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SECOND SESSION OF THE PREPARATORY COMMITTEE OF THE
UNITED NATIONS CONFERENCE ON TRADE AND EMPLOYMENT

VERBATIM REPORT

* ELEVENTH MEETING OF COMMISSION A

HELD ON WEDNESDAY, 11 JUNE 1947 at 2.30 P.M. IN THE
PALAIS DES NATIONS, GENEVA

Mr. MAX SUTENS (Chairman) (Belgium)

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* For record of Tenth Meeting see Summary Record E/PC/T/A/SR/10.

CHAIRMAN: The meeting is called to order.
(Interpretation)

Gentlemen, we have today to examine and discuss Articles 34, 35, 36 and 38 of the draft Charter. I suppose you have all taken into consideration the annotated Agenda prepared by the Secretariat for these Articles (W/175 dated 6th June). We shall start with Article 34.

I want to remind you that we are going to follow the procedure which we have always followed, that is, to restrict our discussion in this Commission to questions of substance, and let the sub-Committee which we will appoint, if we do not continue the mandate of the Committee working on Articles 14, 15 and 2a, discuss questions of drafting.

As far as Article 34 is concerned, we are confronted with an amendment to Paragraph 1, proposed by Belgium and Luxembourg. I think this is an amendment of substance, and I therefore invite M. Forthomme to develop his argument.

M. PIERRE FORTHOUME (Belgium) (Interpretation): Gentlemen, the Belgian and Luxembourg delegations believe that paragraph 1 of Article 34 provides for an exception for an escape clause of a very general character, and that therefore we must be very careful not to limit the case too strictly in which these paragraphs could be applied. If we admit as a principle, and that is already an important privilege, that a country can revoke some concessions on tariffs which it has conceded, in order to protect its own producers, it would be going a little bit too far to extend the possibility of such an action to the territories which enjoy a preferential treatment as far as this nation is concerned. It has been admitted generally that such an action should be taken at the request of such a country which enjoys such preferences, and if we are not very careful what that paragraph entails we will, to a great extent, augment the difficulties of those who have to protect their own production if they have to discuss not only with one country but with the territories which are related to that country by preferential arrangements. Therefore, the Belgian delegation proposes to delete this paragraph to make equal as far as possible the means of defence of all the parties engaged in such negotiations.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I am afraid that the suggestion which is made by the Belgian delegation would definitely not be acceptable to us. It seems to us that this is a question of equity and that the equity springs from the nature of the original bargain which we have in contemplation, and which is the reduction of tariffs on the one hand against the reduction, possibly elimination, of preferences on the other. It seems to us that if countries/^{which} contemplate such reduction in their tariffs are free to withdraw reductions they have made in certain cases by this

Article, it is equitable and right that the corresponding freedom should be allowed in cases where preferences have been reduced or abolished. There has already been a great deal of criticism at home about the wide scope of this escape clause and we feel that, if there was not to be a balance under it as between the concessions on tariffs and concessions on preferences, it would become unacceptable to public opinion in the United Kingdom. It goes without saying that, if it should become necessary - as we hope it will not - to evoke this clause in relation to preference, it must in our view be evoked for the benefit of those parties who have suffered from the reduction or abolition of preference and at their request. We have put down an amendment which follows later, which is designed to make that point clear that action must be taken at the request of the party which suffers through the abolition or reduction of preferences. As I have said, this is a matter on which we have definite views, and I think we shall have to insist really on the retention of the text.

Dr. H.C. COMBS (Australia): Mr. Chairman, the delegate for Belgium based his objections to the application of this escape clause to industries adversely affected by a reduction or elimination of preference, on the principle that his delegation believes that it is desirable to equalise the means of defence between the different parties to the agreement. We believe that this is a very sound principle, provided that the means of defence are adapted to the situation against which they are intended to defend the parties. Speaking for Australia, I would just like to say that the possibility of industries dependent upon preferences being adversely affected by a modification of those preferences, is at least as great as the possibility of industries in other countries being adversely affected by a modification in tariff protection.

We have some industries in Australia of a primary producing character which have substantially grown to their present scale during the period of operation of the preferences. It is exceedingly difficult to forecast what the position of those industries will be if the preferences are modified.

I suggest that it is precisely to deal with that type of situation - where countries are invited to accept an undertaking the precise implications of which it is impossible to see in advance - that this escape clause was provided. It was provided originally for modifications of the tariff. We suggest that precisely the same justification exists for industries at present dependent upon preferences.

Since we cannot forecast precisely, it means that inevitably, in accepting a modification of those preferences, we are taking a risk which involves the livelihood of many individual producers, for many of whom it will be impossible to find alternative forms of production. Consequently this clause does appear to us to be fundamental to enable us to ensure that serious and widespread social hardship is not imposed upon some of those producers.

We do not anticipate that it will be necessary to use this clause. We very sincerely hope it will not, not only for ourselves but for the countries who will be looking at it primarily as a means of possible escape from the effects of a reduction in the tariff. Nevertheless it is important, because we cannot fully anticipate the result of the changes we are contemplating making.

Furthermore, it has another very important significance; that is, just because there is that great element of uncertainty

as to the effects of the changes we are contemplating, the possibility of having those changes accepted in our own community depends a good deal upon the assurances which we can offer that they will not, in fact, produce devastating results, and the existence of this clause is an extremely valuable instrument in the hands of those people who are anxious to err on the side of taking risks in the interests of lower barriers to trade.

This does offer the protection that, if we do take risks and if in the odd case we err on the side of too great reductions, we will be in a position to ensure that it does not cause serious social hardship. I would suggest, therefore, to the Delegate of Belgium that the application of the very principle which he himself has outlined justifies fully the retention of that part of this clause which provides a potential escape clause for industries at present dependent upon tariff preferences.

CHAIRMAN (Interpretation): I would like to ask Mr. Colban, who has been in charge of the Drafting Committee, why the sentence to which the Belgian Delegate objects is between brackets.

Mr. Erik COLBAN (Norway): I am sorry ----

Mr. R. J. SHUCKLE (United Kingdom): Mr. Chairman, I wonder if I could volunteer an explanation. You will observe that these brackets are round and not square. Round brackets are used in order to render the structure of the sentence more clear. We might have used commas, but I think it would have read less clearly if we had used commas. It is, I think, purely for the purpose of keeping the clarity of the sentence that we have used brackets.

Mr. COLBURN (Interpretation): I would like to add that those round brackets are already in the London Draft and that the Drafting Committee in New York did not want to make any changes of substance.

CHAIRMAN: (Interpretation): In the French text, a sentence which appears between brackets has a very big significance and I might have anticipated that you had already condemned this sentence in the bottom of your hearts.

Mr. COLBURN: (Interpretation): It was certainly not the intention of the Drafting Committee. We could replace the brackets by two commas.

CHAIRMAN (Interpretation): Does anybody wish to speak on this subject?

Dr. J.E.HOLLOWAY (South Africa): Mr. Chairman, I want to direct my attention next to the Belgian amendment and to the paragraph which it seeks to amend.

This Article contains the principle of what is generally known as the escape clause. I think you will all have read the directive of the President of the United States, which, if I have read it correctly, lays upon the United States Delegation the liability of having an escape clause in the Charter.

I think, Mr. Chairman, we ought to express a certain amount of moderate gratitude to the United States for warning us beforehand that any concessions the United States make in these negotiations must be taken with a measure of reserve. That is essentially fair play, to give us that warning.

This paragraph as it stands will no doubt be amended, but a paragraph of this nature will no doubt have to go into the Draft Charter and therefore, from that point of view, the South African Delegation will not object in principle to the inclusion of this provision for escape. But I wish to point out certain consequences.

Part of the negotiations are based on the assumption that the countries of the British Commonwealth must sacrifice, and sacrifice for all time, certain rights that they have hitherto exercised, and exercised for a long time among themselves. It will close to us an alternative way of organising our trade and will make it necessary for us to break down certain things that we have done in the past in order to organise the trade in that way.

It is true that that is intended to be made possible for us by the opening of alternative ways of organising our trade, and then, just to complete the circle, Article 34 again makes it possible to close up that alternative way of organising our trade to bring us back to the original position we were in, without giving us any alternative.

Well, Mr. Chairman, as I have said, in the circumstances in which this clause figures in the Charter, we shall, no doubt, have to accept some sort of clause of this nature. What I do wish to say - and say with a good deal of emphasis - is this: that if a clause like this is used in such a way as gradually to whittle away what we have paid for giving up that right to make preferential arrangements among ourselves, the whole basis of the Charter and the Organization will fall away; it cannot continue.

The negotiations have been referred to by the late Lord Keynes as horse-trading and this Article might very well be so interpreted: - that we buy a horse for 200 dollars, we pay the 200 dollars, but the party selling the horse is at liberty to take the horse back and keep the 200 dollars. Well, if that happens, something more will happen, and I want to state that very explicitly. I want to point out further that the clause as drafted - I am not talking of the principle but the clause as drafted - has been so drafted as to put the party whose horse and money are being taken away in a somewhat more difficult position to apply any corrective measures than the party that took the horse and the money.

The party that starts by taking advantage of the escape clause must give notice as far in advance as may be practicable. That sounds very nice but of course "as far in advance as may be practicable" may be a month, or it may be a week, or it may be twenty-four hours. But when the Article goes on to say that as a matter of fact there may be circumstances under which you have to give no notice, you can just act first of all and then talk about it afterwards. Now, what remedy has the aggrieved party got under this document, - this document which is to be a fair document as between the various countries engaged in horse-trading? - The country which is aggrieved may not act as precipitately as the country which created the problem. To start with, an attempt must first be made to try and arrive at some sort of agreement. Now I think all of you have had experience in intergovernmental discussions on matters in which two Governments are in conflict with each other over a particular thing and you know that that is something which takes a very considerable amount of time. However, let us assume that things go particularly fast and that there is established within a comparatively short time that there is no agreement. May the aggrieved party then act as precipitately as the party that has

caused the problem? No; he must give 30 days notice, and he cannot act before the expiration of 30 days. What is more, he must make up his mind inside the period of 60 days whether he is going to act at all and when the 60 days have passed then he may not act any more. So that if, in a desire not to put more limitations on international trade, he should, in the first 60 days, think that probably no great harm will be done and therefore it is not necessary for him to act, and he then finds within the next period of 60 days that a great deal of harm is done to him, he can no longer act because the period has passed. That is the draft as it stands now, in plain English.

The English is not so plain at one other point. I do not want to try to suggest that we deal with this point now. I am mentioning it only so that the drafting committee can take note of it. The words at the end of the first sentence of paragraph 3, "..... the suspension of which the Organisation does not disapprove", refers to something. That "which" refers to something antecedent to that paragraph - which antecedent, which earlier word it is, I do not know. It seems to me the English has gone a bit "wonky" there and I suggest that the drafting committee might tell us what that means.

CHAIRMAN: (Interpretation): As the representative of the Union of South Africa has said himself, his remarks were of a general character and did not apply specifically to the amendment submitted by the Belgian delegation. We shall have a later opportunity to return to the remarks of the representative of the Union of South Africa, but in the meantime I would like to know if any other delegate wishes to address the meeting in connection with the Belgian amendment?

DR. G. GUTIERREZ (Cuba): Referring exclusively to the Belgian amendment, the Cuban delegation thinks it is worth while to remember that this matter came up as Article 29 of the original United States proposal. It was stated from beginning that it was an escape clause, but at that time it seemed it was not clear enough that the concessions granted during the negotiations would mean not only the concessions on customs duties but, at the same time, the negotiations made on preferences.

On account of that, when this matter was taken up by the London meeting, it was very clearly stated there that "the Preparatory Committee considers that members of the Organization, in the event of unforeseen developments and of injurious effects on their trade caused by or threatened by reasons of the obligations laid down in Chapter V (including tariff or preference concessions) should be permitted to withdraw or modify the obligations to the extent and for the time necessary to prevent the injurious effects. The Preparatory Committee agreed that this right should be subject to adequate safeguards and to the possibility of counter-action by other members in the event of the abuse of the right". So, the equation is clear and the phrase which is between brackets only gives the proper setting to a principle that has been accepted in

London, in New York and, I suppose, in Geneva.

DR. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I would like to continue the remarks made just now by the Brazilian delegate when he referred to the London conference.

In the London conference we mentioned there the preferences existing, and then I had occasion to say, when it was said that it was an adopted principle, that we would state the position of the preferences like that. I said then and there that we could not do anything against them - they were there and we had to accept them. So, we have to face the preferences as they are there, and we have, in the Charter, taken due consideration of the existing preferences. But now, I would ask, why rub it in again in this phrase?

Here, the first part of this paragraph is, I think, comprehensive enough. We speak of "unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter". Well, if you include preferences here, I might say why not include here the abolition of quantitative restrictions? An important point for other countries is the curtailment of state trading. We can go on to a very great extent there simply by including all the sacrifices of all the countries entering into this Charter.

I think, therefore, that the first part of this paragraph is, as I may repeat, comprehensive enough, and in that sense I support the amendment of my Belgian colleague.

CHAIRMAN: The Delegate of New Zealand.

Mr. WEBB (New Zealand): The New Zealand Delegation hold that if it must be assumed that an escape clause of this sort is necessary, it is a matter of audible necessity to make some such provision for preferences as is made in these words; that necessity arising out of what one might call a fundamental bargain, which was in a sense the starting point of these Charter discussions.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I would just like to make one comment on the observations of the Netherlands Delegate.

If I have read this paragraph rightly, it does already extend to all the different matters, such as quantitative restrictions, State-trading and so on, which are covered by this Chapter V.

There is a particular reason, none the less, why the matter of preferences needs to get a special mention, and that is because, in the case of all the other measures, the injury would fall upon the Member where domestic producers suffer; but there is an intention here, because where it is a preference it is not the domestic producers who suffer, but producers in the territory which receives the preferences. For that reason it is necessary, if you are going to cover all the matters in Chapter V, to make a special mention of the case of preferences in order that they should be exempt.

CHAIRMAN: The Delegate of Belgium.

Mr. FORTHOMME (Belgium) (Interpretation): I would like to explain more clearly what I mean by equality of means of defence and protection.

We have seen many times in a period where the most-favoured-nation clause was generally admitted the tentative approach of countries which tried to get together in order to lower the tariff barriers, in negotiations which were stated to be absolutely open, which meant that everybody who was outside resolved to make the same concessions as had been made at the origin by those engaged in the original negotiations; but those arrangements were stillborn, because immediately one invoked against them the most-favoured-nation clause.

As far as preferential treatments are concerned the situation is very different. It is true to say that those preferential treatments were also the result of negotiations. However, they were negotiations within a closed circle. Only those with a certain privilege were admitted to participate in the negotiations. Nobody else from the outside was admitted.

Therefore I believe it cannot be said that somebody who is outside of such an inner circle has the same needs of negotiations with the Members of that circle as two nations which are both not part of the inner circle.

(After interpretation)

Mr. FORTHOMME (Belgium): No, I said: "The nation which is outside the circle has the same action or means of defence as a nation within (against those without)".

CHAIRMAN: The Delegate of Cuba.

Dr. Gustave GUTIERREZ (Cuba): Mr. Chairman, I have listened with great attention to the remarks made by the Belgian Delegation, but I really think we are not now discussing the situation of the preferential system at all. The preferential system as well as the Customs Unions are facts in economic and international life. They have been accepted in the Conference, so to attack a certain provision which is a consequence of a principle and again raise an attack on a principle that is not being discussed now, would lead us nowhere.

It is a fact that the privileges, if they are so granted to the members of a preferential system, are not extended to other nations, but it is just the same in regard to Customs Unions. So we are facing facts of economic life and trying to bring them together in the best possible form. We do not think we are attempting to create a Utopia of economic life: it is in accordance with the principles already accepted.

CHAIRMAN: The Delegate of Norway.

H.E. Erik COLBAN (Norway): I would like to know what the words in parenthesis really add to the previous sentence. If it is agreed that serious injury to domestic producers is sufficient to make applicable this procedure of redress, is not that enough? Does not that really cover also the case of a Government enjoying preferences which suffers serious injury to its domestic production, or is it the intention that the words in parenthesis go much further? I do not quite understand, and would be very grateful if one of those who have spoken in favour of the maintenance of these words would be kind enough to explain.

CHAIRMAN The Delegate of United Kingdom.

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, I would just like to amplify what I have said before in explanation of this point. I really do not think it is very much more in the last resort than a drafting point.

You see that this paragraph starts by saying: "If, as a result of unforeseen developments and of the effect of the obligations incurred under or pursuant to this Chapter", etc. Well, "the obligations", on the face of it--I quite agree with the Delegate of Norway--would seem to cover absolutely everything which is provided for in this Chapter, that is to say, reductions of tariffs, reductions and abolition of preference, abolition of quantitative restrictions, and so on.--everything, in fact. But there is this essential difference which makes it necessary to mention the case of preference, that is, as this clause is drawn, without the words in brackets, it refers to a Member into whose territories products are being imported in such quantities as to "threaten serious injury to domestic producers", and when that happens that Member shall be free to suspend the obligations.

Now that clearly is not a wording which can fit the case of a preference, because it is not the domestic producers who are injured in this case: it is the producers in a preferred territory, and it is purely, I think, in order to get that point clear that these words in brackets are necessary. In order to make it still clearer, we have proposed an amendment which we will come to later on, to add at the end of the words in brackets: "at the request of such producers' Government". That is the point as I see it.

CHAIRMAN: The Delegate of the Netherlands.

Dr. A.B. SPEEKENBRINK (Netherlands): There is one comment I would like to make on the Delegate of the United Kingdom's reference to the damage done to the producers and the other country receiving the preferences. Well, although it was not so clear in the time before the War, one could always say that one had a system of quantitative restrictions, and you work that system simply by putting concessions against each other. That system was in favour of certain countries. In that respect, a certain country receives a preference in a country applying quantitative restrictions. If it is abolished, the other country will lose opportunities to import, and in that case it is comparable with the country receiving a preference.

I do not see much difference there, and that is why I would prefer, as Mr. Shackleton has remarked, it should be regarded as a drafting point. Therefore, I believe that a sub-Committee might have to study these Articles again and find a form which will cover, more or less, the position of all the other countries and not only countries receiving a preference.

I may add one thing, Mr. Chairman, just to put my case clearly. We are not against escape clauses, but we are against escape clauses on specific points all the time; and we are in favour of having such escape clauses formulated in such a way that the International Trade Organisation shall judge whether there is a serious case for the lifting of certain obligations from certain countries. We are quite in favour of having the International Trade Organisation as an organisation to judge the actions of the States, where they are really entitled to adopt a definite course; but we are against-- again I repeat that--many escape clauses on specific points, because if you have that, in the whole Charter, then you have about a hundred escape clauses, and God help us if we have to find a way in that labyrinth.

CHAIRMAN: (Interpretation): I am sorry, Gentlemen, but I cannot agree with what Mr. Speekenbrink has just said that this is a question of drafting. It is a question of substance, and a very important question it is. It is true what Mr. Gutierrez said that we are not discussing for the time being the preferences themselves; however, we are confronted with Article 34 which states very clearly that the escape clause should apply to a country which receives preference on a product imported in another country and this causes to threaten a serious injury to the production of another country. This is a very clear point. The honourable delegate for Belgium asserts that, in his opinion, this is an excessive clause, and should be deleted. I would like to ask Mr. Forthomme whether he would insist on this amendment being discussed now or whether he would prefer to wait till the discussion itself shows whether we could not find another way out.

Dr. H.C. COOLBS (Australia): I suggest, to make it clear, that so far as the Australian delegation is concerned we seek no privileges on industries which are dependent on preferences which are not open to industries protected in other ways. Our intention, in supporting this present draft, was to ensure that the same facilities for emergency action should be available to them. Since it is not possible physically for them to be the same - since action is called for in a different place - we have sought merely to see that the same sort of emergency action be taken in the only place where it can be taken, which is in the countries granting the preference, provided that the purpose of the review of this Article is merely to ensure that no special privilege is given to such industries. We are perfectly content to see such examination of this undertaken and to participate in it. We are not seeking special privileges, but merely to ensure that those privileges in industries are open to other countries if they are incorporated under emergency conditions, and that they should be available also to industries in countries which are dependent upon preferential arrangements.

M. Pierre FORTHOMME (Belgium) (Interpretation): Mr. Chairman, in view of the very important contribution which has just been made by the Delegate of Australia, I think it would be useful if, without withdrawing our amendment, we should pursue the possibility of trying to find a solution along the very constructive line just indicated, and I believe that the Drafting Committee could do some very important and good work in that respect.

CHAIRMAN (Interpretation): I propose, Gentlemen, to abandon the discussion at this point and to refer the matter to the Subcommittee.

We are confronted with two other amendments relating to Paragraph 1, but, as far as I can see, they are purely drafting amendments; one emanates from the United Kingdom Delegation and the other from the Delegation of the United States. If these Delegations do not wish to explain their proposals right here, I think we could refer the whole question to the Subcommittee.

Mr. R. J. SHACKLE (United Kingdom): That course is agreeable to us.

Mr. John W. EVANS (United States): We agree, Mr. Chairman.

CHAIRMAN (Interpretation): The two amendments will go immediately to the Subcommittee.

The Delegate of China.

Mr. C. H. CHEN (China): Mr. Chairman, the Chinese Delegation would like to suggest, in regard to the last sentence of this paragraph, that the phrase "in respect of such product"

be altered to read: "the Member shall be free in respect of such product, to suspend the obligation in whole or in part." The original wording of that phrase seems to us to be rather ambiguous. This is not a change of substance, but it will make the wording more clear.

CHAIRMAN (Interpretation): I believe the proposal just made by the Delegate of China is partly covered by the United States amendment. It might be as well to transfer this amendment immediately to the Sub-committee. Is that agreed?

(Agreed).

We now come to Paragraph 2, which deals with the question of whether or not certain measures could be permitted without prior consultation. We are confronted with amendments presented by the Delegations of Canada, Chile and Cuba, which all assert that no action should be permitted without prior consultation.

We are therefore confronted with a very important amendment of substance and I will ask the Delegate of Canada to speak on the subject.

Mr. J.J. DEUTSCH (Canada): The Canadian Delegation does not much like Article 34, but we realise that certain higher realities make it necessary and therefore, since we have to have it, we hope it will be used only in the most serious circumstances and will be used infrequently.

We also hope that the use of this clause will not set in motion a long chain of counter-actions and withdrawal of concessions, and so on, and lead to a great deal of difficulty and friction.

We look upon this as purely an emergency clause, to be used under clear emergency conditions, and we also hope that before

this emergency action is invoked there will be the maximum amount of consultation and discussion between the parties interested, so that an amicable settlement can be reached, and counter-action and that type of thing will not be necessary.

For that reason, Mr. Chairman, we feel it important that the Article should not be invoked without prior consultation with the parties affected.

We do not think that these emergencies will develop overnight. If they are really serious emergencies they can be anticipated; they will be seen if they are serious. If they are not serious, then the Article should not be invoked at all, in our opinion. If they are really serious and will produce widespread repercussions and harm, that can be foreseen and there will therefore be time to consult.

Questions such as dumping - the difficulties which arise when there is a sudden dumping into a market - can be dealt with under other Sections of the Charter, if it is genuine dumping. A situation like this does not need the invocation of this Article and therefore we do not see that these emergencies will suddenly appear and will suddenly cause widespread harm to an important industry. That can be clearly foreseen, it seems to us. Therefore we do attach great importance to prior consultation, because the type of counter-action that will be taken will be far less, and far less dangerous, than if there is no prior consultation. If there is no prior consultation, then the counter-action will be likely to be serious.

Whilst I am speaking, Mr. Chairman, I might as well go on to our second point, which is connected with this: that, if there is no provision for prior consultation, it seems to us that counter-action could be taken without prior consultation. We think those two things must go together, but we stress much more the first point, that we should always have prior consultation.

CHAIRMAN (Interpretation): The discussion of the amendment submitted by the Canadian delegation is open. Does anyone wish to speak? The delegate of Belgium.

M. PIERRE FORTHOMME (Belgium) (Interpretation): It must be obvious, after what I said myself about the amendment submitted a few minutes ago by the Belgian delegation, that I am fully in sympathy with the arguments quoted by the Canadian delegation in support of the amendment which they have now submitted to this Commission. I agree that the applicability of the clauses in Article 34 must be limited and that also the motives which can be quoted in order to ask for the applicability of these clauses must be equally limited. But I cannot agree with the contention of the Canadian delegate that the cases which are covered by Article 34 are such that they can always be foreseen and forecast. There may be the case of a certain number of small neighbouring countries where the distances which separate them from each other are small and where overnight, or at least within a very short period, due to the fact that the distances are so small, a great quantity of goods can be dumped into the other country, thus making useless any appeal to the clauses of Article 34. I wonder consequently whether the best way of dealing with the case submitted by our friend from Canada would not be to draft Article 34, paragraph 2 somewhat differently and instead of referring to "critical and exceptional circumstances" refer to "critical circumstances, such that any delay would cause irreparable damage."

CHAIRMAN (Interpretation): The delegate of the United States.

Mr. JOHN W. EVANS (United States): Mr. Chairman, I wish to state my agreement with M. Forthomme's remark concerning the possibility of foreseeing in all cases the development of a situation which would require emergency action. I fully agree with the delegate of Canada in his hope that this clause will not be used frequently and that it will be used in good faith, but it is in the nature of an emergency action and it is likely to arise in unexpected ways at unexpected times without full warning, and for that reason we feel that it is necessary to retain the possibility, which we sincerely hope would be used very infrequently, the possibility of taking action promptly without the delay required by consultation.

CHAIRMAN: Dr. Coombs.

Dr. H.C. COOMBS (Australia): Mr. Chairman, like the two previous speakers, I find myself in great sympathy with the Canadian point that it is exceedingly undesirable that action should be taken under this article without consultation, if that can possibly be avoided. But I agree, too, that circumstances may well arise in which that prior consultation is not practicable, and it is therefore necessary to provide for the possibility of immediate action in advance of consultation. At the same time, while I agreed with the spirit of the suggestion of the delegate of Canada, I did feel that there was some inconsistency in his attitude that, if we were obliged to make a mistake, from his point of view, by accepting action prior to consultation in relation to the first step in the train of actions, it was therefore necessary to make the same mistake thereafter. It seems to me that it is undesirable to have action of this kind without consultation and it can only be justified by the type of circumstances described by Mr. Forthomme.

It is difficult to offer that sort of justification for retaliatory action. Before retaliation is taken or an action of an individual member is, in the light of this emergency provision, deemed to be necessary, it seems to me that all possibility of consultation, to see whether the original action can be eliminated or varied, to examine the basis for its justification and so on, should be taken before retaliation by other parties is accepted as inevitable.

It does seem to me that the whole purpose of this Charter, while finally we are forced here and there to come back to approved retaliation, so to speak, as the only ultimate protection of countries against irrational action by other countries, is to postpone such retaliatory action until all other possibilities have been exhausted. I suggest, therefore, that we would do very well to hesitate to accept the Canadian suggestion that, because we find it necessary to permit initial action without consultation, we should go on, therefore, to justify retaliatory action without consultation.

CHAIRMAN (Interpretation): The delegate of Chile.

M. F. GARCIA-OLDINI (Chile) (Interpretation): Mr. Chairman, the Chilean delegation has presented a reservation on this very Article, and I want to express my full agreement with what has been stated by the Honourable delegate from Canada.

We believe that such exceptional circumstances cannot be called regularly "unforeseen" or "sudden". There is a great amount of possibility of foreseeing and taking the necessary precautions before the crisis itself arises.

I quite agree with what has been said by M. Forthomme that we might envisage some occasions on which an emergency

situation would present itself with that suddenness of which he has been speaking. However, even in that case, we could provide for some kind of accelerated procedure in order to inform the Organization at least of what is going to happen.

Our main purpose here is to protect a Member who is hit by such an emergency situation. I will just say that in most of the cases we would have the possibility of providing for such an emergency situation, whereas we are running the very grave risk of producing a real catastrophe in the country against which such measures could be applied.

I think if such cases as have been imagined by the Belgian Delegate occur - they can, of course, quite possibly be imagined - it might be a good thing to find some clearer definition of the conditions in which such an emergency situation would arise, with all the suddenness and characteristic of being entirely unexpected.

The Drafting Committee could perhaps find words in which such a peculiar situation could be plainly and very precisely explained, and even in that case I think we should imagine the possibility of putting into effect an accelerated procedure, perhaps, not to negotiate, but in order, at least, to know what measures are going to be taken.

CHAIRMAN: The Delegate of Canada.

Mr. DEUTSCH (Canada): Mr. Chairman, I want to refer to some of the remarks made by the Member for Australia concerning our second proposal for immediate counter-action, if prior consultation is not required in the initial case.

The Member for Australia found difficulty in finding the logic of our position. I think it is this, Mr. Chairman, that in such an Article as now drafted, it seems to us there is a lack of balance between the Member taking the initial action of withdrawing a concession, and the right of a Member to take counter-action. The counter-action is only possible if the Organisation does not disapprove. In other words, there has to be some sort of supervision by the Organisation, whereas the Member taking the initial action may take that action even without prior consultation; and if there is no agreement reached after the action is taken, consultation takes place afterwards, but the Member is nevertheless free to go ahead and continue the withdrawal of the concession - whereas a counter-action is only permitted to the extent that the Organisation does not disapprove.

There is a lack of equality, a lack of balance, in this provision, and it seems to us that the initiative, the stronger position lies in the hands of the Member who took the initial step in withdrawing the concession.

Now the point of our suggestion is, if immediate counter-action is permitted, it cannot put the same restraint on countries taking the initial step, if they know they may be immediately faced with a counter-action. It seems to me it would not only restore the balance of the situation but restrain the frivolous use of this clause; whereas, in the other case, they may withdraw a concession and go to the Organisation without the other Members having the right to take a counter-action, and so there is some difference, in the ~~weight~~ of influence, with the countries concerned, that may have some practical effect - and that the ~~weight~~ of influence in the Organisation will not be entirely equal. That, of course, is just a practical fact - and that is the logic of this position.

Now, as I said before, I do not attach equal importance to this particular point as to the first point, that there should be prior consultation. I have sympathy with the point expressed by the Member for Belgium. I think there is a good argument there. But I doubt very much really whether these emergencies do appear so constantly, if they are really serious cases.

We have had considerable experience in this respect, Mr. Chairman - I do not think any country is more closely linked than Canada is with the United States, or that more trade flows across the border than between those two; and it has never been necessary for us in our long and close association for either one of us to act without prior consultation. I do not remember a case, and I cannot think of any situation more

devastating between those two countries.

We are as closely linked economically as any two countries on the face of the earth, and I do not see where there is a serious situation that could not be foreseen in time for some kind of consultation; and I still stress that we attach a good deal of importance to this.

CHAIRMAN: The Delegate of France.

Mr. BARADUC (France) (Interpretation): Mr. Chairman, I just want to point out to the Commission that Article 34 refers to an emergency case, but it is not the only Article which refers to emergency cases, and we have already in our prior consultations, when we came to Article 7, stated that it should not be possible for a Member State to take any measures without prior consultation.

Therefore, I would be in the mind of supporting the Amendments presented by the Chilean and Canadian Delegations, in order to amend Article 34 in that respect.

I must, however, confess that I have been struck by the very important remark made by the Honorable Delegate of Belgium, as far as certain circumstances are concerned, and we would not oppose any Amendment without taking into consideration the reasons put forward by Mr. Forthomme.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, after listening to this discussion, I have the feeling that this is a case where a compromise is really inevitable. In fact, I may say that it reminds me of the discussion which took place in the Drafting Committee in New York, which resulted in the present text.

Now, I would like to suggest that, by and large, the present text is not a bad compromise. One knows that all compromises are unsatisfactory, and this is no exception; but I think it has the makings perhaps of a workable and suitable compromise in the circumstances.

In the first place, I would like to point out that it is only a period of thirty days which has to elapse between the action and the counter-action. That is a small change which the Drafting Committee made at New York. Originally it was a period of sixty days and we reduced that to thirty. I feel that thirty days is a desirable interval to allow. It allows for feelings to cool, for second thoughts to be thought, and possibly it may help to prevent what I think the Canadian Delegate described as "chain" reactions from happening.

The second point that was made by the Canadian Delegate was that the party which wanted to take the counter-action would have to go first to the Organization for approval. Well, I am inclined to think that that is not the right reading of the text. The text says: "such substantially equivalent obligations or concessions under this Chapter the suspension of which the Organization does not disapprove". Now, I read those words "does not disapprove" as not requiring prior approval, but making it possible for the Organization to disapprove, so to speak, exposé facts. A Member

and
 may take counter-action/if the counter-action which it takes
 appears to the Organization to be excessive, the Organization
 can go to that Member and say, "We think that the counter-action
 you are taking is excessive--you ought to moderate it". That is
 the way I read those words. It may be that if that is the
 intention, the Drafting Sub-Committee should be asked to make it
 clearer. That is how I understand the intention.

I should like to suggest, subject to a possible improvement
 in places, such as the suggestion which the Belgian Delegate has
 made for the end of paragraph 2, that we ask the Drafting Committee
 whether it can somewhat improve this compromise, but recognize,
 nevertheless, that a compromise on these general lines is probably
 the necessary solution.

CHAIRMAN: The Delegate of the Netherlands.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, as I
 have taken rather an important part in the Drafting of this Article
 in London, I might explain to the meeting that just for the reasons
 put forward by M. Fortomme, we put in that paragraph 2, and we
 have indicated more or less that it applies to exceptional
 circumstances, to show that it was not a general rule but should
 only be applied in very very few cases.

The reason for that I might also explain here. In the first
 paragraph we talk about obligations incurred under or pursuant
 to this Chapter. Later on, we talk about concessions. That
 might be a little ambiguous. We always think of concessions in
 the way of tariffs, but the obligations in this Chapter are far
 greater, as here we forego the right, for instance, to apply
 counter restrictions which in the old days was a means of stopping
 the imports, having consultation and afterwards allowing certain
 imports into the country again, after reaching a satisfactory
 agreement.

I might say that a country like Holland is not in a position to change the tariff every day. It is a long drawn-out matter to change the tariff. You have to go to Parliament to get the approval for doing certain things. You might have certain emergency action, but that is also generally very difficult to apply. Therefore, we attach importance to the possibility of having an escape clause like paragraph 2, and I might seem here to be contradicting what I have said the moment before with regard to escape clauses. But I am convinced that if you wish to have an escape clause like this, and perhaps modify it in the way our Belgian colleague has proposed, it should only apply to very exceptional cases. You might be able to forego many other escape clauses because that would give you the feeling of security that if something did happen -- a very great injury to the economy of your country -- you would be able to act, provided you are prepared to put the matter before the Organization and near its judgment.

I think that in the case of countries like Holland, I can state here clearly that we are prepared to accept the judgment of the Organization, and I am not afraid of any abuse or violation of this clause if we should really adhere to what is said in paragraph 2, and, as has been remarked by Mr. Shackle, when it comes to a suspension of which the Organization does not disapprove. We might even strengthen that part. This is not to get more liberty for countries: it is only to make it possible for them to enter into all the obligations of the Charter.

Mr. J.G. TORRES (Brazil): Mr. Chairman, we prefer to look at this question in the light of Brazil's experience. Past events have shown us that if we could not take action quick enough to counter certain practices, we would have to see a great deal of damage done to some of our industries. We cannot see how such emergencies as have occurred in the past could have been dealt with properly by waiting for a judgment which will not be very rapid in coming. We are, therefore, in favour of leaving freedom to countries to act in time to counter whatever practices may be done in the future that may have some harmful effect upon us. This brings up a side question and we would like to avail ourselves of this opportunity to bring this to the attention of the Commission. In discussing Article 17 Brazil, to our regret, has been unable to withdraw two very serious reservations, and the opinion of some of the delegations has been that we could withdraw as well those reservations because, under Article 34, we could take the emergency action that we were looking for under Article 17. However, this interpretation does not seem to be universal, and we would very much insist that the Drafting Committee which is to be appointed look at this matter from this standpoint, whether or not the measures we want under Article 17 can be taken under Article 34, because if that is not the case, then I am afraid the Brazilian delegation would not be in a position to withdraw such reservations and we might as well go to the world conference and fight there again for such rights. The point is that, summarising our views, we want to have prior action guaranteed whenever we should be faced with an emergency situation, and whether Article 34 will be ample enough to allow us to take such action that at present we cannot take under the present drafting of Article 17, and I might say this consideration is very proper and opportune because the Drafting Committee on Article 17 has, in fact, been unable to report a unanimous agreement on that point, and I understand that the Netherlands delegation have now seen their interests the way we look at them. If Article 34 is drafted to our satisfaction, then we might at the same time do away with two points of the Charter.

CHAIRMAN: The Delegate of Cuba.

D. Gustavo GUTIERREZ (Cub.): Mr. Chairman, the Cuban Delegation wishes only to say that it maintains the point of view expressed at New York, that action should not be permitted without prior consultation. The permission to take action and counter-action without prior consultation will, in our opinion, lead to a disagreeable situation, which will do no good to the purposes of the Charter.

The text of Paragraph 2 was conceived when it stated: "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." Then comes the provision where the difference exists. It says: "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."

This reminds me, Mr. Chairman, of a guerrilla leader who ordered all prisoners to be shot immediately, and afterwards be submitted to a courtmartial.

This sort of thing, we believe, may create friction instead of goodwill amongst all nations, which is what we all hope for.

CHAIRMAN: (Interpretation): The Delegate of South Africa.

Dr. J.E.HOLLOWAY (South Africa): Mr. Chairman, I must say it is a matter of some comfort to me to hear that Mr. Shackle also had some difficulty about the meaning of the words

"the suspension of which the Organization does not disapprove."
Mr. Shackle is an Englishman and no doubt learnt English at his mother's knee - unlike myself, who did not know that English existed until I went from the wild veldt into the town - and understands it better. Whilst his intervention has given me some idea of what those words are intended to mean, his further suggestion creates another difficulty.

If they are also intended to mean, not the suspension which originally gave rise to this chain of consequences, but also the latter part, "of which the Organization does not disapprove.", I could suggest that it would be so easy to say that it would have probably been seen. The phrase is so vague that I hope the Drafting Committee will let us know what it does mean. At present I feel myself in some difficulty in dealing with that part of the paragraph because of that obscurity.

Whilst I think we could support the second suggestion of the Delegate of Canada, I do not know that I can support the first suggestion, namely, that there must always be prior consultation. Assuming that an article like this is necessary, I do not think that prior consultation is always possible.

The discussion hitherto has gone on the point whether one can foresee the need for invoking the paragraph. Well, within limits one can foresee, but suppose you have foreseen it, and suppose you are then under the obligation to tell all the world that you have foreseen it - a country like Belgium might easily be swamped by telling the world - because these things are never a secret - because everybody will try to get in ahead of the possible change in the Belgian tariff.

For that reason, I do not think that the first part of the suggestion by the Delegate of Canada is practicable, always assuming that the article is necessary at all.

As to the second part, however, I am entirely in agreement with the Delegate of Canada. I do not see why people should have any tender conscience for the party that has got away from its obligations. If this clause is to be used at all, it has got to be used only as an exceptional clause and, if it is not used in very exceptional circumstances, it will undermine the whole of this Organization. The more limitations we put on its use - provided those limitations allow it to be used in these very exceptional circumstances we have in mind - the better.

This clause, as a matter of fact, clinches the right of certain groups to be a damned nuisance - excuse me, Mr. Chairman, I withdraw that word; they will be an unconscionable nuisance to all the Governments concerned, and if one of the consequences is that there may be immediate retaliatory action, then this Article will be used only for the purpose for which it is inserted here, namely, when there is some exceptional emergency.

I do not see why you should give the party that starts by getting away from its obligations a fair field to get away, and put limitations on everybody else not to take any action. The party that is prejudiced by it ought at least to have as big a start after hearing the pistol as the other chap after beating the pistol.

CHAIRMAN (Interpretation): The delegate of India.

MR. B.N. ADAKAR (India): Mr. Chairman, the Indian delegation attaches some importance to the procedure laid down in this Article and, insofar as it provides for action to be taken without prior consultation in critical and exceptional circumstances, we would entirely support the remarks made by the delegate for the Netherlands.

We think that there may be circumstances in which it may be difficult for a Member giving a concession to accurately forecast its possible consequences for its domestic interests, and therefore it is very desirable to make a provision of this kind. We entirely support the idea that the existence of the provision could give a greater degree of security and confidence to the Members when they are negotiating concessions.

However, having said that, there is one further point which we would like to submit for the further consideration of this Commission. It is that this Article relates to the need for granting releases from obligations undertaken under this Charter. The procedure indicates under what circumstances a Member may seek release from the obligations incurred by it in order to avoid serious injury to its domestic producers. But there are other provisions in this Charter which deal with the same subject.

There is the procedure in Article 15, which relates to the granting of release from implications incurred under this Charter when such a release is required for the purpose of economic development. A Member may find that it needs release from the obligations incurred by it either because there are heavy imports which threaten the interests of established industries, or because the increased imports have made the development or the establishment of an industry impossible.

The circumstances are different, but I suggest that the procedure laid down for the granting of release should be the same, or should be similar.

Article 34, which deals with release when heavy imports threaten the position of an established industry, makes it possible for the Member to take action without prior consultation with the Organization, provided that it informs the Organization immediately after the action is taken and, if there is no agreement among the interested Members, to go ahead with the action. In paragraph 3 it has been provided that the Member which takes the action may, if it fails to acquire the concurrence of affected Members, maintain the action only subject to certain penalties, while in Article 15, in the case of obligations which are negotiated obligations, the Member may try, under the auspices of the Organization, to secure the agreement of other affected Members, but if there is no such agreement, then the Member concerned will not be free to take any action.

I do not see that there is any adequate justification for making a distinction between the two cases. In sub-paragraph (b) of paragraph 2 of Article 13, the Organization may grant the release from a negotiated obligation to a Member only upon agreement being reached with the Members substantially affected. In this case, even if there is no agreement, the Member would be free to go ahead with this action.

I would suggest, Sir, that the sub-committee be requested to go into this question and satisfy itself that there is adequate justification for making a distinction between the two cases. In any case, in the course of this discussion, it has been explained that the provisions of Article 34 apply to all obligations.

The sub-committee should consider the desirability of distinguishing at least between negotiated obligations and non-negotiated obligations as has been done in article 13. If such a distinction is necessary in the case of releases required for the purposes of economic development, I see no reason why such a distinction should not be made when releases are similarly required for the protection of established industries.

CHAIRMAN: The Delegate of Chile.

Mr. GARCIA OLDINI (Chile) (Interpretation): The discussion which has taken place, Mr. Chairman, shows very clearly that it is very difficult, once a text has been drafted and discussed by a Drafting Committee with certain intentions in the mind of those who drafted it, to interpret it to mean something entirely different.

It is difficult for us at this stage to depart from the intention which the authors of the text who drafted it have put into the text.

For instance, the debate which has taken place here this afternoon indicates that the text of paragraph 3 of Article 34 has only considered one aspect of the problem, which quite clearly has two aspects. It has placed itself in the position of States considered in paragraph 1 of Article 34 who find themselves in a critical situation and who, in order to escape such critical situations, are granted certain privileges under paragraph 2 of Article 34. But if a State by virtue of this clause is authorised, if it finds itself in a critical situation, to withdraw certain concessions without previous consultation, obviously the same privilege should be recognised to those who in defence of their own interests and in order to avoid an equally critical situation for themselves, want to take certain counter-measures.

The word "retaliation" has been used here, in connection with counter-action of States so affected by the withdrawal of concessions. I do not believe that the word "retaliation" is a correct expression to describe what is merely a legitimate defence. It has already been said that, as it stood, the Article was a compromise, but a good compromise. I am sorry not to be in a position to agree with this statement.

In order to make it a good compromise the same treatment should be reserved for Members who withdraw concessions as for those who take counter-action in order to defend their own interests in such a circumstance. In other words, if previous consultation is provided for in the case of a counter-action, the same procedure should be applicable to a Member who wants to withdraw a concession.

If, on the other hand, no previous consultation is required from a Member who wants to withdraw a concession, other Members should equally be at liberty to take counter-action without previous consultation.

CHAIRMAN: The Delegate of the United States.

Mr. EVANS (United States): Mr. Chairman, I have been listening with great care to the discussion of the last half hour.

I want to make clear that my remarks are not specifically directed to the remarks which have just been made by the Delegate of Chile, but it does seem to me that some of this discussion indicates that the Article is being considered as something more than it was originally intended to be by a Number of Delegates.

It is labelled "Emergency Action". We have always looked upon it as an emergency Article - an Article to be used only in cases where a serious injury was actually being done or about to be done to produce it. Under those circumstances I feel that a good many of the considerations raised here are not particularly appropriate. This Article was certainly not intended in our Delegation to be used as an escape, a general escape from the obligations undertaken by any Member.

I think that the experience between the United States and Canada which has been referred to by the Canadian Delegate is an instructive one. The United States has had experience in the use of escape clauses, and as the Canadian Delegate has said, in

all our experience there has been no use of such an escape clause without prior consultation. We feel sure that the other Members of the Organisation would use this clause with the same discretion and in the same good faith.

That does not mean that we think that the clause as now written is necessarily perfect. I think that there may be some merit in the suggestion of the Delegate of Chile, that there should be a provision which makes certain that the procedure for notifying the Organisation, and entering into consultation in the extreme case, where action is taken without prior consultation, should be immediate. I think that any language that could be devised, or proposed language, which would say that a Member taking action would notify the Organisation immediately on his decision to take such action, may even be worth considering; but I am not certain.

I think also there has been some merit in the argument that the Member affected by this emergency action or action taken without prior consultation, on the face of it appears to be at some disadvantage; but the remarks of the Delegate of Australia are, I think, very pertinent. If, in fact, the action was taken in good faith merely because of an emergency, it seems extremely unlikely that that action would have created a similar emergency in the country which considers itself affected, but I had thought that the present wording of the Article would take care of the situation if it actually existed: that a Member who was subjected--if I may use the expression--to a serious emergency as a result of the use of Article 34 by another Member, would have the same privileges as the first Member had. The only qualification there is that the original action does, in fact, create a serious emergency and that it is not merely a balancing action by the second Member. If it is simply a balancing action by the second Member, it is hard to conceive the necessity for immediate, precipitate and perhaps, as has been suggested, ill-considered action. But if there is any doubt that the Member who has been affected seriously, in such a way that serious injury has been created, is entitled to the same privileges as the original Member, I certainly think the paragraph should be clarified.

CHAIRMAN: The Delegate of Canada.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, the discussion has shown that it will be necessary to work out some compromise on the various points of view that have been put forward, and some very useful suggestions have been made in that connection, particularly the suggestion of the Delegate of Belgium and the Delegate of Chile. I for one am prepared to hand the matter over to the Drafting Committee to see how the wording can be improved so as to achieve a reasonable

degree of agreement. Also, I would like the Drafting Committee to examine the wording of paragraph 3, which, as has been pointed out, is obscure, and see if the meaning cannot be brought out a little more clearly. Therefore, I am prepared, Mr. Chairman, to see this matter go to the Drafting Committee.

CHAIRMAN: The Delegate of Norway.

H.E. Erik COLBAN (Norway): The Norwegian Delegation agrees generally with the statement made by the Delegate of the Netherlands. We are prepared to accept the New York Draft of paragraphs 2 and 3. This draft, by the way, is practically the same as the London draft, and we consider it as satisfactory. This does not, of course, prevent us from agreeing to such drafting amendments as the sub-Committee may possibly recommend.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, as this discussion has had a big effect on the balance of three parts of Article 34, the New Zealand delegation wishes to suggest that the balance of the Article will be greatly improved by deleting from paragraph 3 the so-called "cooling period", that is the thirty days provision. It seems to us that as consultation must take place, and as presumably it will be a long one, it is a sufficient cooling off period. It seems to us that ^{an} even stronger consideration may be that, in fact, the thirty days provisions may have, in certain circumstances, ^{the} reverse effect of what is intended, because after all the period in terms of administrative action is a pretty short one and a state may require, in order to exercise its right of retaliation, to take certain administrative action which will require necessarily a lapse of time. In all those circumstances a state faced with the necessity for acting quickly is more likely to act precipitously than if it had more time at its disposal. That is a state affected by this time limit would be disposed to think that the period within which retaliatory action is allowed ^{and it} had better play safe and take that action.

Mr. C.H. CHEN (China): Mr. Chairman, the Chinese delegation is in favour of maintaining the text of paragraph 2 as it stands. As it has been pointed out by the delegation of the United Kingdom, this is the best possible compromise because this Article is dealing with emergency action. It would be impossible for every case to have prior consultation. Under this paragraph, the first sentence provided for previous consultation, the only exception being for critical or exceptional circumstances which, as set out, are very limited, and it is up to the member to consider whether the circumstance is critical or not and, at the same time, it is also provided that consultation will be open immediately for the affected members. I think it is quite a fair and practical provision, therefore, and we associate ourselves with the opinion expressed by the delegations of India, Netherlands, Norway and the United Kingdom.

CHAIRMAN (Interpretation): Gentlemen, I think it is time to put an end to this long and very interesting discussion. Ideas have been aired here and it seems now that we must come to a new kind of compromise. There seems to be a general consensus of opinion that even in the case of exceptional and critical circumstances prior consultation should be conceded. However, the conditions of those critical circumstances may be such that prior consultation would be quite impossible. The only aim which we must always have in mind is that it should not lead to abuses.

I do not think that it will be an easy task to arrange for a new wording to cover that particular aspect of the question. However, I am sure that the Commission will put all its heart into the solution of that difficult problem.

I would now like to dispose of the two Belgian amendments presented to Paragraph 2 and I would advocate that those two amendments should be sent immediately to the Sub-committee.

As a matter of fact, the two Belgian amendments to Paragraph 2 are so strictly linked with Paragraph 1 that they cannot be separated from this main subject and, as Paragraph 1 has already been turned over to the Sub-committee, it would be only correct that this should also be the case for the Belgian proposal referring to Paragraph 2.

As to the Belgian and United Kingdom proposals, I should also like to have them sent to the Sub-committee, as they both have one single purpose in mind, to take care of the situation both of the countries which grant preferential arrangements and those which enjoy preferential arrangements.

The only amendment which I should like to take up now, before we close this meeting, is the amendment of the United States Delegation, which suggests the words "substantially equivalent" in Lines 12 and 13 and makes the comment that they will give to the Organization a wider margin of decision.

Does anyone wish to speak.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, as you invite discussion on the United States amendment to Paragraph 3, I would like to say one or two words.

When I first saw the United States amendment, which consists of simplifying the last sentence, I thought it was attractive. It would get rid of the mention of the equivalent obligations on the one hand and the possible additional action on the other. But, after hearing this discussion today, I am inclined to think there is some merit in leaving the text as it stands.

At the same time, if we say that normally the action shall be equivalent, you do have to provide for the case where there is abuse, so I am inclined to think that, on the whole, the last two sentences are perhaps best as they stand.

I think that the provision for equivalent action would be useful where a case of preferences is involved, but there is the question of whether action should be taken against the country which takes the action or the country which has the benefit of the action. I think it is useful to have the equivalent action specified.

CHAIRMAN (Interpretation): Does the Delegation of the United States wish to speak on the subject?

Mr. JOHN W. EVANS (United States): Thank you, Mr. Chairman.

I did not think it was necessary for me to introduce the amendment, because I think the explanation made by us in submitting it was simple enough and has been reproduced in the annotated agenda.

I should like to remark, however, on Mr. Shackle's statement. I think it would be well to point out that we have no objection to the use of the words "substantially equivalent". Our deletion of those words was consequent upon our deletion of the last sentence. We felt, perhaps in error, that the Commission would not want to take out the last sentence and leave in "substantially equivalent" in such a way as to leave no discretion to the Organization.

I think it may be possible to accomplish both what Mr. Shackle wants and what we want by leaving in the words "substantially equivalent" and finding some other formula for expressing the freedom of action in the Organization which may be necessary in exceptional cases.

CHAIRMAN: Does anyone wish to speak on this subject?
The D Delegate of Canada.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, we are in favour of retaining the words "substantially equivalent", for the reasons given by the Delegate for the United Kingdom. If that requires a change in the last sentence, we prefer to make the change in the last sentence rather than drop the last sentence.

CHAIRMAN (Interpretation): The delegate for the Netherlands.

DR. A.B. SPEEKENBRINK (Netherlands): I can only say that I am in favour of retaining the article as it stands here.

CHAIRMAN (Interpretation): Under these conditions, I believe, Gentlemen, we can have confidence in the wisdom of the sub-committee.

Gentlemen, it is six o'clock and we have gone through with Article 34. We begin tomorrow at 2.30 in the afternoon with Article 35.

The Secretariat has just advised me that we meet in Executive Session tomorrow at 2.30 in order to approve document E/PC/T/92, which is the last report of the Working Party on Tariff Negotiations.

Gentlemen, the meeting stands adjourned.

The meeting rose at 6.05 p.m.