAN. Alternative B reads as follows:

The value for duty of imported products should be based on their actual value as represented by the price at which, at a determined time and place, and in the ordinary course of trade between independent buyer and seller, like goods are sold or offered for sale in quantities and under conditions comparable to those under which the imported goods are sold or offered for sale, or the nearest ascertainable equivalent of such value. The value should not be based on the value of products of national origin or on arbitrary or fictitious valuations.

Would you explain that to us?

Mr. LEDDY. Yes, sir. That alternative was proposed by other delegations. It is an attempt to spell out in some detail the principle of actual value. The criticism of the principle of actual value given in alternative A, advanced by these delegations, was that there would be a large measure of discretion in the member countries as to what "actual value" means. They are here attempting to pin it down, and I might explain what significance it has with respect to our own procedure.

The CHAIRMAN. I wish you would.

Mr. LEDDY. At the present time our values are based upon imports in the usual wholesale quantities of a product. In other words, a large buyer who buys in quantity would pay a duty on a value which was probably higher than the value of the actual goods that he purchased, whereas a small importer would probably pay a duty on a value lower than the value of the actual shipment that he purchased.

Is that clear?

The CHAIRMAN. I must say it is not.

Senator CONNALLY. I would say the same.

Mr. LEDDY. The value of an imported product is not based on the actual price paid for the particular shipment bought by a particular importer; it is based upon the usual wholesale quantities of imports of that product.

The CHAIRMAN. Continue.

Mr. LEDDY. A small importer, who buys only a few units of a product, will probably have to pay a larger price than a large importer who buys many units of the product.

The CHAIRMAN. I do not see that that follows from what you said before.

Mr. LEDDY. I am trying to explain.

The CHAIRMAN. Go ahead, sir.

Mr. LEDDY. The value which each importer pays will be the same; that is, the value will not be based either upon the large quantity that the large importer bought or the small quantity that the small one bought. It will be based on the value of the usual wholesale quantity, which may be different from either one of them because of the differences in the amounts bought.

In other words, the price will usually be lower if the amounts bought are large, and higher if the amounts bought are small.

Under our present system, each importer of the product, no matter what quantity he buys, pays duty on the same value. Alternative B is directed in part at that practice. It says the duty should be based on the value of quantities comparable to those under which the imported goods are sold or offered for sale.

In other words, a large importer would get the benefit of quantity discounts, and the smaller importer would have to pay the higher duty because he did not get the benefit of quantity discounts.

The CHAIRMAN. As to alternatives A, B, and C, which is the position of the State Department?

Mr. LEDDY. Our position is A. This whole thing is being explored with the Customs Bureau.

The CHAIRMAN. In your opinion, will you be able to maintain A?

Mr. LEDDY. I should not like to reply to that, sir.

The CHAIRMAN. Do you believe we will, Dr. Wilcox?

Mr. WILCOX. In the negotiations?

The CHAIRMAN. Yes.

Mr. WILCOX. I do not know. I do not know what the force of opinion of the countries involved is on this issue.

The CHAIRMAN. For our purposes would it be correct to say that we do not know what turn this particular matter will take?

Mr. WILCOX. No; we do not. However, Alternative A is what we propose.

I may say this, Senator, that if we grant the desirability of a uniform basis of valuation, this is the basis that would require the least change in our administrative procedure.

Senator CONNALLY. Alternative B will be insisted upon by most of the foreign countries very likely, because it prohibits the basis being on the value of the product of national origin as our products over here. They anticipate that their prices—the exporting countries—will be less than our prices, or they would not ship them to this country, so they are likely to contend for B because it gives them a smaller base on which to pay the duty, and the duty will not be as high; is that not true?

Mr. LEDDY. Some delegations have pressed very strongly for B, but it would require rather extensive changes in other countries' valuation systems also.

Senator CONNALLY. That may be, but the ones who will want that would not worry about that.

Mr. LEDDY. Well, it would require some changes in their own systems.

The CHAIRMAN. Alternative C reads:

Where an actual price of imported products is not accepted as the basis for determining their value for duty purposes, their assessed value should not be based on the value of products of national origin or on arbitrary or spurious valuations, but should satisfy clearly defined and stable conditions which conform with commercial usage.

Is not the requirement "clearly defined and stable conditions" unrealistic?

Mr. LEDDY. I am sure I do not know, sir. I do not know what that means. It was advanced by another delegation and no agreement was reached on it and I think everyone had doubts about it.

The CHAIRMAN. Reading paragraph (b):

The value for duty purposes of any imported product should not include the amount of any (customs duty or) internal tax, applicable within the country of original or export, from which the imported product has been relieved or made exempt by means of refund.

Is the intent of that clear?

Mr. WILCOX. Where you have a domestic purchase tax in a country, so that the price of the product sold to consumers in that country would be higher than the price at which it is exported, you would not include that domestic purchase tax in the valuation.

The CHAIRMAN. I read (c), as follows:

In converting the value of any imported product from one currency to another for the purpose of assessing duty, the rate of exchange to be used should be fixed in accordance with prescribed standards to reflect effectively the current value of each currency in commercial transactions.

I take it that that paragraph does not require strict adherence to the parity values set by the Monetary Fund, that attention could be given to black-market values or there could be an independent valuation of the currency; is that correct?

Mr. WILCOX. Well, I suppose so. This is not our text.

The CHAIRMAN. Continuing [reading]:

The bases and methods for determining the value of products subject to duties, charges or restrictions based upon or regulated by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the amount of duty likely to be imposed.

How could a trader get behind these iron curtain countries and determine valuations?

Mr. WILCOX. Well, he would know the basis upon which the valuation would be made.

The CHAIRMAN. He might know the basis, but could be possibly understand the operation of the basis?

Mr. WILCOX. Fortunately the great bulk of American exports will go to areas which are not the other side of a curtain.

The CHAIRMAN. With reference to article 18, can we summarize it this way: That alternative A is the position of the State Department, but that as of this time we do not know which alternative will be adopted?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Article 19. Customs formalities reads:

1. The Members recognize the principle that subsidiary fees and charges imposed on or in connection with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. They also recognize the need for reducing the number and diversity of such subsidiary fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements.

I think the language is clear. Do the nations generally agree to that?

Mr. WILCOX. Well, I assume that they will. Yes, sir. This matter was not handled at the conference in London. It has not been acted on by the preparatory committee. It has come out of the interim drafting committee.

The CHAIRMAN. At New York?

Mr. WILCOX. And I do not know what countries voted how on particular issues.

The CHAIRMAN. Would the State Department support that paragraph?

Mr. WILCOX. I think it may not be the exact text, but in substance it is our original proposal.

Senator CONNALLY. What are those subsidiary charges?

Mr. LEDDY. They are such things as consular fees, for example, that some countries impose, in very high amounts.

Mr. WILCOX. The principle here is that you put your protection in the rate of the duty and you do not conceal it in some other device. People in the United States who sell goods abroad say to us that in many cases documentation and red tape, forms that have to be filled out, the subsidiary fees that have to be paid, and so forth, are much more of an obstacle to their selling abroad than the actual rate of duty.

And they say, if you want to have protection, put it in the duty where we can see it, and then let us go ahead and sell.

The CHAIRMAN. The reason I asked whether that was generally acceptable is because I know from personal knowledge that many foreign countries have an enormous amount of red tape in the clearing of goods.

I am not prepared to say that each charge is exorbitant, but the aggregate of them might very well be a hindrance to trade.

Mr. WILCOX. It is not only the amount of the charge but the delay that may be involved in the mere procedure.

The CHAIRMAN. I asked whether the provision was generally accepted, and you said it was new, and therefore you did not know what the attitude would be at Geneva. Is that correct?

Mr. WILCOX. That is correct. I have no reason to believe that it would not be generally accepted.

The CHAIRMAN. The reason is it will require quite a bit of revision of the laws and customs of a lot of other countries to comply with that paragraph.

Mr. WILCOX. That is right.

The CHAIRMAN. So there might be some resistance to it, I suggest. [Reading:]

2. Members undertake to give effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they undertake, upon request by another Member, to review the operation of any of their customs laws and regulations in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

How is that paragraph sanctioned?

Mr. WILCOX. The answer is the same as in the answer of the previous article. There is no specific sanction.

The CHAIRMAN. It could be brought to the attention of the Organization?

Mr. WILCOX. If it could be argued that the failure to carry out this reform in customs administration had the effect of nullifying or impairing the Charter—

The CHAIRMAN. A complaint could be made to the Organization, and the Organization could require action?

Mr. WILCOX. I would doubt that in this case a member would go that far.

The CHAIRMAN. I am not thinking of what their choice might be; I am thinking of what they could do if they wanted to.

Mr. WILCOX. That is right.

The CHAIRMAN. [Continuing reading:]

3. Except in cases of serious negligence, greater than nominal penalties over and above the duty properly payable should not be imposed by any member in

connexion with the importation of any product of any other Member country because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established.

Who determines serious negligences, and what would be the standard of determination?

Mr. WILCOX. The country administering its own customs laws would determine that.

The CHAIRMAN. So it would have to find it was guilty of serious negligences before you would have any—

Mr. WILCOX. No, sir. This is serious negligence on the part of the importer or the concern that is sending goods into a country.

Senator GEORGE. That is just a general injunction laid on all the member states, is it not?

Mr. WILCOX. That is right.

Senator GEORGE. That is what that is, apparently.

The CHAIRMAN. Continuing [reading]:

4. The provisions of this Article shall extend to fees, charges, formalities, and requirements relating to all customs matters, including:

- (a) Consular transactions, such as consular invoices and certificates;
- (b) Quantitative restrictions;
- (c) Licensing;
- (d) Exchange regulations;
- (e) Statistical services;
- (f) Documents, documentation, and certification;
- (g) Analysis and inspection; and
- (h) Quarantine, sanitation, and fumigation.

ARTICLE 20. MARKS OF ORIGIN

1. The Members agree that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum.

2. Each Member shall accord to the products of each other Member country treatment with regard to marking requirements no less favorable than the treatment accorded to like products of any third country.

3. Whenever administratively practicable, Members should permit required marks of origin to be imposed at the time of importation.

What does that mean, "at the time of importation?" Does it mean after the product gets here, or at the time it is assembled for export, or what does it mean?

Mr. WILCOX. I assume it means when the product arrives here.

The CHAIRMAN. What is the point? What difference does it make whether it is marked at that time or marked at some prior time?

Mr. WILCOX. It is a matter of convenience to the importer.

The CHAIRMAN. Continuing [reading]:

4. The laws and regulations of Members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.

5. Members agree to work in co-operation through the Organization toward the early elimination of unnecessary requirements as to marks of origin. The Organization is authorized to investigate and recommend to Members measures directed to this end, including the adoption of schemes of general categories of products in respect of which marking requirements operate to restrict trade in a degree disproportionate to any proper purpose to be served, and which shall not in any case be required to be marked to indicate their origin.

How does a mark of origin restrict trade?

Mr. LEBBY. Well, sir it is an extra requirement that must be complied with. For example, there are certain products which you might

be required to mark, for example, raw materials or crude materials, and the requirement might be impossible to comply with.

The CHAIRMAN. You could not mark every piece of coal, for example.

Mr. LEDDY. That is right, or every brick.

The CHAIRMAN. You probably could, and in many cases do, but it might be considered burdensome to mark every orange, or every lemon. Is that right?

Mr. LEDDY. That is the point.

The CHAIRMAN. Is the burden of this article against marks of origin, for marks of origin, or just a sensible discrimination as to when marks of origin serve a useful purpose and should be encouraged, and when they do not and should be discouraged?

Mr. LEDDY. That is entirely correct.

The CHAIRMAN. That is the purpose?

Mr. LEDDY. Yes, sir.

The CHAIRMAN. It seems to me that marks of origin serve a useful purpose in that they keep the consumer in any given country constantly advised of the amount of foreign goods that he is paying for.

Mr. LEDDY. I think that is the generally accepted view, that it is a consumer protection.

The CHAIRMAN. And if it is an exceptionally good piece of merchandise it tends to protect the mark established by the foreign supplier.

Mr. LEDDY. Yes, sir.

Senator CONNALLY. Is this article or this paragraph designed to allow the Organization to designate certain categories of products that do not need to be marked as to origin?

Mr. WILCOX. They may do nothing but make recommendations to members.

Senator CONNALLY. They could recommend, for instance, as suggested by Senator Milikin, that oranges should not necessarily be stamped on each orange, but the shipment, probably the whole shipment, should be marked.

Mr. WILCOX. They may make such a recommendation; yes.

Senator CONNALLY. All right.

The CHAIRMAN. Continuing [reading]:

6. As a general rule no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking has been unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

Would you mind illustrating that?

Mr. LEDDY. I think that is related to paragraph 3. If the product has not been marked in the country of export, you should not subject it to a penalty upon its arrival in the country of import, if the importer is prepared to mark it before it goes into the channels of consumption.

The CHAIRMAN. Or unless not marking was to achieve some kind of a deception. Is that right?

Mr. LEDDY. That is right.

The CHAIRMAN. Continuing [reading]:

7. The interest of Members in protecting the regional and geographical marks of origin of their distinctive products is recognized and shall be given consideration by the Organization which is authorized to recommend a conference of interested Members on the subject.

If Rocky Mountain celery had a regional trade-mark, or if Texas grapefruit had a Texas trade-mark, could that be protected under the operation of this clause?

Senator CONNALLY. Grapefruit does not need it. The taste does that.

Mr. WILCOX. Yes, sir. The problem there will be one of arriving at an agreement among Members to respect each others regional marks of origin.

The CHAIRMAN. The purpose is to protect if there is any good reason to protect. Is that right?

Mr. WILCOX. Well, we might arrive at an agreement, to use an illustration, that grapefruit produced in the Mediterranean would not be stamped "Texas."

Senator CONNALLY. I hope you observe that.

The CHAIRMAN. What is the view of the commercial world as to the provisions of article 20?

Mr. WILCOX. I do not recall any question concerning those. The National Association of Manufacturers does not comment. I have here two paragraphs from the National Foreign Trade Council. Do you want me to read it?

The CHAIRMAN. Are they lengthy?

Mr. WILCOX. No; it is not very long.

The CHAIRMAN. Read it, please.

Mr. WILCOX. It reads:

The adoption of reasonably uniform regulations regarding the marking of goods to indicate origin would be a most satisfying development. There is, however, a thoroughly sound basis for insistence on the part of importing countries upon such marking, and an advantage to exporting countries whose products have established a general reputation of quality.

While endorsing the principle that such requirements should not involve unreasonable difficulties and expense, we believe that it would be equally constructive to educate producers of goods intended or suitable for export to apply origin marks along with their trade-marks so as to meet any reasonable requirements.

The general use of such marking in goods which are sold to domestic consumers is subject to no serious objection. A proper regard for the customer's preference suggests that this is good business practice.

We believe that this article is well considered in general, but an attempt should be made to reduce the number and broad applicability of stated exemptions from marking requirements.

The CHAIRMAN. I will have a note on that later on. But while I am thinking of it, let me ask you if there is anything in this charter that in any way changes or affects our own patent system and the monopolies which might be established or encouraged by it?

Mr. WILCOX. No, sir.

The CHAIRMAN. Either in its internal aspects or in our relations with other countries?

Mr. WILCOX. No, sir.

The CHAIRMAN. Thank you. [Reading:]

ARTICLE 21. PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS ADVANCE NOTICE OF RESTRICTIVE REGULATIONS

1. Laws, regulations, judicial decisions, and administrative rulings of general application made effective by any Member, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes, or other charges, or to requirements, restrictions, or prohibitions on imports or

exports, or on the transfer of payments therefor, or affecting their sale, distribution, transportation, or insurance, or affecting their warehousing, inspection, exhibition, processing, mixing, or other use, shall be published promptly in such a manner as to enable traders and governments to become acquainted with them. Agreements in force between the government or a governmental agency of any Member country and the government or governmental agency of any other country affecting international trade policy shall also be published. Copies of such laws, regulations, decisions, rulings, and agreements shall be communicated promptly to the Organization. This paragraph shall not require any Member to disclose confidential information which would impede law enforcement, or otherwise be contrary to the public interests or would prejudice the legitimate business interests of particular enterprises, public or private.

I note especially the last sentence, which I assume is intended to protect confidential disclosure of private industries and businesses to the government of facts concerning those businesses or industries, and that the point is that those matters shall not be disclosed. Is that correct?

Mr. WILCOX. It applies to business secrets, yes, sir.

The CHAIRMAN. Does that run all the way through the charter?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. That is completely protected in your opinion all the way through the charter?

Mr. WILCOX. You will come on to the same point when you discuss chapter 6.

The CHAIRMAN. I want to go beyond that and get your opinion on whether that can be taken as a fact all the way through the charter.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Continuing [reading]:

2. Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article. Moreover, Members undertake to maintain, or to institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement.

We have our own customs court systems?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. How widespread is that system?

Mr. LEDDY. I think that there are a considerable number of countries that have either a court system, or an administrative system, which is independent of the administrative enforcement authorities.

The CHAIRMAN. That is what I am driving at.

Mr. LEDDY. There are a considerable number of other countries which do not have such independent review.

The CHAIRMAN. The administrative system is directly connected with the customs raising system?

Mr. LEDDY. That is true.

The CHAIRMAN. Therefore the criticism is that there is no independence between the two, and you really cannot get a fair review of the matter.

Mr. LEDDY. Yes, sir.

The CHAIRMAN. And this is aimed to end that.

Mr. LEDDY. Yes, sir.

Mr. WILCOX. I believe that with respect to everything in this article, our present practice is in conformity.

The CHAIRMAN. Continuing [reading]:

3. No administrative ruling of any Member effecting an advance in a rate of import duty or other charge under an established and uniform practice, or imposing a new or more burdensome requirement, restriction, or prohibition on imports, or on the transfer of payments therefor, shall, as a general rule and within the limits of administrative practicability, be applied to products of any other member country already en route at the time of publication thereof in accordance with paragraph 1 of this Article. *Provided*, That if any Member customarily exempts from such new or increased obligations products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the date of such publication, such practice shall be considered full compliance with this paragraph. The provisions of this paragraph shall not apply to antidumping or countervailing duties.

I note, up above, the language—

shall, as a general rule and within the limits of administrative practicability, be applied—

and so forth. What are the exceptions to the general rule?

Mr. LEDDY. Well, sir, in some cases, particularly, I should think, in cases where the source of imports is from a nearby country, it may be impossible to devise administratively practicable regulations to catch everything which may have been en route at the particular time of the publication of the law.

I should think also, as a general rule, it might cover cases where an emergency duty is being applied.

The CHAIRMAN. As to articles en route, supposing they were on the way in demoralizing quantities?

Mr. LEDDY. I should think, as I say, if the purpose of the duty is an emergency duty and the quantities already en route are of demoralizing magnitude, I should think that a country would be able to say that in that case the duty would be applied.

The CHAIRMAN. Is that clear from this language?

Senator GEORGE. It seems, Mr. Chairman, that the provisions of this paragraph, "shall not apply to antidumping or countervailing duties"—it seems was intended to take care of situations of that kind.

The CHAIRMAN. Is that your interpretation of that?

Mr. WILCOX. There is also the clause that you read, "as a general rule," which I should think would provide latitude there.

The CHAIRMAN. How widespread is the 30-day practice referred to?

Mr. WILCOX. It is our practice.

Mr. LEDDY. It is our practice. We have had some experience with that rule in trade agreements. We have been able to obtain agreement in, I should say, less than half of the cases.

In other cases we could not negotiate this rule. There is considerable opposition to it.

The CHAIRMAN. I notice the comment "Six delegates reserve their decisions provisionally."

Mr. LEDDY. Yes, sir.

The CHAIRMAN. Is there a rather sharp and important conflict of opinion on it?

Mr. LEDDY. I think a considerable number of countries feel that for administrative or other reasons they would find it rather difficult to comply with the rule.

The CHAIRMAN. That is from the exporter viewpoint or the importer viewpoint?

Mr. LEDDY. From the importer viewpoint. We feel that it is a reasonable rule. We have not had difficulty with it in our own experience.

The CHAIRMAN. And you feel that from our own standpoint the provisions are flexible enough so that we could exclude goods en route which might be in very burdensome or demoralizing quantities?

Mr. LEDDY. Yes, sir. I should think so.

The CHAIRMAN. Do you feel that way, Dr. Wilcox?

Mr. WILCOX. I should think so. Yes.

The CHAIRMAN. Article 22 reads:

INFORMATION, STATISTICS, AND TRADE TERMINOLOGY

1. The Members shall communicate to the Organization as promptly and in as much detail as is reasonably practicable:

(a) Statistics of their external trade in goods (including imports, exports, reexports, transit and transshipment, and, where applicable, goods in warehouse or in bond);

(b) Statistics of governmental revenue from import and export duties and other taxes on goods moving in international trade and, insofar as readily ascertainable, of subsidy payments affecting such trade.

So far as possible, the statistics referred to in (a) and (b) shall be related to tariff classifications and be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value, or by amounts of exchange made available.

How are you going to get a practical administration of the requirement for statistics as to subsidy payments affecting trade? Would that be satisfied by a listing of the statutes and a summary of the contents of the statutes granting subsidies, and which might in turn affect the price of goods exported? How will that operate as a practical matter?

Mr. WILCOX. I would be inclined to interpret that as meaning subsidy payments directly affecting trade, because there might be remote subsidies that would have an indirect effect.

The CHAIRMAN. For example, if we put on a direct export subsidy, let us say, on cotton, we would have to make a full report of that, I assume.

Mr. WILCOX. That is right.

The CHAIRMAN. If we had some internal measure that might have the effect of encouraging the exportation of the product, and of putting it on a more favorable basis in foreign markets, if that which was done under the statute was indirect, we would not be required to report on that?

Mr. WILCOX. I suppose you might say that, to take an extreme case, the Government provision of good roads facilitates getting the cotton to the seaboard, or perhaps our railway-rate structure is such as to be favorable to the movement of cotton for export.

It seems to me that that would go beyond what is required here.

The CHAIRMAN. There might be a no-man's land that would be subject to controversy?

Mr. WILCOX. Perhaps.

The CHAIRMAN. Continuing [reading]:

2. The Members shall publish regularly and as promptly as possible the statistics referred to in paragraph 1 of this Article.

3. The Members shall give careful consideration to any recommendations which the Organization may make to them with a view to improvement of the statistical information furnished under paragraph 1 of this Article.

4. The Members shall make available to the Organization, at its request and insofar as reasonably practicable, such other statistical information as the Organization may deem necessary to enable it to fulfill its functions, provided that such information is not being furnished to other intergovernmental organizations from which the Organization can obtain the required information.

In passing it seems to me to be a highly desirable provision.

Mr. WILCOX. To avoid duplication.

The CHAIRMAN. Yes. [Reading:]

5. The Organization shall act as a center for the collection, exchange, and publication of statistical information of the kind referred to in paragraph 1 of this Article. The Organization may, in collaboration with the Economic and Social Council of the United Nations and its Commissions, and with any other interested international organization, engage in studies with a view to bringing about improvements in the methods of collecting, analyzing, and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications.

By "classifications" as used in that sense you mean the mechanical divisions of subjects, do you not?

Mr. WILCOX. That is right.

The CHAIRMAN. Continuing [reading]:

6. The Organization may also, in cooperation with the other organizations referred to in paragraph 5 of this Article, study the question of adopting standards, nomenclatures, terms, and forms to be used in international trade and in the official documents and statistics of Members relevant thereto, and may promote the general acceptance by Members of such standards, nomenclatures, terms, and forms as may be recommended.

I assume the promotion referred to in what I have just read is in the nature of recommendatory promotion?

Mr. WILCOX. I should think so. There might be some agreement on the desirability of certain standard forms so that traders would be familiar with them, whatever country was involved, and the Organization would present them to individual countries and say "This has been adopted by a committee. We recommend its adoption by your country," and so on.

The CHAIRMAN. Have our business interests made any complaint about this article?

Mr. WILCOX. I think the Foreign Trade Council has a short comment. [Reading:]

The general intent is good, and the provisions are adequately phrased to accomplish their purpose.

One feature requires comment:

In several passages it is stipulated the statistics shall be furnished in as detailed and accurate a manner as possible.

Is that still in here?

Mr. LEDDY. No, sir.

Mr. WILCOX. This is a comment on the London draft, and this particular point has been taken care of.

The CHAIRMAN. Otherwise no objection that you recall?

Mr. WILCOX. I think that would be the principal group that would be interested in this point. Here is what the National Association of Manufacturers says [reading]:

Foreign and trade statistics are frequently misleading. If appraisal of the goods imported and exported is based upon the effective market rate it may change from day to day. There may be a considerable difference between the

state of the foreign exchange rate on the day of importation or exportation and that on the day at which payment is due.

If the appraisal is based on the official rate it is liable to sudden alteration in the event of a change in the official rate. To prevent such deficiencies which may render the statistical information quite useless all members should agree on a uniform procedure in the elaboration of their foreign trade statistics. They should compute all values in terms of the same currency, that is, of a stated weight and fineness of gold.

Paragraph 1 of article 22 should be revised to read as follows:—

There again they are talking about the London draft. But I think this is still relevant. [Continues reading:]

Members agree to make available promptly to the Organization in as detailed and accurate a manner as practicable in terms of the currency set by the Organization such statistics and so forth.

Apparently the only point they have there is that to have trade statistics of many countries comparable, you must state them in terms of a common unit. The question there would be whether the countries themselves be asked to make that conversion when they submit the statistics, or whether the trade organization, when it tries to publish comparable statistics, make that conversion itself.

The CHAIRMAN. Article 23 reads:

Boycotts: No Member shall encourage, support or participate in boycotts or other campaigns which are designed to discourage, directly or indirectly, the consumption within its territory of products of any specific Member country or countries on grounds of origin, or the sale of products for consumption within other Member countries on grounds of destination.

I note that is limited to specific member countries.

Mr. WILCOX. That is right.

The CHAIRMAN. Could a member discourage the purchase of regional products in the sense of more than one country?

Mr. WILCOX. As this is worded I suppose a member could say "Do not buy anything from Latin America."

The CHAIRMAN. Or do not buy anything Asiatic.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. Or do not buy anything Slavic.

Mr. WILCOX. I do not think that is the intention of it. The intention of this wording is to permit a "buy British" campaign or "buy American" campaign that is not directed against one particular foreign country.

The CHAIRMAN. I notice the indirect form only covers about half of the problem. I am not suggesting that all of it should be covered. In fact, I think I would be in violent opposition if all of the problem were covered.

But by permitting you to encourage purchases from a particular country, you are necessarily discouraging purchases from other countries. Is that not correct?

Mr. WILCOX. I am not sure what you have in mind there.

The CHAIRMAN. The language is limited to efforts to discourage.

Mr. WILCOX. Yes.

The CHAIRMAN. Directly or indirectly?

Mr. WILCOX. That is the boycott.

The CHAIRMAN. But by permitting encouragement you necessarily have the collateral factor of discouragement.

Mr. WILCOX. You mean if we would urge upon our people to buy goods from country "X"—

The CHAIRMAN. Let us say that we urge buy British.

Mr. WILCOX. I think a buy British campaign in the United States would be consistent with this article.

The CHAIRMAN. Exactly.

Mr. WILCOX. I think that is an academic question, if I may say so, Senator.

The CHAIRMAN. I think so, too. But the point that I am getting at is that by permitting a "buy British" or a "buy this" or "buy that" campaign, by encouraging it, you have the effect of discouraging the acceptance of goods of like nature of other countries, and I agree with you it is academic, and I think it would be fruitless to pursue it any further.

Specifically it would not prevent a "buy American" campaign, because that would not be directed to any specific country.

Mr. WILCOX. That is right.

The CHAIRMAN. It would not prevent State movements to buy Georgia products, or buy Colorado products, or to buy the products of any State.

Mr. WILCOX. Within the United States?

The CHAIRMAN. Yes.

Mr. WILCOX. No, sir.

The CHAIRMAN. It would not?

Mr. WILCOX. No, sir.

The CHAIRMAN. Or by the same token any smaller governmental subdivision?

Mr. WILCOX. It does not apply to internal trade at all.

The CHAIRMAN. Exactly. Where did we end those associated articles?

Mr. WILCOX. I think you are in section D, article 30, which is on page 25.

The CHAIRMAN. Yes. [Reading:]

SECTION D. SUBSIDIES

ARTICLE 30. GENERAL UNDERTAKING REGARDING SUBSIDIES - ELIMINATION OF EXPORT SUBSIDIES - EXCEPTIONS

1. If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, the Member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from the territory of the Member country and as to the conditions making the subsidization necessary. In any case in which it is determined that serious prejudice to the interest of any other Member is caused or threatened by any such subsidization, the Member granting the subsidization shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.

One of the Senators makes this comment:

Article 30 forbids the continued payment of a subsidy on exports over all cotton and other commodities. What alternative method of marketing our agricultural surpluses abroad is contemplated as long as we maintain our domestic prices above the world price levels?

Mr. WILCOX. Paragraph 1 is not relevant to that question because it does not relate to export subsidies. The question is apparently directed toward paragraph 2.

Do you want me to go ahead with it now or put in 2 first?

The CHAIRMAN. Please let me have your comments on 1, as to its purposes.

Mr. WILCOX. One does not relate primarily to export subsidies; it relates to domestic subsidies. The commitment involved is first a report to the Organization, and second, discussion with other members upon the request of other members.

The CHAIRMAN. Is there any further sanction involved?

Mr. WILCOX. No, sir.

The CHAIRMAN. So far as this paragraph is concerned?

Mr. WILCOX. So far as this paragraph is concerned, there is not.

The CHAIRMAN. This is a subsidy, a condemned subsidy, which operates, directly or indirectly to increase exports of any product, or to reduce imports under the circumstances stated.

Mr. WILCOX. It is a subsidy which has that effect. Did you use the word "condemned"?

The CHAIRMAN. Yes.

Mr. WILCOX. I do not think it is condemned.

The CHAIRMAN. It is subject to complaint by other members, is it not?

Mr. WILCOX. It is subject to complaint and discussion. That is all.

The CHAIRMAN. Nothing more?

Mr. WILCOX. That is all.

The CHAIRMAN. There is a recognition that it might do harm to other members?

Mr. WILCOX. It might. It does not say that it necessarily would.

The CHAIRMAN. But there is no obligation other than to discuss and consult?

Mr. WILCOX. That is right.

The CHAIRMAN. Continuing [reading]:

2. (a) No Member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain any other system, which results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in the conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability. Provided that this shall not prevent any Member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically, from remitting such duties or taxes which have accrued, or from using the proceeds of such duties or taxes to make payments to domestic producers;

(b) Members shall give effect to the provisions of this paragraph at the earliest practicable date, but in any event not later than three years from the day on which this Charter enters into force. If any Member considers itself unable to make the provisions of this paragraph effective in respect of any specified product or products upon the expiration of such period, such Member shall, at least three months before the expiration of such period, give to the Organization notice in writing requesting a specific extension of the period and accompanied by a complete analysis of the system in question and the facts justifying it. It shall then be determined whether the extension requested should be made.

Would you mind discussing that paragraph in the light of the question of the Senator, which I read to you?

Mr. WILCOX. In order to give a complete answer to that question, I also should include paragraph 1, I think.

The CHAIRMAN. Perhaps I had better, then, read paragraphs 3 and 4.

Mr. WILCOX. Paragraph 3 is not relevant to this particular question, but No. 4 is.

The CHAIRMAN. Let us get it in the record at this point. [Continues reading:]

3. A system for the stabilization of the domestic price or of returns to domestic producers of a primary product, which results over a period in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, may be determined not to involve a subsidy on exportation under the terms of paragraph 2 of this Article if it has also resulted over a period in the sale of the product for export at a price higher than the comparable price charged for the like product to domestic buyers, and if the system is so operated, either because of the effective limitation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interest of other Members.

4. (a) In any case of subsidization of a primary commodity, if a Member considers that its interests are seriously prejudiced by the subsidy or if the Member granting the subsidy considers itself unable to comply with the provisions of paragraph 2 of this Article within the time limit laid down therein, the difficulty may be determined to be a special difficulty of the kind referred to in Chapter VII, and in that event the procedure laid down in that Chapter shall be followed.

(b) If it is determined that the measures provided for in Chapter VII have not succeeded, or do not promise to succeed, within a reasonable period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 of this Article shall cease to apply in respect of such product as from the effective date of such determination and shall not be reapplied in respect of such product until a date determined in accordance with procedures approved by the Organization.

Mr. WILCOX. Now, to the question that the Senator put.

The CHAIRMAN. Let me read the question again, Doctor. He says [reading]:

Article 30 forbids the continued payment of a subsidy on exports of raw cotton and other commodities. What alternative method of marketing our agricultural surpluses abroad is contemplated so long as we maintain our domestic prices above world prices?

Mr. WILCOX. The answer is that article 30 does not forbid a continued payment of export subsidies on cotton or other products. Now, let me explain what it does.

The CHAIRMAN. Would you mind repeating your answer?

Mr. WILCOX. Article 30 does not forbid a continued payment of export subsidy on raw cotton or other products.

Now, let me explain exactly what it does provide.

In the first place, the provision is made that export subsidies may be continued for 3 years beyond the time of the establishment of the Organization. Let us say, for the purpose of argument, that that is 1949. That would then be until 1952.

In addition to that, the provision is made that an extension of this time may be granted; that determination is made and all other determinations are made, according to paragraph 6, under the procedures established by the Organization in accordance with paragraph 4 of article 66; and paragraph 4 of article 66 provides that [reading]:

The Conference shall establish procedures for making the determinations provided for in Article 30. * * * whereby any such determinations shall be made through the Organization by consultation among the Members substantially interested in the product concerned.

So it is a determination not by the Organization but by members substantially interested in the product.

So that period may then be extended, in my illustration, beyond 1952.

The CHAIRMAN. Now, supposing that the members get together and go through this consultative process, and they reach a determination. Is that a unanimous determination, or majority, and what happens then?

Mr. WILCOX. The Organization shall establish procedures for making such determination.

The CHAIRMAN. So that that could be a sanctioned duty.

Mr. WILCOX. The members in consultation might decline to extend the period; yes.

The CHAIRMAN. And the Organization could say that if you do decline to extend the period, this, this, and this may happen. Is that right?

Mr. WILCOX. Yes.

The CHAIRMAN. So that there is the potentiality there of sanctions for failure to meet these subsidy provisions.

Mr. WILCOX. I have not finished the story, yet.

The CHAIRMAN. Go ahead.

Mr. WILCOX. In paragraph 4, however, it provides, under the chapter relating to commodity arrangements, where you have a finding of a burdensome world surplus situation, that nations that are concerned may undertake to arrive at a commodity agreement.

Now, the terms of that commodity agreement may involve a sharing among producing nations of export markets in this particular product.

If that is agreed upon, under the terms of the commodity agreement, there is nothing in the commodity chapter which would forbid the continued payment of an export subsidy.

The CHAIRMAN. Under the intergovernmental agreement?

Mr. WILCOX. Under the intergovernmental agreement.

The CHAIRMAN. Which, as you point out, might require sharing of markets.

Mr. WILCOX. That is right.

The CHAIRMAN. And is directed primarily to burdensome world surpluses?

Mr. WILCOX. That is right.

The CHAIRMAN. Now, supposing that just as a matter of domestic policy, and we might do this, supposing that we set up a two-price system with the intention of disposing of our surpluses, regardless of whether there might be a burdensome world surplus. For a definite part of our production we set a domestic price. We sell the rest for whatever we can sell it for on the world market regardless of whether there is a burdensome world surplus. Would that come under the prohibitions here?

Mr. WILCOX. Your question puzzles me because you ask about the policy that we would follow in disposing of a surplus, regardless of whether a surplus existed.

The CHAIRMAN. I am talking about a domestic surplus.

Let me make this clear. There is a strong agrarian philosophy that a farmer should be allowed to produce as much as his land will produce under all circumstances. Coupled with that is the theory that he should receive a certain price, a domestic price for that part of his product which is required for the domestic market, that the Government should assure him of that, and that the surplus, the domestic surplus which is bound to result, under those circumstances, should

be put upon the world market for whatever price it will bring, and he should receive his part of that.

How does this plan square with that proposal?

Mr. WILCOX. What bothers me about your question is the suggestion that we would have a surplus in the United States that would have to be disposed of by artificial means, but that there would be no surplus anywhere else in the world.

If there were no surplus anywhere else in the world, if there was scarcity elsewhere, and there was no competitor with us in foreign markets, I cannot imagine that we would have a burdensome surplus.

It seems to me, in a commodity like cotton, particularly, where we are such a large factor in the total picture, that a burdensome surplus in the United States means a burdensome surplus on world markets.

The CHAIRMAN. We are talking about a burdensome surplus. I suggest that that does not necessarily follow.

Senator GEORGE. It does not necessarily follow. It means low prices in the world market, but does not necessarily mean a burdensome surplus.

It looks to me like under these sections, that you are simply outlawing any subsidy, direct or indirect, on exportation, let us say, of cotton, as a particular product.

Mr. WILCOX. I have not finished my exposition yet.

Senator GEORGE. And, of course, there is a period in which you can have a stay of execution, but the day of execution is nevertheless fixed.

The CHAIRMAN. And the extensions are in the hands of other countries.

Senator GEORGE. Yes.

Mr. WILCOX. I am still not through with the exposition, Senator.

The CHAIRMAN. All right.

Mr. WILCOX. Paragraph 4 (b) provides that [reading]:

If it is determined that the measures provided for in Chapter VII have not succeeded, or do not promise to succeed—

The CHAIRMAN. Chapter VII covers intergovernmental commodity agreements.

Mr. WILCOX. Yes.

The CHAIRMAN. Which is premised on a burdensome world surplus.

Mr. WILCOX. Yes. [Continues reading:]

within a reasonable period of time—

and so on, then—

the requirements of Paragraph 2 of this Article shall cease to apply in respect of such product as from the effective date of such determination and shall not be reappplied in respect of such product until a date determined in accordance with procedures approved by the organization.

The CHAIRMAN. Taking that much of it, you again put the decision in the hands of the Organization.

Mr. WILCOX. No. This says flatly that the requirements of paragraph 2 cease to apply and shall not be reappplied until a date determined in accordance with procedures approved by the Organization.

The CHAIRMAN. Subparagraph 2, to which you refer. This is paragraph 4 (b) [reading]:

If it is determined that the measures provided for in Chapter VII—

that contemplates an intergovernmental agreement.

Mr. WILCOX. That is right.

The CHAIRMAN. Continuing [reading]—

have not succeeded, or do not promise to succeed, within a reasonable period of time in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 of this Article shall cease to apply in respect of such product as from the effective date of such determination and shall not be reapplied in respect of such product until a date determined in accordance with procedures approved by the Organization.

Mr. WILCOX. That is right.

The CHAIRMAN. Now, it seems to me that several things are very clear. That contemplates an intergovernmental agreement.

The determination of whether a burdensome world surplus exists, or has been removed, is in the Organization.

Even if there should be a suspension of the ban for a time, it could be reapplied under the express language of the paragraph.

Mr. WILCOX. That is right.

The CHAIRMAN. That does not cover the whole problem. That does not meet the case that I put to you. Suppose we do not want to go into an intergovernmental agreement. Supposing we simply embark upon the policy of saying to the farmer, "You grow as much as your acres will produce. We need X quantity of your product for our domestic consumption, and we will see that you get a certain price for that. We will take the surplus and we will sell it for you in the world market for what we can get for it."

That is the system, let us assume, that Congress sets up. That, I suggest, is not met completely by 4 (b) unless Congress also wants this country to go into an intergovernmental commodity agreement.

Mr. WILCOX. This does not require an agreement. It does require, under paragraph 4, a study group to consider whether there shall be an agreement. If that study group were to decide that there was no prospect of getting an agreement, that agreement did not hold out any hope of success, then the rest of the paragraph applies.

It does not require that an agreement must have been entered into and broken down.

The CHAIRMAN. But assuming, Doctor, that we do not want to enter into an agreement, do we have to enter into an agreement under this plan?

Mr. WILCOX. No, sir.

The CHAIRMAN. Suppose we do not have to, and we choose not to?

Mr. WILCOX. All right.

The CHAIRMAN. And we are going to maintain a two-price system of the type that I have mentioned to you. Do we violate these provisions?

Mr. WILCOX. We would not be in violation unless the provisions of paragraph 2 were reapplied, and we continued to use the export subsidy.

The CHAIRMAN. The prohibitions of paragraph 2 (a) could be applied?

Mr. WILCOX. If the prohibitions of paragraph 2 (a) were reapplied, and we continued to use the export subsidy, we might then be in violation; yes.

The CHAIRMAN. Who would make that determination?

Mr. WILCOX. The countries substantially interested in the product.

The CHAIRMAN. Under such rules as the Organization would set up?

Mr. WILCOX. That is right.

The CHAIRMAN. So, up to this moment, clearly we are under the ban of the paragraphs that have been read?

Mr. WILCOX. Well, we are not under the ban for 3 years.

The CHAIRMAN. That is right. (Exhibit XIX B provides a partial list of subsidized products.)

Mr. WILCOX. And if we ask an extension, and the determination is negative, then we are under the ban; yes.

The CHAIRMAN. In that connection, Doctor, I think that every responsible man in Congress looks forward to the day of great agricultural surpluses, and the question is, What are we going to do with them? We, of course, hope to develop byproduct manufacture to take care of surpluses, but the old two-price system will be popping up just as sure as we are sitting here. It passed Congress a couple of times and would have been in effect had it not been vetoed.

I am correct on that, am I not?

Senator GEORGE. Yes; I think so.

The CHAIRMAN. Was that not the McNary-Haugen bill?

Senator GEORGE. Yes.

The CHAIRMAN. By the way, is this whole article limited to primary products?

Mr. WILCOX. It says "any product."

The CHAIRMAN. It could go to manufactured products under its present terms?

Mr. WILCOX. Yes. Of course, the exports of manufactured products have not usually been subsidized.

The CHAIRMAN. By "primary" products we usually mean agricultural products, untreated mineral products.

Mr. WILCOX. Yes. Continuing [reading]:

3. A system for the stabilization of the domestic price or of returns to domestic producers of a primary product, which results over a period in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market.

That language, I think you will agree, meets the case I put to you.

Mr. WILCOX. You are reading from "3" now?

The CHAIRMAN. Yes.

Mr. WILCOX. No. 3 is not relevant to our case. No. 8 just describes the sort of a program that has existed, for instance, in New Zealand, where the country undertakes, over a time, to utilize the price of the commodity, which is paid to producers. In some years this stabilization involves paying the domestic producer more than the world price. In other years it results in paying him less than the world price. And the Government of New Zealand, over a time, makes a profit on this operation in some years, and loses money on the operation in other years.

The purpose is to maintain that price stable over a time. That kind of an operation is exempted by paragraph 3.

The CHAIRMAN. Under your interpretation, 3 does not apply to the case?

Mr. WILCOX. It would not exempt operations in which an effort was made not to maintain stable prices, but to maintain prices permanently above world levels. It would not exempt such a case.

The CHAIRMAN. Does 3 have application to any of our domestic situations as far as you can see?

Mr. WILCOX. I do not believe we have ever undertaken a program of the sort described in 3.

The CHAIRMAN. I should like to suggest to you, Doctor, that is one of those very muddy paragraphs which I suggest does not say at all what you have said is its meaning.

Now, we come to paragraph 4 (a) again. Does that mean that under those circumstances, we could be compelled to go into an inter-governmental commodity agreement?

Mr. WILCOX. No, sir. There is nothing in the document which would ever compel us to go into that.

The CHAIRMAN. You excluded that possibility in a previous answer.

Mr. WILCOX. Yes. We would join in consultation on the problem without commitment to go into any agreement.

The CHAIRMAN. But we are still under these time limitations that we have already discussed?

Mr. WILCOX. That is right.

The CHAIRMAN. Continuing [reading]:

(b) If it is determined that the measures provided for in Chapter VII—

that is the governmental commodity agreement, if we are in one, and you said we do not have to go in one.

Mr. WILCOX. That is right.

The CHAIRMAN. To continue [reading]:

(b) If it is determined that the measures provided for in chapter VII have not succeeded, or do not promise to succeed, within a reasonable period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 of this article shall cease to apply in respect of such product as from the effective date of such determination and shall not be re-applied in respect of such product until a date determined in accordance with procedures approved by the Organization.

Now, then, on the assumption that we did go into an intergovernmental commodity agreement, that could be set aside or it could be reimposed by the Organization?

Mr. WILCOX. No. If you have an intergovernmental commodity agreement you operate according to the terms of that agreement, and the specific terms of the agreement are not a matter of requirement in this document at all.

The CHAIRMAN. But it does say that if it is determined that the measures provided for in chapter VII have not succeeded [reading]:

or do not promise to succeed, within a reasonable period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 of this article shall cease to apply in respect of such product as from the effective date of such determination and shall not be reapplied in respect of such product until a date determined in accordance with procedures approved by the Organization.

Mr. WILCOX. Yes, sir. That is right.

The CHAIRMAN. I am simply asking, that even if we went in and if it did not work, and if it were called off, it could be reapplied under decision of the Organization?

Mr. WILCOX. It could be reapplied. Yes.

The CHAIRMAN. Continuing [reading]:

5. Notwithstanding the provisions of paragraph 2 and subparagraph 4 (b) of this article, no Member shall grant any subsidy on the exportation of any product

which has the effect of acquiring for that Member a share of world trade in that product in excess of the share which it had during a previous representative period—

The case, Doctor, which I put to you might clearly contemplate that kind of a situation. We might be able to sell so cheaply that we would get more than the share which we had in an earlier period. Is that not correct?

Mr. WILCOX. You mean if we were willing to subsidize heavily enough to do so?

The CHAIRMAN. Yes, of course.

Mr. WILCOX. Yes.

The CHAIRMAN. We would have to dispose of the surplus in the case which I put to you, which means we would have to sell for what we could get. We could not continue to accumulate those surpluses year after year.

There might be some leeway in that, but roughly speaking, we would have to dispose of those surpluses currently, especially if there were perishable or burdensome storage features involved.

Mr. WILCOX. Take an illustration. Say you have an export commodity in which we have in the past sold 50 percent of the quantity consumed in the world, and we decide that we want to sell 75 percent of the quantity consumed in the world, and that we are willing to appropriate any sums of money that may be necessary to do that. That would run counter to paragraph 5.

The CHAIRMAN. Are you drawing a distinction in what you have just said, between a case that you may have in mind and the case that I put to you?

Mr. WILCOX. No.

The CHAIRMAN. Going on [reading]:

account being taken insofar as practicable of any special factors which may have affected or may be affecting the trade in that product. The selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member granting the subsidy. Provided that such Member shall, upon the request of any other Member having an important interest in the trade in that product, or upon the request of the Organization, consult promptly with the other Member or with the Organization regarding the need for an adjustment of the base period selected or for the reappraisal of the special factors involved.

I do not think that requires any comment in view of the comment that we have had.

Does that open up any new vistas of escape to your mind?

Mr. WILCOX. What do you mean by "escape," Senator? Escape for a country from the requirements of the chapter?

The CHAIRMAN. No. I mean escape from the difficulty which the questions which have been propounded to you have given to you.

Mr. WILCOX. The questions which have been propounded to me on this section, Senator, give me no difficulty whatsoever.

The CHAIRMAN. I am quite sure it is true, because you have given very clear, unhesitating answers, to the effect that the case that has been put to you so far would be a violation of the Charter.

Mr. WILCOX. May I amplify my answer on this section a bit?

The CHAIRMAN. Surely.

Mr. WILCOX. In the first place, let me say that this section, as it stands, in the draft, from the interim drafting committee in New York, is, in substance, and I think almost verbatim, what was originally

proposed by the United States in the Proposals for Expansion of World Trade and Employment in November 1945, in the section on export subsidies given on page 16 of that document.

It appeared in exactly the same form in the suggested charter for an International Trade Organization put forward by the United States in September 1946, section (e), subsidies, on pages 18 to 20 of that document, and in practically the same form and substance in the London draft charter which came out of the Preparatory Committee and was published in December 1946.

This is a United States text. This text originated in the discussions between the Governments of the United States and the United Kingdom in the fall of 1945 at the time that the American proposals were first discussed, and this text was drafted in the Department of Agriculture, and was personally cleared, I understand, with the Secretary of Agriculture, and it has been negotiated in the subsequent international meetings by members of the Department of Agriculture on the delegation.

I would agree on the point that is implicit in your question, that there will be an inconsistency, a difficulty created by a domestic policy which undertakes to maintain domestic agricultural prices on levels above world prices, and an effort to open up world trade.

That is, if you want to move away from world price levels, it means that you tend to isolate yourself from the rest of the world in one way or another.

In the case of a product which you want to import, it means import quotas, and in the case of a product where you produce more than you want at home, and you want to export, it means subsidies, if you are above the world price level.

Now, this Charter, where these problems have arisen, has attempted to compromise them, and it has compromised them by leaning in the direction of the past agricultural policy of the United States and the present agricultural policy of the United States. That was illustrated when we discussed sections of the Charter having to do with import quotas on agricultural products. And it is illustrated in this section on export subsidies.

In spite of the conflict as to economic policy involved here, this Charter does not say export subsidies stop. It says 3 years plus an extension, plus an effort to get a commodity agreement, plus the maintenance of export subsidies if you do not get commodity agreement.

Now, the one limitation it lays down is that you do not use this device to try to push your position in the world market to a larger percentage than you had in the past.

The CHAIRMAN. In the case that I put to you, I think the latter is implicit.

Mr. WILCOX. In your illustration, it was. That was the illustration you gave me, and in that case, we would run counter to this provision.

The CHAIRMAN. We would run counter to it in any policy of Congress that had the same substance as the case that I have given you.

Mr. WILCOX. Yes. But I do not know what the precise content of agricultural policy is going to be, beyond the year 1952.

The CHAIRMAN. That is right.

Mr. WILCOX. I know that we have a commitment under the Steagall amendment with respect to 1947 and 1948. In the year 1948, the Congress of the United States will have to arrive at some sort of

a decision as to agricultural policy, because the Steingall commitment runs out at the end of that year.

In the year 1948, presumably, the Congress of the United States will have to arrive at a decision as to trade policy, assuming that this Charter is negotiated and presented to the Congress for action.

When that time comes, of course, it is for the Congress to decide how those two policies are to be related one to the other.

The CHAIRMAN. The Congress, at that day and time, may not act with complete comprehensiveness. It may reserve a part of its problems to later dates, and in fact, usually does, and so, of course, the purpose of my questioning has been to see how much flexibility would be left in Congress to decide whatever policy it wanted to decide with relation to the type problem that I have described.

Mr. WILCOX. The Congress might decide, in the 1948 session, that provisions of the sort we have been discussing here, would be unduly restrictive as to its complete freedom of action in other fields, and if it were basing its decision on that issue, it would reject the document if it contained such provisions.

The CHAIRMAN. Paragraph 6 says [reading]:

Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with paragraph 4 of Article 68.

I think we covered that with sufficient completeness.

Mr. WILCOX. Yes.

Senator GEORGE. Doctor, I call your attention to the fact that the British Purchasing Agency is sanctioned under this charter, is it not? It is authorized under this charter?

Mr. WILCOX. It is not prohibited.

Senator GEORGE. No; it is not prohibited. As a matter of fact, it is sanctioned, as I read the charter.

While that Agency, of course, must do certain things, among the things it has the right to do is to buy cotton at the cheapest price it can find it available in the world.

Now, if that policy is to be pursued with respect to purchasing agencies like the British, which buys all the cotton under the British flag, all around the earth, and these provisions in this charter hold, so far as export subsidies or import restrictions, and both are implicit—if you have one you must have the other, or have the right of the other—it seems to me that you, notwithstanding the 8-year period which is just as respite, you practically reduced cotton, and it will apply to a great many other farm products in this country, primary products, to a domestic market here. And then your prices may be such as you run into some other troubles with a whole philosophy of your charter on the manufactured products, out of those higher-priced domestic products.

I cannot see that there is any way to harmonize the thing. Either we have to abandon the whole theory on which most of our farm legislation, both war and prewar, has been formulated, I cannot see how we are going to hold with that philosophy and subscribe in good faith to this charter as it is presently written.

I do not see it at all, because it seems to me that the clear purpose here is to simply say, "Now, whatever your purpose is." Of course, I grant you, in respect of the one thing, that if the purpose of a higher price for such part of the product that is consumed in the domestic

market is to acquire a larger percentage in the world market than you formerly enjoyed, or that you held during any particular period, you can very well see how that could be reached without interfering basically with the concept of your charter here, and a hostile position as to the policy of Congress, as has been exemplified in much of our legislation in the past few years, could be avoided.

Mr. WILCOX. I do not believe, in fact, Senator, that during the period while we have subsidized the exportation of any farm products from this country, that our share of the world market has increased. I think, in fact, it has declined.

Senator GEORGE. That has not been the purpose of the farm legislation to which the chairman referred. It may have had some effect, however, in that field, but that has not been the purpose.

The purpose has been to secure a price here that would enable your producers, your domestic producers, to live. Actually, it is a complement to the whole protective system, and where you have a product that is definitely on an export basis in a big way, where 80 percent of it has to be exported, if you have any reasonable production—and without reasonable production, of course, you have very high-cost production, and you are precluded from making those improvements in your farming operations that you want to make.

Therefore, our policy has been basically complementary to a protective system that we have built up in this country, so far as our manufactured products are concerned, and so far as all those products in which we rely on for an export basis.

The purpose was not to gain a larger proportion in the world market for cotton, but it was to get a price for so much of the cotton, let us say 7,000,000 or 8,000,000 bales—of course, consumption ran higher than that during the war, in the domestic market—but say 7,000,000 to 8,000,000 bales, if we were to hold something like the average production that we held for long period of years, or a proportionate part of that, and sell it in the world market, it meant that we had to have a higher price for so much of the cotton consumed in the domestic market, and naturally you would have to meet the world prices so far as the cotton that you sold in foreign markets is concerned.

Mr. WILCOX. I was agreeing with your point, Senator. I do not believe that in view of our experience, the provisions of paragraph 5 here would be restrictive as far as we are concerned. It relates to something that we have never attempted to do.

Senator GEORGE. No; that has not been the purpose of Congress, at least, at any time.

Mr. WILCOX. It has not been the effect, either.

Senator GEORGE. No; I do not think it has been the effect, either. I agree with you, Doctor. But we face a very stubborn problem here, not alone in the production of cotton but in the production of any other primary product which is already on or is approaching an exportable basis.

Then, when you consider that you have such things still in the world, not prohibited by the Charter, as the British Purchasing Agency, which is perfectly free to buy in large quantities, while they must have regard for the commercial value of the product, while they must have publicized their prices paid, and so forth, they would simply take the market away from us if something, not necessarily the farm legislation that we have had in the past, some of which I never did

like exactly, so far as I am personally concerned, but I have always recognized or at least for a number of years I have recognized that some comparable legislation, something in the nature of that legislation, was necessary.

Mr. WILCOX. Senator, it is presumptuous of me to make a comment to you on cotton, but if I may, I would suggest that the real problem ahead there is likely to be the competition of synthetic fibers.

Senator GEORGE. I know, Doctor! There is no question about that. That just aggravates the problem.

Mr. WILCOX. And paper, and things like that, in the domestic market. And that a higher price level for cotton in the domestic market does make that competition of rayon and paper and other methods of packaging more difficult for cotton.

Senator GEORGE. There is no question about that. It increases that competitive factor there. It is a very hard one, under any circumstances. (A memorandum on the Cotton Marketing Program of the United States and the Proposal Charter by the General Counsel of the United States Tariff Commission appears as Exhibit XIX C.)

The CHAIRMAN. I should like to read into the record at this point an excerpt from a press release dated Washington, D. C., March 26, 1947, in the British Information Services. [Reading:]

Sir Stafford Cripps' speech on Imperial preference again gets attention in the editorial columns. The *Mall*, *News Chronicle*, and *Herald* all devote their main editorials to this speech. The *Mall* and *News Chronicle* express some fear that Imperial preference may be abandoned without substantial recompense. The *News Chronicle*, for instance, says, "We cannot throw away Imperial preference in order to exchange the substance of real economic advantage for the shadow of American promises." The *Herald*, on the other hand, claims that Sir Stafford Cripps has made it plain that Britain will reduce Imperial preferences only if other countries make equitable concessions in return.

Now, I am reading from the *Baltimore Sun*, March 26, 1947, page 5. The heading is: "Britain Planning Philippine Treaty." The sub-heading is: "May Attack United States Pact with Manila at Conference. London, March 25."

This is an AP dispatch:

A foreign office spokesman disclosed today that Britain is negotiating a friendship treaty with the Philippines. At the same time it was hinted in a debate in the House of Commons that Britain may attack the recently completed United States-Philippines twenty-five-year preferential trade treaty at the International Trade Conference at Geneva next month. There was no indication of any connection between the diplomatic negotiations and the trade treaty discussions which will be handled by Sir Stafford Cripps, President of the Board of Trade, at the Geneva (Switzerland) meeting beginning April 10. Observers in London's financial districts said the Philippines Agreement was one of the chief points on which the United States might be open to an attack in any attempt by Washington negotiators to lower or eliminate Britain's Empire Trade Preference System, and the Dominions.

Doctor, would it be convenient for you to go on again at 2:30?

Mr. WILCOX. I can do so.

The CHAIRMAN. I understand that you are working against a due date. I realize that you have things to do. But I would like to get through by 5 with you, if we can possibly do it.

Mr. WILCOX. Yes; that might be possible.

(Thereupon, at 1:10 p. m. the committee recessed until 2:30 p. m.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., upon the expiration of the recess.)

The CHAIRMAN. The committee will come to order.

STATEMENTS OF CLAIR WILCOX, DIRECTOR, OFFICE OF INTERNATIONAL TRADE POLICY, DEPARTMENT OF STATE, WASHINGTON, D. C. (Resumed); AND JOHN M. LEDDY, ADVISER, DIVISION OF COMMERCIAL POLICY, STATE DEPARTMENT, WASHINGTON, D. C. (Resumed)

The CHAIRMAN. Section E, State Trading. Article 31, Nondiscriminatory Administration of State-trading Enterprises, reads as follows:

1. If any Member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product, the commerce of other Members shall be accorded treatment no less favourable than that accorded to the commerce of any country other than that in which the enterprise is located in respect of the purchase or sale by such enterprise of any product. To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as price, quality, marketability, transportation, and other terms of purchase or sale, having due regard to any differential customs treatment maintained consistently with the other provisions of this Charter.

2. The provisions of paragraph 1 of this Article relating to purchases of imports by state enterprises shall apply to purchases or imports of products for resale (or for use in the production of goods for sale). With respect to purchases or imports by state enterprises of products for governmental use and not for resale (or for use in the production of goods for sale), Members shall accord to the commerce of the other Members fair and equitable treatment, having full regard to all relevant circumstances.

3. This Article shall apply to any enterprise, organ, or agency in which there is effective control by a Member government.

Alternative A:

or over whose trading operations a Member government exercises effective control by virtue of the special or exclusive privileges granted to the enterprise.

Alternative B:

or over whose trading operations a government is, under the arrangements providing for the special or exclusive privileges granted to the enterprise, legally entitled to exercise effective control.

The CHAIRMAN. The latter part of paragraph 1 was not entirely clear to me, Dr. Wilcox. I wonder if you would tell us just what is contemplated by the two paragraphs and give us illustrations of the type of thing which is forbidden?

Mr. WILCOX. May I first make a general statement about the whole section on state trading?

The CHAIRMAN. Yes.

Mr. WILCOX. The section is designed formally to establish the same general principles with respect to state trading operations that are applied elsewhere in the Charter to private enterprise trading operations under public regulation.

One of the purposes of the Charter is expansion of the total of trade; that would be achieved in the case of countries under a private enter-

prise system by a reduction of trade barriers. In the case of a country that had a complete monopoly of its foreign trade in the hands of the Government, a reduction of such barriers would not have much meaning because the country could buy or not, as it chose. Therefore, it is the purpose of article 33, which involves a total purchase commitment on the part of such a country, and the illustration there, of course, is the Soviet Union, to involve a parallel obligation to the obligation assumed by private trade countries.

Now, the other general principle that exists throughout the Charter with respect to private trading is that of nondiscrimination, and it is the purpose of the article which you have just read to apply in the case of state trading operations that principle of nondiscrimination that is applied elsewhere in the Charter in cases of private trade. Now, of course, with private trade, the operation of nondiscrimination is simply that your laws governing foreign commerce are applied equally as among other countries. In the case of state trading, of course, again, that would not have so much meaning, because a state-trading enterprise would be free to sell in one place or to buy in one place and not in another and to discriminate in its purchases and sales.

It is the purpose of this article to lay down a rule of nondiscrimination in the operation of a state-trading enterprise. This would apply in a country that had only part of its trade in the hands of the state, maybe only one product, or in the case of a country that was conducting all of its foreign trade.

Article 33 applies only in the case of a country conducting all of its foreign trade.

I would like to say a little more about this section, if I may.

The CHAIRMAN. If you would.

Mr. WILCOX. We have here a problem which some people have said is insoluble; that is, it has been argued that the only effective way in which to deal with a state trading monopoly is to set up another state trading monopoly to deal with it. It you have state trading doing all the purchasing, on one side of the border, you set up a state trading enterprise to do all the selling on the other side of the border, and you have a monopolist facing a monopolist and you fight it out; or vice versa, with the sales and the purchases. That may ultimately be necessary, and if it were the fact that the bulk of the trade of the world outside of the United States was in the hands of governments, we might be left no alternative but to do this; that is, state trading abroad, if it were pervasive, might drive us into state trading at home. But certainly that is not as yet the situation and it is not, I think, a solution of the problem in which the United States would be prepared to acquiesce except in the most extreme situation where there was no alternative.

Hence, the effort to approach this problem in another way.

Now, I would not contend that what we have in this section is a completely satisfactory or final solution of this problem by any means.

We have discussed this matter at considerable length with business groups in the United States, and we have sought their advice on it. I can give you an indication as to the position of the National Association of Manufacturers and the Chamber of Commerce and so on, on this issue, if you wish. And this is the most adequate

statement that we have been able to present. I think in certain respects it is open to very serious criticism.

I would be glad to indicate as we go along what the difficulties are. It is based on the assumption that where other countries have chosen to set up state trading, we cannot tell them that they cannot do that. We do not want to isolate ourselves from countries in which state trading is in existence, so we have to work out a method by which the private-trading part of the world can do business with the state-trading part of the world on an equal basis; that has been the purpose behind this section.

The CHAIRMAN. To the extent that we adjust ourselves to state trading, or appease state trading, to that extent we are impairing some of the idealism of the charter?

Mr. WILCOX. Well, the Charter has grown out of a philosophy of private trade; yes.

The CHAIRMAN. I remember at an earlier part of our discussion you gave considerable emphasis to the objective of having a free economic world in which private trade could operate?

Mr. WILCOX. That is right.

The CHAIRMAN. And to the extent that we appease state trading we are certainly working against that principle, are we not?

Mr. WILCOX. That is right.

I think if the world moves on into a condition in which the bulk of trade is in the hands of states, the type of provisions that we have in this charter will come to have less and less meaning.

The CHAIRMAN. You have mounting artificiality of all kinds.

Mr. WILCOX. That is right.

The CHAIRMAN. That frustrates your basic purposes.

Mr. WILCOX. Yes, sir.

The CHAIRMAN. The effect of state trading, generally speaking, is repressive, is it not, as far as the expansion of the kind of foreign trade that we would want to see is concerned?

Mr. WILCOX. Well, conceivably you could have a considerable volume of trade under state trading, but state trading is prejudicial to multilateralism and is more likely to lead to bilateralism in trade; yes.

The CHAIRMAN. What is the present status of British cotton buying? As I understand it private trading in cotton has been set aside in Great Britain. The Government has taken over. Is my understanding correct?

Mr. WILCOX. The Government has a monopoly on cotton imports. There is no private trading in cotton.

The CHAIRMAN. That would be an illustration of state trading, would it not?

Mr. WILCOX. That is right.

Senator GEORGE. They also have them in other trading?

Mr. WILCOX. I believe they do and I believe we do, too, in rubber, for instance.

Senator GEORGE. We do in rubber.

They have a purchasing agency, Senator, if I may say, which is of course financed by Government directly and indirectly, and they do the buying for all the fabricators and processors and manufacturers in Britain and elsewhere under the British flag in those other areas if they come under or wish to come under it. They have a monopoly of purchasing and monopoly buying.

Mr. WILCOX. Yes.

The **CHAIRMAN.** Does that not have a direct effect in depressing prices of world cotton?

Mr. WILCOX. Yes; I should think the more you concentrate buying in the hands of one single buyer, the more advantage it gives the buyer when there are many sellers.

The **CHAIRMAN.** Obviously a monopoly in control of the market will buy as cheaply as possible.

Mr. WILCOX. Certainly.

The **CHAIRMAN.** Now, in paragraph 1, it is said:

If any member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute, or produce any product, the commerce of other members shall be accorded treatment no less favorable than that accorded to the commerce of any country other than that in which the enterprise is located in respect of the purchase or sale by such enterprise of any product.

That is a little muddy to me. Just what does that mean?

Mr. WILCOX. Well, it means equality of treatment in the sales of a state trading enterprise as among different foreign buyers and its purchases as among different foreign sellers.

The **CHAIRMAN.** Does not the word "commerce" go beyond that?

Mr. WILCOX. I do not think it is intended to; no, sir.

The **CHAIRMAN.** I picked up the word "commerce," and it seems to me to go beyond words that might have been limited to products dealt with on a state trading basis.

Mr. WILCOX. I do not believe it is intended to.

The **CHAIRMAN.** What would you say is the relationship of paragraph 1 to the British preferences system?

Mr. WILCOX. None.

The **CHAIRMAN.** That does not grant equal privileges as far as commerce of other nations is concerned.

Mr. WILCOX. The British preference system has to do with control of flow of private trade.

The **CHAIRMAN.** What, if anything, would be the relationship between British state-controlled products and its preference system? Those products, of course, would flow in commerce between constituent parts of the Empire and they would also flow in commerce to some extent as to the rest of the world?

Mr. WILCOX. Well, in a state-trading enterprise, when the United Kingdom made purchases, do they have to pay duties?

Mr. LADD. I think the point is covered by the last clause in the next sentence, which is by way of implementation of the principle stated in the first sentence. It provides that they buy on the basis of commercial considerations, such as price, quality, and so forth, having due regard to any differential customs treatment maintained consistently with this charter. That would mean, for example, let us take wheat: If there were a duty preference on wheat in the United Kingdom market, the state enterprise would have regard to the duty-paid price. In other words, by engaging in state trading it is not required to eliminate the preference. That would be taken care of under the negotiations provided under article 24.

The CHAIRMAN. We have been doing some state trading in copper. We have been buying copper in the world market and then we have been bringing that in duty-free and have been passing it on to the consumer duty-free.

We have also bought some with duty and have passed it on to the consumer with duty.

Is there any bearing between what Great Britain might do with the cotton which she buys under her state trading and the preference system?

Mr. LEDDY. Insofar as there were a preference, a duty preference, on cotton imported into the United Kingdom, the state enterprise could take that into account, yes.

The CHAIRMAN. This morning I asked you whether there was anything in the charter any place that might affect the monopolies that result naturally from the granting of patents by this country and their maintenance through agreements in foreign countries. Just for the sake of the record I will ask you as to whether there is anything in this section that bears on that?

Mr. WILCOX. No, I do not think this section has any bearing on that.

The CHAIRMAN. What would be the bearing of this section on oil concessions granted by a nation to some subsidiary, government-owned corporation? Would that be considered state trading?

Mr. WILCOX. If the corporation were owned by the Government and located outside of its own borders, operating a concession in some other country—"wherever located" is the phrase here—and it were engaged in production, yes, I think it would be covered.

The CHAIRMAN. It has been suggested, for example, that we protect our interest in the Mediterranean area by setting up Government corporations and acquiring oil rights and using the product, for example, for the supply of our Navy. Would this cut across the purpose of the paragraph we are discussing?

Mr. WILCOX. Well, it would not prevent us from doing so. The only principle would be that in selling the oil that was produced by such a Government-owned corporation, the corporation should sell it on a commercial basis.

The CHAIRMAN. Exactly.

Mr. WILCOX. It should act like a business concern would act.

The CHAIRMAN. It could not monopolize the distribution of the product to a particular purchaser.

Let me give you a case, something that we can measure. Let us assume that the United States, in one form or another, by one set of mechanics or another, goes into a foreign country, acquires oil for the purpose of delivering that oil to itself or its agency exclusively, and would not admit the rest of the world to the right to buy that oil on any basis, allocated or otherwise. Would that be condemned by that section?

Mr. WILCOX. I think that illustration would be covered by the exception in article 37 (d), that nothing in the chapter applies to measures relating to traffic in arms, ammunition, and implements of war, and to such traffic in other goods and materials as is carried on for the purpose of supplying the military establishment.

The CHAIRMAN. Supposing the purpose were other than the supply of the military establishment? Supposing it were to get an additional source of oil for general uses in this country?

Mr. WILCOX. Well, in that case I think the provision in the paragraph would apply; that is, sell on a commercial basis and do not discriminate for political reasons in your sales.

The CHAIRMAN. In other words, we would not be permitted to maintain that sort of exclusive selling arrangement?

Mr. WILCOX. No; I think, as it is written, the answer to that is "No."

The thing that causes me to hesitate in the answer would be the possibility of a producing company selling its whole output to a distributing company which would then handle the distribution.

The CHAIRMAN. Looking through the form, if it came to that ultimate substance, it would be condemned, would it not, by the article?

Mr. WILCOX. If it is not for military purposes, if it is a Government corporation, if it is exporting, it treats all commerce the same on the basis of commercial principles.

The CHAIRMAN. And of course the same thing is applicable to all of the other countries that might pursue that policy?

Mr. WILCOX. That is right.

The CHAIRMAN. Would that not hit substantially at countries other than ourselves?

Mr. WILCOX. Well, this would not—

The CHAIRMAN (interposing). Does not Great Britain, to put it another way, control considerable oil through devices of that kind, through government-owned corporations or controlled corporations, for uses which Great Britain dominates not on an equally accessible basis to the rest of the world?

Mr. WILCOX. If it is a governmentally owned or controlled corporation, whether located within the country or located within another country, this principle applies, yes.

The CHAIRMAN. Is this acceptable to Great Britain?

Mr. WILCOX. They have not objected to it.

The CHAIRMAN. You have heard the statement made many times by people who are considered expert on the subject, that we are depleting our oil reserves and other reserves to a point where we should acquire foreign reserves for substitution in the domestic field?

Mr. WILCOX. Yes.

I think I should amend my earlier answer about Great Britain. This was in the earlier proposals in essence, if not word for word, and the British Government indicated its agreement on all important points of the proposal.

The CHAIRMAN. I mentioned oil, and the same principle would go to minerals or anything else?

Mr. WILCOX. That is right.

The CHAIRMAN. Let me read the last sentence of paragraph 1:

To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as price, quality, marketability, transportation, and other terms of purchase or sale, having due regard to any differential customs treatment maintained consistently with the other provisions of this Charter.

Just what is that aimed at? The part that is confusing me is:

having due regard to any differential customs treatment maintained consistently with the other provisions of this Charter.

What specifically is in mind there?

Mr. WILCOX. I think this would permit, let us say in the case of the British Empire, the purchase by a government trading agency in

Britain, of products at a higher price within the Empire and a lower price outside of the Empire to the extent of the difference in the tariff.

Mr. LEDDY. That is right.

The CHAIRMAN. And that would be a further buttressing for the preference?

Mr. WILCOX. No; it merely recognizes its existence.

The CHAIRMAN. But if it worked the other way it would tend to destroy the existence of the preference, would it not?

Mr. WILCOX. That is right.

The purpose of this last clause is to be neutral as to the question of preferences which are to be handled in the negotiations elsewhere.

The CHAIRMAN. Now, paragraph 2, which reads:

The provisions of paragraph 1 of this Article relating to purchases of imports by State enterprises shall apply to purchases or imports of products for resale (or for use in the production of goods for sale). With respect to purchases or imports by State enterprises of products for governmental use and not for resale (or for use in the production of goods for sale), Members shall accord to the commerce of the other Members fair and equitable treatment, having full regard to all relevant circumstances.

Mr. WILCOX. The first sentence of this second paragraph says that the preceding paragraph applies to a commercial operation in which you are buying products for resale, or raw materials, and you produce the goods and you sell the goods.

The second part of this paragraph relates to governmental purchase for governmental use—that is, public procurement—which is not a commercial operation. There the rule is fair and equitable treatment.

The CHAIRMAN. I read paragraph 3, as follows:

This article shall apply to any enterprise, organ, or agency in which there is effective control by a Member government.

This simply describes the type of controls to which the article is applicable.

Mr. WILCOX. That is right. That period should be eliminated after the word "government."

The CHAIRMAN. Is all of paragraph 3 still open?

Mr. WILCOX. No; the alternatives are for the conclusion of the paragraph.

The CHAIRMAN. The alternatives do not indicate differing suggestions which have not yet been settled?

Mr. WILCOX. They do.

The CHAIRMAN. I will read the alternatives, as follows:

Alternative A

or over whose trading operations a Member government exercises effective control by virtue of the special or exclusive privileges granted to the enterprise.

Alternative B

or over whose trading operations a government is, under the arrangements providing for the special or exclusive privileges granted to the enterprise, legally entitled to exercise effective control.

Let me ask again, Is all of paragraph 3 open for further consideration, or has this been agreed upon?

Mr. WILCOX. The first clause in the paragraph is agreed.

The CHAIRMAN. Up to the comma?

Mr. WILCOX. Yes. The second clause is not agreed.

The CHAIRMAN. What was the acceptance by the members so far as 1 or 2 is concerned? Was there much opposition or was it unaniously approved?

Mr. WILCOX. Your question had to do with 1 and 2?

The CHAIRMAN. Yes.

Mr. WILCOX. There is general agreement except with respect to the material shown in brackets.

The CHAIRMAN. Article 32: Expansion of Trade by State Monopolies of Individual Products—and I read:

1. If any Member, other than a Member subject to the provisions of Article 33, establishes, maintains, or authorizes, formally or in fact, an effective monopoly of the importation or exportation of any product, such Member shall, upon the request of any other Member or Members having an interest in trade with that Member in the product concerned, enter into negotiations with such Member or Members in the manner provided for in respect of tariffs under Article 24, with regard to (a) in the case of an export monopoly, arrangements designed to limit or reduce the protection afforded through the operation of the monopoly to domestic users of the monopolized product or to assure exports of the monopolized product in adequate quantities at reasonable prices; or (b) in the case of an import monopoly, the maximum margin by which the price for an imported product charged by the monopoly in the home market may exceed the landed cost, before payment of any duty, of such product purchased by the monopoly from suppliers in the territories of Members, after due allowance for internal taxes, transportation, distribution, and other expenses incident to purchase, sale, or further processing, and for a reasonable margin of profit. For the purpose of applying this margin regard may be had to average landed costs and selling prices of the monopoly over recent periods.

2. Any Member newly establishing any import monopoly in respect of any product shall not create a margin as defined in paragraph 1 (b) greater than that represented by the maximum rate of import duty which may have been negotiated in regard to that product pursuant to Article 24.

3. With regard to any monopolized product in respect of which a maximum margin has been established pursuant to paragraph 1 (b) or paragraph 2 of this Article, the monopoly shall, as far as administratively practicable, and subject to the other provisions of this Charter, import (from Members) and offer for sale at prices charged within such maximum margin such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at that time.

4. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for revenue purposes.

Would you mind giving us full illustrations of cases intended to be met by those provisions?

Mr. WILCOX. This is the case of a state monopoly in the trade of a single product. In such a case, negotiations with the country monopolizing the trade in that product with respect to a reduction in tariff would have little meanings, because even if they had a tariff and did reduce it, since the Government is the only buyer, they may not buy anything.

Now, a case in point, I should think, as an illustration, would be the French state monopoly of tobacco, and let us say, for instance, that we should like to sell more American cigarettes in France. We do not accomplish that purpose, we do not get an expanded market for American cigarettes in France by getting them to reduce a tariff, because there is no private trader there that is free to buy them. So, what this purposes is a substitute in such a case; that is, negotiation as to the margin that they apply over and above the landed cost of American cigarettes in France determining their final selling price.

In the same way in which we would ask some other countries that did not have a state monopoly of tobacco to reduce a tariff against American cigarettes, we might say to the French, "We want to negotiate that margin with you," and we may get their agreement to that. In that case the price of American cigarettes in France would come down and the American tobacco companies might find their market for their product thereby enlarged.

The CHAIRMAN. Does this condemn a complete monopoly? Supposing that the French policy were to do whatever is necessary to do to keep American tobacco out of France, would this condemn that?

Mr. WILCOX. Oh, no. All this says is that they will negotiate on it.

The CHAIRMAN. As to this particular article, there are no further sanctions?

Mr. WILCOX. No, they may withhold that particular thing from the negotiations the same as we may withhold a product from negotiations. We may say, "No concessions on this."

They may say, "No concessions on that."

The CHAIRMAN. By that same token, any number of concessions could be set up by a member and they would not be reachable?

Mr. WILCOX. That is right.

The CHAIRMAN. Would not that leave a rather sizable gap in the system here?

Mr. WILCOX. No, I do not think so. In this negotiating process, in the bargaining process on tariffs, a country is free to grant concessions on a particular product or not, as it chooses, and it is free to bargain with respect to the margins of a State monopoly or not, as it chooses.

So that there would be no incentive in this bargaining situation to set up a State monopoly.

The CHAIRMAN. You make your comparison with tariffs. Supposing you make it with import quotas, does this not have the effect of an import quota? I mean in ultimate terms. If you are maintaining a monopoly on tobacco in France and do all the things to keep tobacco out, you are completely preventing importation of tobacco.

Mr. WILCOX. If that is the policy of the monopoly, not to buy any foreign tobacco, it is the equivalent of an embargo.

The CHAIRMAN. Well, would that be approved by this article or would it be disapproved?

Mr. WILCOX. As far as this article is concerned, it would not be disapproved, but let us say, just to illustrate the thing—I do not say this has been the policy—that the French tobacco monopoly would say, "We want to buy all of our tobacco in the Eastern Hemisphere and we will not buy any tobacco at all from the United States."

I should think that would run contrary to the previous provisions of the Charter, article 31, but it would not be outlawed by article 32.

The CHAIRMAN. There was a provision elsewhere that at least token imports must be permitted?

Mr. WILCOX. Yes.

The CHAIRMAN. Would that have any application to the present situation?

Mr. WILCOX. That means that your import quota system must admit token imports, but if you have all of the product in the hands of

the state and there are no private imports at all, that does not have any meaning, no, sir. The state monopoly may import nothing whatsoever.

The CHAIRMAN. I come back to my other question. Does not this leave a rather large gap in the protections which you would like to set up in this Charter?

Mr. WILCOX. I cannot see that this particular article does. The fact of state trading creates difficulties, but all that this article says is that the state trading country bargains as to the margins to be charged a state trading enterprise on imported goods, and it attempts to set them up as an equivalent of bargaining with respect to tariffs.

The CHAIRMAN. But that is unsanctioned?

Mr. WILCOX. That is right, there is no sanction.

The CHAIRMAN. Paragraph 2 reads:

Any Member newly establishing any import monopoly in respect of any product shall not create a margin as defined in paragraph 1 (b) greater than that represented by the maximum rate of import duty which may have been negotiated in regard to that product pursuant to Article 24.

Now, just what does that mean?

Mr. WILCOX. Well, this is the case in which there have been negotiations with respect to a particular product that is in the hands of a private enterprise, and subsequently a country establishes an import monopoly on that product. It does not then establish a margin over the landed cost which is greater than the rate of import duty which it would have charged if the product were in the hands of private traders.

The CHAIRMAN. Now, will you draw the distinction for us between an existing monopoly of the type we are discussing and a newly established one?

Mr. WILCOX. Well, this is designed to prevent countries from increasing their barriers against foreign goods by shifting over to state trading; that is the purpose.

The CHAIRMAN. Yes, but are there any handicaps existing in case of newly established monopolies that do not exist in the case of existing monopolies?

Mr. WILCOX. No.

The CHAIRMAN. There is no point, then, to the emphasis on newly established monopolies?

Mr. WILCOX. No; it is merely to keep the situation as it has been bargained out before they set up the state monopoly.

The CHAIRMAN. I read paragraph 3, as follows:

With regard to any monopolized product in respect of which a maximum margin has been established pursuant to paragraph 1 (b) or paragraph 2 of this Article, the monopoly shall, as far as administratively practicable, and subject to the other provisions of this Charter, import (from Members) and offer for sale at prices charged within such maximum margin such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at the time.

I find that one very difficult to understand.

Mr. WILCOX. Well, let us say we negotiate with France a reduction in the margin on American cigarettes. That means that the price at which American cigarettes would sell in France is lower; that means that they could sell more of those cigarettes in France, but the French

tobacco monopoly might not buy more cigarettes as a result of having reduced the price, although the market is there for them.

This says that they must buy enough to satisfy the full demand at the new price. That, of course, is what would happen under private trade without restriction.

The CHAIRMAN. How would that be determined?

Mr. WILCOX. Well, I suppose it means there must be enough cigarettes there to sell a pack of cigarettes to everyone who has the money, at the new price, unless they are rationed.

The CHAIRMAN. That is rather impractical; is it not?

Mr. WILCOX. I think it is difficult.

The CHAIRMAN. Yes. Paragraph 4 reads:

In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for revenue purposes.

Lesser monopolistic leeway would be given to that kind of a corporation; would it not?

Mr. WILCOX. No; I think more. I think the country would say, "The purpose of this monopoly in this country is really to provide the Government with revenue, and for that reason we want to maintain a large margin because we depend upon that to finance the state and, hence, we do not want to bargain about that margin."

The CHAIRMAN. That is a frequent situation in foreign countries as to various types of monopolies.

Mr. WILCOX. Yes.

The CHAIRMAN. It applies to match monopolies; does it not?

Mr. WILCOX. Yes.

The CHAIRMAN. And also to tobacco.

Mr. WILCOX. Yes.

The CHAIRMAN. What other examples can you offer?

Mr. WILCOX. Well, in any case it will be a product with a low unit value and a large market, that is consumed habitually.

The CHAIRMAN. And easy to administer?

Mr. WILCOX. That is right.

The CHAIRMAN. If I may make a suggestion, I think that whole article could be clarified considerably—article 33, expansion of trade by complete state monopolies of import trade. I notice that the whole paragraph is in brackets.

Mr. WILCOX. This is the proposal made by the United States, and it has not been discussed by the committee. The reason it has not been discussed is that the only country to which this would apply has never attended the meetings of the committee.

The CHAIRMAN. I see.

Well, if the member had attended and if it were to join, and if our viewpoint prevailed, then the following would be effective [reading]:

Any Member establishing or maintaining a complete or substantially complete monopoly of its import trade shall promote the expansion of its foreign trade with the other Members in consonance with the purposes of this Charter. To this end such Member shall negotiate with the other Members an arrangement under which, in conjunction with the granting of tariff concessions by such other Members, and in consideration of the other benefits of this Chapter, it shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon. This purchase arrangement shall be subject to periodic adjustment.

That necessarily, from its terms, contemplates import quotas, does it not?

Mr. WILCOX. No. Import quotas would have no meaning in this case. It contemplates a commitment as to the total volume of imports. The purpose of import quotas is to limit the private trader; in this case there is no private trader, and the state buys as much as it pleases.

The CHAIRMAN. I suggest it is to limit imports by private traders. Does this not by its specific terms provide for that?

Mr. WILCOX. No; it provides for the expansion of imports.

The CHAIRMAN. I suggest that if you provide for an agreed upon amount of imports, you necessarily are dealing with an import limitation.

Mr. WILCOX. That is not the purpose of it. The purpose of it—and this is what I think is to be said in criticism of it—is to get a state that has a complete monopoly of its foreign trade to agree to import more than it otherwise would have imported.

The CHAIRMAN. I am not saying that the operation of it would not result in a larger import, but it results in a measured import established by agreement, which is a quantitative limitation, which is a characteristic feature of an import quota.

Mr. WILCOX. No; there would be nothing about such an agreement—I am not arguing for this, Senator—as proposed here that would limit the total amount that that country could buy. The figure that they would set would be a minimum for the imports and not a maximum.

The CHAIRMAN. Well, it might operate either way.

Mr. WILCOX. No.

The CHAIRMAN. Of course it might.

Let me read it further:

It shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon.

If it viewed that as a burdensome thing, it would limit itself to an agreed upon minimum.

Mr. WILCOX. It could.

The CHAIRMAN. This also provides that that sort of arrangement is subject to periodic adjustment.

Well, at the moment it is academic; is it not?

Mr. WILCOX. Yes.

On this point, the United States Associates of the International Chamber of Commerce say [reading]:

The committee realizes that the mechanics of the purchase agreement have been used with certain success by the United States and the Soviet Union. The committee believes this device is probably the only means available for providing through international agreement for a given level of exports for an increase in exports to a country with complete monopoly in foreign trade. The committee has some question whether the device can be made to operate on a multilateral basis. It is difficult to envisage how an agreement involving this mechanism would in practice be negotiated, and it is difficult to foresee how to measure the quid pro quo in regard to them collectively.

Senator GEORGE. That simply means, Doctor, that if we desire to do some trading with Russia, say of automobiles, that we could say to Russia, "If you will take a certain X quantity of automobiles, we will grant you certain concessions on something that you desire to export to us."

Mr. WILCOX. That is not the way the section is written now, Senator. It is a commitment as to the total amount that they would purchase from all sources and not from particular countries.

Senator GEORGE. From all sources?

Mr. WILCOX. Yes.

Senator GEORGE. In other words, it is a multilateral program?

Mr. WILCOX. It would be a statement of the volume of their total imports.

Senator GEORGE. I had the impression that what was meant was that any country might say, "We will give you certain tariff concessions provided that during a fixed period you will take a minimum of imports from us."

Mr. WILCOX. That is not the way it is written.

Senator GEORGE. It is not?

Mr. WILCOX. The National Association of Manufacturers says [reading]:

We do not believe it is economically sound or desirable, as required in article 33, that nations purchase a minimum amount of goods from abroad. This would apparently permit the International Trade Organization to decide what minimum in value and quantity and kind of goods should be bought by such nations from other nations.

I do not think that is quite accurate.

The CHAIRMAN. As I read the section, it requires agreement on the amount of imports.

Mr. WILCOX. That is right.

They continue to say:

Because the basic principle is bad, we believe the article should be eliminated.

The National Foreign Trade Council takes the same position on that article, as follows:

It would appear that in the search for an inducement which such a nation would or could offer to other members related in any way to the projected expansion of world trade, the foregoing was the only specific undertaking which could be devised. It is, of course, the reverse of a quota on imports.

However, it is difficult to see why the nation concerned should be attracted to make commitments more expansive than the demonstrated requirements of its economy in any case. Therefore, it would seem that the supposed inducement is largely illusory.

We do not believe the inclusion of this article serves any useful purpose, and recommend that it be deleted.

The CHAIRMAN. Doctor, at the present time, independent of the Charter, are the generalized benefits resulting from "most favored" clauses in our trade agreements available to Russia?

Mr. WILCOX. Yes.

The CHAIRMAN. What effect will the Charter have on that?

Mr. WILCOX. It depends on whether Russia joins the Organization.

The CHAIRMAN. If they do not?

Mr. WILCOX. If our proposal for the clause relating to nonmembers is adopted—that is, article 36—1 year after the establishment of the Organization, most-favored-nation treatment would be limited to members, and if Russia were a nonmember it would not be extended to Russia.

The CHAIRMAN. At the present time Russia maintains a monopolistic position so far as imports are concerned?

Mr. WILCOX. Yes.

The CHAIRMAN. But has the benefit of the generalization of the most-favored-nation clauses of our trade agreements been made available to Russia?

Mr. WILCOX. Yes.

Senator GEORGE. These seems to be little purpose to maintain it, because from the construction which I place on it—which is probably the only one you can place on it, looking at the language—it is hardly possible that all of the nations would be inclined to make concessions to Russia, because there would be bound to be many members, if you have a large organization, and you would have little or no trade relations with them.

Mr. WILCOX. It would be my judgment that the article should be dropped and we should not press for it.

Senator GEORGE. I do not think we could accomplish anything.

The CHAIRMAN. Section F, Emergency Provisions—Consultation. Article 84, Emergency Action on Imports of Particular Products. I read as follows:

1. If, as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products (or, in the case of a product which is the subject of a concession with respect to a preference, is being imported under such conditions as to cause or threaten serious injury to producers in a territory which receives or received such preference), the Member shall be free to suspend the obligation in respect of such product in whole or in part, or to withdraw or modify the concession to the extent and for such time as may be necessary to prevent such injury.

I believe it would be well to read the rest of it, so I will continue:

2. Before any Member shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical and exceptional circumstances such action may be taken provisionally without prior consultation, Provided that consultation shall be effected immediately following upon the taking of such action.

3. If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action, shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than sixty days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action, of such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In cases of abuse the Organization may authorize an affected Member to suspend obligations or concessions in addition to those which may be substantially equivalent to the action originally taken.

At the present time we have an Executive order that authorizes the inclusion of escape clauses in the trade agreements which we will negotiate?

Mr. WILCOX. The escape clause in our trade agreements is the origin of this article.

The CHAIRMAN. Yes, I understand that. I want to see whether the article goes further and I want to measure the departures from the Executive order that is now standing.

The escape clause is, of course, a two-way road independent of the Charter, and assuming we had this escape clause in the Charter that too would be a two-way road. We can escape when we are injured and the other fellow can do likewise.

Mr. WILCOX. That is right.

The CHAIRMAN. We can pick the product from which we wish to escape, and he can do the same, picking a product from which he wishes to escape?

Mr. WILCOX. That is right.

The CHAIRMAN. Is there any theory of trying to measure the injury from our escape at the present time which would enable the other fellow to pick a series of concessions which he had given and void them?

Mr. WILCOX. You mean where this escape clause appears in an agreement at the present time, is the substantially equivalent obligation idea present?

The CHAIRMAN. That is right.

Mr. LEDDY. I think the escape clause in the Mexican agreement permits the other party to terminate in whole or in part. Now, the reason for including the provision for terminating in part was to permit withdrawal of something which was roughly equivalent to the withdrawal by the member using the escape clause.

The CHAIRMAN. That represents a departure from my understanding. I thought that we could escape from a particular item that was burdening us, and the other fellow could escape from a particular item that was burdening him. It was not my understanding that if we escape from one thing, he looks over his list and then escapes from an equivalent amount.

Mr. WILCOX. But if he undertook to withdraw from more than an equivalent concession, we should object.

The CHAIRMAN. That is not my point. The other fellow would be governed by the same rule that governs us, he could escape from an importation that was injuring him?

Mr. WILCOX. Yes.

The CHAIRMAN. It has not been my understanding that whether or not he was injured he could take a look at his concessions to us and say, "Well, I am not being injured by the importation of these matters but I am going to withdraw these concessions."

Mr. WILCOX. He can withdraw from the whole agreement.

The CHAIRMAN. He can withdraw from the whole agreement if we withdraw from a single item?

Mr. WILCOX. Yes.

The CHAIRMAN. And under the President's order?

Mr. WILCOX. Yes, or from part of it.

The CHAIRMAN. Do you view that as a fairly balanced scheme?

Mr. WILCOX. Yes, I should say so.

The CHAIRMAN. In the absence of injury to the other fellow?

Mr. WILCOX. Yes, but these agreements are mutual things. You have your bargaining and you strike a balance. Then, one day, one of the parties comes along and says, "Part of what I gave you in this bargain, I am going to take back."

Then the other fellow says, "Then it is not a bargain," or he says, "I will take part back of what I gave you."

The CHAIRMAN. Is there not a large field for delay in paragraph 2—considering the time for notice and for the Organization to consider the matter and for the members to consider the matter. A large number of the members might be interested?

Mr. WILCOX. The answer, as far as the first sentence of the paragraph is concerned, is "Yes," and that is as far as we went in the Mexican agreement; but there has been added here another sentence: In critical and exceptional circumstances such action may be taken provisionally without prior consultation—

and there the answer to your question would be "No," there need not be delay.

The CHAIRMAN. But in that case consultation goes on subsequently leading to what? Could the Organization under any conceivable circumstances reverse or modify the decision to invoke the escape clause?

Mr. WILCOX. No.

The CHAIRMAN. What would be the purpose of the further consultation?

Mr. WILCOX. Further consultation would have to do with what happened to the agreement as a result of the invoking of the escape clause.

The CHAIRMAN. And there the role of the Organization would be what?

Mr. WILCOX. The role of the Organization?

The CHAIRMAN. Yes.

Mr. WILCOX. In that case members would propose to withdraw concessions, the determination of the Organization would have to do with whether the concessions withdrawn were substantially equivalent.

The CHAIRMAN. The members permitted to complain would be only those who entered into trade agreements on which concessions had been granted?

Mr. WILCOX. Yes.

The CHAIRMAN. Now, then, I notice a provision that goes further than treating the subject on the basis of withdrawal of substantially equivalent obligations or concessions. The last sentence says:

In cases of abuse the Organization may authorize an affected Member to suspend obligations or concessions in addition to those which may be substantially equivalent to the action originally taken.

Mr. WILCOX. That is a penalty.

The CHAIRMAN. What abuses are in mind?

Mr. WILCOX. The escape clause is supposed to be employed when a product is being imported into the territory of any member in such increased quantities as to cause serious injury to producers of like or competitive product. A member might invoke that clause in a case in which those conditions were not satisfied. In such a case the Organization might authorize the member affected to suspend more than an equivalent obligation.

The CHAIRMAN. As a penalty?

Mr. WILCOX. As a penalty for not adhering to the rules.

The CHAIRMAN. At the present time, in the absence of the Organization contemplated by the Charter, that would be a matter to be straightened out between the nations making the agreement, would it not?

Mr. WILCOX. Well, it still is. At the present time what might happen under such a circumstance is that the agreement would be destroyed entirely, and if one member exercised his rights under this clause, he might, as a result of that, lose all of the concessions that he had obtained from the other country.

The CHAIRMAN. He might, but that would be a matter between the two nations?

Mr. WILCOX. That is right.

The CHAIRMAN. Now, it becomes a larger matter—first, as to whether more is taken than is substantially an equivalent amount, and finally the penalty. Those are matters subject to the judgment of the Organization?

Mr. WILCOX. Yes; except that I think the other country party to the agreement can still get out of the agreement under its own terms; is that right, Mr. Leddy?

Mr. LEDDY. Yes.

The CHAIRMAN. You mean under the usual termination clause?

Mr. WILCOX. Under the usual terms of the agreement.

The CHAIRMAN. But that has no necessary bearing on what we are talking about, if I understand you.

Mr. WILCOX. No. I think what this involves is retaliation, which is less severe than is possible at the present time.

The CHAIRMAN. That, I suggest, does not necessarily follow.

Mr. WILCOX. Well, at the present time what may happen is abrogation of the whole agreement. This is something less than abrogation of the whole agreement.

The CHAIRMAN. Then suppose that we had gotten some concession on automobiles from X country, and let us suppose that we had granted some concession as to gloves, and further let us suppose that in the same agreement there were concessions between the two parties as to a half dozen articles. If one of the countries is disappointed with the experience under one of those items, it does not necessarily follow that it would withdraw as to all of the other items?

Mr. WILCOX. No.

The CHAIRMAN. And under the present system each of the nations would be the judge of that situation, would it not?

Mr. WILCOX. That is right.

The CHAIRMAN. Under the proposed system, the Organization would sit there in a judging capacity?

Mr. WILCOX. Yes.

Mr. LEDDY. I think the intent is that the Organization would not initiate such action, it would only act in response to an action proposed by a member. That is not perfectly clear from that sentence, but that is the intent.

Mr. WILCOX. The Organization would not compel any member to withdraw concessions, but it would permit them to do so if they, upon their initiative, sought to do so.

The CHAIRMAN. But to withdraw concessions they would have to get the consent of the Organization, and to impose a penalty they would have to get the consent of the Organization?

Mr. WILCOX. That is right.

The CHAIRMAN. Article 35, Consultation—Nullification or Impairment, reads as follows:

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, antidumping and countervailing duties, quantitative and exchange regulations, subsidies, state-trading operations, sanitary laws and regulations for the protection of human, animal, or plant life or health, and generally all matters affecting the operation of this Chapter; and shall, in the

course of such consultation, provide the other Member with such information as will enable a full and fair appraisal of the situation which is the subject of such representations.

2. If any Member could consider that any other Member is applying any measure, whether or not it conflicts with the terms of this Charter, or that any situation exists, which has the effect of nullifying or impairing any object of this Charter—

“Of this Charter.” I notice that the first paragraph deals with “this chapter,” and now it says “Charter.”

Mr. WILCOX. Yes; this is broader than the chapter.

The CHAIRMAN. I continue reading:

the Member or Members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter. If no such adjustment can be effected, the matter may be referred to the Organization, which shall, after investigation, and, if necessary after consultation with the Economic and Social Council of the United Nations and any appropriate intergovernmental organizations, make appropriate recommendations to the Members concerned. The Organization, if it considers the case serious enough to justify such action, may authorize a Member or Members to suspend the application to any obligations or concessions under this Chapter as may be appropriate in the circumstances. If such obligations or concessions are in fact suspended, any affected Member shall then be free, not later than sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the Organization.

It seems to me that that is very clear. Do you wish to make any statement?

Mr. WILCOX. This is patterned after the consultation—nullification or impairment section of our trade agreements, and it becomes operative not only in a case in which a member has deliberately violated a provision but where some action he has taken or some new situation that has come up operates to impair or nullify the Charter.

The CHAIRMAN. But at the present time, under our trade agreements, we have no organization to police or to judge the matter?

Mr. WILCOX. That is right.

The CHAIRMAN. Or to make decisions regarding it?

Mr. WILCOX. Well, we do have under some of the trade agreements committees or commissions of the two countries to supervise the agreements.

I have here the comparable article for the trade agreement with Peru.

The CHAIRMAN. I think that would be interesting.

Mr. WILCOX. Article XI of our trade agreement with Peru in 1942.

The CHAIRMAN. Can you supply us with a copy of that?

Mr. WILCOX. Yes.

(Article XI of the Peru trade agreement is as follows:)

ARTICLE XI

1. If the Government of the United States of America or the Government of the Republic of Peru should consider that any circumstance, or any measure adopted by the other Government, even though it does not conflict with the terms of this agreement, has the effect of nullifying or impairing any object of the agreement or of prejudicing an industry or the commerce of the country, such other Government shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a mutually satisfactory adjustment of the matter. If agreement is not reached with respect to the matter within thirty days after such representations or proposals are received, the Government which made them shall be free, within fifteen days after the expiration

of the aforesaid period of thirty days, to terminate this agreement in whole or in part on thirty days' written notice.

2. The Government of the United States of America and the Government of the Republic of Peru agree to consult to the fullest possible extent in regard to all matters affecting the operation of the present agreement. In order to facilitate such consultation, a commission consisting of representatives of each Government shall be established to study the operation of the agreement, to make recommendations regarding the fulfillment of the provisions of the agreement, and to consider such other matters as may be submitted to it by the two Governments.

The CHAIRMAN. Section G, relations with nonmembers. Article 36, contractual relations with nonmembers; treatment of the trade of nonmembers.

The text of this Article, as given in the United States Draft Charter, is reproduced below for reference.

How was that handled?

Mr. WILCOX. It has never been considered by the Preparatory Committee or its subcommittee.

The CHAIRMAN. Does this represent the State Department's view? Mr. WILCOX. This represents the original American proposal.

The CHAIRMAN. I continue reading as follows:

"1. No Member shall seek exclusive or preferential advantages for its trade in the territory of any non-Member which would result, directly or indirectly, in discrimination in that territory against the trade of any other Member.

"2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member shall be contractually entitled to any of the benefits of this Charter.

"3. With regard to countries which, although eligible for membership, have not become Members or have withdrawn from the Organization, no Member shall, except with the concurrence of the Organization, apply to the trade of such countries the tariff reductions effected by such Member pursuant to Article 18. This paragraph shall become effective upon the expiration of one year from the date on which the Organization is established: *Provided*, That this period may be extended by the Organization for further periods not to exceed six months each.

"4. Members undertake to review any international obligations they may have which would prevent them from giving full effect to paragraphs 1 and 2 of this Article and, if necessary for that purpose, to terminate such obligations either by agreement or in accordance with their terms."

That, as I read it, so far as paragraph 1 is concerned, would establish sort of an open-door trade policy over the world, is that correct?

Senator GEORGE. In the territory of nonmembers.

Mr. WILCOX. I don't know whether you can describe it with that phrase. The purpose, I think, is clear: that all members are to have equal access to the trade of nonmembers. No member is to seek to obtain a position of advantage as compared to other members in relations with nonmembers.

The CHAIRMAN. Now, the nonmembers are apt to be backward nations so far as industrial development is concerned; is that not correct?

Mr. WILCOX. Well, there might be backward nations among the nonmembers.

The CHAIRMAN. Assuming that all of the modernized nations come into the charter, and assuming that the residue will be nations with backward economies, this would prevent any member nation from going into those countries and, in exchange for loans or in connection with concessions, getting exclusive privileges there. Would that not be the purpose of that?

Mr. WILCOX. For its trade?

The CHAIRMAN. Yes, exactly.

Mr. WILCOX. I don't think it would bar concessions; I mean, in the sense of an oil concession or anything of that sort.

The CHAIRMAN. Of course, the operation of an oil concession is trade in the highest degree.

Mr. WILCOX. I do not think that was envisaged here. Do you think so?

Mr. LEDDY. No, I think it was directed against trade advantages primarily—preferential or exclusive trade advantages.

Mr. WILCOX. That is, it was concerned with tariffs and quotas and arrangements like that, affecting commodity movements.

The CHAIRMAN. Well, I suggest the language is broad enough to cover the type of case that I put to you. Would it cover a case where, for some consideration, a nonmember would give a member the exclusive control over tobacco or matches in that country?

Mr. WILCOX. I think the wording might be broad enough to hit such a case.

The CHAIRMAN. Was that the intention?

Mr. WILCOX. I do not think that is the intention, no.

The CHAIRMAN. Now, please give me a statement as to just what was intended by that "1." I think your language is pretty broad there.

Mr. WILCOX. Well, this was directed toward the possible effort of a member to obtain more favorable treatment with respect to quotas or tariff preferences that would give him an advantage over the other members of the Organization in dealing with nonmembers.

The CHAIRMAN. It was not to relate to internal advantages?

Mr. WILCOX. That was not the purpose, no.

The CHAIRMAN. I repeat, I believe the language is broad enough to cover that.

Now, paragraph 2 is an emphasis of the monopolistic nature of the Charter and illustrates the coercive effect; I assume it is intended to build up a coercive effect which will bring people under the Charter.

Mr. WILCOX. It is the purpose of article 36 to make it attractive to join the Organization, or unattractive to remain out of it; yes, sir.

The CHAIRMAN. Paragraph 3 has the effect of dividing the world into the "touchables" and the "untouchables," does it not?

Mr. WILCOX. Well, if it works, everybody will be "touchable." If it does not work, everybody will still be touchable, but you will have to reach farther to touch some people than others.

The CHAIRMAN. An "untouchable" could become a "touchable" by joining the Organization.

Mr. WILCOX. Voluntarily; yes, sir.

The CHAIRMAN. And a "touchable" may not have dealings with "untouchables" of the type described, unless the "untouchable" comes into the Organization and thus becomes "touchable"?

Mr. WILCOX. Of the type described, yes.

The CHAIRMAN. Section H. General Exceptions. Article 37. General Exceptions to Chapter V, reads:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) Necessary to protect public morals;
- (b) For the purpose of protecting human, animal or plant life or health, if corresponding domestic safeguards under similar conditions exist in the importing country;
- (c) Relating to fissionable materials;
- (d) Relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;
- (e) In time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member;
- (f) Relating to the importation or exportation of gold or silver;
- (g) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as, those relating to customs enforcement, deceptive practices, and the protection of patents, trade marks and copyrights.
- (h) Relating to the products of prison labour;
- (i) Imposed for the protection of national treasures of artistic, historic or archeological value;
- (j) Relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restriction on domestic production or consumption; or
- (k) Undertaken in pursuance of obligations under the United Nations Charter for the maintenance or restoration of international peace and security.

I have a question from a Senator relating to that clause (b), which reads:

For the purpose of protecting human, animal or plant life or health, if corresponding domestic safeguards under similar conditions exist in the importing country.

The comment: Apparently article 37 (b) is designed to safeguard our sanitary restriction against importation of diseased meat or live animals. It is noted, however, that this article was not agreed to at London. Can we be assured that some such safeguards will be included in the final draft of the charter?

Mr. WILCOX. No final action was taken on certain sections of the Charter in London. This, however, was discussed in New York, and I think in the subcommittee there is no dissent on this point. Is there?

Mr. LEDDY. Certainly not on that point. I do not believe there was any dissent on the language there, but naturally every country will want to study this carefully.

But on the point of sanitary protection, there is no disagreement at all.

The CHAIRMAN. And as to that point, the State Department takes the position set forth in (b)?

Mr. WILCOX. Yes. I think this wording is substantially our original proposal, perhaps word for word, and it follows the types of exceptions that have always been included in trade agreements. I would say that there has been what I would regard as a drafting error here, in making all of these lettered paragraphs subject to that introductory clause. I think the national security exceptions—namely, (c) fissionable materials, (d) traffic in arms, and so forth, (e) time of war or other emergency, (k) United Nations charter obligations, perhaps (f) importation or exportation of gold or silver—are absolute exceptions, subject to no qualification.

The CHAIRMAN. Are all of these provisions generally acceptable?

Mr. WILCOX. Yes; I believe so.

The CHAIRMAN. Are there any important reservations by any of the nations?

Mr. WILCOX. Can you answer that, Mr. Leddy? Were there any important reservations?

Mr. LEDDY. No. Just questions of detail.

The CHAIRMAN. With some exceptions—for example, fissionable materials—this is more or less routine in our various international agreements, is it not?

Mr. WILCOX. It is almost “boilerplate,” yes.

The CHAIRMAN. And international law itself would protect a number of these provisions?

Mr. WILCOX. Yes.

The CHAIRMAN. Would you mind illustrating subclause (j), with particular reference to the language following the word “if”?

Mr. WILCOX. Well, this would be a complete exemption for measures taken for conservation, if they were taken under international agreement or if they were taken unilaterally, in conjunction with domestic conservation measures.

The purpose of that is to prevent pure trade-restriction measures being adopted, and then excused under the plea that it is just conservation, and it is completely exempt.

The CHAIRMAN. Supposing we said, “We will continue to exploit our domestic oil reserves for domestic consumption, but we will not export any of our oil.”

Mr. WILCOX. I would not call that conservation.

The CHAIRMAN. I would suggest it would be a species of conservation. It would certainly prolong the life of our oil deposits for domestic use.

Mr. WILCOX. If you cut off exports, yes.

The CHAIRMAN. You would not have the exemption of (j) if you cut off exports and continued to use oil or any other primary product domestically.

Mr. WILCOX. What would be the answer to that on export prohibitions?

Mr. LEDDY. I should think the answer would be that if the purpose were to conserve domestic resources, the reasonable way to do it would be to promote the importation of the product.

The CHAIRMAN. That is another angle of it.

Mr. LEDDY. Yes, sir. But if countries are free to limit the exports on conservation grounds, we might find, for example, in the case of oil, if we should cut off our exports, that other countries might do the same thing.

The CHAIRMAN. It might be very bad policy. I am not talking about the policy. But let me put the case again. Suppose that we decided it would be wise to lengthen the life of our domestic resources for domestic consumption purposes; and did so by forbidding the export of those articles. Would that be permissible or nonpermissible?

Mr. LEDDY. No, sir; not unless the conditions were laid down restricting the domestic production or consumption.

The CHAIRMAN. It would not be permissible?

Mr. WILCOX. I had always thought of this, Senator, in connection with import restrictions, but article 25 has a general ban against export restrictions also. So I agree with his answer.

The CHAIRMAN. That double-rivets it. [Reading:]

SECTION I. TERRITORIAL APPLICATION

ARTICLE 38. TERRITORIAL APPLICATION OF CHAPTER V—FRONTIER TRAFFIC—CUSTOMS UNIONS

1. The provisions of Chapter V shall apply to the customs territories of the Members. If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as though it were a separate Member for the purpose of interpreting the provisions of Chapter V.

2. The provisions of Chapter V shall not be construed to prevent—

(a) Advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or

(b) The formation of a customs union, Provided that the duties and other regulations of commerce imposed by any such union in respect of trade with Members shall not on the whole be higher or more stringent than the average level of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union.

3. Any Member proposing to enter into a customs union shall consult with the Organization and shall make available to it such information regarding the proposed union as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

4. The Members recognize that there may in exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Any such exceptions shall conform to the criteria and procedures which may be established by the Organization under paragraph 3 of Article 66.

That is the two-thirds vote?

Mr. WILCOX. That is right. That particular article adds no substance to what was already in the charter.

The CHAIRMAN. Continuing [reading]:

5. For the purpose of this Article a customs territory shall be understood to mean any territory within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such territory. A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union.

What would be the application of article 38 to the United States? I am speaking of paragraph 1. What are our customs territories?

Mr. LEDDY. Well, the customs territory of the United States includes Puerto Rico, Hawaii, Alaska, and some minor territories. There are some separate customs territories under the jurisdiction of the United States, such as the Virgin Islands and Guam and American Samoa. What this does is to apply principally the rules of non-discrimination, where appropriate, to each separate customs territory. It is less significant for the United States than it is for countries such as the United Kingdom, which have many separate customs territories under their jurisdiction.

The CHAIRMAN. I notice paragraph 2, subclause (a), which states [reading]:

Advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic.

Give us a reason for that exception.

Mr. WILCOX. Well, that is the usual provision, I think. It has to do with purely local business on two sides of a line.

Is it customary to make a 15-mile rule, or something of that sort?

Mr. LEDDY. It is usually 10 miles, yes.

Mr. WILCOX. And exceptions may be made there, so that business can go on between people located on either side of the border.

The CHAIRMAN. As to paragraph 3, does the Organization have a prohibiting power there?

Mr. WILCOX. No.

The CHAIRMAN. Is there any provision in the charter against a group of nations entering into a customs union, assuming that the aggregate effect is not to discriminate against other members?

Mr. WILCOX. No.

Senator GEORGE. Doctor, may I ask you one question? Do all of the exceptions in article 37 apply to state-trading organizations, state monopolies, et cetera?

Mr. WILCOX. Yes, all the exceptions in article 37 apply to everything that precedes it in the chapter.

Senator GEORGE. And without regard to whether they are private traders or state traders or state organizations or state monopolies, or what not?

Mr. WILCOX. That is right.

The CHAIRMAN. When do you plan to leave the country, Doctor?

Mr. WILCOX. Next week.

The CHAIRMAN. We will want to get after chapter VI on Monday morning. Will you be in a position to appear, or shall we have Mr. Terrill up here?

Mr. WILCOX. I will be grateful if you will have Mr. Terrill take that on. I will be in town Monday, if you want me to come, but I should like to use the time to get my desk cleared up and my bags packed.

The CHAIRMAN. So will you make arrangements to have Mr. Terrill here on Monday morning?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. I hope you have a good trip and I want to take this occasion to express appreciation for your frankness, your forthrightness, and the great instruction that you have given us in this matter.

Mr. WILCOX. Thank you.

The CHAIRMAN. We will recess until 10:30, Monday morning, in this room.

(Thereupon, at 4:30 p. m., the committee recessed until Monday, March 31, 1947, at 10:30 a. m.)

INTERNATIONAL TRADE ORGANIZATION

MONDAY, MARCH 31, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in room 312 of the Senate Office Building, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Millikin (chairman), Bushfield, Johnson of Colorado, and Lucas.

The CHAIRMAN. The hearing will come to order. Will you state your full name, your residence, and your occupation?

STATEMENT OF ROBERT P. TERRILL, ASSOCIATE CHIEF, DIVISION OF INTERNATIONAL RESOURCES, DEPARTMENT OF STATE, WASHINGTON, D. C.

Mr. TERRILL. Yes, sir. My name is Robert P. Terrill. I am Associate Chief of the Division of International Resources of the Department of State. I reside in Arlington, Va.

The CHAIRMAN. Will you give us some idea of your background.

Mr. TERRILL. I am a graduate of Stanford University. I have been employed by the Douglas Aircraft Co., Santa Monica, I have been a university professor at Stanford University, the University of California, at Berkeley, Reed College in Portland, Oreg., and the State College of Washington.

The CHAIRMAN. What did you teach there?

Mr. TERRILL. International economics and other economic subjects. I have been with the Department of State since 1942.

The CHAIRMAN. We are now coming to the consideration of chapter VI, which deals with restrictive business practices.

I shall read article 30, which deals with "policy towards restrictive business practices." [Reading:]

1. Members shall take appropriate measures individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in Article 1.

2. Without limiting the generality of paragraph 1 of this Article, the practices listed in paragraph 3 below shall be subject to investigation in accordance with the procedure with respect to complaints provided by the relevant Articles of this Chapter, if the Organization considers them to have or to be about to have any of the harmful effects enumerated in paragraph 1 of this Article, whenever—

(a) They are engaged in or made effective by one or more public or private commercial enterprises or by a combination, agreement, or other arrangement

between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises (i. e., trading agencies of governments or enterprises in which there is effective public control), or between private and public commercial enterprises; and

(b) Such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products.

3. The practices referred to in paragraph 2 of this Article are as follows:

(a) Fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;

(b) Excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sale or purchase quotas;

(c) Discriminating against particular enterprises whether by boycott or otherwise;

(d) Limiting production or fixing production quotas;

(e) Suppressing the application or development of technology or invention, whether patented or unpatented;

(f) Extending the use of rights under patents, trade-marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use, or sale which are not the immediate subjects of the authorized grant."

Mr. Terrill, will you make what observations you wish regarding those three paragraphs?

Mr. TERRILL. Well, Mr. Chairman, the general purpose is to set forth a declaration of policy to which the member countries will subscribe, and to implement that policy by the succeeding articles of the chapter.

The records of various investigating committees of the Congress have shown that monopolistic practices in international trade, particularly on the part of foreign concerns, have been very extensive.

The committees to which I refer specifically are the Senate Committee on Patents, which held hearings in 1941 and 1942, and the Senate Committee on War Mobilization, that held hearings from, I believe, 1943 until last fall.

That testimony runs into many volumes and indicates the extent to which international trade became cartelized, to use a current term to describe the situation.

Most foreign countries do not impose the same high standards of conduct on their business firms in international trade that the United States does. Some countries tolerate or permit their business enterprises to engage in cartel arrangements and restrictive practices. Others have encouraged the participation of their nationals in international cartels. A few countries, such as Canada, have followed policies similar to those of the United States.

One of the purposes of this chapter would be to eliminate the disparity of conduct, insofar as possible, between American firms engaged in international trade and foreign firms that are so engaged.

The wording of article 39 indicates that it is not what might be called an International Sherman Act.

That approach, we feel, is decidedly too broad for the world at the present time, in view of the fact that there are disparities among countries with regard to their attitudes toward restrictive business practices. The present approach is more flexible than that of a general prohibition of specific types of business practices.

Moreover it is also different from the general, but very sweeping approach, of the antitrust acts of the United States. It attempts to steer a middle course, which will become clear as we proceed.

There is written into paragraph 1, a clause to which I think specific attention should be called at this time. The clause is in the sixth line and it reads:

whenever such practices have harmful effects on the expansion of production and trade—

and so forth.

Senator JOHNSON. Where is that language to be found, sir?

Mr. TERRILL. Paragraph 1, Senator, of article 39, on page 34, reading down to the sixth line.

Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade—

and so forth.

Senator JOHNSON. Who determines that "harmful"?

Mr. TERRILL. That will have to be determined, Senator, by the Organization itself.

Senator JOHNSON. And if they determine that something in the subparagraphs in paragraph 2 are harmful, then what can they do about it?

Mr. TERRILL. The general course that the Organization would follow would be to inform the member governments of its decision or determination in the particular case in question and to call upon the member governments to take action to prevent or to terminate the restrictive business practices that their nationals may be engaging in.

Senator JOHNSON. And suppose that the governments do not comply with that request?

Mr. TERRILL. There are no specific sanctions in this chapter, Senator, which could be invoked. The only sanction, I believe, is to be found in article 35 on nullification and impairment of the charter. The reason is, if I may extend this remark briefly, that there is no measurable damage to trade.

The case of a tariff, for example, is different.

If a foreign country were to withdraw from us a tariff concession on a given product, you could, to some fairly definite extent, measure the damage to our trade. In the cartel type of case, however, where you have a restrictive business arrangement in effect, it is quite difficult to value in dollars and cents the amount of the damage. Therefore, while we might withdraw concessions, it would be very difficult to know just how much to withdraw.

Senator JOHNSON. Well, I should like to take up, for example, the case of wheat, under subparagraph (d) of section 2.

Mr. TERRILL. Yes, sir.

Senator JOHNSON. Where you make it a matter of investigation, the limiting of production or fixing of production quotas. Our farm and our agricultural agencies and our farmers and farm organizations have for many, many years been trying to work out some plan of price support. And during the incumbency of Secretary Wallace as Secretary of Agriculture, a plan was worked out to limit the acreage which could be planted to the farm crops, such crops as wheat and corn and tobacco and cotton.

Now, suppose that a foreign nation would say, "That plan makes wheat scarce, therefore it is not a good thing for us," so the United States, if it wanted to keep in the good graces of the ITO, would have to abandon its acreage limitation so that we could produce quantities of wheat and so that we would reach a very low level in price, so that the foreign nation could take an advantage of that situation to the ruination of the American agriculturists and wheat growers.

Now, just how would that be handled and what would be the effect of these two paragraphs and subparagraphs under the two upon such a program as the so-called Wallace agricultural program?

Mr. TERRILL. Senator, the type of governmental action of which you are speaking is not comprehended at all under the terms of this chapter. If you will note the language of paragraph 2, subparagraph (a), the chapter is limited in its application to such practices:

(a) * * * engaged in or made effective by one or more public or private commercial enterprises or by a combination—
of enterprises.

Senator JOHNSON. Yes; but (a) has no effect on (d). (d) has the same relative position with respect to paragraph 2 that (a) has. (d) is not a subparagraph of paragraph (a). It is a paragraph of equal importance to (a). And what is contained in (a) does not in any way limit or affect or apply to paragraph (d).

Mr. TERRILL. Well, it was our clear intention, Senator, that paragraph 2 (a) should exempt or eliminate from the provisions of this chapter the type of governmental arrangement to which you are referring. That is to say, these practices, restrictive business practices affecting international trade, would come under this paragraph only when they are engaged in or made effective by commercial enterprise.

In other words, if all the wheat in the United States were produced by, let us say, one corporation, and that corporation carried on certain restrictive business practices, these might, in the event of complaint, be subject to investigation.

Senator JOHNSON. Yes, but the Government itself drives all wheat growers into one corporation. It is not called a corporation but that is what it is. They all operate together as an entity.

Mr. TERRILL. In the instance you have mentioned, Senator, growers would operate in conformity with a governmental regulation as to their acreage, let us say.

Senator JOHNSON. Well, then, your testimony is that the acreage programs, such as we have experienced, which at the present time are suspended because of war conditions, that such programs are entirely exempt and outside of the provisions of article 89, is that correct?

Mr. TERRILL. Yes, sir, very definitely.

Senator JOHNSON. Well, that is it.

Mr. TERRILL. And I would further call your attention to article 45, which contains a specific exception for intergovernmental commodity arrangements, such as we have entered into in connection with wheat.

Senator JOHNSON. Yes. That is an intergovernmental arrangement?

Mr. TERRILL. Yes, sir.

Senator JOHNSON. But we have arrangements within our own Nation. An intergovernmental arrangement might very well escape the provisions, but a national program, such as we have with respect

to all of our major crops, our five major crops, not including sugar would be affected by the provision contained in this proposal.

Mr. TERRILL. I believe I can assure you that paragraph 2 (a) governs the entire article, namely, article 39, as well as succeeding articles.

Senator JOHNSON. Well, I am glad to have that, sir.

The CHAIRMAN. Are there any further questions, Senator?

Senator JOHNSON. No.

The CHAIRMAN. Mr. Terrill, I think you have already emphasized that with rare exceptions the most of the world does not share our own idealism, so far as monopolistic practices and restraints of trade are concerned; is that correct?

Mr. TERRILL. I believe that that would typify the situation, Senator.

The CHAIRMAN. In fact, I gathered from one of the remarks that you made, that many foreign governments have been known to encourage monopolistic practices and restraints of trade, so far as foreign commerce is concerned; is that correct?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Now, with that general age-old practice existing contrary to our own idealism on the subject, what chance do you think there is that the provisions of this paragraph would be complied with in good faith?

Mr. TERRILL. Senator, that is an imponderable question, and I can only give you the views that I have personally arrived at in the course of discussions with representatives of foreign countries. Their view is that the governments who sign this charter, in the event they are called upon to do so, would carry out their obligations generally in good faith.

There might be, however, differences of interpretation from case to case between the governments as to whether a particular arrangement was having harmful effects on international trade.

Just as in the case of our own antitrust procedures, there are frequently differences of view even among the courts as between, let us say, the lower courts and the Supreme Court, as to whether or not the restraints in question are reasonable or unreasonable. Just so, there is always room for differences between governments in this respect.

I do think this, in addition: Many countries have out of necessity accepted international cartels on the part of their business concerns. The cartel arrangement, from their point of view, has been defensive and they have been thrust into cartels owing to the policies of stronger and larger governments.

Before the war Germany, in particular, exercised an enormous thrust on the smaller countries in Europe, for example Holland and Belgium, with respect to participation in cartels.

It is entirely possible, therefore, and it is my own opinion, that many governments of Europe, at least, will be glad to get international cartels off their necks, if I may use that expression.

The CHAIRMAN. Well, they will willingly get them off their necks only if the conditions are obviated which necessitate cartels, is that not correct?

Mr. TERRILL. Yes, I believe, Senator, that the action contemplated under this chapter will have a much greater chance of success in a generally prosperous world than it would if we had another prolonged world depression.

The CHAIRMAN. Well, now, what are the conditions which exist generally between nations which would encourage the acceptance and their good faith compliance with these provisions at the present time?

Mr. TERRILL. Senator, I find that question a little bit difficult to apply.

The CHAIRMAN. Let me back up. The reasons these nations go in for cartels include, I suggest, certain revenue aspects. Then they devise to promote the disposition of distinctive or surplus products for which there is need to find international markets. Insofar as nations are pushed into cartels in the manner which you have described, I suggest it is because of exchange weaknesses or because they cannot otherwise get the goods that they have to have. They have got to find a buyer, and the buyer may happen to be a nation which says, "Yes, we will buy your goods if you buy our goods." Will you give us other examples and then we will bring them into relation to the problems of the present day world in which we live.

Mr. TERRILL. Senator, I have some doubts about the purposes of international cartels being those which you have generally described, if I may put it that way, particularly as to the need for finding sources of supply outside their own borders. The purpose of the cartel is, generally speaking, to obtain control over a market for the sale of a product, or to obtain control over an industry throughout the entire world.

The CHAIRMAN. Yes.

Mr. TERRILL. It is true, of course, that from a national standpoint, this might mean more foreign exchange than they would otherwise get.

The CHAIRMAN. If I may interrupt, keep in mind that the cartels do not operate in a vacuum. They must find people with whom to deal, and there must be an exchange of mutual consideration. I would appreciate very much if you would put your discussion both in terms of the country which maintains the cartel and in terms of the country which deals with the cartel. That was what I was thinking of when I gave my own layman's description.

Mr. TERRILL. On the whole, Senator, I think the countries that have to deal with the cartel and that are subject to its controls have, on the whole, been very unhappy with their experiences, and that you will find that most of the countries of the world, numerically speaking, are unhappy about the operation of international cartels because, as buyers or because as developers of new industries, they have felt the results of cartel operations, both in terms of the prices they pay, the cost of the goods they buy, and the development of new industries.

The CHAIRMAN. Then let us cut short the general philosophy on the subject and give us a statement of why a country engages in cartel operations and why it is able to find countries that will deal with it on a cartel basis.

Let us take Germany and the cartels which Germany maintained, and her relations to countries which unhappily found it necessary to deal with those cartels.

Give us a statement of the background which compelled or induced that kind of business.

Mr. TERRILL. If Germany succeeded in getting some other countries producing a particular commodity to join with her in an export cartel arrangement, the industries of third countries would be under

pressure to come to terms with the cartel in order to keep a share of the market and to keep the cartel from engaging in a price war, for example, to drive it completely out of the market.

The **CHAIRMAN**. And what were the reciprocal features? Germany, for example, did have an arrangement involving cartels with Rumania. Now, what did Rumania pass to Germany in return for what Germany passed to Rumania?

Germany had cartel arrangements with Argentina. What did Germany pass to Argentina? What did Argentina pass back to Germany?

Mr. **TERRILL**. The German state did have barter arrangements, and clearing and compensation arrangements, Senator.

The **CHAIRMAN**. And the cartels were instruments of that?

Mr. **TERRILL**. And to the extent German firms became instrumentalities of the German State, they would participate in actual transactions. That is, they sold to firms which would make available to them in foreign countries certain amounts of strategic raw materials, for example.

The **CHAIRMAN**. In the case of Germany, it was the cartel which was the instrument for perfecting the deal between the governments; was that not true?

Mr. **TERRILL**. That frequently was the case, yes, sir.

The **CHAIRMAN**. All right. Now, then, please come to the mutual considerations.

Mr. **TERRILL**. The mutual consideration would, of course, be that the trading country other than Germany would obtain certain German products.

The **CHAIRMAN**. Germany, in the case of Rumania, would obtain wheat and Rumania would have to take German manufactured products, carloads of aspirin, for example?

Mr. **TERRILL**. Yes, sir, and harmonicas.

The **CHAIRMAN**. Germany would obtain meat from Argentina and Argentina would have to take German manufactured products; is that correct?

Mr. **TERRILL**. Yes, sir.

The **CHAIRMAN**. There always was a consideration, as you have very clearly said, to all the very unhappy and unwilling nation customers.

Now, what made the basis unhappy and unwilling? What were the fundamental economic maladjustments between the countries that brought those sorts of things into being?

Mr. **TERRILL**. In the particular case that we mentioned here of German aggression during the 1930's the raw-material producing countries were frequently willing to enter into these arrangements in order to obtain a market outlet. They were also forced to enter into the German agreement by internal political pressure, as, for example, the local Nazi sympathizers or anti-democratic sympathizers in both Rumania and Argentina.

The **CHAIRMAN**. That is right. Now, let us apply those considerations to the world as it is. Is there not a large group of nations, which we ordinarily call satellite nations, that are in this unhappy relationship with, for example, Russia?

Mr. **TERRILL**. There are a group of countries that might be said to be under Russian influence.

The CHAIRMAN. Czechoslovakia is one of them. Poland is one of them, is that right?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Yugoslavia seems to be perfectly happy about it, but it is one of them. Right? Sweden has become one of them. Right?

Mr. TERRILL. I would not say so, sir.

The CHAIRMAN. Has not Sweden entered into a bilateral agreement with Russia?

Mr. TERRILL. Yes, they do have a bilateral arrangement but it is not any complete trading arrangement. It is a loan arrangement.

The CHAIRMAN. Sweden has been operating through cartels, has it not?

Mr. TERRILL. Some Swedish firms do participate in such arrangements, Senator.

The CHAIRMAN. That is right. In fact, during the war, there was an attempt to whip up some scandal. I do not know whether or not justified, because of Swedish cartel relations with some of our own citizens and with Germany.

Finland, of course, has an unhappy trade relationship with Russia.

Now, is not the reason for those unhappy relationships, the political relationships of the country, the economic weaknesses of the countries, weaknesses in exchange, weaknesses in productive facilities, and so forth and so on?

Mr. TERRILL. That situation you describe does exist, Senator.

The CHAIRMAN. Yes. Now, does it not exist in an intensified degree at this very moment? Have those conditions all over the world ever been any less intense than they are today?

Mr. TERRILL. Senator, am I correct that you are drawing the inference that there are now certain forces driving foreign concerns into cartel arrangements with other foreign concerns?

The CHAIRMAN. You have grasped my inference precisely. I am suggesting, and I would like to have your reaction to it, that the influences which formerly drove nations into cartel arrangements exist in such an intensified degree today that there is very little practical hope of getting them in reality to abandon those practices. If your answer is "no," it is, I suggest, because you think that this charter will cause them to abandon those practices. If your answer is "no," please demonstrate how this charter will substitute the safeties and stabilities which do not exist, which drive parties into cartel arrangements.

Mr. TERRILL. Well, I would agree, Senator, that this charter could not, of itself, eliminate the pressures that you have outlined.

The CHAIRMAN. Would you say that this charter will have to wait for effective operation until the world, generally, gets on a more healthy political and economic base?

Mr. TERRILL. No, sir; I do not believe that that is the case. There is in progress every day a very large area of commercial conduct and transactions to which this charter would apply at once.

As a matter of fact, Senator, I think it can be said that one of the main hopes of getting back on a more normal and peaceful basis of international trade rests in the adoption by member governments of a philosophy such as that outlined in this charter.

I might put it this way: This has been called by the representatives of some governments the "free-enterprise charter," and I think that

might be a plausible description since what it aims to do in a broad general way is to give free enterprise a chance to succeed in international trade. That is its primary purpose, and while it could not get at the political difficulties you have mentioned, it would have the effect of setting up some alternative to a system of brute force of the type that you have described.

The CHAIRMAN. All right, now let us suppose that this charter were in force and effect right now. Let us suppose it.

Now, let us suppose that at the same time the nations of the world are in the condition that we have described.

Now, tell me how this charter would operate as a solvent to their troubles.

Mr. TERRILL. In the event that a nation with aggressive aims attempted to gain control through its own companies over concerns in other states or to dominate world trade in a particular commodity through cartel arrangements, this charter would bring such practices under the strictures of the whole United Nations Organization.

The CHAIRMAN. All right. Rumania has an enormous surplus of wheat and under all the circumstances, she has to look to a cartel-maintaining government to dispose of that wheat. Now, let us assume that Rumania has signed this charter.

The CHAIRMAN. What is there about this that puts Rumania into a position to resist the necessities which are imposed upon her by the necessity of disposing of that surplus?

Mr. TERRILL. Well, there would be in the charter, Senator, nothing which would remove this condition of which you speak. However, there are two things to be said. One, of course, is that for some time, Rumania will be desperately short, I presume, of foodstuffs, and will find an ample world market for everything she can produce.

The other point is that the cartel arrangement is not the primary factor leading to the sort of dominance that you have mentioned.

The CHAIRMAN. Well, let us assume that I have overemphasized the importance of the cartel. I did develop, and I believe you agreed, that the cartel becomes an instrumentality of government policy in such matters. I think you agreed with me on that?

Mr. TERRILL. It can be, yes, sir.

The CHAIRMAN. Yes.

Senator LUCAS. May I ask a question?

The CHAIRMAN. Surely, Senator.

Senator LUCAS. Is Russia now a member of your Organization?

Mr. TERRILL. No, sir. If I may explain that, Senator, the Economic and Social Council invited Russia to participate in the Preparatory Conference in London.

Senator LUCAS. Yes. We had that the other day.

Mr. TERRILL. They did not attend that meeting.

Senator LUCAS. How about Rumania?

Mr. TERRILL. No, sir, Rumania would not be eligible at the present time to join since it is not a member of the United Nations.

Senator LUCAS. I see. Now, if Russia does not join this council, and continues in the position that the able Senator from Colorado has suggested here, or any of the satellites, so-called smaller satellites that are controlled by Russia refuse to join, that would not in itself, eliminate the necessity of forming this Organization with the rest of the nations of the world who wanted to go into it, would it?

Mr. TERRILL. I should think that the case would be quite to the contrary.

Senator LUCAS. That is right. In other words, if Russia continues to operate as she does, whether it is under a cartel system or under just a plain Group 4 system, or whatever you want to call it, is it not a fact that these other nations that would desire to join with the United States in a movement of this kind, have a tendency at least to offset what the Russian people are doing?

Mr. TERRILL. Referring now particularly to the provisions of Chapter VI, I should think that they would set up the kind of a trading system in which free enterprise would have the greatest chance of success and survival.

Senator JOHNSON. But, Mr. Chairman, of course the sterling block is not quite so oppressive in its operations as the totalitarian methods of economic and political influence, but it is very effective and we know something about the operations of the sterling block. We know something about the imperial preferences. We know something about their operation.

A couple of years ago, I was a member of the Petroleum Committee and we went into the handling of petroleum the world over, and we were told that whenever a British company, a private British company, enters a petroleum business any place in the world, His Majesty's government has an equity in that operation, and they take a certain amount of stock.

We know something about the Dutch East Indies, and Holland's control, her political and economic control, and the British control in India and in other parts of the Far East, and the British control all through the Middle East.

So, Russia and her economic and political sphere of influence is not the only obstacle that this section or this article will have to deal with. The world is full of them.

Belgium, with her South African enterprise, and Britain with her African enterprise, they have the whole thing tied up. We ran into that the other day when we were talking about copper, trying to find out what could be done to free the copper market, so that our producers in this country could obtain some copper, and we ran into that same thing.

The whole world is full of it. We make commitments under these provisions here, and we find out that no one else is bound by any commitments. We start out to commit the other fellow, and we wind up by being the only nation of them all that is committed to anything.

The CHAIRMAN. Senator Lucas, that point you mentioned was developed.

Senator LUCAS. I probably should not have even said it, because I have not been here very much.

The CHAIRMAN. No, no. I just want to say it was developed that we are about the only country in the world that has antimonopoly and antirestraint of trade statutes, so we are really in a position of our own. There are some exceptions which will be developed, but we are not committing ourselves very much, while the rest of the world will have to overturn its age-old practices in monopolies and restraints of trade and that raises the practical question, "Will they do it?"

And whether they do it or not, I respectfully suggest, depends upon whether they are going to get a quid pro quo for doing it, and that is

what brought us to the question of what are the causes of these things at which we are shooting and what can be done to eliminate them. I was asking the witness to give us a demonstration of how that chapter or if you please this charter, will eliminate those basic conditions which give rise to the practices which we are condemning here.

Do you wish to add anything further to what you have said?

Mr. TERRILL. No, sir; except that I would say this, Senator, not to detract or take away from the force of your remarks—

The CHAIRMAN. My remarks are merely to elicit information. I am not an expert on this. I am just trying to draw you out. You are the fellow that is important here.

Mr. TERRILL. I would say that cartel practices, though, began before the existence of the situations that you have mentioned for illustration. That is to say, during the 1920's the international cartel movement gathered a great deal of speed and increasingly, as you point out, during the depression years, the governments did use their commercial firms as instrumentalities for the carrying out of national diplomacy.

It is true, and I want to make this definite: I do not believe that the type of world political and military condition you speak of would be removed merely by adherence of all countries to chapter VI, but, as Senator Lucas has remarked, I believe, this chapter would create international obligations on the part of member countries to refrain from allowing their nationals to set up a cartelized world in which free enterprise would have a difficult time to survive.

The CHAIRMAN. It would do that, I suggest, it would have that effect if the existence of the nation, if its self-protection worked in that direction. On the other hand, if the existence and self-protection of the nation worked in the direction of the maintenance or encouragement of cartels, or monopolistic practices or practices in restraint of trade, I respectfully suggest, it would that direction.

Senator LUCAS. Could it do that under your organization, if it were a member, without violating the charter?

Mr. TERRILL. I think that question is a very appropriate one at this point. Any member who is signatory to this charter presumably could not continue to adhere to the terms of this chapter and engage in, shall we say, an all-out program of pushing its firms, whether public or private, into international cartels.

The CHAIRMAN. I am not challenging for one moment, Senator, that this puts a prohibition on what we are talking about. The point is, I suggest, that you as the doctor, may prescribe a remedy for me and may have the power to compel me to take it, but the end point is, will the remedy cure my disease, and that is what I am trying to sift here.

Mr. TERRILL. I feel that if the patients in this case will take the prescription, it will cure their disease because their disease has partly come from this type of practice.

Senator LUCAS. No one knows whether this will operate perfectly or to the advantages, perhaps, of the nations that will go into this, and nobody knows at the present time whether the United Nations Organization is going to work either, but we set up the United States Organization on the theory that we could eliminate war and have peace. We hope it works, but we have had wars from the beginning of civilization, and we have had all these things that Senator Johnson and Senator Millikin contend exist in these totalitarian nations, as well as some

who are not totalitarian, but the sole point with me, as I see it, is that it is worth a try. It is a step, in my humble opinion, in the right direction, and what damage can come to the United States whether we go into this or not, if this does not work?

Will you tell me that, what damage can come to the United States of America if this does not work?

Mr. TERRILL. I see no damage at all, sir, because—and I do not want to anticipate any further questions that your chairman may have on other sections of the chapter—because the United States would not have to alter either its laws or its philosophy.

So, in this case, the burden of change, if indeed there is any burden in connection with it, which I would personally deny, such a burden will be on the other countries of the world and not on us. We are asking them, in effect, to come up to our standards, rather than saying, "We will sink to your standards of conducting business."

Senator LUCAS. That is right.

The CHAIRMAN. That is exactly what this does?

Mr. TERRILL. Precisely, Senator.

The CHAIRMAN. Pardon me.

Senator LUCAS. That is all right. I was certain that that was my understanding of it, and I have not followed it as closely as I should, Mr. Chairman, because I just have not had time, but if what the witness says is correct, it is difficult for me to understand how, in this critical time and period of the world, that this Nation would not take a chance of seeing that other nations that are friendly to us at this moment, do come to our way of thinking and up to our standards upon this question of international trade and this question of economics, which, after all, is the basis of practically everything.

It seems to me it is a vital step in the right direction and I suppose, in view of your statement, that we would lose nothing if this thing does not prove successful.

The CHAIRMAN. The Senator, I think, has raised the question squarely, and I believe this is a good time to get into it, just what change this would have on our general practice.

The Sherman Act was a general prohibition of monopolies and restraints of trade, was it not?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. We passed that act back in 1890.

Senator LUCAS. It has never been very effective, has it, Senator?

The CHAIRMAN. Now, then, to protect against the rigidities of it, and to permit in export trade the very type of thing which is condemned here, we passed the Webb-Pomerene Act, did we not?

Mr. TERRILL. I am not sure, Senator, that we did pass the Webb Act to permit the type of thing mentioned here.

The CHAIRMAN. Does not the Sherman Act condemn monopolies in both domestic and foreign business?

Mr. TERRILL. Yes, sir; it includes the foreign trade of the United States.

The CHAIRMAN. Does the Webb Act expressly except combinations which otherwise would be monopolistic or in restraint of trade so far as export trade is concerned?

Mr. TERRILL. It does not except all of them, I believe, Senator.

The CHAIRMAN. Maybe not all of them, but it takes a step in that direction; does it not?

Mr. TERRILL. Yes, sir; that is its general import.

The CHAIRMAN. So that at the present time, under the Webb-Pomerene Act, we have express authority for the formation of domestic combinations in, if you please, restraint of trade which are specifically encouraged by the Webb-Pomerene Act to act internationally; is that not correct?

Mr. TERRILL. That is correct; yes, sir.

The CHAIRMAN. Now, what was the effect of the Capper-Volstead Act? Not the Volstead Act, but the Capper-Volstead Act.

Mr. TERRILL. To remove agricultural cooperatives from the operation of the Sherman Act.

The CHAIRMAN. So there we took an affirmative step giving agricultural cooperatives domestically the right to restrain trade and engage in monopoly, is that right?

Mr. TERRILL. But there is a limitation on that, Senator. The purpose was not to enable them to restrain trade, as such.

The CHAIRMAN. No.

Mr. TERRILL. But to make sure that they could be formed legally and operate without fear of automatically falling under the Sherman Act.

The CHAIRMAN. Exactly. It comes, I suggest, to the same thing. The motivating reason was not to restrain trade or to encourage monopolies, but it said in effect that if your operation should result that way, you are exempt from the Sherman antitrust law, is that not correct?

Mr. TERRILL. I should not be speaking on this in any detail, Senator, but my understanding is that under both the Webb and the Capper-Volstead Acts, there is a definite area within which the association can operate, but outside of which it would run afoul of the antitrust laws.

The CHAIRMAN. I would not say there are no limitations at all. I am simply developing the fact that this country has recognized areas in which restraints of trade and monopolies are not forbidden.

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Is that right?

Mr. TERRILL. That is correct, Senator.

The CHAIRMAN. So it develops that we have recognized the fact that we may combine in this country for monopolistic and restraint of trade operations abroad.

Mr. TERRILL. That is correct, sir.

The CHAIRMAN. We have done that. We have given special exemption to our farmer cooperative organizations; is that right?

Mr. TERRILL. That is correct.

The CHAIRMAN. Is there not a law that gives the same protection to our labor organizations? What about the Clayton Act?

Mr. TERRILL. Yes; they are exempt, as I understand it, from the provisions of the Antitrust Act.

The CHAIRMAN. So, as to those acts, the provisions of this chapter, would require revision; would it not?

Mr. TERRILL. Senator, that would not be my understanding of the case. I called attention earlier to the fact that in the language of article 39 we have definitely written in what might be termed for international purposes a "rule of reason." The member countries shall take appropriate measures to prevent restrictive practices when-

ever such practices have harmful effect on the expansion of trade and the maintenance of high levels of real income.

The CHAIRMAN. Yes.

Mr. TERRILL. And that gives a considerable element of flexibility. Let us take, just for illustration, the case of the Webb-Pomerene Act. The philosophy of that act, as it was expressed, time and again, and is still expressed, is that it permits combinations of American exporters to meet foreign competition. I can see nothing inconsistent between the provisions of this charter and an association formed for that general purpose.

The CHAIRMAN. Well, let us see. Would you say that this is not the effect of the language of the Webb-Pomerene Act: "Nothing in sections 1 to 7 of the Sherman Act"—those are the sections which spell out the offense—"shall make illegal an association entered into solely for the purpose of export trade and actually engaging solely in export trade, providing the association is not in restraint of trade in the United States, nor in restraint of export trade of a domestic competitor of such association, and provided the association does not either in the United States or elsewhere, enter into any agreement, understanding, or a conspiracy, or to do any act which artificially or intentionally enhances or depresses prices within the United States of commodities to be exported, or substantially lessens competition within the United States or otherwise restrains trade."

Is that your understanding of the gist of the Webb-Pomerene Act?

Mr. TERRILL. Yes. That is its language.

The CHAIRMAN. Is that not a clear-cut exemption from the operation of this chapter?

Mr. TERRILL. I am not sure that I get that question, Senator. I can only say that the existence of an export association in this country or in any other country, is not per se, in violation of anything in this charter.

The CHAIRMAN. Yes, but is it not in violation, if it does the thing which is prohibited here, to wit, to restrain foreign trade or to set up monopolies of foreign trade.

Mr. TERRILL. Under the charter, Senator, all that could happen would be that we would be allowing or giving foreign nationals the right to come into the International Trade Organization and complain that the practices that the association was engaging in were frustrating the purposes of this charter.

The CHAIRMAN. Yes.

Mr. TERRILL. But, going back to the language of article 39, you remember that the association, in this case the Webb association, and it might be a British export association that is being complained against, must have substantial control of world trade in a given commodity.

In other words, the Webb association in question would have to be one which controlled the entire world supply. If it controlled the entire world supply, or a very substantial portion of it, so that it effectively controlled the trade, it would be very doubtful if it would, at the same time, not be affecting our domestic market by virtue of its activities in the foreign market.

The CHAIRMAN. You are arguing a case that might or might not exist. You do not say it necessarily will affect our domestic market.

The Webb-Pomerene law contemplates you can engage in these things without restraining or affecting your trade at home.

Mr. TERRILL. Yes, Senator, but the case I am imagining is one in which the export association effectively controls world trade in a given product. I am merely pointing out that if it did so control the entire world supply, it would probably be having some effect on the domestic market, if it engaged in certain practices abroad which led to complaint from foreigners.

Senator BUSHFIELD. Would that not be the necessary corollary; that the domestic market would be affected?

Mr. TERRILL. I would think in this hypothetical case, I am mentioning, that it would be, Senator.

Senator LUCAS. May I ask the Senator one question? It may not be material, but frankly, I have not read the Webb-Pomerene Act in a long, long time, but as I listen to the Senator read there what he contended to be the principal thing in that act, affecting this charter, I wish to state, will the Senator agree with me that that is right in the teeth of cartels?

The CHAIRMAN. I would say that it is an encouragement of cartels. American cartels operating in foreign fields.

Senator LUCAS. Well, I just did not quite understand it that way, and I was wondering, in view of the fact that the witness was discussing cartels, whether or not the Senator was making the point under this Webb Act that we could organize cartels in this country.

The CHAIRMAN. Yes. I think, Senator, you will agree with me that lots of times we confuse something by using a smear word. You pointed out the other day that the word "cartel" is a smear word. Let me put it this way: as I interpret the Webb-Pomerene Act, we can set up export organizations here in this country, which, if they were operated here at home in the same way they are authorized under the Webb-Pomerene Act to operate abroad, would be violating the Sherman Antitrust Act, and as I interpret this chapter that we are discussing under the explanations that have been made, those export organizations are in flat violation of the provisions of this chapter.

It might or might not be a good thing. I am not arguing the merits of it.

Senator LUCAS. Yes.

The CHAIRMAN. It would require us to change the Webb-Pomerene Act and would require us, maybe, to change the Capper-Volstead Act, and would require us maybe to change the exemption from the penalties of the Sherman Act which we have given to labor.

Senator LUCAS. And cooperatives.

The CHAIRMAN. Yes. It might or might not be a good thing. I am not arguing that.

Senator LUCAS. They have all been under attack.

The CHAIRMAN. Now, I think it is appropriate to enter into the record at this time the names of some 50 export associations which have filed with the Federal Trade Commission under the Webb-Pomerene law.

I enter that into the record to show we are not just talking theory.

(The list appears as exhibit XII A.)

Senator LUCAS. I understand.

Let me ask you, Senator Millikin, right on that point:

Are any of these corporations that operate under this Webb-Pomerehne Act taking any interest in this legislation?

The CHAIRMAN. Not that I know of. Not one of them has approached me on the subject.

I have been told by Dr. Wilcox that a number of trade organizations have made complaints, and some of them, I think, have in part approved the charter.

But I am not operating on any of their data.

I will say this: before we finish this thing, I intend to review all the showings pro and con that have been made by outside organizations, and I may put something in the record on that. I think it should be in the record.

Senator LUCAS. I think so.

The CHAIRMAN. But the point I want to make now is that no private industry and no private association is feeding the chairman with any kind of stuff for the direction of this hearing.

Senator LUCAS. No. I did not have that in mind at all, Senator.

The CHAIRMAN. No.

Senator LUCAS. My only thought was whether or not they were going to be witnesses here, from these organizations that might be affected, let us say, by this, in view of this hearing.

It was whether or not they were going to testify.

The CHAIRMAN. As far as I know, no one has suggested that any of those organizations appears.

I doubt whether it is practical that they appear, because we are operating against a sharp time limitation.

Senator LUCAS. I appreciate that.

Let me ask one further question.

The CHAIRMAN. Yes.

Senator LUCAS. Is there any concerted effort on the outside here in opposition to this measure?

I mean, is there any organization or any witnesses or groups of people who are going to testify who are vitally opposed?

The CHAIRMAN. Under the chairman's plan, no one will testify here who is either violently for or violently opposed.

This inquiry, according to the notions of the Chair, is to elicit the proper interpretation of this charter, by those who have written it and who are promoting it.

Senator LUCAS. Well, that is perfectly proper, of course.

The CHAIRMAN. And then, as I say, if there is no objection by the committee, after we finish with the official witnesses, we may introduce into the record a digest of the views pro and con of the outside organizations.

Senator LUCAS. I think that is fine, the way the chairman is moving, because this is something new, and I believe it should be thoroughly understood and explored from beginning to end in order that the country may be told of this, and a record made properly, and the chairman, I believe, is doing that very well.

The CHAIRMAN. As the Senator knows, it is a tedious job and we have been taking it sentence by sentence and trying to find out what it means from those who have written it and who are promoting it.

Now, let us get to paragraph 1. [Reading:]

Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international

trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in Article 1.

Now, are we to take the meaning of "restrain competition," from the general context of the chapter, and from its various provisions, or do we assign to those words the meanings which have been developed in our own procedures, and in our own judicial experience in this country under the Sherman Act and subsequent amending legislation?

Mr. TERRILL. There is no clear definition of the restraint of competition in the charter, Senator.

We gave considerable attention to that possibility, however.

We found that if we attempted to codify this idea, it would be an extremely lengthy task that would probably satisfy no one, because you would have to put in every detail of every circumstance in which a given act could be held to be restraining competition, and since there are innumerable acts and innumerable circumstances under which each act could occur, the job is practically impossible.

Therefore, we shall have to develop from case to case, as time goes on, standards acceptable to the world in this matter, by getting decisions under ITO as complaints arise.

The CHAIRMAN. Under what circumstances would complaints be brought under your plan which might finally come before the international court of justice?

Mr. TERRILL. It is hard to be concrete on that, Senator.

The CHAIRMAN. Please picture us a case which finally could land there, involving the construction of words, such as we are talking about.

Mr. TERRILL. I do not believe, Senator, that any cases could go up to the court on this matter.

The CHAIRMAN. On this chapter?

Mr. TERRILL. Yes. But as to the entire chapter, I would not know, offhand.

There are probably some possibilities.

The CHAIRMAN. Then will you give such thought to that as you can, and we will not go into it further now, but either by memo or by appearing again, will you illustrate those types of cases which might arise under this chapter, which might find their way ultimately to the international court of justice, for decision.

Mr. TERRILL. Yes, sir. (The suggested memorandum appears as exhibit XIV.)

The CHAIRMAN. I notice under the language of paragraph 1, you are condemning business practices.

Is that limited to business practices by private organizations or does it also limit state organizations?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Or State monopolies?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Does it apply to only the one, or to all of them, or less than all of them?

Mr. TERRILL. It applies to all of them, Senator.

The CHAIRMAN. All organizations?

Mr. TERRILL. I think that subparagraph (a), under paragraph 2 makes that clear:

whenever they are engaged in or made effective by one or more public or private commercial enterprises.

The CHAIRMAN. So that this condemnation is sweeping to the effect that it applies to private organizations or to public organizations?

Mr. TERRILL. Correct.

The CHAIRMAN. Now, when you talk about limiting access to markets, any successful business which overcomes competition limits access to markets.

Is that the type of thing that is contemplated?

Mr. TERRILL. Senator, I think it is true, as an economic proposition, that successful business firms do succeed in eliminating their rivals from a portion of the total trade.

The CHAIRMAN. Yes.

Mr. TERRILL. In that case, the elimination, to the extent it has occurred, of some competition is incidental to the purpose of the business enterprise.

The CHAIRMAN. Well, it is the prime purpose of the business enterprise, is it not?

Mr. TERRILL. But it is not a deliberate and contrived aim.

The CHAIRMAN. I beg most respectfully to differ with you.

If you go into business today, I suggest you go into it with a deliberately contrived aim of expanding your market and of limiting access to the market by your competitor. Otherwise you are running a philanthropical and not a business institution.

Mr. TERRILL. Yes, sir; that is correct.

The point that I really had in mind, Senator, is this: that there are various methods of accomplishing that objective.

The CHAIRMAN. That is what I am driving at.

Let us draw a line of distinction between legitimate cases that have that effect that fall on one side of the line and the illegitimate, prohibited cases that fall on the other side.

Mr. TERRILL. That is, of course, the intent of this particular chapter, I think, to prevent certain types of practices which do arbitrarily, artificially, and by agreement or arrangement, eliminate or prevent competition from outside firms.

The CHAIRMAN. Now, put that in terms of cases. Give us some cases which would be legitimate and cases which would be prohibited where in each instance the effect is to deprive some one else of access to a market.

Mr. TERRILL. I can illustrate by an actual case, Senator, in international trade.

A group of firms combined in a cartel in Europe have gone around and organized the dealers in a given product into a dealers' association with whom they have made binding arrangements to the effect that they will not handle the products of a certain American firm or else they will lose the entire supply of the cartel's product.

That would, I think, in any fair court or tribunal, be adjudged as an unconscionable and unfair restraint on the American concern.

The CHAIRMAN. You mean that the foreign distributor is obligated to handle the business of everyone who wants him to distribute for it?

Mr. TERRILL. No, sir, but in order to eliminate the American competition, the cartel coerced, deliberately coerced, clearly coerced the distributors.

The CHAIRMAN. What was the coercion feature?

Mr. TERRILL. Well, the coercion feature was that they would not sell anything to them.

They would take them off their list entirely, so that any firm which refused to obey this might find itself out of business.

The CHAIRMAN. Well, what is the situation of a filling station operator in this country?

He makes a contract with his supplier of the product, which is sold by the filling station, that he will sell those products exclusively.

Mr. TERRILL. Probably this is, however, a mere contract of agency which, of course, is a perfectly legitimate and normal commercial practice, but if all of the filling stations, let me put it that way, and of course it is impossible because of their number in this country, but if all of the filling stations were forced to sign contracts with, let us say, two or three major oil companies that they would not sell the products of any other company and would discontinue the present sales of such products, then you would have an entirely different sort of case.

The CHAIRMAN. What is the coercive feature which will bring the effect you complain of as far as foreign distributors are concerned?

Why should not the foreign distributor have the right to make an agreement, assuming there is no unlawful coercion, to say, "I will handle X product exclusively and I will not handle a similar product made by Y or Z, or A or B?"

What is wrong with that?

Mr. TERRILL. There is nothing wrong with that, Senator.

The CHAIRMAN. Where does the wrong come in?

Mr. TERRILL. In the particular case I was using as an illustration, all of the dealers in certain foreign countries were brought under an arrangement in which they promised not to buy from the American concerns.

That has happened in important products, where all the dealers are sewed up.

The CHAIRMAN. What is the coercive feature?

Mr. TERRILL. Well, would it be correct to put your question as to what powers did the cartel hold over the dealers in this case?

The CHAIRMAN. Yes; I think you could build a coercion out of that.

Mr. TERRILL. Then, Senator, I will so interpret your question.

The CHAIRMAN. What power did they hold?

Mr. TERRILL. I do not know precisely. I am, of course, conjecturing that they threatened to cut off any particular dealer who stepped out of line.

They threatened to cut off his supply and while there was an apparent alternative, let us say, of American supplies which that dealer might have turned to, it was evidently not large enough to keep him in business. In any event that dealer clearly faced extinction if he violated this arrangement.

The CHAIRMAN. The question we are considering, I believe, can be stated as a minimum that you do not intend to reach the case where a private interest in this country exports its product and by virtue of

the merits of the product and the superiority or excellence of its salesmanship, it gradually acquires such a predominance in the market as to deny access to the market to others?

Mr. TERRILL. Clearly not, Senator.

We would hope to promote just that sort of market advantage.

The CHAIRMAN. That is not what is in mind?

Mr. TERRILL. Definitely not.

The CHAIRMAN. Yes.

Now, does this chapter draw any distinction between the type of exporting arrangement contemplated by the Webb-Pomerene Act, made by citizens of this country, or in combination by citizens of this country and citizens of some other country?

Is there any distinction?

Mr. TERRILL. There is no distinction on the fact of the article, Senator, but I think the distinction is an important one, because it would relate to our own domestic statutes.

That is to say, the case that I discussed before in connection with the Webb-Pomerene Act assumed that the American association had a monopoly of world trade in a given product. That is very seldom, if ever, the case.

There is usually some element of foreign competition, and if the American concerns, united to a Webb association, enter into, shall we use "cartel arrangements," just for convenience—

The CHAIRMAN. All right.

Mr. TERRILL. Enter into restrictive arrangements with foreign concerns, then they would be subject, as I assume, under recent judicial decisions, to the application of the Antitrust Acts.

The CHAIRMAN. Now, where is the language in this chapter that draws that distinction?

Mr. TERRILL. There is no specific language, Senator, which draws that distinction, but the force of the chapter moves from this point; namely, harmful effects on the expansion of products and trade. That is No. 1.

And, No. 2, from subparagraph (b) of 2, namely, that such commercial enterprise, individually or collectively, possesses effective control of trade.

The CHAIRMAN. Now, let me ask you again; and I am not sure we got a clear answer, though we did a lot of talking, but I am not sure we got a clear answer to my question of a while ago: Is it your contention that the Webb-Pomerene Act and the Capper-Volstead Act, and I believe it is the Clayton Act, which gives certain exemptions as far as monopolies and restraints of trade are concerned, to labor organizations, can they live side by side with the provisions of this chapter?

Mr. TERRILL. I would say the answer to that is very definitely "yes," Senator.

(Subsequently, the State Department submitted the following memorandum in amplification of this statement:)

Question: Does article 89 of the charter require amendment of the Webb-Pomerene Act?

Comment: Article 89 commits members to take "appropriate measures" to eliminate restrictive business practices "whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income." " * * * " The Webb-Pomerene Act

authorizes United States business to combine for export trade, provided in general that the United States domestic market and domestic competitors are not adversely affected by their operations. Where these conditions are breached, the export associations are subject to prosecution under the Antitrust Acts. The question is whether, as a practical matter, any of these export associations operating solely within the area of immunity afforded by the Webb-Pomerene Act may be expected to have "harmful effects" within the meaning of article 39.

An analysis of the operations of Webb-Pomerene associations indicates that there is little real likelihood that the activities of such associations operating within their legal rights will be found to have "harmful effects" within the meaning of article 39. The possibility that such a case may arise is sufficiently remote that we do not consider the revision of the Webb-Pomerene Act to be called for in order to discharge any obligations we may have under the International Trade Organization Charter.

While we regard the contingency as unlikely, it may be that at some time in the future the International Trade Organization will receive a complaint regarding the restrictive practices of a Webb-Pomerene association; that it will investigate the complaint and find the Webb-Pomerene association's activities "harmful;" and that on receiving the complaint, this Government will determine that no United States statute had been violated. When that occurred, this Government would be under an obligation to prevent the continuance or recurrence of the practice, which could only be done by legislation. But our failure in good faith to enact such legislation until this contingency arose would not violate in letter or spirit any commitment undertaken in the charter.

Question: Does article 39 of the charter require amendment of section 6 of the Clayton Act?

Comment: Section 6 of the Clayton Act provides that "Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, * * * nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws." This is not inconsistent with article 39 of the charter. Chapter VI of the charter is limited by its terms to business practices engaged in by commercial enterprises. The United States takes the position, as expressed in section 6 of the Clayton Act, that "the labor of a human being is not a commodity or article of commerce." Therefore, those activities of labor unions which are protected by the Clayton Act cannot be defined as "business practices" engaged in by "commercial enterprises."

Of course, a labor union might become subject to the charter where it was conspiring with a business organization to restrain trade, but this would not involve a change in the Clayton Act. As the Supreme Court said in defining the scope of the Clayton Act in *Allen Bradley Co. v. Local Union No. 3* (325 U. S. 797, 811), "A business monopoly is no less such because a union participates, and such participation is a violation of the [Sherman] Act."

Question: Does article 39 of the charter require amendment of the Capper-Volstead Act (Cooperative Marketing Associations Act of 1922)?

Comment: The Capper-Volstead Act provides that "Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations * * * in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged." While it is not clear whether such cooperative marketing associations would be "commercial enterprises" within the terms of article 39 of the charter, such a determination is made unnecessary by section 2 of the Capper-Volstead Act which places a limitation on the practices of such associations which is at least as strict as the provisions of article 39. Section 2 forbids a cooperative marketing association to monopolize or restrain trade in interstate or foreign commerce "to such an extent that the price of any agricultural product is unduly enhanced thereby." Any restrictive practice which did not "unduly enhance" prices would scarcely be regarded as "harmful" within the meaning of article 39. In addition, agricultural associations are denied the protection of the Capper-Volstead Act where they join with other groups to restrain trade. *United States v. Borden Co.* (308 U. S. 188).

The CHAIRMAN. They could?

Mr. TERRILL. Yes, sir. If I might extend that remark just a bit to point out to you why I think that is the case: Export associations in

the United States are, on the whole, less numerous, or less extensive in proportion to total trade than in most foreign countries.

The British case would illustrate my point that export associations abroad, particularly in Europe, are much more numerous than in the United States, and are regarded as an ordinary device to conduct export trade. (A list of British export associations appears as exhibit XII B.)

Foreign governments, of course, when they were discussing this matter with us, took cognizance of their own situations, and as we discussed the subject, we were of one mind, that we were not prohibiting or outlawing export associations.

The CHAIRMAN. What British type, for example, or what American type?

Mr. TERRILL. What American type, Senator?

The CHAIRMAN. As set up in the laws we have discussed?

Mr. TERRILL. Well, Senator, regardless of type or country, the export association was not something which this charter was intended to prohibit.

The CHAIRMAN. Then, let me ask you, what is left to your charter? What is prohibited by your charter?

Mr. TERRILL. Well, Senator, "prohibited," is not exactly the word. What might violate the articles of the chapter would be better.

The CHAIRMAN. I do not want to interrupt your explanation unduly, but I do not think you should put these things in terms of "might."

I think this article sets out a course of conduct which is approved or disapproved, and where you are setting up something of this kind that has certain sanctions to it, I think it should be definitely clear whether a given course of conduct would be approved or would not be approved.

I do not think you have anything here of any value if it rests in this fuzzy field of might or might not be approved.

What I am asking you is, after we have finished the exceptions which we have just now discussed, what remains prohibited under the chapter?

Mr. TERRILL. The case that would fall under the terms of the chapter would be one in which an export association has substantial control of world trade in a given product, and engages in business practices that are harmful to the expansion of world trade and maintenance of high levels of income, and so forth, or the other purposes of the organization.

The CHAIRMAN. Now, point out the specific language that makes it clear that that is the only thing that is condemned by this chapter.

Mr. TERRILL. We would have to read, Senator, the wording of paragraph 2.

The CHAIRMAN. All right, let us do that in just a moment.

Let me ask you a few more questions about 1.

It seems to me that there is a condition imposed in 1 that might make the whole thing ineffective. Let me read 1 and we will get it in its proper context. [Reading:]

Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets, or foster monopolistic control.

and here is your condition—

whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in Article 1.

Now, if you wanted to make a case with 1 as a springboard, would you have to show that the particular organization or the particular practices against which you are complaining would have to produce these harmful results "in all countries"?

Mr. TERRILL. No, sir.

The CHAIRMAN. That is what it says.

Mr. TERRILL. That is taken from the language of the earlier draft. The American draft of article 1, which sets forth the purposes of the organization.

The CHAIRMAN. Yes.

Mr. TERRILL. You see, if I may explain that language, there is a simple word in there; namely, the maintenance in "all" countries.

The CHAIRMAN. That is right.

Mr. TERRILL. "All" because it might be argued on that point—

The CHAIRMAN. That is the word I am emphasizing.

Mr. TERRILL. I think that word throws the burden in the opposite direction, Senator.

The CHAIRMAN. The other fellow would simply, then, have to show one country which was not having its high levels of real income affected, and he would go scot free.

It would be unfortunate from an enforcement standpoint to allow such a simple escape, if you mean really to do anything with this chapter.

Mr. TERRILL. The construction, Senator, that you put on that may well be the proper one, because this article has been changed around since originally drafted.

The CHAIRMAN. Is not that the clear language?

Let me go through it again, now. [Reading:]

Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade—

and now what?

which restrain competition, limit access to markets, or foster monopolistic control whenever such practices have harmful effects—

on what?

on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in Article 1.

So, if I were the defendant, and I showed one country where that effect did not follow, then I would go scot free; is that not correct?

Mr. TERRILL. At the moment, it sounds somewhat plausible.

I can assure you that it was not intended, however. We will examine this with the closest attention.

The CHAIRMAN. It seems to me that the language does not fit what you really intend to express.

Now, the British are completely content with this article?

Mr. TERRILL. Yes, sir. I believe that they have no reservation that I am aware of at least at the moment.

I might just add one point here.

I am not sure as to whether they and several other countries would be very happy about the inclusion of the term "one public commercial enterprise." That is to say, I am contrasting that case in which one public enterprise is acting singly and independently in world markets with the case in which several public enterprises in several countries are combined together to act in a certain way.

The CHAIRMAN. Yes. One of the tests in paragraph 1 is of high levels of real income, where they are adversely affected.

What are your reference points? How are you going to judge what is a high level of real income? Is it such a level as we have in this country, or such a level as exists in the particular country where these bad practices are operating? If you have got to take in all the countries as the language seems to imply, how are you going to give any real working substance to that test?

Mr. TERRILL. There are two points I would like to make in reply to that, Senator.

One of them is this: the reason the term "all countries" is in there is to make sure that measures which a given country adopts that might cut a larger slice of the pie, the world pie, artificially for it if nobody took any counter-measures are not considered to be within the objectives of the Organization.

This language is borrowed from article 1 of chapter 1 as to the purposes of the Organization.

The CHAIRMAN. That is bootstrap lifting. It does not prove anything.

Mr. TERRILL. The objective is not to promote high levels of income only in one country, Senator, but to promote them in all countries.

It does not exactly answer your question, but it goes back to an earlier one.

The CHAIRMAN. Then the high level of real income is an existing level, or an idealistic level?

Mr. TERRILL. That is a difficult question, Senator.

The CHAIRMAN. You have to make a case before the Organization and you have to show here that the high level of real income has been injured, or has not been injured.

How do you commence to assemble your evidence?

Mr. TERRILL. I think, for the most part, Senator, this concept of the level of real income is synonymous with the level of production, in that real income can be generated only by production.

The CHAIRMAN. Yes, but I beg respectfully to differ with you most fundamentally on that.

You can have an enormous level of production, witness the production of Japan, with a definitely inferior level of real income. The two do not necessarily go together at all if you use the words "level of real income," in any sort of sense in which we usually use them.

Mr. TERRILL. Of course, that is possible.

The CHAIRMAN. You have a high level of rubber production in the rubber-producing countries where people live on the equivalent of 5 cents or 10 cents a day. That certainly is not a desirable standard of real income.

Mr. TERRILL. Well, of course, when I use the term "production," I am assuming that it has a given composition and that it includes production of things people need.

The CHAIRMAN. All right.

Now, can you tell me how you are going to make your case either to comply with the words or defend against them?

Mr. TERRILL. Now, the other factor I wanted to bring in although I said the primary factor would be the maintenance of production—the second factor would, of course, be price. And this is entirely hypothetical, but if I were arguing a case before the trade organization that a specific, shall we say, cartel arrangement was impairing the objectives of this Charter, one of the things I would point to would be the condition of prices before and after the cartel began operation, or prices with reference to the costs of production.

The CHAIRMAN. Yes, and how would you bring that argument into relation with the goal you are shooting at; to wit, a high level of real income?

Mr. TERRILL. Well, I do not think the high level of real income is a specific goal of this chapter, Senator. It is a goal of the International Trade Organization, as a whole.

The CHAIRMAN. It is a test of injury, is it not?

Mr. TERRILL. Yes, sir; it is being used in this specific case as a test of injury.

Now, does this cartel organization or do these restrictive business practices in question impair the attainment of, or the maintenance of a high level of real income?

The CHAIRMAN. All right. Now, tell me what is a high level of real income in the sense you are using it. What is the goal we are shooting at.

Mr. TERRILL. Well, in a specific case you would come down to the question of whether or not, by its price practices, the combination in question prevented the access of potential consumers to the market.

The CHAIRMAN. All right.

Now, high prices give opportunity for a higher level of real income, do they not; to the worker, for example?

Mr. TERRILL. Well, I am not altogether sure that is necessarily the case, Senator.

The CHAIRMAN. But if there is not enough price to warrant a raise in the worker's level of income, then you cannot possibly raise his level of income, can you?

Mr. TERRILL. That is true, if the prices are below the cost of production.

The CHAIRMAN. You are bringing the price into relation with the level of income. Let us probe the significance of that.

The higher, then, the price of rubber, the greater the opportunity to raise the level of income of the rubber field workers; is that right?

Mr. TERRILL. But the rubber plantations could very easily price themselves out of the market, Senator.

The CHAIRMAN. Yes, of course, but I am not talking about that.

Mr. TERRILL. And employment should also be considered.

The CHAIRMAN. I will ask you whether you agree with me as far as I have gone, the higher the price the higher the opportunity for increasing high levels of real income.

Mr. TERRILL. I do not think that is correct, Senator, if I may say so.

The CHAIRMAN. Let us take the converse, then.

Then do you maintain that the lower the price, the better the opportunity to increase real levels of income? .

Mr. TERRILL. No, sir; I do not maintain the converse, either.

The CHAIRMAN. Then, will you state your own formula.

Mr. TERRILL. Well, I should think that the price which business firms will maintain, under conditions of competition, is a price which is approximately equal, year in and year out, to total cost of production.

The CHAIRMAN. Well, they have got to do a little better than that, do they not?

Mr. TERRILL. Well, I am counting in as a cost of production returns to management and invested capital, Senator.

The CHAIRMAN. But you are figuring on some kind of a return?

Mr. TERRILL. Yes, Senator, you have to assume a going rate, both as to the interest, profits, and wages.

The CHAIRMAN. It is said that the United States Steel is making too much money at the present time. I do not know whether they are or not, but on the theory they are, Mr. Murray is now asking for an increase in wages with the hope of raising the real income of his workers, so the price does have a relationship to real income, does it not?

Mr. TERRILL. Yes, sir; that is my contention.

The CHAIRMAN. And the higher the price, as witness the case of U. S. Steel, the greater the opportunity of the worker to improve his real income within certain limits, which we could quickly define from a general economic standpoint?

Mr. TERRILL. I think it is interesting as a point here, Senator, to point out an actual cartel situation; namely, the rubber restriction scheme.

The CHAIRMAN. Yes.

Mr. TERRILL. They succeeded in raising the price of rubber enormously from somewhere around 20 or 30 cents up to \$1.50 a pound, as I recall. Sales of rubber were curtailed by that price increase, and the burden fell on the unemployed workers in the plantation.

Therefore, I think what we really are saying is that for the workers who would still be employed, a continuing increase in price would give them a larger share of the pie of national income, to the extent the price increases were reflected back into their wages.

The CHAIRMAN. Yes.

Well, then, you come back to the first barrel of my proposal, that the higher the price the greater the opportunity, and I do not say that it will follow as a matter of fact, but the greater the opportunity to improve the real income of the workers.

Mr. TERRILL. But not in all countries, Senator. Because remember that in our illustration, other countries would be using this product.

The CHAIRMAN. Yes.

Mr. TERRILL. Consumers might be situated in other countries.

We could assume such price increases would be taking away real income from them.

The CHAIRMAN. Now, you have washed out completely any meaning you can put on the high level of real income.

Mr. TERRILL. Well, I am not sure that I have, Senator, because it seems to me we have talked about the effects of price practices in all countries, as used in the language of the Charter. Price gouging by

one country which entered into a monopolistic arrangement would be reflected in reduced levels of real income, that is, in the goods obtainable by other countries.

The CHAIRMAN. All right.

Now, do you feel that I have denied you any opportunity you may want to explain what the functional purpose in a given case is of these words "high level of real income"?

Do you wish to say anything more about it?

Mr. TERRILL. No; I do not. You have made me very dubious about it.

The CHAIRMAN. Let us get into paragraph 2. [Reading:]

Without limiting the generality of paragraph 1 of this Article, the practices listed in paragraph 3 below shall be subject to investigation in accordance with the procedure with respect to complaints provided by the relevant Articles of this Chapter, if the Organization considers them to have or to be about to have any of the harmful effects enumerated in paragraph 1 of this Article.

Now, all you are doing there is setting up a general prohibition. You are maintaining the generality of it, but now you are specifying some definite things which, while maintaining the generality of your prohibition, do definitely come under the prohibition; is that right?

Mr. TERRILL. That is correct.

May I put it this way, Senator?

The CHAIRMAN. Yes.

Mr. TERRILL. What we are doing in paragraph 2 is getting into the question of what is to be done about it; what you do about putting into effect the policy that is spelled out in paragraph 1. Paragraph 2 states that under certain circumstances the practices to be listed shall be subject to investigation in accordance with a certain procedure.

The CHAIRMAN. That is right.

And I assume that that residue which is left under the general language, which is not specified, would also be subject to the same procedure; is that right?

Mr. TERRILL. Yes, sir; that is correct.

The CHAIRMAN. All right. [Reading:]

(a) They are engaged in or made effective by one or more public or private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises (i. e., trading agencies of governments or enterprises in which there is effective public control), or between private and public commercial enterprises; and

(b) Such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products.

In other words, the prohibition of (a) would be negatived if such commercial enterprises, individually or collectively, did not possess effective control of trade among a number of countries in one or more products; is that right?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. What is "effective control of trade"?

Mr. TERRILL. I presume that the test would be as to whether the firm or the combination of firms had the power, generally speaking, to regulate the market. The question is, could they determine what the level of prices would be, who would be allowed to sell, or other features of commercial dealing.

The CHAIRMAN. Regardless of the quantitative result?

Mr. TERRILL. I am not sure I get that question, Senator.

The CHAIRMAN. Well, you might have everything that you have described and still not control the great bulk of the trade.

Mr. TERRILL. I am not sure as to that point, and I do not know how to reply to it.

The CHAIRMAN. Is there a criterion, then, of judgment set up in this Chapter which the Organization could work on in determining whether or not effective control had been established?

Mr. TERRILL. No, sir. I believe that that will have to be determined from case to case in the light of surrounding circumstances.

The CHAIRMAN. In other words, the organization would have to act on a freewheeling basis?

Mr. TERRILL. No, it would be freewheeling, Senator.

The CHAIRMAN. I suggest it must come to that, as you have no preordained standard.

Mr. TERRILL. We thought about this, of course, in the drafting of the instrument, but we felt that no one has ever yet been able to set up definitions which would enable you to determine, in all cases, when "effective control" exists.

The CHAIRMAN. You answer is "case by case".

Mr. TERRILL. You simply have to resort to that, Senator.

The CHAIRMAN. What is meant by "a number of countries"?

Mr. TERRILL. Senator, that is put in there for the purpose of making it clear that the trade in question has to be international trade. It has to be between two or more countries.

Senator JOHNSON. It is directly contradictory to the word "all countries, in paragraph 1.

Mr. TERRILL. Well, Senator, in the other case, we were referring to the level of income and the production in the world as a whole.

Senator JOHNSON. Yes; I understand that.

The CHAIRMAN. Would you mind repeating your answer?

Mr. TERRILL. In the first instance, where we are using, in paragraph 1 of Article 39, the phrase "all countries," we are referring to the world as a whole.

In the present paragraph, paragraph 2, I think, Senator, we are getting on to a quite different subject. We are getting down to a specific instance and showing what kind of cases the ITO will entertain. We are stipulating that the trade in question must be international trade. It must be commerce between two or more countries.

The CHAIRMAN. It could be among two of the most unimportant countries in the world?

Mr. TERRILL. It could certainly include them; yes.

The CHAIRMAN. Well, "a number of countries"?

Mr. TERRILL. That is right, sir.

The CHAIRMAN. That might include two or three of the most unimportant countries in the world, for the purpose of conferring jurisdiction to hear this kind of complaint.

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Three reads:

The practices referred to in paragraph 2 of this Article are as follows:

(a) Fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale, or lease of any product.

Now, any private enterpriser has to fix the price of his commodity; does he not?

Mr. TERRILL. That is correct.

The CHAIRMAN. That surely is not the test that is envisaged here?

Mr. TERRILL. No, Senator.

It very definitely would not constitute any harm to world trade.

In fact, it often facilitates trade if people put out price lists and announce the conditions under which they will deal with others.

The CHAIRMAN. In other words, the fixing of the price to be prohibited would have to fall under the preceding condemnations?

Mr. TERRILL. Well, it would probably have to be fixed by agreement among a number of firms, Senator.

The CHAIRMAN. Yes.

Now, how about patents?

Mr. TERRILL. Patents would not be involved here, Senator. To the extent that the monopoly conferred by the patent enables the patentee to control the conditions of sale lawfully, it is clearly removed from any provisions of this chapter.

The CHAIRMAN. Under what condition would a man operating under the monopoly established by a patent fall afoul of this chapter?

Mr. TERRILL. It would be well, I think, Senator, to refer to subparagraph (f).

He would fall afoul only if he extended the use of the rights under the patent to "products or conditions of production, use, or sale which are not the immediate subjects of the authorized grant."

The CHAIRMAN. What is meant by that?

Mr. TERRILL. A possible illustration would be a tying contract, where a patentee licenses his patent and then requires, as a condition of the license, that the licensee buy his raw materials from him. That would clearly be a case in which the patent rights granted by law to control the invention were being extended in order to control raw materials which might be used in the course of production.

The CHAIRMAN. Or any other kind of materials?

Mr. TERRILL. Yes, Senator.

The CHAIRMAN. Suppose a manufacturer, X, has a highly desirable gadget of some kind that merchants want.

If X said, "Why, yes, I will supply you with this gadget if you will also stock your shelves with groceries which I sell you," that would be prohibited?

Mr. TERRELL. Well, in that case, the grocer, of course, is not a licensee under the patent.

Would not the case be better if the patentee had licensed another person to make his gadget?

The CHAIRMAN. Does the patentee have distribution rights?

Mr. TERRILL. You are getting into a field now, Senator, in which I probably could not follow you.

A patentee does or can have legitimate control over many conditions of the sale or the use of his product.

The CHAIRMAN. Well, it was within that field of permissible distribution and restriction that I put my case to you.

Mr. TERRILL. Senator, I am not sure that I am adept enough to draw the proper answers from the law.

However, I assume that in the case you mention, the patentee would clearly be going outside of any rights conferred by virtue of his patent.

The CHAIRMAN (reading) :

(b) Excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sale or purchase quotas.

Does that take in everything that the language seems to take in, or are there some intended exceptions?

Mr. TERRILL. Well, we spoke about one important field a few moments ago, Senator; namely, excluding any enterprise from any territorial market or field of business activity, and pointed out, in that connection, that there were several broad conditions that had to exist before there could be any question about the practice falling within the scope of the chapter.

The CHAIRMAN. It would have to come under all of the condemnations that precede in this chapter; is that right?

Mr. TERRILL. And the exceptions, too, Senator.

The CHAIRMAN. Well, let me put some cases to you that might be innocent.

We had a variant of this awhile ago.

Suppose that some outfit, by virtue of superiority of its article, aggressiveness of its sales organization, captures the market.

The effect is that it excludes somebody else and would be innocent unless that act is combined with these other things which are condemned.

That would be an innocent act; would it not?

Mr. TERRILL. No, sir; as I understand your question. Do you mean all the other practices listed here?

The CHAIRMAN. I am speaking now with reference to (b).

Mr. TERRILL. Oh, I see.

The CHAIRMAN. I am saying to you, suppose a company by virtue of its superior product, or by virtue of its superior salesmanship, or a combination of both, captures a market some place.

By that token, it excludes somebody from that market; is that not correct?

Mr. TERRILL. That is correct.

The CHAIRMAN. Unless that act were combined with some of the things up above that were condemned, that would be an innocent act; would it not?

Mr. TERRILL. That is correct, Senator. The parties would have to use boycotts or something like that.

The CHAIRMAN. Under what circumstances could a market be divided or allocated?

Mr. TERRILL. That sort of a practice has been quite common under previous cartel schemes.

If two or more firms have a substantial monopoly of world trade in a product, they can divide between themselves different national markets on either an exclusive or a nonexclusive basis.

In other words, the contract will state that firm A shall have country X and firm B shall have county Y, and that they will both have access to another country, Z.

The CHAIRMAN. Two countries may make aspirin.

One says, "You take the Balkans and we will keep out of there"; and the other says, "You take western Europe and we will keep out of there!" Is that the kind of a case you have in mind?

Mr. TERRILL. That is the case, Senator.

The CHAIRMAN (reading):

(c) Discriminating against particular enterprises whether by boycott or otherwise.

Give me an example of discrimination by boycott.

Mr. TERRILL. I will define a boycott very roughly as an organized or concerted refusal to sell. It is illustrated by my previous example in which a group of retailers is brought into an arrangement with a cartel under which they will refuse concertedly to handle or deal in the products of any outside or independent firm.

The CHAIRMAN. One of the causes or alleged causes for the war between Japan and China was that the Chinese would not buy Japanese goods.

The Chinese maintained a boycott. Is that the kind of things that are contemplated here?

Mr. TERRILL. No, I do not think it is, Senator.

If the consumers of a given country for any reason refrain from buying the products of another country, a transaction between commercial enterprises is not involved.

The CHAIRMAN (reading):

(d) Limiting production or fixing production quotas.

Now, what about natural resources—conservation of natural resources? What about the situation where vast oil deposits are held by concessionaires which, under existing practice, do involve an allocation of supply?

Mr. TERRILL. As to the first point, Senator, conservation is clearly exempted from the provisions of this chapter under article 45. Article 45 and paragraph 1 (b) referred to international arrangements contemplated in article 50.

The CHAIRMAN. I think Dr. Wilcox stated the other day that under certain assumed circumstances, those trade practices might come under the prohibition of other parts of the Charter.

If we acquire a concession in Arabia—an oil concession—we develop it and we sell the product exclusively to the United States Navy; what about that?

Mr. TERRILL. The Charter definitely exempts that sort of a sale because it is for Government use.

The CHAIRMAN. And it is for military purposes also?

Mr. TERRILL. We could take all of this oil, every bit of it, appropriate it to our own Government use, and not be in violation of the Charter.

The CHAIRMAN. But if we took that same oil and used it exclusively for general domestic purposes within the United States, what would the situation be?

Mr. TERRILL. The case would not then come under this exemption, as I understand it, Senator.

The CHAIRMAN. I think that was the type of case which Dr. Wilcox discussed.

Senator JOHNSON. What about the oil compacts that many of our states have entered into to control production and keep down production—to bring demand and supply into better balance?

Mr. TERRILL. Those, Senator, would be in the same position as the wheat acreage restriction arrangements that you mentioned earlier. They are definitely not covered by this chapter.

Senator JOHNSON. Not affected by this Organization?

Mr. TERRILL. Definitely not in this chapter.

The CHAIRMAN. Then what is affected by that (d)?

Mr. TERRILL. Clause (d) would affect arrangements whereby a number of concerns situated in different countries get together on their own to control the world production of a given product. Pursuant to this agreement they set production quotas for each firm.

As was brought out before our courts in the aluminum case, such an arrangement existed in the use of aluminum; a central corporation was established in Switzerland to which many, if not most, of the aluminum companies outside of the United States belonged, and they fixed the amount which each firm could produce.

They fixed it in accordance with ownership of the stock of the central corporation, assigning so many units of production to each stockholder.

The CHAIRMAN. Suppose the motivating influence of the agreement was to conserve a primary product?

Mr. TERRILL. If that was the motivation, and if there was a public purpose carried out through legislation, then it would be excluded from the provisions of this chapter.

If, on the other hand, they were commercial firms, that might be different.

The CHAIRMAN. Suppose that it were for the simple purpose of making money and making it intelligently, to wit, by not squandering the resources out of which it is made?

Mr. TERRILL. I think that if the private firms, without legislative authority and without agreement between their governments, in case they are situated in different countries, go into such a scheme, it would be in violation of the Charter, if it were held by the Organization to [reading]:

have harmful effect on the expansion of production and trade.

It would be, of course, a case for consideration by the ITO.

However, there is nothing in the Charter that would flatly condemn any sort of arrangement or any sort of practice.

That is, there is no flat prohibition.

The CHAIRMAN. So once more you put yourself in the hands of the Organization without knowing what the rules will be to judge your case.

Mr. TERRILL. There is only one general criterion; that is, harmful effects on the expansion of production and trade.

Moreover, Senator, the case would have to be brought up by a complaint to the ITO from some member country or some business firm, and it would have to support this claim before the ITO.

In other words, article 39, which contains the policy, particularly paragraph 1, does not operate, to use an expression that has been used here before, in a vacuum. You must have certain surrounding circumstances, and you must also have a complaint by some affected member country or some affected person, and it is up to them to make out a case.

The CHAIRMAN. But it all comes to the end point, I suggest, that the Organization which judges the complaint operates on rules of its own manufacture.

At least, rules which are not specified in the Charter?

Mr. TERRILL. Well, it operates in the light of the criterion or principle which is stated here, Senator.

I might add one further point in connection with the case you used for illustrative purposes:

If there were no chapter VI in this document, it would be possible to defeat every attempt by governments to establish regulatory schemes for the purpose of relieving temporary distress among producers or for the purpose of conserving resources.

The firms—commercial enterprises—could go out and make their own arrangements. If they felt, for example, that the governmental arrangement was too tough on them, they could go out and make their own arrangement with producers in other countries, and you would have, therefore, a very important loophole in this whole Charter.

The CHAIRMAN. So what you are doing by what you have just now said is to enhance the monopolistic feature of the intergovernmental arrangements?

Mr. TERRILL. Well, if public arrangements are made, they should be effective.

The CHAIRMAN. Yes. That comes to the same thing, does it not?

Mr. TERRILL. Yes, Senator. I presume that it might. I had not thought of it exactly in that way before.

The CHAIRMAN (reading):

(e) Suppressing the application or development of technology or invention, whether patented or unpatented.

Now, just exactly what does "suppressing" mean?

If a man owns a patent, he has a right to suppress, if he wishes to, the application of the patent.

If he has an invention which, of course, is not patented, he has a right to suppress it.

What kind of suppression are you talking about here?

Mr. TERRILL. I suppose, Senator, that the test, and it is just a supposition on my part, would be as to whether or not the person was failing to apply some piece of knowledge because of his own private motives, or whether he was, instead, in a conspiracy with some other party.

The CHAIRMAN. Let us suppose that John Doe has a line of patents which are of enormous importance to the trade of the world. Let us suppose that.

Let us suppose that out of malignance of heart, he decides to suppress those patents—"You just cannot use my patents and I do not care how it influences trade."

Are you condemning that?

Mr. TERRILL. I believe that is the kind of case that is condemned here in the sense that it could be the basis for complaint.

The CHAIRMAN. Then you are arguing that a man must exploit his patent if some organization said he must?

Mr. TERRILL. I do not believe that would be the case, Senator.

The CHAIRMAN. Well, it seems to me that it falls one way or the other. Either a man has a right, regardless of motive, for the profit

motive or for lack of profit motive, or sheer orneriness, to suppress his patent or invention, and if he does some authority, if there is any sense to this, can say, "You have to go ahead and exploit this patent."

Mr. TERRILL. I do not think, Senator, there is any such power conferred on the Organization in this chapter.

The CHAIRMAN. Then what does "(e)" mean?

Mr. TERRILL. I should say this, Senator, that I do not know of such cases, although there have frequently been stories to the effect that patents are being put to sleep.

The CHAIRMAN. Yes. I have no doubt that they are.

Mr. TERRILL. I really do not know of such cases, Senator.

The CHAIRMAN. If I may interrupt, there is a school of philosophy that would prevent a man from putting his own patent to sleep.

I am trying to find out whether this is a reflection of that school of philosophy.

Mr. TERRILL. I might say that most countries do have provisions in their patent laws under which remedial action can be taken by the Government, and nonuse is the one of the conditions for opening the patent.

The CHAIRMAN. Do we have such a law?

Mr. TERRILL. No, sir, we do not have it.

The CHAIRMAN. All right.

Mr. TERRILL. My point is, Senator, that in the case you have used as an example, all that any affected person could do would be to go to the Organization and complain that this was happening.

The CHAIRMAN. Yes, I know.

Mr. TERRILL. Then, if the Organization felt that it was a case in which the purposes of the Organization were being frustrated, and if the individual had a substantial control of world trade—in other words, if it were some kind of product patent rather than a process patent; it could recommend to the United States or any other affected government that appropriate remedial action be taken.

If the United States did not have appropriate legislation under which it could take action, it could simply inform the Organization that it had no practicable way to carry out the recommendation.

Our obligation as put forth in article 42 will make that clear when we come to it, Senator.

The CHAIRMAN. Yes, but when we sign this charter, we are agreeing that suppressing the application or development of technology or invention, whether patented or unpatented, is a condemned practice.

Mr. TERRILL. No, sir, we are not. We are only saying, Senator, if I may take the opposite side—

The CHAIRMAN. I want you to.

Mr. TERRILL. And appeal to the language of paragraph 2, which states that this is one of the practices—

which shall be subject to investigation by the Organization.

To read it again:

Without limiting the generality of paragraph 1 of this Article, the practices listed in paragraph 8 below shall be subject to investigation in accordance with the procedure—

and so forth.

The CHAIRMAN. Yes.

Mr. TERRILL. And then we get into the remainder of the list.

The CHAIRMAN. Let me ask you again: Is there anything in article 39 that can proceed past the point of recommendation?

Mr. TERRILL. No, sir.

The CHAIRMAN. Nothing in article 39 is sanctioned?

Mr. TERRILL. No, the only sanction that could possibly be invoked in the case of any country which refuses to take action even in the most flagrant violation of the provisions of chapter VI, would be article 35, on general impairment of obligations.

The CHAIRMAN. Well, that is a pretty large source of power.

Mr. TERRILL. Yes, sir; it is.

The CHAIRMAN. As we go along through this chapter, I think I shall bring to your attention a number of sanctions.

Let me put it to you again: Suppose that John Doe has a patent the suppression of which would restrain competition or limit access to markets, or foster monopolistic control, and let us assume that that suppression would have a harmful effect on the expansion of production and trade, and the maintenance in all countries of a high level of real income, or impair any of the purposes of the Organization as set forth in article 1. Would he be prohibited from suppressing his patent?

Mr. TERRILL. Under the patent laws of the United States? Is that your question, Senator?

The CHAIRMAN. I do not quite follow you.

Mr. TERRILL. I was inquiring about the meaning of your question, Senator.

The CHAIRMAN. The language does not say anything about "under the patent laws of the United States."

Mr. TERRILL. That is right, sir.

Senator JOHNSON. "Patented or unpatented."

The CHAIRMAN. That is all it says.

Mr. TERRILL. The point of my inquiry about your question, Senator, is this: We have a case here of complaint to the Organization by a national of another country or the government of another country. The trade organization, after investigating the matter, getting the United States views on it, holding hearings, and so forth, decides that this does contravene the purposes of the Organization. It frustrates the purposes of the Organization.

ITO could specifically recommend action or it could bring this finding to the attention of the United States.

The CHAIRMAN. All you are saying is that the final choice would be left to each member. Is that what you are saying?

Mr. TERRILL. No, Senator; the next question would be as to whether the United States had appropriate legislation.

The CHAIRMAN. Yes. Suppose that they did not.

Mr. TERRILL. If they did not have, I should say it would be up to Congress to decide whether they wished to provide such legislation.

The CHAIRMAN. And if they did have, would it be the obligation of the United States to follow that legislation?

Mr. TERRILL. No, sir. Due process of law would have to operate in each case.

I think the obligation section, when we come to it in article 42, will make that clear. The discretion as to whether any American law is violated will rest with the United States and not with the ITO or any international body.

The CHAIRMAN. The question is whether any American laws, in the light of the obligations which we have assumed under this charter, have been violated. That is the question?

Mr. TERRILL. I am probably not getting the point of your question, Senator.

The CHAIRMAN. All right. Let me make it very short and simple: The presence of section (e), subsection (e) in this paragraph 3, demonstrates that in the minds of the draftsmen of this charter, it is conceivable that suppressing the application and development of technology or inventions, whether patented or unpatented, could fall within the condemned categories; is that right?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. There would be no sense in having it in there otherwise.

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Now, I can put a simple case: Suppose that the American holder of a patent, or the American inventor, suppressed his patent or suppressed his invention, with the results that are condemned here. What would happen? That is all I am trying to get at.

Mr. TERRILL. The Organization would first have to make a finding to this effect.

The CHAIRMAN. Yes.

Mr. TERRILL. Then, in accordance with its obligations, it would make a determination and report fully to the members.

The CHAIRMAN. Yes, and then what?

Mr. TERRILL. Next, it would request each member concerned to take every possible action to prevent the continuance or recurrence of the practices.

The CHAIRMAN. Yes?

Mr. TERRILL. And it may, at its discretion, recommend to the members concerned remedial measures to be carried out in accordance with their respective laws and procedures.

The CHAIRMAN. It may, and if it does so, then we are confronted with that kind of recommendation, and you can see very clearly that that might involve a conflict with our existing law relating to patents and inventions, and might put upon us the burden of passing a new set of laws to remedy the defect; is that right?

Mr. TERRILL. Yes, sir. The user clause, so-called.

Senator JOHNSON. Now, Mr. Chairman, before you leave that, in the field of atomic energy, the United States Government assumed a complete control and monopoly on all patents and devices and formulas, and information, and everything else pertaining to atomic energy.

I would like to ask the witness if, in that action, such action would be frowned upon in this chapter.

Mr. TERRILL. No, Senator. I can refer you to article 59, which is a cross reference to this chapter. Article 59, in subparagraph (c), clearly exempts [reading]:

arrangements relating to fissionable materials, to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment —

Senator JOHNSON. So, all such weapons are exempted entirely from this charter?

Mr. TERRILL. That is correct. Arrangements or agreements relating to these are clearly exempt.

The CHAIRMAN. During the noon hour, let me suggest that you canvass provisions which we shall come to later which possibly indicate that that question might find its way into the lap of the international court of justice. So please take a look at that and be prepared to give us an answer when we come to it.

Mr. TERRILL. Senator, would this involve the question mentioned earlier regarding the International Court?

The CHAIRMAN. No, the question of fissionable materials. The question of military applications.

I hope that you will eliminate it from the jurisdiction of the International Court, but there is something that I saw that suggested that that matter might be passed to that court, and of course, under our present policy, we would never allow any body of any kind to determine for us what we should do with our fissionable materials.

Mr. TERRILL. That is correct.

The CHAIRMAN. Nor any other military goods.

Senator JOHNSON. In the field of electronics, for instance?

The CHAIRMAN. Exactly.

Mr. TERRILL. Of course, Senator, everybody is deeply interested in this matter of the suppression of unpatented technology and presumably undisclosed inventions.

The CHAIRMAN (reading):

(f) Extending the use of rights under patents, trade-marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

That strikes me as rather vague and very flexible.

Just what is intended?

Mr. TERRELL. Well, Senator, it does cover a lot of ground, and I think it has to be pretty flexible.

That is, it is flexible in the sense that it is highly generalized, and we have to generalize when we are trying to get that sort of an idea into a document.

I think the basic distinction that is made comes down to this: that there are certain monopoly rights conferred by law upon a patentee or the holder of a trademark or copyright.

They are fairly similar in all countries of the world.

Now, we want to make it clear that none of the practices carried on by virtue of the possession of those rights shall fall within the provisions of this chapter.

Also, we are saying, and basing it on experience from the past, that these rights can be used in such a way that the monopoly power derived from them is extended to objects which are not within the scope of the grant authorized by the legislature.

The CHAIRMAN. Give me an example, please.

Mr. TERRILL. One example is the case in which a patentee licenses a patent to another party and requires that this party perform certain acts, such as buying materials only from him in the future, or dealing only with certain other persons, or hiring engineers only from the patentee's firm.

Now, those are examples of a tying contract.

The CHAIRMAN. Yes.

It seems to me that that would be an illustration of a case that would go beyond the authorized field.

Now, here is the basic question, it seems to me: Are you not putting into the hands of this Organization, the right at least so far as international trade is concerned, to determine what is the authorized scope of a patent, rather than to allow the matter to remain within the countries as it does at the present time in this country?

Mr. TERRILL. No sir. I definitely do not believe that is the case.

The CHAIRMAN. Then, who judges? Let us read it again:

Extending the use of rights under patents, trade marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

Who determines whether the matters are properly or not properly within the scope of the authorized grant?

Mr. TERRILL. Paragraphs 2 and 3, Senator, have a particular setting. They set forth a list of practices which is not intended to be all-inclusive. These practices, however, are suspect, and they provide a basis for the entertainment of a complaint by the Organization.

The CHAIRMAN. Yes.

Mr. TERRILL. The practices are not condemned, per se. Paragraph 2 of Article 39 merely says that if any member government or a firm, brings a complaint on the basis of paragraph 3, the Organization will look at it and investigate.

The CHAIRMAN. Yes. All right.

Now, who judges whether the matters referred to in subclause (f) of paragraph 3 of article 39 are or are not within the scope of the authorized grant?

Mr. TERRILL. I do not know whether that point would ever come to determination by the ITO, Mr. Senator. That is not up to it.

This is a determination made by a complainant.

The CHAIRMAN. Yes.

Mr. TERRILL. Now, what the ITO would be concerned with would be whether or not the practices that are referred to are such as to have harmful effect on the expansion of production and trade.

It would be up to the member governments to decide whether or not their nationals had violated their own particular laws or had violated their own antitrust laws as the case might be, or had gone beyond the protection afforded by their patent laws.

The CHAIRMAN. Now, then, is your answer that the judgment as to whether or not the use of the rights under patents, trademarks or copyrights, is or is not properly within the scope of the authorized grant, will remain within the jurisdiction of the individual members? Is that what you say?

Mr. TERRILL. I should think so, yes, definitely.

The CHAIRMAN. Very definitely.

In other words, you are excluding any judgment on that matter from the jurisdiction of the ITO?

Mr. TERRILL. No. I am not necessarily excluding that.

I merely said that they might not have to decide that question in any given case.

The CHAIRMAN. But if they decided to decide it, could they decide it?

Mr. TERRILL. Well, you are asking me to anticipate a lot, Senator. I suppose that they could make such a determination for their own part and say, "This is our opinion and belief."

The CHAIRMAN. Yes. And then what?

Mr. TERRILL. But they would not have any power to act on that basis.

Their only power would be to pass on to the member governments their determination that these restrictive business practices exist and that something ought to be done about it.

The CHAIRMAN. And then the member government, if you had the legal machinery for doing it, would be obligated to do something about it?

Mr. TERRILL. They would be obligated to give the determination of the organization serious consideration.

The CHAIRMAN. Under our scheme here, they would have to bring it into some sort of judicial determination, would they not?

Mr. TERRILL. I presume they would have to do that, in accordance with the spirit of the charter. The Attorney General could, I suppose, give consideration to the recommendation of the ITO by reading it and throwing it in the waste basket and saying he had considered it, but this would not conform to the spirit of the charter. In order to fulfill this, he probably would have to go to the grand jury.

The CHAIRMAN. Well, now, will you agree with me as to this: that the subject of patents and trade-marks and copyrights is one of enormous importance?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Will you agree with me on this: that there never should be any doubt as to the penalties a man can come under in connection with his use of any of those privileges? Do you agree with me on that?

Mr. TERRILL. I would agree thoroughly as to the legitimate use of them, Senator, but that is that in question?

The CHAIRMAN. I am not talking about that.

I am saying, if John Doe commits a robbery, if he wishes to, he can look in the book and find out what the penalty is.

Do you not believe that it should be possible for the owner of a patent or copyright or similar privilege to know always what the penalties are for a misuse of his power?

Mr. TERRILL. Surely, Senator, he should know what the penalties are.

The CHAIRMAN. Should there ever be a doubt as to the tribunals which will have jurisdiction to hear and determine the matter?

Mr. TERRILL. No, there should be no doubt as to that.

The CHAIRMAN. Do you say to me that paragraph (f) is so clear that the owner of an American trademark or copyright will know whether he is in the hands of the ITO, whether he is in the hands of our courts, or will know where he is, as far as these patent matters are concerned?

Mr. TERRILL. Yes, sir, I should think so. Those two related paragraphs, 2 and 3, also have to be read in connection with our obligations under the charter, which are set forth in article 42.

I say that because the jurisdiction of our own country in deciding antitrust cases is not in any way affected by this charter.

Our country will have full and complete jurisdiction as to whether the antitrust laws have been violated.

And the ITO is not called upon to decide whether American law has been violated.

The CHAIRMAN. Somebody, Mr. Terrill, has got to decide whether someone had done something outside of the scope of his copyright or his patent.

Now, all I am putting to you is:

First, should not it be as clear as words can make it, who is going to make that decision?

Second, should not it be as clear as words can make it, the criteria on which the decision will be made?

Third, should not it be as clear as words can make it, how any penalty which may be enforced will be enforced?

Mr. TERRILL. Yes.

The CHAIRMAN. And fourth, does this paragraph make those things clear?

Mr. TERRILL. This paragraph, by itself, of course, does not, Senator.

The CHAIRMAN. Now, then, when we come back after luncheon, will you take a suppositious case, where, in connection with what precedes here someone has exceeded the scope of his authorized grant; or has done this under what precedes here, under what follows here, or what is any place else in this charter and answer those questions which I have propounded?

Mr. TERRILL. I will try to do it, sir.

That is a very large order.

The CHAIRMAN. All right.

Let us recess for lunch, until 2:30.

(Whereupon, at 1:12 p. m., an adjournment was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., upon the expiration of the recess.)

The CHAIRMAN. The committee will come to order, please.

Mr. TERRILL, before the noon recess we were discussing the relation of patents, trademarks, and copyrights to section 3 (f). The suggestion has been made that perhaps you would like to submit a memorandum to the committee clarifying the State Department's view as to the effect of that subparagraph in the light of the discussions which we had this morning. Is that correct?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Will that memorandum be forthcoming?

Mr. TERRILL. Yes, sir.

(The memorandum is as follows:)

Quotation: Article 89, paragraph 3 (f), authorizes the International Trade Organization under certain circumstances to investigate business practices "extending the use of rights under patents * * * to matters not properly within the scope * * * of the authorized grant." Will this place the International Trade Organization in the position of passing judgment on the scope and validity of the claims made by the inventor in his patent?

Comment: In most cases involving the use of patents as a restrictive device, the question of the scope and validity of the inventor's claims will not be at issue. This is seen by reviewing some of the more likely types of cases involving patents which might come before the International Trade Organization.

Of all types of restrictive arrangements involving patents, the "tying contract" is the most common. Such a contract usually conditions the grant of a patent license on the licensee's acceptance of certain restrictions with respect

to unpatented or unpatentable articles; a typical illustration is the licensing of a patented salt-tablet machine which was conditioned on the licensee's buying his salt from the patentee. The question whether the salt itself falls under the claims of the patent is clearly not at issue.

There may be other kinds of restrictive practices involving patents, however, in which the question of the validity of claims under the contract will be involved. For example, in some cases a patentee may have threatened to sue for infringement if his competitors did not take licenses from him. His complaining competitors may assert to the International Trade Organization that the patentee's claims regarding infringement are invalid and that the patentee is acting in restraint of trade. If such a case should come before the International Trade Organization and if its outcome turns on the scope of the valid claims under the patent, the Organization would not be expected to make a finding on such scope; the best it could do in those circumstances would be to recommend to the complainant that the question of scope be settled in the courts of the countries involved.

If the Organization should by chance undertake to express a view regarding the scope of the valid claims under a patent, the view would plainly not be binding on courts or administrative agencies of the countries involved. It is the member nations themselves which authorize patent claims and it is clearly for them to determine the scope of what they have authorized. The charter in no way abridges that right.

The CHAIRMAN. Article 40 [reading]:

PROCEDURE WITH RESPECT TO COMPLAINTS AND CONFERENCES

1. The Organization shall—

(a) arrange, if it considers such action to be justified, for particular Members to take part in a conference requested by any Member which considers that any particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39.

Considering the number of nations which it is expected will ultimately join this Organization, that has within it the potentiality of a very considerable number of conferences, has it not?

Mr. TERRILL. Senator, the word "conference" there may be a little bit misleading. It might convey the notion of a great, full-dress performance whereas actually what is meant is that the countries would, through special representatives, perhaps through their embassies, consult in a more or less routine way as to the situation that exists.

In other words, it would not be the calling of a special international congress, but would merely be a meeting between the parties concerned, two or three, or perhaps more.

The CHAIRMAN. If you take the whole Charter and add up the number of conferences that might be required, the number of consultations that might be required, and considering that in the light of the number of members who might join the Organization, I think an argument could be made that the whole thing might become extremely burdensome and a sort of universal nuisance.

I am not making that argument, at least at this time, but there is the possibility of it.

Mr. TERRILL. Yes, sir.

The CHAIRMAN. Continuing [reading]:

(b) consider each written complaint submitted by any Member or submitted with the authorization of a Member by any affected person, organization or business entity within that Member's jurisdiction, claiming that particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39, and prescribe the minimum information to be included in such complaints;

(c) consider and request each Member concerned to furnish such information as the Organization may deem necessary including, information or

data from commesial enterprises within its jurisdiction, and then determine whether further investigation is justified;

(d) if it considers that further investigation is justified, notify all Members of each such complaint, request the complainant or any Member to provide such information relevant to the complaint as the Organization may deem necessary and conduct or arrange for hearings provided that any Member and the parties alleged to have engaged in the practice shall have the opportunity to be heard at such hearings.

(e) review all information available and determine whether the practices in question have or are about to have the effect described in paragraph 1 of Article 39.

In your opinion are any new laws required in this country to enforce the request for information from private organizations?

Mr. TERRILL. No, sir. I think we would feel rather strongly that that should not be the case, that the only information from private firms would be their voluntary submissions in the event that they were accused of participating in an international arrangement that had restrictive effects.

The CHAIRMAN. There is nothing at least in this chapter which could compel a private enterprise in this country to furnish the information for the benefit of the Organization?

Mr. TERRILL. No, sir. I would be willing to go further than that and say that there is nothing in this chapter that can compel our Government to furnish information which had been received pursuant to a grand jury subpoena, and which had not yet been presented to the courts.

The CHAIRMAN. You know the reluctance of business to give information which it is not required to give, and if it is not required to give this information, how would you get it?

Mr. TERRILL. I think what is contemplated is that the information which would be given to ITO by our Government, before any court action in the United States, would be simply that which it had available that was not in a special, confidential status, or which might be a matter of public record, or which American firms had presented voluntarily.

The CHAIRMAN. What about other countries? Do they have organized national information-getting facilities?

Mr. TERRILL. I would say they had, and, on the whole, those facilities are better than ours in the sense that they do not afford the same amount of due process.

The CHAIRMAN. The language of subclause (c) is rather sharp. It says [reading]:

consider and request each Member concerned to furnish such information as the Organization may deem necessary.

Now, there are no qualifications. It does not say if you have it, or if you can get it conveniently. It says "furnish" it. And the Organization shall judge as to what is necessary.

Mr. TERRILL. We have to go on, I think, to read this in connection with article 42, Senator, which sets forth the obligations of the members. In this section the Organization is merely making its request to the country, indicating the types of information that it considers necessary in a given case.

Let us assume that this involves copies of the agreement or contract between the firms. ITO might say that it would like to have copies of any agreements that we may be able to furnish.

The CHAIRMAN. Let me take you back to paragraph (b) again.
[Reading:]

Consider each written complaint submitted by any Member or submitted with the authorization of a Member by any affected person, Organization or business entity within that Member's jurisdiction.

That certainly is a broad authorization for complaints.

Mr. TERRILL. Yes, sir. It is broad, but the problem we ran up against, Senator, is where would you draw the line as to who could complain, and who could not complain.

One possibility would be to draw it so that it would include only firms which are in competition with the other firms in question, or firms which were in the same line of business. But there again the matter of definition would be rather hard to lay out for all time, and therefore we were pushed further and further in trying to decide this point.

The CHAIRMAN. You were pushed to the point where you removed all boundaries.

Mr. TERRILL. Yes; practically.

The CHAIRMAN. Can you not vision the possible volume of complaints that might result?

Mr. TERRILL. Yes; you might have a great many complaints coming to the Government with regard to cartel activities.

The CHAIRMAN. Or any of the other activities that are covered by this chapter.

Mr. TERRILL. Yes.

The CHAIRMAN. Paragraph (d) [reading]:

If it considers that further investigation is justified, notify all Members of each such complaint, request the complainant or any member to provide such information relevant to the complaint as the Organization may deem necessary and conduct or arrange for hearings provided that any Member and the parties alleged to have engaged in the practice shall have the opportunity to be heard at such hearings.

Where would those hearings be held? You have a world-wide Organization.

Mr. TERRILL. That is a question which, of course, has not yet been decided. I assume that would be an administrative matter for the determination of the Organization itself. In the absence of any definite decision on this I would suppose that most of them would be held at the site of the Organization, which would probably be New York City.

We had thought that for purposes of convenience special hearing sessions might be convened at other points where certain witnesses at least could be heard.

The CHAIRMAN. The matter of venue, at least from the standpoint of American philosophy, is always something that is carefully safeguarded. I do not need to discuss with you the reasons for that.

Mr. TERRILL. That is right, Senator.

The CHAIRMAN. Here you have no limitations whatever on that subject. The member or the complaining parties might, under this language, be called to attend a hearing at the farthest possible place that you can imagine from the place of residence.

Mr. TERRILL. I assume that these would take place at the site of the Organization, Senator.

The CHAIRMAN. It does not matter where you put the site. You have a world-wide organization and no matter where you put the

site, you have venue difficulties. You have travel difficulties for all members who are not at that site.

Mr. TERRILL. I think we recognize, sir, that there is a problem here.

The CHAIRMAN. But you have not incorporated any protective provisions.

Mr. TERRILL. No; we have not.

The CHAIRMAN. Now let us suppose that a business organization in X country complains of some monopolistic restraint of trade practice that originates in some other country, and a conference is called, or a hearing is called. Who pays the expenses?

Mr. TERRILL. I assume that each government would have to pay the expenses of any of its own employees or representatives, Senator.

The CHAIRMAN. What about the private business organization that is either involved, or is the object of a complaint? Must it go to any designated place in the world to advance its case, or defend itself, and pay its own expenses?

Mr. TERRILL. I assume that private business firms, unless the government is party to the same proceedings, would have to pay their own expense. By that, if I can make myself clear, a complaint could be brought to the Organization purely as a private complaint. The government merely has passed it on, acting as a letter box and authorizing it.

The CHAIRMAN. But if the government considers there is a prima facie complaint, it is more than a letter box.

Mr. TERRILL. If the government specifically becomes a party to the complaint, it might reflect on the status of the private individual who is also party as a complainant, and in that case the government might pay his expenses just as it would pay the expenses of any representative or an employee of the government.

The CHAIRMAN. A private individual or private enterprise in this country complains of allegedly prohibitive practices of some private enterprise in Afghanistan. Does this scheme bring them both to the capitol of this Organization and require both of them to pay their own expenses?

Mr. TERRILL. Not necessarily, Senator. In the first place there is a procedure provided that I would like to emphasize, in paragraph 1 (c). That is a very short paragraph, but it involves a screening process that we felt to be very desirable and very necessary. In the course of that screening process it will determine whether a complaint has prima facie merits, and whether it satisfies other conditions, such as the requirement that the concerns complained against must possess effective control of international trade.

If this huge volume of complaints that could possibly arise does actually materialize, most of them would get screened out before they reached this final stage where the Organization says: "This is very serious; we are going to conduct a formal investigation."

My comment does not get to the principle of your point, and I am afraid that I cannot answer you with any great definiteness because this kind of a problem is one which it has been assumed the Organization would provide for in its own bylaws. Specifically, on the point you mentioned, where we are the complainant, the Ethiopian party, either the Government or the private firm or both, would probably have to come to New York unless it was provided that there would be a regional center for the ITO, say, in Geneva.

The CHAIRMAN. We usually consider those matters so important that they are embodied in our Constitutions. Our own Federal Constitution has venue provisions. But you have made it very clear there is nothing of that kind in here.

Mr. TERRILL. No; there is not, Senator.

The CHAIRMAN. I know that you will agree that you can conceive of cases which might involve travel and expense difficulties that would be unconscionable.

Mr. TERRILL. Yes; I can see where those might arise.

The CHAIRMAN. Continuing [reading]:

(e) review all information available and determine whether the practices in question have or are about to have the effect described in paragraph 1 of Article 30.

There is a definite obligation on the Organization to reach a determination, is there not?

Mr. TERRILL. That is right.

The CHAIRMAN. Continuing [reading]:

2. The Organization shall

(a) report fully to all Members its determination and the reasons therefor; if it finds that the practices have had (or are about to have) the effect described in paragraph 1 of Article 30, it shall request each Member concerned to take every possible action to prevent the continuance or recurrence of the practices, and may recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures;

(b) request all Members concerned to report fully the action they have taken to achieve these results;

(c) prepare and publish, as soon as possible after enquiries have been provisionally or finally closed, reports on all complaints dealt with under paragraph 1 (d) of this Article, showing fully its decisions, findings, or other conclusions, the reasons therefor and any action which the Organization has recommended to the Members concerned; *Provided*, that

(i) publication of such reports or any portion thereof may be withheld if it deems this course justified; and

(ii) the Organization shall not, if a member so requests, disclose confidential information furnished by that Member which would materially damage the legitimate business interests of a commercial enterprise.

(d) report to all Members and make public if it deems desirable, the action which has been taken by the Members concerned to realize the purposes described in paragraph 2 (a) of this Article.

Do private interests have any judicial appeal under these matters?

Mr. TERRILL. Yes; very definitely.

The CHAIRMAN. What are they?

Mr. TERRILL. The member governments are the sole agencies in carrying out any recommendations. An order or request from an executive agency of the Government, for example, to a private firm, might well be resisted. In the event the administrative agency had powers of compulsion the private firm would still have rights of judicial review.

I am thinking, for example, Senator, of the Federal Trade Commission Act under which the Federal Trade Commission may issue a cease and desist order. However the firm in question has the right to take the matter to the courts.

The CHAIRMAN. Then the courts, depending upon the judicial organization of a particular member, could frustrate the purposes of the Organization?

Mr. TERRILL. There is a possibility that the courts, in countries where due process of law is similar to ours, might decide that there had

not been a violation of law, or that the remedy ordered by the Government was improper.

The CHAIRMAN. If you have laws similar to our own antitrust laws, and the offender is under the jurisdiction of the country which has no such laws, what happens then when it comes to the remedial measures?

Mr. TERRILL. There are several possibilities, Senator. The first, of course, is that the country—I do not like to refer ahead merely to the number—under article 42, 1 (a) would require the members to equip themselves with appropriate measures, either by legislation or by administrative powers, to make sure that they could carry out the general purposes of this chapter.

Thus a country would not necessarily have to have antitrust laws similar to ours. It might operate through administrative orders.

The CHAIRMAN. So in one member nation you might have judicial solution, and in another administrative solutions?

Mr. TERRILL. Or a combination.

The CHAIRMAN. And in another member country no solution at all, because they might have no machinery for considering this kind of a case.

Mr. TERRILL. Senator, I think it is fairly clear that each signatory country would be obligated to establish some kind of machinery to insure that it puts itself in a position to carry out its general obligations.

The CHAIRMAN. That is what I was driving at this morning. At that time I do not think I got a very clear answer to it.

In other words, every member that signs up is obligated to pass laws if it does not already have them, intended to be adequate to carry out the purposes of this charter.

Mr. TERRILL. I think that that would be the presumption, yes, sir.

The CHAIRMAN. In subclause (a) of paragraph 2 the Organization [reading]—

shall request each Member concerned to take every possible action to prevent the continuance or recurrence of the practices.

Every possible action?

Mr. TERRILL. The word "possible," Senator, if I may explain, is put in there very deliberately. Possible, that is, within its system of law and economic organization. For example, we would not want to nationalize a firm, an American firm, which had been in a combination which restrained trade, and which had violated the purposes of the article.

Also, the actions which we take would have to be possible under our own system of law.

The CHAIRMAN. And that would be as to every member.

Mr. TERRILL. Presumably, yes, Senator.

The CHAIRMAN. And it is conceivable that member nations not having the same regard that we have for due process of law might have very harsh methods of enforcing these laws, might authorize confiscation and harsh fines and imprisonment.

Could boycott be authorized?

Mr. TERRILL. I should not think that that would be a possibility; no, sir. At least if it affected international trade,

The CHAIRMAN. So that an American concern which ran afoul of these provisions in X foreign country might find its property taken

away from it there in accordance with systems of adjudication entirely different from our own; might they not?

Mr. TERRILL. Well, there would not be anything in this chapter, certainly, to change any existing situation in that respect. That is to say, certainly no change of that sort is contemplated in the charter, when the charter merely says what it does under article 42, paragraph 1.

The CHAIRMAN. And under your explanation of a moment ago, each member nation would be obligated to equip itself with measures necessary to prevent the continuance and recurrences of the practices which are condemned—this under its own constitutional process, or under its own customary methods of procedure, or I assume under laws which it might invent for the purpose.

I notice down in subparagraph (c) (i) the appearance of the word "justified." What would be the justification for withholding the publication of the reports referred to?

Mr. TERRILL. I cannot envisage what would be the justification for withholding an entire report, Senator, but the important words there are "or any portion thereof," and I suppose that is in there for what might be called diplomatic reasons. A part of the testimony might have consisted of grave slurs on a country and the country might say "please do not publish that."

This is purely hypothetical and conjectural, but, in general, it is put in there in order to avoid a possibly serious conflict between a member country and the Organization.

The CHAIRMAN. Because of the nature, for example, of what might be in the report, even though the report were an actual reflection of what actually happened?

Mr. TERRILL. I cannot imagine that this sort of thing would occur, and I think that the clause is a fairly empty one. It is merely put in there to provide some element of discretion or flexibility. I have never received from any one a concrete illustration.

The CHAIRMAN. Do you think it advisable to put things of that kind in the charter?

Mr. TERRILL. I am not altogether persuaded of the advisability, Senator.

The CHAIRMAN. I notice in subclause (d) it says [reading]:

report to all Members and make public if it deems desirable, the action taken by the Members concerned to realize the purposes described in paragraph 2 (a) of this Article.

Why if deemed desirable? And what is the criterion of judgment?

Mr. TERRILL. I do not believe there is any criterion which could be found anywhere in the article. The clause is in there for about the same reason, insofar as I know, that it appears in the previous paragraph; namely, to provide an element of flexibility on behalf of the member governments and to avoid a possible but completely unforeseen contingency.

I know of no actual contingency in either of those two cases.

The CHAIRMAN. Would you make the same comment as to that provision that you made as to the preceding one?

Mr. TERRILL. Yes, I would; and for the reason I have just stated, that the clause deals with an unforeseeable contingency. Its advisa-

bility is a question of judgment on the part of those who have had long experience in this field.

The CHAIRMAN. What did you mean by the latter part of that?

Mr. TERRILL. I mean that this clause, as I remember it, is in there at the request of experts in international organization affairs, and largely for formalistic reasons. Being interested more in the substance, and not being an expert on these formalistic matters, I only wanted to indicate that my own judgment might not present—

The CHAIRMAN. Has the State Department insisted on those two provisions?

Mr. TERRILL. I do not recall any insistence on it.

The CHAIRMAN. Were they in the original State Department draft?

Mr. TERRILL. I would have to look that up. The question would be whether they are in the proposals that were agreed to by the British and French Governments in December 1945.

We do not have the earlier draft at hand, Senator. I am sorry. I can get that answer and send it to you in a memorandum.

The CHAIRMAN. If you please.

(The memorandum is as follows:)

Question: In article 40, paragraph 2 (c) (1) and 2 (d) the obligation of the Organization to publish reports is made discretionary. Why was this obligation discretionary rather than mandatory?

Answer: The draft of the suggested charter introduced by the United States delegation at the London Conference stated that "the Organization shall * * * prepare and publish reports concerning complaints, findings thereon, recommendations, and actions taken on such recommendations."

However, it was pointed out in international discussions that the International Trade Organization was a new and unprecedented type of organization, that the problems which might arise under it were not altogether predictable, and that it was desirable for a measure of flexibility to be retained with respect to disclosure until the pattern of the Organization's operations were clearer. Since these observations seemed well advised, the United States provisions were redrafted as embodied in subparagraphs (1) and (11) of paragraph 2 (c), article 40 and paragraph 2 (d), article 40. Paragraph 2 (c) as it now stands creates a presumption that reports should be published and that nonpublication will be resorted to only as an exception to the general policy.

The CHAIRMAN. Article 41 reads:

STUDIES RELATING TO RESTRICTIVE BUSINESS PRACTICES

1. The Organization may

(a) conduct studies, either on its own initiative or at the request of any Member, or of the United Nations, or of any specialized agency brought into relationship with the United Nations, relating to

(i) types of restrictive business practices in international trade;

(ii) conventions, laws, and procedures concerning for example incorporation, company registration, investments, securities, prices, markets, fair trade practices, trade-marks, copyrights, patents, and the exchange and development of technology, insofar as they are relevant to restrictive business practices;

(b) request information from Members in connection with such studies.

2. The Organization may

(a) make recommendations to Members concerning such conventions, laws, and procedures as are relevant to their obligations under this Chapter;

(b) arrange conferences for purposes of general consultation on any matters relating to restrictive business practices.

How large an organization do you think you would have to have just to administer this chapter?

Mr. TERRILL. I might say this, Senator, that, as you will notice, all of these points are mere possibilities for the general field of study that might be done over a period of say 20 years. Perhaps many of these studies would never be made.

The CHAIRMAN. Did you ever see an organization that had those authorities that did not proceed immediately to exercise them?

Mr. TERRILL. Yes, sir. I think you are going to see one here, if I may say so, and I would like to refer to chapter 8. There you will find that even as to the making of studies the secretariats of all the commissions are under the control of the Executive Board. They will have to have its authorization for the making of any study. Its members will be the governments and it is they who contribute the funds.

The CHAIRMAN. That is true of our own Federal agencies.

Have you found any of those agencies shirking from crowding right up to the full limit of their authorities?

Mr. TERRILL. I would not know the answer to that, Senator. I know of some agencies which I do not think have crowded up, but in fact are being swamped by events.

The CHAIRMAN. This article we have now read, I suggest would establish a perfect refuge for all of the displaced economists of the whole world.

Mr. TERRILL. Senator, I think we had this very thing in mind; namely, the possibility of a large growth and large expenditures in this Organization, unless it were placed under executive board control and thus under the countries who will have to do the contributing. Many of those who contribute to the United Nations Organization are much more burdened than the United States. That is why we made this provision.

Although more could be said by way of emphasis, I do not believe that any such large scale study program is contemplated. It might be a tiny, almost picayunish affair of four or five people. Or, as you suggest, it might run into the thousands, but we do not contemplate any large organization at all.

The CHAIRMAN. I suggest that if you were going to do on an international scale the things which this Organization contemplates, if you are going to do them effectively, you have to do every one of the things that are specified here, and you have to do them as rapidly as possible so that you will have a foundation on which to work.

You will have to expand the fact finding agencies many times which already exist in the more highly developed countries, such as our own; because you are dealing in an infinitely larger field.

Do you not think this is what would happen? The first time you had a meeting that involved one of the questions of the type covered by this chapter, and a showing was made on it, someone would throw up his hands and say, "Gentlemen, we have not got the basic information on which to solve this problem," and they probably would not have. Whereupon, if there had been any hesitancy in invoking the full fact finding powers of article 41, for example, there would be a full, clear, green light to go ahead on that.

I suggest they would have to, if they wanted to have an efficient organization.

Mr. TERRILL. Senator, as to the connection with specific cases, I am not altogether sure that this study program which is outlined in

article 41 would be necessary as a preliminary to determination in particular cases of complaint. I think what is really intended in article 41 is a long-range program of gathering information for the Members in the light of which they might be led to make their laws more uniform, or, let us say, to secure greater uniformity of national statutes.

That was the type of activity in mind when that article 41 was drafted.

The CHAIRMAN. Let us go back to article 39, paragraph 1. [Reading:]

Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set forth in article 1.

Just the statement of those purposes gives you some idea of the magnitude, of the factual basis, with which the Organization must equip itself in order to do business. And if it did not equip itself with the proper factual basis it would be a monster of inefficiency.

Article 42 reads:

OBLIGATION OF MEMBERS

1. In order to implement the preceding articles of this chapter, each Member shall

(a) take all possible steps by legislation or otherwise to ensure that private and public commercial enterprises within its jurisdiction do not engage in practices which have the effect described in paragraph 1 of article 39.

I think that gives full support of your statement of a while ago that these countries will have to have implementing statutes if they are needed to put this chapter into effect.

(b) take fullest account of the Organization's determinations, requests and recommendations made under paragraph 2 (a) of article 40 and determine appropriate action in accordance with its system of law and economic organization to prevent within its jurisdiction the continuance or recurrence of any practices which the Organization find to have had (or to be about to have) the effect described in paragraph 1 of article 39.

I believe we have sufficiently developed what that requires in the way of domestic legislation of each Member, have we not?

Mr. TERRILL. Yes, sir; I think we have. But I would want to call attention, Senator, to one point there, concerning the obligations of Members, which I think is extremely important. It is found under subparagraph (b). [Reading:]

To take fullest account of the Organization's determinations, requests and recommendations * * * and determine appropriate action in accordance with its system of law and economic organization.

This leaves an element of flexibility in the chapter.

The CHAIRMAN. What does the "determination of appropriate action in accordance with the economic organization" of the country mean?

Mr. TERRILL. I presume that it means this: That the countries are at present in a rather diverse state of economic organization. There are three rough classifications. One is the all Socialist; the other is typified by a country such as Great Britain, in which certain industries are owned by the state, but where there is a large and predominant sector of private industry.

Then you have the type exemplified by the United States, the free enterprise economy. This wording is specific recognition that the mode of carrying out the provisions of the Chapter might differ from case to case.

The CHAIRMAN. Paragraph 2 [reading]:

"2. Each Member shall

(a) establish procedures to deal with complaints, conduct investigations, prepare informatios and reports requested by the Organization and generally assist in preventing practices which have the effect described in paragraph 1 of Article 39, these measures to be taken in accordance with the particular system of law and economic organization of the country concerned.

Irrespective of those differences, each Member necessarily assumes these obligations to operate within its own system.

Mr. TERRILL. I think that would be correct, sir.

The CHAIRMAN. Continuing [reading]:

(b) conduct such investigations as may be necessary and practicable to secure information requested by the Organization or to prevent practices which have the effect described in paragraph 1 of Article 39;

(c) furnish to the Organization, as promptly as possible and to the fullest extent practicable, such information as is requested by the Organization under paragraphs 1 (c), (d) and 2 (b) of Article 40 and under paragraph 1 (a) of Article 41 provided that the Member

(i) may withhold confidential information relating to its national security; or

(ii) on proper notification to the Organization, may withhold information which is not essential to the Organization in undertaking an adequate investigation and which, if disclosed, would materially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld;

(d) report, as requested by the Organization under paragraph 2 (b) of Article 40, the action taken, independently or in concert with other Members, to implement recommendations made by the Organization under paragraph 2 (a) of Article 40, and, in cases in which no action is taken, to explain to the Organization the reasons therefor and discuss the matter further with the Organization if requested to do so;

(e) take part in conferences upon the request of the Organization in accordance with paragraph 1 (a) of Article 40 and paragraph 2 (b) of Article 41.

It has not escaped you, has it, that this article 42 puts the long arm of this international organization directly into the member countries, and imposes upon the member countries certain obligations as to what they shall do within their own territories?

Mr. TERRILL. Senator, in reply to that question I merely want to say this: I believe that there is an absolute minimum of what might be called interference with national sovereignty in this article, and this is the article in which that question really arises. I have the feeling that the arm of the Organization in this particular case is not very long, and if an analogy could be drawn, ITO merely extends a tentative finger into the affairs of any country.

The countries are to act autonomously. They enter into ITO on a purely voluntary basis. They pass their own laws in conformity with their undertakings, and carry out any actions involving their own nationals by themselves.

And so the International Organization really therefore does not interfere, I should think, with domestic laws and modes of procedure.

The CHAIRMAN. I was not touching the point of interference. I was touching the end point that here, in this article, there is not the

slightest question that this International Organization has a call upon the member nations to take action within their own borders in domestic matters.

Perhaps I should amend so that it will be:

in matters which were domestic prior to the time the Members subscribed to the Charter.

Mr. TERRILL. That point is probably quite correct, Senator, although I have not thought it through before. It must be remembered, however, that the only action which the ITO can take is that concerning a case in which the firms involved have a substantial control over international trade.

And what that clause does, therefore, is to make any case in which the ITO has jurisdiction a matter of international concern before the ITO will take any cognizance of it.

Now, may I go one step further to point out that there have been many instances in which other governments or our government have approached each other on matters of commercial practices; so in reality the cases at issue in this chapter are international, and have been for some time.

All the ITO does is to bring in a new agency which will, in effect, mediate between the countries involved in this particular kind of case.

The CHAIRMAN. I believe you would have some difficulty in reading article 42 as a mediation measure.

Mr. TERRILL. Article 42, in addition, attempts—particularly article 1—to bring the national laws and practices of the various countries into uniformity in this matter.

The CHAIRMAN. Exactly. That is not a matter of mediation, is it?

Mr. TERRILL. No, Senator, but what I am asserting is that the ITO itself, as an administrative agency, merely is in a mediatory position.

Now, the undertakings in the chapter may be something quite different.

The CHAIRMAN. That is what I am talking about. Under article 42 it says [reading]:

In order to implement the preceding Articles of this Chapter, each Member shall take all possible steps—and so forth—

each member shall establish procedures and so forth. Shall conduct such investigations, and so forth. Shall furnish to the Organization, and so forth. Shall report, shall take part in conferences. And a part of what is required goes directly to the internal laws and internal procedures of the member nations.

Is there any doubt about that, under your interpretation of the article?

Mr. TERRILL. I think that is correct, Senator. The substance of my point is that the internal commerce of any country, however, as a purely internal affair, is not being made the subject of ITO. The only cases covered are those in which its nationals control or participate in the control of international trade in a given product, and have substantial monopoly powers.

That is really the only area affected in our national statutes.

The CHAIRMAN. I do not see that that mitigates the point that I am making.

Mr. TERRILL. No, it does not mitigate it, Senator.

The CHAIRMAN. Now, would you be in a position to say what the constitutional basis is for an article of this kind as far as our Constitution is concerned having in mind the commerce clause?

Mr. TERRILL. Senator, speaking very much offhand, and not giving the legal view of the Department, it would be my thought that the Constitution gives Congress the power to regulate the commerce of the United States with foreign nations.

The CHAIRMAN. That is right.

Mr. TERRILL. And that it is only American foreign commerce that this country is called upon to police under this charter.

The CHAIRMAN. That is right.

Mr. TERRILL. Therefore, Senator, any action of the Federal Government, or any future legislation Congress might pass, would have to stand that test?

The CHAIRMAN. Does the Constitution in your opinion, give us the right to engage in the regulation of commerce of other nations?

Mr. TERRILL. Not if the transaction does not enter into American trade, no, sir.

The CHAIRMAN. Under this charter would we not have a voice in violations even though they did not affect us?

Mr. TERRILL. As a member of the executive committee, or member of the conference of ITO, the United States might be called upon to vote as to whether an action taking place somewhere else in the world did come under the charter and whether or not, for example, it was in violation of a given provision.

The CHAIRMAN. So to that extent we would be engaging in the regulation of foreign commerce other than our own foreign commerce.

Mr. TERRILL. The representative of the United States in the United Nations would, I suppose, find himself called upon to give the American view.

The CHAIRMAN. Of course. More than that, he is called upon to vote.

Mr. TERRILL. He might be called upon to vote. Yes, sir.

The CHAIRMAN. Let me put it to you in the form of a question. Is there anything in this charter that restricts the vote of the representatives of the members to matters immediately concerning them?

Mr. TERRILL. Not immediately concerning their own countries, Senator.

The CHAIRMAN. There is no such provision, is there?

Mr. TERRILL. No, sir.

The CHAIRMAN. Each country, if a matter is raised before the Organization, that is prohibited here, has a right to pass on it, even though it does not directly affect that particular member. Is that not correct?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. I would like to have the benefit of your observation on this: What is our authority, other than possibly by treaty action, under the commerce clause, or under any other clause of the Constitution, whereby we enter into an organization in which we have only a minority vote, which organization has the power to compel the internal things which are compelled by article 42?

Mr. TERRILL. I know of no constitutional basis to point out at the moment in answer to your question, but I feel that the matters contemplated by article 42 are matters which the Congress and the Fed-

eral Government properly have jurisdiction over at the present time.

They all relate to actions which the Organization might call on the United States to perform, let us say, in order to secure information. That information would have to be such as to affect American trade. The dispute would have to involve American parties.

The CHAIRMAN. You have taken hold of the mildest part of the whole set-up. There is a mandate in here that we pass laws to conform to this charter. That binds future actions of Congress if we adhere to the charter.

By what authority has one Congress the right to bind the action of future Congresses?

Mr. TERRILL. I think that is an entirely correct statement. I know of no such authority to bind future Congresses. I would only say this, that I would feel, Senator, that our obligations under this section are fulfilled by our existing statutes.

For example, our antitrust acts cover all the matters that would be required, and indeed they would set the standard for the rest of the participating countries in this particular field.

The CHAIRMAN. I thought we developed this morning that we might have to repeal some of our existing statutes, such as the—

Mr. TERRILL. Senator, I think that our view would be that that is not contemplated. There is no prima facie necessity of it, nor do I foresee any practical developments that would necessitate it.

The CHAIRMAN. Then that comes about through the present state of our laws, does it not?

Mr. TERRILL. I am not sure that I get your question, Senator.

The CHAIRMAN. The reason that you give that answer is because you say that under the present state of our laws we do not have to do anything.

Mr. TERRILL. I think that is right, sir.

The CHAIRMAN. Is that right?

Mr. TERRILL. I think so, Senator.

The CHAIRMAN. Is it not within the power of Congress to repeal laws as well as to pass new ones?

Mr. TERRILL. Yes, sir.

The CHAIRMAN. So that this, then, would be an abridgement, under your theory, of the right of Congress to repeal these existing laws.

Mr. TERRILL. I should think, yes, if there were an international undertaking to this effect.

The CHAIRMAN. What you are saying in effect is to comply with this charter we have to continue these laws we now have, which you say bring us into conformity with the charter?

Mr. TERRILL. Yes. Of course, if it were felt that the results of participation in this branch of the ITO's activities were inimical to us, there would be two courses of action open: One would be to attempt to have the articles of the chapter modified so that we could modify our own legislation, or, failing that, we could withdraw from the Organization.

The CHAIRMAN. You do not test the validity of a contract by reason of the fact that under certain circumstances you can withdraw from it. The question is, is that which you submit to, is that which you agree to do while you are adhering to it within your proper powers?

That is your question, I suggest.

Mr. TERRILL. I think, Senator, that you would be quite right on that point. We could not.

The CHAIRMAN. I think we have covered it before. Even though under your theory our antimonopoly, and our antirestraint of trade acts are in conformity with this chapter, other nations will have to bring themselves in conformity unless they have laws which now bring them in conformity; and under your testimony of this morning there are very few, if any, nations which are in that status. Is that correct?

Mr. TERRILL. Yes, sir. That is correct.

The CHAIRMAN. Article 43 [reading]:

SUPPLEMENTARY ENFORCEMENT ARRANGEMENTS

1. Members may cooperate with each other in prohibitive, preventive, or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this chapter.

Are there any limitations to that at all?

Mr. TERRILL. I am not sure that I get your question, Senator. Could you clarify it?

The CHAIRMAN. Please give me some examples of what you believe are covered by that article.

Mr. TERRILL. I might say, first of all, that such action could be taken now by other governments, if they were so inclined. This article, therefore, merely makes it clear that the member governments do not always have to run to the Organization in every case in which they may decide to take action independently.

The CHAIRMAN. That might bring you to a state of complete anarchy in the enforcement of this chapter. That is why I say, are there no limitations on it? Can you have a dozen groups of members in combination, as apparently contemplated here, enforcing the law of this Organization?

Mr. TERRILL. No. I think, Senator, that this is the meaning: There have been cases and fairly recent cases in the United States involving restraints of trade on a large scale in which a number of countries were concerned, and a number of firms situated in other countries were also concerned.

Our courts, in issuing remedial orders, can direct them only to parties over whom they have jurisdiction, that is, to parties who reside here, or who are to be found within the American jurisdiction. This article merely states that the governments of the other countries concerned could cooperate with us by taking similar procedures in order to act parallel to us.

The CHAIRMAN. It does not say that. [Reading:]

Members may cooperate with each other in prohibitive, preventive or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any member in furtherance of the objectives of this chapter.

Let us assume that a court in the United States comes down with some kind of a decree, presumably dealing with a subject matter of this charter. Could countries X and Y, as political agencies, cooperate with each other to extend jurisdiction of that United States court into other countries?

Mr. TERRILL. No, sir.

The CHAIRMAN. Why not, under this language?

Mr. TERRILL. I am quite certain that that was not in mind, Senator.

The CHAIRMAN. Let us test it against the language. Let us take the precise case I have given you.

Say the United States Supreme Court has come out with something bearing on the subject matter of this chapter and for the reasons that you have mentioned, for the reason that its jurisdiction does not cover the whole world, countries X and Y say, "Let us enforce that same thing in our countries." Could they do it?

Mr. TERRILL. Yes, sir. They could do that now in the absence of any ITO, or any charter, or any chapter on this subject. The only purpose that I know in putting it in here was to make it clear that you do not have to go through the Organization on each such case.

The CHAIRMAN. You say that could be done now? Could the United States proceed to pick up the judicial decree of a court of some other country and, in cooperation, let us say, with Mexico, make that decree effective in the two countries?

Mr. TERRILL. No, Senator. Definitely not, as I understand the matter. That would not be the case.

The CHAIRMAN. That is the case I am putting to you.

Mr. TERRILL. But we could act in a parallel manner. We could institute proceedings before our own tribunals here, in order to operate in a parallel manner.

The CHAIRMAN. Our Attorney General might say "Let us initiate an action similar to that which has been initiated over in France, and which has produced good results over there." Is that what you have in mind?

Mr. TERRILL. What I have in mind is the case, an antitrust case, which is of world-wide proportions. We could act at the same time, before, or after the foreign courts had acted in that case.

I am speaking of the present situation.

The CHAIRMAN. Give me some examples to bring it down to this language:

Members may cooperate with each other in prohibitive, preventive, or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this Charter.

Give me an illustration that will make that clear.

Mr. TERRILL. Senator, I am afraid I about exhausted my illustrations when I gave the one a moment ago. My own understanding of the article may be incomplete, but I could make further analysis of the matter for you.

The articles simply means that members could take parallel action without resorting to the Organization in every case.

The CHAIRMAN. If we had 50 members, 48 of them in groups of 2, you could set up 24 different combinations for the purpose of making more effective a remedial order of the type contemplated here. Each one of them different.

Mr. TERRILL. Of course, the number of countries concerned would depend on the case in question. Usually you would have only a few major countries.

The CHAIRMAN. You might have a product such as coffee that has very world-wide distribution; cocoa, which has world-wide distribution.

There must be further illumination available on that paragraph.

Mr. TERRILL. I would be very glad to try to get further illumination on it, Senator.

The CHAIRMAN. Would you do that?

Mr. TERRILL. My own interpretation, as I say, may be too limited, but I do not see how it would, in effect, remove, in our case or in the case of any other country, any rights that a citizen might have under due process of law.

The CHAIRMAN. From the standpoint of proponents of the Organization it seems to me that you have a clause in there that might have the effect of splintering whatever effective central power you have. And not only splintering it, but splintering it in a very disorderly way with combinations of nations giving themselves the privilege of enforcing laws having to do with the subject matters in which we are interested. If this language means what it says.

And as I say, from the standpoint of the proponents of the plan I do not believe you should contemplate absurd results. [Reading:]

2. Members participating in or intending to participate in such cooperative action shall notify the Organization.

ARTICLE 44. CONTINUED EFFECTIVENESS OF DOMESTIC MEASURES AGAINST RESTRICTIVE BUSINESS PRACTICES

Any Act or omission to act on the part of the Organization shall not preclude any Member from enforcing any national statute or decree directed towards preventing monopoly or restraint of trade.

That simply says in effect you do not have to abolish all your internal statutes to meet the intent of this chapter. Is that not true?

Mr. TERRILL. No, Senator, I think we regard this article as going beyond that. The international organization may not take any action at all on a given case where, for example, the parties do not substantially control international trade. Or the Organization might say that it finds no reason to think that the provisions of the Charter have been violated.

Nevertheless, under this article, we, or other countries having anti-trust statutes, could enforce them in the given case.

Even though the Organization does not find a violation of the Charter, our own courts might, nevertheless, find that American law had been violated.

The CHAIRMAN. Is that another way of saying that to the extent our domestic law does not conflict with the requirements of the Charter we are at liberty to enforce our domestic law?

Mr. TERRILL. I do not know as it bears on the first portion of your question, Mr. Senator. It certainly bears on the second portion, however.

The CHAIRMAN. Can we maintain a domestic system of law which does conflict with the Charter?

Mr. TERRILL. No. We could not, Senator.

The CHAIRMAN. I believe that is what I said in other words.

Now going back to article 43: In the memorandum that you are going to give me on paragraph 1, would you mind giving a special note as to whether or not, in the State Department's view, the co-operating nations could indulge in trade boycotts, or in collective discriminatory practices against an offending Member, and generally,

coming back to my original question to you when we opened the discussion in that paragraph, what limitations, if any, are there as to the kind of measures which may be pursued.

Mr. TERRILL. Senator, is this in article 43?

The CHAIRMAN. Article 43, paragraph 1.

Mr. TERRILL. I am afraid, Senator, that I do not get the thought that you have in mind.

The CHAIRMAN. I want to make it very clear to you.

Members may cooperate with each other in certain prescribed types of measures for the purpose of making something more effective. Now, they may cooperate in prohibitive practices, in preventive practices, or in other measures. I am trying to find out, may they, for example, engage in trade boycotts.

Mr. TERRILL. It is the "other measures" that you have in mind, Senator?

The CHAIRMAN. The measures of trade boycott might be prohibitory, they might be preventive or come under the category of "other measures." I am trying to find out whether it includes other collective discriminatory practices.

Mr. TERRILL. Yes, I understand, sir.

The CHAIRMAN. In addition to the special things which I mentioned, what are the limits, or what are the lack of limits under that paragraph?

Mr. TERRILL. Thank you, sir.

(The State Department subsequently submitted the following memorandum:)

Question: What is the general purpose and effect of article 43? What is the limit of the remedies which members may impose under the article; can they harass United States business operating subsidiaries within their borders?

Article 43 provides:

"1. Members may, by mutual accord, cooperate with each other in prohibitive, preventative, or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this chapter.

"2. Members participating in such cooperative actions shall notify the Organizations."

This provision affirms the right of any Member to cooperate with other Members in a manner which they are free to pursue today. It removes any ambiguity which the remainder of the chapter might otherwise have created regarding the freedom of Members in this respect. To have prohibited Members from engaging in cooperative undertakings with others or to have curtailed their rights in this respect might well be considered an unwarranted and unnecessary arrogation of power by the Organization.

Where a restrictive arrangement is complex and far flung, and requires remedial measures in a number of different countries, the procedures indicated by articles 43 will tend to bring about less diverse and better integrated remedies in the different countries. It will be noted that article 42 obliges each member to "determine action in accordance with its system of law and economic organization . . .". Since each Member must devise remedies consistent with its administrative and judicial procedures, there is no assurance that a remedy in the United States which is embodied in a court decree, for example, will parallel precisely a remedy devised by a European country. Thus, consultation between Members with respect to such remedial measures may be helpful in bringing about more effective world-wide solutions to major restrictive arrangements.

The question has been raised whether article 43, on ratification by Congress, may not clothe the Attorney General or the United States courts with the power to enforce the decrees of, say, a Canadian court. In our view, article 43 does not enhance the powers of the United States courts or the Attorney General. The article is not self-executing; it is couched in permissive language and is not

sufficiently express in character to constitute enabling legislation of the kind necessary to increase such powers.

Moreover, the nature of the action which can be imposed by Members under the article is limited under the Charter, and "remedies" which might be unfair to United States interests are, for practical purposes, barred by these other provisions. For example, in article 42, each Member undertakes to "determine action in accordance with its system of law and economic organization". Members may do whatever their own laws empower them to do, consistent with the objective of eliminating the restrictive business practice involved, provided such remedies are not inconsistent with other articles of the Charter. Moreover, national remedies cannot be in violation of other international obligations of a Member, such as its treaties of commerce and friendship with other nations; and bilateral treaties of the United States with many other countries limit the freedom of these countries to impose arbitrary and discriminatory measures upon United States nationals and their property. This fact would in effect eliminate boycotts, special taxes, or other discriminatory or harassing "remedies". It should also be noted that article 12, paragraph 2, of the Charter specifies that the Members " * * * shall in general take no unreasonable action injurious to the interest of such other Members, business entities or persons." Moreover, under this paragraph each Member affirms that it " * * * shall * * * carry out all relevant international obligations to which it may be subject or may undertake pursuant to subparagraph (c) of article 61 * * *".

As a result, it would appear that there is no danger of unfair "remedies" being used against United States interests under these articles.

The CHAIRMAN. Article 45 [reading]:

EXCEPTIONS TO THE PROVISIONS OF THIS CHAPTER

1. The obligations in this Chapter shall not apply to
 - (a) intergovernmental commodity arrangements meeting the requirements of Chapter VII;
 - (b) the international arrangements excepted in Article 59.

What are those in 59?

Mr. TERRILL. There is a fairly extensive list, sir.

The CHAIRMAN. That has to do with intergovernmental commodity arrangements.

Mr. TERRILL. Yes. The article begins with the distribution of commodities in short supply, then it goes on to conservation, and, third, it takes up military matters, fissionable materials and the like.

The CHAIRMAN. Continuing [reading]:

2. Notwithstanding the foregoing paragraph, the Organization may make recommendations to Members and to appropriate intergovernmental organizations concerning any features of the arrangements referred to in paragraph 1 (b) of this Article—

Those are international arrangements excepted in article 59— which may have the effect described in Article 1 of Article 39.

I doubt if that article requires any particular comment. Do you wish to offer any further comments, Mr. Terrill?

Mr. TERRILL. No, sir. I have not any. What I have to say on patent matters can best, I think, be said in writing, rather than orally.

The CHAIRMAN. I have a paper entitled "Export Groups of the United Kingdom from the Board of Trade Journal dated April 20, 1946." It purports to be a list of export groups recognized by the Board of Trade.

I believe that the list will show perhaps as many as 200 of such groups, and it will serve as a complementary list to the list of such groups put into the record earlier representing organizations of the United States interested in export trade.

It will be put in the record at this point.

(The list appears as exhibit XII B.)

The CHAIRMAN. Will you state your full name, please, your residence, your occupation, and tell us something of your background?

**STATEMENT OF WILDEAM TAYLOR PHILLIPS, ACTING CHIEF,
INTERNATIONAL RESOURCES DIVISION, DEPARTMENT OF STATE,
WASHINGTON, D. C.**

Mr. PHILLIPS. Yes, sir.

I am William Taylor Phillips, 1018 Valley Drive, Alexandria, Va. I am at present Acting Chief of the International Resources Division, in the Department of State.

My background is in the general field of economics. I taught economics 2 years at Cornell University and 2 years at the University of New Hampshire, after having received a PhD in economics from Cornell University.

I worked in the Bureau of Labor Statistics, and in the Office of Price Administration during 1942 and part of 1943; from there I went to the State Department, originally in the Division of Economic Studies, then in the Commodities Division, which was a newly constituted division during the war, and which, in turn, became the International Resources Division.

The CHAIRMAN. Going now to chapter VII [reading]:

INTERGOVERNMENTAL COMMODITY ARRANGEMENTS

SECTION A. INTERGOVERNMENTAL COMMODITY ARRANGEMENTS IN GENERAL

ARTICLE 46. DIFFICULTIES RELATING TO PRIMARY COMMODITIES

The Members recognize that the relationship between production and consumption of some primary commodities may present special difficulties. These special difficulties are different in character from those which manufactured goods present generally. They arise out of such conditions as the disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuations in prices. They may have serious adverse effects on the interests of producers and consumers, as well as widespread repercussions jeopardizing general policies of economic expansion.

At this point, Mr. Phillips, let me ask you, is the chapter limited to primary commodities, or does it, for example, expand later on into industrial commodities.

Mr. PHILLIPS. It is limited, sir, to primary commodities, except that nonprimary products may, in special instances, be brought under the chapter. We had in mind two particular types of cases: First, a group of primary products, such as fats and oils, which might encompass one or more fabricated products, and second, a commodity such as rubber, where you might have a general world surplus, and you probably would have to take into account synthetic production in the United States and Canada, and the U. S. S. R.

However, the chapter is primarily directed at primary commodities.

The CHAIRMAN. Article 47 [reading]:

OBJECTIVES OF INTERGOVERNMENTAL COMMODITY ARRANGEMENTS

Intergovernmental commodity arrangements may be employed to enable countries to overcome the special difficulties referred to in Article 46 without resorting to action inconsistent with the purposes of this Charter, by achieving the following objectives:

(a) to prevent or alleviate the serious economic problems which may arise when production adjustments cannot be effected by the free play of market forces as rapidly as the circumstances require;

(b) to provide, during the period which may be necessary, a framework for the consideration and development of measures which will have as their purpose economic adjustments designed to promote the expansion of consumption or a shift of resources and manpower out of over-expanded industries into new and productive occupations;

(c) to moderate pronounced fluctuations in the price of a primary commodity above and below the level which expresses the long term equilibrium between the forces of supply and demand (in order to achieve a reasonable degree of stability on the basis of remunerative prices to efficient producers without unfairness to consumers);

(d) to maintain and develop the natural resources of the world and protect them from unnecessary exhaustion; and

(e) to provide for expansion in the production of a primary commodity which is in such short supply as seriously to prejudice the interests of consumers.

Dr. Phillips, is there not a fundamental inconsistency between the objectives of Article 47 and the other objectives of the Charter?

Mr. PHILLIPS. Yes, sir, there is, in this sense. The activities which might be included in an intergovernmental commodity arrangement, which would be under governmental auspices, might require, in fact very probably would require, the imposition of export quotas, perhaps a two price system—a domestic price and a world price—and other types of restrictions which the whole Charter attempts to do away with.

The reason that we feel it may be necessary to resort to these particular activities is that certain commodities are so vitally important to particular countries such as, for example, wool, meat, and dairy products from Australia or tin from Bolivia. In that sort of a situation it is felt that there will be commodity arrangements among producers, whether we like it or not, simply because those countries are either unable or unwilling to let the slow market readjustment take place. They feel that they must take some sort of action. That action very often results in such things as reserving the domestic market exclusively for domestic production, which might be accomplished through embargoes or quotas.

It might be done through an export subsidy whereby a country attempts to force its own production on the world markets. In that case, a subsidy race may ensue where the largest purse would determine which country actually got rid of its surplus.

So, we feel that intergovernmental action will be taken and that arrangements will be entered into; they have in the past, and we know that they will be in the future. What we are trying to do in this chapter is to lay down some rules of the road, so to speak, which will eliminate some of the worst characteristics of agreements as we have seen them in the past.

Previous agreements in many cases have involved producers only. The consumer has had nothing to say about the activity taken under the agreement. In many cases agreements have merely provided an

umbrella for producers, whether efficient or inefficient. In most cases they have been conducted more or less behind a veil of secrecy.

The attempt here in this chapter is to admit that there probably will be agreements. We are not trying to encourage such arrangements nor to prohibit them, but we feel that whatever agreements are entered into should follow specific rules of the game, the most important of which is the requirement that consuming interests should have an equal voice in determinations with the producing interests. That, plus full publicity, we feel, will give a great measure of protection against possible abuses that have appeared in the past.

The CHAIRMAN. Is the net effect to exclude private arrangements?

Mr. PHILLIPS. Yes. The fear is that if you take action such as that described in chapter VI to eliminate restrictive business practices, there might be a tendency for private interests, particularly in some of the smaller countries, to shift to an intergovernmental basis, and private producers might urge that their governments press for intergovernment arrangements on all kinds of fabricated products. We don't want that to occur. That is one of the major reasons for limiting this chapter almost exclusively to primary production. We do not want it to become an outlet for fabricated products which were subject to a cartel arrangement, under what might be governmental auspices.

The CHAIRMAN. Now, let us suppose that the United States entered into one of these intergovernmental commodity arrangements on, let us say, wheat.

What, exactly, would the United States have to do to bring its arrangement into consonance with the facts of wheat growing, wheat harvesting, wheat storage, wheat distribution, wheat pricing?

Mr. PHILLIPS. Senator, I believe the technique would be as follows:

The countries of the world, both producing and consuming, that are substantially interested in world wheat would get together and undertake negotiations among themselves for a wheat agreement. Precisely what form that agreement would take, it is impossible to say.

The CHAIRMAN. It would have some characteristics; would it not?

Mr. PHILLIPS. Yes, sir; it would have characteristics, and after negotiation, it would be referred to the Congress.

The CHAIRMAN. Now, what would be the normal characteristics of an agreement of that kind; let us say, as to a wheat agreement?

Mr. PHILLIPS. Well, my guess would be that a wheat agreement would probably involve export quotas that the producing countries would guarantee to ship. It might well involve commitments on the part of the importing countries to import certain quotas. In addition, there might be a permitted price range.

The CHAIRMAN. There might be price ranges in there?

Mr. PHILLIPS. Within a price range, you presumably would have a commitment on the consumers to take X bushels of wheat at something within the price range.

The CHAIRMAN. Then, there would be delivery schedules and delivery points?

Mr. PHILLIPS. Yes. Well, there would be delivery points, certainly, but whether or not it would be necessary to schedule shipments under international auspices would be hard to say.

The CHAIRMAN. Well, somewhere in the arrangement, those things would naturally be taken care of; would they not?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Now, the United States has entered into an agreement of that kind, and it concerns wheat, let us say. What does the Government, as such, do about it, to perform its part of an agreement of that kind?

Mr. PHILLIPS. The sequence of events would be as follows: The negotiated instrument would be submitted to the Congress. It might be a treaty, in which event it would be sent to the Senate for ratification.

The CHAIRMAN. I am very much interested in that statement. What is your authority for that, under the charter?

Mr. PHILLIPS. Well, sir, there is nothing in the charter that says how it would be ratified. It would be ratified in accordance with our own procedures.

The CHAIRMAN. And where does it say that?

Mr. PHILLIPS. Well, the reason I say that is this: It does not say it in the charter, but all this chapter does is to set up the mechanism within which you negotiate commodity agreements. Then, once negotiated, they would follow the course of any intergovernmental agreement, whether or not the ITO were in being. And when we make treaties, or regulatory commodity agreements, they follow the normal procedure of coming to the Congress for ratification. The ones in which we have participated have been, I think, coffee, sugar, and wheat.

But there is no intent here to set up an international agency which would sanction such agreements without acceptance or rejection by participating members in accordance with their own internal procedures.

The CHAIRMAN. Well, that would be a matter of profound interest to the Congress. I certainly would like to have some reference to language which will support your view.

Mr. PHILLIPS. Well, sir, I don't believe there is anything in the chapter that would refute my view.

The CHAIRMAN. That is far different from supporting your view.

Mr. PHILLIPS. As I say, what we are after in this chapter is this: We are merely establishing some general principles and some general guides under which regulatory agreements may be negotiated. Following that, it is purely a matter of internal processes as to whether or not you engage in a commodity agreement, or whether you even engage in the negotiations, sir.

The CHAIRMAN. Well, you state without equivocation that it is the intent of the State Department that any of these intergovernmental commodity arrangements shall come back to the Congress for approval.

Mr. PHILLIPS. Yes, sir. Any regulatory intergovernmental commodity agreement must, in our opinion, be referred to the Congress.

The CHAIRMAN. Have you made up your mind whether it comes to both Houses, or to the Senate as a treaty?

Mr. PHILLIPS. That I am unable to answer, sir. I could consult with our Legal Division and ask them.

The CHAIRMAN. They are already working on one or two phases of the matter, going to the same question. Will you be good enough to ask them to give special attention to chapter 7?

Mr. PHILLIPS. Yes, sir.

(The Department submitted the following reply:)

DEPARTMENT OF STATE,
Washington, April 15, 1947.

The Honorable EUGENE D. MILLIKIN,
Chairman, Committee on Finance, United States Senate.

MY DEAR SENATOR MILLIKIN: I have been informed that during the course of the testimony of Mr. William T. Phillips of the Department on chapter VII of the proposed draft charter for an International Trade Organization, the question arose whether intergovernmental commodity agreements would be referred to the Congress for congressional approval and, if so, whether such agreements would come to both Houses of Congress, or to the Senate as a treaty.

I have already written to you on the question of reference of the charter of the International Trade Organization itself to the Congress and have indicated that, under the circumstances outlined in my previous letter, no decision has as yet been made on the form in which congressional approval will be asked. Like the charter in general, chapter VII is as yet a preliminary draft and is subject to possible change. It therefore is difficult to say whether commodity agreements negotiated pursuant to the provisions of chapter VII would be referred to the Senate for its advice and consent or whether the approval of both Houses would be asked. I may point out that certain commodity agreements have been presented and approved as treaties. On the other hand, commodity agreements under chapter VII may involve allocation and related powers which would be of interest to the Congress as a whole. Decision has thus not been made on the manner of submission of such agreements to the Congress.

Insofar as such commodity agreements impose any obligations on the United States requiring legislative implementation in any way, it is the intention of the Department that they should be submitted to the Congress.

Sincerely yours,

DEAN ACHESON,
Acting Secretary.

The CHAIRMAN. As we go along in the chapter, we will study the various provisions, with that especially in mind.

Now, am I correct in saying that the plan here is to make an exclusive governmental monopoly by intergovernmental agreements in a field which heretofore has been handled by private arrangements?

Mr. PHILLIPS. In one sense of the word, sir, you are correct. Whether or not it would be an exclusive governmental monopoly would depend pretty much upon the particular agreement. In most cases I would think that quotas would be established, and perhaps a price range would be established within which private trade would operate.

The CHAIRMAN. Let me put it to you this way: Supposing that the private coffee people in Brazil went around to the private coffee distributors all over the earth and made an agreement having to do with the sale of coffee, the pricing of the coffee, and so forth and so on. Would that kind of an agreement be possible when this becomes effective?

Mr. PHILLIPS. No, sir.

The CHAIRMAN. It would not; it would do away with that kind of an agreement?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Would it do away with the agreements that prevail, for example, with respect to the diamond market?

Mr. PHILLIPS. Those, I believe, sir, are private cartel arrangements which would fall under chapter VI. This would prevent them from turning to the governmental channel to achieve the same objective.

The CHAIRMAN. Well, but the same effect could be achieved by an intergovernmental agreement?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. What I am driving at is this: Would the fact of the existence of this chapter bar agreement of the type that I mention?

Mr. PHILLIPS. It would bar them in this sense: that they could not fulfill the requirements of a primary commodity that met the circumstances under article 52. What we have to do here is to delimit the area. There are various ways we might have done it. One way would have been to leave them wide open so that any kind of a product could be subject to an intergovernmental arrangement. That, we felt, was much too dangerous and much too broad.

The CHAIRMAN. I am not thinking about what can be done under intergovernmental arrangement, but what can be done irrespective of an intergovernmental arrangement.

Mr. PHILLIPS. There can be no intergovernmental arrangement that does not fit the chapter, and if chapter VI operates as we hope it might operate, there can be no private arrangements to accomplish the same objective.

The CHAIRMAN. In other words, the fields are not overlapping. When that which is contemplated by article 47 becomes effective, no private interests can occupy the same field; is that right?

Mr. PHILLIPS. Yes, sir; that is right.

The CHAIRMAN. Let me invite your attention to subclause (b) of article 47. I will read it:

(b) To provide during the period which may be necessary, a framework for the consideration and development of measures which will have as their purpose economic adjustments designed to promote the expansion of consumption or a shift of resources and demand power out of overexpanded industries into new and productive occupations—

Would you mind illustrating?

Mr. PHILLIPS. We might take a specific commodity situation; coffee, for example.

Under a coffee agreement which falls under this chapter, our objective is one thing. We have a burdensome surplus with producer distress, market prices way out of line—ruinous prices, perhaps—and producers continuing to produce and even expanding production because of low prices.

Now, there are two ways you can alleviate that situation, it seems to me. One method is to expand consumption, which is a very difficult thing to do in these primary products because of the ineffectiveness of low prices—to induce people to drink more coffee, for example. Or, you can take these artificial means—they are not normal market forces—and hold prices at levels which at least allow producers to exist while you are attempting—and this would have to be done by the individual countries involved—to find alternate lines of endeavor in which these producers could engage.

The CHAIRMAN. Would this be an authority to our Government to enter into an intergovernmental agreement that would result in the lessening of our cotton acreage, for example, and the expansion of some other kind of acreage in the South?

Mr. PHILLIPS. That, sir, would have to come about through the individual agreement. Now, presumably our negotiators would take into account all the factors of our own domestic economy, and, in discussing the proposed agreement with other governments substantially interested, they would arrive at what they considered a reasonable agreement that fitted the needs of that particular commodity.

The CHAIRMAN. Would the United States maintain its full discretion as to whether it would go into that kind of an agreement or not?

Mr. PHILLIPS. Yes, sir; it would.

The CHAIRMAN. There is no question about that whatsoever?

Mr. PHILLIPS. No question whatsoever.

The CHAIRMAN. As a part of the theory of free trade, there is a theory of shifting resources and manpower out of overexpanded industries into new and productive occupations. Is this a glancing approach at the same thing?

Mr. PHILLIPS. No, sir. I believe that the normal commodity—or, let us say, the normal fabricated commodity—is much more sensitive to price changes. A reduction in the price of automobiles, for example, induces producers to produce less and induces consumers to buy more.

The CHAIRMAN. You state that this is not a glancing approach to that free trade theory?

Mr. PHILLIPS. No, sir; not by any means.

The CHAIRMAN (reading):

(c) To moderate pronounced fluctuations in the price of a primary commodity above and below the level which expresses the long-term equilibrium between the forces of supply and demand—

Is it correct to say that there is a long-term equilibrium as to many of these products, and if so, what is a long-term equilibrium of them?

Mr. PHILLIPS. A long-term equilibrium price might be achieved if our own Government, for example, were willing to let extremely low cotton prices persist over a number of years. Eventually you would either force out or starve out producers of the particular product; and, presumably, you would get a reduction in total acreage in cotton.

The CHAIRMAN. Have we had a long-term equilibrium in cotton?

Mr. PHILLIPS. No, sir; I don't believe we have.

The CHAIRMAN. Have we had a long-term equilibrium in wheat?

Mr. PHILLIPS. Well, there is always a long-term equilibrium price, and we have had wide fluctuations around that price, sir.

The CHAIRMAN. And how do you determine that?

Mr. PHILLIPS. It would be a price that would equate the demands of consumers with the production of producers at a remunerative level, one that would cover their costs of production, including a reasonable profit.

The CHAIRMAN. And you say there is a long-term equilibrium in wheat?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Under that formula?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. And in oil?

Mr. PHILLIPS. In any commodity.

The CHAIRMAN. In any commodity. That is, you would have to find a period in which costs had been recovered.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. If you could not find such a period, you could not have an equilibrium under your formula.

Mr. PHILLIPS. You could postulate such a price by an examination of costs, as production is increased by the entrance of more and more

marginal producers, and you would have to estimate what the demands for petroleum, or whatever the commodity happened to be, would be at the various prices. The point where the amount supplied would equal the amount demanded would be the theoretical equilibrium of price.

The CHAIRMAN. But would that necessarily return costs to the producer?

Mr. PHILLIPS. It would return costs to the producers, other than the submarginal producers.

The CHAIRMAN. But your whole production is the aggregate of efficient producers, middling producers, and marginal producers.

Mr. PHILLIPS. And you would not return costs to the submarginal producer.

The CHAIRMAN. So you come into a question of social philosophy, as to whether your figures should return costs to marginal producers.

Mr. PHILLIPS. Well, they should return costs to marginal producers, but not to submarginal producers.

The CHAIRMAN. Or to submarginal producers.

Is the pressure of this chapter in its operation not to return costs to submarginal producers?

Mr. PHILLIPS. There would certainly be a pressure that way, sir; and that is one of the fundamental reasons for the chapter.

Such a pressure is felt strongly when prices become very low. Now, all we say in this chapter is this: Let's take the United States which is a consumer of rubber. We see producers of rubber in the far eastern areas, with rubber at extremely low prices. And we then say, "We are willing, as consumers, to give you some protection for a limited period of time, because we don't want to see your industry ruined and we don't want to see the area ruined. However, during the period in which we are providing, in a sense, a subsidy, we feel that it is up to you to eliminate the uneconomic producers somehow by finding alternative occupations for them. Because we as consumers don't feel that it is proper for us to subsidize you permanently. The quid pro quo would be subsidization on our part for a limited time and eliminating the basic causes that gave rise to the surplus on your part."

The CHAIRMAN. You could see that there would be practical difficulties in that.

Mr. PHILLIPS. We see very grave difficulties involved, Senator.

The CHAIRMAN. Would you say that they might be so grave that it could not work?

Mr. PHILLIPS. Could not work?

The CHAIRMAN. As a practical matter.

Mr. PHILLIPS. Well, yes, Senator.

The CHAIRMAN. Let me put it this way: As a practical matter, when you commence to eliminate substandard operators, you are in most instances eliminating the greatest numerical group of producers.

Mr. PHILLIPS. That might be true, yes.

The CHAIRMAN. And when you do that, you run into political difficulties.

Mr. PHILLIPS. Yes, sir, you do. And it would depend upon each individual agreement whether the Congress felt that the existing political difficulties would warrant that particular agreement.

The CHAIRMAN. This provision that we are now discussing would bar an intergovernmental arrangement that did not base itself on the efficient producer.

Mr. PHILLIPS. I don't believe it goes quite that far, sir. It is an objective and is designed principally to moderate the fluctuations around some price.

The CHAIRMAN. Well, it states, reading from the beginning of the article, now:

Intergovernmental commodity arrangements may be employed * * * by achieving the following objectives.

Am I correct in assuming that if it does not achieve those objectives it may not be employed?

Mr. PHILLIPS. Yes, sir, you are. The objective here is to moderate the fluctuations in the first instance, however.

The CHAIRMAN. Now, let us get back to (c). There is a parenthetical part that reads:

[In order to achieve a reasonable degree of stability on the basis of remunerative prices to efficient producers without unfairness to consumers.]

Is the parenthetical part State Department policy?

Mr. PHILLIPS. The parenthetical part, sir, came about in this way: A number of governments at the drafting commission in New York felt that those words in brackets expressed the meaning of equilibrium price. After considerable discussion about their inclusion, it was decided to put them in brackets expressing neither approval nor disapproval, and leaving it up to the Geneva Conference. As far as the Department is concerned, we would not press for its inclusion.

The CHAIRMAN. Will you accept the provision if the other members wish it?

Mr. PHILLIPS. If the pressure is reasonably strong, Senator, I think we probably would, because it does express the long-term equilibrium between supply and demand.

The CHAIRMAN. You can see the obvious criticism: That you are authorizing a scheme which would only benefit the rich and would exclude the poor.

Mr. PHILLIPS. I do not quite follow you, sir, on that point.

The CHAIRMAN. Well, the efficient producers, putting them on a basis of remunerative prices—if they are efficient producers, they are probably doing all right, and you are authorizing arrangements which make it possible for them to continue being all right.

I am not objecting to it, but I am pointing out to you, or asking you whether you do not foresee a lot of objection in authorizing an arrangement that would exclude those who are not doing so well.

Mr. PHILLIPS. Yes, Senator, I can see that there may be very serious difficulties.

The CHAIRMAN. We have a whole system of laws in this country which are intended to pick up the position of the marginal producer and the fellow that normally has a tough time, and I am just wondering whether the State Department feels itself perfectly comfortable in accepting a theory which is somewhat at variance with that.

We are running a premium-price system, for example, for the benefit of marginal producers of minerals.

Mr. PHILLIPS. Yes, sir. We also run premium-price systems in agricultural products, in a direct attempt to shift people from one

source of production to another. That is the kind of thing that may be involved in regard to these particular arrangements.

The CHAIRMAN. And we are running loan systems in order to put a better foundation under the marginal farmer. We are running loan systems whereby he can acquire and cultivate marginal and subsistence farms.

I am not criticizing it one way or the other. I am simply pointing out to you that you may be sponsoring a philosophy here that would not be acceptable to the Congress.

Mr. PHILLIPS. I might remark that we cannot look only at commodities produced in the United States; because we, as consumers, have a great deal to gain from such a provision. It affects items such as tin and rubber, that we do not produce within the United States, but for which we have paid relatively high prices in the past.

The CHAIRMAN. True. If you can find a practical way to shift the submarginal fellow into something that is more economic.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. And if you cannot—and so far we have not found out how to do that—you are dealing with a very “attractive” theory, I suggest. [Reading:]

(d) To maintain and develop the natural resources of the world and protect them from unnecessary exhaustion.

I think it has already been developed that except by recourse to this device, to wit, intergovernmental commodity arrangements, a nation would not be warranted in refusing export of its natural resources. Does that coincide with your own view of it?

Mr. PHILLIPS. Yes, it does, Senator, although this particular clause causes me personally some little difficulty. Conservation, in my opinion, involves some sort of regulation of world trade; otherwise I just don't see how it might operate. It would be regulation of production or of the trade in the particular product. And if you have regulation, according to this chapter, you must be faced with a burdensome surplus. In such an event, it is very difficult to say that you need conservation on the one hand when you have a surplus on the other hand.

The CHAIRMAN. Then the subclause is somewhat inunderstandable to you?

Mr. PHILLIPS. Yes, sir, and we would like to have it deleted.

The CHAIRMAN. That is the State Department's position?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Thank you. [Reading:]

(e) To provide for expansion in the production of a primary commodity which is in such short supply as seriously to prejudice the interests of consumers.

Just how would that be done?

Mr. PHILLIPS. That, sir, is a difficult one. The way that provision came about was that some of the producing countries, countries that were principally exporters of raw materials, felt that this whole chapter was too much consumer-slanted. They considered that the producers were being held down and would not have a fair shake under the chapter.

On the other hand, there were those who felt that it was slanted the other way—that the producers had too much protection. So this particular paragraph was inserted to prevent a commodity agreement

which, in the first instance, would probably regulate, from being so restrictive as to shrink down the production of the particular commodity, force the price up, and thus injure consumers.

I think it has relatively little meaning, in the sense that it would be, in my opinion, almost impossible to say when a commodity is in such short supply as to prejudice the interests of consumers.

What are the criteria under which you would make that determination? We are not too happy about this particular provision, simply because it is a little bit obscure as to how the thing would operate. It was not, I might add, in the original United States Charter.

The CHAIRMAN. Are you going to move to get it out of there?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Now, going back to subclause (c), toward the end, I think you will find [reading]:

on the basis of remunerative prices to efficient producers without unfairness to consumers.

What is your criterion there?

Mr. PHILLIPS. That, sir, presents the same problem. The smaller producing countries felt that the term "equilibrium between the forces of supply and demand" should be spelled out, and in doing so, they put in the word "in order to achieve a reasonable degree of stability on the basis of remunerative prices to efficient producers."

Some of the consumers, on the other hand, said, "Well, we don't think it is necessary to belabor what 'long-term equilibrium' means, but if you feel that this is necessary, we on our part feel that you should add 'without unfairness to consumers?'"

So that is a negotiated point, and my guess is that that part in brackets would not appear in the final draft.

The CHAIRMAN. And you believe that we can safely rely upon it that that will be out as well as subclause (d) and (e)?

Mr. PHILLIPS. (d) and (e), yes, sir, and I think the part in brackets will not appear. I just do not know, of course.

The CHAIRMAN. The whole chapter turns on the philosophy that the consumer has an equal interest in the determination of prices and supply with the producer, does it not?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Is that part of our domestic philosophy?

Mr. PHILLIPS. Well, sir, I contend that if it is not, it should be our feeling that the consumer should have an equal break with the producer. The philosophy behind that emanates from our position as consumers of two commodities in particular, tin and rubber. They have, as you no doubt know, been looked on with considerable disfavor at various times because the producers used them to some extent as a monopolistic device to force prices up to what certainly our manufacturers considered uneconomic levels.

To get around that difficulty, we have inserted this provision that consumers shall have an equal voice.

Now, in my opinion, no agreement will work unless there is almost unanimity of opinion between producers and consumers; so that you will not have a situation where consumers as a bloc would vote against producers as a bloc. Any successful agreement would necessarily mean that consumers would have to say, "Yes, these provisions are reasonable provisions; the price provisions are reasonable, and we

are willing to go along with them." Producers would have to take a similar course.

The CHAIRMAN. Let me come back to my original question: Has that theory become a part of the philosophy of this country?

Mr. PHILLIPS. The theory, sir, that consumers are entitled to fair consideration?

The CHAIRMAN. Well, I would not say that. I think everyone would subscribe to that. But that in an enforceable sense the consumer has an equal interest in the price or quantity of an article with the producer?

Mr. PHILLIPS. The consumer, while I think he has an equal interest, does not have the same amount of "vocalness."

In other words, the consumer buying a small amount during any given year just does not have the wish or the initiative, or whatever else it takes, to make his views known as strongly as producers do.

The CHAIRMAN. I think that is true. But is there any governmentally authorized mechanism in this country that gives the consumer an equal voice with the producers in determining the amount of production and the price of it?

Mr. PHILLIPS. No, sir; there is not.

The CHAIRMAN. And that is part of the mechanism that we have in this chapter; is that not true?

Mr. PHILLIPS. Yes, sir; certainly in the voting provisions it is.

The CHAIRMAN. You understand that at that point also there is a wide division of philosophy in this country.

Mr. PHILLIPS. Yes, Senator.

The CHAIRMAN. And I develop the point, because it goes to the acceptability of those provisions.

In other words, there are many people who believe that with the exception of pensioners and people who live on dividends, and so forth, the consumers are also producers, and that there is no valid line of distinction. And those people might wonder why we should impose an international standard that draws a line between the consumer and the producer.

I assume, however, that that has all been thought out, and that this is a definite part of State Department policy; am I correct?

Mr. PHILLIPS. Yes, sir. It is not only the Department's policy, but, as you know, it has been approved by the other Government agencies that were engaged in compiling it, getting it together, thinking it out. It has gradually merged over a period of years. This particular chapter first appeared in the proposals; then in the United States suggested Charter; then in the London Draft; and more recently in the New York Draft—with, I think, the important provisions unchanged, or relatively unchanged.

The CHAIRMAN. I suggest that this is the first time that the matter has come before the Congress.

Mr. PHILLIPS. That, sir, I cannot answer. You are perfectly right that there have been no formal hearings. There has been consultation, I believe.

The CHAIRMAN. This is the first time the matter has come before the Congress. When did you start your public hearings?

Mr. PHILLIPS. I think February 25, as I recall.

The CHAIRMAN. So, long toward the end of February was the first time that the matter came to the attention of the public in an organized way.

Mr. PHILLIPS. Yes, although it was discussed, as you know, with the National Association of Manufacturers, the United States Chamber of Commerce, and the United States Associates.

The CHAIRMAN. You will be charged with having kept bad company. [Laughter.]

The CHAIRMAN (reading):

ARTICLE 48. SPECIAL COMMODITY STUDIES

1. Any Member substantially interested in the production, consumption, or trade of a particular primary commodity shall be entitled, if it considers that special difficulties exist or are expected to arise regarding the commodity, to ask that a study of that commodity be made.

2. Unless it resolves that a prima facie case has not been established, the Organization shall promptly invite the Members substantially interested in the production and consumption of or trade in the commodity to appoint representatives to a Study Group to make a study of the commodity. Non-Members having a similar interest may also be invited.

Now, going just that far, any member could ask that a study be made of our cotton situation, our wheat situation, our oil situation, or our mineral situation.

Mr. PHILLIPS. Sir, not of our situation, but of the world situation; and it would have to be a member that had a considerable interest himself in the production, consumption, or trade.

The CHAIRMAN. Where does it say it would have to be a world situation? It says [reading]:

any member substantially interested in the production, consumption, or trade of a particular primary commodity shall be entitled, if it considers that special difficulties exist or are expected to arise regarding the commodity, to ask that a study of that commodity be made.

Now, let us assume that we are an important exporter of cotton, wheat, and oil. Would not any member who is interested in consuming those products, have a right to complain if he thinks that special difficulties exist, or are about to arise?

Mr. PHILLIPS. Not necessarily to complain. They certainly would have the right to come to the Organization.

The CHAIRMAN. Let us not make it "complain." Let us have it as I asked originally, "to make a study."

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. He could ask the Organization to make a study?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Whether or not we are a member of any inter-government commodity agreement?

Mr. PHILLIPS. Yes, sir; this would come before the agreement.

The CHAIRMAN (reading):

The Study Group shall, in the light of an investigation of the root causes of the problem, promptly report its findings regarding the production, consumption and trade situation of the commodity. If the Study Group finds that special difficulties exist or are expected to arise it shall make recommendations to the Organization as to how best to deal with such difficulties. The Organization shall transmit promptly to the Members any such findings and recommendations.

Now, up to that point, let us assume that a member that has been buying our cotton or our wheat or our oil, or any of our primary prod-

ucts, expect special difficulties to arise or thinks that they exist. That study group would then be formed and would be called upon to make a study of the primary products which I have mentioned. Right?

Mr. PHILLIPS. Yes.

The CHAIRMAN. Article 49 is next. However, before coming to article 49: This special difficulties business might involve special difficulties concerned with too much of the product, too high a price, or too low a price. What are these special difficulties that might touch off this action?

Mr. PHILLIPS. Well, sir, they are the difficulties referred to in article 46, rather generally. They arise out of such conditions as the disequilibrium between production and consumption, the accumulation of burdensome stocks, pronounced fluctuations in prices. It is that type of difficulty that we have in mind for this whole chapter.

The CHAIRMAN. The United State could ask for the study, could we not?

Mr. PHILLIPS. Of course, yes.

The CHAIRMAN. If we foresee that we are going to have too much of any of these primary products, and we want to dispose of surplus on world markets, we might have reason to ask for a study, might we not?

Mr. PHILLIPS. We very probably would, sir.

The CHAIRMAN. And that would also go for the consuming nations, would it not?

Mr. PHILLIPS. Yes, sir. In fact, we have been somewhat instrumental in setting up study groups in tin and rubber already, because we foresee these difficulties. All the study groups can do presently, and even under this, is to investigate the world trade situation in that commodity. And so far, the way it works is that we all, then, have the same actual basis upon which to make our own unilateral determinations.

The CHAIRMAN (reading):

ARTICLE 49, COMMODITY CONFERENCES

1. On the basis of the recommendations of the Study Group or on the basis of information about the root causes of the problems agreed to be adequate by the Members substantially interested in the production, consumption or trade of a particular primary commodity, the Organization shall promptly at the request of a Member having a substantial interest, or may, on its own initiative, convene an intergovernmental conference for the purpose of discussing measures designed to meet the special difficulties which have been found to exist or are expected to arise.

Bringing that home to the United States, under the circumstances which I have mentioned, an intergovernmental conference might be called to consider our surplus problems; is that right?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. And again, a consuming interest abroad might call us into an intergovernmental conference on the same matters; is that right?

Mr. PHILLIPS. Yes, sir; although it would be pretty hard to postulate a situation where you would have only one commodity in one country.

The CHAIRMAN. Well, I postulated three—cotton, wheat, and oil.

Mr. PHILLIPS. Well, cotton, for example, would include many other countries. Wheat would do the same.

The CHAIRMAN. That would simply add to the size of the conference.

Mr. PHILLIPS. That is right, yes.

The CHAIRMAN (reading) :

2. Any Member having a substantial interest in the production and consumption of or trade in the commodity shall be entitled to participate in the Conference, and non-Members having a similar interest may be invited by the Organization to participate.

Is there any further comment you wish to make on article 49?

Mr. PHILLIPS. No, sir.

The CHAIRMAN (reading) :

ARTICLE 50. RELATIONS WITH INTERGOVERNMENTAL ORGANIZATIONS

1. Competent intergovernmental organizations, such as the Food and Agricultural Organization, shall be entitled--

(a) to submit to the Organization any relevant study of a primary commodity;

(b) to ask that a study of a primary commodity be made.

2. The Organization may request any intergovernmental organization which it deems to be competent, to attend or take part in the work of a study group or of a commodity conference.

And also [reading] :

ARTICLE 51. GENERAL PRINCIPLES OF INTERGOVERNMENTAL COMMODITY ARRANGEMENTS

Members undertake to adhere to the following principles governing the operation of all types of intergovernmental commodity arrangements:

(a) Such arrangements shall be open initially to participation by any Member on terms no less favorable than those accorded to any other country and there-
after upon such terms as may be approved by the Organization.

What exactly does that mean?

Mr. PHILLIPS. The purpose of that, sir, is that originally any member is permitted to participate in the agreement. It is to make an open-ended agreement.

The CHAIRMAN. What are the types of discrimination which must have been anticipated?

Mr. PHILLIPS. Well, first, the case for discrimination is this: We would want all the countries that had a substantial interest to come into an agreement, because otherwise it wouldn't work. We don't want countries to stay out, see how it works, perhaps skim the cream off the outside market and then when times get bad enough, say, "We would like to come in."

The terms under which they would come in might be penalty terms, such as, say a smaller quota than they would have had if they were originally in the negotiation.

The CHAIRMAN. In other words, that does contemplate possibly a system of penalties intended to induce early entrance into that kind of agreement.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN (reading) :

(b) Non-Members may be invited by the Organization to participate in such arrangements and the provisions of subparagraph (a) of this Article applying to Members shall apply to any non-Members so invited.

I merely wish to invite your attention to the fact that this is the first point in the Charter where there is much solicitude for a non-member.

What has caused you to open your hearts in this case?

Mr. PHILLIPS. Well, sir, a commodity arrangement simply would not work unless you had all the major producing countries and the major consuming countries in it.

The CHAIRMAN. So if you need them, you are big-hearted. If you do not, you put in the "banker's eye." Is that right?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN (reading):

(c) Under such arrangements, participating countries shall arrange for equitable treatment as between nonparticipating members and participating countries affording advantages commensurate with obligations accepted by nonparticipating members.

Now, what is the distinction that is intended there, if intended, between nonparticipating members and members and nonmembers?

Mr. PHILLIPS. Well, sir, this paragraph refers to what you might call, I suppose, most-favored-nation treatment between members and all participants, whether or not they are members. We spoke previously about inviting nonmembers to participate. They would then have to give the same treatment to any member of the Organization, whether or not that member happened to be party to the agreement.

The CHAIRMAN. Well, now, the nonparticipating members would be members who had an interest in the subject matter, would they not?

Mr. PHILLIPS. Well, sir, they would be members of the ITO, but not signatories to the particular agreement. This is an admonition to all signatories, whether they are members of the Organization or nonmembers of the Organization, to give equitable treatment to all members of the ITO.

The CHAIRMAN. I see. But how about the nonparticipating nonmembers? Must you give equitable treatment as between them?

Mr. PHILLIPS. No, sir; they will have to write their own charter.

The CHAIRMAN (reading):

(d) Participating countries shall, in matters the subject of such arrangements, afford non-participating members treatment no less favorable than that accorded to any non-member which does not participate in the arrangement.

It seems to me that there you are getting tough with your own members.

Mr. PHILLIPS. No, sir, I don't think so. What we are trying to do here is to prevent signatories that do not belong to the ITO from giving more favorable treatment to nonmembers of the Organization than they give to members of the Organization. That, sir, is a companion to (c), above, which relates to members and participants; and this is the relation between members and nonmembers, both of whom are nonparticipants.

We get very involved in these "nons" and "members" here.

It is to prevent this sort of a situation: You might have an agreement including nonmembers of the ITO. One such nonmember might make a side deal with some other nonmember of the ITO, which would be more favorable than that given to any member of the ITO. We do not want that. We do not want them to have special pricing arrangements, and so forth, outside of the agreement.

The CHAIRMAN (reading):

(e) Such arrangements shall include provision for adequate participation of countries substantially interested in the importation or consumption of the

commodity as well as those substantially interested in its exportation or production.

Later on, I think there is a formula that gives them equal voting weight; is that right?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. That is to say, gives the consuming countries, as an aggregate, equal voting weight with the producing countries as an aggregate; is that correct?

Mr. PHILLIPS. Yes, sir. This section (c), however, you will notice, relates to all intergovernmental commodity arrangements. That equal voting relates only to regulatory arrangements, because it is felt that there you need the real protection for consumers.

In this particular case, you must include provision for participation by consumers, but they may or may not come in. It is possible that you could have some minor arrangement of some kind that producers would all use the same type or size containers, that consumers simply would not be interested in. And if you required an equal voice, you might militate against such an arrangement, simply because consumers had no interest and were not signatories.

This leaves the door open for anybody who would like to come in on any arrangement, so long as they are members.

The CHAIRMAN [reading]:

(f) Such arrangements shall provide, where practicable, for measures designed to expand world consumption of the commodity.

How?

Mr. PHILLIPS. Well, sir, the purpose there, I think, is good. Any intergovernmental arrangement dealing with a commodity should, in the first instance, not turn immediately to regulation or restriction, but if possible to expansion of consumption, to alleviate the surplus situations.

The CHAIRMAN. Please give me a type of action which might be taken by such an arrangement for the expansion of world consumption of wheat or of cotton, or of oil.

Mr. PHILLIPS. It might be such things as the elimination of some barrier to trade of some kind, a preference or quota, or tariff that some country would have.

The CHAIRMAN. Could it be an advertising campaign to eat more wheat, or use more oil, or wear more cotton clothes?

Mr. PHILLIPS. That has happened under previous commodity agreement. Under rubber agreement the committee maintained, in the United States, a representative who did just that. He advertised "Use more rubber." "Buy more tires."

The CHAIRMAN. I think we have trade associations in this country which levy a certain percentage on the product for the purpose of carrying on campaigns to increase consumption.

Mr. PHILLIPS. That is correct.

The CHAIRMAN. And that might be, under this subparagraph?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN [reading]:

(g) Full publicity shall be given to any intergovernmental commodity arrangement proposed or concluded, to the statements of considerations and objectives advanced by the proposing Members, to the nature and development of measures adopted to correct the underlying situation which gave rise to the arrangement and, periodically, to the operation of the arrangement.

Well, does that simply mean you are going to give full publicity to the whole deal?

Mr. PHILLIPS. Yes, sir; it is to be a goldfish bowl operation.

The CHAIRMAN. Not a gold-brick operation?

Mr. PHILLIPS. I hope not.

The CHAIRMAN [reading]:

SECTION B. INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS INVOLVING THE REGULATION OF PRODUCTION, TRADE AND PRICES

ARTICLE 52. CIRCUMSTANCES GOVERNING THE USE OF REGULATORY AGREEMENTS

Members agree that regulatory agreements may be employed only when it is determined that:—

Now, what is the distinction between a regulatory agreement and an intergovernmental commodity arrangement?

Mr. PHILLIPS. A regulatory agreement is any agreement which restricts or regulates production, trade, prices, and, I think, in the definition in Article 60, imports and exports.

Let me read this to you: Article 60, paragraph 3 [reading]:

A regulatory agreement is an intergovernmental commodity arrangement involving regulation of the production, export or import of a commodity or regulation of prices.

The CHAIRMAN. Whereas an intergovernmental agreement is what?

Mr. PHILLIPS. The distinction there, sir, is between arrangements and agreements; arrangements that do not regulate production, trade, or prices in any way.

A study group would be an intergovernmental arrangement. It is an arrangement whereby governments get together and consult. But when it comes down to the point of actually fixing prices, or fixing quotas, or in any other way regulating the trade or production relating to that commodity, then these circumstances must apply. These circumstances, you will find, and probably have found, are fairly rigid.

The CHAIRMAN. Anyhow, you might have an intergovernmental agreement that did not fall under article 52.

Mr. PHILLIPS. Yes, sir. That would be called an arrangement, in the wider sense of the word.

The CHAIRMAN (reading):

Members agree that regulatory agreements may be employed only when it is determined that—

(a) a burdensome surplus of a primary commodity has developed or is expected to develop, which would cause serious hardship to producers, among whom are small producers who account for a substantial portion of the total output, and these conditions cannot be corrected by normal market forces alone, in time to prevent such hardship, because characteristically, in the case of the primary commodity concerned, a substantial reduction in price does not readily lead to a significant increase in consumption nor to a significant decrease in production—

Going just that far: if a serious hardship were caused to producers, most of which would not be small producers, but would account for a substantial proportion of the total output, an agreement would not be possible?

Mr. PHILLIPS. No sir; it would not. What this undertakes to do is to enumerate what in economic terms would be called inelasticity of supply and demand. If you had a small number of large producers, let us say, usually they are able to take care of themselves fairly

readily. They are susceptible to price changes. They curtail their activities. They may shut down their plants.

The people that I think need the protection are such people as small producers in cotton, wheat, other primary commodities, where the small producer himself is not aware of what his fellow producers' plans are. He does not know what they are doing; all he knows is that he must continue to produce this particular commodity. He is tied there to the land, or whatever it happens to be, by habit, home ties, lack of capital, and various other factors. It is that type of a situation that we feel warrants the use of regulation of international trade.

The CHAIRMAN. Yes, but let us see what the alternative is. If you have a lot of small producers mixed up with some large producers, and if it happens that the large producers provide the most of the total output, you are then taking the umbrella away from over the heads of the little fellows.

Mr. PHILLIPS. Well, to some extent you are.

The CHAIRMAN. Is their distress any less because they happen to be mixed up with some big fellows who are producing most of the product?

Mr. PHILLIPS. No, sir. It would hinge upon the determination of what a substantial portion is, and who small producers are.

The CHAIRMAN. What is a substantial portion of the total output?

Mr. PHILLIPS. That determination would have to be left, I imagine, pretty much up to the Organization, the commission that would deal with this particular thing; or any member country that had the producers involved within it would have to make a case any say, "This case is one that is suitable for a commodity agreement. It is not merely to protect some large producers that happen to be in temporary difficulties."

The CHAIRMAN. It might protect them, but that would not relieve the little fellow's need for protection. Our various farm benefits are of enormous assistance to the big and profitable producers, but in theory, at least, we maintain those benefits because they reach to the smaller producers.

Mr. PHILLIPS. Well, sir, do we have them there where there are very few small producers?

The CHAIRMAN. No; there may be many small producers, but they may not produce the most of the crop.

Mr. PHILLIPS. Well, I personally would not interpret "substantial"——

The CHAIRMAN. I think you will find in a half dozen crops, I could mention, that the bulk of the crop is produced by a relatively small number of producers; but all of them benefit from those benefits.

It all comes down to what is a substantial portion. And where we are trying to measure the social as well as the economic benefits of this thing, is it not a fair inquiry to find out whether or not the small producers will be protected?

Mr. PHILLIPS. Well, sir, let me read first:

A burdensome surplus of a primary commodity has developed, or is expected to develop.

That is the real criterion. Everything that follows that is intended to be a definition of what a "burdensome surplus" is. In most cases you do have many small producers. Those are the cases where market

forces cannot prevent serious hardship because of the fact that you do have small producers.

Now, if you have a few large producers, and a peripheral area of some small producers, the market mechanism will, in most cases be able to take care of it, because those large producers, in taking care of themselves, will curtail their activities, or their output and the benefits of that curtailment will accrue to the small producers who are on the periphery.

The CHAIRMAN. That might happen, or it might not. We are talking about a rule of law here. You are talking about what might happen, in brackets.

I suggest again that it comes down to: What is the meaning of the term "substantial portion?"

Mr. PHILLIPS. That is certainly part of it. - But the rest of the definition is also part of it; which is that the conditions can't be corrected by normal market forces alone.

The CHAIRMAN. I agree to all of that.

Mr. PHILLIPS. It would be a matter of judgment, really.

The CHAIRMAN. In each case?

Mr. PHILLIPS. In each case; yes, sir.

The CHAIRMAN. With no way of knowing in advance, and with no possibility of knowing, whether the particular agreement that you are trying to make will be validated. Because you do not know what the judges will decide as to what is a substantial portion of the total output.

Mr. PHILLIPS. Well, sir, you would have to negotiate the agreement, and presumably you would have a number of countries that felt that the particular commodity did have these difficulties and was the proper subject of an agreement. The Organization, which would include those members, would have to upset their judgment.

The CHAIRMAN. In other words, you are offering an invitation to an argument.

Mr. PHILLIPS. Well, we have, I might say, struggled over these two, A and B, here. We did not want the way left wide open for any agreement in any commodity, whether fabricated or primary or what not. We could have attempted to define "primary" and "secondary," or "nonprimary."

The CHAIRMAN. Let us suppose that you had 5,000 little fellows producing on the margin, not producing very much of the whole product, but making a living out of it, or trying to; and you had a couple of hundred big fellows who were producing most of the product. Would the small fellow have a chance under this, or would he not?

Mr. PHILLIPS. Probably not; no, sir. His government would have to make a determination whether or not they thought the commodity agreement would help him sufficiently to warrant proposing negotiation of one.

The CHAIRMAN. Well, I do not see anything to that effect in the language. The agreement, I suggest, is supposed to conform to what is set out here in (a).

Mr. PHILLIPS. (a), (b), or (c).

The CHAIRMAN. Or (b) or (c), yes. Now, I doubt very much whether you are warranted in shifting that to one of the governments determining whether or not the small producer is going to be covered.

The only way the small producer can be covered under the language is for him to account for a substantial portion of the total output, and I think we are agreed that if he does not account for a substantial portion of the output, he cannot be protected by that kind of an agreement.

We come back again to a definition of what is a substantial portion of the total output.

Mr. PHILLIPS. Yes, sir. And I must come back again to the fact that this is intended to spell out what a burdensome surplus is. Because, in actuality you never get a burdensome surplus unless governments intervene.

For example, we have had, at times, a burdensome surplus of cotton; simply because the Government has seen hardship to many small producers because of the low price, and they have taken it upon themselves to intervene and pay parity, or whatever the determination happens to be. They in turn accumulate these stocks, which consumers were not willing to buy at that price, and which could not be sold in international trade.

The CHAIRMAN. Well, you do not mean that there was never a case?

Mr. PHILLIPS. I just cannot think of a case where you actually get a physical surplus of a commodity, unless—

The CHAIRMAN. Were we not the world's greatest exporters of cotton, relatively much larger than we are now, before we ever had any of these Government subsidies?

Mr. PHILLIPS. Yes, sir; I believe we were.

The CHAIRMAN. Did we not have burdensome surpluses of cotton at that time? Have we not had burdensome surpluses of wheat prior to the time that the Government started putting floors under wheat?

Mr. PHILLIPS. Well, that I am not qualified to answer, Senator.

The CHAIRMAN. Would you say that Government intervention has at times caused surpluses of rubber in the world market, or surpluses of coffee?

Mr. PHILLIPS. The physical surplus itself in coffee, and to some extent in rubber, has been due to the fact that there has been some governmental intervention.

The CHAIRMAN. I would not for a moment say that government policy could not produce that result. I am simply challenging your statement that it always produces that result; and that that result cannot happen without government intervention. That was your original jumping-off point. [Reading:]

(b) widespread unemployment or underemployment in connection with a primary commodity, arising out of difficulties of the kind referred to in article 46, has developed or is expected to develop, which would not be corrected by normal market forces alone in time to prevent widespread and undue hardship to workers, because characteristically, in the case of the industry concerned, a substantial reduction in price does not readily lead to a significant increase in consumption but to the reduction of employment and because areas in which the commodity is produced in substantial quantity do not afford alternative employment opportunities for the workers involved—

Now, that word "and" which I just emphasized makes it necessary to comply with everything that is in that subclause (b), does it not? You have to have a determination of widespread unemployment or underemployment, which has the effects described, and that must occur in an area in which the commodity is produced in substantial

quantity, and which area does not afford alternative employment opportunities for the workers involved?

Mr. PHILLIPS. Yes, sir; that is right.

The CHAIRMAN. If it does afford alternative employment opportunities, then you could not have that kind of an agreement.

Mr. PHILLIPS. That is correct, Senator.

The CHAIRMAN. What would be the mechanism for getting the worker for whom this subparagraph seems to have solicitude into those alternative employment opportunities? Does he do that on his own initiative? Must there be a government movement of some kind to take him out of one job and put him into another? How will you work that out?

Mr. PHILLIPS. First, let me say that this section is designed to cover the case of mineral production, where there is no alternative employment; and the (a) above was designed principally for agricultural products.

The CHAIRMAN. Well, we might apply that to agricultural products.

Mr. PHILLIPS. It might be applied in that way, but principally it is designed—let me put it this way: Either case could fall under one or the other, but in general you would expect agricultural products to fall under (a), and minerals under (b). Because here in the (b) case you have precisely the kind of thing we were talking about a few minutes ago. You might have, let us say, Bolivian tin production, whereby they would close down, curtail their operations to a half-time basis—which is what “underemployment” means—or throw the employees out of work.

Now, in that case you must have also a lack of alternative opportunities, because if that happens in a fabricated product, or in places where there are plenty of alternatives, the workers just normally go to work some place else.

The CHAIRMAN. Let us take the case of mineral products. Let us assume that you have widespread unemployment; or underemployment, in the case of these mineral products. Now, if the miners can go to work on the neighboring ranches, or if they can go to work doing forestry, or if there are other employment opportunities available for them, this would not work.

Mr. PHILLIPS. That is right, Senator.

The CHAIRMAN. This recognizes the principle that a working man must be prepared to keep his type of work diversified; that a man does not have the right to say, “I am a miner and I am going to spend my life mining.” This is a recognition of the principle that Government can order him into some other business or subject him to penalties which might result if this kind of an agreement were not made; is that right?

Mr. PHILLIPS. Well, sir, it is supposed to be a recognition that regulatory agreements are a serious interference with our normal way of doing business, and they are only warranted in the most outstanding cases.

The CHAIRMAN. Yes, but you authorize them as a beneficence under certain circumstances; and we are discussing the circumstances under which you do that. You say to a man who prefers to be a metal miner, for better or worse: “Well, it’s too bad, old boy. If you would cut loose and get out of the metal-mining business, and go over and mine coal, or go over and work in the forests, or go down to the port and do

some stevedore work, we would give you the benefits of this; but if you are not willing to do this, that is too bad."

Mr. PHILLIPS. Well, sir, you put it rather bluntly, but I think it is in general correct.

The CHAIRMAN. We had quite an experience with that during the war. Some fool in the Government conceived the theory that if you closed the precious-metal mines of this country, all of the miners would at once go to work in the copper mines. But they just did not go. They had the notion that they were precious-metal miners and not copper miners, and they did not get a handful of them. All they got out of it was the closing of the precious-metal mines, without getting help for the copper mines.

This is a continuation of the theory that proved itself such a disastrous failure during the war.

And what we are doing here may be a violation, I suggest, of fundamental human dignity.

Now, we are not thinking about kicking around a lawyer and saying, "Well, now, you go over here and become a grocery clerk." We are not saying that to a teacher or a professional man. But we are saying that to a miner. I suggest those men may feel they have a definite right to say, "My business is mining, and nobody has a right to push me into doing something else." I think you ought to give a little thought to that. [Reading:]

(c) the Organisation finds that, for a commodity other than a primary commodity, in addition to the circumstances set forth in either (a) or (b) above, exceptional circumstances justify such action. Agreements under this subparagraph shall be governed not only by the principles set forth in this Chapter but also by any other requirements which the Organisation may establish.

Now, that paragraph would bring in industrial products, would it not?

Mr. PHILLIPS. Yes, sir, that is the first reference.

The CHAIRMAN. Under "Exceptional circumstance." What might be those exceptional circumstances, and what might be the other requirements which the Organization might establish?

Mr. PHILLIPS. The circumstances might be a group of primary commodities, as I think I mentioned earlier, such as fats and oils, which might be treated as a group. Or a better case, I think, would be that of synthetic rubber, where the exceptional circumstance would be that total world rubber supplies, natural and synthetic, were in burdensome surplus.

The CHAIRMAN. Or might it be automobiles? And if not, why not?

Mr. PHILLIPS. Automobiles would have to either satisfy (a) or (b), which would be a burdensome surplus or widespread unemployment.

The CHAIRMAN. Well, would not these exceptional circumstances—

Mr. PHILLIPS. No, it must be in addition to (a) or (b).

The CHAIRMAN. What article is that?

Mr. PHILLIPS. That is article 62 (c).

The CHAIRMAN. Yes, that is right. So that if the circumstances in (a) or (b) prevailed, and if other exceptional circumstances prevailed, the Organisation could include—I just mentioned automobiles

as an example—it could include anything it wanted to, could it not, if that test were made?

Mr. PHILLIPS. That is right, sir.

The CHAIRMAN. What exactly did you have in mind other than oils and fats?

Mr. PHILLIPS. Those were the two cases that we specifically had in mind. What we were endeavoring to do was to make it difficult to enter into an agreement in nonprimary products. Since agreements are a serious interference with normal business, we do not think they are justified on a widespread basis. However, if you do have these inelasticities so that you cannot get normal marketing forces to correct the situation, actually any commodity should be entitled to such protection—even automobiles—if it were true that substantial reductions in price did not lead to increase in consumption or decrease in production.

The CHAIRMAN. Well, once accepting the soundness of the general theory of your governmental commodity agreements or regulations, I can think of no reason why you should not make it all the way across the board. But I am suggesting that perhaps you are taking on too much sail when you do.

Mr. PHILLIPS. I think it would be considerably too much sail. It might lead to the operation of almost all international trade on a government-to-government basis, which we certainly do not advocate.

The CHAIRMAN. And I am wondering whether you could not, under the circumstances mentioned there, include all of your international trade.

Mr. PHILLIPS. I think not, sir. The circumstances, as we have already discussed them, are rather complex and somewhat restrictive. A fabricated product which would meet those requirements? I have simply not been able to think of an example of one which meets them.

The CHAIRMAN. I wonder why you do not specify there exactly what you have in mind.

Mr. PHILLIPS. Well, the real reason is that we are not sure that we have thought of all of the possibilities. I cannot think of an example, and I have never seen anybody who could. The only justification in my opinion would be as to companion products, such as rubber, synthetic and natural, and the fats and oils. Those are the two cases that are specifically in mind in the definition of a commodity, and when an agreement for a primary commodity, as defined in this special sense, which includes substitutes, would be justified.

If I may go on, this was specifically designed to close the door—maybe not lock it, but certainly to close it—from a shift from private operations under chapter VI to the governmental route to achieve the same objective. We just did not feel that it was proper that cartel organizations or any other such groups should be able to turn, particularly in the cases of some of the smaller countries, where private groups often exercise considerable influence on the activities of their governments; and rather than have pressures from those members of the Organization, we felt that it was necessary to circumscribe these things rather stringently.

The CHAIRMAN. Shall we meet at 10:30 in the morning?

Mr. PHILLIPS. Fine, sir.

(Thereupon, at 5:40 p. m., an adjournment was taken until Tuesday, April 1, 1947, at 10:30 a. m.)

INTERNATIONAL TRADE ORGANIZATION

TUESDAY, APRIL 1, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in room 312 of the Senate Office Building, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senator Millikin (chairman).

The CHAIRMAN. The meeting will come to order.

I believe, Doctor, we are starting with article 53.

STATEMENT OF WILLIAM TAYLOR PHILLIPS, ACTING CHIEF, INTERNATIONAL RESOURCES DIVISION, DEPARTMENT OF STATE, WASHINGTON, D. C.—Resumed

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN (reading):

ADDITIONAL PRINCIPLES GOVERNING REGULATORY AGREEMENTS

Members undertake to adhere to the following principles governing regulatory agreements in addition to those stated in Article 51:

(a) Members agree not to enter into any new regulatory agreement unless it has been recommended by a conference called in accordance with Article 49. Nevertheless, Members substantially interested in the production and consumption of, or trade in, a particular commodity may proceed by direct negotiation to the conclusion of an agreement, provided that it conforms to the other provisions of this Chapter, if there has been unreasonable delay in the proceedings of the Study Group or of the Commodity Conference—

Doctor, who judges whether there has been unreasonable delay?

Mr. PHILLIPS. That would have to be done, I believe, Senator, by the negotiating parties.

In my opinion, the latter part of this paragraph (a) is a little bit illogical, because, in the first place, we are talking about principles and the principle is that members agree not to enter into an agreement unless it has gone through the procedure.

I believe that the latter part, starting with "nevertheless," and giving this more or less outside the organization procedure, would better fall under article 49, "Conferences."

The CHAIRMAN. From the standpoint of draftsmanship, it seemed to me that there was an indecent haste to carve out an exception.

Mr. PHILLIPS. I am inclined to agree with you, sir. It casts doubt upon the ability and intent of the negotiating parties, both in a study group and negotiating conferences.

The CHAIRMAN. Exactly.

Mr. PHILLIPS. And we have attempted to have that either stricken or moved.

However, a few governments feel that there might be intentional delay. I think that they look back on the long, protracted negotiations on wheat and feel that it might take 12 years to negotiate an agreement, particularly with consumers and producers all together. There might be a substantial number of countries involved, and they feel that it is necessary to have this exit.

However, under this proviso, such negotiations must conform to the other provisions of the chapter. The only provisions that it is an exception from are those relating to study groups and commodity conferences. This would mean there would be precisely the same countries involved in the outside negotiations and, in my opinion, I can see no reason why it would accomplish the result more expeditiously through that procedure than through the regular procedure.

The CHAIRMAN. It seems to me that it is a sort of first cousin to a feature of the charter that we were discussing yesterday.

When you set up an organization requiring a definite procedure intended to maintain the authority and the efficiency of the Organization, and then you carve out an exception whereby members of the Organization may start dealing outside of it you are doing something which, from an organizational standpoint, is usually considered very dubious.

Mr. PHILLIPS. Very dubious, and in this case it casts direct doubt on the ability of the Organization.

The CHAIRMAN. It casts doubt on the ability of the Organization, and from the standpoint of organization efficiency, the first thing you know you have got all sorts of little side planets revolving in their own orbits, and ultimately acting independent of the Organization, and then the Organization is confronted with the problem of undoing those permissions in order to reassert its own authority, which is a very difficult thing to do.

Mr. PHILLIPS. I believe, sir, that we will attempt to get this particular one changed in the negotiations.

The CHAIRMAN (reading):

(b) Such agreements shall be designed to assure the availability of supplies adequate at all times for world demand at reasonable [and stable] prices [remunerative to efficient producers]—

You are aware of the parity price system which we maintain on a number of our agricultural products?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Would that automatically be considered a reasonable price, at stable price, and a price remunerative to efficient producers?

Mr. PHILLIPS. I doubt, sir, if you could say that it would be automatic. The way these words in brackets, "and stable, [prices] remunerative to efficient producers" came about, follows from article 47 (c).

If you remember, we discussed that yesterday, where there is reference to the long-term equilibrium price, and there had been an addition similar to this one.

The CHAIRMAN. Yes.

Mr. PHILLIPS. This part in brackets, which is not agreed to, and is still subject to considerable negotiation, stems from that feeling that

there would be or should be some attempt to spell out what price is in mind.

The real purpose of the principle is that no regulatory agreement should overrestrict production so that supplies would not be forthcoming to satisfy world demand.

It could be just as well said, if we stopped with the words "world demand." That is what we are really driving at.

The CHAIRMAN. Well, stopping where you suggest, you have taken on a pretty good-sized order, have you not?

The agreements result from instabilities which may provide supplies more than adequate for world demand or less than adequate for world demand; is that not right? That is why you have the agreement.

Mr. PHILLIPS. Well, sir, the reason, in the first instance, is that you have more than necessary to supply world demand.

The CHAIRMAN. Yes. What else?

Mr. PHILLIPS. In regulatory agreements, there must be a burdensome surplus or the other criterion must be satisfied. So that you start off with a surplus situation, and then during the course of the agreement, if there were an attempt to overregulate or overrestrict or overcramp down on production, this would presumably follow. It is intended to be a safety valve to prevent overrestriction. The agreement must see to it that that does not happen.

The CHAIRMAN. As to the words in brackets, are they or are they not State Department policy?

Mr. PHILLIPS. No, sir.

The CHAIRMAN. They are not State Department policy?

Mr. PHILLIPS. Those words are inserted in brackets, which means that they are neither agreed nor disagreed to. They are suggested.

The CHAIRMAN. What will be the State Department's policy on that?

Mr. PHILLIPS. In our original statement of the draft charter, sir, we stopped with the words "for world demand at reasonable prices."

The CHAIRMAN. The bracketed portion "[remunerative to efficient producers]," what is the State Department's attitude toward those words?

Mr. PHILLIPS. Well, sir, it is hard to argue against them.

I do not particularly like to see them in a charter of this kind because it implies an attempt on the part of the negotiating governments immediately to put prices up to a certain spot, or at least there is an implication of considerable rise in prices. Agreements should be aimed at eventually reaching prices which are remunerative to efficient producers.

The CHAIRMAN. Well, a price remunerative to an efficient producer is the lowest price among the producers, is it not?

Mr. PHILLIPS. No, sir, I believe not. It seems to me that would not be the case.

Starting from the lowest cost, most efficient world producer, you go up through the range to the highest cost, and you might go one-half or two-thirds up to the range to reach the marginal efficiency point.

The CHAIRMAN. An efficient producer produces at less cost than a less efficient producer, does he not?

Mr. PHILLIPS. This is relative. You are right.

The CHAIRMAN. So that a price level becomes relative and is remunerative to an efficient producer quicker than it is to an inefficient producer, is that not correct?

Mr. PHILLIPS. That is correct, of course.

The CHAIRMAN. Coming back to our own parity price system on agricultural products, I suggest that the first purpose of that is to stabilize farm prices in the commodities which the system covers.

Mr. PHILLIPS. Yes, sir; that is correct.

The CHAIRMAN. And I suggest that in practice, as to those commodities, it has been reasonably successful in stabilizing them.

Of course, there are complaints that the prices are too low as the result of the system, or they are too high as the result of the system, depending on how you look at it, but it does put a peg in there which does have a tendency to stabilize.

Mr. PHILLIPS. Yes, sir; but do you not find, sir, that no matter what price is set under the parity formula, there are always producers who simply cannot cover the cost of production at that price?

The CHAIRMAN. Yes.

Mr. PHILLIPS. So that the marginal producer, at the parity price, just covers his cost, and some people below him may more than cover cost.

The CHAIRMAN. The marginal producer often complains of the present formula for parity, basing his complaint on what you have said.

In other words, the parity formula bases itself on a previous period of time when farm prices were theoretically in a proper relationship with industrial and other prices, and that is a theoretical conception in the first place.

In the second place, it does not do complete equity all the way across the board to all producers.

Mr. PHILLIPS. That is correct.

The CHAIRMAN. But it is a system which does have some stabilizing effect, I suggest, and what I am trying to get at is, what would be the effect of that clause on our parity system?

Mr. PHILLIPS. I believe that it would not cause any major difficulties. The agreement itself, following this principle, would merely state that certain quantities would be available to consuming countries in international trade.

That might mean that in the case of, let us say, the United States, with a parity price above the world price, we would negotiate an agreement which the Congress would then either approve or disapprove.

In approving it, it might be approving a price for world supplies of that commodity, something below our domestic support price. This would involve an export subsidy, but it would not necessarily interrupt our own parity system.

The CHAIRMAN. Now, I invite your attention again to a matter which developed yesterday that under (b), you are excluding the protection of such agreements to those producers who would not be rated as "efficient," and that they are the producers who often suffer most in a period of dislocation. [Reading:]

(c) under such agreements participating countries which are largely dependent for consumption on imports of the commodity involved shall, in determinations made relating to substantive matters, have together a voice equal to that of

those countries largely interested in obtaining export markets for the commodity, provided that any country which is largely interested in the commodity but which does not fall precisely under either of the above categories, shall, according to its interests in the circumstances, have an appropriate voice within one of the other category without altering the equality between the two;

Now, first, the intent. Let us make a case out of it. Brazil has a burdensome surplus of coffee. What are the other great coffee-producing countries?

Mr. PHILLIPS. Well, there are 16. Colombia is one of them. Most of them are in Latin America. Guatemala and so on.

The CHAIRMAN. All right. Let us assume, to simplify this, let us assume that Brazil, which is the principal coffee producing country, has developed a burdensome surplus which would be burdensome from a world standpoint, which she has done on occasion, is that not correct?

Mr. PHILLIPS. That is correct, yes, sir.

The CHAIRMAN. To simplify the problem, let us assume that the other coffee-producing States have not measurably added to that burdensome surplus.

Now, am I correct in this: That Brazil would sit around the table with the coffee-consuming countries, and when it came to working out the procedures and agreements to remedy the situation, Brazil would have half of the voting power and all of the other consuming countries would have half of the voting power; is that correct?

Mr. PHILLIPS. Well, sir, in the case you postulate, it would be correct. However, I do not think it would be possible for Brazil to ask for an agreement in those circumstances, because one country among a number of producers of coffee could not claim a surplus unless there was a surplus in world trade.

The CHAIRMAN. Well, could not Brazil, by herself, produce a surplus in world trade?

Mr. PHILLIPS. Well, that surplus would reflect itself in difficulties for the other producing countries also.

The CHAIRMAN. So that even though the other producing countries were not in a state of surplus, yet a great surplus in Brazil might reflect to them the same problems which Brazil, itself, would have?

Mr. PHILLIPS. It could very well do that.

The CHAIRMAN. In that kind of a case, I assume that all of the coffee-producing States would sit there with one vote and all of the consuming States with the other vote?

Mr. PHILLIPS. Yes, sir.

The difficulty really lies in the fact that you cannot separate the sheep from the goats very expeditiously.

The CHAIRMAN. Yes.

Mr. PHILLIPS. You may find countries that produce a lot of a particular commodity, and consume a lot of that commodity, yet export and import very little. You may have some countries that are large importers and large consumers. You may also have some that are large producers.

We are merely trying to set up the principle that in negotiations, during which you will negotiate voting power, countries follow this principle.

The CHAIRMAN. And it is a further emphasis on the principle which we discussed yesterday that the consumer has an equal interest with the producer in quantity and in price?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. I think the latter part of that subclause is a little bit fuzzy. It says [reading]:

provided that any country which is largely interested in the commodity but which does not fall precisely under either of the above categories—

I take it that that means not predominantly producing or not predominantly consuming?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Perhaps some producing and some consuming; is that it?

Mr. PHILLIPS. Yes, sir; that is it.

The CHAIRMAN (reading):

shall, according to its interests in the circumstances, have an appropriate voice within one or the other category without altering the equality between the two.

Does that mean it is to be given some kind of a weighted standing?

Mr. PHILLIPS. Yes, sir; it would be given some vote, but whatever vote it got during the course of the negotiation would mean that the other countries that were obvious consumers or producers would have that much less of a vote.

The CHAIRMAN. Who raised that point?

Mr. PHILLIPS. Which country, sir?

The CHAIRMAN. Yes.

Mr. PHILLIPS. France.

The CHAIRMAN. France raised it?

Mr. PHILLIPS. Yes, sir. They had in mind a situation where they were a large producer and a large consumer but not a large voice in world trade, and they felt that the activities taken under an agreement might seriously affect them. For example, if the world price was below the French price, they might become a large importer, and if the world price was above the French price there might be a large outflow of the commodity from their country.

The CHAIRMAN. Is French Guinea a coffee-producing country?

Mr. PHILLIPS. Very small.

The CHAIRMAN. Are the Mediterranean countries coffee producing?

Mr. PHILLIPS. To some extent.

The CHAIRMAN. Where does France get her coffee?

Mr. PHILLIPS. I do not know, sir. I could find out. They import a good share of it, I believe, from either Central or South American countries.

The CHAIRMAN. In that kind of a case, somebody would sit around and say, "This country has a 70-percent consuming interest, and a 80-percent producing interest," and that would be weighted in the vote, would it not?

Mr. PHILLIPS. Yes, during the negotiations, they would have to arrive at some system of voting that they thought would be right for that particular commodity.

The CHAIRMAN. Who would decide the question involved?

Mr. PHILLIPS. The negotiators.

The CHAIRMAN. The negotiators, themselves?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. No review authority in the organization, or executive board or commission or conference?

Mr. PHILLIPS. No specific review. The Organization would have representatives there, because they would call the conference, and they would make their voice heard as to whether or not they thought that the way the negotiations were going conformed to this principle.

I think it would be fairly safe to say that the consuming countries would use this particular provision to pretty good advantage in their negotiations, and they would be able to look out for themselves.

The CHAIRMAN. Let me ask you again. Let us apply the question that I suggested to coffee.

After this charter becomes effective, will intergovernmental arrangements and regulations provide the only lawful method whereby coffee surpluses can be handled?

Mr. PHILLIPS. Internationally?

The CHAIRMAN. Yes.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. In other words, private coffee producers from that moment on will not be able to look toward the same end with coffee distributors?

Mr. PHILLIPS. Not if chapter VI is effective, sir.

The CHAIRMAN. That is what I mean. All right. [Reading:]

(d) Such agreements shall, with due regard to the need during a period of change for preventing serious economic and social dislocation and to the position of producing areas which may be suffering from abnormal and temporary disabilities, make appropriate provision to afford increasing opportunities for satisfying world requirements from sources from which such requirements can be supplied in the most effective and economic manner—

I wish you would go into that rather fully. It has some very interesting implications to me.

Mr. PHILLIPS. The purpose there, sir, is to prevent the type of intergovernmental commodity agreement that we have had historically on various occasions under which production was frozen into the existing pattern. There was no opportunity for new producers to come into the system. There were prohibitions, for example, in the rubber agreement against the exportation or sale of leaves, bark, and so on, so that nobody could get a hold of seeds or roots and start in the business themselves.

What we are trying to do here is to make it possible for new producers to come into production if they are able to survive under the agreement.

If the agreement is successful in expanding consumption, that would mean the efficient sources would get a larger share of that new demand, which has opened up, so that ultimately the consumer would get the supplies, and I do not like to use the phrase "at the lowest cost," but at certainly a "reasonable" cost.

The CHAIRMAN. Well, the language is: "in the most effective and economic manner."

Mr. PHILLIPS. It has certainly an implication of cost involved—although it does not necessarily require that under any agreement, on any particular commodity, that cost would be the only criterion.

The CHAIRMAN. Now, the sources referred to, are they producing sources in being, or might they include sources which could be brought into being?

Mr. PHILLIPS. They would include both, sir. That is precisely the intent. That is to make it possible for new sources, if they are effec-

tive and economic, to use the terms of this particular paragraph, to come in the world picture.

In other words, we do not want to freeze production into some historical pattern of production and just say, "Well, now, we have this to start with. We will protect this. We are going to keep it this way and we are not going to change it." We want to be able to change it, and we want the agreement to stimulate changes.

The CHAIRMAN. Supposing you had a burdensome surplus of oil. The members which are now producing oil would get around the table with the oil consumers, would they not?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. For working out this type of agreement.

There are a number of areas in the world which we know are capable of producing oil, but which are not producing oil.

Just exactly what would that kind of agreement have in it to bring that oil into production?

Mr. PHILLIPS. Well, it would be permissive rather than aggressive. It might provide for periodic review of quotas, and if a new area demonstrated that they were an effective source, there might be a larger quota assigned to them, and some diminution in the quota of some other area.

The CHAIRMAN. Would the agreement have in it affirmative provisions for bringing in the oil from reserves of that type?

Mr. PHILLIPS. Well, it is a little hard to say what any agreement would have in it, sir, because it is, as I say, a matter of negotiation.

The CHAIRMAN. Could it have that in it?

Mr. PHILLIPS. It could have that in it.

The CHAIRMAN. And who would determine whether an agreement of that kind, as you say, is permissible?

Would whether or not we enter an agreement of that kind depend upon the members, or would it depend upon a review by the Organization?

Mr. PHILLIPS. It would depend upon the negotiating members. This whole chapter, if subscribed to by the member countries, that is to say, if the ITO came into being, the member governments would be saying, "Yes, we will live up to these particular provisions," in their negotiations. It would be a matter of good faith that they would attempt to carry out the principles to which they have already subscribed.

The CHAIRMAN. Well, the requirement is that the agreement shall [reading]:

make appropriate provision to afford increasing opportunities for satisfying world requirements from sources from which such requirements can be supplied in the most effective and economic manner.

You have said that that could be taken care of by providing for a periodical revision of allocation; is that right?

Mr. PHILLIPS. That could be one way, yes, sir.

The CHAIRMAN. You have said that the agreement itself could contain provisions for opening up new areas of production; is that right?

Mr. PHILLIPS. It could be in an agreement; yes, sir.

The CHAIRMAN. What other ways could it be done?

Mr. PHILLIPS. Well, let us see.

If you used the price mechanism, it might be possible to have a gradual declining world price level, which would make it possible for inefficient producers to continue in production for a period of time.

The CHAIRMAN. You can see that the progressive effect of this, and I am not arguing the faults or the virtues of it, if it is honestly agreed to and honestly enforced, is to bring in a new set of more efficient producers who will come within the remunerative provisions and to exclude continually a group of producers who do not find remuneration in the agreement.

Mr. PHILLIPS. That is correct, sir.

The CHAIRMAN. Is that right?

Mr. PHILLIPS. That is correct.

We feel, particularly from the United States point of view, that since we have a competitive free enterprise type of economy we certainly do not want to have agreements that thwart and throttle competition and prevent the entrance of newcomers into the field, and that type of thing.

The CHAIRMAN. I am not arguing one way or the other.

Mr. PHILLIPS. I realize that, sir.

The CHAIRMAN. But I think we should consider the effect.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. The effect would be if you opened up tremendously cheap oil in the Mediterranean region, Central American region, for example, or any place in the world, it might exclude from such agreements our own internal oil production.

Mr. PHILLIPS. We would have to make that determination, sir. In the negotiation we would either say, "This agreement, from our point of view, is not one to which we wish to subscribe," or "It is."

The CHAIRMAN. The economic facts.

Mr. PHILLIPS. That is correct.

The CHAIRMAN. Might take the umbrella from over us?

Mr. PHILLIPS. That is right, sir.

The CHAIRMAN. And that would go as to cotton or wheat or sugar?

Mr. PHILLIPS. Any commodity.

The CHAIRMAN. Paragraph (e) [reading]:

Participating countries shall formulate and adopt a programme of economic adjustment believed to be adequate to ensure substantial progress toward solution of the problem within the time limits of the agreement.

Now, what would be done under that? Give us some illustrations.

Mr. PHILLIPS. First, may I comment on that particular section?

I believe this is a little bit unhappily worded, because several people have said, "It looks to us like it is a world planning authority." That is by no means the intent.

The intent is that individual governments within the framework of an agreement, would take their own actions in accordance with their own economic system, their own system of laws, to try to stimulate shifting production, shifting the most inefficient into alternative lines.

The CHAIRMAN. It is very ambiguous, I suggest.

Mr. PHILLIPS. It is, I agree, sir, and I believe that we will undertake to get that reworded.

The CHAIRMAN. And what will be its philosophy under the rewording?

Mr. PHILLIPS. Its philosophy will be that it is up to the individual member government to take action that that individual government believes will help solve the problem.

The CHAIRMAN. To wit, the problem of unmanageable surplus?

Mr. PHILLIPS. Yes, sir; which we are already undertaking in this country.

The CHAIRMAN. Were you here the other day when Dr. Wilcox and I were discussing some aspects of that subject?

Mr. PHILLIPS. No, sir; I was not.

The CHAIRMAN. Of course, you can handle unmanageable surplus by repression measures affecting production, can you not?

Mr. PHILLIPS. That is one way.

The CHAIRMAN. That is one way to do it.

You can handle what previously had been an unmanageable surplus possibly by new technologies, which operation would consume such surplus?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Agriculturalists are working hard at the present time to figure out all sorts of industrial uses for agricultural products. That is a field which illustrates what I am talking about now.

Suppose, however, that we went into a two-price system, and I remind you that Congress has twice passed two-price systems, which did not become effective because they were vetoed. The object of that would be to assure, let us say, a minimum price for that portion of domestic production needed for domestic supply and to put the rest on the world market for whatever could be gotten for it.

I believe you will agree that that would produce very large surpluses, and they might become unmanageable.

Under the spirit of these provisions, would we be barred from passing legislation of that kind?

Mr. PHILLIPS. I think, sir, under the spirit of this, that we would not necessarily be barred, but we would not be making an honest attempt to try to eliminate our share of the surplus.

The CHAIRMAN. Well, would that not run right in the face of what you are trying to do?

Mr. PHILLIPS. Yes.

The CHAIRMAN. From an international standpoint, to control surpluses?

Mr. PHILLIPS. It would; yes, sir.

The CHAIRMAN. It would.

If there is any effectiveness to the Charter, so far as surpluses are concerned, it is to control them through the domestic action of the various members; is that not correct?

Mr. PHILLIPS. Well, that is the only way it can be done.

The CHAIRMAN. And if the member sets up a system of domestic law or practice which produces or aids in producing unmanageable surpluses, that country is in violation, I suggest, of the letter and the spirit of the Charter?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. And it will either have to conform or it will come under whatever penalties may be available in the Charter; is that correct?

Mr. PHILLIPS. That is correct; although in this particular part of the Charter, the only penalty that is available is that the agreement would break up.

Each agreement would have its own withdrawal provisions, whatever they might be.

The CHAIRMAN. Yes.

Well, let me carry it one step further. If we had a system of laws in this country affecting agricultural products, let us say that had the tendency of producing unmanageable surpluses, we would not be permitted to enter into one of these intergovernmental arrangements; would we?

Mr. PHILLIPS. We would be unable to negotiate such an agreement, I believe.

The CHAIRMAN. All right. Other countries would have the privilege of negotiating such an agreement?

Mr. PHILLIPS. Yes, sir; they would.

The CHAIRMAN. And the effect of that would be to impose an embargo against our own surpluses for exports, would it not?

Mr. PHILLIPS. Very probably it would; yes, sir.

The CHAIRMAN (reading):

ARTICLE 54. ADMINISTRATION OF REGULATORY AGREEMENTS

1. Each regulatory agreement shall provide for the establishment of a governing body, herein referred to as a Commodity Council.

2. Each of the countries participating in an agreement shall be entitled to have one representative on the Commodity Council. These representatives alone shall have the right to vote. Their voting shall be determined in such a way as to conform with the provisions of subparagraph (c) of Article 53.

Mr. PHILLIPS. That is the equal-voice provision.

The CHAIRMAN. That is the equal-voice provision, right.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN (reading):

3. The Organization shall be entitled to appoint a nonvoting representative to each Commodity Council and may invite any competent intergovernmental organization to nominate a nonvoting representative for appointment to a Commodity Council.

4. Each Commodity Council shall have a nonvoting chairman who, if the Council so requests, shall be nominated by the Organization.

5. The Secretariat of each Commodity Council shall be appointed by the Council after consultation with the Organization.

6. Each Commodity Council shall adopt appropriate rules of procedure and regulations regarding its activities, provided that they are not found by the Organization to be inconsistent with the principles and provisions of this Charter.

The effect of that would be to give the Organization the last word?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. So far as rules of procedures and regulations of those councils would be concerned?

Mr. PHILLIPS. That is correct.

The CHAIRMAN (reading):

7. Each Commodity Council shall make periodic reports to the Organization on the operation of the agreement which it administers. In addition, it shall make such special reports as the Organization may specify or as the Council itself considers to be of value to the Organization.

8. The expenses of a Commodity Council shall be borne by the participating countries.

That means by the consuming as well as the producing countries, I take it?

Mr. PHILLIPS. That is correct; yes, sir.

The CHAIRMAN (reading):

ARTICLE 55. PROVISION FOR INITIAL TERMS, REVIEW AND RENEWAL OF REGULATORY AGREEMENTS

No regulatory agreement shall remain in force for more than five years, unless renewed, and no renewal shall be for a longer period than five years. Renewal and termination of such agreements shall be subject to the procedures established therein and renewed agreements shall conform to the principles of this Chapter. Regulatory agreements shall also include provision for withdrawal of any party—

Under what circumstances?

Mr. PHILLIPS. That would depend on the particular commodity and the agreement which was negotiated.

As far as I know, there has never been an agreement which did not have a withdrawal provision of some kind, and various of the other governments felt that it would be helpful to put in this section that such a provision should be in each agreement. It would depend entirely on the particular agreement.

In some cases, it might be that you could not withdraw until the end of a crop year, if it were an agricultural crop.

The CHAIRMAN. If I remember correctly, you opened your testimony yesterday by a statement to the effect that all of these agreements would come back to the Congress for approval.

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Do you adhere to that?

Mr. PHILLIPS. Yes, sir; I do.

The CHAIRMAN. You have found nothing to shake your faith?

Mr. PHILLIPS. No, sir.

The CHAIRMAN. All right. [Reading:]

Periodically, at intervals no greater than three years, the Organization shall prepare and publish a review of the operation of each agreement in the light of the principles set forth in this Chapter. Moreover a regulatory agreement shall provide that if its operation has failed substantially to conform to the principles laid down in this Chapter, participating countries shall revise the agreement to conform to the principles, or shall terminate it—

Does the Organization decide that? Who decides it?

Mr. PHILLIPS. The Organization, sir, reviews the agreements periodically to see that they are in conformity with the principles.

The CHAIRMAN. But where does it say that the Organization shall decide whether or not it is in conformity with the principles?

Mr. PHILLIPS. I do not believe it does, and perhaps it should.

The CHAIRMAN. Maybe you can find that later, but let us put a red lantern on that.

Mr. PHILLIPS. All right.

The CHAIRMAN (reading):

When an agreement is terminated, the Organization shall take charge of archives and statistical material of the Commodity Council.

I suppose that the agreement, itself, would have provisions in it as to what might be done with the residue of the articles which had been under control of the agreement?

Mr. PHILLIPS. I should think so, and any unexpended funds.

The **CHAIRMAN**. Oh, Doctor, there will not be any unexpended funds. You are an incorrigible optimist. [Continues reading:]

ARTICLE 86. SETTLEMENT OF DISPUTES

Any question or difference concerning the interpretation of the provisions of a regulatory agreement or arising out of its operation shall be discussed originally by the Commodity Council. In the absence of agreement, the question shall be referred to the Commodity Commission for examination and recommendation to the Executive Board. The Executive Board shall then issue a ruling in pursuance of the provisions of Article 86.

What is this "Commodity Commission" referred to?

Mr. PHILLIPS. The Commodity Commission is one of the three Commissions that are provided. One is on business practices, one is on commercial policy, and one is on commodities.

The **CHAIRMAN**. Let us read that again. [Reading:]

Any question or difference concerning the interpretation of the provisions of a regulatory agreement or arising out of its operation shall be discussed originally by the Commodity Council.

I wonder if this paragraph gives you any part of the answer to the question we left suspended as to the previous paragraph?

In the absence of agreement, the question shall be referred to the Commodity Commission for examination and recommendation to the Executive Board. The Executive Board shall then issue a ruling in pursuance of the provisions of Article 86.

Could that reference lead to the assumption of jurisdiction by the International Court of Justice?

Mr. PHILLIPS. For justiciable issues; yes, sir.

The **CHAIRMAN**. In that kind of an agreement, what would you say might provoke a justiciable issue?

Mr. PHILLIPS. Well, I know of no specific example. This is intended to be just a safeguard here to provide for settlement of disputes right up the line to the International Court, if necessary, although my guess would be that if you had a real dispute, that could not be settled in the Commodity Council, that very probably the agreement would break up.

The **CHAIRMAN**. I am inclined to think, also, it would break up.

But what would be the hang-over of litigation and trouble and who would decide that?

Mr. PHILLIPS. Well, that would go in the first instance to the Commodity Commission after the Commodity Council found itself unable to solve it, and the Executive Board.

Would you like to have me read article 86?

The **CHAIRMAN**. Please read the appropriate parts of article 86.

Mr. PHILLIPS. Article 86, section 2 reads [reading]:

Any question or differences concerning the interpretation of this Charter or arising out of its operation shall be referred to the Executive Board for a ruling thereon. The Executive Board may decide either to give a ruling on the matter itself, or to refer it, with the consent of the parties, to arbitration upon such terms as may be agreed by the parties. Any ruling of the Executive Board shall, upon the request of any Member directly affected or, if the ruling is of general application, upon the request of any Member, be referred to the Conference.

From there, article 86, paragraph 3, refers to the justiciable issues. I will read that, if I may.

Any justiciable issue arising out of a ruling of the Conference with respect to the interpretation of subparagraphs (c) (d), (e), or (k) of Article 87 or of paragraph 2 of Article 86.

The CHAIRMAN. We are dealing with article 57.

Mr. PHILLIPS. Yes, sir. I am afraid this does not apply. Wait a minute.

It would apply only, then, to questions going up to the Executive Board, and from there to the General Conference. I am sorry. I was wrong when I spoke of the justiciable issues. I see this part does not apply.

The CHAIRMAN (reading):

ARTICLE 57. OBLIGATIONS OF MEMBERS REGARDING EXISTING AND PROPOSED
COMMODITY ARRANGEMENTS

1. Members shall transmit to the Organization the full text of each intergovernmental commodity arrangement in which they are participating at the time of the coming into force of their obligations under this Charter.

What are the arrangements or the agreements of this character which are now outstanding between the nations?

Mr. PHILLIPS. There are very few, I believe. The sugar agreement and the coffee agreement in both of which the quota provisions are inoperable; also in the wheat agreement.

There are also several agreements to which we are not parties. The tea agreement for example.

Both the rubber and tin agreements have been disbanded although I believe there is still an arrangement on timber of some kind.

The CHAIRMAN. What was the sponsorship of those agreements? Did they follow through diplomatic channels, or were they sponsored by some world organization?

Mr. PHILLIPS. No; none by any world organization. They came about in two ways, really, with shades of gradations between them.

One, almost private arrangements which had some sort of stamp of Government approval, and the others which were strictly intergovernmental commodity agreements. I believe that almost unanimously these agreements included just producers and no consumers.

The CHAIRMAN. I did not understand your last statement.

Mr. PHILLIPS. In many cases, producer interests alone got together in an agreement which, in some cases, was intergovernmental. In other cases, they were pretty much under private auspices.

The CHAIRMAN. Would it be convenient to assemble a list of arrangements of that kind which are in force at the present time?

Mr. PHILLIPS. I have, sir, an article here from the Journal of Political Economy, by Joseph E. Davis, called Experience Under Intergovernmental Commodity Agreements From 1902 to 1945, which sets forth very succinctly the various agreements.

The CHAIRMAN. Is it a factual account?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Or is it in support of some philosophy?

Mr. PHILLIPS. Well, it is factual but it does point out draw-backs of some of the agreements and points out his opinion of the good points in other agreements.

The CHAIRMAN. Could you let me have that to determine whether it should be put in as an annex to our record?

Mr. PHILLIPS. Surely. (The article appears as exhibit XIII.)

There is a purely factual compilation that the International Labor Organization put out, I believe, in 1941 or 1942, which sets forth the texts of the various agreements.

The CHAIRMAN. 1941 or 1942?

Mr. PHILLIPS. Somewhere around there.

The CHAIRMAN. Does this Davis article bring the situation to date?

Mr. PHILLIPS. To 1945; yes sir. I believe that came out in about July of 1945.

The CHAIRMAN. And would this cover the same agreements that the other article covers; that is, that part of those agreements which are still in existence?

Mr. PHILLIPS. Yes, sir. This does not give the precise terms of the agreement. It summarizes the agreement.

The CHAIRMAN. But the other article to which you refer gives the text?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Continuing [reading]:

Members shall also transmit to the Organization appropriate information regarding the formulation, provisions, and operation of such arrangements. Members shall conform with the decisions made by the Organization regarding their continued participation in any such intergovernmental commodity arrangement which, after review by the Organization, shall have been found to be inconsistent with the intentions of this Chapter.

That is a rather large grant of authority to the Organization, is it not?

Mr. PHILLIPS. That means they would take all these agreements mentioned in that article and in the International Labor Organization compilation and would review them to see whether or not they conformed. If they did not, they would recommend either their change or termination to members, and members undertake to adhere to the findings of the Organization.

The CHAIRMAN. That is a binding agreement to conform, is it not?

Mr. PHILLIPS. Yes, it is. It would be a little difficult, sir, for governments to adhere to the intentions and the provisions and the principles of this chapter and then continue to adhere to an agreement which was in violation of those principles.

The CHAIRMAN. Yes; of course it would be.

I am wondering, as a legal matter, how you might set aside the existing nonconforming agreements.

Mr. PHILLIPS. I believe that without any exception they all provide for amendment or termination, so that there is a procedure.

The CHAIRMAN. In the last event, you could follow the termination procedure which you believe is in all those contracts?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Are any of them long term?

Mr. PHILLIPS. I believe that there is no termination procedure longer than 1 year. Most of the terminations are designed to get over a crop period or a production period. I know of none that is longer than a year.

The CHAIRMAN (reading):

2. Members shall transmit to the Organization appropriate information regarding any negotiations, looking to the conclusion of an intergovernmental commodity arrangement, in which they are participating at the time of the coming into force of their obligations under this Charter. Members shall also conform with decisions made by the Organization regarding their continued participation in any such negotiations. The Organization may dispense with the requirement of a Study Group or a Commodity Conference, if it finds them unnecessary in the light of the negotiations.

Well, that is merely a further implementation of what precedes, is it not?

Mr. PHILLIPS. Yes. The first one is existing agreements, and the second refers to those that are under negotiation when they come into force.

The CHAIRMAN (reading):

ARTICLE 58. GENERAL UNDERSTANDING BY MEMBERS

Members, including Members not parties to a particular commodity arrangement, shall give the most favorable possible consideration to any recommendation by a Commodity Council for expanding consumption of the commodity in question.

Just exactly what does that mean as a practical matter?

Mr. PHILLIPS. It is not a very binding undertaking by members.

The CHAIRMAN. It is entirely unmeasurable, is it not?

Mr. PHILLIPS. Yes; it is. It is designed merely to bring again forcefully to the attention of all members that in dealing with surpluses, the first emphasis should be of expanding consumption rather than of restricting production. No member would have to take any specific step. No member would have to be bound to increase their consumption if they thought the prices were wrong, or the other terms of sale were wrong.

But it is an admonition to members, as it says, to give the most favorable possible consideration to expanding consumption.

The CHAIRMAN. We would not have to go out and eat more "Wheatsie-Teatsies" for breakfast?

Mr. PHILLIPS. No, sir.

The CHAIRMAN. In other words, we could do as we please about that.

Mr. PHILLIPS. We can do as we please.

The CHAIRMAN. And therefore there is no sense in having it in there; is that right?

Mr. PHILLIPS. Need I comment on that one?

The CHAIRMAN. Let us have a 5-minute recess.

Mr. PHILLIPS. All right.

(Whereupon, a short recess was taken.)

The CHAIRMAN. The hearing will come to order. [Reading:]

ARTICLE 59. EXCEPTIONS TO PROVISIONS RELATING TO INTERGOVERNMENTAL COMMODITY ARRANGEMENTS

The provisions of Chapter VII shall not apply:

(a) to inter-governmental commodity arrangements which relate solely to the equitable distribution of commodities in short supply, or to those provisions of inter-governmental commodity arrangements which appropriately relate to the protection of public morals or the protection of human, animal or plant life or health; provided that such arrangements are not used to accomplish results inconsistent with the objectives of Chapter VI or Chapter VII. Members shall not participate in such arrangements if they involve the regulation of production, trade or prices, unless authorized or provided for by a multilateral convention subscribed to by a majority of the countries affected or unless operated under the Organization—

Would you mind giving us as much clarification of that as you can, Doctor?

Mr. PHILLIPS. The first exception which relates to the equitable distribution of commodities in short supply is made principally because the whole chapter is slanted toward just the obverse of the coin, in other words, a surplus situation.

The CHAIRMAN. Yes.

Mr. PHILLIPS. We did not feel that the provisions of this chapter and the principles, and so on, satisfied the case of short supply.

Although short supply distribution which, of course, is international allocation, has been necessary during the war we hope it will not be necessary in the future.

The CHAIRMAN. What may be done about that kind of situation?

Mr. PHILLIPS. We could still operate, if necessary, exactly the way we have been operating.

In other words, it does not have to fall under the Organization and you do not have to conform to these principles.

The CHAIRMAN. The governments could make agreements along that line?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Without coming under the jurisdiction of the Organization, is that correct?

Mr. PHILLIPS. With this proviso down here that it must be a multilateral convention subscribed to by a majority of the countries affected, which should be interpreted to mean producers and consumers.

The CHAIRMAN. A convention is usually regarded as synonymous with a treaty. Would that be a treaty which would come back to the Senate for advice and consent?

Mr. PHILLIPS. I am not sure how it would be operated, sir. It would come to the Congress, presumably.

The CHAIRMAN. If I am correct in the statement that a convention is usually regarded as a species of treaty, and is usually regarded as synonymous with treaty, it necessarily would have to come back to the Senate for advice and consent, would it not?

Mr. PHILLIPS. I believe so.

The CHAIRMAN. Would you mind asking your counsel to give the committee an opinion on the meaning of the word "convention"?

Mr. PHILLIPS. I would be glad to, sir.

The CHAIRMAN. As used in that context. And whether such convention would come back to the Senate for advice and consent.

Mr. PHILLIPS. Yes, sir. (The opinion of the legal adviser of the Department of State appears as exhibit XVII D.)

The CHAIRMAN. Now, where you have a situation of short supply, would arrangements between private parties be prohibited?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. That would be prohibited?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. So if you have any kind of arrangement to control short supply, it must necessarily be governmental?

Mr. PHILLIPS. It must be governmental.

The CHAIRMAN. Yes; but when governmental, it need not be under the jurisdiction of the Organization except that it must be provided by a multilateral convention, subscribed to, and so forth, as provided; is that correct?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN (reading) :

(b) to international fisheries or wildlife conservation agreements with the sole objective of conserving and developing these resources or to agreements relating to the purchase and sale of a commodity falling under Section B of Chapter V.

Clarify that one, please.

Mr. PHILLIPS. The fisheries exception, again, simply does not fit the chapter.

The burdensome surplus provisions, and so on, are quite contrary to what is the case when you need to conserve.

Conservation is really somewhat analogous to the short supply situation. You have an exhaustible marine resource which is being overfished. Well, there is some regulation needed. Regulation of the size of seines, and the type of gear, and so on.

The CHAIRMAN. Well, you have an exhaustible marine resource if you overfish.

Mr. PHILLIPS. Yes, sir; and the purpose of the conservation agreement, of course, is to prevent overfishing, which involves some regulation.

Now, if it involves regulation, we cannot very well apply to it the criteria of regulatory agreements, because one of them requires a burdensome surplus, and certainly if you have a burdensome surplus of a marine resource you do not need to conserve it.

The CHAIRMAN. I notice that the word "conserving" is used in conjunction with the word "developing." Do not the two words together indicate not only the conservation of a static situation, but an increase in supply?

Mr. PHILLIPS. Yes; it does. It might mean setting aside particular areas for spawning purposes, or even restocking.

The CHAIRMAN. Might that not lead to a burdensome surplus?

Mr. PHILLIPS. Well, sir, if it did, you might have an agreement which would then have to conform to these particular provisions. It would not be properly called a conservation agreement in that case, however, but what you might call a "burdensome surplus" agreement.

The CHAIRMAN. Now, again, the agreement of the type referred to in this subclause (b) is an agreement which would not be under the jurisdiction of the Organization?

Mr. PHILLIPS. That is correct; yes, sir.

The CHAIRMAN. Would it also be prohibited subject matter for private agreement?

Mr. PHILLIPS. I believe so; yes, sir.

The CHAIRMAN. Now, what is the feature which is added at the end and which refers to section E of chapter V, which, in turn, relates to state trading?

Mr. PHILLIPS. State trading, sir, has its own rules and regulations, and those bilateral arrangements should conform to the principles set forth in section E of chapter V. They do not fit well within this chapter at all, since you very often find, and in fact usually find, that a state trading enterprise is dealing in a commodity that is in normal supply, not in burdensome surplus and not necessarily in a shortage situation.

The CHAIRMAN. What does this say to a state trading enterprise? Does it say to them it is outside of this article or inside of this article?

Mr. PHILLIPS. No, sir; it is outside of this article. It says to a state trading enterprise, "You conform to the section of chapter V, which relates to state trading. You do not conform to the surplus-commodity situation."

The CHAIRMAN. Then they can deal as they see fit with either surplus-commodity situations or a shortage situation?

Mr. PHILLIPS. If there were a surplus situation and an agreement was negotiated, you could bring in a state trading country as part of the agreement.

In that case the agreement would cover not only state trading countries but also nonstate trading countries, but if the state trading country deals in a commodity which is not in burdensome surplus, and is their normal way of conducting business, these principles would not apply.

For example, in the case of a state trading enterprise making a bilateral bulk-purchasing arrangement, it would be impossible to require that all interested governments in that commodity get together and have a study group to study that situation, or that consumers and producers should have an equal voice.

In other words, those are bilateral trade deals and the principles set forth in section E of chapter V—that the arrangements should be dictated by commercial considerations—would apply.

The CHAIRMAN. Then you are giving state traders privileges that are not available to other members?

Mr. PHILLIPS. I believe not, sir, because any commodity that is in burdensome surplus, whether a state trading company trades in it or not, would be a proper subject of an agreement.

But the purely bilateral agreements—just the two country agreements between either two state trading countries or one state trade country and a nonstate trading country—could or could not be in a commodity which we considered in burdensome surplus.

The CHAIRMAN. I guess I will have to put on the dunce cap. I am still confused as to the significance of the state trading reference in that subclause (b).

Mr. PHILLIPS. Let me try another example. This chapter is aimed at the burdensome surplus commodities.

The CHAIRMAN. That is right.

Mr. PHILLIPS. Which would be a very limited number.

The CHAIRMAN. That is right.

Mr. PHILLIPS. The State trading enterprise might deal in thousands of commodities on a strictly bilateral basis with other governments.

The CHAIRMAN. Yes.

Mr. PHILLIPS. If the commodity in which they happen to be dealing is in burdensome surplus, it would fall within the jurisdiction of this chapter. In that event, the state trading country would have to make up its mind whether or not it wanted to enter into the agreement.

As far as bilateral agreements for purchase and sale are concerned, they are between the purchaser and the seller. There is no reason to believe that in very many cases it would be a commodity that is in burdensome surplus.

But this by no means says that if a State trading deal has been made in a commodity which is in burdensome surplus, that that commodity is then not subject to an agreement. That is not the exception, sir. It is only that these principles do not fit a deal between a buyer and a seller.

The CHAIRMAN. I continue opaque.

Well, let us go on to (c). [Reading:]

to arrangements relating to fissionable materials, to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment, or, in the time of war or other emergency in international relations, to the protection of the essential security interests of a Member.

Are there any limits of any kind anywhere in this chapter or in the charter on the scope of that subparagraph?

Mr. PHILLIPS. I believe that these same points are found in the commercial policy section, and chapter VI on restrictive business practices makes specific reference to this exception here.

So I believe that there is no place in the charter where we do not have the military exception.

The CHAIRMAN. Could arrangements of the kind which are privileged by this subsection be in any way referred to the review or the judgment or the decision of the Organization, or any part of the Organization, or to the International Court of Justice?

Mr. PHILLIPS. I believe not, sir. Of course, any agreement in which we enter into negotiations and then after negotiations submit to the Congress, would be our own determination as to whether or not we were in any way jeopardizing our own security. There is nothing in this chapter that transmits to the Organization any such authority.

The CHAIRMAN. Well, then, the answer is "no"?

Mr. PHILLIPS. Is "no."

If, and I think this is true, this section has been carefully drawn.

It was drawn pretty much by the military people and I believe they felt that it covered any possible contingency.

The CHAIRMAN. I notice a comment in that article which reads:

The Committee was of the opinion that arrangements relating solely to the equitable distribution of commodities in short supply and mentioned in this Article should be short-term arrangements of a transitional character.

That is not stated in the article, is it?

Mr. PHILLIPS. It is not stated in the article.

The CHAIRMAN. Will it be stated in the article?

Mr. PHILLIPS. If not in the article, it will be certainly part of the record, sir.

The CHAIRMAN. There will be an official interpretation?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. It will be to that effect?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN (reading):

ARTICLE 60. DEFINITIONS

1. For the purposes of this Chapter, the term "primary commodity" means any product of farm, forest, or fishery, or any mineral, which enters world trade in substantial volume in a form customarily called primary, and may include such a product on which minor processing has been performed in preparation for export. The term may also cover a group of commodities, of which one is a

primary commodity as defined above and the others are commodities (whether primary or non-primary) which are so closely related to the other commodities in the group that they can conveniently be dealt with in a single arrangement.

First, as to the meaning of the word "mineral." Usually the word "mineral" is taken to include "oil." Is that your own interpretation of word?

Mr. PHILLIPS. I believe that that would be included; yes, sir.

The CHAIRMAN. Give us some examples of these associated products that would come under the definition of paragraph 1 of article 60.

Mr. PHILLIPS. What they were specifically aimed at was, I believe, as I mentioned earlier, the fats and oils situation, where fats and oils are thought of more or less as one commodity.

The CHAIRMAN. I am very sorry, Doctor, but that seems to be a vote. I hate to ask you to come back this afternoon for a very short review of this chapter, but could you be back at 2:30?

Mr. PHILLIPS. I would be glad to; yes, sir.

The CHAIRMAN. We will recess until 2:30.

(Thereupon, at 12 noon, a recess was taken until 2:30 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:30 p. m., upon the expiration of the recess.)

The CHAIRMAN. The hearing will come to order.

STATEMENT OF WILLIAM TAYLOR PHILLIPS, ACTING CHIEF, INTERNATIONAL RESOURCES DIVISION, DEPARTMENT OF STATE, WASHINGTON, D. C.—Resumed

The CHAIRMAN (reading):

1. For the purposes of this Chapter, the term "primary commodity" means any product of farm, forest, or fishery, or any mineral, which enters world trade in substantial volume in a form customarily called primary, and may include such a product on which minor processing has been performed in preparation for export. The term may also cover a group of commodities, of which one is a primary commodity as defined above and the others are commodities (whether primary or non-primary) which are so closely related to the other commodities in the group that they can conveniently be dealt with in a single arrangement.

You gave as an example fats and oils?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Can you think of anything else?

Mr. PHILLIPS. Not in that grouping. Unless you group together a group of two commodities, one of which would be an obvious primary commodity and the other perhaps a substitute or synthetic product; such as synthetic and natural rubber.

Those were the cases we had in mind all through the drafting.

The CHAIRMAN. Yes. [Reading:]

2. For the purposes of this Chapter, the term "Member" or "non-Member" shall be taken to mean a Member or non-Member of the Organization with its dependent territories. If a Member or non-Member and its dependent territories form a group, of which one or more units are mainly interested in the export of a commodity and one or more in the import of the commodity, there may be either joint representation for all the associated territories or, where it is so desired, separate representation for the territories mainly interested in export and separate representation for the territories mainly interested in import.

Is that all subject to the principle which we have discussed that in the end, and when it comes to voting or drawing an agreement, the consumers and the producers shall have equal voice?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. What are the dependent territories of the United States in the sense of the words as they are used here?

Mr. PHILLIPS. I should think Alaska would be the principal example. It is a little hard to conceive of Alaska wanting to be, let us say, a consumer, while the United States wanted to be a producer or vice versa.

This would apply mainly to British territories under which, for example, in rubber, Ceylon or Malaya might wish to be producers while the United Kingdom itself might wish to put forth its views as a consumer.

The CHAIRMAN. No matter how they shuffled themselves around, in the end there would be that equality between consumer and producer interest, so far as making a contract is concerned?

Mr. PHILLIPS. That is right.

The CHAIRMAN (reading):

3. A regulatory agreement is an intergovernmental commodity arrangement involving regulation of the production, export or import of a commodity or regulation of prices.

I think that is clear.

Let me come back again now to your statement made early during your examination that all these intergovernmental agreements will come to the Congress for approval.

What is your affirmative support for that statement in the language of the charter?

Mr. PHILLIPS. I believe, sir, that in the language of the charter, nothing is said. That would be in accordance with our own internal structure.

The way we would handle regulatory agreements, which require in effect legislation, is this: They would have to come to the Congress, in the first instance, for approval, and in the second instance, for implementing legislation if needed, and thirdly, for funds.

The CHAIRMAN. Well, of course, if the agreement required implementation of the type that did call for funds, or did call for an internal governmental mechanism, that would have to be set up and you would have to be set up and you would have to come to the Congress.

Mr. PHILLIPS. That is right.

The CHAIRMAN. And is it your thought, then, that it would be impossible to draw up an intergovernmental arrangement that would not have to be implemented in the way you suggest?

Mr. PHILLIPS. I can think of none that involve regulation at all that would not have to be implemented, sir.

The CHAIRMAN. So that is the basis for your theory?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Well, of course, that is true as to most every participation that we have in this charter Organization. In the end there has to be money to support the workings of the plan. We, I assume, will contribute the principal part of the money. The Con-

gress, therefore, will have to appropriate it, and in that sense, the Congress would have a theoretical control over everything in the charter.

Mr. PHILLIPS. More than theoretical, sir, I believe.

The CHAIRMAN. It can be made more than theoretical.

However, the course of our history shows that once this country has made an international commitment, it has rarely been sabotaged by the appropriations route. All students of the subject realize that you can, in effect, repeal even a treaty if the treaty must be implemented with funds.

But I do not know whether there is much history of that kind, if any.

Now, may I invite your attention to article 86, paragraph 3 of article 86, which refers to paragraph 2 of article 59, which is a part of the chapter which we have been discussing.

I find no paragraph 2 in article 59.

Mr. PHILLIPS. That, I believe, is a misprint, sir.

Let me look back to the London draft.

The CHAIRMAN. All right.

Mr. PHILLIPS. Paragraph 2 of article 59 in the earlier draft referred to the fissionable materials exception, traffic and arms, ammunition and implements of war, and that reference should be corrected in this edition.

The CHAIRMAN. So that should be article 59, subsection (c) ?

Mr. PHILLIPS. That is correct; yes, sir.

The CHAIRMAN. Now, you may recall that this morning I asked you whether any part of subsection (c) could possibly be subjected to any decision other than our own.

And you were quite certain at that time that it could not be, that we would be the sole judges of those matters.

Article 86, paragraph 3, says [reading] :

Any justiciable issue arising out of a ruling of the Conference with respect to the interpretation of sub-paragraphs (c), (d), (e), or (k) of Article 37 or— and the way you have corrected it—

subsection (c) of Article 59 may be submitted by any party to the dispute to the International Court of Justice, and any justiciable issue arising out of any other ruling of the Conference may, in accordance with such procedures as the Conference shall establish, be submitted by any party to the dispute to the International Court of Justice. The Members accept the jurisdiction of the Court in respect of any dispute submitted to the Court under this Article.

Does that modify your views any ?

Mr. PHILLIPS. Yes, sir; I believe it does. I was in error.

The CHAIRMAN. Do you believe that it will be acceptable to the Congress to have our arrangements regarding fissionable material submitted to the International Court of Justice ?

Mr. PHILLIPS. I am afraid I am not qualified to go into the justiciable part.

The CHAIRMAN. It may be that you have been a little hasty in your correction of paragraph 3 of article 86. It may be that what is meant there is something different from a reference back to subsection (c) of article 59.

And so I am going to suggest to you that you sort of brood on that, and let me know later on what the final word is.

I feel quite confident that you cannot get congressional approval of anything that would allow our control of fissionable materials or what we intend to do about fissionable materials, or as far as that goes, to the other matters mentioned in article C of article 59, to be referred to any one other than ourselves for decision.

Mr. PHILLIPS. I would like to put in a memorandum on that if I might.

The CHAIRMAN. Yes.

(The memorandum appears as exhibit XIV.)

The CHAIRMAN. Have you any further comments you wish to make?

Mr. PHILLIPS. No, sir.

The CHAIRMAN. I am sorry to have made it necessary for you to come back for such a short session.

Mr. PHILLIPS. That is all right.

The CHAIRMAN. Thank you very much, Doctor.

Mr. PHILLIPS. Yes, sir; thank you, sir.

Mr. Stinebower will be the next witness.

The CHAIRMAN. Will you take the chair, please, and give the reporter your full name, your residence, and your occupation, and some background on yourself?

STATEMENT OF LEROY D. STINEBOWER, SPECIAL ASSISTANT TO THE ASSISTANT SECRETARY FOR ECONOMIC AFFAIRS, STATE DEPARTMENT, WASHINGTON, D. C.; ACCOMPANIED BY JOHN M. LEDDY, ADVISER, DIVISION OF COMMERCIAL POLICY, STATE DEPARTMENT, WASHINGTON, D. C., AND EDMUND H. KELLOGG, DIVISION OF INTERNATIONAL ORGANIZATION AFFAIRS, STATE DEPARTMENT, WASHINGTON, D. C.

Mr. STINEBOWER. Leroy D. Stinebower. My residence is Washington. I am special assistant to the Assistant Secretary of State for Economic Affairs. My background is very largely in the Department of State. After college and graduate school and 3 years of teaching I came to the Department of State in 1934 in the Economic Adviser's Office and have been there in one of the economic offices ever since.

The CHAIRMAN. What schools did you graduate from?

Mr. STINEBOWER. Kalamazoo College in Michigan, and the University of Chicago.

The CHAIRMAN. What degrees did you get from the University of Michigan?

Mr. STINEBOWER. Master's degree in 1927.

The CHAIRMAN. And then you taught where?

Mr. STINEBOWER. At Allegheny College from 1928 to 1931.

The CHAIRMAN. What subject did you teach?

Mr. STINEBOWER. In the department of economics, and in a small school you teach most of the subjects in economics.

The CHAIRMAN. Did you specialize in economics in college?

Mr. STINEBOWER. Yes; in the latter part of my graduate work at the University of Chicago I specialized in international economic relations.

The CHAIRMAN (reading):

CHAPTER VIII. ORGANIZATION

SECTION A. FUNCTIONS AND STRUCTURE OF THE ORGANIZATION

ARTICLE 61. FUNCTIONS

In addition to the functions provided for elsewhere in this Charter, the Organization shall have the following functions:

(a) to collect, analyze, and publish information relating to international trade, including information relating to commercial policy, business practices, commodity problems, and industrial and general economic development;

(b) to facilitate consultation among Members on all questions relating to the provisions of this Charter and to provide for the settlement of disputes growing out of the provisions of the Charter;

That last—

to provide for the settlement of disputes growing out of the provisions of the Charter—

is rather broad. I am wondering whether it could be construed as supplanting the operation of judicial machinery in the member countries, or to put it in another way: Is that a method of saying that all disputes growing out of this charter are to be settled by the Organization?

Mr. STINEBOWER. It is my understanding that it is merely listing, among the functions of the Organization, a function which is more specifically provided for under article 86.

The CHAIRMAN. In other words, you do not construe it as ousting the possibility of domestic judicial settlement?

Mr. STINEBOWER. No, sir; I interpret it as no broader than article 86. The CHAIRMAN (reading):

(c) to make recommendations for, and promote international agreement on measures designed to improve the bases of trade and to assure just and equitable treatment for the enterprises, skills, capital, arts, and technology brought from one country to another, including agreement on the treatment of foreign nationals and enterprises, on the treatment of commercial travellers, of commercial arbitration and on the avoidance of double taxation—

I doubt whether anyone would quarrel with those matters as ends.

Have you gone into this further than merely to state a hope? Have you thought of specific measures for better protecting the nationals of one member in the territory of another?

Mr. STINEBOWER. The various departments have been giving, for a considerable period of time, a good deal of attention to questions arising in this general field. Both in connection with the clauses of commercial treaties, and in connection with the trade agreements that we have negotiated, and as a separate item.

In addition, the International Chamber of Commerce has very recently concluded a very comprehensive draft of what they call a Code of International Investment, and nearly all of these subjects also have a fairly long history of international discussion, in no small part under the League of Nations, and in such private organizations as the International Chamber of Commerce.

The purpose, as I understand it, for putting the article in the charter in this form is that these are subjects with a long and complicated history. It is not practicable to try to write them all out in detail before the charter is complete, and it would be probably very difficult to get full international agreement in time to conclude an agreement of this sort, but the International Trade Organization should be a

body for the continuing study of these problems, with a view to getting international agreement in these fields.

The CHAIRMAN. It seems to me that we have several of those objectives which become especially important if we are to go ahead and use American capital for extensive investment abroad. I doubt whether you will have very much of that unless those who do the investing have reasonable assurance that their investments and their persons and the persons of their employees will be given decent treatment.

Mr. STINEBOWER. It is a matter that has been very much in the mind of the executive branch of the Government for quite a number of months and years, for that matter.

The CHAIRMAN. Do other nations seem impressed with the necessity for getting into a code of that kind?

Mr. STINEBOWER. Yes, sir; in the Economic and Social Council of the United Nations, there is a Subcommittee on Economic Development, one of whose tasks is to look into the problem of an international code of investment.

The CHAIRMAN (reading) :

(d) generally to consult with and make recommendations and, as necessary, furnish advice and assistance to Members regarding any matter relating to the purposes or the operation of this Charter, and to perform any other function appropriate to the purposes and provisions of this Charter—

As to the word "assistance" in the third line, what kind of assistance is contemplated?

Mr. STINEBOWER. That would generally be technical assistance, sir, particularly the kind of assistance that is contemplated in article 11, paragraph 2, in which, at the request of a member government, the Organization may, within the limits of its resources and its competence, assist governments who apply to it to locate technicians, experts, and advise them on problems of their economic development.

It might, on occasion, be an application for a statistical expert to help them improve their statistical reporting services, so that the Organization may carry on its functions under paragraph (a) above in this article.

The CHAIRMAN. As you picture the Organization, will it be equipped with a pool of technicians available for assignment here and there?

Mr. STINEBOWER. Its staff might well include a few technicians of a general character, but if the request were for specialized experts, shall I say, in the engineering field, certainly we would not contemplate that they would be on the Organization's pay roll.

The Organization might assist a member government in locating such experts, and it would be for the member and the Organization to work out methods of bearing the financial cost involved.

Presumably, in those cases, the member receiving the assistance would bear most of the cost.

The Organization's service would have been to help them locate the advice.

The CHAIRMAN. The Organization would act in a sort of liaison capacity?

Mr. STINEBOWER. Yes.

The CHAIRMAN. And to do it intelligently would require some technical staff.

Mr. STINEBOWER. Yes.

The CHAIRMAN. But you do not picture the Organization as maintaining a pool of experts available for assignment?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. Do you consider that the Organization will have a pool of money available for assignment here and there?

Mr. STINEBOWER. No, sir; that, of course, would develop with experience, but my understanding of the purpose of the article is not to invade the functions of organizations such as the International Bank, or private financial arrangements, or any other international or intergovernmental arrangements that would finance expensive projects.

This organization is not designed to get into that field but rather to assist in the furnishing of advice.

The CHAIRMAN. The last part of subclause (d) has some very large language.

It says [reading]:

to perform any other function appropriate to the purposes and provisions of this Charter.

What are the limitations on that? That is completely wide open.

Mr. STINEBOWER. Well, the principal limitation, of course, is the provisions of the Charter.

The CHAIRMAN. Well, it goes beyond that. The key words are: "the purposes and provisions of this Charter," and it is "any function appropriate" to those purposes and provisions.

It seems to me that is as wide as the world.

Mr. STINEBOWER. I suppose that one answer, in addition to the limitation of the Charter itself, is the obvious limitations of budgetary opportunity and budgetary availabilities.

These organizations, specialized organizations of this kind, have not, by and large, had enormous budgets. The opportunity to perform functions of a very wide character would require both approval of the Director General and the Executive Board, and in appropriate cases, the Conference itself, and in all cases, the Conference itself, when it came to the approving of the budget of the Organization.

The CHAIRMAN. Well, I am not sure I would discount your answer entirely holding out as it does a possibility of some relief against the open-end character of those words. But I doubt whether that is a completely sound way to determine what you wish to do or what the words mean.

Your answer says that it does not make much difference what these words mean, because, in the end, money will have to be spent, and some one is going to have to approve the spending of the money.

I suggest that that is not a very sound rule of interpretation.

Mr. STINEBOWER. Pardon me, Senator; I did not mean to limit my reply to the budgetary aspects. I merely pointed out that the Conference, itself, would, in all cases, have the responsibility of passing on the budgetary aspects.

The CHAIRMAN. Yes.

Mr. STINEBOWER. But in addition, the Director General, who would undertake the administrative responsibilities for performing the services in the first instance, is subject to the review of the Executive Board and of the Conference.

So with most of the projects, if we were thinking of an excessively enthusiastic Director General, who wanted to go beyond reasonable bounds, he would have to check with two representative and executive bodies. If I may point out, it is a provision that is very similar to a provision in the constitution of the Food and Agricultural Organization which, in article 1, paragraph 3 (c) provides that it

shall also be the function of the Organization—

and that is the Food and Agricultural Organization—

generally to take all necessary and appropriate action to implement the purposes of the Organization as set forth in the preamble.

The CHAIRMAN. Well, that merely points me to an additional ambiguity.

Mr. STINEBOWER. It is a kind of blanket clause intended not to make the previous entirely limiting.

The CHAIRMAN. What it say is:

In addition to the functions provided for elsewhere in this Charter, the Organization shall have the following functions * * * to perform any other function appropriate to the purposes and provisions of this Charter

That is completely without dimension. That is in addition to the functions provided elsewhere in the charter.

Mr. STINEBOWER. On that point, may I reply that the original United States draft on this article attempted to comb through the charter and relist here in this article, all of the functions of the Organization.

In the process of discussion, there were a great many delegations which felt there were difficulties of attempting to repeat; small variations of language between articles might give rise to differing interpretation as to what the function was.

So, it was preferred to allow the chapters IV, V, VI, and VII to stand for themselves as to the functions of the Organization and here only to gather together the general functions of the Organization

The complete listing of the Organizations ended up, then, with a basket type of clause of this character.

The CHAIRMAN. You have spelled out many functions and you have spelled out the conditions under which they come into being or operate, but here you say, "in addition" to those, to do anything that is "appropriate to the purposes and provisions of this charter."

That gains heightened importance, when we keep in mind, and we should keep it in mind all the way through here, that the United States does not have a weighted vote on the Conference or on the Executive Board.

Do you wish to make any further comments on that?

Mr. STINEBOWER. No; I have no further comments.

The CHAIRMAN. Does the State Department favor that language?

Mr. STINEBOWER. It has been in from our earliest draft in substantially that form.

The CHAIRMAN. It originated as a State Department viewpoint and as a State Department Draft?

Mr. STINEBOWER. May I just check it?

Yes; the original language was substantially the same.

The CHAIRMAN. And in your opinion it continues to be State Department policy?

Mr. STINEBOWER. Yes, sir; we had not felt that it was open to wide abuse.

The CHAIRMAN (reading):

(e) to cooperate with the United Nations and with other intergovernmental organizations for the purpose of furthering the attainment, with an economy of effort, of the economic and social objectives of the United Nations and the restoration and maintenance of international peace and security.

What has this Organization to do with the social objectives of the United Nations?

Mr. STINEBOWER. The words are used in connection with the United Nations Charter, which combines, particularly in article 55, the economic and social purposes of the United Nations, which are brought together under the responsibility of the General Assembly and Economic and Social Council. (Exhibit VIII A.)

Hence, the two are really always linked in references to the charter.

In addition, I would add this: That the word "social" in many countries has a rather broader connotation than it seems to have in the United States.

The CHAIRMAN. Like the word "democratic"?

Mr. STINEBOWER. It comprises more of the economic, and, for example, in the United Nations we have frequently found that the jurisdiction of what is called the Social Commission is supposed to comprehend a great many elements of the standard of living.

When I have carried it that far I think it is fairly clear that we assume this Organization has a good deal to do with the standard of living, which may be one of the social objectives.

The CHAIRMAN. Those words do not enlarge the stated purposes of the Organization?

Mr. STINEBOWER. None whatever.

The CHAIRMAN. It is a recognition of the fact that a matter that is primarily economic may also have social repercussions; is that right?

Mr. STINEBOWER. May contribute to social welfare.

The CHAIRMAN (reading):

ARTICLE 62. STRUCTURE

The Organization shall have as its principal organs a Conference, an Executive Board, Commissions as established under Article 72, and a Secretariat.

This Organization, when it really gets going, will be, by all odds, the largest agency operating under the United Nations Organization, will it not?

Mr. STINEBOWER. No, sir; I should not have thought so.

May I correct that: I should not have thought that is necessarily so. I should not have thought that it will be necessarily larger than the United Nations Educational, Scientific, and Cultural Organization, for example.

The CHAIRMAN. Well, I believe they would be panting on your shoulder, because those words themselves tell you that there are limitless possibilities for expansion of organization.

Do you think they are going to get in a race with you to see which is the biggest?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. This will not be an organization of modest proportions, will it?

Mr. STINEBOWER. I should think so, sir. Of course, what constitutes "modest proportions" is perhaps a matter of relative judgment, but I should not have anticipated that this Organization would be notably larger than the Food and Agricultural Organization of the United Nations, for example.

The CHAIRMAN. If you were setting up a new business organization, one of the first things you would do would be to make an estimate of the personnel and staff, space requirements, costs, and so forth.

What are your estimates on this thing?

Mr. STINEBOWER. To the best of my knowledge, Senator, there are no estimates in enough detail to be worthy of giving to you at this moment, but in that connection, I would recall that we are discussing this in the negotiation stage and not in the stage in which it comes to the Congress for approval, and when it does come, I should anticipate the same course that the proposal for the Food and Agricultural Organization followed. It would be accompanied by an estimate of the first year's budget before the Congress would be asked to pass on it.

We are doing here substantially what we did with the constitution of that Organization when we sat with a small subcommittee of the Senate Committee on Foreign Relations and went over the charter in the process of working it out.

When it came back to the Congress for its consideration and approval, it was accompanied by the estimate of the budget for the first year.

The CHAIRMAN. What is the budget for the whole of the United Nations at the present time?

Mr. STINEBOWER. The whole of the Organization and all its related agencies?

The CHAIRMAN. Yes.

Mr. STINEBOWER. I am not able to give that to you, sir.

Subject to correction, it would run approximately \$40,000,000. For the United Nations itself there is about \$25,000,000 to \$27,000,000 of the total.

The Food and Agricultural Organization budget is \$5,000,000 a year.

I think the Civil Aviation Organization's budget is somewhat smaller.

The International Labor Organization has a budget of about \$3,000,000 a year, I believe.

The United Nations Educational, Scientific, and Cultural Organization has a budget of \$6,000,000.

Those are the magnitudes that have been involved to date in specialized agencies.

The CHAIRMAN. What is our percentage?

Mr. STINEBOWER. It has varied from just a decimal under 40 percent for the United Nations itself to 25 percent in the Food and Agricultural Organization and under 20 percent—I cannot give you the exact figures—for the International Labor Organization. That is undergoing some change.

The CHAIRMAN. What will be our share of this Organization?

Mr. STINEBOWER. We will propose, under article 66, paragraph 7, that no one country should pay more than one-third of the budget.

The CHAIRMAN. Will that be well supported?

Mr. STINEBOWER. We hope that it will. It is in line with the views expressed by Senator Vandenberg as to the long-range United States contribution to the United Nations itself.

This year, because of considerable difficulties in countries that have not recovered, it was agreed for the United States to take somewhat higher proportions, but Senator Vandenberg has been strongly on record, saying that that is too high a percentage, for a continuing contribution to the United Nations.

The CHAIRMAN. Let me come back now to my original question: Are you prepared now to give us any kind of an estimate as to the size of this Organization, personnel, costs, and so forth?

Mr. STINEBOWER. Well, sir, as a purely personal estimate, which has no departmental sanction, I should make an offhand estimate of about \$5,000,000 a year as the operating costs of this Organization after it had got under way.

It would not necessarily take that much as operating cost its first year.

The CHAIRMAN. With all its staff?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. All its commissions operating?

Mr. STINEBOWER. Yes, sir. It might run a little more than that, but I would make an estimate of about \$5,000,000 a year.

The CHAIRMAN. For the full development of all its functions here?

Mr. STINEBOWER. I do repeat that is a personal estimate, but I would be willing to stand by it at this time.

The CHAIRMAN. Do you know what it costs us to run the economic features of the Department of State?

Mr. STINEBOWER. No; I could not give that to you right now.

The CHAIRMAN. Is there anyone here prepared to let us have a figure on that?

You might check against that as a sort of reference point.

The Tariff Commission costs us \$1,317,000 in a relatively inactive status, and it has not been known as an organization of a great deal of extravagance.

The Department of Commerce, for cooperating with American Republics, and in connection with export controls, spends \$1,202,000 a year.

The State Department spends \$18,215,000 as our cost of membership in international organizations.

The United Nations, \$14,765,000.

Others \$3,450,000. That means other international organizations.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. State Department cooperation with American Republics, \$2,343,000.

Now, those figures deal in very limited fields compared with the possibilities which we have before us.

Mr. STINEBOWER. That is true, sir, but on the other hand, they do include, by virtue of, I think, what is Public Law 117, what one might call direct operational expenses which are less likely to be borne by an organization of this kind. I would have to check the reference.

We are enabled to furnish therein at the expense of the United States Government, technicians to assist other countries in this hemisphere. Those are expenses which it is relatively unlikely that an or-

ganization of this kind would find it possible to bear. It would be more in the nature of a broker in assisting these countries to find technical assistance.

It is much less likely to bear that kind of expense out of its budget, and if for no other reason than that the United States is not the only contributor to this budget. Other countries, as well as ourselves, have proved in other international organizations that they too, are aware of the contribution they are called upon to make annually, and they keep a pretty close watch on the global size of the budget of the organizations.

The CHAIRMAN. Have you ever added up all of the consultations that are contemplated under this charter, and all of the conferences? Have you added up all of the different investigations that are contemplated?

Mr. STINEBOWER. Presumably, most of those are done at the headquarters of the Organization with the existing staff.

The CHAIRMAN. But you cannot make an investigation into rubber at the headquarters of the staff?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. I assume that you will not investigate a natural resource at headquarters.

Mr. STINEBOWER. That is correct, but I was referring about the numerous discussions and conferences to which you referred in that connection. I was going on to the investigations.

The CHAIRMAN. Well, will not the Organization attempt to convenience the witnesses or the members? Will everybody have to come running to the capitol?

Mr. STINEBOWER. For the most part, these things will be accomplished at periodical meetings of the Executive Board or of the Conference itself. On the commodity studies, such commodity groups may be convened in particular parts of the world and not necessarily in the headquarters.

But the point I really meant to make was that we do not envisage or contemplate the Secretariat of the Organization spending their lives on wheels in going from one part of the world to another.

The CHAIRMAN. I doubt whether the Secretariat would, but your commissions and technical staffs and investigators and technicians of all kinds, I certainly would hope that they would not confine their activities to the rocking chair.

Mr. STINEBOWER. They will not.

The CHAIRMAN. The long and short of the story is that the promoters of the Organization have not cast up a tentative schedule of costs?

Mr. STINEBOWER. They have not cast up a precise schedule of costs. To the best of my knowledge, it has always been assumed that it would be roughly of the magnitude of other specialized organizations and that is why I did refer to the size of the budgets of those organizations.

The CHAIRMAN. Has the Organization contemplated by this charter been marked up? Have you got a chart of it?

Mr. STINEBOWER. Yes, sir; in rough form. It sketches out this way: you have at the top of the Organization the annual conference, which is the representative body. In the box immediately below that,

if you think of it as an organization chart, you have the executive board which we will come to in a moment here.

The CHAIRMAN. Let me short circuit all that.

Mr. STINEBOWER. I am sorry.

The CHAIRMAN. I think I can visualize the main features of the organizational chart.

Have you broken it down to a point where you can look them over and add up the personnel involved?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. It has not been done?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. You could not say now roughly how many people will be employed by this Organization?

Mr. STINEBOWER. No, sir.

(Exhibit XV presents an organization chart of the proposed International Trade Organization.)

The CHAIRMAN (reading):

SECTION (B). THE CONFERENCE

ARTICLE 63. MEMBERSHIP

Before I come to that, where are the headquarters of this Organization to be?

Mr. STINEBOWER. It will be determined by the Organization itself.

The CHAIRMAN. Has there been any talk about it so far?

Mr. STINEBOWER. One of the main possibilities is that it might be located at the seat of the United Nations. There is a good deal to be said for locating specialized organizations near the United Nations with which they are supposed to be brought into relationship.

Some of that will depend, in part, upon where other intergovernmental organizations, which have closely related functions, are to be located.

The International Monetary Fund is here. The Food and Agriculture Organization, which will be closely interested in the commodity chapter of the Organization, is temporarily here but has not taken a final decision as to where it will put its permanent headquarters, although at its first annual conference, it decided in principle to locate its permanent headquarters at the seat of the United Nations.

It is my understanding that there was a disposition to review that decision in the light of the decision of the United Nations to locate in New York City.

The CHAIRMAN. Is there any movement to locate this Organization outside of the United States? Any special movement?

Mr. STINEBOWER. To the best of my knowledge, there is not.

The CHAIRMAN (reading):

SECTION B. THE CONFERENCE

ARTICLE 63. MEMBERSHIP

1. The Conference shall consist of the representatives of the Members of the Organization.
2. Each Member shall have one representative and may appoint alternates and advisers to its representative to the Conference.
3. No representative to the Conference may represent more than one Member.

ARTICLE 64. VOTING

1. Each Member shall have one vote in the Conference.
2. Except as may be otherwise provided for in this Charter, decisions of the Conference shall be taken by a majority of the Members present and voting.

Referring to article 64, paragraphs 1 and 2, do those paragraphs represent the settled position of the State Department?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. What is the State Department position?

Mr. STINEBOWER. That is still in the process of very careful examination and in particular, in connection with those provisions of section C of chapter V, which have to do with the consultation with the International Monetary Fund about balances of payments difficulties of members.

While there is no settled position at the moment, we hope to have one in the near future, and there is an inclination to do one of two things:

Either to give the International Monetary Fund, where there is weighted voting, a preponderant voice, or a controlling voice, in the determination of whether a member is in balance of payments difficulties, or to adopt for that purpose, the purpose of such determinations, the same voting procedures, the same weighted voting, in the ITO as now prevails in the International Monetary Fund, in order that there may be consistency of decision in both organizations.

The CHAIRMAN. One would think where the functions would impinge on each other, or where they occupy the same field, that the method of voting would be the same.

Mr. STINEBOWER. That is the idea.

(The United States formula for weighted voting appears as exhibit XVI.)

The CHAIRMAN. Have your policies gone any further than that, as to all other fields, does the State Department adhere to its original position of one vote per member?

Mr. STINEBOWER. It does, to the best of my knowledge, with provisions for special majorities required on certain subjects as listed in the charter.

The CHAIRMAN. They are listed in the charter?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. You are not promoting the inclusion of any additional provisions requiring more than a majority vote, are you?

Mr. STINEBOWER. Additional to those already set forth?

The CHAIRMAN. Yes.

Mr. STINEBOWER. No, sir.

The CHAIRMAN. Are you promoting any additional provisions that would enlarge the field for weighted voting?

Mr. STINEBOWER. We have found great difficulty in the weighted voting formula, and while we have no final position, we certainly are willing to hear the contrary views of the countries that are arguing for weighted voting.

Our disposition remains, except in the cases where I have mentioned, to adhere to the principle of one country one vote.

The CHAIRMAN. There has been an enormous amount of discussion on the subject of weighted voting, has there not?

Mr. STINEBOWER. Annex B is longer than the charter itself, at the moment.

The CHAIRMAN. Roughly speaking, do the large countries want weighted voting, and the small countries want one vote per member?

Mr. STINEBOWER. Subject to correction by my colleagues, I believe that the principal advocates of the weighted voting have been the British countries.

The CHAIRMAN. Why have we not favored weighted voting?

Mr. STINEBOWER. We have felt that where the interests of the United States are directly at stake, in actions of the Organization, we might ask for special majorities rather than weighted voting, but since most of the acts of the Conference, and for that matter, the executive board, are in the nature of recommendations to governments for action, which has to be implemented by governments, the importance of the recommendation is not merely determined by the weights of the votes that you can collect on an issue, but on the numbers of countries that are willing to accept the obligations.

It is no good to get a 75-percent vote which represents, in an extreme case three countries, with, shall I say, 30 countries voting in the negative, but accounting for only 25 percent, and expect the legislatures of those countries to implement the recommendation.

The CHAIRMAN. Yes, but there is a substantial field of power in this charter which does not come back to the member nations for acceptance, is that not correct?

Mr. STINEBOWER. That is correct.

The CHAIRMAN. And there the question of one vote per member becomes very important, does it not?

Mr. STINEBOWER. That is correct, and there it has been and still is a view of the Department that special majorities are the protection that one seeks rather than a complicated set of weighted voting.

The CHAIRMAN. And the view of the Department in that respect is expressed in the charter in those cases where special majorities are provided for?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. You are not asking for any extensions of special majorities?

Mr. STINEBOWER. With the one exception that I mentioned when I began about the balance of payments difficulties.

Oh, there has been called to my attention, that we have under consideration, but without final decision, to require a two-thirds vote in two additional places where it is not now; namely, paragraph 8 of article 34, which relates to the release of members from obligations to other members who have abused the privileges of that article.

The CHAIRMAN. You want to make that by a two-thirds vote?

Mr. STINEBOWER. Yes, sir.

And also on the suspension in paragraph 2 of article 35, where you suspend the application of obligations or concessions in the case of nullification or impairment.

In those two cases we have under consideration, but with no final decision, the extension of the two-thirds majority rule.

The CHAIRMAN. Aside from the exceptions which you have mentioned, and the place where the two-thirds rule is already reflected in the provisions of the charter, itself, the policy of the State Department is one vote per member?

Mr. STINEBOWER. Yes.

The CHAIRMAN (reading):

ARTICLE 65. SESSIONS, PROCEDURE, AND OFFICERS

1. The Conference shall meet in regular annual sessions and in such special sessions as may be convoked by the Director-General at the request of the Executive Board or of a majority of the Members.

2. The Conference shall adopt its own rules of procedure. It shall annually elect its President and other officers.

ARTICLE 66. POWERS AND DUTIES

1. The Conference shall have final authority to determine the policies of the Organization. It may make recommendations to the Members and to other international organizations regarding any matter pertaining to the purposes of this Charter.

2. The Conference may delegate to the Executive Board authority to exercise any of the powers or perform any of the duties of the Organization, except such specific powers and duties as are expressly conferred or imposed upon the Conference under this Charter.

What are the powers which may not be delegated to the executive board?

Mr. STINEBOWER. They are the powers which are expressed in chapter II relating to the admission of members, and in the articles of this chapter where specific reference is made to the conference rather than to the Organization.

I have here, in anticipation of a question like that, a list hastily prepared which I should like to have checked for final accuracy if it is read into the record. I have mentioned article 2, section 2, on the approval of new members.

In article 66, paragraph 1, on the final determination of policies of the Organization.

Paragraph 3 of the same article on the waiver of obligations.

In paragraphs 4 and 5 of the same article on establishment of procedures for making the determinations provided in these two paragraphs.

And paragraph 6 of the same article; 7 on the budget; and 8 on the site.

Next, article 68, on the selection of members of the executive board.

Then, in article 72, on the establishment of commissions.

Article 73, paragraph 2, on the determination of the membership of commissions.

Article 78, paragraph 2, on the approval of the Deputy Directors-General.

Article 79, paragraph 1, on the appointment of the Director-General and establishment of his powers and duties.

Article 80, paragraph 1, on regulations regarding the staff of the Secretariat.

Article 81, paragraph 1, on bringing the organization into relationship with the United Nations.

Article 81, paragraph 4, on the decision to absorb other international organizations.

Article 84, paragraph 3, on the details of the status and legal immunities and status of the Organization.

Article 85 on the amendment process.

Article 86, paragraph 3, on the settlement of disputes.

And article 87 on the status of members in arrears on their contribution.

The CHAIRMAN. Those are matters which may not be delegated by the commission to the board?

Mr. STINEBOWER. That is correct.

The CHAIRMAN. Do your conclusions in those respects arise from the language of the charter or is that the way you want it to be?

Mr. STINEBOWER. No; in our understanding, it arises from the language of the charter. Wherever the charter specifically says, "The conference may," or "shall," that is a power that may not be delegated.

Where it says the "Organization may" or "shall," it confers the power for the conference to exercise the powers of the organization, but it could also delegate it to the executive board.

The CHAIRMAN. I wonder if you are not inventing a rule of interpretation that may not have complete universal acceptability?

Mr. STINEBOWER. Well, if there is any doubt about that, sir, I am sure that that is a matter on which clarity should be sought in the next stage of the draft. To the best of my knowledge, it is not a disputed point, but it may be a matter that should be clarified in further draft.

The CHAIRMAN. Yes. It seems to me that the board is going to be very busy, and there ought never be a question about its jurisdiction.

Mr. STINEBOWER. That is right.

The CHAIRMAN. I am not at all making any contention that your rule of construction is not a good one, but I do hope you will be very certain that it is a good one and that it will be universally accepted as a good one.

Mr. STINEBOWER. We will make sure that the people who are going to Geneva have that in mind to clarify.

The CHAIRMAN (reading) :

3. The Conference may, by the affirmative votes of two-thirds of the Members of the Organization, determine criteria and set up procedures, including voting procedures, for waiving, in exceptional circumstances, obligations of Members undertaken pursuant to this Charter.

Give me some examples.

What kind of situations are foreseen that might call for the invocation of that paragraph?

Mr. STINEBOWER. You have the rules relating to nullification and impairment. You have the authority for the Organization, to waive the obligations of members in respect of quotas in the event of balance of payments difficulties.

You have the opportunity to waive obligations under the so-called escape clause, and under paragraph 24-3, you have the authority under certain circumstances to waive the obligations of members with respect to countries which have not yet concluded satisfactory tariff reductions.

Those are the ones that come most directly to my mind.

The CHAIRMAN. But if the circumstances were exceptional, if they might be considered to be exceptional at the time, and without reference to any established criteria, the obligations could be waived by a two-thirds vote?

Mr. STINEBOWER. If that is the rule of procedure that is devised.

The CHAIRMAN. To put it another way, there is no established criteria for the determination of exceptional circumstances?

Mr. STINEBOWER. That, sir, is to be determined by the Conference by a two-thirds vote.

The CHAIRMAN. And the Conference itself would determine that by a two-thirds vote without established criteria?

Mr. STINEBOWER. I do not read it so, sir, but that may be right.

The CHAIRMAN. What would be the established criterion then for determining an exceptional circumstance?

Mr. STINEBOWER. This reads:

The Conference may, by the affirmative votes of two-thirds of the Members of the Organization, determine criteria and set up procedures, including voting procedures, for waiving—

The CHAIRMAN. Yes.

Mr. STINEBOWER. So the first step is by two-thirds vote to set up the criteria themselves.

The CHAIRMAN. I see. I think your point is well taken. [Reading:]

4. The Conference shall establish procedures for making the determinations provided for in Article 30 and in Article 52, whereby any such determination shall be made through the Organization by consultation among the Members substantially interested in the product concerned.

First, are these determinations exclusively confided to the Conference or may they be delegated to the Board?

Mr. STINEBOWER. The procedures for making the determinations are exclusively confided to the Conference by the construction we understand to be placed on the language.

The CHAIRMAN. Now, article 30 relates to what?

Mr. STINEBOWER. The subsidies on commodities in burdensome surplus.

The CHAIRMAN. Article 52?

Mr. STINEBOWER. The commodity arrangements, the exceptional circumstances provision, the determination of fact of burdensome surplus.

The CHAIRMAN. It has to do with intergovernmental commodity arrangements?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading):

5. The Conference shall establish procedures for making the determinations, decisions, and recommendations provided for in paragraph 3 (c) and (d) of Article 28, paragraph 1 (e) (1) and paragraph 2 of Article 28, paragraph 2 of Article 34 and Article 35.

Tell us the substance of those paragraphs which are referred to.

Mr. STINEBOWER. Article 26, paragraph 3, subsections (c) and (d) relate to the use of quotas in the event of balance of payments difficulties.

Article 28, paragraph 1 (e) (1) relate to the exceptions to the non-discriminatory rule with respect to quantitative restrictions.

And articles 34 and 35 relate respectively to the so-called "escape clause" and to the nullification and impairment article.

The CHAIRMAN. That paragraph puts a lot of teeth into subjects which heretofore have looked rather mild and innocent and perhaps unenforceable.

The Conference has it within its powers to establish the procedures for making the determinations, the decisions, and the recommendations. So it will not just rest on talk.

Mr. STINEBOWER. Presumably, one of the early tasks of the Conference would be to establish the procedures for taking action so that each one would not be taken on an ad hoc basis, as it arose.

The CHAIRMAN. That is right. [Reading:]

6. The Conference may prepare or sponsor agreements with respect to any matter with the competence of the Organization and by the affirmative votes of two-thirds of the Members present and voting recommend such agreements for acceptance. Each Member shall within a period specified by the Conference notify the Director-General of its acceptance or, in the case of nonacceptance, shall furnish a statement of the reasons therefor.

Would you give us a rather full explanation of what is in mind there?

Mr. STINEBOWER. This is an article which is parallel to similar articles in many of the constitutions of international organizations.

A fairly standard function and power of the Conference is to make recommendations in the form of international agreements which are then recommended to countries for acceptance in accordance with their respective constitutional procedures.

That is, these may relate, to take some specific examples, to matters relating to double taxation. A standard international convention, for example, relating to double taxation.

How the member accepts such an agreement, if it does accept, depends upon its own internal constitutional process.

This merely provides two things: One, that these matters are regarded as serious enough that the Conference may not recommend formal intergovernmental agreements to members on a mere majority vote, it takes a fairly substantial majority to begin with.

Having such a substantial majority in favor of an agreement of this kind, it becomes incumbent upon a member to report why, in its view, the agreement is not a satisfactory one, and why it did not undertake to accept it.

There is no obligation to accept it. Merely an obligation to state its reasons for finding it unsatisfactory.

The CHAIRMAN (reading):

7. The Conference shall approve the budget of the Organization, and shall apportion the expenditure of the Organization among the Members.

I assume that that is apportioned on a predetermined basis of apportionment, or would it determine the basis currently, varying perhaps with each budget.

Mr. STINEBOWER. It is not standard practice for organizations to do that, although in their early years, there is sometimes a good deal of adjustment necessary as new members are coming in, and particularly now as countries are recovering their ability to bear their full share of international budgets.

But within a few years at least, one would anticipate a scale of contributions which would not vary from year to year.

The CHAIRMAN. Well, have we decided on what our proportion should be?

Mr. STINEBOWER. Only to the extent, as I indicated earlier, that we are prepared and do expect to try to write in here a limit of 33⅓ percent on the contribution of any one member.

The CHAIRMAN (reading):

8. The Conference shall determine the site of the Organization and shall establish such branch offices as it may consider desirable.

I think we have probed the site question as much as could be profitable here.

I am glad to see a recognition of what might become a need for the establishment of branch offices.

Have you any plans as to branch offices?

Mr. STINEBOWER. There is a general plan with which the State Department is in agreement, and with which the United Nations is in agreement, and with which some of the specialized agencies have already indicated an agreement. That is that where branch offices are set up, they should, in the absence of special circumstances, be located near the branch offices, or the regional headquarters of the United Nations itself, and other regional organizations.

In other words, we should get the same cooperation among agencies in the field as we hope to get among the headquarters of the Organization.

The CHAIRMAN. I notice in the "comments" in this article, a note that two delegates suggested that a catalogue should be included of those powers which may not be delegated by the Conference to the executive board.

We now have that in the record, have we not?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. I notice another comment to the effect that a delegate suggested the addition of a sentence that would fasten the one-third limitation.

Mr. STINEBOWER. That is the United States delegation.

The CHAIRMAN. That is the United States.

I notice another suggestion that no rigid maximum should be laid down in the charter for the contribution of any member.

Was that suggestion responsive to the changing abilities to contribute of nations under hardship?

Mr. STINEBOWER. I cannot answer that in connection with this article.

Mr. LEDDY. I think, as I recall the discussion, there were no arguments for it except the one of flexibility.

In other words, to take account of changing circumstances.

Mr. STINEBOWER. By analogy with the Constitution of the Food and Agricultural Organization, when that was being written there was universal acceptance at that time that 25 percent was the maximum that any member should be called upon for that Organization, but there was a reluctance to write it in in view of unforeseen contingencies, such as, for example, arose in connection with the International Labor Organization during the war when important contributors, such as Germany, Japan, and other fairly large countries, fell out.

Well, if there had been a provision of this type then, a maximum ceiling for any one country, the entire load of the loss of such members would have fallen upon the smaller contributing countries.

The CHAIRMAN (reading):

ARTICLE 27. TARIFF COMMITTEE

1. There shall be a Tariff Committee which shall act on behalf of the Organization in the making of recommendations and determinations pursuant to paragraph 8 of Article 24.

What does that mean?

Mr. STINEBOWER. In article 24, paragraph 8, provision is made for the determination as to whether a member of the Organization has

adequately carried out its obligation to negotiate tariff reductions with other members of the Organization.

This article imposes upon this Tariff Commission the necessity of making such a determination and recommendations arising therefrom.

The CHAIRMAN. What is the relation of the Tariff Committee to the Conference and to the Executive Board?

Mr. STINEBOWER. The Tariff Committee is a part of the Organization, but, except as it consists of members of the Organization, is practically autonomous as compared to either the Conference or the Executive Board.

The CHAIRMAN. Is its sole purpose the purpose stated in Paragraph 1?

Mr. STINEBOWER. That is the only purpose it has, and it consists automatically of all members who have qualified by the process of negotiating trade-barrier reduction.

The CHAIRMAN. The second part of article 67 (reading):

2. The Committee shall consist originally of those Members of the Organization which shall have made effective the General Agreement on Tariffs and Trade dated ----- 194... Any other member of the Organization shall be a member of the committee when, in the judgment of the committee, that member shall have completed negotiations pursuant to paragraph 1 of article 24 comparable in scope or effect to those completed by the original members of the committee.

That General Agreement on Tariffs and Trade referred to raises some very interesting questions of authority. Are you familiar with those questions?

Mr. STINEBOWER. I gather you had discussed them largely under chapter 5. Yes.

The CHAIRMAN. I see no point in rehashing the matter. It seems to me that the following language is somewhat dimensionless [reading]:

Any other member of the Organization shall be a member of the Committee when, in the judgment of the Committee, that member shall have completed negotiations pursuant to paragraph 1 of Article 24 comparable in scope or effect to those completed by the original members of the Committee.

What would be the standards of judgment to determine whether an agreement had been completed comparable in scope or effect to others which had been completed? How can you evaluate these various trade agreements, one against the other?

Mr. STINEBOWER. Well, frankly, Senator, it seems to me that comes to this: The original members of the committee are those who have already completed the first round of negotiations; and what this, in effect, says is that as soon as another member of the Organization has completed agreements which are satisfactory to the countries represented on the Tariff Committee for admitting them to the benefits of the Organization and to the benefits of their own agreements, they will automatically have, by acceptance and conclusion of the agreements, indicated that they feel that this country is ready to come on the Tariff Committee.

The CHAIRMAN. You used the word "satisfactory." If that word "satisfactory" were in this paragraph, it would put an entirely different aspect on it than is put on by the word "comparable." All that I am trying to get at is this, how can you measure one agreement against another in terms of comparability in scope or in effect? We have one

agreement that deals with automobiles and gloves. We have another agreement that deals with coffee and manufactured products, and so forth and so on. How can you possibly rate those in scope and effect?

Mr. STINEBOWER. Well, the overt measure of comparability is the fact that the governments who are represented and make up the Tariff Committee have concluded agreements with this other member who is now applying. By their very act of completing these agreements, they say, "This is a satisfactory quid pro quo for the benefit of the agreements we have earlier negotiated with other countries."

They have an objective test as to whether they think the member has qualified for those benefits, and if it has, it has also qualified for membership of the Tariff Committee.

The CHAIRMAN. However, they reach that decision by taking a look at the member who is to be brought in, and asking themselves, "Has this member made an agreement comparable in scope or effect to those which we have made?"

All I am getting at is, how are you going to measure this comparability in scope and effect?

Mr. STINEBOWER. Well, if I understand your question, you do measure it, whether this article is in or not, by the mere fact that, if I may confine it to one country to make it simple, the United States has negotiated agreements with 15 or 16 other countries.

The CHAIRMAN. Yes.

Mr. STINEBOWER. Then, it proceeds to negotiate with an additional country X. Part of the negotiation is a direct arrangement between the United States and X. Part of the agreement is the undertaking on the part of both the United States and X to give to each other the benefit of concessions they have made in other agreements. If the United States thinks that the agreement is good enough to conclude with X, presumably, then, it also is willing to say that it has made a satisfactory or comparable agreement and is qualified to come in as a member of the Tariff Committee. But the decision to accept or not to accept the agreement, which hence raises the question of comparability, exists with or without this article.

The CHAIRMAN. Yes, but you cannot get into it unless you execute an agreement.

Mr. STINEBOWER. Unless you pay your dues.

The CHAIRMAN. Which is comparable in scope or effect to those which the other members have paid.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. And the test of that, I suggest, remains undetermined. [Reading:]

3. Each member of the Committee shall have one vote.

We have sufficiently developed the significance of that, I think.

Mr. STINEBOWER. Yes.

The CHAIRMAN. It raises all of the questions that we have raised each time we have come to a provision of that kind.

Mr. STINEBOWER. Certainly.

The CHAIRMAN (reading):

4. Decisions of the Committee pursuant to paragraphs 1 and 2 of this Article shall be taken by a two-thirds majority of its members and other decisions by a simple majority.

You are making it kind of hard for a fellow to get in, are you not, under paragraph 4?

Mr. STINEBOWER. We would expect that the larger part of the members who have already negotiated among themselves should be satisfied that the new applicant has paid his dues to the club.

The CHAIRMAN (reading):

The Committee shall adopt its own rules of procedure, including provision for the election of its officers.

ARTICLE 68. MEMBERSHIP

The Executive Board shall consist of fifteen Members of the Organization elected by the Conference.

2. Subject to the provisions of paragraph (3) one-third of the members of the Executive Board shall be elected each year for a term of three years. A retiring member shall be eligible for immediate reelection.

3. At the first election members of the Executive Board shall be chosen. The term of office of five members shall expire at the end of one year and of five other members at the end of two years, in accordance with arrangements made by the Conference.

4. Each member of the Executive Board shall have one representative and may appoint alternates and advisers to its representative.

Is the State Department firmly committed to the formula of paragraph 4?

Mr. STINEBOWER. No, sir. The entire article is a typographical correction and should be in brackets. It is one of the articles which is still not fully agreed.

The CHAIRMAN. What will be the attitude of the State Department on the substance of the article?

Mr. STINEBOWER. The State Department is now prepared to recommend that the United States should support some provision for the allocation of permanent seats to certain members of the Organization, and the permanency would be based on some scale or criterion of economic importance.

The CHAIRMAN. Somewhat similar to the theory of the Security Council of the United Nations?

Mr. STINEBOWER. Yes, sir; that is, there would be certain members who would automatically be entitled to seats. But there is this possible difference, it depends on the number of permanent seats that are finally allocated. In the Security Council, the same five come back year after year.

In the Executive Board, the top three or four members are entitled to a permanent seat and would certainly come back year after year. There is no danger of their being shifted around, but depending on the number you seat, if you were to seat as many as six, for example, it is always possible that countries will rise or fall in the economic importance, and someone might bump the present incumbent off the lower seat or the lower two seats.

The CHAIRMAN. Would you have, just as in the case of the Security Council, a given number of certain nations that sit there permanently with others coming in and going out according to a rotation formula?

Mr. STINEBOWER. You would have a combination of both. You would have some kind of criterion of economic importance. You will find written out here, at fair length the various suggestions that have been made.

The CHAIRMAN. Yes.

Mr. STINEBOWER. You establish the criterion of measuring economic importance. Then, if, for purposes of illustration, we say that six members are to be automatically entitled to seats on the Executive Board by reason of being the six most important, economically important, nations, they would not be subject to election; but there still might be rotation among them in the sense that there would not be permanency, if what is now the seventh country rises to fifth place, why, it bumps one of the countries off.

The CHAIRMAN. Yes.

Mr. STINEBOWER. Therefore, it is not permanent in the same way that the Security Council is. However, there would be six seats, in my illustration, which would not be subject to election.

Numerous other suggestions have been made for electing the remaining 9, if there are 15 in all. In view of the United States, the entire Conference should elect the remaining 9. There is a question as to whether the members who are entitled to a seat, as a matter of right, should participate in the elections for the remaining 9. That is a matter on which we have no strong conviction, but would normally expect that the entire Conference would participate in the election, just as in the case of the United Nations, where the five members who have permanent seats on the Security Council also participate in the election of the remaining three.

The CHAIRMAN. The State Department will press for a solution of that kind?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. In my own opinion, I think it would be well worth while to do that. [Reading:]

ARTICLE 69. VOTING

1. Each member of the Executive Board shall have one vote.
2. Decisions of the Executive Board shall be made by a majority of members present and voting.

The significance of that one vote would, of course, expand or contract according to your solution of the preceding article; is that not correct?

Mr. STINEBOWER. I beg your pardon. I do not follow the question.

The CHAIRMAN. If you had one vote permanently, you would have a much more important vote than if you had one vote on a rotating basis; is that not correct?

Mr. STINEBOWER. May I put it this way: I think it is fair to anticipate, on the basis of experience in other international organizations, that even if the formula is one country or one member, one vote, there is no such thing as equality among votes; and the announcement that the United States, for example, intends to vote a certain way on a motion is a far more important factor than the announcement that some small country intends to vote that way.

The CHAIRMAN. It might be.

Mr. STINEBOWER. It might be, and frequently is.

The CHAIRMAN. However, the weight of one vote, in a close issue, nevertheless would continue to be decisive.

Mr. STINEBOWER. When the vote is cast, it only counts as one.

The CHAIRMAN. That is right.

Now, then, that one-vote provision carries with it all of the argument for and against a weighted vote, does it not?

Mr. STINEBOWER. Yes, sir. May I draw a distinction? To a very great extent the arguments that can be adduced for or against weighted voting of the Conference apply, also, to voting in the executive board.

The CHAIRMAN. Yes.

Mr. STINEBOWER. However, the work of the Executive Board is reviewable by the Conference, and there are greater difficulties in establishing a weighted voting formula for the Executive Board on which not all members of the conference are represented; and if they were to take the weighting that they have in the conference and bring that to the Executive Board, then depending on the size of the elected countries, the voting weight of a country like the United States would change from year to year, depending upon the total votes to be cast. There are greater difficulties in working out a weighted voting procedure in the Executive Board than there are in the Conference.

The CHAIRMAN. If the end effects, regardless of formula, were not much the same, you would find a constant tendency to review all important decisions of the Executive Board.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. For obvious reasons.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. Therefore, it would be a desirable objective, if it can be worked out, to have the same formula in both the Board and the Commission?

Mr. STINEBOWER. There, I have to give you a personal answer, Senator. I have, in connection with the formulation of the constitutions of a number of these organizations, had to give some thought to it, and I do believe there is only one formula that is successful. There is one formula of which I know that can accomplish that result, and that is the formula that is followed in the International Monetary Fund.

There, each member of what would correspond to the Executive Board in this case is elected by identifiable countries, not by the Conference as a whole; and he, as a member of the Executive Board, then casts the votes that are represented by all of the countries that contributed to his election.

That is a formula that works reasonably well, perhaps very well where the voting is related to a financial contribution. It is one that would be resisted a great deal in an organization like this, in which a member of the Executive Board was supposed to represent a given handful of countries.

Beyond that, the attempt to carry weighted voting over from the Conference into the Executive Board presents some very real difficulties. I would not say they are insuperable, but they are very real.

The CHAIRMAN. You will have a lot of difficulties in weighting your vote in the Board and in the Conference?

Mr. STINEBOWER. That is right.

The CHAIRMAN. It may be. I can see that you have difficulty either route that you go. It may be that you have gotten an insuperable where you cannot figure out a nice harmonizing solution that gives no trouble of any kind.

As to paragraph 2 of article 60, does that mean all decisions of the Executive Board shall be made by a majority of members present and voting?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Are there any exceptions to that at all?

Mr. STINEBOWER. There are none that I think of, no.

The CHAIRMAN (reading):

ARTICLE 70. SESSIONS, PROCEDURE, AND OFFICERS

1. The Executive Board shall adopt its own rules of procedure, including rules concerning the convening of its sessions.

2. The Executive Board shall annually elect its Chairman and other officers, who shall be eligible for reelection.

3. The Chairman of the Executive Board, as such, shall be entitled to participate, without the right to vote, in the deliberations of the Conference.

4. Any Member of the Organization which is not a member of the Executive Board, shall be invited to send a representative to any discussion by the Board of a matter of particular and substantial concern to that Member. Such representative shall, for the purpose of such discussion, have all the rights of members of the Board except the right to vote.

ARTICLE 71. POWERS AND DUTIES

1. The Executive Board shall be responsible for the execution of the policies of the Organization and shall exercise the powers delegated to it and perform the duties assigned to it by the Conference.

That, I assume, was subject to the limitations which we have already discussed?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading):

It shall supervise the activities of the Commissions provided for in this Charter and shall take such action upon their recommendations, as it may deem appropriate. It shall provide adequate machinery to review the work of the Organization relating to industrialization and general economic development.

Could the Executive Board overrule the Commissions?

Mr. STINEBOWER. Oh, yes, sir. The commissions are purely expert bodies advising the Executive Board.

The CHAIRMAN. Could it overrule the Tariff Committee?

Mr. STINEBOWER. No, sir; the Tariff Committee does not report to the Executive Board, nor does that report to the Conference, for that matter.

The CHAIRMAN. You do not consider the Tariff Committee as a Commission?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. I notice the sentence in paragraph 1 of article 71:

It shall provide adequate machinery to review the work of the Organization relating to industrialization and general economic development.

What would be "adequate machinery"?

Mr. STINEBOWER. That sentence arises out of the fact that there are provided in the charter in several places functions relating to economic development which the Organization may perform. There is not provided under section E a commission on industrialization or a commission on economic development. In view of that gap, it was decided to put this kind of a sentence in. There was a difference of view as to whether there should be provided from the outset a commission on development. That would be one way by which the Executive Board could perform this function—one form of machinery.

Another way which has been considered would be to have the deputy directors general in charge of the various sections of the Organization

and perhaps the presidents of the other three commissions form a standing committee of the Organization.

It was an unwillingness to prejudge the organizational forms by which that function would be performed that led to the writing of the sentence in this way.

The CHAIRMAN. Is it not rather odd, organizationally speaking, for a subordinate agency to review the work of the main agency? If I interpret this correctly, the Executive Board will be reviewing the work of the Organization.

Mr. STINEBOWER. Well, the Organization in this case is decidedly to be distinguished from the Conference. The Organization is the entirety, including the secretariat and the staff and its commissions—the entire Organization. Now, the Conference itself may obviously perform this function, too. It keeps a watching brief on everything that is done in the Organization. But as the executive of the policies laid down by the Conference, the Executive Board would be the appropriate body, as we understand it, to review the work in any field of the Organization.

It reviews it with the assistance of three commissions in the field of the three chapters of the charter. In the field of industrialization, it is left to the Executive Board to determine what kind of machinery it will use for reviewing that function of the Organization.

The CHAIRMAN. Would this clarify what I have in mind, that when you speak of reviewing the work of the Organization, you are not speaking of the reviewing of it in the sense that an appeal court reviews the work of a lower court?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. That merely means taking a look at it?

Mr. STINEBOWER. Keeping a watch, a brief over it; a supervisory look at the work of the Organization.

The CHAIRMAN. That is all that is meant?

Mr. STINEBOWER. That is all that is meant.

The CHAIRMAN. I think that clarifies it. [Reading:]

2. The Executive Board may make recommendations to the Conference, to the Members of the Organization, or to other international organizations, on any subject falling within the scope of this Charter, and shall prepare the preliminary agenda of the Conference.

Can the Executive Board make such recommendations without the approval of the Conference?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Is not that rather strange from an organizational standpoint?

Mr. STINEBOWER. On many occasions the Conference, being an annual conference presumably, recommends. Recommendations on some subjects would lose their point if it were necessary to wait until the Conference had passed upon them. They are only recommendations and not directives for action.

On the other hand, the Executive Board is responsible to the Conference and if it made too many silly recommendations or exceeded its powers, I think one could depend upon the Conference at the next election to remove the offending members of the Board. However, the provision for direct recommendations is made in the light of the fact that it may be necessary to take cognizance of current situations

which cannot wait or should not have to wait until the ensuing annual Conference. The Conference would still retain the authority to repudiate those recommendations.

The CHAIRMAN. The Conference would retain that authority to repudiate those recommendations?

Mr. STINEBOWER. Completely, and to refuse to reelect members of the Board as the result.

The CHAIRMAN (reading):

3. The Executive Board may recommend to the Conference the admission of new Members of the Organization.

SECTION E. COMMISSIONS

ARTICLE 72. ESTABLISHMENT

The Conference shall establish a Commission on Commercial Policy, a Commission on Business Practices and a Commodity Commission and may establish such other Commissions as may be required. The commissions shall be responsible to the Executive Board.

ARTICLE 73. COMPOSITION AND PROCEDURE

Before we come to that article, I invite attention to the fact that these commissions may also be endlessly multiplied.

Mr. STINEBOWER. It is possible.

The CHAIRMAN. Now, article 73 [reading]:

1. Commissions shall be composed of persons chosen by the Executive Board and qualified by training or experience to carry out the functions of the Commissions in accordance with the purposes of this Charter.

Those commissions will be made up of technicians, will they not?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. They need not be representatives of members at all—probably will not be?

Mr. STINEBOWER. They may not be.

The CHAIRMAN. Yes, they could be, but probably will not be; is that right?

Mr. STINEBOWER. I think that is not right, sir. Under article 82, paragraph 2, it is provided that the provisions of this article, in which we speak of the international responsibilities of personnel of the Organization, shall apply to members of the commissions.

It depends on what you may have meant by "representatives." They may not act in a capacity as representatives of their government while serving on commissions.

The CHAIRMAN. Yes.

Mr. STINEBOWER. There is nothing that would prevent an officer of this Government from serving on the Commission, but he would not do so in a representative capacity. He would do so because he was recognized as an expert in the field.

The CHAIRMAN. I repeat, the point is to put technicians on these commissions?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading):

2. The number of members of each Commission and the conditions of service of the members of each Commission shall be determined in accordance with regulations prescribed by the Conference.

3. Each Commission shall elect its Chairman, and shall, subject to approval by the Executive Board, adopt its own rules of procedure.

4. The Chairman of each Commission shall be entitled to participate, without the right to vote, in the deliberations of the Executive Board and of the Conference.

5. Pursuant to agreements under paragraph 2 of Article 81, the Organization may make arrangements for representatives of other intergovernmental organizations having a special interest in the activities of any of the Commissions to participate in the work of such Commissions.

I notice a comment on that paragraph. It seems to be contemplated that the Food and Agricultural Organization might be called in.

Mr. STINEBOWER. We have always anticipated that it would be called into the Commodity Commission. There was some difficulty in mentioning them specifically in the Charter to the exclusion of other organizations.

The CHAIRMAN. Well, you have enough leeway to call in anybody that would have any reason for being there, have you not?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading) :

ARTICLE 74. GENERAL FUNCTIONS

The commissions shall perform such functions as the Conference or the Executive Board may assign to them, including such functions as the Executive Board may deem appropriate in connection with the settlement of disputes.

Just what is in mind there?

Mr. STINEBOWER. That has more relevance in connection with the original draft on settlement of disputes submitted by the United States than it seems to have in connection with the present article 80, but it was contemplated that the Executive Board, before deciding a dispute arising out of the application or interpretation of the charter, would have the liberty, the permissive liberty, of calling on a commission for advice as to the facts of the case.

The CHAIRMAN. Could a dispute be delegated to a commission?

Mr. STINEBOWER. There is no provision in either our original draft or in the present draft that would let the Commission decide. It would only be a service to the Executive Board.

The CHAIRMAN. That is the whole purpose of it?

Mr. STINEBOWER. That is the only purpose of it.

The CHAIRMAN (reading) :

The functions of the Commission on Commercial Policy, the Commission on Business Practices, and the Commodity Commission shall include those specified in Articles 75, 76, and 77, respectively. The Commissions shall consult with each other as necessary for the exercise of their functions.

ARTICLE 75. FUNCTIONS OF THE COMMISSION ON COMMERCIAL POLICY

The Commission on Commercial Policy shall have the following functions :

(a) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter V and regarding the commercial policy aspects of proposals involving the exercise by the Organization of its functions under this Charter; and

(b) to develop and to recommend to the Executive Board programmes designed to further the objectives of this Charter in the general field of commercial policy.

These commissions have no power other than recommendatory; is that correct?

Mr. STINEBOWER. That is correct.
The CHAIRMAN (reading):

ARTICLE 76. FUNCTIONS OF THE COMMISSION ON BUSINESS PRACTICES

The Commission on Business Practices shall have the following functions:

(a) to conduct studies in the field of Restrictive Business Practices, as provided for in paragraph (a) of Article 41; and

(b) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter VI and regarding the exercise of the functions of the Organization under this Charter, insofar as they relate to Restrictive Business Practices.

ARTICLE 77. FUNCTIONS OF THE COMMODITY COMMISSION

The Commodity Commission shall have the following functions:

(a) to study commodity problems and proposals for dealing with them and to prepare the reviews called for in Article 55—

Those are regulatory, are they not?

Mr. STINEBOWER. Yes, sir; those are the reviews relating to the renewal or termination of an agreement.

The CHAIRMAN (continuing reading):

* * * and (b) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter VII and those arising from the provisions of paragraph 4 of Article 30.

Chapter VII relates to commodity agreements, paragraph 4 of Article 30 relates to subsidization of primary commodities, does it not?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading):

SECTION F. THE SECRETARIAT

ARTICLE 78. COMPOSITION

1. The Secretariat shall consist of a Director-General and such staff as may be required.

I invite your attention to the lack of limitation there on size of staff.

Mr. STINEBOWER. The limitation, sir, comes in the budget which the Secretariat, the Director General, must provide and have approved by the Organization, but it has been and is the consistent view of the United States that you cannot do the Director General's work for him within the limit of budget and directives that he gets from the conference. He must have a free hand in the provision of staff to carry out the functions assigned to him.

The CHAIRMAN. There is no limit on the Organization as to the size of any staff that it may approve, other than the practical limitation, which you developed awhile ago, of persuading the member countries to pay the bill.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. Is that right?

Mr. STINEBOWER. That is correct.

The CHAIRMAN (reading):

2. The Director General shall have authority to appoint Deputy Directors General in accordance with regulation approved by the Conference.

ARTICLE 79. THE DIRECTOR GENERAL

1. The Director General shall be appointed by the Conference upon the recommendation of the Executive Board. The powers, duties, terms, and conditions

of office of the Director General shall be in accordance with regulations approved by the Conference. He shall be the chief administrative officer of the Organization, and shall be subject to the general supervision of the Executive Board.

Will all of these people be international persons?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Where is that provided?

Mr. STINEBOWER. Under the provisions of article 82.

The CHAIRMAN. Will they have income-tax exemptions and tax privileges similar to those provided for the members of the United Nations?

Mr. STINEBOWER. Presumably they will, although the provision here in article 84 depends upon the recommendations of the conference and the arrangements worked out with members.

The CHAIRMAN. I think perhaps we had better wait until we get to that.

Mr. STINEBOWER. All right.

The CHAIRMAN (reading):

2. The Director General or his representative shall be entitled to participate, without the right to vote, in all meetings of the Conference, of the Executive Board, of the Commission, and of the Committees of the Organization. The Director General may initiate proposals for the consideration of any organ of the Organization. He shall present through the Executive Board an annual report to the Conference on the work of the Organization and shall in consultation with the Executive Board prepare the budget of the Organization for submission to the Conference.

I think it has been demonstrated that the Director General in these international organizations can be a very potent fellow.

Mr. STINEBOWER. He is indeed. He is a very significant international figure.

The CHAIRMAN. Not only significant internationally, but he is a potent fellow in the Organization. He can be!

Mr. STINEBOWER. Yes.

The CHAIRMAN (reading):

ARTICLE 80. EMPLOYMENT OF STAFF

1. The Director-General shall appoint the staff of the Secretariat and fix its duties and terms and conditions of service in accordance with regulations approved by the Conference. The paramount consideration in the employment of the staff and in the determination of its conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity, due regard being paid to the importance of recruitment on as wide a geographical basis as possible.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. How do these mixed language groups work out, as a matter of practice?

Mr. STINEBOWER. Actually, in very short time, they come to have facility in one of the two main languages, and generally the location of the Organization determines the working language of the Secretariat. In the United Nations, for example, there are very few members of the Secretariat who do not do passably well in English now.

The organizations that used to live in Geneva nearly always developed French as the working language of the Secretariat.

The CHAIRMAN. So that if it should start out as a sort of Tower of Babel, that ameliorates as time goes on?

Mr. STINEBOWER. Language facility becomes a matter of importance to the Director General in recruiting the staff.

The CHAIRMAN (reading) :

2. The conditions of service, such as the provisions governing qualifications, salary, tenure, and retirement of members of the Secretariat shall be fixed, so far as practicable, in conformity with those for members of the Secretariat of the United Nations and of other specified agencies.

Mr. STINEBOWER. That should be specialized agencies. That is a misprint.

The CHAIRMAN (reading) :

SECTION G. MISCELLANEOUS PROVISIONS

ARTICLE 81. RELATIONS WITH OTHER ORGANIZATIONS

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations.

That is under the economic and social part?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading) :

This relationship shall be effected through agreement with the United Nations under Article 63 of the Charter of the United Nations, which agreement shall be concluded by the Director General and approved by the Conference. The agreement shall provide for effective cooperation between the two Organizations in the pursuit of their common purposes, and at the same time shall recognize the competence of the Organization within its jurisdiction as defined in this Charter. The Conference may adjust the provisions of this Charter to conform to any such agreement provided such adjustments do not involve new obligations on the part of Members.

Would you mind placing the contemplated organization here in its relation to the United Nations? Is it a subordinate agency? Is it subordinate in part and autonomous in part? What is its exact position in the whole over-all scheme?

Mr. STINEBOWER. According to my understanding, it remains an autonomous agency. The Articles of Agreement, bringing it into relationship with the United Nations, may not without the consent of the members by the amendment process, change any fundamental purpose or obligation of the organization. The Charter of the United Nations in article 57, contemplated that these specialized international agencies would be brought into relationship with the United Nations through agreements to be negotiated by the Economic and Social Council and approved by the General Assembly, and also in turn approved by the conferences of the specialized organizations. The purpose of article 57 of the Charter was not to give the United Nations the power directly to intervene in decisions and, shall I say, to remand or to veto decisions of the specialized agency.

The CHAIRMAN. What is your authority for that statement?

Mr. STINEBOWER. The authority is the entire Charter of the United Nations. It is part of the powers of the Economic and Social Council and of the General Assembly to coordinate the activities and policies of the organization through recommendations to the organization and to members of the United Nations, but there is nothing in the Charter of the United Nations which gives even to the General Assembly, and much less to the Economic and Social Council, any authority to override activities.

The purpose in writing those provisions of the Charter of the United Nations was in recognition of a wider variety of international organizations than we had before, to place in the United Nations the responsibility for harmonizing, stimulating and coordinating all of these specialized agencies, so they would contribute to a consistent pattern of international cooperation, rather than perhaps getting at cross purposes with each other in time.

The CHAIRMAN. Under your view of it, these related agencies, these specialized agencies, operating under or with the United Nations, might have more power than the United Nations itself?

Mr. STINEBOWER. In their particular fields they may very well have more power.

If it would be of interest, I would be glad to submit for your records one of the agreements concluded between the United Nations and one of the specialized agencies. For example, the agreement concluded between the United Nations and the Food and Agricultural Organization.

The CHAIRMAN. Have you that? It would be a good thing to have for the record, and if you will let us have it, we will put it in as an appendix.

Mr. STINEBOWER. Yes, sir. May I just make one more statement?

The CHAIRMAN. Yes.

Mr. STINEBOWER. A perusal of that agreement will indicate that the furthest that the powers of coordination go are these: An agreement on the part of the specialized agency in question to put any recommendation referred from the General Assembly or the Economic and Social Council on the agenda of its conference for consideration, an agreement to give due weight to recommendations it receives, agreement for reciprocal representation at each other's meetings, agreement on the part of the specialized agency to participate in the coordination committee of the Economic and Social Council. That is a committee which consists of the Secretary General of the United Nations and the Director General, or whatever his corresponding title may be, of the various specialized agencies. They meet together in the effort to work out common problems, particularly at the administrative level, although also at the policy level.

The Economic and Social Council, itself, is the next coordinating body. It did not set up a separate coordinating commission as once was suggested. It is the coordinating body on matters of activity or policy which the administrative officers themselves cannot iron out. The General Assembly is the organization which would address recommendations either to member governments or to the specialized agencies on matters of inconsistency of policy.

The CHAIRMAN. Well, that is an interesting theory.

Let me give you one of my own.

I participated actively in trying to determine the meanings of the United Nations Charter. We had in mind the possible role of these specialized agencies. It never occurred to us that an agent would have more power than the principal. We were very much interested in finding out what powers the principal might have and so we established that very definitely in this field, that it would have no more than recommendatory powers.

It would have put an entirely different face on the situation, I suggest, had anyone at that time proposed that an agency of the United

Nations could have more power than the United Nations itself in that field.

Now, it has already been developed here that when this agreement comes back to the Congress, the very source of power that permitted us to approve the United Nations gives us the power to approve the agreement. We are not limited in our power to approve an agreement, but the question still arises whether that agreement is consistent with the purposes and the powers of the United Nations. You will find, I suggest, that many Members of the Congress consider that the United Nations is the principal agency, and that this and all other specialized agencies are subordinate to it, and contrary to your theory, are subject to its control or should be.

The members can alter what was originally conceived to be that relationship. Of course, they can alter it. They can alter the fundamental structure of the United Nations itself, but when you propose such an alteration, you are putting up a lot of sail, and you might overturn your boat.

Mr. STINEBOWER. Well, Senator, if I may reply to that, I am very doubtful indeed—

The CHAIRMAN. If I may go one step further, we had it very sharply in mind how the development of these social and economic activities might be reaching into the member nations, in the sense of interfering with their domestic jurisdictions, and we were out to measure just how much of that would result from the United Nations Charter. That is why we went to such particular pains to find out what the power of the Charter was; and it was never suggested, I repeat, that a specialized agency, an agent, would finally wind up with more power than the principal, the principal's power being limited under all of the interpretations given to the United Nations Charter, to that which is recommendatory.

Mr. STINEBOWER. With all due respect, Senator, I do not think that the words were well chosen, if they lent themselves to that interpretation, because to the best of my knowledge, while the United Nations Charter was being written at San Francisco, no one anticipated the use of that word "agency" as implying that the Organization was an agent of the United Nations as an Organization, in that sense. It was used in the sense of organization. The word "agency" was used not in the sense of an agent of the United Nations. It was used, I do submit, in the sense we sometimes use it in titles of our Federal agencies. It is synonymous with the word "organization." The "specialized international agencies" might just as well have read "specialized international organizations."

The CHAIRMAN. You are making an argument now with relation to principal and agent that would not conflict.

Mr. STINEBOWER. It is my understanding that it was not.

I do well recognize the domestic jurisdiction clause that you mention, because I lived through the particular drafting committee in which that arose at San Francisco.

The CHAIRMAN. You will then remember that there was a special interpretation by the members of the United Nations.

Mr. STINEBOWER. I do, indeed.

The CHAIRMAN. That made it very clear that there were no functions in the Economic and Social Council other than recommendatory.

Mr. STINEBOWER: I do, indeed.

The CHAIRMAN. It was that hot a question. There was not only senatorial curiosity about it, but you had a lot of curiosity about it at San Francisco, and I invite you to present right here any suggestion that was made at San Francisco that any specialized agency, whether in or out of the relationship of principal and agent, would have greater power than the Economic and Social Council itself.

Mr. STINEBOWER. Well, on that, I would be quite clear, sir. By the time the San Francisco conference met, we had already held the Bretton Woods Conference, and I feel reasonably sure that no member of the United States delegation and no Member of the Congress when it considered the Bretton Woods Agreement would have contemplated giving to the Economic and Social Council, in which it is one country, one vote, any principal-agent relationship, in that sense, between the Economic and Social Council and the International Monetary Fund, on which the United States has a weighted vote.

Also, if I may say, it has been my privilege to participate in the negotiation of the four agreements, which have been reached between the United Nations and specialized agencies, the Food and Agricultural Organization, the ILO, the International Labor Organization, the Civil Aviation Organization which is temporarily in abeyance because of the Spanish issue, and the United Nations Educational and Cultural, Scientific and Cultural Organization.

In none of those discussions which led to these agreements have any questions of principal and agent arisen. If anything touched on that, the jealousies of the agencies for preserving their prerogatives under their charters have been protected.

The CHAIRMAN. What I asked you was, did anything occur at San Francisco that suggested that this organization would have more power than the Economic and Social Council itself?

Mr. STINEBOWER. Yes, sir. I think it was always contemplated that when it came to operative functions—if the United Nations wanted, not the United Nations as an organization, but if the member states wished to conclude an agreement, for example, as in the International Monetary Fund, it could be done.

The CHAIRMAN. I agree with you that as a matter of power it can be done. Of course, it can be done. You can bring this charter as it is back here, and we can approve it, assuming we do it constitutionally. We can approve it. There is no question about that. I am talking to you about what was contemplated by the United Nations.

Mr. STINEBOWER. I meant to answer.

The CHAIRMAN. No one thought that the Economic and Social Council itself was going to be a completely operative agency, in itself.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. I suggest to you that it was contemplated that the Economic and Social Council would work through specialized agencies, to achieve its objectives, and I suggest to you again that its power to achieve its objectives was limited to that which is recommendatory, from which it follows if there is any logic to the scheme at all, that the specialized agencies must limit themselves to that which is recommendatory. In other words, it could be contended that this charter is in violation of the United Nations Charter, but that we have the power to adopt it and approve it if we wish to accept the violation and live under it.

I am not questioning our power in the matter, if the charter comes back and is submitted to us in a constitutional way and if we act on it in a constitutional way.

Mr. STINEBOWER. With all due respect, Senator, I can only say that if that is an interpretation of the Charter, I mean if that is the correct interpretation of the Charter of the United Nations, I did not hear it discussed in those terms before or during the San Francisco Conference; and to the best of my understanding of what was going on, it was assumed that we had limited the functions of the United Nations in the economic and social field to recommendations, that if the countries of the world wished to take stronger action, if I may call it such, they would do that through independent agreements for the charters of specialized agencies. In support of that, I do suggest that articles 57 and 63 of the charter were written in the light of the Bretton Woods Agreement which had already been concluded, and it was contemplated, and the record will show quite clearly that it was contemplated that the bank and the fund would become specialized agencies of the United Nations, not agents in this particular case, but specialized agencies within the meaning of article 57.

The CHAIRMAN. Let me bring you back to the Economic and Social Council under which this agency, or in association with this agency, will operate. Is that right?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. How senseless it would have been at San Francisco, after all of the agitation over the power of the Economic and Social Council, to have passed a special interpretative resolution to the effect that the power of this arm of the United Nations Organization is recommendatory only, how senseless it would have been to have developed the same thing in the hearings before the Senate Foreign Relations Committee, how senseless it would have been to have developed the same thing on the floor of the Senate, while having up our sleeves the thought that a specialized agency, which we always figured would carry out the powers of the Economic and Social Council, should have greater powers than the Council itself. What is the sense of it? Why emphasize that limitation on the power of the Economic and Social Council if at the same time there was a rounded concept that the specialized agency should have greater power? Would it not have been the logical thing to say, "The Economic and Social Council, as such, shall have nothing but recommendatory powers, but we invite your attention to the fact that this associated agency, the ITO, will have far greater powers"? Was anything of that kind developed in the record?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. How was it?

Mr. STINEBOWER. In connection with the discussion of articles 57 and 63, that problem was faced in connection with the International Monetary Fund, as an example.

The CHAIRMAN. Is the International Monetary Fund under the Economic and Social Council?

Mr. STINEBOWER. It has not yet come, but it is hoped that it will negotiate an agreement before the next session of the Council.

The CHAIRMAN. That raises the same questions we are discussing now? We cannot prove any point now by simply forecasting the same point in the future.

Mr. STINEBOWER. That, I realize, sir, but you asked me if it had been contemplated at San Francisco, and when we wrote the Charter of the United Nations obviously no organization had yet become a specialized agency in the technical sense of having entered into relationships.

The CHAIRMAN. That is right.

Mr. STINEBOWER. At that time, we had three kinds of test cases to think about. We had the existing International Labor Organization. We had the Food and Agricultural Organization which had not come into being, but whose constitution had been submitted to governments.

The CHAIRMAN. Yes.

Mr. STINEBOWER. We had the International Monetary Fund and the International Bank.

The CHAIRMAN. Yes.

Mr. STINEBOWER. In writing article 57 and article 63, it was necessary to think about the nature of the relationship to be established with the United Nations in the light of existing or potentially existing organizations.

The CHAIRMAN. Yes.

Mr. STINEBOWER. There, it was clearly recognized that there were some things which the United Nations could not do by direct action, by the direct action of the General Assembly or the Economic and Social Council, to override the operative decisions of a body such as the International Monetary Fund or the International Bank, which have responsibilities entrusted to them by the agreement of members who have entered into those organizations.

The theory of that as expressed there was this: Without power to command, the United Nations is still made up of the same member countries, by and large; it is not identical membership, but, by and large, it is made up of the same member countries who are members of the specialized organizations; presumably governments should speak with one voice, whether they do or not, in different international organizations.

In many cases a recommendation from the General Assembly to the specialized agency should be sufficient to command respect and compliance.

Where there are problems of operative responsibility under another international agreement, the effective recommendation is really not to the organization itself, but to the members who are common members of both, to consider whether in instructing their representatives to the specialized agency at the next session, they should not bring the policies of that organization into line with suggestions made by the United Nations.

The CHAIRMAN. Which spells what, so far as the point before us now is concerned?

Mr. STINEBOWER. Which spells the fact that it was contemplated that if the United Nations wanted to establish operating procedures, operating functions in international organizations they would do it through separate international agreements, setting up a specialized agency, and that the function of the United Nations in the economic and social field would be to try to harmonize and coordinate the interests of the specialized agencies, all of which repeat in one form or another the common purposes of the United Nations in their purposes.

The CHAIRMAN. Let me ask you again, What was the sense of making it doubly and triply and quadruply certain that the Economic and Social Council would have nothing except recommendatory powers and not developing at the same time that this organization which is contemplated would have greater powers than the Economic and Social Council?

Mr. STINEBOWER. Well, as I understood it, the theory was—

The CHAIRMAN. What is the point of all of that emphasis on the lack of power of the Economic and Social Agency of the United Nations if some other agency operating under the same banner is going to have greater power? What is the sense of it? Why the emphasis on it? Why go to all of that trouble of interpretation? Why limit the power of the Economic and Social Council?

Mr. STINEBOWER. Well, as I understand it, the purpose was because the members of the United Nations were not prepared in adopting the Charter of the United Nations to give functions to the Economic and Social Council, or, for that matter, to the General Assembly of such far-reaching import as they gave to the Security Council, but that they did anticipate and had already anticipated through the negotiations of two of these instrumentalities that I have just mentioned that governments would get an independent chance to examine critically the provisions of any organization which did have direct powers, but in a more limited field.

The CHAIRMAN. Yes. Well, I have not challenged the right of the countries to alter the United Nations Charter, if they wish, or to adopt independent agreements. I have not challenged that.

Mr. STINEBOWER. My only understanding that—

The CHAIRMAN. That is not my point. What I am trying to get at is, under what theory do we make it so very clear that the Economic and Social Council shall have no more than recommendatory powers, while at the same time, we withhold the fact and say nothing about the even more important fact that some other agency that may revolve in the same orbit will have greater powers than the Economic and Social Council?

Let me put it another way: Do you suppose that men who thought it was very important to determine a limitation of power of the Economic and Social Council, under the explanations which were made of that power and under the explanations of the limitations on that power, would have taken the same view had it been developed at the same time, "Oh yes, this is true as to the Economic and Social Council; it can do nothing but recommend, but an associated agency will have very much more power"? That feature of it, I assure you, was not developed. The Senate, because of its great interest in the powers of the Economic and Social Council might, and I do not know whether it will or not, be very much interested in this, I was going to say this boot-strap lifting but that assumes the validity of my own case, and so I shall say the added powers contained in the charter of the proposed Organization.

Mr. STINEBOWER. Well, sir, I can only refer to the testimony during the hearings on the United Nations Charter. I do not have chapter and verse here, but I do recollect that Dr. Pasvolsky, in testifying, referred to specialized agencies which have operating functions, whereas the functions of the Economic and Social Council were only recommendatory.

The CHAIRMAN. Operating in the sense of carrying out the work of the Economic and Social Council. Of course, that was contemplated.

Mr. STINEBOWER. At the same time, also, I cannot say whether this is in the record of the hearings or not, I do not have this in mind, but certainly in all of the descriptive material which was published by the Department of State there was shown what was our understanding of the common understanding of the agencies to be brought into relationship under article 57. Those diagrams, charts, descriptive materials always listed the Food and Agricultural Organization, the Labor Organization, the Monetary Fund, the Bank, the proposed ITO, and various other organizations.

Quite without regard to the ITO, sir, the articles of agreement of the International Monetary Fund were completed. It is true that the Congress had not yet accepted them.

The CHAIRMAN. Has the Congress accepted them?

Mr. STINEBOWER. They had not yet accepted them. They were pending, they were public knowledge as to what was in the agreements.

I can also testify out of personal recollection, although I am afraid this is one of the things that one cannot find recorded in minutes, that during discussions within the American Delegation at San Francisco one of the things that was felt at that time to be reassuring, rather than otherwise, was that nothing in this one-country-one-vote organization could override decisions that would be taken in the International Monetary Fund where we had substantially 35 percent of the votes. All one could do was to recommend.

The CHAIRMAN. Quite right.

Mr. STINEBOWER. And I think at that time there was no misunderstanding among the delegation which did include Members of Congress that that was the relationship between specialized agencies and the United Nations.

The CHAIRMAN. Was this charter before the Senate at the time we were considering the United Nations?

Mr. STINEBOWER. This charter, no, sir. I was speaking about the Monetary Fund.

The CHAIRMAN. Were those articles before the Senate at that time or were they in process of being developed?

Mr. STINEBOWER. They had been completed. The Bretton Woods Conference had been held the year before.

The CHAIRMAN. Yes.

Mr. STINEBOWER. The San Francisco Conference.

The CHAIRMAN. Yes.

Mr. STINEBOWER. I am fairly sure that the articles of agreement of the Monetary Fund were not formally before the Congress.

The CHAIRMAN. I can say to you that they were not. They were not any more than this charter is formally before the Congress.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. Nor to the same extent. We never had a preliminary sitting of any of those things before the Congress. This proposed International Trade Organization charter is the first international document in 14 years which has been sifted before it came back as a fait accompli.

Mr. STINEBOWER. Except this one.

The CHAIRMAN. Which one is that?

Mr. STINEBOWER. The constitution of the Food and Agricultural Organization.

The CHAIRMAN. Was that studied by Congress before it was approved?

Mr. STINEBOWER. The Senate Foreign Relations Committee appointed a three-member subcommittee with which some of us met regularly, Senators Austin, Thomas of Utah, and Gillette, and we met regularly and went over it entirely, in just this way.

The CHAIRMAN. I am glad to hear that. I think it is a very sound procedure.

Mr. STINEBOWER. And also UNRRA.

The CHAIRMAN. At the time we were considering the powers of the Economic and Social Council we did not have this charter before us, did we?

Mr. STINEBOWER. No, sir.

The CHAIRMAN. And we had no other charter before us of the fund or the bank or any other arrangement at that time?

Mr. STINEBOWER. Not officially.

The CHAIRMAN. Well, not officially. I am not so sure even unofficially. I remember in connection with Bretton Woods that Secretary Morgenthau came over one day and had an unofficial gathering of Senators and made some comments as to what might be in an agreement of that kind.

Mr. STINEBOWER. Well, if I may put it this way—

The CHAIRMAN. My point is that I do not think you can make anything out of agreements that were in process of formulation, that were not before the Congress in any official way and that had not been signed up and had not been approved and that were not, so far as the Congress might know, even in final form.

Mr. STINEBOWER. That is not quite correct with respect to the Bretton Woods Agreements, however, sir, because in the same form that any international agreement is concluded and signed, subject to the approval of the Congress, the Bretton Woods Agreements were in final form. They had been signed by the Executive at Bretton Woods, subject to the concurrence of the Congress, and there was no further modification or further negotiating process. That was done 10 months before the San Francisco conference began.

The CHAIRMAN. Yes, but there had been no hearings by Congress.

Mr. STINEBOWER. There had been no hearings.

The CHAIRMAN. On the Bretton Woods arrangement.

Mr. STINEBOWER. I am not attempting to be disrespectful, but I only mean that they were in final form and I can testify that the issues arising out of this question you are putting to me were discussed in the United States delegation at San Francisco in the light of known provisions of Articles of Agreement that would eventually come to the Congress.

The CHAIRMAN. Yes, and the chairman of the delegation at San Francisco stated expressly at the hearings on the United Nations Charter, he emphasized that the powers of the Economic and Social Conference would only be recommendatory.

Mr. STINEBOWER. That is all they are.

The CHAIRMAN. And there was not a suggestion at the hearings that a charter of this kind would come along with greater powers than recommendatory, not a suggestion. That is exactly what we were probing. Do you suppose we would have allowed the subject to have dropped on the assertion that the powers of the Economic and Social Council are merely recommendatory, had we been advised at the same time that something would come along later with greater powers? [Reading:]

2. The Organization shall cooperate with the other intergovernmental organizations having related interests and activities. Arrangements for cooperation with such organizations may be made by the Executive Board. Effective working relationships with such organizations, which may include the establishment of joint committees or provision for reciprocal representation at meetings or such other measures as may be necessary to assure effective cooperation, may be established by the Director General.

3. The Organization may make suitable arrangements for consultation and cooperation with nongovernmental organizations concerned with matters within its competence and may invite them to undertake specific tasks.

I call attention in connection with that paragraph of the opportunities which are there offered for a further mushrooming of the activities of the organization and of its size. [Continues reading:]

Whenever the Conference of the Organization and the competent authorities of any other international organization, whose purposes and functions lie within the competence of the Organization, deem it desirable to effect a transfer of its resources and functions to the Organization, to incorporate it into the Organization or to bring it under the supervision or authority of the Organization, the Director General, subject to the approval of the Conference, may enter into mutually acceptable arrangements for this purpose. The Organization may acquire such resources and assume such functions of, or incorporate or exercise such control over, such other organizations as may be provided by any convention or agreement appropriate to the purpose.

Are you using "convention" there in the sense of a treaty?

Mr. STINEBOWER. Treaty or international agreement; yes, sir.

The CHAIRMAN. Well, are you using the word "convention" in the sense of a treaty?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. So that in real substance that could read, "As may be provided by any treaty or agreement appropriate to the purpose," is that right?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading):

The Members shall, subject to their respective constitutional requirements, take such steps as the Conference may determine to integrate such other international organizations into the structure of the Organization.

What is in mind there, what kind of organizations will you take in? Have you considered taking in any specific organizations?

Mr. STINEBOWER. Yes, sir. There are a number of preexisting organizations which have functions somewhat related to the International Trade Organization which might well be absorbed, but which this does not require to absorb. For example, there is and has existed, I believe, since 1913, what is known as the Brussels Bureau for the Publication of Custom Tariffs, a central organization which publishes for the information of countries of the world all customs tariffs.

There is the Berne Bureau for the Protection of Patents and Trade-marks, operative under the International Convention for the Protec-

tion of Industrial Property. Those, in particular are two that we have in mind.

When the Food and Agricultural Organization was before the Congress for its approval, the Congress was at some pains to instruct the United States Government to see to it that the preexisting International Institute of Agriculture at Rome should not go along as a parallel body, but should be absorbed. This is an article designed to authorize similar action, wherever it seems desirable to the member governments to eliminate duplication.

The CHAIRMAN. In each case a merger or absorption of that kind will come back to the Congress?

Mr. STINEBOWER. If it is the kind of merger that requires the abolition of a preexisting organization, it may or may not. In the case of the Rome Institute it was not regarded as necessary, as I understand it, to bring it back to the Congress because we had a mandate in advance to absorb it.

The CHAIRMAN. How about where you do not have an advance mandate?

Mr. STINEBOWER. It would depend in part on whether we were a party to that Organization.

The CHAIRMAN. You mean a party of the Organization being absorbed?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Supposing we were not?

Mr. STINEBOWER. Then I should suppose that it would not have to come back for approval.

The CHAIRMAN. And if we were, it would?

Mr. STINEBOWER. It would, perhaps, depend upon the structure, the way in which the Organization had been set up and the steps that were necessary to absorb it.

The CHAIRMAN. What is the operative test on which you would determine whether to bring that kind of a transaction back to Congress for approval or disapproval?

Mr. STINEBOWER. One test is the test which was involved in the Rome Institute in which it was necessary for the members who had been inactive during the war to pay their back dues so as to liquidate the existing obligations of the Organization. That we did in the case of the Rome Institute.

If it were a matter of taking over the Brussels Bureau for the Publications of Customs Tariffs which in effect is the liquidation of an overlapping organization, since under article 61 (a) you already have a mandate for this Organization to do that task, I should assume, subject to checking this answer that it would not then be necessary to bring it back to the Congress if the Congress had approved of this article. If it involved no obligation of any kind upon the United States Government to absorb it.

The CHAIRMAN. Suppose it increased the expenses of the Organization?

Mr. STINEBOWER. The purpose would be to do the opposite.

The CHAIRMAN. It might not result—I mean, you might have increased expense.

Mr. STINEBOWER. If you do that, it comes back to the Congress each year.

The CHAIRMAN. I understand that it comes back every year. I am talking about, would not the Congress have the right to approve it in the first instance or disapprove it?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. If it increases the expense to the Organization.

Mr. STINEBOWER. I would want to check this answer but not purely for that reason, because on that basis any action—

The CHAIRMAN. Is that not your own test? It is not my test.

Mr. STINEBOWER. No, sir. I spoke of the case in which it involved an expense on the liquidation of the Organization, not a new expense for the International Trade Organization.

The CHAIRMAN. Then let me ask you again what would be the test that would bring that kind of a transaction to Congress for approval?

Mr. STINEBOWER. I am not able to give an objective test to you. I presume it would be the opinion of the competent legal authorities, ultimately of the Attorney General, whether it was a matter that could be accomplished by Executive action or required implementing legislation. If I may put it this way, it is a little parallel to the termination of almost any international agreement. The advice and consent of the Senate is required for entering into a treaty. The advice and consent as to the termination of a treaty is not. It may be done by purely Executive action.

The CHAIRMAN. Give me again the case that you postulated involving the absorption of an outside organization. This was what organization?

Mr. STINEBOWER. The International Institute of Agriculture at Rome was being absorbed into the new Food and Agricultural Organization.

The CHAIRMAN. We were a member?

Mr. STINEBOWER. We were.

The CHAIRMAN. It was a public agency?

Mr. STINEBOWER. It was a public agency.

The CHAIRMAN. Did that come back to the Congress?

Mr. STINEBOWER. It came back in this sense, that because it was an organization located in Rome the United States had paid no dues during the war. It was a captive of the enemy. There were liabilities of the Rome Organization and it was not felt that the new Organization should absorb the outstanding liabilities of the old Organization. It was felt that those were the things for the members of the old Organization to clean up. So that having estimated what the existing liabilities were and prorating them on an equitable basis among the members of the old Organization we did come back to the Congress and ask for appropriation to pay off our proportionate share of those liabilities so it could be absorbed liability free into the new Organization of which we were, also, a member.

The CHAIRMAN. But you did not bring it back to ask permission to do that?

Mr. STINEBOWER. No.

The CHAIRMAN. You came back to get money?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Is there authority here to take over a private organization?

Mr. STINEBOWER. Not according to my reading of it. As a matter of fact, in the third line of this paragraph we noted—

The CHAIRMAN. Let me invite your attention to paragraph 4 which states [reading]:

Whenever the Conference of the Organization and the competent authorities of any other international organization, whose purposes and functions lie within the competence of the Organization, deem it desirable to effect a transfer of its resources and functions to the Organization—
and so forth and so on.

Could that not be a private organization?

Mr. STINEBOWER. It could be. We regard that as an inadvertent bit of drafting, and noted just this morning that it would be desirable to make that read, "intergovernmental organization," rather than "international organization."

The CHAIRMAN. Then you intend to secure a correction of that kind?

Mr. STINEBOWER. We intend to propose that correction; yes, sir.

The CHAIRMAN. Let me put the thought again to you that is in my mind. The constant absorption of international organizations may have the effect of constantly enlarging what you start out with. That, in turn, imposes fiscal burdens. It also imposes changes, perhaps in the character of the organization as originally contemplated.

What control will the Congress have over that other than the control you have mentioned, of disapproving budgets, if it wishes to?

Mr. STINEBOWER. The direct control is not entirely apparent right at the moment to me. If I may point out, however, we are in other directions under a fair amount of continuing pressure from the Congress to simplify the existing structure of international organizations. We are getting more attention to larger organizations at the moment than we have ever had before, but even prewar, at a time when we think of not so many organizations having existed, there were in the neighborhood of 200 public international organizations of varying size and importance. We were not members of all of them, but we paid small amounts to a very substantial number of them, and it has been repeatedly represented to us that one of the things that we should do in the processes of setting up the several larger organizations is to simplify the structure of those 200 organizations by absorbing as many of them as possible into these organizations, both in the interest of efficiency and of economy.

The CHAIRMAN. Will the Congress have the opportunity to approve or disapprove each successive absorption in advance?

Mr. STINEBOWER. I am not aware of any requirement that brings it here, sir.

The CHAIRMAN. (reading):

ARTICLE 82. INTERNATIONAL RESPONSIBILITIES OF PERSONNEL OF THE ORGANIZATION

1. The responsibilities of the Director-General and of the staff shall be exclusively international in character. In the discharge of their duties they shall not seek or receive instructions from any government, or from any authority external to the Organization. They shall refrain from any action which might prejudice their position as international officials.

2. The provisions of paragraph 1 of this Article shall also apply to the members of the Commissions provided for in Article L72.

3. The Members shall respect the international character of the responsibilities of these persons and shall not seek to influence them in the discharge of their duties.

ARTICLE 83. INTERNATIONAL LEGAL STATUS OF THE ORGANIZATION

The Organization shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.

Could it sue and be sued domestically?

Mr. STINEBOWER. Subject to the immunity provisions in article 84.
The CHAIRMAN (reading):

ARTICLE 84. STATUS OF THE ORGANIZATION IN THE TERRITORY OF MEMBERS

1. The Organization shall enjoy in the territory of each of its Members such legal capacity privileges and immunities as may be necessary for the exercise of its functions.

2. Representatives of the Members of the Organization and its officials shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the Organization.

Who reaches the determinations on that?

Mr. STINEBOWER. Paragraph 3 of the same article.

The CHAIRMAN (reading):

3. The Conference may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article and may propose conventions to the Members for this purpose.

In other words, these are merely objectives, paragraphs 1, 2, and 3, and the detail will be covered by convention?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. By conventions you mean treaties?

Mr. STINEBOWER. Or other forms of international agreement. In the case of the United Nations we do propose a treaty on this matter.

The CHAIRMAN. Do you interpret the word "convention" as including treaties and, also, other forms of international agreement? Would it include an Executive agreement, for example?

Mr. STINEBOWER. I should have less hesitancy in answering that, sir, if I had not just observed Senator Austin in considerable difficulty with the representative of the Soviet Union in the Security Council over the word "convention," which seemed to cause Senator Austin some difficulty in definition. And I should not think of trying to improve upon his difficulties.

The CHAIRMAN. Neither do I care to adopt them. I think we ought to have a straight answer as to the meaning of the word.

Mr. STINEBOWER. I believe, as we have used it, it was the intent to say, international agreements. Part of the problem is that we are not writing just merely for the United States Government. It does become a problem for each government as to the method by which it approves these international instruments.

The CHAIRMAN. Of course, but I am primarily interested in knowing how we interpret it. So far as we are concerned, will these matters come back as a treaty?

Mr. STINEBOWER. As used here that will depend. It is used in varying senses throughout to include both treaties and agreements, and it would depend upon the understanding which was reached between the executive branch and the Congress as to whether a particular subject was appropriate for a treaty, and whether it was appropriate for an executive agreement.

The CHAIRMAN. I cannot accept that at all. I have to interpret the meaning of the word "convention" in paragraph 3.

Mr. STINEBOWER. It is entirely clear in this case, sir, that there is nothing that could be completed under paragraph 3 by executive action. It would take action of the Congress, but I am not prepared to say whether the Congress would insist upon that being in the form of a treaty or whether it would want it in the form of an agreement.

The CHAIRMAN. It is not what Congress insists upon. It is a question of what direction this gives to the President of the United States. Is this a direction to the President to bring it back as a treaty or is it a direction to bring it here as something else?

Mr. STINEBOWER. It is a directive to bring it back to the Congress, but it is not a directive in itself to bring it back as a treaty.

The CHAIRMAN. That is what I wanted to get at. Under your interpretation of it I assume that is the State Department's interpretation, the word "convention" here does not necessarily require it to be presented as a treaty?

Mr. STINEBOWER. That is my understanding.

The CHAIRMAN. Well now, if there is any question about that.

Mr. STINEBOWER. I will correct the record.

The CHAIRMAN. Do not correct the record, give me special information of it.

Mr. STINEBOWER. I will do it in the form of a separate communication.

The CHAIRMAN. That is right.

I may point out to you that the subject of privileges and immunities is frequently covered by treaties.

Mr. STINEBOWER. It is generally covered by treaties, not universally.

The CHAIRMAN (reading):

ARTICLE 85. AMENDMENTS TO THE CHARTER

1. Any amendment to this charter which does not involve new obligations on the part of Members shall become effective upon receiving the approval of the Conference by the affirmative votes of two-thirds of the Members.

2. Any amendment to this Charter which involves new obligations on the part of Members, shall become effective for each Member accepting the amendment, upon acceptance on the part of two-thirds of the Members, and thereafter for each remaining Member on acceptance by it.

Will you explain that?

Mr. STINEBOWER. Yes, sir. If this is the kind of an amendment which would in any way impose an obligation beyond that already imposed by the acceptance of the Charter itself, if it imposes a new obligation, it first of all requires two-thirds of the members of the Organization to propose it. Second it becomes effective when two-thirds of the members of the Organization have accepted it by whatever is their appropriate constitutional procedure. It is thereupon effective only for those members which have accepted it and becomes effective for each new member accepting it as he accepts it.

The CHAIRMAN. I do not find the authority for your statement that it takes two-thirds of the members to propose the amendment.

Mr. STINEBOWER. I do not find it here, either, sir. That is an omission because it takes two-thirds vote in paragraph 3 even to adopt the rules under which an amendment may be adopted. That is an omission which I am sure has dropped out in the drafting. It is something that has dropped out in the redrafting because, originally, paragraph 1 covered all the method of adopting all amendments in

the first instance, then if they did not involve new obligations for member, the action of the conference itself was sufficient.

The CHAIRMAN. Then is it the State Department's purpose by appropriate language, to require that an amendment of this type shall be proposed by not less than two-thirds?

Mr. STINEBOWER. Of the conference?

The CHAIRMAN. Of the conference.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Let me see if I understand the first sentence of paragraph 2. First, you have to have an acceptance on the part of two-thirds of the members?

Mr. STINEBOWER. Yes.

The CHAIRMAN. In addition to that, each member to be bound must accept it?

Mr. STINEBOWER. Yes, sir. In the first place, the two-thirds is a vote within the conference itself. If I may use the analogy it is like a two-thirds vote in the Senate before an amendment to the Constitution may be proposed to the people or the States for approval, but then, from then on, it takes the two-thirds of the individual members of this Organization to accept the amendment by their constitutional procedures.

The CHAIRMAN. Let us read that language again. [Reading:]

Any amendment to this Charter which involves new obligations on the part of Members, shall become effective for each Member accepting the amendment, upon acceptance on the part of two-thirds of the Members, and thereafter for each remaining Member on acceptance by it.

I ask you again, does it mean that in addition to the two-thirds required that there must be an individual acceptance?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. By those to be bound?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. And going on [reading]:

The Conference may determine that any Member which has not accepted an amendment under this paragraph within a period specified by the Conference, shall cease to be a Member of the Organization. In the absence of such determination, a Member not accepting an amendment shall, notwithstanding the provisions of paragraph 1 of Article 80, be free to withdraw from the organization upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General.

In other words, the conference can kick the member out, or, if that does not happen, the member may pull out himself.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. But he does not have to pull out if the conference does not kick him out?

Mr. STINEBOWER. That is right.

The CHAIRMAN. Is that right?

Mr. STINEBOWER. That is right.

The CHAIRMAN (reading):

The Conference shall, by the affirmative votes of two-thirds of the Members, adopt rules of procedure for carrying out the provisions of this Article.

ARTICLE 80. INTERPRETATION AND SETTLEMENT OF DISPUTES

1. The texts of this Charter in the official languages of the United Nations shall be equally authoritative.

2. Any question or differences concerning the interpretation of this Charter or arising out of its operation shall be referred to the Executive Board for a ruling

thereon. The Executive Board may decide either to give a ruling on the matter itself, or to refer it, with the consent of the parties, to arbitration upon such terms as may be agreed by the parties. Any ruling of the Executive Board shall, upon the request of any Member directly affected or, if the ruling is of general application, upon the request of any Member, be referred to the Conference.

So that initially the executive board rules, but it can be taken to the conference?

Mr. STINEBOWER. Yes, sir. May I remark that again a typographical omission is present? Paragraphs 2, 3, and 4 should be bracketed as paragraphs in which agreement has not been reached.

The CHAIRMAN. Do they coincide with the State Department views?

Mr. STINEBOWER. No, sir. In fact the State Department's views are still substantially those of the charter originally published in article 76.

The CHAIRMAN. Which differs from these paragraphs in what respect?

Mr. STINEBOWER. They differ in two important respects: The first is in these words in the second and third lines of paragraph two, "or arising out of its operation."

This says any question or differences concerning the interpretation of the charter, or arising out of its operation, and so forth. Later on that opens up reference to the International Court of Justice. If I may in nonlegal language, as a nonlawyer, expound what I understand to be our views on this subject, they are these: In the first instance the Organization itself should interpret questions or differences of opinion relating both to the interpretation of the charter and to the application of the charter.

When there is no difference of opinion as to the interpretation of an article there still may be difference of interpretation as to the application of the article. We did not originally provide for any arbitration procedures, but would be willing to see them included.

In the first instance, our view has been that the executive board should make a finding and a decision on either of these two cases, interpretation of the charter, or application of the charter. That would be reviewable by the conference, appealable to the conference.

In our view if it were a question of interpretation of the charter, the conference might, in its discretion, permit the question to be appealed to the International Court. If it were a question——

The CHAIRMAN. Any question?

Mr. STINEBOWER. Any question of interpretation.

The CHAIRMAN. Of interpretation of the charter?

Mr. STINEBOWER. If it were a question of the application of an article, not in dispute as to interpretation, we would assume that the Organization itself should be the last court of appeal.

In particular cases, the Court would not be in a better position than would the Organization itself to make findings of fact about a given commercial policy practice, and in event, the article is not in dispute as to its interpretation, the conference should be the final appeal on application of the article.

The CHAIRMAN. Is the State Department prepared to accept the bracketed paragraph?

Mr. STINEBOWER. No, sir. We will still maintain an effort to insert substantially what we had as article 76 of our original charter with a possible modification as to arbitration if agreed by the executive board and by both of the parties.

The CHAIRMAN (reading) :

3. Any justiciable issue arising out of a ruling of the Conference with respect to the interpretation of subparagraphs (c), (d), (e), or (k) of Article 37 or of paragraph 2 of Article 59 may be submitted by any party to the dispute to the International Court of Justice, and any justiciable issue arising out of any other ruling of the Conference may, in accordance with such procedures as the Conference shall establish, be submitted by any party to the dispute to the International Court of Justice. The Members accept the jurisdiction of the Court in respect of any dispute submitted to the Court under this Article.

Does the State Department agree with that?

Mr. STINEBOWER. With the limitations as to the comments I made before. This is tied to paragraph 2 which includes questions arising out of the operation of the charter.

The CHAIRMAN. Yes; I understand that.

Mr. STINEBOWER. Beyond that my statement stands; yes.

The CHAIRMAN. Have you prepared a complete résumé of all pertinent questions, or questions that may arise out of the charter that might find their way to the International Court of Justice?

Mr. STINEBOWER. No, sir; but in our interpretation, the interpretation we will endeavor to have accepted, the issues that might arise would be the meaning, the interpretation to be placed upon any article of the charter itself. We would have omitted questions arising out of the operation of the charter. So if I understand your question correctly, the list would be a list of the articles of the charter.

The CHAIRMAN. If there is a question as to their interpretation that might go to the International Court of Justice?

Mr. STINEBOWER. Might, with the consent of the conference.

The CHAIRMAN. Otherwise not?

Mr. STINEBOWER. Otherwise not, except for the specifically exempted paragraphs on which you have already been promised a statement from the Department by the earlier witness.

The CHAIRMAN. Will jurisdiction to consider these matters in any of their domestic aspects be taken away from the courts?

Mr. STINEBOWER. Not according to my understanding.

The CHAIRMAN. Well, our courts will have jurisdiction over some international aspects of cases. Are we precluding that jurisdiction?

Mr. STINEBOWER. I am not an expert on conflict of laws, but I take it this raises no new problems as compared to the interpretation of any international agreement by international bodies as compared to the domestic courts.

The CHAIRMAN. There is one feature that I think ought to be given some thought. In our statute of adherence to the International Court of Justice we reserve to ourselves the right to try all domestic questions. Are you running across that?

Mr. STINEBOWER. Well, I am not sure, but I can state my understanding of it. You might conceivably run across it in the application of an article of the charter. Let us take for example, the subsidy provisions and assume the United States decides under a noncontroversial interpretation of the charter that it may impose a subsidy. That might become a matter of difference of opinion or a dispute between the United States and the Organization. Certainly, the United States courts are not precluded from their jurisdiction of the matter.

The CHAIRMAN. Your understanding is that you are not limiting whatever may be the jurisdiction of the United States courts in the absence of this charter?

Mr. STINEBOWER. That is my understanding.

The CHAIRMAN. That is your understanding?

Mr. STINEBOWER. Yes.

The CHAIRMAN. Is it your understanding that we are reserving to ourselves the right to pass upon, by our own courts, matters that affect our domestic affairs?

Mr. STINEBOWER. It would be my understanding that the courts would take notice of the international obligations of the United States as recorded in duly approved instruments, but it is also my understanding that that does not prevent the courts from taking jurisdiction of the domestic issues.

The CHAIRMAN. I am not so sure that you have answered my question.

Mr. STINEBOWER. Maybe I did not understand it.

The CHAIRMAN. In our statute of adherence to the International Court we reserve the right to adjudicate our own domestic questions. Does this conflict with that in any way?

Mr. STINEBOWER. Well, not according to my understanding.

The CHAIRMAN. Have we, by joining this Organization, or do we permit the Conference or any part of this Organization to submit matters to the International Court of Justice which we might elect not to submit under the reservation which I have referred to?

Mr. STINEBOWER. No, sir. It would be the other way around. If we or some other party wanted to take a matter to the International Court, the Conference could presumably prevent it by saying, "This is going to be dealt finally within the Organization."

In other words, the permission of the Conference to take a matter to the Court is required, but it is not my understanding that anything in this language gives the Conference the power to require members to take an issue to the Court. The one thing that the Conference may do by way of taking the initiative by going to the International Court is itself taking the charter to the International Court for an advisory opinion.

The CHAIRMAN. I suggest that, perhaps, you had better have a memorandum submitted on the relation of these provisions to the jurisdiction of the International Court under our statute of adherence.

Mr. STINEBOWER. Well, we will ask the Legal Adviser's Office to do that.

The CHAIRMAN. I think it is very important to do that.

Mr. STINEBOWER. Yes, sir.

(The State Department submitted subsequently the memorandum which appears as exhibit XIV.)

The CHAIRMAN. [Reading]:

4. The Organization may, in accordance with paragraph 2 of Article 101 of the Charter of the United Nations, request from the International Court of Justice advisory opinions on legal questions arising within the scope of its activities.

That presents a related question going to the same thing on which you will provide a memorandum. We might not want the International Court to take jurisdiction of something under the reservation which we have made in our statute of adherence, and we might, also, not want the International Court even to give an advisory opinion.

Mr. STINEBOWER. I will be glad to have that included, but I think I can answer that directly, sir. We, as a member, would have only the authority and powers that our vote and influence in the Conference

gave us, but if the Conference by its decision decided to refer to the International Court for an advisory opinion, beyond that we would not be able to have stopped the reference.

The CHAIRMAN. Well, you mean that the Organization or the Conference might ask the International Court of Justice for an advisory opinion on a matter which we considered entirely domestic to ourselves?

Mr. STINEBOWER. I should not have thought that would be a legal question arising within the scope of its activities but I will be glad to have real experts on that subject answer that question.

The CHAIRMAN. I think we should know that. It is often just as inadvisable to have an advisory opinion as to have a final opinion. [Reading:]

ARTICLE 87. CONTRIBUTIONS

Each Member shall contribute promptly to the Organization its share of the Organization's expenditures as apportioned by the Conference.

I think we have discussed the possibilities of that.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN (reading):

A Member of the Organization which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the organs of the Organization if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Conference may nevertheless, permit such a Member to vote, if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

By the way, is there much delinquency of that kind in the United Nations Organization?

Mr. STINEBOWER. No, sir. There are only two or three countries, I think, that have not fully paid 1946 contributions yet. These last two sentences that you read out are a verbatim quotation from the United Nations Charter.

The CHAIRMAN (reading):

ARTICLE 88. ENTRY INTO FORCE

1. The original of this Charter, as set forth in the Final Act of the United Nations Conference on Trade and Employment, shall be deposited with the Secretary-General of the United Nations, who will furnish certified copies thereof to all interested governments.

2. Each government accepting this Charter shall deposit an instrument of acceptance with the Secretary-General of the United Nations, who will inform all governments represented at the United Nations Conference on Trade and Employment and all other Members of the United Nations which were not represented at that Conference, of the day of deposit of each instrument of acceptance and of the day on which this Charter enters into force under paragraph 3 of this Article.

3. This Charter shall enter into force on the sixtieth day following the day on which the number of governments represented at the United Nations Conference on Trade and Employment which have deposited instruments of acceptance pursuant to paragraph 2 of this Article shall reach----

Mr. STINEBOWER. That should read "reach."

The CHAIRMAN. It must be "reach." [Continues reading:]

twenty, and the acceptance of each other accepting government shall take effect on the sixtieth day following the day on which the instrument of such acceptance is deposited. Provided that, if this Charter shall not have entered into force by any of the governments which have made effective the General Agreement on Tariffs and Trade dated together with any other government represented at the

United Nations Conference on Trade and Employment, may agree to bring this Charter into force among themselves in accordance with arrangements which they may agree upon. Any instrument of acceptance deposited with the Secretary-General of the United Nations shall be taken as covering both procedures for bringing this Charter into force, unless it expressly provides to the contrary or is withdrawn.

Has any date been proposed for insertion in the first blank?

Mr. STINEBOWER. Not that I know of; no, sir.

The CHAIRMAN. You are aware of some criticism that has been made of the General Agreement on Tariffs and Trade?

Mr. STINEBOWER. In a general way; yes, sir.

The CHAIRMAN. If the members under the latter part of paragraph 3 go ahead with arrangements which they may agree upon, will those arrangements be brought back to the Congress?

Mr. STINEBOWER. Yes. They would have to be, sir.

The CHAIRMAN. Does it say so?

Mr. STINEBOWER. You will know in advance, and everyone will know by the time the International Conference on Trade Employment has been concluded how many signatories there are to the general agreement. Without going into the misgivings you have already expressed about that, and assuming that it is substantially the numbers who are now negotiating it will not be far from the requisite 20, anyway. If it were to be a very small number that would be a matter to be looked into from the outset.

The CHAIRMAN. I am supposing that less than the requisite number are willing to enter upon an agreement, because the requisite number could not be obtained or because the due date was passed, or something of that kind. In that event, would the agreement which the joining parties entered into be brought back to Congress for approval?

Mr. STINEBOWER. I assume it would, sir, and if it were not, it certainly would have to be provided in advance when the charter were presented to the Congress for its approval and they made provision for the special circumstances that would be contemplated here.

The CHAIRMAN. Well, that would simply be the equivalent of adopting this charter, I assume, with a lesser number of members than were originally contemplated. That is the substance of it, is it not?

Mr. STINEBOWER. I did not quite mean it that way. What I meant was that regardless of the language of this article, when the Congress had submitted to it the charter with an article something like this in it, there would certainly have to be presented to, and there would have to be adopted by, the Congress enabling legislation which would do one of these two things: It would either, in view of the General Agreement on Tariffs and Trade, expressly authorize the implementation of this article, or, alternately, insist that it be brought back before action were taken under this article.

The CHAIRMAN. Is that another way of saying that such an agreement would come back to Congress for approval?

Mr. STINEBOWER. It comes to the Congress for approval without reservation. I am merely attempting to say that I am not sure just what you mean by "come back." If the Congress saw fit in its first action on this to make provisions for the procedures by which this could be brought into force I assume that it would not then come back.

The CHAIRMAN. Let us assume that every condition of paragraph 3 had been complied with, the charter will come before the Congress for approval, will it not?

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Let us assume that the due dates have not been met or the requisite number have not signed.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. Let us assume that nevertheless we wish to enter into that kind of an agreement, that kind of a charter, and can find others who will join us.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. We do so; we get their agreement; would that agreement come back to the Congress to be approved?

Mr. STINEBOWER. It would certainly come back to the Congress unless the Congress in its first consideration of this specifically authorized a procedure by which it did not ask it to come back.

The CHAIRMAN. Under what circumstances has the Congress authorized this agreement among less than all of the contemplated members?

Mr. STINEBOWER. It has, unless in its enabling legislation it makes provision on this, and I can scarcely believe that the Congress would not make provisions either requiring that it come back or laying down specifically the provisions by which it might be followed.

The CHAIRMAN. It may be that we are getting confused over what you refer to as enabling legislation. When the Congress gives enabling legislation it will have something before it.

Mr. STINEBOWER. Yes, sir.

The CHAIRMAN. It will either have this charter before it, I suggest, signed by the requisite number of parties as provided in this paragraph and signed within the time as provided in the paragraph, or, it will come back here as the type of agreement mentioned in three.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. So that the enabling legislation in either case will adapt itself to the kind of agreement that comes back here; is that right?

Mr. STINEBOWER. That is my understanding; yes, sir.

The CHAIRMAN. And in either case that means that some kind of an agreement would come back here requiring an enabling statute.

Mr. STINEBOWER. Yes.

The CHAIRMAN (reading):

4. Each government accepting this Charter does so in respect of its metropolitan territory--

What is our metropolitan territory?

Mr. STINEBOWER. In this particular case, my understanding, subject to correction is that it is the custom area of the United States which includes continental United States, Puerto Rico, Alaska, and Hawaii.

The CHAIRMAN. Is there any doubt in your mind about that?

Mr. STINEBOWER. I will have that corrected with a note to you, if it is not.

The CHAIRMAN. If further investigation develops that not to be the fact, let us know.

(The following memorandum was submitted subsequently:)

**DISCUSSION OF "METROPOLITAN TERRITORY" AND "SELF-GOVERNING TERRITORIES" IN
MR. STINEBOWER'S TESTIMONY, ITO HEARINGS, APRIL 1, 1947**

With respect to article 88, paragraph 4, of the charter, Mr. Stinebower was asked about the meaning of the words "metropolitan territory" to which the provisions of the charter would apply.

The term "metropolitan territory" is common in foreign usage, but not with respect to the United States. However, it will be noted that this paragraph provides that each member shall at the same time accept the charter in respect of both "metropolitan territory" and "other territories for which it has international responsibility" other than those which are self-governing as to matters provided for by the charter. Consequently, it is immaterial as to just what constitutes the metropolitan territory of the United States as distinguished from other territories which are not self-governing.

In this connection, it may be pointed out that article 38 of the charter relating to the application of chapter V, covering tariffs and other commercial policy matters, specifically uses the term "customs territories" of the members, a term which is well established in United States usage.

With respect to the Virgin Islands, concerning which Mr. Stinebower was in doubt, the laws imposing taxes, including customs laws and regulations, existing when the United States acquired the islands have been continued in force until the Congress of the United States shall otherwise provide (act of March 3, 1917, sec. 4, 39 Stat. 1133; 48 U. S. C. 1335). Therefore the Virgin Islands cannot on that account be said to be self-governing, within the meaning of paragraph 4. There are no territories for which the United States has international responsibility which are self-governing under the provisions of paragraph 4.

The CHAIRMAN. I will repeat [reading]:

Each government accepting this Charter does so in respect of its metropolitan territory and such other territories for which it has international responsibility with the exception of those territories which are self-governing in respect of matters provided for by the Charter. Each Member shall notify the Secretary-General of the United Nations of any acceptance of this Charter on behalf of any such self-governing territory, and the provisions of this Charter shall become applicable to that territory on the sixtieth day following the day of the receipt of such notification.

For what other territories have we international responsibility?

Mr. STINEBOWER. The Virgin Islands, Guam, American Samoa, and some miscellaneous small islands of no economic importance in the Pacific.

The CHAIRMAN. With the exception of those territories which are self-governing, in respect of matters provided for by the charter, which of the territories that you have mentioned are self-governing?

Mr. STINEBOWER. In respect to the United States, none of them are, and I will submit to you another statement, if this is incorrect, unless the Virgin Islands, which would be so interpreted. The Virgin Islands Legislature enacts its own customs legislation, but I believe it is subject to approval by the President.

The CHAIRMAN. You are referring now to Alaska?

Mr. STINEBOWER. No, sir; to the Virgin Islands. Alaska is an integral part of the customs territory of the United States and the Customs Act applies to it.

The CHAIRMAN. Which Territories are you referring to?

Mr. STINEBOWER. The Virgin Islands would be the only one which is possible, in the case of the United States, self-governing with respect to the matters provided for by this charter. I will submit a memorandum if that is not correct.

The CHAIRMAN. Will the self-governing Territory have a voice in that matter?

Mr. STINEBOWER. Well, that would be a matter between the metropolitan government and the self-governing Territory. It would not be a matter decided by the International Trade Organization.

The CHAIRMAN. Suppose the United States did not agree with its Territory. Suppose that we and our self-governing Territory did not reach an agreement, would we then be in position to notify the Secretary-General of the United Nations of the acceptance of the charter by the self-governing Territory?

Mr. STINEBOWER. My understanding is that there is nothing in this last sentence that really applies to the United States. It applies to countries like the United Kingdom and France which have much more complicated arrangements with various parts of a wide-flung empire. If the Virgin Islands are self-governing it does apply.

The CHAIRMAN. There is a certain anachronism in our notifying the Secretary-General of the United Nations of our self-governing territory's acceptance of this charter, unless we get the consent of the self-governing territory.

Mr. STINEBOWER. That is correct.

The CHAIRMAN. It is contemplated that we should get that consent?

Mr. STINEBOWER. I should presume so.

The CHAIRMAN (reading):

ARTICLE 80. WITHDRAWAL AND TERMINATION

1. Without prejudice to the provisions of paragraph 3 of Article 24—

Meaning what?

Mr. STINEBOWER. That is a provision on the negotiating of adequate trade agreements, and the withdrawal of benefits to the tariff in event the member does not negotiate a trade agreement.

The CHAIRMAN (reading):

1. Without prejudice to the provisions of paragraph 3 of Article 24 or paragraph 2 of Article 35—

Mr. STINEBOWER. That is the nullification and impairment article.

The CHAIRMAN (reading):

any Member may withdraw from the Organization either on its own behalf or on behalf of a territory which is at the time self-governing in respect of matters provided for by this Charter at any time after the expiration of the three years from the day of the entry into force of this Charter, by written notice addressed to the Director-General. The Director-General shall immediately notify all other Members.

Has there been much discussion as to what that period of time should be? Is there a general agreement on 3 years?

Mr. STINEBOWER. That was linked directly to the 3-year term to which the United States may enter into trade agreements under the authority of the Trade Agreements Act.

The CHAIRMAN (reading):

2. A withdrawal under paragraph 1 of this Article shall take effect upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General.

3. This Charter may be terminated at any time by agreement of three-fourths of the Members.

Has there been any discussion as to whether that should be on a weighted basis?

Mr. STINEBOWER. No, sir. This is three-fourths of the members.

The CHAIRMAN. And there have been no suggestions that a weighted basis of voting should apply there?

Mr. STINEBOWER. No, sir; but I would suggest that if the countries which on their weighted voting system might account for as much as 40 or 50 percent of the votes would drop out, there would be little incentive for the smaller countries to keep the charter alive.

The CHAIRMAN. Well, it might be equally important for the smaller countries to drop out, or, to terminate the charter. I mean, it may work badly for the little country as well as the big country.

Mr. STINEBOWER. That is all I meant, sir.

The CHAIRMAN. We are very much obliged to you.

We will meet at 2:30 tomorrow afternoon. We hope to hear Chairman Ryder of the Tariff Commission. There is a possibility that we will have to call off the meeting tomorrow afternoon, or delay starting it because the committee has an executive session in the morning on another subject which may run over into the afternoon or which might occupy the whole day, but, in any event, we will try to get going again at 2:30 tomorrow afternoon.

(Thereupon, the committee adjourned at 6:15 p. m., to reconvene at 2:30 p. m. the following day, Wednesday, April 2, 1947.)

INTERNATIONAL TRADE ORGANIZATION

WEDNESDAY, APRIL 2, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 2:30 p. m., pursuant to adjournment, in room 312 of the Senate Office Building, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senator Millikin (chairman).

The CHAIRMAN. The meeting will come to order.

Will you give the the reporter your full name, your official position, and your residence?

STATEMENT OF OSCAR B. RYDER, CHAIRMAN, UNITED STATES TARIFF COMMISSION, WASHINGTON, D. C., ACCOMPANIED BY E. G. MARTIN, GENERAL COUNSEL, TARIFF COMMISSION, WASHINGTON, D. C.

Mr. RYDER. Oscar B. Ryder, Chairman, United States Tariff Commission, Washington, D. C.

My residence is 803 Prince Street, Alexandria, Va.

The CHAIRMAN. The chairman requested Chairman Ryder to appear this afternoon and give us a summary of the history of our tariff legislations, and also to give us some instruction in the practical aspects of the negotiation of trade agreements.

Take your own head, Mr. Chairman.

Mr. RYDER. Mr. Chairman, it is a rather difficult assignment I have.

The tariff history of the United States, of course, is very voluminous, and it has been very controversial. I have absorbed a great deal of knowledge on the subject and I will try, as briefly as I can, to summarize our tariff history.

Now, in doing that, I may not go into the sort of thing you want. If I do not, stop me and ask me questions, so that I can give you the information you want.

The CHAIRMAN. Just give us a general picture of the subject.

Mr. RYDER. All right.

The CHAIRMAN. The chairman realizes completely that in the short period of time you have had you cannot develop a thesis that would earn you a doctor's degree, for example.

Mr. RYDER. Not quite.

The CHAIRMAN. So do the best you can under the limitations which are imposed on you.

Mr. RYDER. I will start by saying that the first Tariff Act passed in 1789 was the second act passed by the American Congress.

The first act was to provide for the oath of offices, so that they could get on the pay roll, and the second act was to get some revenue, which was a tariff.

Now, that tariff, and every succeeding tariff down to the present, has had two elements—a protective element and a revenue element.

In other words, both purposes have entered into all of our tariff legislation.

As I recall it, the Tariff Act of 1789 stated that it was for the encouragement of manufactures. However, the amount of protection afforded in that law was rather moderate and was chiefly confined to the specific duties of certain specified products, such as on certain iron and steel products.

As I recall it, most of the articles were dutiable at rather moderate ad valorem rates. Five or 10 per cent.

Now, from the beginning of our Government in 1789 on to about 1808 our economy continued to be a colonial economy. We obtained from England pretty nearly all of our manufactures, except the large amount of manufactures which were produced at that time in the home.

We paid for those imports with exports of raw materials and foodstuffs, largely tobacco, cotton, and some grains.

Under the first tariff act and the amendments thereto—and there were numerous amendments from time to time, chiefly to get increased revenue—there was little, if any, stimulus to manufacturers.

The CHAIRMAN. Might I interrupt to ask you what is our present revenue from tariffs and customs?

Mr. RYDER. The total amount?

The CHAIRMAN. Yes.

Mr. RYDER. Do you know that amount, Martin?

Mr. MARTIN. It is estimated at \$400,000,000.

The CHAIRMAN. Not a very important part of our whole revenue-producing system.

Mr. RYDER. It presently is not.

However, until the turn of the century, and the beginning of the income tax in 1913, it was our chief element of revenue, I think. Certainly it was for a long period of time.

Now, the first large encouragement to manufacturers in this country came not from a tariff but from the embargo and nonintercourse acts of the Jefferson administration and from the war of 1812 which followed.

During that war there was a very large development in cotton manufacture in this country. There was also a smaller but still very considerable development in wool manufacture, and an expansion of our iron and steel industry.

In those days the finished iron and steel products were largely made in blacksmith shops, and so forth. They did not, to any great extent, enter into world trade. Imports and exports were chiefly in pig iron and bar iron.

The CHAIRMAN. Those industries themselves have been stimulated by the necessity of making war supplies.

Mr. RYDER. Yes.

During the War of 1912, and, of course, during the preceding non-intercourse and embargo acts, we were thrown on our own more or less, and that was an immense stimulus to our industries, particularly cotton, wool, and iron and steel.

Now, the first strong protective movement in this country followed the War of 1812. Naturally, the industries that had grown up during that period were subjected, for the first time, to severe competition from abroad, and they demanded protection.

And the Tariff Act of 1816 was at least a moderate protective measure. I happen to remember the duties on woolens and worsted and cotton cloth were 25 percent. On cotton, however, they had a provision that any goods valued at less than 25 cents should pay the duty as if they were valued at 25 cents. That made a minimum specific duty of $6\frac{1}{4}$ cents.

At the time this was enacted in 1816, prices were high and there were very little imports under 25 cents, but in 1818 there came the usual postwar depression and values dropped to 17 or 18 cents on coarse goods, so that the minimum provision afforded additional protection to the cotton-weaving industry but not to the woolen industry, which did not like the situation at all. They tried to get a similar minimum, and finally did get it in 1828, by the way.

The increased duties in the act of 1816, most of them, at least, were to last only 3 years in the original act, but in 1818, when the depression came along, they were extended until 1826. And additional duties were imposed in that year, I believe, on iron and steel products.

Then, in 1820, there was a strong movement in Congress to enact a still higher tariff, and they passed a tariff bill in the House but it was defeated in the Senate by one vote.

In 1824 another bill came before Congress and was passed by both Houses, and made our third general tariff act. That was an increase over the Tariff Act of 1816.

THE CHAIRMAN. Were there many articles in those acts? Were many articles protected by those acts?

MR. RYDER. Oh, yes. The field of controversy chiefly in those acts was on woolens and worsted, cotton cloths, and iron and steel products.

THE CHAIRMAN. The tariffs were fitted to the state of economy of the Nation at that time?

MR. RYDER. Oh, yes. And there is another difficulty about it, Mr. Chairman. Comparing those acts with the recent tariff acts, the rates in those acts were, up to 1824 at least, considerably lower than the rates we have had in any of the tariff acts since our Civil War, except possibly 1913.

THE CHAIRMAN. Were they operating on a strict protection theory or were they operating on a scientific tariff theory, or what was the approach in reaching a definite rate?

Was it opportunistic?

MR. RYDER. It was opportunistic, I would say. There were conflicts of interests, as usual. In those days, from 1816 to 1824, the strongholds of protection were the Central States—New York, Pennsylvania, Ohio, and Kentucky.

In Pennsylvania, it was chiefly the iron and steel industry.

In most of the other Central States, it was chiefly the agricultural interests who advocated protection on the ground of home-market arguments. The South, in general, was opposed. New England was divided.

New England had, up until that time, up until the War of 1812 period, been principally a shipping territory. Shipbuilding and

shipping were the principal industries other than agriculture. The New England ships went all over the world. They became famous.

And in all three of the tariff acts that I mentioned, 1816, the bill of 1820, which was not passed, New England was divided. In 1824, Daniel Webster made one of the strongest speeches ever made for low-tariff policy.

In 1828, which is the next tariff act that I will come to, he made a speech in favor of the increased protection in that act. He explained it very thoroughly and very completely, that Massachusetts had been a shipping colony, a shipping State, but that the tariff policies that had been adopted had forced New England into manufacture, and now they had to keep on protecting New England manufacture.

That was more or less the argument Daniel Webster made in his 1828 speech.

That Tariff Act of 1828 is famous in American history. It is known as the Tariff of Abominations. It got that name from the fact that the Jackson men, who controlled the House, and I think possibly the Senate, thought they would get the Adams men into a hole by proposing a tariff act which increased protection of the manufactures of New England but also increased the rates on the things that New England used, hemp, for instance, duck for the sails, iron and steel that went into making their ships. To their surprise, the bill was passed by both Houses.

Most of the so-called abominations were gotten rid of in a year or two by special acts.

The 1828 tariff was, by the way, the highest tariff we had before the Civil War. And I believe the ad valorem equivalent in that tariff, if I recall correctly, was about as high as any tariff we have ever had.

It was a most unscientific tariff. It, as I said, was revised by special acts in a number of its worst features, and in 1832, it was revised downward to about the 1824 level.

Then, in 1833, came the great compromise between Calhoun and Webster in the Tariff Act of 1833, which called for gradual reduction in the rates down to a 20-percent level.

The CHAIRMAN. Across the board?

Mr. RYDER. Yes; over a period of years. And the most severe cuts were toward the end of the period.

I think it was to go over a 10-year period, ending in 1842.

I do not remember whether it was just before or just after it came to an end, that the Whigs, having won the election, passed the Tariff Act of 1832 which carried the tariff rates back about to the 1824 level.

Then, in 1846, came the Walker Tariff Act, which was more moderate than the preceding tariff acts. It has frequently been spoken of as a low tariff or free-trade tariff, but as a matter of fact, it was at least moderately protective.

The main rates in it were 30 and 25 percent, as I recall it. On woolens, I think it was 30 percent, and on cotton cloths 25 percent, if I remember correctly.

The tariff was divided into A, B, C, D, E, F lists, and with everythink enumerated under each of those lists having a specified rate.

In 1857, the rates in the Tariff Act of 1846 were revised downward. They did not change the composition of the schedules. They just reduced the rates.

The 30 percent rate was reduced to 24 percent, and the 25 percent to 20 percent, and so on. That went into effect 4 years before the Civil War.

This ends what might be called our "early tariff history."

The CHAIRMAN. Were the rates effective? Did they exclude foreign goods that they were intended to exclude?

Mr. RYDER. Well, they had considerable effect, I would say, in reducing imports. Under those acts, we had a very substantial production of woolen and cotton textiles; principally, coarse goods.

How much that was dependent upon protection is a matter of argument. Nobody can decide, certainly at this date, and I imagine people differed on it very greatly at that time.

The iron and steel industry was somewhat different. During the early period, up to about 1840, we relied entirely upon charcoal smelting, which was a rather expensive process. The British had already gone into using coke; but with our centers of population at that time, bituminous coal was not available. It was not readily accessible to transportation at that time, so our industry was carried on chiefly in eastern Pennsylvania with charcoal.

Around 1840 we began to use anthracite coal, which gave us a much better position, and our industry did expand to a very considerable extent.

Still, at a later period, in 1860, with the railroads opening up into western Pennsylvania, we went to using the bituminous coal, making the coke and using that for smelting.

That was the situation, roughly, up until 1860. Of course, that whole period was a period of great development in American industries, and the American capital particularly the period, I would say, from 1850 to 1860, after the gold discoveries in California.

The Civil War marks the dividing line in our history on the tariff as well as many other things.

Soon after the beginning of the Lincoln administration the Morrill Tariff Act was passed increasing tariff duties. I do not remember the number now, but two or three different other acts were passed during the Civil War increasing tariff duties for revenue purposes chiefly; these increases were frequently associated with excise taxes on the corresponding domestic products.

The CHAIRMAN. That was during the war?

Mr. RYDER. During the Civil War.

After the Civil War the excise taxes were repealed, but the duties were not. The result was the protective tariffs as we knew them in the period from the Civil War on.

There were some revisions. Some changes here and there at different times. But there were no very basic, very great changes in the Civil War rates up until 1890.

I believe there was a general tariff act passed in 1883 which rewrote the tariff, but the changes in duties were not very great.

In 1890 the McKinley Tariff Act raised duties considerably over the rates then prevailing.

Then, 4 years later, in 1894, the Wilson Act was passed, making a very moderate reduction in the rates of the McKinley Act.

President Cleveland thought it was a violation of his party's pledges and refused to sign it, if you will recall, and let it become a law without his signature.

Then, in 1897, the tariff was revised again upward and again in 1909. In both cases the tendency was upward, though there were some downward changes.

The CHAIRMAN. All those revisions were made by the Congress?

Mr. RYDER. Oh, yes.

The CHAIRMAN. There was no governmental agency that dealt with the subject other than the Congress?

Mr. RYDER. Well, there were some provisions for reciprocal agreements. I have not tried to go into those, but there were some provisions for reciprocity, which were not very successful, as I recall.

I can get up a statement on those. I am not prepared on those now. I am not prepared at this present moment to testify with respect to them.

The CHAIRMAN. Were those to be worked out through some Government agency other than the Congress or through the State Department; do you recall?

Mr. RYDER. Do you remember that, Mr. Martin?

Mr. MARTIN. The reciprocity agreements that became effective were authorized by Congress, and the President negotiated the agreements.

Mr. RYDER. That is what I thought.

The CHAIRMAN. That was my impression.

Mr. RYDER. That was what I thought. The first really substantial tariff reduction, after the Civil War, was in 1918. That act was in effect only a year or a little less when the First World War began.

The CHAIRMAN. That was the so-called Underwood Act?

Mr. RYDER. The so-called Underwood Tariff Act. It was never tested in a normal period.

Then, in 1922, in the Fordney-McCumber Act, the tariff was revised to about the 1909 level, I would say, something around that.

There was some increase again, particularly in the rates on agricultural products in the act of 1930.

Then, in 1932, Congress, in effect, increased the tariff further by imposing excise taxes on imports of copper, petroleum, coal, and lumber, and in 1934 on various oils and fats.

Now, there is one point I think which might be brought out: The chief protective controversies up until about the First World War, were with respect to textiles, chiefly cotton and wool, and with respect to iron and steel products.

Of course, there were others, such as glass, and china, and things of that sort, but the principal controversies were over the textiles and iron and steel products.

During the First World War we developed a very large chemical industry, at first under embargo on imports and then under American valuation duties, which still are assessed on certain chemical products.

The CHAIRMAN. From the time we entered into that war with Germany, which was the great chemical nation at that time, they were unable to send this stuff in here because we and Great Britain were maintaining a very tight embargo, is that not correct?

Mr. RYDER. I think so.

Before the First World War we were not without a chemical industry, but the chemicals we produced were chiefly staple products that were more or less noncompetitive, but we relied for the great range of coal-tar products on Germany almost entirely.

We built up that industry during and just after the First World War.

Then, to bring it up to date in 1934, the Congress passed, for the first time, the Trade Agreements Act which has been renewed several times, and now lasts until June 1948.

That in a very rough and in a very brief way, gives you the tariff history of the United States.

Now, there are certain things in regard to that that might be brought out. You asked, I believe, for a table giving you the imports over a long period of time.

The CHAIRMAN. Yes.

Mr. RYDER. And I sent you a copy of that.

Now, I have a set of tables here of which that is the first.

The first one is the one you have already had, which gives from 1851 to the present, our imports, exports, and balance of trade. It gives it for the 10-year average for 1851-60, and for each 5 years thereafter, and for each year since 1937. (Exhibits, Statistics Section, Table 1.)

The CHAIRMAN. May I ask you at this point, Mr. Chairman, whether the change in the value of the gold has made any change in the valuations in these tables?

Mr. RYDER. Oh, yes.

The CHAIRMAN. Do we use the old gold dollar or the new gold dollar?

Mr. RYDER. The current dollar is used.

The CHAIRMAN. The current dollar is used?

Mr. RYDER. Yes, sir.

The CHAIRMAN. From the time of the change?

Mr. RYDER. That is right.

The CHAIRMAN. Thank you very much.

Mr. RYDER. We did have a table, and I had a table made up, which I do not have here, which gives these figures, at least for a part of the period, on a constant-value basis. That is taking index numbers and a constant dollar value.

The CHAIRMAN. Yes.

Mr. RYDER. But I do not know how valuable such a table is.

Then the second table I am submitting shows national income, imports, and the ratio of imports to national income, and the ratio of exports to national income over a period beginning with 1918. (Table 2.)

The CHAIRMAN. I notice a column, "Exports (including reexports)."

Mr. RYDER. That is right.

The CHAIRMAN. Are the reexports sufficiently important to deserve attention in connection with that column?

Mr. RYDER. I think, in most years, they would not be, and they would not change these figures very greatly. Do you think so?

Mr. MARTIN. No.

Mr. RYDER. I do not think it would.

I will look into that. It was more convenient, for various reasons, to use general imports, and if you use general imports, then it is better to use exports including reexports.

The CHAIRMAN. "General imports" would include some of the things brought in here, and reexported, or fabricated here and reex-

ported, with the purpose in mind of fabrication here and reexport; is that correct?

Mr. MARTIN. General imports do include everything that come in, yes, sir.

The CHAIRMAN. So that makes a wash item out of it?

Mr. RYDER. But if the exports were with the benefit of draw-backs, they would be included as "domestic exports" and not as "reexports." "Reexports" include only the goods we export without change.

The CHAIRMAN. If you should conclude that there is an important element there, will you give us further figures on that?

Mr. RYDER. I think I can have them made up on the basis of imports for consumption. I do not think it will make much difference.

The CHAIRMAN. Just so that we have two columns that contrast fairly.

Mr. RYDER. The next one is a very significant table. (Table B.)

There is a chart here which illustrates that.

This table and that chart both indicate the changes that have occurred in the composition of our imports and exports since 1851.

The classification, I have to say, is rather arbitrary, but it is significant.

The first category is "Foodstuffs," and then "Crude materials."

Crude materials usually would be dominated by cotton. Semi-manufactures and finished manufactures.

Looking at the manufactures, which is the green line, I believe on that chart there, in 1851-60 over 50 percent of our imports were manufactures.

In 1936-40, the last 5 years, only 18 percent were manufactures. That shows that under our tariff policy and for other causes, the tariff being only one of the causes, our imports became, to a greater and greater extent, composed of crude materials used for manufacture here, and foodstuffs, and, to a decreased extent, of finished manufactures.

The CHAIRMAN. Are the crude materials what are sometimes called primary materials?

Mr. RYDER. Yes.

The CHAIRMAN. Metals and minerals?

Mr. RYDER. You can see what happened. As our industries grew in strength and with our tariff policy, the amount of manufactured goods that could be imported declined. The proportion of them to the total. The actual amount may not have declined, but the proportion to the total import declined.

And as our manufactures expanded, they required more and more imported raw materials.

Until rayon more or less superseded it, we had a tremendous import of raw silk for our silk industry. Rubber for our rubber industry. Tin for our tinplate industry, and so on.

Now, if you will look under "Exports" in the chart or table, you will see that just the opposite happened.

In 1851-60, our exports were only 12 percent of finished manufactures, and in 1936-40, they were 52 percent manufactures.

Another interesting part of that chart is the column on foodstuffs.

You see that in 1851-60, 29 percent of our exports were foodstuffs. Then in the next half decade, 1861-65, 56 percent, and then if you will skip the next half decade, since it seems to be out of line, 85

percent were foodstuffs, and then 48 percent, and then 46 percent in 1881-85; 44 percent in 1891-95; 42 percent in 1898-1900.

The CHAIRMAN. Are those foodstuffs manufactured foodstuffs or raw foodstuffs, or both?

Mr. RYDER. They were generally both, but chiefly raw foodstuffs, I would say, corn, wheat, hog products.

During the seventies, eighties, and nineties, after our farm lands in the Middle West and the far West had been opened up, we had tremendous export surplus of wheat, corn, hog products, and things of that sort. They went all over the world.

Now, since the turn of the century, they have tended to decline. They declined in proportion of our total exports, and I think in total quantity. At least, in recent years they have so declined.

That is due, of course, to increased consumption here, with our increased population, and due also to the opening up of new lands in countries like Argentina and Australia, and, thirdly, to the growth of agricultural protection in European countries.

This is very interesting. The development is very interesting, and I thought it was worth while calling attention to it.

The CHAIRMAN. Yes; it is a very good job.

Mr. RYDER. Table 4 gives the foreign trade by areas with our balance of trade with each area, and shows how, from the tropical countries and the countries from which we get raw materials, we get more imports than exports, whereas with countries of Europe the balance runs the other way.

It indicates how triangular our trade is. (Refer to Exhibits, Statistics Section, Table 4. Table 4 expressions are in terms of values. Table 5 provides the same data expressed in percentages.)

The CHAIRMAN. Do you have statistics here showing the balance of trade for a period preceding that which is shown on table 4?

Mr. RYDER. You mean by areas?

The CHAIRMAN. Areas or otherwise. As I recall it, there was a period of time when we were a debtor Nation in terms of balance of trade. When was that?

Mr. RYDER. Well, if you will look at the first table there, you will get the answer to that, I think. You will see that this table begins in 1851.

The CHAIRMAN. That is precisely what I had in mind.

Mr. RYDER. If you would go back further than that, you would find the same situation prevailing.

The CHAIRMAN. Yes.

Mr. RYDER. From the early period down to the 1870's, we usually had a balance of imports. In other words, we usually imported more than we exported. That was because we were importing capital at that time. We were being loaned money by other countries to develop our industries, our railroads, and things of that kind, and we were a debtor nation.

We had ample supplies of raw materials to export.

For instance, and I probably should have said this previously, I might recall that our early railroads were built with imported rails. A special provision was made that if rails imported were used within 8 years, they were duty free. Many of our early railroads were made from imported iron and steel.

The CHAIRMAN. Many of our early mines were opened with foreign capital.

Mr. RYDER. Oh, yes. And after the Civil War, in the 1880's, you will find a regular migration of European companies into this country in various lines. Due to our tariff policy, they put up mills here.

The CHAIRMAN. Mr. Chairman, I notice your table 1 works in 5-year periods except at the beginning.

Mr. RYDER. That is right.

The CHAIRMAN. Since that is the case, would any of those 5-year periods reflect any years in which we were on the debtor side?

Mr. RYDER. You will see here at this point, the break comes in 1876-80.

The CHAIRMAN. Yes.

Mr. RYDER. I forget the exact year. It seems to me it was '74 or '75 that the balance of trade turned and there may have been 1 or 2 years since then that the balance of trade has not been in our favor, but if so, they are exceptions.

The CHAIRMAN. Roughly speaking, we have been a creditor Nation ever since?

Mr. RYDER. Well, we have not been a creditor Nation in the sense of balance of indebtedness, but we have had a balance in our favor on foreign merchandise account.

The CHAIRMAN. Is that another way of saying other countries owed us more than we owed them?

Mr. RYDER. That is right, they owed us more than we did them, on merchandise account.

The CHAIRMAN. Yes.

Mr. RYDER. Now, as far as the financial aspects of it were concerned, up until the First World War, we were in a debtor position with respect to the rest of the world. In other words, we owed the rest of the world more than the rest of the world owed us.

The CHAIRMAN. In terms of money demands?

Mr. RYDER. Yes; from the First World War, we have been a creditor Nation in that sense.

Now, before I go into the procedure under trade agreements, if there are any other questions you want to go into with respect to tariff history, I would be glad to try to answer them.

The CHAIRMAN. Can you tell us when we first developed the thought of reciprocal trade, and give us a rough outline of the subsequent developments of it, and when we first commenced to impose responsibilities on agencies like the Tariff Commission?

Mr. RYDER. Well, I do not have in mind the details of the various reciprocity acts. They are very technical and I had not had time to go into them for this hearing. I think it was before the Civil War we had a reciprocity agreement with Canada. That is right, is it not?

Mr. MARTIN. Yes, sir.

Mr. RYDER. That lasted for some time. I forget how it was terminated.

Then we negotiated an agreement with Canada, during the Taft administration, but it did not take effect because Canada failed to enact enabling legislation. Then there have been various other provisions, I can get you a list of them, providing for reciprocity in two or three of the tariff acts. They never were used to any great extent, and they were not very successful.

One of them required Senate ratification, and the Senate ratified none of them, if I remember correctly, and under one of the other acts, there were some agreements made on certain products by the President under his authority to negotiate.

I can get you a list of those and would be glad to put them in the record if you desire it.

The CHAIRMAN. Please be good enough to send that to us.

(The list above referred to is as follows:)

APRIL 3, 1947.

RECIPROCAL TRADE AGREEMENTS NEGOTIATED BY THE UNITED STATES WITH FOREIGN COUNTRIES PRIOR TO 1934

In 1844 a reciprocity treaty was negotiated with the German Zollverein, but failed to receive Senate approval.

In 1854 a reciprocity treaty was negotiated by the President with Canada. This treaty was approved by the Senate and became effective. The treaty was terminated by the United States in 1860.

In 1855 a reciprocity treaty was negotiated with Hawaii, and again in 1867, neither of which was approved by the Senate. Another reciprocity treaty, signed in 1875, was approved by the Senate and became effective in 1876 pursuant to legislative enactment.

In 1850 a reciprocity treaty was negotiated with Mexico but was not approved by the Senate.

In 1875 a reciprocity treaty negotiated with Canada failed to receive the approval of the Senate.

In 1858 a reciprocity treaty negotiated with Canada and Newfoundland was not approved by the Senate.

Under section 3 of the Tariff Act of 1890 the President negotiated reciprocal trade agreements on a limited number of items specified in the law with the following countries, all of which he made effective by proclamation:

Austria Hungary
Brazil
Cuba and Puerto Rica
Dominican Republic
German Empire
Guatemala
Honduras
Nicaragua
Salvador
Trinidad and other British Colonies.

Under section 8 of the Tariff Act of 1897 the President negotiated reciprocal trade agreements on a limited number of items specified in the law with the following countries, which he made effective by proclamation:

| | | |
|---------------|---------------|-------------|
| Bulgaria | Great Britain | Portugal |
| France | Italy | Spain |
| German Empire | Netherlands | Switzerland |

Under section 4 of the Tariff Act of 1897 reciprocal trade treaties were negotiated with France, Argentina, Ecuador, Nicaragua, Dominican Republic, Denmark (for St. Croix), and Great Britain (for various colonies). These treaties, which required Senate approval, were never approved by the Senate.

In 1902 a convention of commercial reciprocity was negotiated with Cuba which was made effective by legislative action in 1903.

In 1911 a reciprocity arrangement was negotiated with Canada and approved by the United States Congress but failed to become effective because of lack of approval by the Canadian parliament.

Mr. RYDER. The first very extensive use of tariff bargaining has been under the present Trade Agreements Act.

The CHAIRMAN. What was the function of the Tariff Commission prior to the Trade Agreements Act?

Mr. RYDER. Well, the Trade Agreements Act has not changed the functions of the Tariff Commission.

We were established in 1916 largely because of the tariff problems the war created, particularly with respect to the chemical industry, and certain other industries, and also because both the Congress and the President had difficulty in getting objective statements of fact.

They had to rely, before that, almost entirely upon representations of interested parties, which nearly always contradicted each other.

And the desire was to have an organization, bipartisan in character, and the Commission by law has an equal number of Democrats and Republicans, on which Congress and the President could rely for an objective statement of facts, leaving decision on policy to the President and Congress.

We were given wide powers under that act, under the Revenue Act of 1916, wide powers of investigation, requiring the submission and collection of data, and that kind of thing, and those provisions of the act of 1916 were reenacted in the Tariff Act of 1930, without any substantial change, so that our chief function from the beginning has been a fact-finding function, to supply objective information to the Congress and the Executive.

Now, in the Tariff Act of 1922, we were given powers of investigation under the so-called flexible tariff provision, section 315 of the Tariff Act of 1922, which was reenacted with some changes in section 336 of the Tariff Act of 1930.

Under that, the President was given the authority to increase or decrease duties as much as 50 percent after an investigation by the Tariff Commission on differences in cost of production.

The CHAIRMAN. That was the first legislation that put the discretion within those limits in the President?

Mr. RYDER. That is right.

Well, some of the other acts did give him some discretion. I will give you a list of those. But that was the first very large and fairly frequently used grant of authority.

That section is still on the statute books, of course.

The Trade Agreements Act removes from the operation of that flexible tariff provision any article on which concession has been made in the trade agreement, and because of declining import problems, just before the Second World War and during the Second World War, there has been very little work under that provision since 1937 or 1938. Under that provision, a number of increases and decreases in duties were made.

The CHAIRMAN. What was the philosophical basis for the increase or decrease prior to the adoption of the Reciprocal Trades Act?

Mr. RYDER. The basis under the flexible tariff provision was differences in cost of production here and abroad. A criterion which involved a large amount of investigatory work with very large number of very difficult problems. Cost allocation and cost averages, and that kind of thing, of course.

The CHAIRMAN. The end point was to have tariffs that would equalize those costs?

Mr. RYDER. Equalize costs. And the way it was operated, there was an intent to equalize weighted average costs, here with weighted average costs abroad insofar as they could be determined.

The CHAIRMAN. When we get into the next chapter, if I do not remember to ask you to contrast that philosophy with the philosophy under the reciprocal trade system, I hope you will develop it.

Mr. RYDER. I can do that right now.

The CHAIRMAN. May we have a recess of a minute or two? I have a telephone call that I have to put in.

Mr. RYDER. All right.

(Thereupon, a short recess was taken.)

The CHAIRMAN. Proceed, Mr. Ryder.

Mr. RYDER. You asked, Mr. Chairman, about the difference in philosophy under the Trade Agreements Act and under the flexible tariff provision.

Under the flexible tariff provision, we were, the Tariff Commission was, confined to a more or less rigid cost formula.

Under the Trade Agreements Act the effort is made to determine what action shall be taken on the basis of all available information regarding what I would call the conditions of competition with respect to a specific product.

Manifestly, in view of the wide scale of operations under the trade agreements in the past, and even the wider scale planned for the future, it is impossible to make cost investigations to cover even a very small part of the articles covered. Reliance has been placed upon the information that is obtainable regarding the amount of imports, its proportion to domestic production, a comparison of the grade and prices of the imported product, or the grade and prices of the domestic product, and an assessment as far as it can be done of all of the various factors including such information as you can get with regard to wages and other elements.

In other words, there is a much wider basis and a much wider variety of criteria involved in trade-agreement operations.

The CHAIRMAN. What is the end objective you seek to reach, so far as competition in our domestic market is concerned?

Mr. RYDER. Well, the principle, as stated by the Department of State and the President, in obtaining renewal of the Trade Agreements Act, is to reduce American duties in return for reduced duties from foreign countries in order to get or secure an increase in world trade which would include an increase in our imports which in turn would permit an increase in our exports.

And, as has always been stated, I believe that this was to be done without seriously injuring any of the important protected American interests or American industries.

The CHAIRMAN. Does the latter test run into anything that might be measurable? Does it take the shape of a formula, or does it come down to judgment?

Mr. RYDER. It is bound to come down to judgment, Senator. There is no way scientifically to determine things of that kind.

They are always bound to be a matter of judgment.

The CHAIRMAN. Would that be another way of saying that the domestic producer, who is confronted with the possibility of a trade agreement that might make a cut in the tariff, would not be able to take hold of any definite rule or any definite formula from which he could determine what the cut, if any, would be?

Mr. RYDER. No.

The CHAIRMAN. He is not in a position to do that?

Mr. RYDER. No.

The **CHAIRMAN.** And in advance of the practical negotiations, is anyone in the Government in position to make a forecast as to what may or may not be done?

Mr. RYDER. No; certainly not in advance of the public hearings that are held on the subject and getting together of all the available information on it.

What the Trade Agreement authorities are faced with is the same kind of thing that the congressional committees were faced with when they revised the tariffs. They have got to take all of the facts they have at their disposal and use their best judgment in making their decisions with respect to the various items. There is no way of getting around the necessity for judgment.

The **CHAIRMAN.** Could you take some suppositious item and give us sort of a work out on just how that item would be handled with the object of determining whether a cut should be made and if a cut should be made, how much of a cut?

Mr. RYDER. Well, you could do that but it has to be in a very general term.

I do not know whether I could add much to what I have already said.

Take product X, we will call it.

The **CHAIRMAN.** Yes.

Mr. RYDER. On product X, we have in the Tariff Commission a lot of information which we have obtained over the years, and we have experts who are familiar with the competitive problems of the industry. That information is boiled down into a digest, which you have seen, which has been published for the pending negotiation.

Now, that information is the basic information with which the trade agreement authorities—and I will use that term to cover all of the committee systems—start. That information includes data as to imports and exports, and duties; also a good deal of information as to the conditions of competition, the type of things imported, how they compare with the type of things produced here. This is supplemented by data obtained at the hearings and in briefs submitted in advance of the hearings. Both the briefs and the testimony at the hearings are summarized for the use of the interdepartmental committee working on the subject.

The **CHAIRMAN.** You have been good enough to furnish me with a couple of sample recommendations.

Mr. RYDER. That is right.

The **CHAIRMAN.** Made by the Tariff Commission, and I shall have those put into the record at the appropriate place.

Mr. RYDER. They are not recommendations. They are digests or summaries.

The **CHAIRMAN.** Digests of the facts?

Mr. RYDER. That is right.

Then when the country committees decide upon the initial recommendations regarding concessions, they start with the digest, a summary of the information presented at the hearings. In addition they have available the experts of the Tariff Commission, its economists and experts on the various commodities who furnish them orally a great deal of additional information, technical and otherwise.

Then, as an agricultural product, they have the benefit of the Department of Agriculture experts on agricultural products.

And with all of that information before them, the country committee makes its recommendation to the Trade Agreement Committee, which goes all over each article again.

I think there I might read the statement that I have on the procedure of the Trade Agreements Act, unless you object.

The CHAIRMAN. I do not want to infringe on that, but I would like to go a little further with this item of competition.

Mr. RYDER. All right.

The CHAIRMAN. Now, as I understand it, from the information you have given and the explanation you have made so far, in order to increase our export business, we are, through imports, willing to introduce an element of competition with our domestic production. The determining limit there would be the avoidance of serious injury to the particular affected interests.

And I have asked you whether there is any definite formula which would measure serious injury, and you have said there is not.

Mr. RYDER. That is right.

The CHAIRMAN. And I can see the difficulty of trying to spell out all of the features that might be involved there.

Mr. RYDER. That is right.

The CHAIRMAN. I believe you said the Commission would not have a formula, but that it would come right down to a question of judgment.

But what solicitude is shown in the pursuit of the formula for, let us say, high-cost producers?

Mr. RYDER. Of course, we have to take into account in the study that is made in connection with the concessions, the different segments of a given industry.

Now, some of those segments we know are not subject to competition as much as other segments are.

For instance, in some textiles, it is the fine quality goods in which there is the greatest amount of competition. In other words, you try to find out what are the most vulnerable spots. That is one of the things you take into account.

The CHAIRMAN. That is, vulnerable to foreign competition?

Mr. RYDER. That is right, vulnerable to foreign competition. And what segments of the industry would be most likely affected by a given reduction in duty.

Some of our mining industries, in one section of the country, we know, may have considerably higher costs than another. We may not have the exact cost, but we know it is more or less a marginal producing area of the country.

The CHAIRMAN. All right. You make a search for those vulnerable points.

Mr. RYDER. That is right.

The CHAIRMAN. Having found them, then what is done about it?

Mr. RYDER. Well, you take those vulnerable points into consideration in determining how far you are going in making your cut, and how important those vulnerable spots are, and what effect in particular on those spots a given reduction would have.

The CHAIRMAN. Do you average the industry costs?

Mr. RYDER. Well, if we get costs we would so, but, of course, as I pointed out in connection with trade agreement work, no cost determinations are made.

The CHAIRMAN. Either domestic or foreign?

Mr. RYDER. That is right. Of course, in certain industries, the Tariff Commission does have cost investigation made previously, and those costs are used as some indication of what might be the current condition.

The CHAIRMAN. Do you make profit studies?

Mr. RYDER. Yes, frequently we do; yes.

The CHAIRMAN. The reason I ask the question is that I was talking to a gentleman who is quite influential in this process that we are discussing, and he indicated that although the unit price of the particular product might be considered low, or might be considered fair in this country, yet this particular industry, or a certain part of it, was putting very, very large profits away, and therefore, under his theory of procedure, it would be fair in that kind of case to introduce some additional competition.

Is that his individual notion of it, or is that a policy which is followed?

Mr. RYDER. Well, my own view is that you have got to use profits with a great deal of care, particularly profits for any given year or even a short series of years.

If you are going to take profits into account, you have got to take what have been the profits of the industry over a considerable period of time, or certainly in some sort of a normal period.

If the industry has been continually prosperous and is expanding and making profits over a long period of time, and the profits have been pretty high or fairly high, that would be an indication that you would possibly be able to make some cut in the duty, if it is a protected industry.

But you would not take that alone. That would be only one of the things that you would take into consideration.

The CHAIRMAN. I am a little bit mystified as to how you can measure the competition of foreign goods on our domestic market, measure the impact of it, without a rather thorough knowledge at least of our domestic costs. The profit in the price is the impact margin. How can you determine the impact of competition unless you have a pretty thorough knowledge of what those costs are?

Mr. RYDER. Well, of course, if you could have the cost of every concern abroad, and every concern here, it would throw a great deal of light on the situation.

You would do away, then, with the use of judgment to a large extent, but it is utterly impracticable to do that in any large number of products. To make a cost investigation here and abroad is a very difficult and time-consuming job, and as I can testify, having spent about 8 years of my life working under the flexible tariff provision law exclusively. It is a very difficult thing to make cost allocations and get proper averages, and that kind of thing.

And when you come out with your average, you often wonder how valuable it is.

There are various other indexes besides cost,

Other indexes are, whether the industry is an expanding one, whether it is on the whole a profitable industry, what segment of the American industry is affected by import competition, the competitive probabilities in the light of differences in wages here and abroad, and the known differences in productivity of labor here and abroad. Sometimes you can get information on all these matters, and sometimes you cannot.

Of course, as I say, it is bound to be a matter of judgment even if you get the completest possible information. It is bound to be to a very considerable extent a matter of judgment.

The more data you get, probably the less the element of judgment involved. It is because of the element of judgment that it is necessary to have something like the escape clause, so that if any mistakes are made, there is some mechanism by which they can be rectified.

The CHAIRMAN. This is a good point for me to get your reaction to: It has been suggested that the existence of the escape clause puts us in a position to take much larger chances in reductions than would otherwise be taken. That, of course, is an alarming suggestion to those who fear reductions.

Can you tell us whether that sort of chance taking is going to be part of the policy in negotiation of the forthcoming trade agreement?

Mr. RYDER. Well, I can give you only my view of it.

I would say that there would be a few cases, probably, a relatively few cases where the situation was rather obscure as to what would be the effect of a given duty reduction, and where that particular commodity is very important in getting the desired concession from the foreign country. There might be a few cases of this kind where it would make a difference having the escape clause, but I do not think there would be very many.

The CHAIRMAN. Do you think that is a justifiable policy?

Mr. RYDER. I think, in general, no. I think, in general, you should make your decision on the best judgment available, and if the judgment is that the probabilities are there would be injury, you should not make the concession.

The CHAIRMAN. Without respect to the escape clause?

Mr. RYDER. That is right.

The CHAIRMAN. In other words, you should look at the matter as it is.

Mr. RYDER. That is right.

The CHAIRMAN. And not think, "Well, if I make a bad deal, maybe I can get out of it"?

Mr. RYDER. That is right.

The CHAIRMAN. The damage may be done by the time you could possibly invoke the escape clause. Even if you invoke it, it may be that the time involved for the Tariff Commission to get the facts together, and advise the President, and to follow the formalities of making the escape, that by the time all of those steps had been taken, the horse would be out of the barn. People who are aware of the chance-taking theory are much alarmed.

Perhaps I should say to you at this point: When Secretary Clayton testified, I questioned him along the same line, and of course, I was hopeful that I would get a good strong statement out of him so that there would not be any such chance-taking policy, and I regret to say that I did not receive a very durable assurance from him.

Mr. RYDER. Well, I have not read his testimony and I can give you only my own view of it, as I stated.

There are, as I said, a very few rather obscure cases which are very important in negotiations which the escape clause might affect.

The presence of the escape clause might make a difference of whether I personally would favor a reduction or not. But there would be relatively few cases of that kind.

In general, I am of the opinion that we should use the best judgment one can get, and where there is a strong probability that there will be injury to a domestic industry, then to refrain from making that concession; and to use the escape clause to correct situations which arise either because your judgment was wrong, or because of unforeseen developments.

We are in a very uncertain world. I would not minimize that at all. What is going to happen in the next 2 or 3 or 10 years no one knows, and for that reason alone, we have got to have something like the escape clause.

The CHAIRMAN. But it is, also, an equally good reason for not taking chances of the type that I have mentioned.

Mr. RYDER. Certainly not taking any very great chances.

The CHAIRMAN. Yes. Would it not, in your opinion, be a sound rule to resolve substantial doubts, when they exist, against a cut?

Mr. RYDER. Well, I think that you would have to take into account the degree of the doubt and the importance of that product in your pending negotiation, but in general, I would agree, yes.

The CHAIRMAN. Of course, my statement of that principle, excludes captious doubt.

Mr. RYDER. Yes, sir.

The CHAIRMAN. Over attenuated doubt.

Mr. RYDER. It is all a matter of relativity, of course, and it is hard to answer in a general way, but I have done the best I can for you.

The CHAIRMAN. Could we come back to the treatment of the top third of most any line of business, the high-cost producers. Just how are the problems of that segment of a particular business considered in these negotiations?

Mr. RYDER. Well, as I stated a while ago, the industry is studied for the purposes of deciding what concessions shall be made, studied not as a unit; but the various segments of the industry so far as we can get information about them are studied.

If you have a mining industry, it is in various sections of the country, and information is obtained not on the average of the industry but upon the operation of the various parts of that industry.

And if you take a textile industry, you have to study and consider the organization of the industry, the production of the various plants, all the way from the coarsest grade and the poorest grade to the very highest, that is the various segments of the industry, how they would fare in competition with imports, and the extent they encounter import competition, or may encounter it, if the duty is reduced.

The CHAIRMAN. If the concession were considered worth while, is it conceivable that cuts might be made that would seriously injure or put out of business, we will say, the top group of high-cost producers?

Mr. RYDER. Well, that is hard to answer.

The CHAIRMAN. I am postulating a very, very desirable concession.

Mr. RYDER. Yes.

The CHAIRMAN. Outweighing in value, let us say, several times what might be considered the value of the high-cost producers.

Mr. RYDER. There is always in nearly every industry, except some of our industries dominated entirely by large-scale producers, there is nearly always a fringe of the industry which is operating at just about or below cost. It is amazing to me how companies I have seen have gone along, year after year, losing money, but they seem to do it.

With the increased competition, some of those companies might be forced out. I do not think there is any question that that might happen.

The CHAIRMAN. In each of these cases, if I may interrupt, you are trying to achieve a balance between value of concession and the amount of injury.

Mr. RYDER. That is, if the injury amounted to material or substantial injury to an important segment of the industry, then I would be opposed to it, and I think the commitments of all the trade-agreement people have been against making concessions that would do that.

The CHAIRMAN. Is it conceivable that if the concession were great enough, that a substantial part of a given domestic industry might be seriously injured?

Mr. RYDER. Well, yes. There are industries, doubtless, if you would make the maximum concession permitted under the Trade Agreements Act at the present time, there would be serious injury to the industry. There are no doubt cases of that sort. How many I do not know, and I do not think anyone would advocate making an across-the-board 50-percent reduction.

The CHAIRMAN. But if the traders were to get a very choice prize of a concession, in order to get that, they might be willing to cut rather deeply into what might be considered a less important domestic industry, taking the whole thing on a balance?

Mr. RYDER. Well, the principle that would guide there would be that they would go as far as they could in cutting that duty without seriously injuring an important part of an industry, an important industry.

The CHAIRMAN. You have more or less ruled out, you have not ruled it out completely, but I believe you have ruled out more or less the factor of foreign costs in the determination.

Am I correct in that?

Mr. RYDER. Oh, no; I would not rule out any factor that you can get information on. It is difficult to get costs abroad. We have done it in some instances very successfully, but it is always difficult.

The CHAIRMAN. In this upset world with unstable currencies and state-owned enterprises in which costs are concealed by virtue of cost-supporting taxation, monopolistic states, and so forth and so on, it would be almost impossible to get dependable cost statistics, would it not?

Mr. RYDER. It would be impossible to get costs now abroad or here, for that matter, that you could be at all certain would be good 3 years from now.

The CHAIRMAN. Generally speaking, with very few exceptions, can you get dependable costs over the whole world as of today?

Mr. RYDER. It is very doubtful. Many industries would be very doubtful. The difficulty of obtaining costs and computing costs at the present time would be very great even here. It would be much

greater abroad, of course. Costs abroad would not be at all indicative. Costs obtained now abroad would not be at all indicative of what they may be a year or two from now.

The CHAIRMAN. There is quite a little opinion around the Congress that these factors that you have to deal with in these trades are so uncertain and so unstable that they are bound to continue that way for some time to come, and that this would seem to be a rather bad time to be making trade agreements.

Would you care to comment on that?

Mr. RYDER. Well, that is a legitimate objection to action at this time. I personally doubt if it is a conclusive objection for the simple reason that there are various countries who are in the midst of balance-of-trade and currency difficulties.

They are closely controlling their imports and exports by quotas, exchange controls, and otherwise.

And if those things get set, it is going to be difficult to upset them. So that there is a great deal to be said for going ahead now, despite the uncertainties, and trying to get the impediments to trade removed, particularly to our trade, that the countries of the world have set up against us, and to minimize the spread of state trading and state enterprise, and to prevent the quota- and exchange-control systems becoming permanent.

The CHAIRMAN. Taking that approach to it, do not these uncertainties to which you have referred, enhance the degree of caution that should be taken in the type of agreement that we make?

Mr. RYDER. Well, the two arguments which have been stated work both ways.

If you think it is important to prevent the present trade controls becoming permanent and preventing spread of state trading, then purely from that point of view, you would take reasonable chances in making your concessions. I say "reasonable" chances.

The CHAIRMAN. In the ITO charter, there are a number of provisions which no doubt are being directed against state controls and state monopolies, and also a definite program to appease them and possibly to encourage them.

My point is that there seems to be a conflict of policy, as to whether we should encourage these state controls or discourage them as you have suggested.

If our policy is to encourage them, then I suggest that we go about it in a rather peculiar way when we recognize them and accommodate ourselves to them in the proposed ITO charter. You can comment on that or not, as you please.

Mr. RYDER. I would be glad to comment on it.

I do not agree that the charter does that. The charter recognizes what you have to recognize: That there is going to be a certain amount of state trading. We cannot get the countries of the world, at the present time, to agree to abolish state trading. So an effort is made that where they do have state trading, to try to get some commitments which we can use to see that they do not use state trading against us.

The CHAIRMAN. If you fit it into this system, Mr. Chairman, and if you take no affirmative steps to stop it, and if you adjust and accommodate yourself to it, I suggest that such action will not achieve the purposes that you have in mind, to uproot those things so that we can have a better state of freer trading in this world.

Mr. RYDER. I think, from my observation, the purpose of those who made up the United States proposal, which was the basic instrument on which the various additions and changes have been made, the purpose was by getting commitments now for reduction of tariffs and also commitments that seek to ban quotas and controls of that sort, that you would create by that action a situation which would minimize the necessity and the tendency toward state trading.

Manifestly, certain countries, like Czechoslovakia and England, are going to have a certain amount of state trading. And certain provisions in the charter were made to try to insure a fair treatment when you did have state trading. I am sure the intention of those who drafted it was not to encourage it, but as far as possible to discourage it.

The CHAIRMAN. I would not say that they were out affirmatively to encourage those things. I am simply saying that it might be argued that when you accommodate yourself to them, and when you adjust a charter and an organization to them, certainly you are not taking an affirmative step to discourage them.

Mr. RYDER. Well, it was envisaged originally that Russia would become a party to the agreement, and naturally you had to have a provision that would try to take care of where you had a total state trading system. Now, there are other countries which, despite all we can do, will continue at least for any predictable future to have state trading systems at least in certain products. I do not think that it will be realistic to make a charter under the assumption that you would not have any of them. And I am sure the purpose of those that drew it was to create a document which would minimize the probability of countries going into state trading.

The CHAIRMAN. My point is that you cannot ride it both ways. You cannot claim that we are doing things to break up state trading and thus make a freer world for trade at the same time that we are writing charters recognizing it and adjusting ourselves to it. That is my sole point.

Mr. RYDER. Well, you could logically say that, but on the other hand, you can take the position that we are making an instrument which, in its various phases, will do things that the authors of it think will have a tendency and a very strong tendency toward a reduction in the tendency toward state trading and toward the use of various devices that have been used against our trade.

But, at the same time, to recognize that insofar as you do have those things, that there should be some rules regulating them so as to limit the injury which they might do our trade. At least, that is the philosophy, as I understand it, Senator. I am just trying to give it to you.

The CHAIRMAN. I appreciate your answer. I got the impression out of a statement made by one of the witnesses yesterday that they are about ready to dump over that part of the charter which would accommodate itself to complete monopolistic states.

Mr. RYDER. If Russia does not come in, I do not know whether there would be any other complete monopolistic state or not. Though Czechoslovakia is one of them at the present time.

The CHAIRMAN. Czechoslovakia, I believe, is a kind of semisatellite of a monopolistic state.

Mr. RYDER. That is right. Do you want me to read this statement about the procedure under the Trade Agreements Act?

The CHAIRMAN. Yes; I want to get to that.

Mr. RYDER. If you want to ask any question before we get to that, it is all right.

The CHAIRMAN. I want to ask you this question; if you think it is more appropriate to take it up later, let us do that.

What goods are there that we want to export that we cannot export because of foreign customs restrictions?

Mr. RYDER. I do not know. Offhand, I cannot think of any goods that we cannot export at all for those reasons, but there may be examples of that. It is a question of how much we can export of various manufactured products, like automobiles, or adding machines, typewriters, and machinery of various kinds, and certain agricultural products like wheat and cotton.

The CHAIRMAN. But are those exports being prohibited because of the duties, or in the main, because of financial and other difficulties of the buying nation and because of our own shortages and our own domestic problems in connection with the possible exports?

Mr. RYDER. Well, right at the present moment, of course, all of those elements enter into it. Our own shortages here, and our own high prices, no doubt, discourage exports. And the real difficulty of foreign countries, which they are having, is paying for the goods that they get from us no doubt puts severe limitations on what they can buy from us, and by the controls, quotas, and other devices, they limit our exports—that is, their imports from the United States—to things considered essential.

The CHAIRMAN. Yes. And is it not to be presumed that they will continue to do so as long as their domestic economy indicates the necessity of it?

Mr. RYDER. As long as the present situation continues, that will be true. How long that situation will continue, I do not know. It will not continue indefinitely, of course.

The CHAIRMAN. To put it another way, Mr. Chairman: Generally speaking, at the present time, the state of world demand is really such that there is no effective limitation on our export trade, except the ability of the potential customer to pay for it.

Mr. RYDER. That is right; and our ability to export.

The CHAIRMAN. And our ability to export it?

Mr. RYDER. That is the present situation.

The CHAIRMAN. So we have got a guessing contest as to how long that situation will continue.

Mr. RYDER. That is right; and at present, of course, right at the present moment, there is relatively little import competition and probably in only a very few industries is there any chance of great increase in import competition, whatever you do. What we have been discussing here is principally what will happen after this period passes.

The CHAIRMAN. Yes.

Mr. RYDER. This period of transition which will last, say, from 3 to 5 years. After that period has passed—

The CHAIRMAN. Now, then, taking a look at the ability of the foreign nations to export, I think it is a matter of common knowledge that Great Britain is far short of her exporting goals. As I recall

it, she has been aiming to do this year 175 percent of her highest prewar exports.

Mr. RYDER. Of her exporting in 1938.

The CHAIRMAN. In 1938. And she is able to do, with maximum effort, about 110, or something like that. Are my figures, roughly, correct?

Mr. RYDER. I think something like that; and even that increase is chiefly due, I imagine, to higher prices.

The CHAIRMAN. Now, when you get out of Great Britain, what countries in the world are prepared to export a lot of stuff into this country and are prevented from doing so because of our tariffs?

Mr. RYDER. Well, right at the present moment, I would say that our tariff is not the chief impediment to trade. The chief impediment to trade, of course, is the inability of foreign countries to produce, to ship.

The CHAIRMAN. That is what I was coming to.

Mr. RYDER. Under the existing situation, during this transitional period.

The CHAIRMAN. They cannot export until they can get their industries rehabilitated.

Mr. RYDER. That is right. In other words, bearing on some of the things we discussed previously. The present situation of the foreign industries, in general, right at the present moment, is that they are less favorably situated with respect to exporting here than they were before the Second World War began, but that does not say what is going to be the situation in several years.

The CHAIRMAN. When we get through this so-called transitional period?

Mr. RYDER. That is right. The countries of Europe are having to reconstitute their industry to a very large extent. The British industries, for instance, their textile industries. They reduced their production very greatly during the war, and the people were taken out of that industry and now they have to train new people to go back into the industry, and it takes time.

The CHAIRMAN. As I read the literature on the subject that is available to me, Great Britain has been having great difficulty in rehabilitating her export industry.

Mr. RYDER. That is right.

The CHAIRMAN. She has had to put the emphasis on consumptive goods, for immediate domestic consumption.

Mr. RYDER. That is right.

The CHAIRMAN. She has not been able to modernize her mines.

Mr. RYDER. That is right.

The CHAIRMAN. She has not been able to modernize her textiles.

Mr. RYDER. That is right.

The CHAIRMAN. She has not been able to modernize her railroads. She has not been able to modernize her steel industry.

Mr. RYDER. That is right.

The CHAIRMAN. That same condition, greatly exaggerated, exists over the continent of Europe.

Mr. RYDER. Yes, it does. That is the situation as it is today. What you have to take into account is what will be the probable conditions at the end of this transition period when more or less normal conditions come to exist here and in the European countries.

I will go ahead, then, with this?

The CHAIRMAN. Proceed, Mr. Ryder.

Mr. RYDER. I come now to the question of the trade agreements organization and procedure, which is the second matter upon which I have been asked to testify. On this question and the related question of the means taken to insure that no reduction in duty made under the trade-agreements program for the purposes of expanding United States trade results in serious injury to the producing interests directly affected by the reduction. I can speak from first-hand knowledge, as from the beginning I have been connected with the operation of the trade-agreements program. Since its establishment in 1934, I have been the Tariff Commission member of the Trade Agreements Committee, and from 1939 to 1942 I was Chairman of the Committee for Reciprocity Information.

The administration of the Trade Agreements Act has been placed by the President under the direction of the Secretary of State. Work under the act, however, is carried on through interdepartmental committees established by Executive order. Actual negotiation of agreements is in charge of the Department of State operating through its Division of Commercial Policy.

For an understanding of what I have to say as to procedure, it will be necessary to keep clearly in mind the part played by the interdepartmental Committee for Reciprocity Information and by the interdepartmental Trade Agreements Committee and its country subcommittees.

First as to the Trade Agreements Committee: Section 4 of the Trade Agreements Act prescribes that before concluding any agreements under the act [reading]:

the President shall seek information and advice with respect thereto from the United States Tariff Commission, the Departments of State, Agriculture, and Commerce and from such other sources as he may deem appropriate.

I should add there at the last renewal of the act, the Departments of War and Navy were added. I neglected in revising this to put that in.

It was for the purpose of securing the required "information and advice" in the most effective way and at the time when it could be most useful that the Trade Agreements Committee was established by the Secretary of State shortly after the passage of the Trade Agreements Act in June 1934. In February 1947, this committee was formalized in Executive Order 9882 and made to report directly to the President. As at present organized, it is composed of members not only from the agencies specifically mentioned in the law—the Tariff Commission and the Departments of State, Agriculture, Commerce, War, and Navy—but also from the Departments of the Treasury and Labor. In addition, information is obtained from other Government departments and agencies when matters of interest to them are under consideration.

Thus, the primary function of the Trade Agreements Committee is to correlate and integrate the information regarding any proposed trade agreement supplied by all the agencies represented on the committee, and to submit to the President recommendations based on such information and embodying the conclusions reached by the committee after a thorough interchange of information and views between its various members.

The secondary function of the Trade Agreements Committee is to direct the trade agreements program in all its respects, subject to ap-

proval of the Secretary of State and of the President on major questions of policy. Thus the Trade Agreements Committee is the clearinghouse or, as it might be called, the nerve center of the trade-agreements organization. Everything flows to and from it. In its work it utilizes the services of the Committee for Reciprocity Information and the services of the interdepartmental subcommittees known as country committees, one for each country with which an agreement is made or is proposed. The country committees are composed of experts from the Tariff Commission, and from the Departments of State, Commerce, and Agriculture. In addition, experts from other Government agencies are called on when matters of interest to them are being considered.

I now come to the Committee for Reciprocity Information, which has the function of obtaining information from producers, importers, exporters, and private organizations and individuals regarding proposed trade agreements and regarding the operation of agreements already in effect. On it are members from the Tariff Commission and the Departments of State, War, Navy, Commerce, Agriculture, and the Treasury. To a large extent, its members are also members of the Trade Agreements Committee. The committee receives briefs and holds public hearings on each proposed trade agreement, and sifts and summarizes the information thus obtained for use of the various country committees and of the Trade Agreements Committee.

With this organizational background, I shall discuss in order:

1. The work preliminary to the negotiation of a trade agreement.
2. The methods by which an agreement is negotiated.
3. The ways in which it is attempted to make reductions in duty which will expand the trade of the United States but not cause serious injury to the producing interests affected by the reductions.
4. The procedure in regard to complaints regarding the operation of trade agreements.

Any proposal to negotiate with a country, let us call it country X, for a trade agreement, is studied first by a country committee, set up especially for the purpose, and then by the Trade Agreements Committee, which canvasses the problems that may be expected to arise in the negotiations and makes its recommendations to the Secretary of State and the President.

If the President authorizes negotiations and country X agrees to negotiate, the first step preliminary to actual negotiations is to secure agreement upon the articles with respect to which the United States will consider making duty concessions. This is necessary because this Government has established the rule of giving public notice of all articles which will be considered for this purpose.

The list is made up initially by the country X committee and is reviewed and revised by the Trade Agreements Committee.

The CHAIRMAN. Right there, Mr. Chairman, how does the United States reach that advance decision that it will consider making duty concessions?

Mr. RYDER. Well, the way that is done, you get a list of the articles by going through our import statistics, and you get a list of the articles that come here chiefly from the given country, or of which that country is a very high ranking supplier, and you include those in your initial list. That is the way it is usually done.

The CHAIRMAN. I mean, how does the country committee decide to make that initial decision that "We will consider reduction on the following items which we produce domestically."

Mr. RYDER. Well, that is made up purely on a statistical base. If the country under consideration is a chief supplying country of an article, or a very-high ranking supplier, the article is put on the list. That does not say we are going to make a concession, but it is put on the list for consideration.

The CHAIRMAN. That is, we look around to the countries where we want to do some exporting, and we say, "Country A is a chief supplier of gloves, country B is a chief supplier of coffee, country C is a chief supplier of textiles," and so we say, "Well, if we are going to get concessions from countries A, B, and C on exports that we would like to put in there, we will have to consider reduction on the things as to which they are the chief suppliers."

Mr. RYDER. Yes. If country X is, say, Belgium, why, you go down the list of imports and you pick out those articles on which Belgium was a chief or high ranking supplier. You will get window glass, plate glass, certain iron and steel products. Those are put on the list. That is the list which you start with. Then, that list is made up by the country committee into a list, and then reviewed and revised by the Trade Agreements Committee.

The CHAIRMAN. What I would like to get at, Mr. Chairman, is, does the establishment of that initial list set up what might be called a presumption for cutting?

Mr. RYDER. Oh, no; not at all.

The CHAIRMAN. That is what I am getting at.

Mr. RYDER. No, not at all.

The CHAIRMAN. There is no presumption that because we supply a list, that there will be a cut unless later evidence indicates there should be a cut?

Mr. RYDER. There is no presumption at all. It is something that will be considered in the negotiation.

The CHAIRMAN. We will consider it.

Mr. RYDER. That is right.

The CHAIRMAN. But we do not start with a presumption that this will be cut unless evidence convinces us it should not be cut.

Mr. RYDER. No. It is just that this product will be studied and considered in connection with the negotiation.

The list as recommended by the Trade Agreements Committee is, with the approval of the Secretary of State and the President, submitted to country X.

The only reason we do it is because we have to publish the other list, the list we are going to give the other country we can postpone, but since we are going to have a hearing we have got to have an understanding as to what is included in the negotiations.

The CHAIRMAN. The publication does not reveal the concessions we are going to ask?

Mr. RYDER. No. That is dealt with below.

The CHAIRMAN. Yes.

Mr. RYDER. Then the list, as recommended by the Trade Agreements Committee is, with the approval of the Secretary of State and the President, submitted to country X. Country X, of course, will

almost certainly wish to enlarge the list of articles to be the subject of negotiations. Usually, the requests for additional listings are granted except in cases where there are strong reasons for not doing so.

Where there is a very minor supplier, for instance. I remember in the case of, I believe it was Sweden, there was a certain type of cutlery. We were turning it down because they were a very minor supplier. They said that they were the chief supplier on the high-value cutlery, cutlery above a certain value, I believe they got a concession. A very small item in which they were interested.

The CHAIRMAN. One of the reasons why we limit this to the principal supplier is because if a deal results, we generalize the benefits.

Mr. RYDER. That is right.

It is, however, made clear that in any case the listing of an article may not be taken as indicating that a concession will actually be made. In fact, an examination of the record will show that in negotiations under the Trade Agreements Act many of the articles listed were not made the subject of concessions.

The CHAIRMAN. May I ask you at that point, how many articles were in this last listing?

Mr. RYDER. It depends on how you count those things. I believe the way we usually count them a little over 1,400. Is that right, Martin?

Mr. MARTIN. Yes, sir.

Mr. RYDER. Slightly over 1,400.

The CHAIRMAN. Is there any precedent that would indicate the percentages of items as to which cuts will be made?

Mr. RYDER. For some of the past agreements, I suppose we could get that up. I do not have it here, the percentage of the articles listed on which concessions were made.

The CHAIRMAN. I have a letter from a Senator who has heard that we are going to make a very large number of cuts. It is recognized that it would not be consistent with our bargaining to tell us at this time what particular items will be cut.

Mr. RYDER. That is right.

The CHAIRMAN. While that is recognized, I think I will try, to the best of my ability, to see if we cannot get some further, perhaps more generalized, statements on that subject.

Go ahead, please.

Mr. RYDER. All right.

The list of United States products to be made the subject of negotiation having been agreed upon, the Secretary of State simultaneously announces the negotiations with country X, and publishes the list. At the same time, the Committee for Reciprocity Information makes a public call not only for information on the question of concessions by the United States on the articles listed but also for information regarding the articles on which the United States shall ask concessions of country X. A final date is set for the filing of briefs and announcement is made of the date of the public hearing. (Exhibits XXII A, B, and C present the announcement, notice, and products list published for the negotiations at Geneva in April 1947.)

All the information obtained in the briefs and given at the public hearing is analyzed and summarized by the Committee for Reciprocity Information and transmitted to the Trade Agreements Committee and to the subcommittee on country X.

The ball now passes to the country committee which has the duty of formulating for submission to the Trade Agreements Committee tentative schedules of the concessions to be requested of country X, known as schedule 1; and of concessions which the United States will be prepared to offer initially in return for the concessions to be requested, known as schedule 2.

In preparing these schedules, the country committee draws on information from two sources: First, the information submitted by producing, importing, exporting, and other interests through the Committee for Reciprocity Information; and second, the information and advice submitted by Government agencies pursuant to section 4 of the Trade Agreements Act.

The Tariff Commission is primarily responsible for supplying information regarding possible concessions by the United States; the Department of Commerce, for supplying information regarding the concessions to be requested of country X; the State Department for supplying the information regarding the general provisions; the Department of Agriculture, for supplying special information on agricultural commodities; and the Treasury Department, for supplying information on customs matters.

The part played by the Tariff Commission in supplying information regarding possible concessions by the United States is particularly pertinent to my later testimony regarding the means taken to safeguard domestic producing interests.

For each article included in the published list of articles on which the United States will consider making concessions, the Commission prepares what we call a digest summarizing all the information available which may throw light on the competitive position of the domestic industry with respect to imports.

Each digest, which is prepared by the commodity expert on the article in question, collaborating with economists of the Commission's staff, is reviewed by a committee of the Commission composed of both Democratic and Republican members of the Commission. Every effort is made to have the digests as complete and as objective and devoid of bias as possible.

The digests prepared on the 1,400 or more items listed for consideration in the pending negotiations were made public before the beginning on January 13 of the hearing on these negotiations. The members of the Finance Committee have doubtless examined these digests. They contain the same kind of material that we furnished your committee in connection with the congressional tariff revisions of 1922 and 1930. (Exhibit XXII D presents a typical commodity digest.)

But supplying written material in the form of digests is not the only way in which the Commission assists the country subcommittees. It also puts at their disposal, as it put at the disposal of congressional committees in tariff revisions, the entire expert staff of the Commission to furnish needed technical information and advice.

Likewise, the country subcommittees have the assistance of experts from State, Commerce, and Agriculture, also the Treasury Department, and, in the case of minerals, the Bureau of Mines.

In formulating the schedule of concessions to be asked of the foreign country in question, the subcommittee frequently has the assistance of the commercial attaché stationed in that country and brought back to Washington especially for the purpose.

The CHAIRMAN. Mr. Chairman, do we have a commercial attaché in every country?

Mr. RYDER. I could not answer that. I know we do in all larger countries.

The CHAIRMAN. If we do not, I assume the ministries or the consular officers are required to furnish information of that kind?

Mr. RYDER. Oh, yes; that is right. When the country subcommittee has completed its draft of the schedules of the concessions to be sought from the foreign country and of the concessions which we are prepared to offer initially in return, they are submitted to the Trade Agreements Committee. That committee reviews and revises both schedules using not only the report of the country subcommittee but also the Tariff Commission digest on commodities on which duty reductions are proposed.

As the member of the committee from the Tariff Commission, I have regarded it as my special function to see that full consideration is given to the possible effects of any proposed concession on the domestic producing interest involved.

I cannot, of course, speak for the Tariff Commission as such. As I am the member from the Tariff Commission, which is primarily a fact-finding organization, I usually leave the decision to the other members of the committee after making certain that all the available facts have been considered. When, however, my judgment on an important matter differs decidedly from that of the majority of the committee, I register a dissent. Under the new Executive order such a dissent must go to the President together with a full statement of the reasons for making it.

The CHAIRMAN. Mr. Chairman, when you are sitting on that committee, do you give affirmative advice as to what you might consider to be the point below which a reduction should not be made?

Mr. RYDER. I frequently do, yes.

The CHAIRMAN. Do other members give the same kind of advice?

Mr. RYDER. Oh, yes.

The CHAIRMAN. And when there is a dissent on the Tariff Commission, do you make that view known to your members on the other committee?

Mr. RYDER. I do not quite get that question exactly.

The CHAIRMAN. You are sitting now on the Interdepartmental Committee?

Mr. RYDER. That is right.

The CHAIRMAN. As a member of that committee, you are bringing to the attention of the committee, a point below which reductions should not be made.

Suppose that on the Tariff Commission, as such, that same subject has been up and there is a difference of opinion, there is a dissent from the majority opinion.

Do you carry into the discussions before the Interdepartmental Committee the contrary opinion of the minority of the Tariff Commission?

Mr. RYDER. No; the Commission as a commission performs its function in giving all available information in the digest, and in loaning its experts to the committee. The Commission, as such, does not consider the concession or the degree of concession.

The CHAIRMAN. I see.

Mr. RYDER. The negotiation of the agreement: When the Trade Agreements Committee has finally agreed upon the two schedules and they have been approved by the Secretary of State and the President, negotiation of the agreement is begun. The United States negotiating group is headed by an official of the State Department, who is assisted by experts from the Tariff Commission, Commerce, and Agriculture. The negotiators are under instructions to make every effort to obtain from the foreign country the duty concessions contained in the schedule of desired concessions approved by the President and they may not, without authorization, agree to concessions in United States tariffs other than, or in excess of, those included in the approved schedule of possible United States concessions.

Frequently, however, points arise in the course of the negotiations which the negotiators have to refer to the Trade Agreements Committee for further instructions. In particular, the Trade Agreements Committee must be consulted when the negotiators find it necessary in order to come to an agreement with the foreign country to have the authority to take less than asked or give more than authorized. Either one might happen, of course.

A foreign country might insist on greater concessions than initially authorized, or on the other hand, they might not give as much as you think it warrants, if you make the concession.

In other words, a proper quid pro quo.

The **CHAIRMAN.** Yes.

Mr. RYDER. Any departure, however, from either schedule requires approval not only of the Trade Agreements Committee but of the Secretary of State and the President.

By this procedure the Trade Agreements Committee, the Secretary of State and the President are kept informed of the progress of negotiations, and the major decisions which determine the character of the agreement are made with their approval. When, therefore, the negotiating committee lays the completed agreement before them for final decision, they are already familiar with its principal features.

The **CHAIRMAN.** Mr. Chairman, does the President have a special assistant or any one on his staff who concerns himself especially with these matters?

Mr. RYDER. I cannot answer that. So far as I know, not, but I am not certain on that point.

The **CHAIRMAN.** Those matters would be brought to him, I presume, by the State Department?

Mr. RYDER. They usually are. The State Department, or the chairman of the Trade Agreements Committee, takes the concession up to him and gets his approval. What the process is, I do not know.

I have never had anything to do with that, except on one occasion with an agreement in France, way back in 1936.

The **CHAIRMAN.** The chairman of this interdepartmental committee is the Secretary of State, is he not?

Mr. RYDER. No; the chairman is the Chief of the Commercial Policy Division of the Department of State.

The **CHAIRMAN.** Who is that?

Mr. RYDER. Mr. Winthrop Brown.

The **CHAIRMAN.** Mr. Winthrop Brown.

Mr. RYDER. Then we come to the safeguarding provisions.

As will become apparent from the foregoing account of the procedure in making a trade agreement, the effort is made to safeguard domestic producing interests. Situations existing, or foreseen, at the time an agreement is made are taken into account in making the agreement, usually by specific provisions relating to specific concessions. It is recognized, however, that mistakes may be made. All along, moreover, it has been recognized that under the changing and uncertain economic conditions which have existed since the passage of the Trade Agreements Act, situations unforeseen at the time a particular agreement is made, might arise thereafter and cause such excessive imports as to threaten injury to domestic interests. Various methods have been adopted to guard against such contingencies.

Some of the safeguards included in trade agreements apply to individual commodities on which duty concessions are made and relate to situations existing or foreseen at the time the concessions are made. Sometimes this is accomplished simply by providing that the reduced duty on a given commodity shall apply only upon imports up to a specified quantity, imports in excess of that quantity continuing dutiable at the higher rate.

That has been true of the reductions on cattle to Canada, and potatoes, I believe, and others, a number of others.

The CHAIRMAN. Mr. Chairman, assuming we use an escape clause as to one out of a number of items in a particular trade agreement. That is a two-way road. Of course, the other country could also use the escape clause on some commodity as to which it concluded it had made a profligate concession?

Mr. RYDER. That is right.

The CHAIRMAN. There has been some testimony to the effect that the other country might escape from what it would consider to be an equivalent amount of concession.

Is that your understanding of the thing?

In other words, it might escape from three or four items. We escape from one item. It might escape from three or four, if it thought those three or four were equivalent in concession value.

Mr. RYDER. That is right. Of course, those things always give rise to some difficulty, there is no question of that.

If a foreign country thinks, by your action under the escape clause, you are taking away from them a valuable concession which reduces the value of the agreement, they are going to assert the right of withdrawing something.

I would do it, I believe, if the other country did it to us, and we, of course, have to give the other country that right.

The CHAIRMAN. All I was driving at was whether they would be confined to exercising the escape clause as to a particular item where they felt they had made a profligate concession, or whether they would be entitled to withdraw, say, several items up to a point of equivalence of concession.

Mr. RYDER. They would no doubt attempt to do that. You would attempt to withdraw concessions that you thought were roughly equivalent, and that might involve more than one concession, of course.

The CHAIRMAN. And if the other fellow escaped, we would have the same right?

Mr. RYDER. We would have the same right.

The CHAIRMAN. Yes, sir.

Mr. RYDER. Examples of tariff quotas are the duty reduction on cattle, cream, and potatoes, made in the trade agreement with Canada.

More frequently, however, the limitation on the degree of increase in imports which may result from a given duty concession is accomplished by narrowing, in one way or another, the scope of the concessions. Sometimes, particularly in the case of fresh fruits and vegetables, the scope of the concession is limited to imports in a specified season of the year. In other cases, its scope is narrowed by setting up a special tariff classification within a classification in the tariff act. This method of classification, or subclassification, has been used in the various trade agreements. It is especially useful in cases where imports of a given commodity come principally from two countries but in such markedly different grade or type from each of them that they, in effect, constitute different commodities with different competitive characteristics.

This method is employed for the purpose of preserving bargaining power for use in making a trade agreement with the other countries. It is also used where a particular duty reduction, under the circumstances, can safely be made to one of the two countries but not to the other. This method was used to prevent the cheaper and more competitive grades of commodities coming from Japan from getting the benefit of the concessions made to European countries in the more expensive grades of the same commodities.

Examples are the reclassifications made to prevent Japanese producers from getting the benefits of the concessions made to the United Kingdom on pottery, cotton cloth, and various other products.

In order to protect against unforeseen situations which may develop after a trade agreement is made, more general safeguards are required than those which relate to individual concessions. For this purpose, various types of safeguarding provisions have been included in practically all agreements authorizing action to take care of special situations that may arise.

In the earlier agreements, the endeavor was to include a separate provision to safeguard against each of the various contingencies envisaged as sufficiently within the realm of possibility to warrant such a precaution.

I shall not attempt to discuss all of the provisions of this type included in the various agreements. For my purpose, it will suffice to mention only two of the more important and the more frequently occurring ones. One is a provision, contained in practically all of the earlier agreements, permitting termination or modification on short notice should wide variations in the exchange rates between the currencies of the United States and the foreign country party to any agreement threaten serious injury to industries in either country.

The other is a provision contained in many of the earlier agreements permitting the withdrawal or modification of any concession if third countries should obtain the major benefit of the concession and if in consequence imports of the article concerned should threaten serious injury to producers in either of the countries parties to the agreement.

In later agreements the endeavor to include in each trade agreement separate articles to safeguard against various specified contingencies, has, in general, been abandoned because, for one reason, of the recognition of the impossibility of foreseeing at the time of making an

agreement all the situations which may arise under the agreement to require safeguarding action.

Reliance instead has been placed largely upon a single general provision broad enough in its scope to afford the basis for speedy action in situations, foreseen or unforeseen, which may arise to threaten injury to producing interests in either of the countries parties to an agreement. Such provision was first included in the agreement with Argentina, article XII of which stipulates that either country may terminate the arrangement, in whole or in part, on short notice, in the event that any circumstance arises to prejudice its industry or commerce, and that it is found impossible to adjust the matter satisfactorily.

This article in the Argentine agreement was sufficiently broad to provide not only for action in most of the situations for which separate safeguarding provisions had been included in previous agreements but also for action in most other situations in which injury might result from duty concessions made in a trade agreement. Article XI in the trade agreement with Mexico is superior, however, in that it provides for less drastic action than termination of the agreement, in whole or in part. The article reserves to both the United States and Mexican Governments the right to withdraw or modify the concession made with respect to any article, including the imposition of a quota limitation on the imports of the article, should such action prove necessary to protect the domestic producers of like or similar articles from serious injury through excessive imports resulting from developments unforeseen at the time the agreement was made.

The article provides that the President, upon a finding of facts, is required to take one of the courses of action authorized by the article, naturally, after consultation with the Mexican Government.

Executive Order 9832, issued by the President on February 25, 1947, makes it mandatory that an escape clause similar to that included in the Mexican agreement be included in all subsequent trade agreements. This order also establishes the procedure for administering the escape clause.

Action by the President is to be after an investigation by the Tariff Commission, which is charged with the duty of receiving and passing upon complaints of injury to domestic industries.

The escape clause and the procedures established by it, together, provide what it is very important to have amid the uncertainties of the postwar transition period, a flexible instrument for prompt and adequate action to prevent injury from an unexpectedly large and excessive increase in imports. And what is just as important to the maintenance of the trade-agreements program, by this provision it will be possible for the United States to take such safeguarding action with the minimum of risk of causing the other country party to the agreement to terminate the agreement, in whole or in part, as it of necessity is given the right to do in case of such action.

The authority to impose quotas is important in this connection.

In temporary emergency situations, such as may arise in the transition period, quotas are probably the most effective method of import control. They may be set at such a figure as to prevent serious injury to producing interests and at the same time to permit a sufficient volume of imports to satisfy the exporting country.

The CHAIRMAN. Will the provision for quotas be included in future trade agreements?

Mr. RYDER. The safeguarding clause permits quota action.

The CHAIRMAN. Mr. Commissioner, what is the purpose of the multilateral agreement which it is proposed we enter into rather than the bilateral trade agreements which we have been accustomed to entering into?

Mr. RYDER. Well, as I understand it, the present tentative plan—I think it is only tentative as far as I understand it—is the plan that was made at London, that we shall proceed as we have done in the past, to make agreements with each one of the countries we are negotiating with; so that the procedure of making agreements will be substantially the same as it has been in the past.

But when you have made all those agreements, which will have to be generalized to all the countries, we will make a consolidated list of them. I do not know how that will work out, but that was a tentative plan they made at the London Conference. I was not present there.

The CHAIRMAN. So the final agreement would be one agreement which would reflect the different schedules agreed upon by the different parties to the agreement.

Mr. RYDER. It would, as I understand it, and I don't speak with authority on the subject, but I understand it to be one consolidated schedule which includes all the concessions which we have made in all the agreements with all these countries.

The CHAIRMAN. And would the other provisions be common to all of the members?

Mr. RYDER. That is what I understand.

The CHAIRMAN. Which I assume would be of the same general nature as are the general provisions of our present trade agreements with possibly some changes evolved as a result of the studies that are made over there, and possibly a closer conformity to the proposed international organization charter.

Mr. RYDER. I would think that was the plan.

The CHAIRMAN. The trade agreements system could be advanced by separate bilateral agreements, as well as by this multilateral approach, could it not?

Mr. RYDER. Well, as I understand it, the thing is to be done, has always been done, by bilateral agreements, but after you have made the bilateral agreements you consolidate them all into one schedule. Exactly how that will work out, I do not know. (Exhibit XXI presents the draft of the General Agreement on Tariffs and Trade proposed to be negotiated at Geneva.)

The CHAIRMAN. But if that consolidated purpose were not considered to be a wise purpose, the reciprocal trade system itself would not be prejudiced if you went ahead on the oldtime separate agreement between groups of two countries each.

Mr. RYDER. No.

As far as I can see, the only difference it would make at all, as far as I understand it, is in the agreements made between two countries other than the United States; for instance, between the United Kingdom and France.

As I understand it, the proposal for a consolidated list was made in order to try to assure that in all these agreements you would get the same standard general provisions.

The CHAIRMAN. But that could be arranged, I assume, without having a multilateral agreement. I mean, those of us in this room can sit around here and agree upon the common provisions of a half dozen agreements that will bind us in our various capacities.

Mr. RYDER. Well, I think some of those present at the London Conference thought, in view of the discussions there, it would be easier to get at it if they had this kind of an arrangement.

I have no opinion on that, Senator.

The CHAIRMAN. Let me come back, then, to the original proposition:

Assuming there is not any special reason for doing it in that way, the system would not suffer—

Mr. RYDER. No; I do not see that it would make any great difference.

The CHAIRMAN. How many trade agreements are in effect at the present time?

Mr. RYDER. Do you remember that?

Mr. MARTIN. About 26.

The CHAIRMAN. Could you furnish us with a list?

Mr. MARTIN. Yes. All the agreements are effective except the one with Czechoslovakia and the first one with Canada, which was superseded by the second one.

The CHAIRMAN. And will you give us the expiration dates?

Mr. RYDER. There are no expiration dates. After a certain period, usually 3 years, and sometimes a lesser period, you have a right to denounce an agreement on a certain notice, so there is no definite termination date.

The CHAIRMAN. But it could be indicated, on the list whether the agreements are now subject to that renunciation.

Mr. RYDER. That is right.

The CHAIRMAN. The entire plan leading into the charter contemplates that there shall be a provisional organization to operate on this multilateral agreement until the whole subject matter can be passed into the permanent Organization set up by the proposed charter.

Mr. RYDER. That is right.

The CHAIRMAN. Has that provisional Organization, in your opinion, any vital part in the maintenance or continuance of the reciprocal trade system?

Mr. RYDER. Of course, you could continue our reciprocal trade-agreement system without that, but whether you could get the general reduction among all the members of the trade-agreement Organization, not only between the United States and other members, but between the various other members without such a provision, I do not know.

As I recall that provision—I have not read it recently—it is made to assure that those who have made the concessions do not admit other countries into the club, as you might call it, unless they have made something like equivalent reductions.

The CHAIRMAN. Well, it is contemplated under the plan that that provisional Organization shall not come into effect until after the conclusion of the agreements to be negotiated.

Mr. RYDER. That is right.

The CHAIRMAN. So the agreements to be negotiated will be in being if and when this provisional Organization comes into being.

Some question has been raised during the hearing as to whether that is a valid organization in the absence of congressional consent, under the way they now propose to set it up.

I believe under some modifications that question would disappear, but under the way it is now set up, it has been charged that the agreement would be invalid. That is the reason I am now probing to find out whether the reciprocal trade system would be seriously injured if that provisional agreement did not come into being.

Mr. RYDER. I don't know that I exactly understand your point.

As I recall that provision, that was a part of the charter and would not become effective as far as the United States is concerned, except by congressional action of some kind.

The CHAIRMAN. No. That is the point, Mr. Chairman. It is intended to put that into effect without congressional authorization and to act as a sort of an interim and provisional carrying arrangement until the Congress does approve of the charter.

Mr. RYDER. I did not realize that the provision attempted to do that. I had interpreted it the other way. I would have to read it again.

The CHAIRMAN. I am not asking you to pass upon the legal effect of it. It is criticized on the ground that containing the provisions which are now proposed to be inserted, it is, in main effect, the same as the charter itself. It is argued from that, that if you have to have congressional approval on the charter itself, of course, you have to have congressional approval for an interim arrangement having the same effect as the charter. And I am not trying to involve you in that argument. All I am trying to get at is whether, if we do reach the reciprocal trade agreements that we hope to reach, they would be seriously embarrassed from your standpoint; or whether the reciprocal trade system would be seriously embarrassed if we did not have that provisional organization.

Mr. RYDER. My answer could be only provisional. I would have to study that whole question. I had not thought of that aspect of it, but offhand, I would say that as far as carrying on our trade agreements program, you would not have to have such a provision; but that such a provision would be necessary if you are going to have the general tariff reduction between all of the various countries that belong to the International Trade Organization.

If you are going to see that that is done, then some such provision as that preliminary committee would probably be necessary.

The CHAIRMAN. Well, of course, the fact is that you have not had it so far; and you have been working the system; and I assume you will continue to work the system if you did not have to have it in the future. You might be able to work it better if you had it, but it is not necessary to the continuance of the working of the system, is it?

Mr. RYDER. Not in general. The only question which I am not clear on is what would be the effect, supposing that the United States succeeds in negotiating an agreement with all the 17 countries in this Geneva Conference, whether those agreements would be contingent upon the carrying out of something like this preliminary matter?

The CHAIRMAN. Oh, yes.

Mr. RYDER. That is the only question that I have, and I don't know the answer to it.

The CHAIRMAN. That would raise a new question, and that goes to the other question, on which I am not asking you to comment, as to whether anything should be made contingent upon that, and whether it could be made contingent in a lawful way without bringing it back to Congress.

Mr. RYDER. That is right.

The CHAIRMAN. Now, will the proposed agreement, whether on a bilateral or a multilateral basis, overlap into our existing agreements, or will they all be new agreements?

Mr. RYDER. As I understand it, in the case of the countries with which we are undertaking negotiations at Geneva, and with which we now have trade agreements, the idea, the plan, is to replace the existing agreements with new agreements, just as we did in the case of Canada.

We made one agreement and then we later made another agreement superseding the previous agreement.

The CHAIRMAN. It would contain the contents of the existing agreements?

Mr. RYDER. Not necessarily.

The CHAIRMAN. It might not. The existing agreements might continue effective as to some items?

Mr. RYDER. Well, you would make a new agreement, and the new agreement would continue many of the same concessions that were in the preceding agreement. It might make further concessions on some items and might include some new items.

The CHAIRMAN. And might some be left out?

Mr. RYDER. Some might be left out; yes.

The CHAIRMAN. In other words, this will be a new, fresh start for all the countries involved, that will wipe out their previous agreements?

Mr. RYDER. That is right. The new agreement will replace the old agreement.

The CHAIRMAN. And will the new agreement include any countries with which we do not now have agreements?

Mr. RYDER. Yes.

The CHAIRMAN. Which countries will be included that are not now included?

Mr. RYDER. Well, we have no agreement with Czechoslovakia. We did have one, but it was ended. We have no trade agreement with Norway; we have no trade agreement with Australia, New Zealand, South Africa, Lebanon. I may have left out some.

Mr. MARTIN. China, India, and Chile.

Mr. RYDER. China, British India, and Chile.

The CHAIRMAN. Will your memo have a little footnote on that to make clear the additional countries?

Mr. MARTIN. Yes, sir.

(The list is as follows:)

APRIL 2, 1947.

LIST OF COUNTRIES WITH WHICH THE UNITED STATES HAS EXISTING TRADE AGREEMENTS

| | | |
|------------------------------|-----------|-----------------|
| *Argentina | Ecuador | *Netherlands |
| *Belgium and Luxem- bourg | Finland | Paraguay |
| *Brazil | *France | Peru |
| *Canada | Guatemala | Sweden |
| Colombia | Haiti | Switzerland |
| Costa Rica | Honduras | Turkey |
| *Cuba | Iceland | *United Kingdom |
| El Salvador | Iran | Uruguay |
| | Mexico | Venezuela |

All agreements with these countries except the agreement with Iran and that with Paraguay (which takes effect April 9, 1947) are now subject to termination on 6 months' notice. On June 28, 1947, the agreement with Iran will become subject to termination on 6 months' notice.

ADDITIONAL COUNTRIES IN PENDING NEGOTIATIONS

The countries indicated above by asterisk are included in the pending agreement negotiations. In addition to these, the following countries are also included in the pending negotiations:

| | | |
|----------------|-------------|--|
| Australia | India | Union of South Africa |
| Chile | Lebanon | Union of Soviet Socialist Republics |
| China | New Zealand | |
| Czechoslovakia | Norway | |

The CHAIRMAN. Let me read portions of this letter to you, Mr. Chairman. This is from a Senator, addressed to me.

It says [reading]:

It occurs to me that it would be well for our Senate Finance Committee to have from the Trade Agreements Committee, or from the Tariff Commission certain information regarding the various types of concessions they expect to offer at Geneva in return for concessions from other countries.

Now, I presume that the published list covering the whole 1,400 items would answer that far. [Continues reading:]

The Tariff Commission presumably is conversant with these lists and the analysis and summaries of same. I am informed the amount of trade involved in the forthcoming agreement is very large. We should have some kind of a tabulation to show what the representative prewar earnings on these articles amounted to, together with the total dutiable imports by commodity groups or tariff schedules, so that we can compare the total and dutiable commodities upon which the concessions are intended to be offered to foreign countries.

Let me read that again. [Reading:]

We should have some kind of a tabulation to show what the representative prewar earnings on these articles amounted to, together with the total dutiable imports by commodity groups or tariff schedules, so that we can compare the total and dutiable commodities upon which the concessions are intended to be offered to foreign countries.

Could that information be supplied?

Mr. RYDER. I don't quite understand exactly what the meaning is, what is meant by the earnings there.

Naturally you could not give out a list of the concessions we are initially prepared to offer. In fact, I don't know whether the President has yet approved them or not. I don't think he has.

And if they were given out, they would have to be given out by the President, or certainly by the Secretary of State and not by the Tariff Commission.

They are a matter for interdepartmental action, and finally for action by the President.

The CHAIRMAN. The letter goes on [reading]:

It seems to me there should be a break-down to show what proportion of the total import trade for each group affected by the concessions is made up of products on which no concession is being offered, or a maximum reduction is being offered. It would be well to have some break-down of the contemplated action between those essentials.

Mr. RYDER. Between what?

The CHAIRMAN. Let me read it again:

It seems to me there should be a break-down to show what portion of the total import trade for each group affected by the concessions is made up of products on which no concession is being offered, or a maximum reduction is being offered. It would be well to have some break-down of the contemplated action between those essentials.

Mr. RYDER. Well, as I say, my answer that would apply to that would apply to the preceding one. When trade agreements are made, of course, we always publish data to that effect, data showing the amount of trade involved in the concessions, the number of concessions on which a maximum reduction was made, and so on.

The CHAIRMAN. The Senator then goes on to say:

All we want is a general summary which, of course, will not involve the disclosure of any confidential information, and as discussed between you and me this noon, we do not wish to go into the full factors or conditions surrounding any individual problem.

I believe that what the Senator is getting at is that he is asking for information as to the round numbers, the round figures and statistics, on the articles as to which we have concluded to offer concessions. Is that practicable?

Mr. RYDER. I shouldn't think that it was. I don't think that can be done.

Everything up to the present moment is tentative. Even after the President has approved a given list of concessions, that is tentative, dependent, of course, upon what we get from the foreign countries, and is a subject of negotiations.

And certainly the Tariff Commission could not do it. If it were to be done, it would have to be done by the Trade Agreements Committee as such or by the Department of State, I would say.

The CHAIRMAN. Would it be feasible to furnish us with a round number as to the amount of trade that is involved in the cuts which we are willing to make?

I am not talking as to the amount of the cut, but as to the amount of the present trade, or for a statistical period the items which we are willing to cut if we get concessions. Would that be feasible?

Mr. RYDER. You mean—

The CHAIRMAN. I assume you could take the 1,400 items, and say that these 1,400 items in the year 1946, or the year 1939 represented this much total trade.

If that can be done, I think one of the things that the Senator would like to have is: What will be the total of trade as a comparative

figure on the items on which we are willing to make cuts, assuming that we get concessions?

Mr. RYDER. The first figure, I think, has already been published. As to the second figure, I would say that this is a matter of inter-departmental action, a matter for Presidential action.

I don't think it would be proper for one agency, the Tariff Commission, which mainly supplies information, to pass upon whether that should be done. That should be asked certainly of the State Department or of the chairman of the Trade Agreements Committee.

The CHAIRMAN. Let me go on. [Reading:]

A general over-all statement as to what they have in contemplation and what they have agreed upon to discuss in their negotiations, will enable this committee to have some idea of the general scope of the negotiations and of the extent of the concessions contemplated.

Do you remember the figure that you referred to just a little while ago as to the over-all amount of trade involved in the over-all number of items which you have considered?

Mr. RYDER. We have that figure, but I don't recall what it is.

Do you have it, Mr. Martin?

Mr. MARTIN. The public list covered about 85 percent of our trade—dutiabie and free—and 79 percent of our dutiabie trade. (See Exhibits, Statistics Section, Tables 7 and 8.)

You see, a good many items are included that are found on the free list.

The CHAIRMAN. As of what period of time?

Mr. MARTIN. 1939.

The CHAIRMAN (reading):

A general over-all statement as to what they have in contemplation and what they have agreed upon to discuss in their negotiations will enable this committee to have some idea of the general scope of the negotiations and of the extent of the concessions contemplated.

I take it your answer is that the general scope of the negotiations and the general state of the negotiations contemplated is, first, something which has not been completely established; second, if it were completely established, so far as we were concerned, it does not follow that what we propose would be accepted; and third, if any information of that kind is given out, it should be given out by the President.

Mr. RYDER. That is right.

The CHAIRMAN. Next paragraph [reading]:

You may already have arranged for this information, but I have not had time to read all of the hearings, nor have I been able to be present at all of them, because of other demands on my time.

Is there any information at all which you feel could be given that would afford any illumination on any of these matters which have been raised in the letter?

Mr. RYDER. I think that I probably could say this much in a very general way: That including concessions of all kinds, including bindings of present duties, and so on, a pretty high proportion of the trade listed would be covered in the total of concessions of one kind or another.

The CHAIRMAN. A high percentage of the figures that are in the record?

Mr. RYDER. Yes, sir; a pretty high proportion. I think that could be said without any doubt.

The CHAIRMAN. Has a dollar value ever been put on the figures that are in the record?

Mr. MARTIN. I don't think so.

The CHAIRMAN. That would be a simple matter of statistics, would it not?

Mr. MARTIN. Yes, sir.

The CHAIRMAN. Would you mind giving us that?

Mr. MARTIN. Yes, sir.

The CHAIRMAN. Thank you very much.

(The matter referred to is as follows:)

Proportion of United States imports subject to trade agreements negotiations at Geneva

[Based on imports in the calendar year 1939]

| | Total im- ports ¹ | Imports sub- ject to nego- tiation | Proportion subject to negotiation |
|---------------|---------------------------------|--|---|
| | Thousands | Thousands | Percent |
| Total..... | \$2,220,185 | \$1,892,445 | 85 |
| Dutiable..... | 892,185 | 710,445 | 79 |
| Free..... | 1,321,000 | 1,182,000 | 89 |

¹ These figures which were compiled by the Tariff Commission differ slightly from the official import statistics published by the Department of Commerce.

The CHAIRMAN. Have you any further comments?

Mr. RYDER. No, I have not; not along that line. I would say that the question of concessions to be made is a very difficult question, as you know, and the tactics of negotiation are very delicate, and it has to be done very largely in a nonpublic way. I personally have never had anything to do with the actual negotiations except in one case and that is the case of the Czechoslovakian agreement that "disappeared." And I just accidentally got into that one.

But I do know that it is a delicate matter, of course, as all negotiations of that kind are.

The CHAIRMAN. Let me ask you this:

Is it your understanding that if the charter becomes effective, from that time on, all of the negotiations for reciprocal trade agreements will come within the provisions and the procedures outlined by the charter?

Mr. RYDER. Yes. The charter requires members to negotiate for reductions of tariffs, all the members of the Organization. That is covered by article 14, is it not?

Mr. MARTIN. Article 14.

The CHAIRMAN. And as you envisage it, that negotiating process would lead to the same type of agreements that we are accustomed to?

Mr. RYDER. That is the intention.

The CHAIRMAN. And they would have the same term and the same denunciatory provisions?

Mr. RYDER. Of course, if we proceeded under the Trade Agreement Act in making agreements pursuant to the charter, it would have to be under the terms of the Trade Agreements Act.

The CHAIRMAN. That is exactly what I am driving at.

Assuming the adoption of the charter, would that in practical effect, or in legal effect, amend the Trade Agreements Act?

Mr. RYDER. No, except in this respect: I would say that adoption of a charter by this country would require the United States to continue to have some kind of a trade agreement act providing for negotiations, looking toward reductions in duty.

It does not mean that this particular act would be necessary, but some act that did provide for negotiations, bona fide negotiations for future reduction.

The CHAIRMAN. Well, to put it another way: Just what changes do you see will be made by the charter, if any; in the Reciprocal Trades Act?

Mr. RYDER. I would not say that it would require any, except an extension of the Trade Agreements Act, or some other form of trade agreement bargaining; unless, of course, you went to the limits provided in the Trade Agreements Act for concessions. And further negotiations would be required under the charter, and I do not know how that would work out.

Mr. MARTIN. There would be a change in the generalization provisions.

Mr. RYDER. I am glad Mr. Martin called my attention to that. I had forgotten for the moment that it would require possibly some change in the generalization provisions.

The CHAIRMAN. What change would be required in that?

Mr. RYDER. Martin, you can state that.

Mr. MARTIN. The present law requires that reduced duties be extended to all countries except where the President finds that a particular country discriminates against our trade or follows other practices hostile to the Trade Agreements Act.

The charter would require that the reduced duties under the charter be denied to nonmembers of the ITO.

We could follow the same law that we have now, but we would have to adopt a policy of saying that if a country did not join the ITO it was following policies contrary to our Trade Agreements Act.

The CHAIRMAN. Then, to put it another way: If we join the charter, will we have to amend the Trade Agreements Act, and, if so, in what particulars?

Mr. RYDER. I think your answer would be that if you interpret the authority of the President not to extend a concession to a given country that pursues policies contrary to the spirit of the Trade Agreements Act, construing it so as to apply to people who won't join the ITO, you would not have to make any change.

Mr. MARTIN. That is right, but I think that interpretation would be rather strained.

Mr. RYDER. But if you didn't adopt that interpretation, you would have to amend the Trade Agreements Act accordingly.

The CHAIRMAN. Now, then, put it another way:

Once we adopt the charter, will we be operating under the charter or under the Reciprocal Trades Act as far as these trade agreements are concerned; or under both?

Mr. RYDER. Under both; but I would say that you couldn't proceed under the charter except by some congressional act such as a Trade Agreements Act.

The CHAIRMAN. In other words, I assume that the enabling statute, if we went into the Organization, would contain in it those things necessary to harmonize our Reciprocal Trades Act with the charter.

Mr. RYDER. I would think so; yes.

The CHAIRMAN. Do you consider that the charter would make any change in the effect of the President's Order 9832?

Mr. RYDER. No; I can't think of any change it would make in that. Can you think of any, Mr. Martin?

Mr. MARTIN. No, sir.

The CHAIRMAN. Would you mind giving that some thought, and if any changes would be required, give me a little memo on it?

Mr. RYDER. All right.

Mr. MARTIN. Do you mean only substantial changes, Senator, or do you mean any literal change?

The CHAIRMAN. No; a substantial change in procedure or in substance.

(Mr. Ryder subsequently furnished the following memorandum:)

UNITED STATES TARIFF COMMISSION,
Washington 25, April 8, 1947.

Hon. EUGENE D. MILLIKIN,

Chairman, Committee on Finance, United States Senate.

DEAR SENATOR MILLIKIN: Toward the close of my testimony before the Senate Finance Committee on April 2, 1947, you asked the following question: "Do you consider that the charter will make any change in the effect of the President's Order 9832?"

The escape clause is set forth in full in article 84 of the charter. There is one difference, however, between the escape clause as it appears in that article and the escape clause as it appears in the Mexican agreement. In the Mexican agreement, consultation is required only with the country to which the concession on the commodity in question has been made. Under paragraph 2 of article 84 "the Organization and the other members having a substantial interest as exporters of the product concerned" must be given an "opportunity to consult in respect to the proposed action." The larger number of countries to be consulted might increase the difficulty of putting into effect action recommended by the Tariff Commission and, in some instances, might cause some delay. However, article 84 does not specify the length of time to be allowed for consultation or require that there shall be agreement before action is taken. The President thus could limit the time of consultation and take action as quickly as he should think necessary. In fact, article 84 provides that in "critical and exceptional circumstances" action may be taken provisionally without prior consultation. In that case, consultation would take place after "provisional" action.

It seems clear that the Tariff Commission's investigation under Executive Order 9832 would not at all be interfered with in the operation of the charter.

The suggestion in the Annexure of the Preparatory Committee's report that the tariff negotiations among the members of the Preparatory Committee will be multilateral "both in scope and in legal application" would appear to give each of the foreign countries participating in the multilateral agreement a legal contractual right to each concession granted, but by virtue of article 84 only those members having substantial interest as exporters of the commodity affected need be consulted regarding safeguarding action with respect to any concession.

Sincerely yours,

OSCAR B. RYDER, *Chairman.*

The CHAIRMAN. Are there any further comments?

Mr. RYDER. I have none. I would be glad for you to ask any further questions you may want to ask.

The CHAIRMAN. Thank you very much, Mr. Ryder, for coming, and for the useful information you have given us.

Mr. RYDER. Thank you, sir. I have been glad to be of assistance to you, and if there is any way in which I can help you further, let me know. (Tables 9, 10, and 11 in the Statistics Section of the Exhibits provide additional statistical data on duty rate reductions.)

The CHAIRMAN. We shall recess until 10:30 tomorrow morning.

(Whereupon at 5:30 p. m. an adjournment was taken, to reconvene at 10:30 a. m., on Thursday, April 3, 1947.)

INTERNATIONAL TRADE ORGANIZATION

THURSDAY, APRIL 3, 1947

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment, in room 312 of the Senate Office Building, Hon. Eugene D. Millikin (chairman) presiding.

Present: Senators Millikin (chairman) and Bushfield.

The CHAIRMAN. The hearing will come to order, please.

Dr. White, would you kindly state your full name and your occupation.

STATEMENT OF HARRY D. WHITE, UNITED STATES EXECUTIVE DIRECTOR, INTERNATIONAL MONETARY FUND, WASHINGTON, D. C.

Mr. WHITE. Harry Dexter White, and at present I am the United States Executive Director of the International Monetary Fund.

The CHAIRMAN. Doctor, have you met Senator Bushfield?

Mr. WHITE. I have not had the pleasure.

Senator BUSHFIELD. Doctor, I am glad to meet you, sir.

Mr. WHITE. I am very glad to meet you, Senator.

The CHAIRMAN. Doctor, the proposed charter for the ITO defines certain relationships between that Organization and your Fund.

We would appreciate any comments you care to make on the subject.

Mr. WHITE. Senator, I came here at your invitation, prepared to answer questions that I could on the Fund's activities, and so I have not any prepared statement, so my remarks will be quite "off the cuff."

The CHAIRMAN. I think that is even better, sometimes, than a prepared statement, if a man knows what he is talking about.

Mr. WHITE. Fine.

We are interested in those aspects of the ITO that bear on some of the Fund activities, and we have considered some of those aspects rather carefully. In fact we have participated through our representatives in the discussions on the particular points at some of the more recent conferences.

The area which is covered by the International Trade Organization that touches on Fund activities and responsibilities relate, chiefly, if I remember correctly, first, to the exceptions specified in the draft charter to the provision that countries may not undertake, through any device other than tariff or taxes, to restrict imports.

One of those exceptions important for the Fund is that if the balance of payment situation warrants a modification of the trade balance,

then a restriction of imports through one device or another may be applied.

The CHAIRMAN. If a particular currency became scarce, for example, you might have to apply certain import or export restrictions in order to bring the thing back in balance; is that correct?

Mr. WHITE. Quite so, Senator, though I think that relates more to the question of discriminatory restrictions. They are closely related, but for convenience one might treat them separately.

The second point of interest to the fund bears on that subject of discrimination. Discriminatory treatment may take the form of either adjustments of import quotas or foreign exchange permits being granted in one fashion rather than another.

The International Monetary Fund articles of agreement already cover the question of discriminatory treatment when it involves the use of foreign exchange, and the ITO is attempting to pursue a parallel course with regard to devices other than those involving foreign exchange which can be used to implement discriminatory policies. (The articles of agreement referred to appear as exhibit VIII-C.)

The CHAIRMAN. I was going to say, roughly speaking, you can accomplish the same restrictive results by exchange restrictions as you can by direct import restrictions, or export restrictions, or tariffs, or other deals in commodities themselves; is that not correct?

Mr. WHITE. That is largely true, Senator, but with varying degrees of effectiveness depending on whether you use one device or another and depending on the special situation.

There are times, for illustration, when you might get much more effective results by setting a quota on imports than on rationing foreign exchange permits, because in many cases it may be easier to evade foreign exchange control than import control. At other times, the reverse might be true.

The CHAIRMAN. If you cheapen or render more expensive any one currency in terms of other currencies, you accomplish some of the effect which would be accomplished by a reduction in tariffs; is that not correct?

Mr. WHITE. Very true, Senator.

The CHAIRMAN. So that I assume the provisions of the charter that have to do with certain defined collaborations between the Fund and the proposed Organization are intended to close restriction gaps which might affect the monetary problem, and might be related at the same time to the trade problem.

Mr. WHITE. I think I agree with what I believe is the general principle which you are stating, but to make sure, might I put it this way, and see if we are in agreement?

The CHAIRMAN. Yes.

Mr. WHITE. That because there are at least two ways of attempting to accomplish changes in foreign trade, by prohibiting through agreement one course of action, you do not necessarily prevent the attainment of the objective, since there is another way left open by which the country can operate.

The CHAIRMAN. I agree entirely with that.

Mr. WHITE. I think that is what you had in mind?

The CHAIRMAN. I agree entirely with that.

Give us a brief summary, if you will, please, of those powers which the fund has which might affect the inflow or outflow of trade from any given country.

Mr. WHITE. An enumeration of the powers which might affect the trade balance?

The CHAIRMAN. Take your own head on it. I am trying to get some information in the record so as to point the parallelism where it exists, and develop any differences where they exist, so that the Senate may have some facts in the record to show the reason for collaboration between the two agencies.

Mr. WHITE. That is a broad question, Senator, and I will try my best to supply a comprehensive answer, but I am afraid I may ramble a bit.

The CHAIRMAN. Go ahead and ramble.

Mr. WHITE. One of the important ways of influencing the balance of payments or the trade balance of a country is to alter foreign exchange rates.

The fund, as you remember, has the authority, under certain conditions to reply to a country requesting an alteration in its exchange rates because the country feels such alteration is necessary to correct what is called a "fundamental disequilibrium," to say to that country, "In our judgment the alteration is necessary," or "In our judgment it is not necessary".

In other words, the fund can concur, or it can withhold concurrence. And if it withholds concurrence, and if the member country does not accept the fund's views, there are certain consequences which follow, of varying degrees of effectiveness. The fund can go so far as to declare the country in default.

The CHAIRMAN. And to withdrawal, as I recall it.

Mr. WHITE. The country can withdraw at any time, or in extreme cases the fund can force a country to withdraw.

The CHAIRMAN. Yes.

Mr. WHITE. That refers to the case when a country requests a change in its currency parity.

But the fund's authority goes further than that. It may extend to situations in which the fund is not being asked to approve a change in currency parities.

The fund may say to a country that is coming to the fund to acquire foreign exchange: "You are using the fund's resources in a manner which, in our judgment, is prejudicial to the other members, or to the resources of the fund, and the reason why you apparently are being forced to resort to the resources of the fund is because there are in your country some basic maladjustments not being corrected."

And it may be that one of those basic conditions which needs correction is an alteration in foreign-exchange rates, or it may be something else.

It may be, for illustration, that the country in question is pursuing an inflationary policy making it difficult for it to maintain its position in the export market. It may be importing so much that it no longer has the foreign-exchange reserves to spare, and it is coming to the fund for foreign exchange. Coming to the fund, under this hypothetical case that I am assuming, would not help correct the situa-

tion which is giving rise to the need for more aid. The country might thereby jeopardize the fund's resources, in the opinion of the fund, and so the fund might say, after appropriate consultation and discussion, that "We think there is required some modification of credit, or price policy, or commercial or fiscal policy, so as to put a stop to the drain on your foreign-exchange resources and to the requests to the fund."

The fund can thus help bring about changes in a member country's foreign trade by many ways.

The CHAIRMAN. Please give us a kindergarten illustration of how variations in exchange rates affect imports and exports.

Mr. WHITE. Let us suppose a member country has rapidly rising prices. As the result of those rapidly rising prices, the country may be unable, in the months to come, to maintain its level of exports, because other countries find the prices when converted into their own currency are higher than prices they would have to pay for similar goods purchased either at home or somewhere else. They naturally reduce their purchases from the country having rising prices.

The country in question likewise finds that because the prices at home are rising more rapidly than in many other countries, imports are more attractively priced than their domestic goods, and so the domestic consumers import more and buy less of the goods produced at home.

The end result of that process is that the country is buying much more, selling much less, and has to use more of its foreign exchange reserves or borrow some.

On a specific commodity, for example, say gloves.

The CHAIRMAN. Yes.

Mr. WHITE. The country may be a large glove exporter. It finds that the people in other countries who have been importing their gloves begin to buy elsewhere.

The CHAIRMAN. In other words, the American purchaser of, let us say, French gloves, has to put up too many dollars to get the French exchange necessary to purchase those gloves?

Mr. WHITE. Yes. Though in the particular case cited, not because the exchange rate has changed, but because the price of gloves is rising in France.

The CHAIRMAN. But if, by fiat, the exchange rates were halved or doubled, it would have the effect, roughly, of doubling or of halving the price of the product to the importer.

Mr. WHITE. Roughly, and for a time, probably.

The CHAIRMAN. Yes.

Mr. WHITE. The price may be rising to the American importer of gloves for one of two reasons. It may be because the price in France is rising, and the American importer has to buy more French francs for a given amount of gloves, if francs cost the same; that is one reason.

The CHAIRMAN. That is right.

Mr. WHITE. Or it may be that he has to pay almost the same number of francs for a given amount of gloves.

The CHAIRMAN. Yes.

Mr. WHITE. But he has to pay more cents for each franc.

The CHAIRMAN. That is right. If, today, the dollar will buy 100 francs and the purchaser of the French gloves in this country buys on

the basis of gloves valued in France on the basis of 100 francs to the dollar, if by fiat the franc was 200 to the dollar tomorrow, that would make it half as cheap?

Mr. WHITE. That would make it half as cheap.

The CHAIRMAN. Exactly. So, until the thing caught up with him, he would buy twice as many gloves?

Mr. WHITE. Rather the gloves would be half as expensive to the American importer.

The CHAIRMAN. He could buy twice as many or with the same amount he would only pay half as many dollars.

Mr. WHITE. That is right, though actually the price in francs under such conditions would not remain the same.

The CHAIRMAN. Until the lag caught up with him some place.

Mr. WHITE. To a large extent.

The CHAIRMAN. The reverse English is true from the standpoint of the French exporter of the gloves?

Mr. WHITE. Precisely. Should the change of the exchange rate be in the other direction, where instead of buying 100 francs for his dollar he could get only 50, the gloves would tend to be twice as expensive, and he would divert his purchase, if he had any alternative, either to home products, or to Czechoslovakia or somewhere.

The CHAIRMAN. And on that simple illustration, it appears to me you might accomplish the same thing by either a radical increase of tariffs or a radical reduction in tariffs.

Mr. WHITE. In part.

The CHAIRMAN. Yes.

Mr. WHITE. We could make the gloves more expensive in the United States by raising our tariffs.

The CHAIRMAN. That is right.

Mr. WHITE. French tariff action would have no direct effect on the price of French gloves to us, though, but they might have an indirect effect.

The CHAIRMAN. In other words, the American purchaser of gloves might find himself in the same end not position as the result of tariff manipulation as from the result of exchange variations.

Mr. WHITE. That is right, sir, except that I think the tariff changes would have to be American tariff changes rather than French.

The CHAIRMAN. Doctor, give us some kind of a résumé of the operations of the fund since it became established.

Mr. WHITE. I will do that, though there are some other areas in which the fund can influence the trade of a member country. Shall I continue?

The CHAIRMAN. Please go ahead.

Mr. WHITE. I refer to the extent to which countries by exchange restrictions on imports can change the pattern and volume of their trade.

In other words, the general principle is that there shall be no exchange restrictions placed on imports, but important exceptions are provided in the fund agreement.

For example, if an importer in a certain country wanted to import sulfates and could not get the necessary foreign exchange because his government said, "We do not feel that we have enough foreign exchange to give you for that purpose," the country would not be violating the fund agreement provided it was restricting imports under authority of a certain provision applying to transition periods.

The transition period is supposed to cover several years, to allow for the transition from the war situation to what is hoped will be a stable peace situation.

A country can therefore decide not to give an importer foreign exchange that he requests, and that still would not be a violation of the articles of agreement under certain conditions.

They are permitted even, under certain cases, to give an importer exchange for purchasing, say, corn from country X. But not if he purchases it from country Y.

The CHAIRMAN. They might say, without attempting to favor one country as against another, "We have a lot of sterling on hand, and we don't have a lot of dollars. Hence, we suggest to you that you channel your trade into sterling for the time being."

Mr. WHITE. Precisely.

The CHAIRMAN. Without having a desire to favor one country's trade as against another. That could be?

Mr. WHITE. Precisely.

The CHAIRMAN. On the other hand, it could represent a desire to favor one country's trade as against another.

Mr. WHITE. Exactly. And there are provisions which are designed to protect members against that kind of discrimination. If it is the first reason that applies, that is, that they have sterling but do not have dollars, they are wholly within their rights during this transition period to pursue a policy of rationing their foreign exchange as you have described it.

Now, in the ITO, they have provisions designed to provide the same safeguard and the same exceptions in the use of direct controls on imports as the Fund agreement provides in the use of controls over foreign exchange.

However, as now drafted, there is some discrepancy in the Fund and ITO as to the time covered by the period of exceptions. Possibly that will be ironed out in later drafts, or they may succeed in the ITO agreement to more clearly define or to shorten what in the Fund agreement is called the transition period.

That is, then, another area in which the Fund has some measure of control over the foreign trade of a member country, because there are certain general principles enunciated in the Fund agreement which makes it possible for the Fund authorities to say to a country, that "It appears to us that these restrictions which you are applying are not now necessary, though they may have been necessary up to now. We believe that you should diminish them."

If the country is unable to agree with the Fund authorities, then there are certain possible penalties that follow.

Then there is a provision in which the Fund itself, as you remember, may deem it necessary to declare a particular currency scarce.

The CHAIRMAN. Yes.

Mr. WHITE. In which case, the members of the Fund are relieved of certain requirements and are authorized to impose restrictions which they otherwise would not be permitted to use.

The CHAIRMAN. Doctor, may I interject at that point?

Mr. WHITE. By all means.

The CHAIRMAN. The reason you declare a currency scarce is because there has been more demand for it than there is supply, and that is

because there has been an undue amount of importation calling for payment in that particular currency; is that not correct?

Mr. WHITE. Well, I am just hesitating on the word "undue." Let us say there has been so much demand for the products of that country, or for payments to be made to that country, relative to the supply of foreign exchange, that they are beginning to draw on the Fund. If that becomes widespread, then the aggregate demand would reduce the amount of that particular currency held by the Fund. The Fund's holdings of that currency and gold may decline to a point at which there may not be enough to satisfy all legitimate requests, and the Fund may therefore have to begin to ration it.

The CHAIRMAN. So there ultimately comes a rationing of the exports of that particular country?

Mr. WHITE. I should not think so, though a country might decide to do so. I doubt very much whether the United States would ever reach the point of rationing United States exports for that reason.

The CHAIRMAN. I was thinking of the United States, but was not mentioning it.

Mr. WHITE. Well, any country.

The CHAIRMAN. Any country.

Mr. WHITE. The change that would be advocated in many quarters abroad is rather that the country whose currency is getting scarce should purchase more goods, and thereby provide more foreign exchange to other countries.

The CHAIRMAN. Or it might be to loan more money to purchasing countries?

Mr. WHITE. That would be another way of supplying the necessary foreign exchange.

The CHAIRMAN. Or to make more foreign investment?

Mr. WHITE. That would be a third way.

The CHAIRMAN. Yes.

Mr. WHITE. There has been a tendency, especially abroad, to assume much too easily that the existence of a shortage of currency is always the fault of the country whose currency is getting scarce. Now, that is not true.

The CHAIRMAN. No.

Mr. WHITE. Scarcity of a certain currency may be due to the fact that other countries are living, we might say, beyond their means, that they are importing too much. Too many persons have taken the position that if we in the United States have a favorable balance of payments, it is always because we are not buying enough.

Well, that may be the case, or it may be that other countries are buying too much. One would have to examine each situation before one would be warranted in coming to a conclusion whether corrective steps had to be taken in the country whose currency was getting scarce, or in the countries who were demanding too much of the currency, or in both.

The CHAIRMAN. But a case is conceivable where, after you have exhausted the loan possibility, the investment possibility, and the increase of importation possibility, of the scarce currency country, that the remedy, if one exists, would be to take less of the goods of that particular country?

Mr. WHITE. Quite so, and you might reach that conclusion even before you have exhausted those possibilities, because it is not at all

unusual for a country to sometimes import more goods than it is warranted in importing.

The CHAIRMAN. I develop that facet of the question because it has a rather close relation to direct controls on import and export goods.

Mr. WHITE. Yes. Well, I will merely touch on a broader aspect.

There are certain general purposes of the Fund enumerated in the article 1 of the Fund agreement, which are fairly broad; for example, to promote stability of exchange, to provide assistance to countries whose balance of payments are in need of short-term assistance in order that they will be able to pursue a policy not harmful to other countries in correcting their balance of payments. There are several others, and the Fund can, through consultation and through exercise of some of its powers, examine many of the basic aspects of a country's economy, to see if, where desirable, the Fund and member can work out jointly, or agree jointly on proposals designed to correct a bad situation.

If it is a basic maladjustment, to take certain basic measures; if temporary to adopt other measures.

That is a broad area in which the Fund can, through consultation, influence the balance of payments of any given country.

The CHAIRMAN. The Bank might have some assisting influence?

Mr. WHITE. Yes.

The CHAIRMAN. In that kind of situation?

Mr. WHITE. Oh, yes, sir. And the Bank and the Fund were designed to collaborate closely on some aspects of that problem.

The CHAIRMAN. Have you finished?

Mr. WHITE. I am sure there are other items, but possibly that is enough to give you an idea of the main avenues through which the Fund may influence the economies of member countries.

The CHAIRMAN. Earlier in the hearing, we introduced into the record a list of perhaps 75 or more countries that maintain import restrictions, and where exchange permits are required.

Mr. WHITE. That is true. Most countries of the world do have restrictions, either import restrictions or restrictions on foreign exchange, and I think it is probably correct to say that most countries have both.

The CHAIRMAN. I think it was developed that we probably have less restrictions than any other country. (For general reference see Exhibit XIX.)

Mr. WHITE. We have a few, but I think there are two or three other countries that do not have as many restrictions as we have.

The CHAIRMAN. Then, let me ask you, Doctor: Now, what progress has the Fund made in breaking down those restrictions?

Mr. WHITE. The restrictions which exist now are chiefly restrictions which the articles of agreement permit those countries to maintain.

The CHAIRMAN. The restrictions which do exist, so far as these countries which are members of the Fund are concerned, exist by virtue of permission?

Mr. WHITE. Yes, sir; but might I add, not necessarily all. We are now proceeding to an examination of many of those restrictions to make certain, as best we can, that they do not violate the provisions dealing with discrimination. We are also undertaking discussions with a number of the member countries looking forward to changing

some of the practices they permit which are felt not to be necessary.

The CHAIRMAN. But most of these restrictions were in existence when the Fund came into existence?

Mr. WHITE. Yes, they almost all were; yes.

The CHAIRMAN. Please give us some idea of what effectiveness the Fund has had in eliminating or in rendering those restrictions more nondiscriminatory.

Mr. WHITE. Almost none, Senator. We have just undertaken the task of discussing with countries, some aspects of their policies that we think may lead to discrimination, or undue restrictions. We are just beginning that process; it will take a long time. If I had to give a short answer to your question, it would be that so far very little has been done as yet by the Fund about discrimination.

The CHAIRMAN. Doctor, when we had the Fund agreement up, as I recall it, we had a lot of discussion about bilateral agreements which were not considered healthy, so far as expansion of world trade is concerned. (Exhibit X.)

This record contains a history of a very substantial burgeoning of that same type of agreement by some of the countries in the Fund. Can you tell us about that?

Mr. WHITE. Yes. But much of the discussion of the Fund powers in that connection, and the expectation as to what the Fund might accomplish related to the normal long-run post-adjustment period.

We are now in the midst of a transition period. There is a provision that, during the transition period, it is permissible—because there is no better feasible alternative—for member countries—to pursue policies and practices which would not be either desirable or permissible after the end of the transition period.

Bilateral arrangements were not among those practices unless they took certain forms, such as offering an accumulated stock of exchange at a lower rate than what we would call the official rate. That was the sort of practice that Germany and Japan pursued in the thirties.

The CHAIRMAN. A preferential goods arrangement might come to the same effect, might it not?

Mr. WHITE. It would be difficult, unless there were state trading or a good deal of state control. It would be pretty difficult, though not impossible, where you have private trading.

The CHAIRMAN. The State Department has made formal protest, for example, against an agreement of that kind, which Argentina has entered into with Great Britain. (Exhibit X, F 5.) I understood also that the State Department is viewing with interest, and perhaps with concern, the agreement which Sweden has made with Russia (Exhibit X, F 3), and possibly an agreement between Russia and Switzerland. Generally, what aspects of that have come under your eye, or have any of the aspects come under your eye?

Mr. WHITE. If we are thinking of the same agreement between Argentina and England, the objection referred to a violation of one of the provisions contained in our financial agreement with England.

The CHAIRMAN. I may be very wrong on this, but as I recall it, it also involved an alleged violation of one of the provisions of our trade agreements.

Mr. WHITE. That may be, and I am not familiar with that, Senator.

The CHAIRMAN. The British defense, as I recall it, was sort of a confession and avoidance. It said, "So far, this has not injured any-

one and it might be more appropriate to raise the point when someone gets hurt."

Mr. WHITE. I think that is the answer they gave to the United States objection I had in mind, and they may have given it to the instance you cite, but I am not familiar with the trade agreement to which you refer.

The CHAIRMAN. I think it might be well, then, at this point, to underline, if you agree, Doctor, that in a state of general world disorder such as we have at the present time, and have had and will probably have for sometime to come, these restrictive devices, both monetary and trade, do not necessarily proceed out of a desire to injure any other country or to discriminate against any other country, but are sheer measures of self-protection in many instances.

Mr. WHITE. I am glad to hear you say that, Senator, because there seems to be a notion in some quarters that the various instruments of restricting imports are all per se, a sin.

I would be inclined to say that if they did not have and use such instruments, there would be unfortunate consequences to world trade under present conditions. There are times when a government has to use certain instruments to achieve certain desirable ends.

As you say, it is not that a country wants to injure anyone, but because of the situation which faces it, it must do something and it selects among the various instrumentalities which it has that which promises to give the best result. I quite agree with the statement you made.

The CHAIRMAN. Does it not follow that that type of restriction will continue until the fundamental economy of the nation which uses the restriction has improved to a point where it can abandon the restriction?

Mr. WHITE. Yes. If you would accept this amendment. Some methods may be less injurious than others.

The situation calling forth those restrictions may be one of basic disequilibrium which is being ignored by the country in question. By its failure to adopt the proper policies, whether they be commercial, or monetary, or economic, it is making necessary those restrictions, whereas, had it modified its policy with respect to the basic situation, it would not be necessary to adopt the restrictive measures. One of the functions of the fund bears precisely on that point.

It attempts through consultation and cooperation and mutual examination of the problem to try to influence countries to pursue policies which will make it possible for them not to have to continue restrictive measure, or to reduce those restrictive measures, and thereby make it possible for trade as a whole to expand.

The CHAIRMAN. But until it does reorient itself into channels of sound practice, international practice, and sound domestic economic practice, its ills will continue, and the necessities for restriction will continue; is that not correct?

Mr. WHITE. Could we say less unsound practice, or sounder practices?

The CHAIRMAN. I would accept that.

Mr. WHITE. I think that is largely true, though even with restriction, there are degrees of restriction.

The CHAIRMAN. Yes.

Mr. WHITE. You can to some extent improve or worsen the situation by adopting one tactic rather than another. And you also can discourage and sometimes prevent discriminatory measures.

The CHAIRMAN. If, for example, a country is unable to do its exporting necessary to balance its imports, or is unable to secure stopgap loans, or is unable to secure foreign investment, it is apt to have to continue those restrictions on imports; is it not?

Mr. WHITE. They may do some other things. For example, they might devalue their currency, which would have the effect of encouraging or promoting the exports and discouraging imports.

The CHAIRMAN. Yes; but I am assuming a case where a country has not rehabilitated itself to the point where it can really make exports.

Mr. WHITE. Do you mean where it could not produce any more exports?

The CHAIRMAN. Where is could not produce any more exports.

Mr. WHITE. That is happening today, of course.

The CHAIRMAN. Do we not have many countries that find themselves in that position?

Mr. WHITE. Right now, there are certainly some.

The CHAIRMAN. Yes.

Mr. WHITE. Where the limiting factor on exports is not the price, but what they can produce.

The CHAIRMAN. They just have been unable to reconstitute their industry. Hence, they cannot even produce enough for themselves, let alone to produce an export surplus; is that not correct?

Mr. WHITE. That is true in many cases, but I think that situation is rapidly changing. The usual situation is that they can, to some extent, increase their exports, but they do not have nearly as much power to increase their exports, as they do over restricting imports.

The CHAIRMAN. And in that kind of case, they often have to increase their austerities at home; is not that correct?

Mr. WHITE. That is true, and they may do it through controls, or through altering the exchange rate.

The CHAIRMAN. I think this might be a good point to get into the record your present view of the British export situation.

As I recall it, it was more or less agreed that if Great Britain wanted to overcome her adverse balance trade, she would have to increase her exports by 175 percent of prewar levels.

Mr. WHITE. I think that was 75, was it not?

The CHAIRMAN. Seventy-five percent above; yes.

Mr. WHITE. That is right.

The CHAIRMAN. Seventy-five percent more than prewar.

Mr. WHITE. That is right, to 175.

The CHAIRMAN. Yes. And at the present time, they are probably doing 10 percent more, is that about right?

Mr. WHITE. I thought they were doing more than the 10 percent more. I am sorry that I do not have the figures but I will gladly supply the figure.

The CHAIRMAN. But, then, in terms of 100 percent as a base, I think the figure given us was about 110, versus a goal of 175.

Mr. WHITE. I should have thought it was substantially more, Senator, but I am uncertain.

The CHAIRMAN. And that accounts for the fact that Great Britain is having to make larger drafts on the loan for purely consumptive purposes.

Mr. WHITE. I think that is partly it. I think it is also the case that England has in her judgment been forced to make more expenditures than was anticipated.

In other words, I think the shortage is not only on the export side. Her needs for foreign exchange for the purposes partly of consumption, but also for other types of expenditures, are greater than she anticipated, but I should be surprised if her exports are only 110. I will check on the figures, and put those in the record.

The CHAIRMAN. Will you drop me a line on that?

Mr. WHITE. I will send you a memorandum.

The CHAIRMAN. We have had some testimony to that general effect. What has Great Britain succeeded in doing in breaking up block sterling?

Mr. WHITE. You are now speaking of the sterling which was blocked.

The CHAIRMAN. I am speaking of the blocked Indian sterling which was the subject of much discussion.

Mr. WHITE. That is true. There have been preliminary negotiations taking place in India which have recently been ended. They are to be continued soon in London.

They made some progress, but not a great deal.

The CHAIRMAN. Is it your understanding that the Indian block sterling has not been unblocked to date?

Mr. WHITE. I don't believe much of it has been made convertible.

The CHAIRMAN. As I recall it, Great Britain was going to use a part of the loan for bargaining the unblocking of some of that blocked sterling. Is my memory faulty on that?

Mr. WHITE. I might put it this way: Having more foreign exchange, Great Britain would be in a position to offer better terms to the countries which own the blocked sterling balances, than she would be did she not have that additional foreign exchange available.

The CHAIRMAN. But so far as I know, up to this time, that has not happened.

Mr. WHITE. I think there has been some settlement but not of any substantial portion of the total blocked sterling.

The CHAIRMAN. Doctor, what is your estimate of the total volume of world trade at the present time?

Mr. WHITE. I would have to guess. I imagine if you would add the exports and imports it would probably be \$60,000,000,000.

The CHAIRMAN. About \$60,000,000,000?

Mr. WHITE. That is a rough estimate, and I may be out of the way by plus or minus \$10,000,000,000 or \$15,000,000,000.

The CHAIRMAN. What percentage of that do we contribute?

Mr. WHITE. We had exports last year, including all forms, somewhere in the neighborhood I think of about \$11,000,000,000. Imports, I think, were a little less than half of that, so it would not surprise me if we had almost somewhere between 20 and 25 percent of the total trade.

The CHAIRMAN. In 1938, a figure that we used before, the total world trade, was about \$46,000,000,000.

Mr. WHITE. That sounds reasonable.

The CHAIRMAN. Our share was about 12 percent.

Mr. WHITE. That sounds approximately correct. Some of that increase, Senator, is due to lend-lease and other arrangements.

The CHAIRMAN. That is what I was getting at. Can we identify the lend-lease factor, and the influence of our loans in the present amount of total world trade?

Mr. WHITE. Oh, we should be able to do it with the facts that are available. I would guess that it is about one-third of our exports, if not a little more, but I will get the facts, and send you a note on that.

The CHAIRMAN. Give me a figure on that, if you will.

Mr. WHITE. Yes.

The CHAIRMAN. Do you attribute that one-third to lend-lease or do you attribute it to loans?

Mr. WHITE. Both.

The CHAIRMAN. To both?

Mr. WHITE. Yes.

The CHAIRMAN. If you have got a figure on that, will you let me have it, please?

Mr. WHITE. I will be glad to supply you that.

The CHAIRMAN. As I recall it, a goal of total world trade that we were shooting at was about \$90,000,000,000 or \$100,000,000,000.

Mr. WHITE. I do not know. We were shooting at expanded trade. Something depends, of course, as you fully appreciate, on prices, and prices have been rising, so the same volume represents an increasing dollar value. An increase in value, therefore, does not have in the same significance as an increase in volume would have.

The CHAIRMAN. I remember one statistic that was dragged through our hearings, was that if we had \$10,000,000,000 of annual trade, we would supply jobs for 5,000,000 men.

Mr. WHITE. \$10,000,000,000 of exports, probably.

The CHAIRMAN. Yes; of exports.

Mr. WHITE. I remember some such figure as that. And that seems all right. I do not know whether the figure of employment is reasonable, but the figure of \$10,000,000,000 of exports is one we had hoped to reach.

The CHAIRMAN. From the figure we have already discussed, it is apparent that Great Britain has achieved some increase in export volume of trade.

Mr. WHITE. I think so, but the extent I do not know.

The CHAIRMAN. And it is apparent that we have increased our export trade, weighted by the lease-lend and export factors that we have discussed?

Mr. WHITE. True.

The CHAIRMAN. What other countries have increased their export trade?

Mr. WHITE. I think that most of the South American countries have. And if you take the prewar period, I think you will probably find several of the European countries. The remainder are still below their productive capacity. Their capacity to produce has not yet reached the level, as you pointed out earlier, where they can deliver everything they could sell.

The CHAIRMAN. Is there any bright spot on continental Europe?

Mr. WHITE. Well, there are several reassuring spots. I do not know whether one would call them "bright." I think Norway is making good progress under the circumstances.

I think Czechoslovakia seems to be going forward very nicely.

And Belgium is, I would say, doing well.

These are all relevant terms. That is, "well" compared to what they were doing a year or two ago. I think one might add Switzerland and Sweden, of course.

The CHAIRMAN. Roughly speaking, we have not really commenced to fill the void in international trade left by the Japanese and the German disruptions, have we?

Mr. WHITE. I would put it this way: That the volume of trade which those two countries had before the war has been replaced by increases in the aggregate of all other countries, but they have left holes in specific cases that have not been filled. For example, Swedish and Swiss trade with Germany.

The CHAIRMAN. Roughly speaking, is any country in the world today in a position to get imports that it wants?

Mr. WHITE. I should say "No," but there are two separate reasons for it.

One, is that a country like ourselves cannot get everything we want, not because we cannot pay for it, but because the goods are not yet available.

The CHAIRMAN. That is it.

Mr. WHITE. That applies to, on the whole, a minor number of countries.

There are more countries who cannot get everything they want because they do not have enough foreign exchange to pay for all they want to buy.

The CHAIRMAN. The countries that might become exporting countries are not exporting, I assume, partially for exchange reasons, but is it not basically attributable to their inability to rehabilitate their productive facilities and provide necessary surpluses for export?

Mr. WHITE. I would consider the latter reason as the chief reason.

The CHAIRMAN. Yes.

Mr. WHITE. Though there is steady progress and, in a few instances, rapid progress in increasing production, and therefore increasing the capacity for export.

The CHAIRMAN. But as the ability to produce, and to produce export surplus increases, of course, you have increasing exchange problems—the increasing necessity for exchange; and it may or may not be a problem; is that correct?

Mr. WHITE. Yes; you have increasing demand for exchange, but when you have increased capacity to export you will have also an increasing supply of exchange. Whether the discrepancy between the demand and supply will increase or diminish depends on many factors.

The CHAIRMAN. Well, the supplies would be somewhat affected by the whole state of trade; would they not?

Mr. WHITE. That is right.

The CHAIRMAN. I mean, we buy more from Brazil than we sell to Brazil.

Mr. WHITE. Quite so.

The CHAIRMAN. Brazil buys more from Great Britain than it sells to Great Britain.

Mr. WHITE. Yes.

The CHAIRMAN. We sell more to Canada than Canada buys from us.

The net effect of these operations is stymied, or is enhanced, depending upon the convertibility of the Brazilian money as against sterling or as against dollars, and the convertibility of Canadian money into sterling and into dollars; is that not correct?

So if you stymie that any place along the line, obviously you are getting into an exchange difficulty, and theoretically, at least, you might be setting up a hurdle to trade.

Mr. WHITE. Yes, except I think "stymie" is probably too strong a word. Let us take our own needs, for example. We could buy more if there were more goods available.

The CHAIRMAN. Yes.

Mr. WHITE. As soon as those countries are able to export more, we will buy more, and they will have more dollar exchange, and that means they will be able to buy more. That means that other countries will have more dollar exchange. Those are the interacting forces on a broad scale by which we hope to gradually increase the levels of trade, notwithstanding the obstacles which you speak of, which are very real.

The CHAIRMAN. Primarily, the exchange of goods, and the exchange problem, is primarily a problem of lack of goods, and that, in turn, goes back to the domestic economies of the producing countries; is that correct?

Mr. WHITE. That is correct, more nearly so at present, and it will become increasingly less so rapidly.

In other words, the world right now is what has frequently been called a "seller's market." You can sell almost anything you can produce at a very satisfactory price, but I presume that within the next few years you will reach the time when the world will change from a seller's market to a buyer's market; when there will be a larger amount of goods available for export, and when prices and other considerations will likely become the limiting factor, rather than the availability of goods.

The CHAIRMAN. Well, if you take the contrary view, you are pronouncing a sentence of doom on the world; are you not?

Mr. WHITE. If world production doesn't increase? I should think so.

The CHAIRMAN. Has Russia come into the fund yet?

Mr. WHITE. No; there is no indication of any renewed interest on her part that I am aware of.

The CHAIRMAN. What demands have been made on the fund for exchange by the constituent members?

Mr. WHITE. None yet.

The CHAIRMAN. None?

Mr. WHITE. None yet. And that is an interesting point because it is a view that some of us took from the start; that the demands would be small. Some of the critics felt that everybody would rush in to get what dollars they could, but I think the developments will bear out the opinion that some of us expressed that that would not be so. Before the year is out, or even before many months are out, some countries will doubtless purchase foreign exchange from us.

The CHAIRMAN. Does it not follow, from what we were talking about before, that there has been a subnormal amount of world trade at the present time? As world trade increases there will be a demand for exchange which does not exist at the present time?

Mr. WHITE. That may be partly it, Senator, but it is also true that many countries have a good deal of gold. They have accumulated fairly large balances of "fat," so to speak, and are able to use that; but another factor is the one you pointed out: That they cannot get the goods, and therefore do not feel they need the additional exchange as yet.

The CHAIRMAN. I take it that there are a number of South American countries that are what you call "fat countries" at the present time?

Mr. WHITE. There are a number of South American countries that have foreign exchange assets that are adequate for the coming months. What the situation will be next year and the year after is unclear at the moment.

The CHAIRMAN. At the present time, they have large dollar balances?

Mr. WHITE. I do not know that they would call them large, but, at any rate, they are adequate for the needs they anticipate in the coming months.

The CHAIRMAN. What is the situation of Canada at the present time?

Mr. WHITE. Canada is doing very well. Canada has very substantial reserves, notwithstanding the fact that Canada has given a large amount of assistance to England and to some other countries, and her export prospects in the coming months are excellent.

The CHAIRMAN. What are the important countries, outside of those we have discussed, that are in a "fat" position?

Mr. WHITE. Well, I should prefer, though it was a word that I used, not to continue to use the term "fat."

The CHAIRMAN. Should we say "obese?"

Mr. WHITE. It is the concept of their being "well heeled" that I think they might appropriately take objection to.

The United States, South Africa, Canada, Argentina, Switzerland, Sweden, Portugal are some of the countries from the point of view of having foreign exchange assets adequate to meet their foreseeable needs. There are some others.

The CHAIRMAN. Outside of those countries?

Mr. WHITE. A number of the other countries have substantial assets in so-called blocked sterling, and to the extent that those balances will be released, they will be in a much better position. Some countries expect to rapidly increase exports. That will provide them with more foreign exchange to buy imports, though not as much as many of them would like.

But more than they have had in the past.

The CHAIRMAN. What, if any, private loans of any magnitude have been made abroad by Americans?

Mr. WHITE. Only in form of some direct investments, and the magnitude is not large. Investments where a company decides to build a branch plant abroad, either to avoid foreign tariffs or to avoid shipping costs, or because the assemblage is easier; but the total is not

large and the magnitude of private loans that have been made is very small.

The CHAIRMAN. Have there been any private loans to foreign governments?

Mr. WHITE. There was a \$100,000,000 short-term loan, if you can call it a loan, to Holland, but it was collateralized by gold, so I do not think that would be the type of loan you have in mind; and there was a refunding loan to Australia.

The CHAIRMAN. Generally speaking, our private capital is out of the foreign loan field?

Mr. WHITE. It is not back yet. The reasons are rather obvious.

The CHAIRMAN. AS I understand it, you have your exchange rates, and in other words, your currency parities are established in the fund at the present time?

Mr. WHITE. Yes. I might add to the previous, there is an extension of short-term credit by United States exporters who are giving 6 months or 9 months or a year credit. It represents an increase now because there was little before.

The CHAIRMAN. I see.

Mr. WHITE. The fund has, in accordance with the requirements of the articles of agreement, not objected to or not opposed the rates of exchange which have been offered by members as their initial rates.

The CHAIRMAN. Do you believe that by voluntary action they can be shaken to realistic levels within the limits provided in the fund?

Mr. WHITE. The limit is an aggregate of 10 percent.

The CHAIRMAN. Yes.

Mr. WHITE. Senator, you are touching on what is obviously an important issue and, as are so many questions in economics, a rather complicated one.

Your use of the word "realistic" makes my answer probably a little different than if you used some other word. There are realistic rates now. Any change in the rates of most of them might make them unrealistic.

The CHAIRMAN. Let us strike out the word "realistic" and let me put it to you this way: Do you believe that under fund developments, the par values of currency, which have been established by the fund (Exhibit XVII), will be able to hold up at our present parity; or, if not, will they be brought to an accessible and workable basis within the limits of the voluntary judgment permitted by the fund?

Mr. WHITE. I think that is a significant way of putting it, and a clear way.

The CHAIRMAN. Yes.

Mr. WHITE. A fair way of putting the question, and a difficult one to answer, but I shall attempt to give you my view of the situation: For most of the currencies I think the answer to that would be "yes." For some of the countries, it would be "no." For a few others, it would be surprising if they were able to hold their present rates, but not impossible.

The CHAIRMAN. Yes.

Mr. WHITE. For some countries—those which present the most difficult monetary situation—there has been no agreement on parity. That includes China and Greece and Yugoslavia and Poland and a few others. We have not yet considered their initial rates.

Again, for obvious reasons, their conditions are such that they were not in a position, and we were not in a position, to consider what should be their initial parities.

Many countries will be able to maintain their present parities for many years to come—even indefinitely. Almost all countries, I think, will be able to maintain their rates for some time because, in the first place, to go back to something we said before, there is now what we call a seller's market. Therefore, as long as that seller's market prevails, there is no advantage in the modification of the rates to them. They will not be able to sell enough more if they devalue because they are selling all they can produce now. Nor do they want to buy more imports. They have all they can do now to keep down domestic demand for import goods.

Were they to alter their exchange rate, a number of things would happen which would be likely to do more harm than good for the country. So, for the time, at least, for the next year and possibly 2 or 3, depending on developments which are uncertain at this time, the adverse consequences of depreciation even for weak currencies far outweigh the favorable factors.

The CHAIRMAN. Could you put it this way: that at the present time, as you have testified, there are no demands for exchange through the fund?

Mr. WHITE. At the moment, but we will soon have some.

The CHAIRMAN. Yes. Until there are demands on the fund for exchange, you really have no pressure against the parity, and therefore the country itself has no reason for altering the parity and further has no reason for suggesting an alteration.

Mr. WHITE. With this qualification, Senator, that there are some countries in which there is uncertainty. Whether their parity should be maintained even under present conditions for very long, or whether there are not certain other conditions that call for correction is not yet wholly clear.

It is a question also of domestic price movements and of commercial policies. And with those countries, it may be the view shared by both the country and the fund that it might be wise for them not to utilize their reserves at this time but rather to use other resources until the situation clarifies.

That applies to a few countries. So that the fact that they are not applying to the fund for exchange would not be in the case of those countries be evidence that their exchange rate may or may not in the future be the appropriate one for them.

The CHAIRMAN. Domestically speaking, then, might the problem arise which you have described, if you have a very strong and widespread domestic market in exchange on a bootleg basis.

Mr. WHITE. If I understand your question, Senator, where you have a large black market?

The CHAIRMAN. Yes.

Mr. WHITE. We usually refer to it as "black market." You called it "bootleg market." It might be evidence that the rate of exchange which is applied to commercial transactions does not reflect the value of that exchange in the minds of many people.

The CHAIRMAN. That is right.

Mr. WHITE. But the existence of a black market in itself need not be evidence of a wrong value. It may be evidence that people have no confidence in that particular currency for political reasons, and want to get their money out. They may think the country is swinging over to socialism, or is going to confiscate, or they may fear civil disturbance.

The CHAIRMAN. That is right.

Mr. WHITE. And under those circumstances, the relative value in terms of international trade, may bear little resemblance to what these individuals may be willing to pay for foreign exchange.

On the other hand, in some currencies there is also frequently a view held by some that the rate of exchange will not persist and therefore people speculate in foreign exchange.

The CHAIRMAN. Might it not go to the confidence of the people in the official parity?

Mr. WHITE. Very definitely.

The CHAIRMAN. You have black-market transactions which involve a different parity than the official parity. Ultimately, the people will commence to wonder about the official parity, and that might set up a red lantern calling for a reappraisal.

Mr. WHITE. Quite so. If it becomes fairly broad. That is one of the disadvantages of the black market.

On the other hand, you have black markets that result from different causes. Let me give you a specific case. Country X, which I am familiar with, has a restriction on exchange for the importation of high-priced cars. Individuals cannot buy foreign exchange for that purpose. They do have a black market which is fed by tourists' dollars, or by other individuals who have dollars.

In these countries there are always some who want high-priced cars, they will go to the market, and they are willing to pay premiums of even 100 or 150 percent if necessary. In order to get the foreign exchange with which to import a luxury, which the government feels the people should not utilize at the time when the foreign exchange is limited, a high premium of that character may be a reflection not of any unreal value, but a reflection of the high degree of efficiency on the part of the country in curtailing the black market, so that there is not very much foreign exchange there for anybody to buy at unofficial rates.

The CHAIRMAN. It also reflects a very extraordinary demand abroad for high-priced cars.

Mr. WHITE. Yes, which in turn may be a reflection of inflation in that country.

The CHAIRMAN. The kind of situation I had in mind was where there is a very general and widespread black market covering all kinds of transactions.

Mr. WHITE. Yes.

The CHAIRMAN. Which represents a serious deviation from the official rate.

Mr. WHITE. That would be another case.

The CHAIRMAN. Where that prevails, that might ultimately compel the country to reappraise its own official parity.

Mr. WHITE. It might do that. It also might be merely a reflection of other conditions.

The CHAIRMAN. How have the countries that have joined the fund made up their quotas in terms of the kind of stuff that they have put up?

As I recall it, there was a little leeway. You could put up so much gold or you could do something else. What was that?

Mr. WHITE. Some gold and the remainder local currency. In fact, they could go further than that, for the larger part of their local currency, they may substitute their government obligations.

The CHAIRMAN. Was there not a minimum of gold?

Mr. WHITE. There was.

The CHAIRMAN. What was that minimum?

Mr. WHITE. That minimum was 25 percent of their quota.

The CHAIRMAN. Yes.

Mr. WHITE. Or 10 percent of their net gold holdings and dollar exchange.

The CHAIRMAN. Whichever was less?

Mr. WHITE. Whichever was less.

The CHAIRMAN. Yes. How have they met their quotas?

Mr. WHITE. I have a list here. If you are interested in the particular countries, and I can give you the aggregate.

The CHAIRMAN. I would like now to have the aggregate, but if you can let me have the list, the committee will then determine whether it should be put in as an annexure to the hearings. It might be interesting to have it in the hearings.

Mr. WHITE. Then, with your permission, I would like to ascertain whether these can be made available.

They will be made available in the future with a lag.

The CHAIRMAN. Give me the figures on the aggregate basis.

Mr. WHITE. I have got the figures but the totals are not here, and I think we can get those in a moment.

The CHAIRMAN. All right.

Mr. WHITE. Many of the countries, of course, took the 25 percent, as did the United States, because it was less than the 10 percent of our gold holdings, and many took the 10 percent because the 10 percent was the smaller.

England, for example, took the 10 percent. The figures are not final, because there are a number of items on which there is further study necessary.

The CHAIRMAN. What loans have the banks made?

Mr. WHITE. None, sir, to my knowledge.

The CHAIRMAN. None?

Mr. WHITE. They are in the process of considering a number of them, and I am informed that the progress of several of them is far along.

The CHAIRMAN. Has the bank guaranteed any loans?

Mr. WHITE. No, sir.

The CHAIRMAN. Has the bank sold any of its securities?

Mr. WHITE. No, sir; it is now in the process of preparing a selling program.

The CHAIRMAN. We had quite a little discussion, as you will remember, at the time when we were considering the fund and the bank as to what would be an acceptable term limit for cyclical movement.

Mr. WHITE. Yes; I remember that, Senator.

The CHAIRMAN. As I recall it, we were instructed to take a certain position with reference to the type of loans which the banks should make.

Mr. WHITE. Yes, sir.

The CHAIRMAN. Can you make that a little sharper for the purpose of the record?

Just what those instructions were.

Mr. WHITE. Yes; I would be glad to. You mean the instructions that the United States Congress asked the Governor of the fund, the United States Governor of the fund to follow?

The CHAIRMAN. Yes; he was to try to get a general consent to a definite policy.

Mr. WHITE. Yes. That was the understanding of the other members, because we were able to assure you only as to what was our own understanding.

The CHAIRMAN. So, would you mind stating the two questions involved, and then tell us what, if anything, has come of any effort that was made to secure agreement?

Mr. WHITE. I will insert the exact words, which I have here, of the request

The CHAIRMAN. What is the capital of the fund?

Mr. WHITE. About \$8,000,000,000 plus. There are some new members coming in.

The CHAIRMAN. Our participation was how much?

Mr. WHITE. \$2,750,000,000.

The CHAIRMAN. What was the capital of the bank?

Mr. WHITE. About the same, and I think our participation was a little larger. I think it is \$3,300,000,000.

The CHAIRMAN. Doctor, unless you have some further comments, we will close the session this morning, and I want to thank you for the very instructive information which you have given us.

Mr. WHITE. Thank you.

The CHAIRMAN. Thank you very much.

We will recess without date.

(Dr. White subsequently submitted the following memorandum:)

INTERNATIONAL MONETARY FUND,
Washington 6, D. C., April 10, 1947.

Hon. EUGENE D. MILLIKIN,
Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR: Below is the summary information with respect to England's trade and the proportion of gold to local currency in the fund that you requested.

At the time of the United Kingdom-United States financial agreement the United Kingdom stated that they needed to increase the volume of their exports by 75 percent over their 1938 exports to enable the United Kingdom to pay for the necessary imports out of current earnings of foreign exchange.

Last year total United Kingdom exports (including reexports) were £111,000,000 sterling as against £470,000,000 for the year 1938. By January of this year exports had increased still more, reaching the annual rate of £1,100 million sterling. In February, however, trade dropped, due partly to the fuel crisis and partly to the short month.

In terms of trade volume, however, the January figure was about 12 percent greater than it was for the comparable period in 1938. That was the figure also that you cited.

The United Kingdom's target for 1947 has been announced as being 40 percent greater than 1938 in terms of volume.

The total amount of gold and dollars held by the fund is approximately \$3,375,000,000, and of other currencies about \$3,125,000,000. This total is less than total quotas of members of the fund (\$7,530,000,000) largely because members are not required to pay in their full subscriptions until they are ready to do business with the fund. Before they do business with the fund they must agree with it on par values for their currencies; and such agreement has not yet been reached with all members.

Sincerely,

H. D. WHITE.

(Thereupon, at 12:18 p. m. the hearing was adjourned.)

APPENDIX

DRAFT OF CHARTER FOR AN INTERNATIONAL TRADE ORGANIZATION PREPARED BY SUBCOMMITTEE OF THE PREPARATORY COMMITTEE MEETING AT LAKE SUCCESS, N. Y., JANUARY-FEBRUARY, 1947

[The "New York Draft"]

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INTRODUCTION

1. At its First Session¹ held in London in October and November 1946, the Preparatory Committee adopted a resolution establishing a Drafting Committee. The resolution, after stating that it was desirable that further drafting be done on the basis of the work carried out at the First Session of the Preparatory Committee and before the commencement of the Second Session, directed the Drafting Committee, composed of representatives of the members of the Preparatory Committee, to meet in New York from 20 January 1947 and to complete its preparation of a report for consideration at the Second Session no later than 28 February 1947. It was resolved that it would be the function of the Drafting Committee to prepare a Draft Charter² or Articles of Agreement based upon the Report and other documents of the First Session, editing for clarity and consistency the portions of the text on which the Preparatory Committee came to a substantial identity of views, preparing alternative drafts of those portions on which there remained a division of general views and preparing suggested drafts covering such uncompleted portions as were referred to it by the Preparatory Committee, together with such explanatory notes and commentaries as the Drafting Committee might consider desirable and useful.

2. The Drafting Committee was convened at the temporary headquarters of the United Nations, Lake Success, New York, on 20 January 1947 and concluded its work on 25 February 1947, having held a total of twenty-nine meetings. Representatives from all the members of the Preparatory Committee attended, with the exception of the Union of Soviet Socialist Republics which stated that it was not in a position to take part in the work of the Drafting Committee. Colombia and Mexico sent representatives to observe the proceedings, in which the representatives of the Food and Agriculture Organization, the International Bank for Reconstruction and Development, the International Labour Organization and the International Monetary Fund actively participated.

3. The Drafting Committee availed itself of the Rules of Procedure of the First Session and worked according to the following plan. An examination of the text of each Article of the Charter drafted at the First Session was first made in plenary session together with any amendments introduced by delegates or suggested by the Secretariat. During this examination a new text of each Article which had been amended was established and reproduced by the Secre-

¹ Whenever the words First Session or Second Session are mentioned the First or Second Session of the Preparatory Committee is understood.

² Whenever the word "Charter" standing alone is used in this Report, it refers to the Charter as drafted by the Drafting Committee; when other texts or the Charter of the United Nations are referred to, the full title is given.

By retaining the title of "Charter" the Drafting Committee did not intend to indicate that it approved or disapproved of the use of this term. This is a point which may need to be considered at a later stage.

tariat for second reading a few days later. After each Article had been examined a second time in plenary session, the text then agreed was referred to a Legal Drafting Sub-Committee. Finally all texts were again, examined when the draft report was approved.

4. The procedure outlined above was followed with most of the Articles of the Charter. However, to deal with Articles for which no detailed and generally agreed text had been established at the First Session, the Drafting Committee decided to constitute at an early stage of its work sub-committees to prepare texts for examination by the Drafting Committee at a later stage. Thus, a Technical Sub-Committee to prepare drafts of Articles 15 to 23 inclusive and Article 37 was set up and an Administrative Sub-Committee which worked upon Articles 1, 2, 64, 68 and 72 to 77 inclusive. Apart from preparing a draft Chapter, the Drafting Committee was charged with providing a more detailed draft of the General Agreement on Tariffs and Trade, based upon the outline drafted at the First Session. For this purpose a Sub-Committee on Tariff Procedures was established. Although the sub-committees were of restricted membership, all delegates to the Drafting Committee were accorded the right to participate in the proceedings of the sub-committees at any time and frequently availed themselves of this facility. In addition, in a number of cases, the Drafting Committee established *ad hoc* sub-committees to deal with specific points.

5. In view of the technical and detailed nature of the work performed by the Drafting Committee, all of its meetings were held in private. The public, however, was kept informed of the work being done by means of press releases arranged by the Secretariat, which gave a press conference at the close of the meeting. It was agreed that the report of the Drafting Committee should be classified as a restricted document, not for publication until such time as the Preparatory Committee itself might decide otherwise.

DRAFT CHARTER *

CHAPTER I. PURPOSES

ARTICLE 1. GENERAL PURPOSES

In pursuance of the determination of the United Nations to create conditions of economic and social progress essential to world peace, the States party to this Charter hereby establish an International Trade Organization through which they will work for the fulfilment of the purposes set out hereunder:

1. To promote national and international action:
 - (a) Designed to realize the objectives set forth in the Charter of the United Nations and particularly in Article 55 (a) thereof, namely, higher standards of living, full employment, and conditions of economic and social progress and development;
 - (b) For the expansion of the production, exchange and consumption of goods, for the achievement and maintenance in all countries of high and steadily rising levels of effective demand and real income, for the development of the economic resources of the world, and for the reduction of tariffs and other trade barriers and the elimination of all forms of discriminatory treatment in international commerce;
 - (c) To avoid excessive fluctuations in world trade and contribute to a balanced and expanding world economy.
2. To further the enjoyment by all Member countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development.
3. To encourage and assist the industrial and general economic development of Member countries, particularly of those still in the early stages of industrial development.
4. To facilitate the solution of problems in the field of international trade, employment and economic development through consultation and collaboration among Members.
5. To enable Members, by increasing the opportunities for their trade and economic development on a mutually advantageous basis, to avoid recourse to measures which disrupt world commerce, reduce productive employment or retard economic progress.

*Square brackets enclose wording adoption of which is left for future consideration.

CHAPTER II. MEMBERSHIP

ARTICLE 2

1. The original Members of the Organization shall be those countries represented at the United Nations Conference on Trade and Employment whose Governments accept this Charter by 104 or, in the event that this Charter has not entered into force by that date, those countries whose Governments agree to bring this Charter into force pursuant to the proviso to paragraph 3 of Article 88.

2. Subject to the approval of the Conference, membership in the Organization shall be open to other countries whose Governments accept this Charter.

3. The Conference shall establish procedures which will open a membership in the Organization to the United Nations on behalf of the trust territories for which the United Nations is the administering authority.

CHAPTER III. EMPLOYMENT, EFFECTIVE DEMAND AND ECONOMIC ACTIVITY

ARTICLE 3. IMPORTANCE OF EMPLOYMENT IN RELATION TO THE PURPOSES OF THIS CHARTER

1. The Members recognize that the avoidance of unemployment or under-employment through the achievement and maintenance in each country of useful employment opportunities for those able and willing to work, and of a high and steadily rising effective demand for goods and services is not of domestic concern alone, but is a necessary condition for the expansion of international trade, for the well-being of other countries, and in general for the realization of the purposes of this Charter.

2. Members agree that, while the achievement and maintenance of effective demand and employment must depend primarily on domestic measures, such measures should be assisted by the regular exchange of information and views among Members and, so far as possible, should be supplemented by international action sponsored by the Economic and Social Council of the United Nations and carried out in collaboration with the appropriate inter-governmental organizations acting within their respective spheres and consistently with the terms and purposes of their basic instruments.

ARTICLE 4. MAINTENANCE OF DOMESTIC EMPLOYMENT

1. Each Member shall take action designed to achieve and maintain full and productive employment and high and stable levels of effective demand within its own jurisdiction through measures appropriate to its political, economic and social institutions.

2. Measures to sustain employment and demand shall be consistent with the other purposes and provisions of this Charter and in the choice of such measures each Member shall seek to avoid creating balance-of-payments difficulties for other Members.

ARTICLE 5. FAIR LABOUR STANDARDS

Each Member, recognizing that all countries have a common interest in the maintenance of fair labour standards, related to national productivity, shall take whatever action may be appropriate and feasible to eliminate sub-standard conditions of labour in production for export and generally throughout its jurisdiction.

ARTICLE 6. THE REMOVAL OF MALADJUSTMENTS IN THE BALANCE OF PAYMENTS

Members agree that, in case of a fundamental disequilibrium in their balance of payments involving other countries in persistent balance-of-payments difficulties, which handicap them in maintaining employment, they will make their full contribution to action designed to correct the maladjustment.

ARTICLE 7. SAFEGUARDS FOR MEMBERS SUBJECT TO EXTERNAL DEFLATIONARY PRESSURE

The Organization shall have regard, in the exercise of its functions as defined elsewhere in this charter, to the need of Members to take action within the provisions of this charter to safeguard their economies against deflationary pressure in the event of a serious or abrupt decline in the effective demand of other countries.

ARTICLE 8. CONSULTATION AND EXCHANGE OF INFORMATION ON MATTERS RELATING TO EMPLOYMENT

The Members and the Organization shall participate in arrangements made or sponsored by the Economic and Social Council of the United Nations, including arrangements with appropriate inter-governmental organizations:

(a) For the systematic collection, analysis and exchange of information on domestic employment problems, trends and policies, including as far as possible information relating to national income, demand and the balance of payments;

(b) For consultation with a view to concerted action on the part of governments and intergovernmental organizations in the field of employment policies.

CHAPTER IV. ECONOMIC DEVELOPMENT

ARTICLE 9. IMPORTANCE OF ECONOMIC DEVELOPMENT IN RELATION TO THE PURPOSES OF THIS CHARTER

The Members recognize that the industrial and general economic development of all countries, and particularly of those in which resources are as yet relatively undeveloped, will improve opportunities for employment, enhance the productivity of labour, increase the demand for goods and services, contribute ultimately to economic stability, expand international trade, and raise levels of real income, thus strengthening the ties of international understanding and accord.

ARTICLE 10. DEVELOPMENT OF DOMESTIC RESOURCES AND PRODUCTIVITY

Recognizing that all countries have a common interest in the productive use of the world's human and material resources, Members shall take action designed progressively to develop industrial and other economic resources and to raise standards of productivity within their jurisdictions through measures compatible with the other provisions of this Charter.

ARTICLE 11. PLANS FOR ECONOMIC DEVELOPMENT

1. Members shall co-operate with one another and with the Economic and Social Council of the United Nations and appropriate inter-governmental organizations in promoting industrial and general economic development.

2. [The Organization, upon the request of any Member, shall advise such Member concerning its plans for economic development and shall, within the competence and resources of the Organization and on terms to be agreed, provide such Member with technical assistance in completing its plans and carrying out its programmes or arrange for the provision of such assistance.] The Organization may, in accordance with the principles of this Chapter, consult with and make recommendations to Members and appropriate inter-governmental organizations relating to the encouragement of the industrial and general economic development of Member countries.

ARTICLE 12. MEANS OF ECONOMIC DEVELOPMENT

1. Progressive economic development is dependent upon adequate supplies of capital funds, materials, equipment, advanced technology, trained workers and managerial skill. Accordingly, the Members shall impose no unreasonable impediments that would prevent other Members from obtaining any such facilities for their economic development and shall co-operate in accordance with Article 11, within the limits of their power, in providing or arranging for the provision of such facilities.

2. Each Member, in its treatment of other Members and of business entities or persons within the jurisdiction of other Members which supply it with facilities for its industrial and general economic development, shall not only carry out all relevant international obligations to which it may be subject or which it may undertake pursuant to sub-paragraph (c) of Article 61 or otherwise but also shall in general take no unreasonable action injurious to the interest of such other Members, business entities or persons.

3. Any Member, or with the authorization of a Member, any affected business entity or person within that Member's jurisdiction, may submit to the Organization a complaint that action by another Member is inconsistent with its obliga-

tions under this Article. The Organization may, without prejudice to the application of Article 85, request the Members concerned to enter into consultation with a view to reaching a mutually satisfactory settlement and may lend its good offices to this end.

ARTICLE 13. GOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT

1. The Members recognize that special governmental assistance may be required in order to promote the establishment or reconstruction of particular industries and that such assistance may take the form of protective measures. At the same time they recognize that an unwise use of such measures would impose undue burdens on their own economies, unwarranted restrictions on international trade and might increase unnecessarily the difficulties of adjustment for the economies of other countries.

2. (a) If a Member, in the interests of its programme of economic development, considers it desirable to adopt any protective measure which would conflict with any other provision of this Charter, or with any obligation which the Member has assumed through negotiations with any other Member or Members pursuant to Chapter V, it shall so notify the Organization and shall transmit to the Organization a written statement of the considerations in support of the adoption of the proposed measure. The Organization shall promptly inform those Members whose trade would be substantially affected by the proposed measure and afford them an opportunity of presenting their views. The Organization shall then promptly examine the proposed measure in the light of the provisions of this Charter and other relevant provisions of this Charter, the considerations presented by the applicant Member, the views presented by the other members which would be substantially affected by the proposed measure and such criteria as to productivity and other factors as it may establish, taking into account the stage of economic development or reconstruction of the applicant Member.

(b) If, as a result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure which would be inconsistent with any obligation that the applicant Member has assumed through negotiations with any other Member or Members pursuant to Chapter V or which would tend to nullify or impair the benefit to such other Member or Members of any such obligation, the Organization shall sponsor and assist in negotiations between the applicant Member and the other Member or Members which would be substantially affected, with a view to obtaining substantial agreement. Upon such agreement being reached the Organization may release the applicant Member from the obligation in question or from any other relevant obligation under this Charter, subject to such limitations as may have been agreed upon in the negotiations between the Members concerned or such further limitations as the Organization may impose.

(c) If, as a result of its examination pursuant to sub-paragraph (a), the Organization concurs in any measure, other than those provided for in sub-paragraph (b), which would be inconsistent with any other provision of this Charter, the Organization may release the applicant Member from any obligation under such provision, subject to such limitations as the Organization may impose.

CHAPTER V. GENERAL COMMERCIAL POLICY

Section A. General Commercial Provisions, Most-Favoured-Nation Treatment:

ARTICLE 14. GENERAL MOST-FAVORED-NATION TREATMENT

1. 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 connexion with importation or exportation and with respect to all matters in regard to which national treatment is provided for in Article 15, any advantage, favour, privilege or immunity granted by any Member 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 respectively.

2. The provisions of paragraph 1 of this Article shall not be construed to require the elimination of any preferences in respect of customs duties or other

charges imposed on importation, which do not exceed the preferences remaining in force after the negotiations contemplated in Article 24 and which fall within the following descriptions:

(a) Preferences in force exclusively (i) between two or more territories which on 1 July 1930 were connected by common sovereignty or relations of protection or suzerainty; or (ii) between two or more of the territories listed in Annexure A to this Charter. Each Member to which provision (i) applies shall provide a list of such territories which shall be incorporated in an annexure to this Charter.

(b) Preferences in force exclusively between the United States of America and the Republic of Cuba.

(c) Preferences in force on 1 July 1946 exclusively between neighbouring countries.

ARTICLE 15. NATIONAL TREATMENT ON INTERNAL TAXATION AND REGULATION

1. The Members agree that neither internal taxes nor other internal charges nor internal laws, regulations or requirements should be used to afford protection directly or indirectly for any national product.

2. The products of any Member country imported into any other Member country shall be exempt from internal taxes and other internal charges of any kind higher than those imposed, directly or indirectly, on like products of national origin.

3. The products of any Member country imported into any other Member country shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, transportation, distribution or use of any kind whatsoever. The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used, *Provided* that any such requirement in force on the day of the signature of this Charter may be continued until the expiration of one year from the day on which this Charter enters into force, which period may be extended in respect of any product if the Organization concurs that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter. Requirements permitted to be maintained under the foregoing proviso shall be subject to negotiation in the manner provided for in respect of tariffs under Article 24.

4. The provisions of paragraphs 1 and 3 of this Article shall not be construed to prevent the application of internal laws, regulations or requirements, other than taxes, relating to the distribution or exhibition of cinematograph films. Any laws, regulations or requirements so applied shall, however, be subject to negotiation for their liberalization or elimination in the manner provided for in respect of tariffs and preferences under Article 24.

5. The provisions of this Article shall not apply to the procurement by governmental agencies of supplies for governmental use and not for resale [nor for use in the production of goods for sale].

ARTICLE 16. FREEDOM OF TRANSIT

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory with or without transshipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the traffic passes. Traffic of this nature is termed in this Article "traffic in transit". The provisions of this Article shall not apply to the operation of aircraft in transit.

2. There shall be freedom of transit through the Member countries via the routes most convenient for international transit for traffic in transit to or from other Member countries. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, or vessels or other means of transport.

3. Any Member may require that traffic in transit through its territory be entered at the proper customhouse, but, except in cases of failure to comply

with applicable customs laws and regulations, such traffic coming from or going to other Member countries shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by Members on traffic to or from other Member countries shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, rules, and formalities in connexion with transit, each Member shall accord to traffic in transit to or from any other Member country treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.

6. Each Member shall accord to products which have been in transit through any other Member country treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through such other Member country. Any Member shall, however, be free to maintain its requirements of direct consignment (*expédition directe*) existing on the day of the signature of this Charter, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty, or has relation to the country's prescribed method of valuation for duty purposes.

ARTICLE 17. ANTI-DUMPING AND COUNTERVAILING DUTIES

1. No anti-dumping duty or charge shall be imposed on any product of any Member country imported into any other Member country in excess of an amount equal to the margin of dumping under which such product is being imported. For the purposes of this Article, the margin of dumping shall be understood to mean the amount by which the price of the product exported from one country to another is less than, (a) the comparable price for the like product to buyers in the domestic market of the exporting country, or, in the absence of such domestic price, either (b) the highest comparable price at which the like product is sold for export to any third country in the ordinary course of commerce, or (c) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit; with due allowance in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. No countervailing duty shall be imposed on any product of any Member country imported into another Member country in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the production or export of such product in the country of origin or exportation. The term "countervailing duty" shall be understood to mean an additional duty imposed for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or exportation of any merchandise.

3. No product of any Member country imported into any other Member country shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes imposed in the country of origin or exportation upon the like product when consumed domestically, or by reason of the refund of such duties or taxes.

4. No product of any Member country imported into any other Member country shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

5. No Member shall impose any anti-dumping or countervailing duty or charge on the importation of any product of other Member countries unless it determines that the effect of the dumping or subsidization, as the case may be, is such as materially to injure or threaten to injure an established domestic industry, or is such as to prevent the establishment of a domestic industry.

6. Nothing in this Article shall preclude Members, parties to a regulatory commodity agreement conforming to the principles of Chapter VII, from incorporating in such agreement provisions prohibiting, as between themselves, the use of anti-dumping duties in cases in which dumping, within the meaning of paragraph 1 of this Article, may be permitted under the terms of such an agreement.

ARTICLE 18. TARIFF VALUATION

1. The Members undertake to work toward the standardization, in so far as practicable, of definitions of value and of procedures for determining the value of products subject to customs duties or other charges or restrictions based upon or regulated in any manner by value. With a view to furthering such cooperation, the Organization is authorized to investigate and recommend to Members such bases and methods for determining the value of products as would appear best suited to the needs of commerce and most capable of general adoption.

2. The Members recognize the validity of the general principles of tariff valuation set forth in the following sub-paragraphs, and they undertake to give effect to such principles, in respect of all products subject to duties, charges or restrictions based upon or regulated in any manner by value, at the earliest practicable date. Moreover, they undertake, upon a request by another Member, to review the operation of any of their laws or regulations relating to value for duty purposes in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

Alternative A

The value for duty purposes of imported products should be based on the actual value of the kind of imported merchandise on which duty is assessed, or the nearest ascertainable equivalent of such value, and should not be based on the value of products of national origin or on arbitrary or fictitious valuations.

Alternative B

The value for duty of imported products should be based on their actual value as represented by the price at which, at a determined time and place, and in the ordinary course of trade between independent buyer and seller, like goods are sold or offered for sale in quantities and under conditions comparable to those under which the imported goods are sold or offered for sale, or the nearest ascertainable equivalent of such value. The value should not be based on the value of products of national origin or on arbitrary or fictitious valuations.

Alternative C.

Where an actual price of imported products is not accepted as the basis for determining their value for duty purposes, their assessed value should not be based on the value of products of national origin or on arbitrary or spurious valuations, but should satisfy clearly defined and stable conditions which conform with commercial usage.

(a) The value for duty purposes of any imported product should not include the amount of any [customs duty or] internal tax, applicable within the country of origin or export, from which the imported product has been relieved or made exempt by means of refund.

(c) In converting the value of any imported product from one currency to another for the purpose of assessing duty, the rate of exchange to be used should be fixed in accordance with prescribed standards to reflect effectively the current value of each currency in commercial transactions.

(d) The bases and methods for determining the value of products subject to duties, charges or restrictions based upon or regulated by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the amount of duty likely to be imposed.

ARTICLE 19. CUSTOMS FORMALITIES

1. The Members recognize the principle that subsidiary fees and charges imposed on or in connexion with importation or exportation should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. They also recognize the need for reducing the number and diversity of such subsidiary fees and charges, for minimizing the incidence and complexity of import and export formalities, and for decreasing and simplifying import and export documentation requirements.

2. Members undertake to give effect to the principles and objectives of paragraph 1 of this Article at the earliest practicable date. Moreover, they undertake, upon request by another Member, to review the operation of any of their customs laws and regulations in the light of these principles. The Organization is authorized to request from Members reports on steps taken by them in pursuance of the provisions of this paragraph.

3. Except in cases of serious negligence, greater than nominal penalties over and above the duty properly payable should not be imposed by any Member in connexion with the importation of any product of any other Member country because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements relating to all customs matters, including:

- (a) Consular transactions, such as consular invoices and certificates;
- (b) Quantitative restrictions;
- (c) Licensing;
- (d) Exchange regulations;
- (e) Statistical services;
- (f) Documents, documentation and certification;
- (g) Analysis and inspection; and
- (h) Quarantine, sanitation and fumigation.

ARTICLE 20. MARKS OF ORIGIN

1. The Members agree that in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum.

2. Each Member shall accord to the products of each other Member country treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.

3. Whenever administratively practicable, Members should permit required marks of origin to be imposed at the time of importation.

4. The laws and regulations of Members relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.

5. Members agree to work in co-operation through the Organization toward the early elimination of unnecessary requirements as to marks of origin. The Organization is authorized to investigate and recommend to Members measures directed to this end, including the adoption of schedules of general categories of products in respect of which marking requirements operate to restrict trade in a degree disproportionate to any proper purpose to be served, and which shall not in any case be required to be marked to indicate their origin.

6. As a general rule no special duty or penalty should be imposed by any Member for failure to comply with marking requirements prior to importation unless corrective marking has been unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.

7. The interest of Members in protecting the regional and geographical marks of origin of their distinctive products is recognized and shall be given consideration by the Organization which is authorized to recommend a conference of interested Members on the subject.

ARTICLE 21. PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS ADVANCE NOTICE OF RESTRICTIVE REGULATIONS

1. Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Member, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation or insurance, or affecting their warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable traders and governments to become acquainted with them. Agreements in force between the government or a governmental agency of any Member country and the government or governmental agency of any other country affecting international trade policy shall also be published. Copies of such laws, regulations, decisions, rulings and agreements shall be communicated promptly to the Organization. This paragraph shall not require any Member to disclose confidential information which would impede law enforcement, or otherwise be contrary to the public interests or would prejudice the legitimate business interests of particular enterprises, public or private.

2. Each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in para-

graph 1 of this Article. Moreover, Members undertake to maintain, or to institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose *inter alia*, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement.

8. No administrative ruling of any Member effecting an advance in a rate of import duty or other charge under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall, as a general rule and within the limits of administrative practicability, be applied to products of any other Member country already enroute at the time of publication thereof in accordance with paragraph 1 of this Article, *Provided*, that if any Member customarily exempts from such new or increased obligations products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the date of such publication, such practice shall be considered full compliance with this paragraph. The provisions of this paragraph shall not apply to anti-dumping or countervailing duties.

ARTICLE 22. INFORMATION, STATISTICS AND TRADE TERMINOLOGY

1. The Members shall communicate to the Organization as promptly and in as much detail as is reasonably practicable:

(a) Statistics of their external trade in goods (including imports, exports, re-exports, transit and transshipment and, where applicable, goods in warehouse or in bond);

(b) Statistics of governmental revenue from import and export duties and other taxes on goods moving in international trade and, in so far as readily ascertainable, of subsidy payments affecting such trade.

So far as possible, the statistics referred to in (a) and (b) shall be related to tariff classifications and be in such form as to reveal the operation of any restrictions on importation or exportation which are based on or regulated in any manner by quantity or value, or by amounts of exchange made available.

2. The Members shall publish regularly and as promptly as possible the statistics referred to in paragraph 1 of this Article.

3. The Members shall give careful consideration to any recommendations which the Organization may to them make with a view to improvement of the statistical information furnished under paragraph 1 of this Article.

4. The Members shall make available to the Organization, at its request and in so far as reasonably practicable, such other statistical information as the Organization may deem necessary to enable it to fulfill its functions, provided that such information is not being furnished to other inter-governmental organizations from which the Organization can obtain the required information.

5. The Organization shall act as a centre for the collection, exchange and publication of statistical information of the kind referred to in paragraph 1 of this Article. The Organization may, in collaboration with the Economic and Social Council of the United Nations and its Commissions, and with any other interested international organization, engage in studies with a view to bringing about improvements in the methods of collecting, analyzing and publishing economic statistics and may promote the international comparability of such statistics, including the possible international adoption of standard tariff and commodity classifications.

6. The Organization may also, in co-operation with the other organizations referred to in paragraph 5 of this Article, study the question of adopting standards, nomenclatures, terms and forms to be used in international trade and in the official documents and statistics of Members relevant thereto, and may promote the general acceptance by Members of such standards, nomenclatures, terms and forms as may be recommended.

ARTICLE 23. BOYCOTTS

No Member shall encourage, support or participate in boycotts or other campaigns which are designed to discourage, directly or indirectly, the consumption within its territory of products of any specific Member country or countries on grounds of origin, or the sale of products for consumption within other Member countries on grounds of destination.

Section B. Tariff and tariff preferences

ARTICLE 24. REDUCTION OF TARIFFS AND ELIMINATION OF PREFERENCES

1. Each Member, other than a Member subject to the provisions of Article 33, shall, upon the request of any other Member or Members, enter into reciprocal and mutually advantageous negotiations with such other Member or Members directed to the substantial reduction of tariffs and other charges on imports and exports and to the elimination of import tariff preferences. These negotiations shall proceed in accordance with the following rules:

(a) Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification or termination of existing international obligations except by agreement between the contracting parties, or failing that, by termination of such obligations in accordance with their terms.

(b) All negotiated reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of preference, and no margin of preference shall be increased.

(c) The binding or consolidation of low tariffs or of tariff-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences.

2. Each Member participating in negotiations pursuant to paragraph 1 shall keep the Organization informed of the progress thereof and shall transmit to the Organization a copy of the agreement or agreements incorporating the results of such negotiations.

3. If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization, which shall make an investigation and make appropriate recommendations to the Members concerned. The Organization, if it finds that a Member has, without sufficient justification, having regard to the provisions of the Charter as a whole, failed to negotiate with such complaining Member in accordance with the requirements of paragraph 1 of this Article, may determine that the complaining Member, or in exceptional cases the Members of the Organization generally, shall, notwithstanding the provisions of Article 14, be entitled to withhold from the trade of the other Member any of the tariff benefits which the complaining Member, or the Members of the Organization generally as the case may be, may have negotiated pursuant to paragraph 1 of this Article. If such benefits are in fact withheld so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the date on which written notice of such withdrawal is received by the Organization. The provisions of this paragraph shall operate in accordance with the provisions of Article 37.

Section C. Quantitative restrictions and exchange control

ARTICLE 25. GENERAL ELIMINATION OF QUANTITATIVE RESTRICTIONS

1. Except as otherwise provided in this Charter, no prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import licenses or other measures, shall be instituted or maintained by any Member on the importation of any product of any other Member country or on the exportation or sale for export of any product destined for any other Member country.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

(a) Prohibitions or restrictions on imports or exports instituted or maintained during the early post-war transitional period which are essential to: (i) the equitable distribution among the several consuming countries of products in short supply, whether such products are owned by private interests or by the Government of any Member; (ii) The maintenance of war-time price control by a Member country undergoing shortages subsequent to the war; (iii) The

orderly liquidation of temporary surpluses of stocks owned or controlled by the government of any Member or of industries developed in any Member country owing to the exigencies of the war, which it would be uneconomic to maintain in normal conditions provided that prohibitions or restrictions for this purpose may not be instituted by any Member after the day on which this Charter comes into force, except after consultation with other interested Members with a view to appropriate international action.

Import and export prohibitions and restrictions instituted or maintained under sub-paragraph (a) shall be removed as soon as the conditions giving rise to them have ceased, and in any event not later than 1 July 1949, *Provided* that this period may, with the concurrence of the Organization, be extended in respect of any product for further periods not to exceed six months each.

(b) Export prohibitions or restrictions temporarily applied to relieve critical shortages of foodstuffs or other essential products in the exporting Member country.

(c) Import and export prohibitions or restrictions necessary to the application of standards for the classification and grading of commodities in international trade. If, in the opinion of the Organization, the standards adopted by a Member under this sub-paragraph are likely to have an unduly restrictive effect on trade, the Organization may request the Member to revise the standards provided that it shall not request the revision of standards internationally agreed under paragraph 6 of Article 22.

(d) Export or import quotas applied under regulatory inter-governmental commodity agreements concluded in accordance with the provisions of Chapter VII.

(e) Import restrictions on any agricultural or fisheries product imported in any form necessary to the enforcement of governmental measures which operate (i) to restrict the quantities of the like domestic product permitted to be marketed or produced, or (ii) to remove a temporary surplus of the like domestic product by making the surplus available to certain groups of domestic consumers free of charge or at prices below the current market level. Any Member imposing restrictions on the importation of any product pursuant to this sub-paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of the restrictions. In determining this proportion the Member shall pay due regard to the proportion prevailing during a previous representative period and to any special factors which may have affected or may be affecting the trade in the product concerned. The Member shall consult with any other Members which are interested in the trade in question and which wish to initiate such consultations.

(f) Import and export prohibitions or restrictions on private trade for the purpose of establishing a new, or maintaining an existing, monopoly of trade for a state-trading enterprise operated under Articles 31, 32 or 33.

ARTICLE 26. RESTRICTIONS TO SAFEGUARD THE BALANCE OF PAYMENTS

1. The Members may need to use import restrictions as a means of safeguarding their external financial position and as a step toward the restoration of equilibrium in their balance of payments on a sound and lasting basis, particularly in view of their increased demand for imports needed to carry out their domestic employment, reconstruction, development or social policies. Accordingly, notwithstanding the provisions of Article 25, any Member may restrict the quantity or value of merchandise permitted to be imported insofar as this is necessary to safeguard its balance of payments and monetary reserves.

2. The use of import restrictions under paragraph 1 of this Article shall be subject to the following requirements:

(a) No Member shall institute [or maintain] restrictions or intensify existing restrictions except to the extent necessary to forestall the imminent threat of, or to stop, a serious decline in the level of its monetary reserves or, in the case of a Member with very low monetary reserves, to achieve a reasonable rate of increase in its reserves. Due regard should be paid in each case to any special factors which may be affecting the level of the Member's reserves, to any commitments or other circumstances which may be affecting its need for reserves, and to any special credits or other resources which may be available to protect its reserves.

(b) The Members shall eliminate the restrictions when conditions would no longer justify their institution [or maintenance] under subparagraph (a), and shall relax them progressively as such conditions are approached;

(c) The Members shall not apply the restrictions in such a manner as to exclude completely imports of any class of goods.

3. (a) Any Member which is not applying restrictions under paragraphs 1 and 2 of this Article but which is considering the need for their institution, shall, before instituting such restrictions (or, in circumstances in which prior consultation is impracticable, immediately following upon the institution of such restrictions) consult with the Organization as to the nature of its balance-of-payments difficulties, the various corrective measures which may be available, and the possible effects of such measures on the economies of other Members. The Organization shall invite the International Monetary Fund to participate in the consultations. No Member shall be required during such discussions to indicate in advance the choice or timing of any particular measures which it may ultimately determine to adopt.

(b) The Organization may at any time invite any Member applying import restrictions under paragraphs 1 and 2 of this Article to consult with it about the form or extent of the restrictions, and shall invite a Member substantially intensifying such restrictions to consult accordingly within thirty days. Members thus invited shall participate in such discussions. In the conduct of such discussions the Organization shall consult the International Monetary Fund and any other appropriate inter-governmental organization, in particular with regard to the alternative methods available to the Member in question of meeting its balance-of-payments difficulties. The Organization shall, not later than two years from the day on which this Charter enters into force, review all restrictions existing on that day and still applied under paragraphs 1 and 2 of this Article at the time of the review.

(c) Any Member may consult with the Organization with a view to obtaining the prior approval of the Organization for restrictions which the Member proposes under paragraphs 1 and 2 of this Article to maintain, intensify or institute, or for the maintenance, intensification or institution of restrictions under specified future conditions. The Organization shall invite the International Monetary Fund to participate in the consultations. As a result of such consultations, the Organization may approve in advance the maintenance, intensification or institution of restrictions by the Member in question insofar as the general extent, degree and duration of the restrictions are concerned. To the extent to which such approval has been given, the action of the Member applying restrictions shall not be open to challenge under sub-paragraph (d) on the ground that such action is inconsistent with the provisions of paragraphs 1 and 2 of this Article.

(d) Any Member which considers that any other Member is applying import restrictions under paragraphs 1 and 2 of this Article in a manner inconsistent with the provisions of those paragraphs or of Articles 27 and 28, or in a manner which unnecessarily damages its commercial interests, may bring the matter for discussion to the Organization. The Member applying the restrictions shall then participate in discussions of the reasons for its action. The Organization, if it is satisfied that there is a *prima facie* case that the complaining Member's interests are adversely affected, may, after consultation with the International Monetary Fund on any manner falling within the competence of the fund, and, if it considers it desirable, after submitting observations to the parties with the aim of achieving a satisfactory settlement of the matter in question, recommend the withdrawal or modification of restrictions which it determines are being applied in a manner inconsistent with the provisions of paragraphs 1 and 2 of this Article or of Article 27 or 28 or in a manner which unnecessarily damages the interests of another Member. If the restrictions are not withdrawn or modified in accordance with the recommendation of the Organization within sixty days, such other Member or Members shall be released from such obligations incurred under this Charter towards the Member applying the restrictions as the Organization may approve.

(e) The Organization, in reaching its determination under sub-paragraph (d) shall not recommend the withdrawal or general relaxation of restrictions on the ground that the existing or prospective balance-of-payments difficulties of the Member in question could be avoided by a change in that Member's domestic employment, reconstruction, development or social policies. In carrying out such domestic policies, however, Members shall pay due regard to the need for restoring equilibrium in their balance of payments on a sound and lasting basis.

4. In giving effect to the restrictions on imports under this Article, a Member may restrict imports of products according to their relative essentiality in such a way as to give priority to the importation of products required by its domestic employment reconstruction, development or social policies and programmes. In so doing the Member shall avoid all unnecessary damage to the commercial interests of other Members.

5. If there is persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the Organization shall seek consultation with the International Monetary Fund. The Organization may then, in collaboration throughout with the Fund, initiate discussions to consider whether other measures might be taken, either by those Members whose balances of payments are under pressure or by those Members whose balances of payments are tending to be exceptionally favourable, or by any appropriate inter-governmental organization, to remove the underlying causes of the disequilibrium. On the invitation of the Organization Members shall participate in such discussions.

6. The Members recognize that in the early years of the Organization all of them will be confronted in varying degrees with problems of economic adjustment resulting from the war. During this period the Organization shall, when required to take decisions under this Article or under Article 28, take full account of the difficulties of post-war adjustment.

7. Throughout this Section the phrase "import restrictions" includes the restriction of imports by state-trading enterprises to an extent greater than that which would be permissible under Article 32.

ARTICLE 27. NON-DISCRIMINATORY ADMINISTRATION OF QUANTITATIVE RESTRICTIONS

1. No prohibition or restriction shall be applied by any Member on the importation of any product of any other Member country or on the exportation of any product destined for any other Member country, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. Members shall observe the following provisions in applying import restrictions:

(a) The administration of the restrictions should be carried out in such a way as to result in a distribution of trade which approaches as closely as possible to the shares which the various Member countries might be expected to obtain as the result of international competition in the absence of such restrictions.

(b) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article.

(c) In cases in which quotas are not practicable, the restrictions may be applied by means of import licenses or permits without a quota.

(d) Import licenses or permits, whether or not issued in connection with quotas shall not (save for purposes of operating quotas allocated in accordance with sub-paragraph (c) of this paragraph) require or provide that the license or permit be utilized for the importation of the product concerned from a particular country or source.

(e) In cases in which a quota is allocated among applying countries, the shares of the various supplying Member countries should in principle be determined in accordance with commercial considerations such as price, quality, and customary sources of supply. For the purpose of appraising such commercial considerations, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Member countries having a substantial interest in supplying the product, shares based upon the proportions, supplied by such Member countries during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed, which would prevent any Member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.

3. (a) In cases where import licenses are issued in connection with import restrictions, the Member applying the restriction shall provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information concerning the administration of the restriction, the import licenses granted over a past recent period and the distribution of such licenses among supplying countries, *Provided, however*, that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

(b) In the case of import restrictions involving the fixing of quotas, the Member applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry, *Provided* that they may be counted, so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary against the quantities permitted to be imported in the next following period or periods, and *Provided* further that if any Member customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this sub-paragraph.

(c) In the case of quotas allocated among supplying countries the Member applying the restriction shall promptly inform all other Members having an interest in supplying the product concerned of the shares in the quota, by quantity or value, currently allocated to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (e) of this Article or under paragraph 2 (e) of Article 25, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member applying the restriction, *Provided* that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organization, consult promptly with the other Member or the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.

5. The provisions of this Article shall apply to any tariff quota established or maintained by any Member and, insofar as applicable, the principles of this Article shall also extend to export restrictions and to any internal regulation or requirements under paragraphs 3 and 4 of Article 15.

ARTICLE 28. EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION

1. The provisions of this Section shall not preclude

(a) restrictions with equivalent effect to exchange restrictions authorized under Section 8 (b) of Article VII of the Articles of Agreement of the International Monetary Fund;

(b) prohibitions or restrictions in accordance with paragraphs 2 (a) (1) or 2 (d) of Article 25;

(c) conditions attaching to exports which are necessary to ensure that an exporting Member country receives for its exports its own currency or the currency of any member of the International Monetary Fund specified by the exporting Member country;

(d) restrictions in accordance with Article 26 which either (1) are applied against imports from other countries, but not as between themselves, by a group of territories having a common quota in the International Monetary Fund, *Provided* that such restrictions are in all other respects consistent with Article 27, or (2) assist in the period until 31 December 1951, by measures not involving substantial departure from the provisions of Article 27, a country whose economy has been disrupted by war;

(e) restrictions in accordance with Article 26 which both (1) provide a Member with additional imports above the maximum total of imports which it could afford in the light of the requirements of paragraph 2 of Article 26, if its restrictions were consistent with Article 27, and (2) have equivalent effect to exchange restrictions which are permitted to that Member under the Articles of Agreement of the International Monetary Fund or under the terms of any special

exchange agreement which may have been made between the the Member and the Organization under Article 20, *Provided* that a Member which is not apply restrictions on payments and transfers for current international transactions, may apply import restrictions under (1) of this subparagraph in special circumstances and only with the prior approval of the Organization in agreement with the International Monetary Fund.

2. If the Organization finds, after consultation with the International Monetary Fund on matters within the competence of the Fund, that import restrictions or exchange restrictions on payments and transfers in connection with imports are being applied by a Member in a discriminatory manner inconsistent with the exceptions provided under this Article or in a manner which discriminates unnecessarily against the trade of another Member country, the Member shall within sixty days remove the discrimination or modify it as specified by the Organization, *Provided* that a Member may, if it so desires, consult with the Organization to obtain its prior approval for such discrimination, under the procedure set forth in paragraph 3 (c) of Article 20, and to the extent that such approval is given, the discrimination shall not be open to challenge under this paragraph.

3. When three-quarters of the Members of the Organization have accepted the obligations of Sections 2, 3 and 4 of Article VIII of the Articles of Agreement of the International Monetary Fund, but in any event before 31 December 1951, the Organization shall review the operation of this Article, in consultation with the International Monetary Fund, with a view to the earliest possible elimination of any discrimination, under paragraphs 1 (e) (i) and (ii) of this Article, which restricts the expansion of world trade.

ARTICLE 20. EXCHANGE ARRANGEMENTS

1. The Organization shall seek co-operation with the International Monetary Fund to the end that the Organization and the Fund may pursue a co-ordinated policy with regard to exchange questions within the competence of the Fund and questions of quantitative restrictions or other trade measures within the competence of the Organization.

2. Members shall not seek by exchange action to frustrate the purposes of the Organization and shall not seek by trade action to frustrate the purposes of the International Monetary Fund.

3. In order to avoid the imposition of trade restrictions and discriminations through exchange techniques and in order to avoid the danger of conflicting jurisdiction between the Organization and the International Monetary Fund in exchange matters, Members of the Organization shall also undertake membership of the International Monetary Fund, *Provided* that any country which is not a member of the International Monetary Fund may become a Member of the Organization if upon accepting this Charter it undertakes to enter, within a time to be determined by the Organization after consultation with the International Monetary Fund, into a special exchange agreement with the Organization which would become part of its obligation under this Charter, and *Provided* further that a Member of the Organization which ceases to be a member of the International Monetary Fund shall forthwith enter into a special exchange agreement with the Organization which shall then become part of its obligations under this Charter.

4. A Member which has made such an agreement undertakes to furnish the Organization with the information which it may require, within the general scope of Section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund, in order to carry out its functions relating to such agreement.

5. A special exchange agreement between a Member and the Organization under paragraph 3 of this Article must provide to the satisfaction of the Organization, collaborating throughout with the International Monetary Fund, that the purposes common to the Organization and the Fund will not be frustrated as a result of action in exchange matters by the Member in question.

6. The Organization shall seek and accept the opinion of the International Monetary Fund as to whether action by the Member in exchange matters is permissible under the terms of the special exchange agreement and shall act in collaboration with the International Monetary Fund on all questions which may arise in the working of a special exchange agreement under this Article.

Section D. Subsidies

ARTICLE 30. GENERAL UNDERTAKING REGARDING SUBSIDIES—ELIMINATION OF EXPORT SUBSIDIES—EXCEPTIONS

1. If any Member grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, the Member shall notify the Organization in writing as to the extent and nature of the subsidization, as to the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from the territory of the Member country and as to the conditions making the subsidization necessary. In any case in which it is determined that serious prejudice to the interest of any other Member is caused or threatened by any such subsidization, the Member granting the subsidization shall, upon request, discuss with the other Member or Members concerned, or with the Organization, the possibility of limiting the subsidization.

2. (a) No Member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain any other system, which results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, due allowance being made for differences in the conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability, *Provided* that this shall not prevent any Member from exempting exported products from duties or taxes imposed in respect of like products when consumed domestically, from remitting such duties or taxes which have accrued, or from using the proceeds of such duties or taxes to make payments to domestic producers;

(b) Members shall give effect to the provisions of this paragraph at the earliest practicable date, but in any event not later than three years from the day on which this Charter enters into force. If any Member considers itself unable to make the provisions of this paragraph effective in respect of any specified product or products upon the expiration of such period, such Member shall, at least three months before the expiration of such period, give to the Organization notice in writing requesting a specific extension of the period and accompanied by a complete analysis of the system in question and the facts justifying it. It shall then be determined whether the extension requested should be made.

3. A system for the stabilization of the domestic price or of returns to domestic producers of a primary product, which results over a period in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, may be determined not to involve a subsidy on exportation under the terms of paragraph 2 of this Article if it has also resulted over a period in the sale of the product for export at a price higher than the comparable price charged for the like product to domestic buyers, and if the system is so operated, either because of the effective limitation of production or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interest of other Members.

4. (a) In any case of subsidization of a primary commodity, if a Member considers that its interests are seriously prejudiced by the subsidy or if the Member granting the subsidy considers itself unable to comply with the provisions of paragraph 2 of this Article within the time limit laid down therein, the difficulty may be determined to be a special difficulty of the kind referred to in Chapter VII, and in that event the procedure laid down in that Chapter shall be followed;

(b) If it is determined that the measures provided for in Chapter VII have not succeeded, or do not promise to succeed, within a reasonable period of time, in removing or preventing the development of a burdensome world surplus of the primary product concerned, the requirements of paragraph 2 of this Article shall cease to apply in respect of such product as from the effective date of such determination and shall not be re-applied in respect of such product until a date determined in accordance with procedures approved by the Organization.

5. Notwithstanding the provisions of paragraph 2 and sub-paragraph 4 (b) of this Article, no Member shall grant any subsidy on the exportation of any product which has the effect of acquiring for that Member a share of world trade in that product in excess of the share which it had during a previous representative period, account being taken insofar as practicable of any special factors which may have affected or may be affecting the trade in that product. The

selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by the Member granting the subsidy, *Provided* that such Member shall, upon the request of any other Member having an important interest in the trade in that product, or upon the request of the Organization, consult promptly with the other Member or with the Organization regarding the need for an adjustment of the base period selected or for the re-appraisal of the special factors involved.

6. Any determination required by or appropriate to the operation of this Article shall be made under procedures established by the Organization in accordance with paragraph 4 of Article 60.

Section B. State trading

ARTICLE 31. NON-DISCRIMINATORY ADMINISTRATION OF STATE-TRADING ENTERPRISE

1. If any Member establishes or maintains a state enterprise, wherever located, which imports, exports, purchases, sells, or distributes any product, or if any Member grants exclusive or special privileges, formally or in effect, to any enterprise to import, export, purchase, sell, distribute or produce any product, the commerce of other Members shall be accorded treatment no less favourable than that accorded to the commerce of any country other than that in which the enterprise is located in respect of the purchase or sale by such enterprise of any product. To this end such enterprise shall, in making its external purchases or sales of any product, be influenced solely by commercial considerations, such as price, quality, marketability, transportation and other terms of purchase or sale, having due regard to any differential customs treatment maintained consistently with the other provisions of this Charter.

2. The provisions of paragraph 1 of this Article relating to purchases of imports by state enterprises shall apply to purchases or imports of products for re-sale [or for use in the production of goods for sale]. With respect to purchases or imports by state enterprises of products for governmental use and not for re-sale [or for use in the production of goods for sale]. Members shall accord to the commerce of the other Members fair and equitable treatment, having full regard to all relevant circumstances.

3. This Article shall apply to any enterprise, organ or agency in which there is effective control by a Member government.

Alternative A

or over whose trading operations a Member government exercises effective control by virtue of the special or exclusive privileges granted to the enterprise.

Alternative B

or over whose trading operations a government is, under the arrangements providing for the special or exclusive privileges granted to the enterprise, legally entitled to exercise effective control.

ARTICLE 32. EXPANSION OF TRADE BY STATE MONOPOLIES OF INDIVIDUAL PRODUCTS

1. If any Member, other than a Member subject to the provisions of Article 33, establishes, maintains or authorizes, formally or in fact, an effective monopoly of the importation or exportation of any product, such Member shall, upon the request of any other Member or Members having an interest in trade with that Member in the product concerned, enter into negotiations with such Member or Members in the manner provided for in respect of tariffs under Article 24, with regard to (a) in the case of an export monopoly, arrangements designed to limit or reduce the protection afforded through the operation of the monopoly to domestic users of the monopolized product or to assure exports of the monopolized product in adequate quantities at reasonable prices; or (b) in the case of an import monopoly, the maximum margin by which the price for an imported product charged by the monopoly in the home market may exceed the landed cost, before payment of any duty, of such product purchased by the monopoly from suppliers in the territories of Members, after due allowance for internal taxes, transportation, distribution and other expenses incident to purchase, sale or further processing, and for a reasonable margin of profit. For the purpose of applying this margin regard may be had to average landed costs and selling prices of the monopoly over recent periods.

2. Any Member newly establishing any import monopoly in respect of any product shall not create a margin as defined in paragraph 1 (b) greater than

that represented by the maximum rate of import duty which may have been negotiated in regard to that product pursuant to Article 24.

3. With regard to any monopolized product in respect of which a maximum margin has been established pursuant to paragraph 1 (b) or paragraph 2 of this Article, the monopoly shall, as far as administratively practicable, and subject to the other provisions of this Charter, import [from Members] and offer for sale at prices charged within such maximum margin such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product, account being taken of any rationing to consumers of the imported and like domestic product which may be in force at that time.

4. In applying the provisions of this Article, due regard shall be had for the fact that some monopolies are established and operated mainly for revenue purposes.

ARTICLE 33. EXPANSION OF TRADE BY COMPLETE STATE MONOPOLIES OF IMPORT TRADE

[Any Member establishing or maintaining a complete or substantially complete monopoly of its import trade shall promote the expansion of its foreign trade with the other Members in consonance with the purposes of this Charter. To this end such Member shall negotiate with the other Members an arrangement under which, in conjunction with the granting of tariff concessions by such other Members, and in consideration of the other benefits of this Chapter, it shall undertake to import in the aggregate over a period products of the other Members valued at not less than an amount to be agreed upon. This purchase arrangement shall be subject to periodic adjustment.]

Section F. Emergency provisions—Consultation

ARTICLE 34. EMERGENCY ACTION ON IMPORTS OF PARTICULAR PRODUCTS

1. If, as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products (or, in the case of a product which is the subject of a concession with respect to a preference, is being imported under such conditions as to cause or threaten serious injury to producers in a territory which receives or received such preference), the Member shall be free to suspend the obligation in respect of such product in whole or in part, or to withdraw or modify the concession to the extent and for such time as may be necessary to prevent such injury.

2. Before any Member shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable and shall afford the Organization and those Members having a substantial interest as exporters of the product concerned, an opportunity to consult with it in respect of the proposed action. In critical and exceptional circumstances such action may be taken provisionally without prior consultation, *Provided* that consultation shall be effected immediately following upon the taking of such action.

3. If agreement among the interested Members with respect to the action is not reached, the Member which proposes to take or continue the action, shall, nevertheless, be free to do so, and if such action is taken or continued, the affected Members shall then be free, not later than sixty days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the Organization, the application to the trade of the Member taking such action of such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove. In cases of abuse the Organization may authorize an affected Member to suspend obligations or concessions in addition to those which may be substantially equivalent to the action originally taken.

ARTICLE 35. CONSULTATION—NULLIFICATION OR IMPAIRMENT

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and ex-

change regulations, subsidies, state-trading operations, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally all matters affecting the operation of this Chapter; and shall, in the course of such consultation, provided the other Member with such information as well enable a full and fair appraisal of the situation which is the subject of such representations.

2. If any Member should consider that any other Member is applying any measure, whether or not in conflict with the terms of this Charter, or that any situation exists, which has the effect of nullifying or impairing any object of this Charter, the Member or Members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter. If no such adjustment can be effected, the matter may be referred to the Organization, which shall, after investigation, and, if necessary after consultation with the Economic and Social Council of the United Nations and any appropriate intergovernmental organizations, make appropriate recommendations to the Members concerned. The Organization, if it considers the case serious enough to justify such action, may authorize a Member or Members to suspend the application to any other Member or members of such specified obligations or concessions under this Chapter as may be appropriate in the circumstances. If such obligation or concessions are in fact suspended, any affected Member shall then be free, not later than sixty days after such action is taken, to withdraw from the Organization upon the expiration of sixty days from the day on which written notice of such withdrawal is received by the Organization.

Section G. Relations with non-members

ARTICLE 36. CONTRACTUAL RELATIONS WITH NON-MEMBERS. TREATMENT OF THE TRADE OF NON-MEMBERS

The text of this Article, as given in the United States Draft Charter, is reproduced below for reference:

"1. No Member shall seek exclusive or preferential advantages for its trade in the territory of an non-Member which would result, directly or indirectly, in discrimination in that territory against the trade of any other Member.

"2. No Member shall be a party to any agreement or other arrangement with any non-Member under which such non-Member shall be contractually entitled to any of the benefits of this Charter.

"3. With regard to countries which, although eligible for membership, have not become Members or have withdrawn from the Organization, no Member shall, except with the concurrence of the Organization, apply to the trade of such countries the tariff reductions effected by such Member pursuant to Article 18. This paragraph shall become effective upon the expiration of one year from the date on which the Organization is established; Provided, That this period may be extended by the Organization for further periods not to exceed six months each.

"4. Members undertake to review any international obligations they may have which would prevent them from giving full effect to paragraphs 1 and 2 of this Article and, if necessary for that purpose, to terminate such obligations either by agreement or in accordance with their terms." of Chapter V, unless they were waived by a two-third majority under the provisions of paragraph 2 of Article 40. The proposed change would thus in his opinion involve a material deviation from the general opinion at the First Session and from the original text.

(b) One delegate suggested that Article 37 should contain a provision permitting a Member to prohibit the importation of any commodity, the production of which is prohibited domestically.

(c) As it seemed to be generally agreed that electric power should not be classified as a commodity, two delegates did not find it necessary to reserve the right for their countries to prohibit the export of electric power.

(d) One delegate maintained a suggestion by his delegation at the First Session to the effect that a paragraph should be added to permit measures "temporarily imposed to prevent, arrest or relieve conditions of social disturbance, natural calamity or other national emergencies, provided that such measures are withdrawn as soon as the said conditions cease to exist". It was suggested that paragraph 2 (b) of Article 25 covers this point to a certain extent.

(e) One delegate suggested that a Member should be allowed temporarily to discriminate against the trade of another Member when this is the only effective

measure open to it to retaliate against any discrimination practiced by that Member in matters outside the purview of the Organization, pending a settlement of the issue through the United Nations. (Cf. the reservation by the same delegate regarding Article 23—Boycotts).

Section II. General exceptions

ARTICLE 37. GENERAL EXCEPTIONS TO CHAPTER V

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in Chapter V shall be construed to prevent the adoption or enforcement by any Member of measures:

- (a) Necessary to protect public morals;
- (b) For the purpose of protecting human, animal or plant life or health, if corresponding domestic safeguards under similar conditions exist in the importing country;
- (c) Relating to fissionable materials;
- (d) Relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;
- (e) In time of war or other emergency in international relations, relating to the protection of the essential security interests of a Member;
- (f) Relating to the importation or exportation of gold or silver;
- (g) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of Chapter V, such as, those relating to customs enforcement, deceptive practices, and the protection of patents, trade marks and copyrights;
- (h) Relating to the products of prison labour;
- (i) Imposed for the protection of national treasures of artistic, historic or archaeological value;
- (j) Relating to the conservation of exhaustible natural resources if such measures are taken pursuant to international agreements or are made effective in conjunction with restrictions on domestic production or consumption; or
- (k) Undertaken in pursuance of obligations under the United Nations Charter for the maintenance or restoration of international peace and security.

Section I. Territorial application

ARTICLE 38. TERRITORIAL APPLICATION OF CHAPTER V.—FRONTIER TRAFFIC—CUSTOMS UNIONS

1. The provisions of Chapter V shall apply to the customs territories of the Members. If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as though it were a separate Member for the purpose of interpreting the provisions of Chapter V.

2. The provisions of Chapter V shall not be construed to prevent:

(a) Advantages accorded by any Member to adjacent countries in order to facilitate frontier traffic; or

(b) The formation of a customs union, *Provided* that the duties and other regulations of commerce imposed by any such union in respect of trade with Members shall not on the whole be higher or more stringent than the average level of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union.

3. Any Member proposing to enter into a customs union shall consult with the Organization and shall make available to it such information regarding the proposed union as will enable the Organization to make such reports and recommendations to Members as it may deem appropriate.

4. The Members recognize that there may in exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter V. Any such exception shall conform to the criteria and procedures which may be established by the Organization under paragraph 3 of article 60.

5. For the purpose of this Article a customs territory shall be understood to mean any territory within which separate tariffs or other regulations of commerce are maintained with respect to a substantial part of the trade of such

territory. A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members of the union are substantially eliminated and substantially the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade territories not included in the union.

CHAPTER VI. RESTRICTIVE BUSINESS PRACTICES

ARTICLE 39. POLICY TOWARDS RESTRICTIVE BUSINESS PRACTICES

1. Members shall take appropriate measures, individually or through the Organization or in both ways, to prevent business practices affecting international trade which restrain competition, limit access to markets or foster monopolistic control whenever such practices have harmful effects on the expansion of production and trade and the maintenance in all countries of high levels of real income or impair any of the purposes of the Organization as set for in Article 1.

2. Without limiting the generality of paragraph 1 of this Article, the practices listed in paragraph 3 below shall be subject to investigation in accordance with the procedure with respect to complaints provided by the relevant Articles of this Chapter, if the Organization considers them to have or to be about to have any of the harmful effects enumerated in paragraph 1 of this Article, whenever

(a) They are engaged in or made effective by one or more public or private commercial enterprises or by a combination, agreement or other arrangement between commercial enterprises, whether between private commercial enterprises, between public commercial enterprises, (*i. e.*, trading agencies of governments or enterprises in which there is effective public control), or between private and public commercial enterprises; and

(b) Such commercial enterprises, individually or collectively, possess effective control of trade among a number of countries in one or more products.

3. The practices referred to in paragraph 2 of this Article are as follows:

(a) Fixing prices or terms or conditions to be observed in dealing with others in the purchase, sale or lease of any product;

(b) Excluding enterprises from any territorial market or field of business activity, allocating or dividing any territorial market or field of business activity, allocating customers, or fixing sale or purchase quotas;

(c) Discriminating against particular enterprises whether by boycott or otherwise;

(d) Limiting production or fixing production quotas;

(e) Suppressing the application or development of technology or invention, whether patented or unpatented;

(f) Extending the use of rights under patents, trade marks or copyrights to matters not properly within the scope of the authorized grant, or to products or conditions of production, use or sale which are not the immediate subjects of the authorized grant.

ARTICLE 40. PROCEDURE WITH RESPECT TO COMPLAINTS AND CONFERENCES

1. The Organization shall

(a) arrange, if it considers such action to be justified, for particular Members to take part in a conference requested by any Member which considers that any particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39;

(b) consider each written complaint submitted by any Member or submitted with the authorization of a Member by any affected person, organization or business entity within that Member's jurisdiction, claiming that particular practices exist which have or are about to have the effect described in paragraph 1 of Article 39, and prescribe the minimum information to be included in such complaints;

(c) consider and request each Member concerned to furnish such information as the Organization may deem necessary including information or data from commercial enterprises within its jurisdiction, and then determine whether further investigation is justified;

(d) if it considers that further investigation is justified, notify all Members of each such complaint, request the complainant or any member to provide such information relevant to the complaint as the Organization may deem necessary and conduct or arrange for hearings provided that any Member and the parties alleged

to have engaged in the practice shall have the opportunity to be heard at such hearings.

(e) review all information available and determine whether the practices in question have or are about to have the effect described in paragraph 1 of Article 39.

2. The Organization shall

(a) report fully to all Members its determination and the reasons therefor; if it finds that the practices have had [or are about to have] the effect described in paragraph 1 of Article 39, it shall request each Member concerned to take every possible action to prevent the continuance or recurrence of the practices, and may recommend to the Members concerned remedial measures to be carried out in accordance with their respective laws and procedures;

(b) request all Members concerned to report fully the action they have taken to achieve these results;

(c) prepare and publish, as soon as possible after enquiries have been provisionally or finally closed, reports on all complaints dealt with under paragraph 1 (d) of this Article, showing fully its decisions, findings or other conclusions, the reasons therefor and any action which the Organization has recommended to the Members concerned; *Provided*, that

(i) publication of such reports or any portion thereof may be withheld if it deems this course justified; and

(ii) the Organization shall not, if a Member so requests, disclose confidential information furnished by that Member which would materially damage the legitimate business interests of a commercial enterprise.

(d) report to all Members and make public if it deems desirable, the action which has been taken by the Members concerned to realize the purposes described in paragraph 2 (a) of this Article.

ARTICLE 41. STUDIES RELATING TO RESTRICTIVE BUSINESS PRACTICES

1. The Organization may

(a) conduct studies, either on its own initiative or at the request of any Member, or of the United Nations, or of any specialized agency brought into relationship with the United Nations, relating to

(i) types of restrictive business practices in international trade;

(ii) conventions, laws and procedures concerning for example incorporation, company registration, investments, securities, prices, markets, fair trade practices, trademarks, copyrights, patents and the exchange and development of technology, insofar as they are relevant to restrictive business practices;

(b) request information from Members in connection with such studies.

2. The Organization may

(a) make recommendations to Members concerning such conventions, laws and procedures as are relevant to their obligations under this Chapter;

(b) arrange conferences for purposes of general consultation on any matters relating to restrictive business practices.

ARTICLE 42. OBLIGATION OF MEMBERS

1. In order to implement the preceding Articles of this Chapter, each Member shall

(a) take all possible steps by legislation or otherwise to ensure that private and public commercial enterprises within its jurisdiction do not engage in practices which have the effect described in paragraph 1 of Article 39; (b) take fullest account of the Organization's determinations, requests and recommendations made under paragraph 2 (a) of Article 40 and determine appropriate action in accordance with its system of law and economic organization to prevent within its jurisdiction the continuance or recurrence of any practices which the Organization find to have had [or to be about to have] the effect described in paragraph 1 of Article 39.

2. Each Member shall

(a) establish procedures to deal with complaints, conduct investigations, prepare information and reports requested by the Organization and generally assist in preventing practices which have the effect described in paragraph 1 of Article 39, these measures to be taken in accordance with the particular system of law and economic organization of the country concerned;

(b) conduct such investigations as may be necessary and practicable to secure information requested by the Organization or to prevent practices which have the effect described in paragraph 1 of Article 39;

(c) furnish to the Organization, as promptly as possible and to the fullest extent practicable, such information as is requested by the Organization under paragraph 1 (c), (d) and 2 (b) of Article 40 and under paragraph 1 (a) of Article 41 provided that the Member

(1) may withhold confidential information relating to its national security; or

(2) on proper notification to the Organization, may withhold information which is not essential to the Organization in undertaking an adequate investigation and which, if disclosed, would materially damage the legitimate business interests of a commercial enterprise. In notifying the Organization that it is withholding information pursuant to this clause, the Member shall indicate the general character of the information withheld;

(d) report, as requested by the Organization under paragraph 2 (b) of Article 40, the action taken, independently or in concert with other Members, to implement recommendations made by the Organization under paragraph 2 (a) of Article 40, and, in cases in which no action is taken, to explain to the Organization the reasons therefor and discuss the matter further with the Organization if requested to do so;

(e) take part in conferences upon the request of the Organization in accordance with paragraph 1 (a) of Article 40 and paragraph 2 (b) of Article 41.

ARTICLE 43. SUPPLEMENTARY ENFORCEMENT ARRANGEMENTS

1. Members may co-operate with each other in prohibitive, preventive or other measures for the purpose of making more effective any remedial order issued by a duly authorized agency of any Member in furtherance of the objectives of this Chapter.

2. Members participating in or intending to participate in such co-operative action shall notify the Organization.

ARTICLE 44. CONTINUED EFFECTIVENESS OF DOMESTIC MEASURES AGAINST RESTRICTIVE BUSINESS PRACTICES

Any act or omission to act on the part of the Organization shall not preclude any Member from enforcing any national statute or decree directed towards preventing monopoly or restraint of trade.

ARTICLE 45. EXCEPTIONS TO THE PROVISIONS OF THIS CHAPTER

1. The obligations in this Chapter shall not apply to

(a) inter-governmental commodity arrangements meeting the requirements of Chapter VII;

(b) the international arrangements excepted in Article 50.

2. Notwithstanding the foregoing paragraph, the Organization may make recommendations to Members and to appropriate inter-governmental organizations concerning any features of the arrangements referred to in paragraph 1 (b) of this Article which may have the effect described in paragraph 1 of Article 39.

CHAPTER VII. INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS

Section A—Inter-governmental commodity arrangements in general

ARTICLE 46. DIFFICULTIES RELATING TO PRIMARY COMMODITIES

The Members recognize that the relationship between production and consumption of some primary commodities may present special difficulties. These special difficulties are different in character from those which manufactured goods present generally. They arise out of such conditions as the disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuations in prices. They may have serious adverse effects on the interests of producers and consumers, as well as widespread repercussions jeopardizing general policies of economic expansion.

ARTICLE 47. OBJECTIVES OF INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS

Inter-governmental commodity arrangements may be employed to enable countries to overcome the special difficulties referred to in Article 40 without resorting to action inconsistent with the purposes of this Charter, by achieving the following objectives:

(a) to prevent or alleviate the serious economic problems which may arise when production adjustments cannot be effected by the free play of market forces as rapidly as the circumstances require;

(b) to provide, during the period which may be necessary, framework for the consideration and development of measures which will have as their purpose economic adjustments designed to promote the expansion of consumption or a shift of resources and manpower out of over-expanded industries into new and productive occupations.

(c) to moderate pronounced fluctuations in the price of a primary commodity above and below the level which expresses the long term equilibrium between the forces of supply and demand [in order to achieve a reasonable degree of stability on the basis of remunerative prices to efficient producers without unfairness to consumers];

(d) to maintain and develop the natural resources of the world and protect them from unnecessary exhaustion; and

(e) to provide for expansion in the production of a primary commodity which is in such short supply as seriously to prejudice the interests of consumers.

ARTICLE 48. SPECIAL COMMODITY STUDIES

1. Any Member substantially interested in the "production or consumption of, or trade in" a particular primary commodity shall be entitled, if it considers that special difficulties exist or are expected to arise regarding the commodity, to ask that a study of that commodity be made.

2. Unless it resolves that a prima facie case has not been established, the Organization shall promptly invite the Members substantially interested in the production or consumption of or trade in the commodity to appoint representatives to a Study Group to make a study of the commodity. Non-Members having a similar interest may also be invited.

3. The Study Group shall, in the light of an investigation of the root causes of the problem, promptly report its findings regarding the production, consumption and trade situation of the commodity. If the Study Group finds that special difficulties exist or are expected to arise it shall make recommendations to the Organization as to how best to deal with such difficulties. The Organization shall transmit promptly to the Members any such findings and recommendations.

ARTICLE 49. COMMODITY CONFERENCES

1. On the basis of the recommendations of the Study Group or on the basis of information about the root causes of the problems agreed to be adequate by the Members substantially interested in the "production or consumption of, or trade in" a particular primary commodity, the Organization shall promptly at the request of a Member having a substantial interest, or may, on its own initiative, convene an inter-governmental conference for the purpose of discussing measures designed to meet the special difficulties which have been found to exist or are expected to arise.

2. Any Member having a substantial interest in the production or consumption of or trade in the commodity shall be entitled to participate in the Conference, and non-Members having a similar interest may be invited by the Organization to participate.

ARTICLE 50. RELATIONS WITH INTER-GOVERNMENTAL ORGANIZATIONS

1. Competent inter-governmental organizations, such as the Food and Agriculture Organization, shall be entitled:

(a) to submit to the Organization any relevant study of a primary commodity;

(b) to ask that a study of a primary commodity be made.

2. The Organization may request any inter-governmental organization which it deems to be competent, to attend or take part in the work of a Study Group or of a Commodity Conference.

ARTICLE 51. GENERAL PRINCIPLES OF INTER-GOVERNMENTAL COMMODITY ARRANGEMENTS

Members undertake to adhere to the following principles governing the operation of all types of inter-governmental commodity arrangements:

(a) such arrangements shall be open initially to participation by any Member on terms no less favourable than those accorded to any other country and thereafter upon such terms as may be approved by the Organization;

(b) non-Members may be invited by the Organization to participate in such arrangements and the provisions of subparagraph (a) of this Article applying to Members shall apply to any non-Member so invited;

(c) under such arrangements participating countries shall arrange for equitable treatment as between non-participating Members and participating countries affording advantages commensurate with obligations accepted by non-participating Members;

(d) participating countries shall, in matters the subject of such arrangements, afford non-participating Members treatment no less favourable than that accorded to any non-Member which does not participate in the arrangement;

(e) such arrangements shall include provision for adequate participation of countries substantially interested in the importation or consumption of the commodity as well as those substantially interested in its exportation or production;

(f) such arrangements shall provide, where practicable, for measures designed to expand world consumption of the commodity;

(g) full publicity shall be given to any inter-governmental commodity arrangement proposed or concluded, to the statements of considerations and objectives advanced by the proposing Members, to the nature and development of measures adopted to correct the underlying situation which gave rise to the arrangement and, periodically, to the operation of the arrangement.

Section B—Inter-governmental commodity arrangements involving the regulation of production, trade or prices**ARTICLE 52. CIRCUMSTANCES GOVERNING THE USE OF REGULATORY AGREEMENTS**

Members agree that regulatory agreements may be employed only when it is determined that:

(a) a burdensome surplus of a primary commodity has developed or is expected to develop, which would cause serious hardship to producers, among whom are small producers who account for a substantial portion of the total output, and these conditions cannot be corrected by normal market forces alone, in time to prevent such hardship, because characteristically, in the case of the primary commodity concerned, a substantial reduction in price does not readily lead to a significant increase in consumption nor to a significant decrease in production; or

(b) widespread unemployment or underemployment in connection with a primary commodity, arising out of difficulties of the kind referred to in Article 40, has developed or is expected to develop, which would not be corrected by normal market forces alone in time to prevent widespread and undue hardship to workers, because characteristically, in the case of the industry concerned, a substantial reduction in price does not readily lead to a significant increase in consumption but to the reduction of employment and because areas in which the commodity is produced in substantial quantity do not afford alternative employment opportunities for the workers involved; or

(c) the Organization finds that, for a commodity other than a primary commodity, in addition to the circumstances set forth in either (a) or (b) above, exceptional circumstances justify such action. Agreements under this subparagraph shall be governed not only by the principles set forth in this Chapter but also by any other requirements which the Organization may establish.

ARTICLE 53. ADDITIONAL PRINCIPLES GOVERNING REGULATORY AGREEMENTS

Members undertake to adhere to the following principles governing regulatory agreements in addition to those stated in Article 51:

(a) Members agree not to enter into any new regulatory agreement unless it has been recommended by a conference called in accordance with Article 40. Nevertheless, Members substantially interested in the production or consumption of, or trade in, a particular commodity may proceed by direct negotiation to the

conclusion of an agreement, provided that it conforms to the other provisions of this Chapter, if there has been unreasonable delay in the proceedings of the Study Group or of the Commodity Conference;

(b) such agreements shall be designed to assure the availability of supplies adequate at all times for world demand at reasonable [and stable] prices [remunerative to efficient producers];

(c) under such agreements participating countries which are largely dependent for consumption on imports of the commodity involved shall, in determinations made relating to substantive matters, have together a voice equal to that of those countries largely interested in obtaining export markets for the commodity, provided that any country which is largely interested in the commodity but which does not fall precisely under either of the above categories, shall according to its interests in the circumstances, have an appropriate voice within one or the other category without altering the equality between the two;

(d) such agreements shall, with due regard to the need during a period of change for preventing serious economic and social dislocation and to the position of producing areas which may be suffering from abnormal and temporary disabilities, make appropriate provision to afford increasing opportunities for satisfying world requirements from sources from which such requirements can be supplied in the most effective and economic manner;

(e) participating countries shall formulate and adopt a programme of economic adjustment believed to be adequate to ensure substantial progress toward solution of the problem within the time limits of the agreement.

ARTICLE 54. ADMINISTRATION OF REGULATORY AGREEMENTS

1. Each regulatory agreement shall provide for the establishment of a governing body, herein referred to as a Commodity Council.

2. Each of the countries participating in an agreement shall be entitled to have one representative on the Commodity Council. These representatives alone shall have the right to vote. Their voting shall be determined in such a way as to conform with the provisions of sub-paragraph (c) Article 53.

3. The Organization shall be entitled to appoint a non-voting representative to each Commodity Council and may invite any competent inter-governmental organization to nominate a non-voting representative for appointment to a Commodity Council.

4. Each Commodity Council shall have a non-voting chairman who, if the Council so requests, shall be nominated by the Organization.

5. The Secretariat of each Commodity Council shall be appointed by the Council after consultation with the Organization.

6. Each Commodity Council shall adopt appropriate rules of procedure and regulations regarding its activities, provided that they are not found by the Organization to be inconsistent with the principles and provisions of this Charter.

7. Each Commodity Council shall make periodic reports to the Organization on the operation of the agreement which it administers. In addition, it shall make such special reports as the Organization may specify or as the Council itself considers to be of value to the Organization.

8. The expenses of a Commodity Council shall be borne by the participating countries.

ARTICLE 55. PROVISION FOR INITIAL TERMS, REVIEW AND RENEWAL OF REGULATORY AGREEMENTS

No regulatory agreement shall remain in force for more than five years, unless renewed, and no renewal shall be for a longer period than five years. Renewal and termination of such agreements shall be subject to the procedures established therein and renewed agreements shall conform to the principles of this Chapter. Regulatory agreements shall also include provision for withdrawal of any party. Periodically, at intervals no greater than three years, the Organization shall prepare and publish a review of the operation of each agreement in the light of the principles set forth in this Chapter. Moreover a regulatory agreement shall provide that if its operation has failed substantially to conform to the principles laid down in this Chapter, participating countries shall revise the agreement to conform to the principles, or shall terminate it. When an agreement is terminated, the Organization shall take charge of archives and statistical material of the Commodity Council.

ARTICLE 56. SETTLEMENT OF DISPUTES

Any question or difference concerning the interpretation of the provisions of a regulatory agreement or arising out of its operation shall be discussed originally by the Commodity Council. In the absence of agreement, the question shall be referred to the Commodity Commission for examination and recommendation to the Executive Board. The Executive Board shall then issue a ruling in pursuance of the provisions of Article 86.

Section C—Miscellaneous provisions

ARTICLE 57. OBLIGATIONS OF MEMBERS REGARDING EXISTING AND PROPOSED COMMODITY ARRANGEMENTS

1. Members shall transmit to the Organization the full text of each inter-governmental commodity arrangement in which they are participating at the time of the coming into force of their obligations under this Charter. Members shall also transmit to the Organization appropriate information regarding the formulation, provisions and operation of such arrangements. Members shall conform with the decisions made by the Organization regarding their continued participation in any such inter-governmental commodity arrangement which, after review by the Organization, shall have been found to be inconsistent with the intentions of this Chapter.

2. Members shall transmit to the Organization appropriate information regarding any negotiations, looking to the conclusion of an inter-governmental commodity arrangement, in which they are participating at the time of the coming into force of their obligations under this Charter. Members shall also conform with decisions made by the Organization regarding their continued participation in any such negotiations. The Organization may dispense with the requirement of a Study Group or a Commodity Conference, if it finds them unnecessary in the light of the negotiations.

ARTICLE 58. GENERAL UNDERTAKING BY MEMBERS

Members, including Members not parties to a particular commodity arrangement, shall give the most favourable possible consideration to any recommendation by a Commodity Council for expanding consumption of the commodity in question.

ARTICLE 59. EXCEPTIONS TO PROVISIONS RELATING TO INTERGOVERNMENTAL COMMODITY ARRANGEMENTS

The provisions of Chapter VII shall not apply:

(a) to inter-governmental commodity arrangements which relate solely to the equitable distribution of commodities in short supply, or to those provisions of inter-governmental commodity arrangements which appropriately relate to the protection of public morals or the protection of human, animal or plant life or health; *provided*, that such arrangements are not used to accomplish results inconsistent with the objectives of Chapter VI or Chapter VII. Members shall not participate in such arrangements if they involve the regulation of production, trade, or prices, unless authorized or provided for by a multilateral convention subscribed to by a majority of the countries affected or unless operated under the Organization;

(b) to international fisheries or wildlife conservation agreements with the sole objective of conserving and developing these resources or to agreements relating to the purchase and sale of a commodity falling under Section E of Chapter V; and

(c) to arrangements relating to flammable materials, to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment, or, in the time of war or other emergency in international relations, to the protection of the essential security interests of a Member.

ARTICLE 60. DEFINITIONS

1. For the purposes of this Chapter, the term "primary commodity" means any product of farm, forest or fishery, or any mineral, which enters world trade

in substantial volume in a form customarily called primary, and may include such a product on which minor processing has been performed in preparation for export. The term may also cover a group of commodities, of which one is a primary commodity as defined above and the others are commodities (whether primary or nonprimary) which are so closely related to the other commodities in the group that they can conveniently be dealt with in a single arrangement.

2. For the purposes of this Chapter, the term "Member" or "non-Member" shall be taken to mean a Member or non-Member of the Organization with its dependent territories. If a Member or non-Member and its dependent territories form a group, of which one or more units are mainly interested in the export of a commodity and one or more in the import of the commodity there may be either joint representation for all the associated territories or, where it is so desired, separate representation for the territories mainly interested in export and separate representation for the territories mainly interested in import.

3. A regulatory agreement is an inter-governmental commodity arrangement involving regulation of the production, export or import of a commodity or regulation of prices.

CHAPTER VIII. ORGANIZATION

Section A—Functions and structure of the Organization

ARTICLE 61. FUNCTIONS

In addition to the functions provided for elsewhere in this Charter, the Organization shall have the following functions:

(a) to collect, and analyze and publish information relating to international trade, including information relating to commercial policy, business practices, commodity problems and industrial and general economic development;

(b) to facilitate consultation among Members on all questions relating to the provisions of this Charter and to provide for the settlement of disputes growing out of the provisions of the Charter;

(c) to make recommendations for, and promote international agreement on measures designed to improve the bases of trade and to assure just and equitable treatment for the enterprises, skills, capital, arts and technology brought from one country to another, including agreement on the treatment of foreign nationals and enterprises, on the treatment of commercial travellers, of commercial arbitration and on the avoidance of double taxation;

(d) generally to consult with and make recommendations and, as necessary, furnish advice and assistance to Members regarding any matter relating to the purposes or the operation of this Charter, and to perform any other function appropriate to the purposes and provisions of this Charter;

(e) to co-operate with the United Nations and with other inter-governmental organizations for the purpose of furthering the attainment, with an economy of effort, of the economic and social objectives of the United Nations and the restoration and maintenance of international peace and security.

ARTICLE 62. STRUCTURE

The Organization shall have as its principal organs a Conference, an Executive Board, Commissions as established under Article 72, and a Secretariat.

Section B—The Conference

ARTICLE 63. MEMBERSHIP

1. The Conference shall consist of the representatives of the Members of the Organization.

2. Each Member shall have one representative and may appoint alternates and advisers to its representative to the Conference.

3. No representative to the Conference may represent more than one Member.

ARTICLE 64. VOTING

1. Each Member shall have one vote in the Conference.

2. Except as may be otherwise provided for in this Charter, decisions of the Conference shall be taken by a majority of the Members present and voting.

ARTICLE 65. SESSIONS, PROCEDURE AND OFFICERS

1. The Conference shall meet in regular annual sessions and in such special sessions as may be convoked by the Director-General at the request of the Executive Board or of a majority of the Members.

2. The Conference shall adopt its own rules of procedure. It shall annually elect its President and other officers.

ARTICLE 66. POWERS AND DUTIES

1. The Conference shall have final authority to determine the policies of the Organization. It may make recommendations to the Members and to other international organizations regarding any matter pertaining to the purposes of this Charter.

2. The Conference may delegate to the Executive Board authority to exercise any of the powers or perform any of the duties of the Organization, except such specific powers and duties as are expressly conferred or imposed upon the Conference under this Charter.

3. The Conference may, by the affirmative votes of two-thirds of the Members of the Organization, determine criteria and set up procedures, including voting procedures, for waiving, in exceptional circumstances, obligations of Members undertaken pursuant to this Charter.

4. The Conference shall establish procedures for making the determinations provided for in Article 30 and in Article 52, whereby any such determinations shall be made through the Organization by consultation among the Members substantially interested in the product concerned.

5. The Conference shall establish procedures for making the determinations, decisions and recommendations provided for in paragraph 3 (c) and (d) of Article 26, paragraph 1 (e) (1) and paragraph 2 of Article 28, paragraph 2 of Article 34 and Article 35.

6. The Conference may prepare or sponsor agreements with respect to any matter within the competence of the Organization and by affirmative votes of two-thirds of the Members present and voting recommend such agreements for acceptance. Each Member shall within a period specified by the Conference notify the Director-General of its acceptance or, in the case of non-acceptance, shall furnish a statement of the reasons therefor.

7. The Conference shall approve the budget of the Organization, and shall apportion the expenditure of the Organization among the Members.

8. The Conference shall determine the site of the Organization and shall establish such branch offices as it may consider desirable.

Section C—Tariff Committee

ARTICLE 67. TARIFF COMMITTEE

1. There shall be a Tariff Committee which shall act on behalf of the Organization in the making of recommendations and determinations pursuant to paragraph 3 of Article 24.

2. The Committee shall consist originally of those Members of the Organization which shall have made effective the General Agreement on Tariffs and Trade dated _____, 1947. Any other Member of the Organization shall be a member of the Committee when, in the judgment of the Committee, that member shall have completed negotiations pursuant to paragraph 1 of Article 24 comparable in scope or effect to those completed by the original members of the Committee.

3. Each member of the Committee shall have one vote.

4. Decisions of the Committee pursuant to paragraphs 1 and 2 of this Article shall be taken by a two-thirds majority of its members and other decisions by a simple majority.

5. The Committee shall adopt its own rules of procedure, including provision for the election of its officers.

Section D—Executive Board

ARTICLE 68. MEMBERSHIP

[1. The Executive Board shall consist of fifteen Members of the Organization elected by the Conference.

2. Subject to the provisions of paragraph (3) one-third of the members of the Executive Board shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election members of the Executive Board shall be chosen. The term of office of five members shall expire at the end of one year and of five other members at the end of two years, in accordance with arrangements made by the Conference.

4. Each member of the Executive Board shall have one representative and may appoint alternates and advisers to its representative.]

ARTICLE 69. VOTING

1. Each member of the Executive Board shall have one vote.

2. Decisions of the Executive Board shall be made by a majority of members present and voting.

ARTICLE 70. SESSIONS, PROCEDURE AND OFFICERS

1. The Executive Board shall adopt its own rules of procedure, including rules concerning the convening of its sessions.

2. The Executive Board shall annually elect its Chairman and other officers, who shall be eligible for re-election.

3. The Chairman of the Executive Board, as such, shall be entitled to participate, without the right to vote, in the deliberations of the Conference.

4. Any Member of the Organization which is not a member of the Executive Board, shall be invited to send a representative to any discussion by the Board of a matter of particular and substantial concern to that Member. Such representative shall, for the purpose of such discussion, have all the rights of members of the Board except the right to vote.

ARTICLE 71. POWERS AND DUTIES

1. The Executive Board shall be responsible for the execution of the policies of the Organization and shall exercise the powers delegated to it and perform the duties assigned to it by the Conference. It shall supervise the activities of the Commissions provided for in this Charter and shall take such action upon their recommendations as it may deem appropriate. It shall provide adequate machinery to review the work of the Organization relating to industrialization and general economic development.

2. The Executive Board may make recommendations to the Conference, to the Members of the Organization, or to other international organizations, on any subject falling within the scope of this Charter, and shall prepare the preliminary agenda of the Conference.

3. The Executive Board may recommend to the Conference the admission of new Members of the Organization.

Section B—commissions

ARTICLE 72. ESTABLISHMENT

The Conference shall establish a Commission on Commercial Policy, a Commission on Business Practices and a Commodity Commission and may establish such other Commissions as may be required. The Commissions shall be responsible to the Executive Board.

ARTICLE 73. COMPOSITION AND PROCEDURE

1. Commissions shall be composed of persons chosen by the Executive Board and qualified by training or experience to carry out the functions of the Commissions in accordance with the purposes of this Charter.

2. The number of members of each Commission and the conditions of service of the members of each Commission shall be determined in accordance with regulations prescribed by the Conference.

3. Each Commission shall elect its Chairman, and shall, subject to approval by the Executive Board, adopt its own rules of procedure.

4. The Chairman of each Commission shall be entitled to participate, without the right to vote, in the deliberations of the Executive Board and of the Conference.

5. Pursuant to agreements under paragraph 2 of Article 81, the Organization may make arrangements for representatives of other inter-governmental organizations having a special interest in the activities of any of the Commissions to participate in the work of such Commissions.

ARTICLE 74. GENERAL FUNCTIONS

The Commissions shall perform such functions as the Conference of the Executive Board may assign to them, including such functions as the Executive Board may deem appropriate in connection with the settlement of disputes. The functions of the Commission on Commercial Policy, the Commission on Business Practices and the Commodity Commission shall include those specified in Articles 75, 76 and 77, respectively. The commissions shall consult with each other as to necessary for the exercise of their functions.

ARTICLE 75. FUNCTIONS OF THE COMMISSION ON COMMERCIAL POLICY

The Commission on Commercial Policy shall have the following functions:

(a) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter V and regarding the commercial policy aspects of proposals involving the exercise by the Organization of its functions under this Charter; and

(b) to develop and to recommend to the Executive Board programmes designed to further the objectives of this Charter in the general field of commercial policy.

ARTICLE 76. FUNCTIONS OF THE COMMISSION ON BUSINESS PRACTICES

The Commission on Business Practices shall have the following functions:

(a) to conduct studies in the field of Restrictive Business Practices, as provided for in paragraph (a) of Article 41; and

(b) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter VI and regarding the exercise of the functions of the Organization under this Charter, insofar as they relate to Restrictive Business Practices.

ARTICLE 77. FUNCTIONS OF THE COMMODITY COMMISSION

The Commodity Commission shall have the following functions:

(a) to study commodity problems and proposals for dealing with them and to prepare the reviews called for in Article 55; and

(b) to advise and make recommendations to the Executive Board on all matters falling within the scope of Chapter VII and those arising from the provisions of paragraph 4 of Article 30.

Section f—The Secretariat

ARTICLE 78. COMPOSITION

1. The Secretariat shall consist of a Director-General and such staff as may be required.

2. The Director-General shall have authority to appoint Deputy Directors-General in accordance with regulations approved by the Conference.

ARTICLE 79. THE DIRECTOR-GENERAL

1. The Director-General shall be appointed by the Conference upon the recommendation of the Executive Board. The powers, duties, terms and conditions of office of the Director-General shall be in accordance with regulations approved by the Conference. He shall be the chief administrative officer of the Organization, and shall be subject to the general supervision of the Executive Board.

2. The Director-General or his representative shall be entitled to participate, without the right to vote, in all meetings of the Conference of the Executive Board, of the Commissions and of the committees of the Organization. The Director-General may initiate proposals for the consideration of any organ of

the Organization. He shall present through the Executive Board an annual report to the Conference on the work of the Organization and shall in consultation with the Executive Board prepare the budget of the Organization for submission to the Conference.

ARTICLE 80. EMPLOYMENT OF STAFF

1. The Director-General shall appoint the staff of the Secretariat and fix its duties and terms and conditions of service in accordance with regulations approved by the Conference. The paramount consideration in the employment of the staff and in the determination of its conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity, due regard being paid to the importance of recruitment on as wide a geographical basis as possible.

2. The conditions of service, such as the provisions governing qualifications, salary, tenure and retirement of members of the Secretariat shall be fixed, so far as practicable, in conformity with those for members of the Secretariat of the United Nations and of other specialized agencies.

Section g—miscellaneous provisions

ARTICLE 81. RELATIONS WITH OTHER ORGANIZATIONS

1. The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected through agreement with the United Nations under Article 63 of the Charter of the United Nations, which agreement shall be concluded by the Director-General and approved by the Conference. The agreement shall provide for effective cooperation between the two Organizations in the pursuit of their common purposes, and at the same time shall recognize the competence of the Organization within its jurisdiction as defined in this Charter. The Conference may adjust the provisions of this Charter to conform to any such agreement provided such adjustments do not involve new obligations on the part of Members.

2. The Organization shall co-operate with the other inter-governmental organizations having related interests and activities. Arrangements for co-operation with such organizations may be made by the Executive Board. Effective working relationships with such organizations, which may include the establishment of joint committees or provision for reciprocal representation at meetings or such other measures as may be necessary to assure effective co-operation, may be established by the Director-General.

3. The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within its competence and may invite them to undertake specific tasks.

4. Whenever the Conference of the Organization and the competent authorities of any other international organization, whose purposes and functions lie within the competence of the Organization deem it desirable to effect a transfer of its resources and functions to the Organization, to incorporate it into the Organization or to bring it under the supervision or authority of the Organization, the Director-General, subject to the approval of the Conference, may enter into mutually acceptable arrangements for this purpose. The Organization may acquire such resources and assume such functions of, or incorporate or exercise such control over, such other organizations as may be provided by any convention or agreement appropriate to the purpose. The Members shall, subject to their respective constitutional requirements, take such steps as the Conference may determine to integrate such other international organizations into the structure of the Organization.

ARTICLE 82. INTERNATIONAL RESPONSIBILITIES OF PERSONNEL OF THE ORGANIZATION

1. The responsibilities of the Director-General and of the staff shall be exclusively international in character. In the discharge of their duties they shall not seek or receive instructions from any government, or from any authority external to the Organization. They shall refrain from any action which might prejudice their position as international officials.

2. The provisions of paragraph 1 of this Article shall also apply to the members of the Commissions provided for in Article 72.

3. The Members shall respect the international character of the responsibilities of these persons and shall not seek to influence them in the discharge of their duties.

ARTICLE 83. INTERNATIONAL LEGAL STATUS OF THE ORGANIZATION

The Organization shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.

ARTICLE 84. STATUS OF THE ORGANISATION IN THE TERRITORY OF MEMBERS

1. The Organization shall enjoy in the territory of each of its Members such legal capacity privileges and immunities as may be necessary for the exercise of its functions.

2. Representatives of the Members of the Organization and its officials shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the Organization.

3. The Conference may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article and may propose conventions to the Members for this purpose.

ARTICLE 85. AMENDMENTS TO THE CHARTER

1. Any amendment of this Charter which does not involve new obligations on the part of Members shall become effective upon receiving the approval of the Conference by the affirmative votes of two-thirds of the Members.

2. Any amendment to this Charter which involves new obligations on the part of Members, shall become effective for each Member accepting the amendment, upon acceptance on the part of two-thirds of the Members, and thereafter for each remaining Member on acceptance by it. The Conference may determine that any Member which has not accepted an amendment under this paragraph within a period specified by the Conference, shall cease to be a Member of the Organization. In the absence of such determination, a Member not accepting an amendment shall, notwithstanding the provisions of paragraph 1 of Article 80, be free to withdraw from the Organization upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General.

3. The Conference shall, by the affirmative votes of two-thirds of the Members, adopt rules of procedure for carrying out the provisions of this Article.

ARTICLE 86. INTERPRETATION AND SETTLEMENT OF DISPUTES

1. The texts of this Charter in the official languages of the United Nations shall be equally authoritative.

[2. Any question or differences concerning the interpretation of this Charter or arising out of its operation shall be referred to the Executive Board for a ruling thereon. The Executive Board may decide either to give a ruling on the matter itself, or to refer it, with the consent of the parties, to arbitration upon such terms as may be agreed by the parties. Any ruling of the Executive Board shall, upon the request of any Member directly affected or, if the ruling is of general application, upon the request of any Member, be referred to the Conference.]

[3. Any justiciable issue arising out of a ruling of the Conference with respect to the interpretation of sub-paragraphs (c), (d), (e), or (k) of Article 87 or of paragraph 2 of Article 59 may be submitted by any party to the dispute to the International Court of Justice, and any justiciable issue arising out of any other ruling of the Conference may, in accordance with such procedures as the Conference shall establish, be submitted by any party to the dispute to the International Court of Justice. The Members accept the jurisdiction of the Court in respect of any dispute submitted to the Court under this Article.]

[4. The Organization may, in accordance with paragraph 2 of Article 96 of the Charter of the United Nations, request from the International Court of Justice advisory opinions on legal questions arising within the scope of its activities.]

ARTICLE 87. CONTRIBUTIONS

Each Member shall contribute promptly to the Organization its share of the Organization's expenditures as apportioned by the Conference. A Member of the Organization, which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the organs of the Organization if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Conference may, nevertheless, permit such a Member to vote, if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

ARTICLE 88. ENTRY INTO FORCE

1. The original of this Charter, as set forth in the Final Act of the United Nations Conference on Trade and Employment, shall be deposited with the Secretary-General of the United Nations, who will furnish certified copies thereof to all interested governments.

2. Each government accepting this Charter shall deposit an instrument of acceptance with the Secretary-General of the United Nations, who will inform all governments represented at the United Nations Conference on Trade and Employment and all other Members of the United Nations which were not represented at that Conference, of the day of deposit of each instrument of acceptance and of the day on which this Charter enters into force under paragraph 3 of this Article.

3. This Charter shall enter into force on the sixtieth day following the day on which the number of governments represented at the United Nations Conference on Trade and Employment which have deposited instruments of acceptance pursuant to paragraph 2 of this Article shall reach twenty, and the acceptance of each other accepting government shall take effect on the sixtieth day following the day on which the instrument of such acceptance is deposited, *Provided* that, if this Charter shall not have entered into by..... 194..., any of the governments which have made effective the General Agreement on Tariffs and Trade dated 194..., together with any other governments represented at the United Nations Conference on Trade and Employment, may agree to bring this Charter into force among themselves in accordance with arrangements which they may agree upon. Any instrument of acceptance deposited with the Secretary-General of the United Nations shall be taken as covering both procedures for bringing this Charter into force, unless it expressly provides to the contrary or is withdrawn.

4. Each government accepting this Charter does so in respect of its metropolitan territory, and such other territories for which it has international responsibility with the exception of those territories which are self-governing in respect of matters provided for by the Charter. Each Member shall notify the Secretary-General of the United Nations of its acceptance of this Charter on behalf of any such self-governing territory, and the provisions of this Charter shall become applicable to that territory on the sixtieth day following the day of the receipt of such notification.

5. Each accepting government shall take such reasonable measures as may be available to it to assure observance of the provisions of this Charter by subsidiary governments within its territory.

ARTICLE 89. WITHDRAWAL AND TERMINATION

1. Without prejudice to the provisions of paragraph 3 of Article 24 or paragraph 2 of Article 85 any Member may withdraw from the Organization either on its own behalf or on behalf of a territory which is at the time self-governing in respect of matters provided for by this Charter at any time after the expiration of the three years from the day of the entry into force of this Charter, by written notice addressed to the Director-General. The Director-General shall immediately notify all other Members.

2. A withdrawal under paragraph 1 of this Article shall take effect upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General.

3. This Charter may be terminated at any time by agreement of three-fourths of the Members.

ANNEXURE A

List of territories referred to in sub-paragraph (2) (a) (ii) of Article 14.

The United Kingdom of Great Britain and Northern Ireland and its dependent territories,

Canada,

The Commonwealth of Australia and its dependent territories,

New Zealand and its dependent territories,

The Union of South Africa including South West Africa,

Ireland,

India,

Newfoundland,

Southern Rhodesia.

Burma,

Ceylon.

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