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

VERB. TIM REPORT

TWENTY-FOURTH MEETING OF COMMISSION A  
HELD ON WEDNESDAY, 2 JULY 1947 AT 2.15 P.M. IN THE  
PALAIS DES NATIONS, GENEVA

DR. E. COLBAN (Chairman) (Norway)

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CHAIRMAN: I think we will start in spite of the fact that some delegates have not yet turned up. There were one or two who mentioned to me this morning that they would find it rather difficult to be here at 2.15. I quite appreciate that - I have not had time myself to have lunch, so I understand the difficulties of the other delegates, but nevertheless we have to start.

Our discussion, when we finished on the 28th June, ended up with a proposal by the French Delegation concerning the note you find on page 9 of the document T/103, relating to Article 17, paragraph 2. The French Delegation propose (I have not got the French text, but I will read the English) that the note should read as follows:-

"It is the understanding of the sub-committee that multiple currency rates may in certain circumstances constitute a subsidy to exports which could be met by countervailing duties under paragraph 2 of this Article".

When that proposal was made, the Delegate of the United States expressed a wish to have some time to think it over, and I would now like to know whether Mr. Ryder is prepared to make a statement on it?

MR. O. RYDER (United States): Mr. Chairman, I expected to speak to the French Delegate about the matter, but with all the other things that have occurred in the meantime I have not had an opportunity to do so.

I wonder if it might not be satisfactory to the Delegate of France if we change in the second line the word "rates" to "practices", and then add at the end "By multiple currency practices is meant practices by Governments or sanctioned by Governments". That is rough, but that is the idea.

M. ROUX (France) (Interpretation): This is agreeable to me, Mr. Chairman,

CHAIRMAN: You have heard the proposal of the United States Delegate. Is there any objection?

Therefore, the note stands with the new version suggested by the Delegate for the United States.

MR. S. RANGANATHAN (India): May we just take down the wording?

CHAIRMAN: "It is the understanding of the sub-committee that multiple currency practices may in certain circumstances constitute a subsidy to exports which could be met by countervailing duties under paragraph 2 of this Article. 'By multiple currency practices' is meant practices by Governments or sanctioned by Governments".

MR. R.L. FRESQUET (Cuba): Mr. Chairman, we would also like to see the amendment in black and white before we decide about it.

CHAIRMAN: Well, the simplest thing then would be for us to adopt in principle the new wording, and it will be circulated for our next meeting to be considered in second reading.

CHAIRMAN: We pass on to paragraph 3 of Article 17. We have in the text on page 10 of Document <sup>103</sup>an Amendment, and you see on page 11 there is no comment, and as the Sub-Committee were unanimous I take it that the Draft as it now appears is agreeable to all of us.

The Delegate of Cuba.

Mr. FRESQUET (Cuba): Mr. Chairman, on page 7 para. (b) there is the position of the Cuban Delegation in relation to the whole of Article 17. That is, that we think the approach to <sup>the</sup> dumping matter is not satisfactory at all, so notwithstanding the tentative approval of the different paragraphs we still maintain the same situation about the Article as a whole.

I do not think it is necessary to repeat here again the reasons why we have come to this position.

CHAIRMAN: I would mention - I do not know whether it was the same Delegate of Cuba who was at our previous meeting - but as far as I remember we discussed this question rather fully and came to the conclusion that for different reasons it was difficult to introduce in the Charter a definite statement to the effect that dumping is condemned. One reason which was not brought up, but which I had in mind, was that dumping is not practised by Governments but by private commercial business firms; and what we can do in dealing with dumping is simply to enable the Governments of affected countries to take measures in order to obtain rights, and in my copy of Doc. 103 I had struck out (b) on page 7, believing that we all agreed that it was impossible to deal with his statement that dumping in principle is a bad practice. We all agree that it

is a bad practice, but it is something done by private commercial firms, and here we think it does not need any weight to state such a thing - it is implied in the rules concerning redress against dumping.

The Delegate of Cuba.

Mr. FRESQUET (Cuba): Mr. Chairman, as we understand it, I think the main reason for not trying to follow our line of thought in respect of this question was that the Sub-Committee was unable at the time to find a definition of what dumping is; but as we are still hopeful that we will be able to do so, that is why we tried to keep the floor open. If any other opportunity, or another group of men are able to find out that formula, it will be much better to put the formula in the text, and not take the text as it is to-day.

CHAIRMAN: I wonder whether the Cuban Delegate could agree that we would not submit to the Conference this reservation. It is obvious that it is open to all of us in the light of new technical conclusions to reopen any question; but by transmitting this under (b) on page 7 to the Conference, we force the Conference to reach a discussion on the question. I wonder whether it is not quite as well to leave it, keeping well in mind that obviously if a better solution can be found, we will all be very happy.

M. R.L. FRESQUET (Cuba): Mr. Chairman, I promise you that I will do my best to convince our Delegation on this point and will convey your message to them. I am sorry that at this stage I am not in a position to withdraw the reservation. Perhaps before we finish the whole story of the matter, I may be in a position to come here with an answer that will satisfy your desire.

CHAIRMAN: Then we pass on to paragraph 3. I take it that we are all in agreement with the draft submitted by the sub-Committee

(Agreed)

Paragraph 4. No comments?

(Adopted)

Paragraph 5. You will see that the sub-Committee has modified the New York text to some considerable extent, and you will find on page 11 of Document T/103, note (a):

"The Delegations of Belgium, France, Luxembourg and the Netherlands expressed the fear that abuses might be committed under cover of the provisions of paragraph 5 regarding the threat of injury, of which a State might take advantage on the pretext that it intended to establish some new domestic industry in the more or less distant future. The Committee considered that, if such abuses were committed, the general provisions of the Charter would be adequate to deal with them".

I would ask one of the Delegates who expressed the fear to kindly let me know whether that is still the case. The Delegate of Belgium.

Baron Pierre de GAIFFIER (Belgium) (Interpretation):

Mr. Chairman, as the Committee knows, we have proposed an amendment expressing these fears of ours. During the work of the sub-Committee, as we are rather conciliatory-minded, we

accepted that it be embodied in the comments, but as this fear is very real, we have to maintain it, and we therefore wish to keep it embodied in the commentaries.

CHAIRMAN: This means, if we do not continue the discussion, that this reservation will go on to the International Conference, and perhaps give rise to considerable discussion, so if it were possible I would try to solve the question here. However, in the face of the unanimous sub-Committee report I do not think that is possible, so unless some Delegates wish to speak, I think we have to accept the request of the Belgian Delegate - a request to which, I take it, all the Delegates mentioned adhere, and maintain this note in our text.

The Delegate of Czechoslovakia.

Mr. B. J. BAYER (Czechoslovakia): Mr. Chairman, I merely wish to express the desire of our Delegation that Czechoslovakia be added to the reservation we are just discussing. Like the other Delegations, we feel that there is no serious damage - no material injury - done to a country which is importing the merchandise and where the particular industry does not exist. It is true, however, (and the idea is contained in the note we are talking about), that there are other general provisions in the Charter which might be used in the case where a country fears that these particular provisions are being abused.

In our opinion, however, the Charter should not be over-loaded with provisions which might lead to the possibility of abuses. If it is, we might experience in the future that the Organization is over-crowded with representations under Article 35 and this, in our view, is not the desire of any of us.

CHAIRMAN: In the light of these declarations by the Belgian and Czechoslovakian Delegations, I think we have no alternative but to maintain the note (a) on paragraph 5 of Article 17.

CHAIRMAN: We pass on to note (b) on Article 17 paragraph 5: "The same delegations maintained that there could, in practice, be no material injury if the price charged by the exporting country was not less than that of the importing country or than the world price. The Sub-Committee felt, however, that this did not provide a valid test of injury".

May I take it that the same attitude is maintained with regard to this note?

Baron PIERRE de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, personally, I would have no objection against the deletion of these commentaries if my opinion is shared by the Delegates for France and the Netherlands.

M. ROUX (France) (Interpretation): Mr. Chairman, since the remarks concerned were expressed by several delegations, we believed that it was necessary to put them into the Report addressed to the Commission, but since this paragraph is not a justification of our text, and it <sup>is</sup> not absolutely necessary to maintain it in the final text, we are of the opinion that all explanatory comments should be maintained. They will probably figure in an appendix of the Charter when it will be signed. We also judge it necessary that certain explanatory comments must be maintained in order that they could be presented to the Members of the World Conference, and especially to those who are not present at the deliberations of the Preparatory Committee. This should be done in order that our text would not be criticised without sufficient explanation of this text on our part, and also in order to prevent amendments which might be rendered unnecessary by the comments to our text. But since this particular sub-paragraph does not present any of the characteristics I referred to, we do not insist on its maintenance.

Dr. S. KORTEWEG (Netherlands): Mr. Chairman, I agree with all that the Delegate of France has said, especially with regard to this note, in general with the other notes that are to be added to this part of the Charter.

CHAIRMAN: I take it that, in view of this, we can strike out note (b) on paragraph 5 of Article 17. Is that agreed? Agreed.

We pass on to (c) on page 11 of T/103: "In cases of dumping in third markets of a serious character such as might not be adequately covered by the new second sentence of paragraph 5, the matter could, in the view of the Sub-Committee, be taken by an aggrieved Member to the Organisation under Article 35 with a view to obtaining an appropriate release from its obligations towards the offending Member". Do you think it will be of any use to the World Conference to maintain the text of this note?

Mr. C.E. MORTON (Australia): Mr. Chairman, I suggest that the note on the paragraph in the text simply says that the Organization is authorised, in its requirements, to permit a Member to take <sup>or</sup> action/to leave it. I think that, such being the case, the maintenance of the note is advisable although it is of no great value, but helps to complete paragraph 5.

Mr. W.E.H. RHYDDERCH (United Kingdom): Mr. Chairman, I really think that this note should be omitted as it does not add one bit to the text.

Mr. C.E. MORTON (Australia): Mr. Chairman, I have no strong views about this, I just thought that we could support a weak Article by giving it a crutch to lean on.

Mr. OSCAR RYDER (United States): Mr. Chairman, I will agree if the delegates are agreeable to omitting the note.

CHAIRMAN: If the Delegate of Australia does not feel very strongly about it, I take it that we may omit that note. Is that agreed? Agreed.

Note VI. page 12.

"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."

I take it this Note must be provisionally maintained.

Mr. Oscar RYDER (United States): As I understand it, this particular paragraph is an important amendment. I do not think we should pass final judgment on it until it has been considered by the Sub-committee.

CHAIRMAN: I take it that we all agree that we maintain it provisionally until we know the fate of the Articles to which this paragraph has reference.

We will pass on to Paragraph 6. It will be noted that there is a new draft. The New York Draft has been replaced by a new draft, which reads: "No measures other than anti-dumping and countervailing duties or charges shall be applied by any Member for the purpose of offsetting dumping or subsidization."

You will find in the comment on page 13, this was not unanimously agreed in the Sub-committee. You will note that the Sub-committee was rather a strong committee and of its members, two representatives of Delegations, China and India, opposed this new draft of Paragraph 6. I would like to ask the Indian representative whether he still maintains his point of view.

Mr. S. RANGANATHAN (India): We still feel the new paragraph should not be added. It came about in an almost casual manner during our discussions. Our main objection to it is that we do not know what exactly we are asked to give up. Rather than have some omnibus revision of this kind without knowing exactly what it implies, we feel the Article would be much better without this amendment.

CHAIRMAN: The Chairman of the Sub-committee is not present, so I would ask the Delegate of Cuba, who did not participate in the discussion, whether he has any views on the matter.

Mr. R. L. FRESQUET (Cuba): We would appreciate a slight change in the two last lines of the Comment. Instead of saying "The Delegate for Cuba was not present at this discussion", we would like these words deleted and the name of Cuba added to those who opposed the new Article.

CHAIRMAN: We have now heard the reasons for opposing the new draft of Paragraph 6. I would like to know whether any of the members of the Sub-committee could give any reason in support of the draft.

Dr. J. E. HOLLOWAY (S. Africa): I was not a member of the Sub-committee, but it seems to me that there is no ulterior motive in this paragraph. It appears to be a case of a man being hung, drawn and quartered. If you could be hung for dumping, you cannot be drawn and quartered at the same time; that seems to me to be perfectly clear.

Mr. C. E. MORRISON (Australia): As the Delegate for India has implied that the paragraph came about in a somewhat off-handed manner, I suggest that the decision might be left to the Indian Delegation.

CHAIRMAN: Does the Delegate of India want to speak?

MR. S. RANGANATHAN (India): Mr. Chairman, some Members in the sub-committee expressed the fear that to deal with dumping a country might take recourse to criminal penalties against the importer. Likewise, some other Members expressed the fear that Governments might restrict the available exchange for people dealing with countries that practice dumping. These measures, they thought, should not be used, and that, to prevent dumping, countries should have recourse, one day, to countervailing duties or anti-dumping duties, and not take any other steps. Personally, I do not see what other steps could be taken, except in the extreme instance - quantitative restrictions.

I recollect that there was some dumping of textiles from Japan many years ago, and the only effective method that India could adopt was to fix a quota. I do not know whether such a circumstance will apply, but I think it is somewhat premature or dangerous to completely write off all such preventive powers that any country may find it necessary to employ, and to regard only the anti-dumping and countervailing duties as reliable resources with which to fight dumping.

CHAIRMAN: Are there any further observations on this?  
The Delegate of Chile.

MR. F. GARCIA-OLDINI (Chile) (Interpretation): Mr. Chairman, I wish to support the remarks just presented by the Delegate for India.

CHAIRMAN: The Delegate of South Africa.

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, would any Member be allowed to use quantitative restrictions unless provision were made in the Chapter dealing with quantitative restrictions?

CHAIRMAN: I do not think so.

MR. S. RANGINATHAN (India): Possibly not. If so, why should there be this clause introduced here by way of abundant caution?

CHAIRMAN: The Delegate for the United States.

MR. O. RYDER (United States): Mr. Chairman, I just want to remark that quotas are not the only methods that can be used to deal with dumping. Much higher duties are necessary for the anti-dumping duties defined in this paragraph. There is a great danger of the mis-use of the various measures, to counteract dumping, which may be termed anti-dumping, and that is the reason for this provision.

CHAIRMAN: The Delegate of Cuba.

MR. R.L. FRESQUET (Cuba): Mr. Chairman, it seems to me that we are not in a position yet to give an answer to that question, because we still do not know what is going to be the final draft of the Articles on quantitative restrictions.

CHAIRMAN: Speaking for myself and without having taken part in the work of the sub-committee, I must say that I do not see any danger in paragraph 6 - "No measures other than anti-dumping and countervailing duties or charges shall be applied by any Member", and so on. There are different possibilities, not only quantitative restrictions, of discriminating against a country,

and this is perhaps the most efficient weapon. So, I think that paragraph 6, in its new wording, has some value.

Unless there are any further remarks, I do not see any way around our difficulties. We have now four delegates instead of two opposing the new draft of paragraph 6, and I am afraid that we shall have to maintain this note (a), altering the last two lines - "and opposed by two delegations (China and India)" to "opposed by four delegations (China, India, Cuba and Chile)".

CHAIRMAN: The Delegate of Cuba.

Mr. FRESQUET (Cuba): Mr. Chairman, it seems to me that may be it will be better just to stop any decision about this Article until we definitely know what are going to be the texts of Articles 15 and 25, and if we make any change at all in Articles 15 and 25, then we will have to come back to this Article and I do not see how we speed up the work of the Committee in this manner.

CHAIRMAN: The Delegate of the Netherlands.

Mr. KORTEWEG (Netherlands): Mr. Chairman, I do not think that the last proposal is a proposal that we agree to, for there is a little possibility that if there are changes in article 15 or another Article, that makes necessary a change of the 6th paragraph of this Article also, we have to come back to it. It is only a possibility, and if we are now deciding that the whole thing is pending, then we have to come back to it.

So I do not think that this is a better way, to agree to this new paragraph. And then, as to the comments, I should like to say that as for myself I do not think it is necessary to mention all the names of the countries in the Sub-Committee who have supported the new paragraph. It is sufficient that only the 6 who are against are named here, for I think in general it is not necessary to name the Sub-Committee at all in comments that are going from this commission to the Executive Committee.

CHAIRMAN: I would answer first the question whether we should postpone further discussion until we know how Articles 15 and 25 and the following Articles have been dealt with.

I do not think it is necessary, and what we do here is

always conditional upon possible reconsideration in the light of decisions taken on other Articles; so I think that we can keep this paragraph 6 as it stands. But we then must have the comment in Note (a), and I think it ought to read that the Sub-Committee did not reach unanimous agreement on the addition of a new paragraph. Its inclusion was supported by 12 delegations and opposed by 4, and the names of these delegations are in the working paper here, but it will not go before the Conference; and I would say in that connection that it has been the practice of the Preparatory Committee never to include in printed documents to be submitted to a further session of the Conference any names concerning the attitude of individual delegations - to say that delegations maintain or oppose and so on.

I think that also should apply in this case.

Is that procedure agreed?

Agreed.

We pass on to Note (b) on page 13. "It is understood that the obligations set forth in Article 17 could, as in the case of all other obligations under Chapter V, be subject to the provisions of Article 34. "

I have two comments to make on that. One is that it seems to me to be superfluous as it is absolutely self-evident; and the second one is that if it should be maintained, it ought rather to come in the beginning of Article 17 than here at the end.

CHAIRMAN: The Delegate of Brazil.

Mr. RODRIGUES (Brazil): I am very sorry not to agree with you. I believe this note is absolutely necessary, and I have an idea that it was agreed in the last meeting of the Sub-Committee to have the note, in order to show that some countries have

accepted paragraph 6 because of this interpretation.

I should like to ask the question because you said in the Saturday meeting that you were prepared to raise a question about these explanatory notes, and I should like to know if you will kindly tell us, because I think it is necessary to have this comment, at least, sent to the next Conference, otherwise countries like Brazil will not be in a position to accept Article 17 as it now stands.

CHAIRMAN: I take it that in the Sub-Committee everybody agreed to the statement under (b) and if that is the case, I fully appreciate the point of view of the Brazilian Delegate, and have no objection, of course, to the note being maintained.

As to the general question of the form of dealing with all these explanatory notes, I promised to bring it up at the Heads of Delegations meeting. To-day we did not arrive as far as the consideration of the Report of the Second Session, but I shall not forget to bring it up as soon as I get an opportunity.

CHAIRMAN: The Delegate of Czechoslovakia.

M. B.J. BAYER (Czechoslovakia): Mr. Chairman, I do not feel very strongly about these particular notes we are discussing. I would not oppose the maintenance of them, and I would not object to the deletion of them, either. But there is something else which strikes me in this connection.

In the course of these afternoon meetings, we have gone through two or three pages and what we have been very successful in accomplishing is the deletion of three or four explanatory notes, which were agreed upon unanimously. On the other hand, we have not been so successful in getting rid of some of the reservations, and I think I would like to say a few words in defence of the explanatory notes.

In our opinion, they are not the obstacle we should fight against; but it seems to us that if we preserve them in general they might serve a good purpose to the other Delegates, especially in the Plenary Session. We all know how much time we spent before we arrived at the unanimous agreement upon the particular question.

CHAIRMAN: I would like to ask the Delegate of Brazil whether, in view of the fact that we are maintaining note (b), we can strike out note (c).

M. E.L. RODRIQUES (Brazil): I agree.

CHAIRMAN: If there is no objection, then, we maintain (b) and we omit (c).

The Delegate of Cuba.

Mr. R. L. FRESQUET (Cuba): Before going on to another matter, we have no objection to that note in Article 17 (6).

CHAIRMAN: Thank you. We pass on to Article 18.  
The Delegate for Australia.

Mr. C.E. MORTON (Australia): Mr. Chairman, I must inform you that today I received certain instructions from my Government regarding Article 18 on which I am not entirely prepared to act without further reference. I would crave your indulgence, therefore, to have Article 18 dealt with at the end of this Meeting, rather than in its normal turn now. Alternatively, as my instructions refer to Article 18 (2) (a) only, if in your wisdom you choose to discuss the rest of the Article and reserve that paragraph only, I am content.

Mr. W.E.H. RHYDBERCH (United Kingdom): Mr. Chairman, we in the United Kingdom, too, would probably have quite a lot to say about paragraph 2(a), particularly the note which says:

"The Sub-Committee considered that the words 'between independent buyer and seller' in (ii) might be deleted on the understanding that the phrase 'under fully competitive conditions' covers the same concept".

I agree with the Delegate of Australia that there would be no harm in deferring consideration of this very contentious matter, if the rest of the Delegates agree.

CHAIRMAN: The Delegate of the United States.

Mr. Oscar RYDER (United States): Mr. Chairman, I think that in view of the remarks of the Delegates of Australia and the United Kingdom, it would be as well to pass over the whole of Article 18 for the present. I would like to have that done particularly in view of the fact that some discussions concerning paragraph 2(c) are still going on.

CHAIRMAN: I take it that we all agree to pass by Article 18, and I am thankful to the Delegate of Australia for his optimism when he said "until the end of the Meeting today"!

Mr. C. E. MORTON (Australia): That was unintentional!

CHAIRMAN: The Delegate of Cuba.

M. R.L. FRESQUET (Cuba): I wonder if it would save your time, Mr. Chairman, if we pass over a small drafting question which arose when we were discussing Article 20, paragraph 5, in the full Committee, where it reads "investigate and recommend". The full Committee agreed to change the wording, which occurs also in Article 18, paragraph 1, to read "may study and recommend" and not to investigate.

Mr. OSCAR RYDER (United States): Mr. Chairman, I have no objection to the suggestion made by the Cuban Delegate. I think it would be the best procedure if we passed over Article 18 and came back to it when we can attend to that Article.

CHAIRMAN: I think this is right, and we could now start with the examination of Article 19 on pages 22 and 23 of document T/103. Article 19, paragraph 1. We have here a general comment on page 23 of document T/103: "Article 19 is shown opposite according to the report ....." It simply is a historical explanation of how the Sub-Committee dealt with the Article, because, in the Working Party where we had this in the first reading, we had a long discussion. Different suggestions were put forward and certain texts were adopted in the first reading. The Sub-Committee has considered itself entitled to re-examine the whole of the Article, and the text before you is the result of this examination. That is what is contained in the long comment on page 23, and I present it for the consideration of the Members here.

You will see, first of all, that the Sub-Committee proposes a new title for Article 19. Instead of the New York text: "Customs Formalities" they propose "Formalities connected with Importation and Exportation". That was only discussed in the Working Party and generally they agreed to it. I would like, in connection with such a title for the Article, to mention once more what I have said on the previous occasion. We must not take these titles too seriously, because it is quite possible that, at the Conference, when we have all the Charter before us, we shall omit all these Article titles. They are exceedingly helpful as working documents, but it is not the ordinary thing in international treaties to try to give a name to each Article so I just warn you that you must not consider any question of substance decided by the title, but must see to it that the text

itself of the Article contains everything we want to express.

Mr. F. GARCIA ULDINI (Chile) (Interpretation): Mr. Chairman, may I just comment very briefly on your remarks dealing with the deletion of headings. It is true that it is not a custom in international treaties to have any headings - the Chapters are simply numbered and the question is left at that. But this Charter is rather an unusual document. I gather that the Committee of the Heads of Delegations is already discussing the possibility of having customs areas. This is an unusual procedure and however this particular problem is solved the point is that it shows how very extraordinary the Charter is as far as documents go.

Besides, international treaties are usually mostly concerned with politics, whereas the Charter deals with international trade, and Member-States will have to study it very closely and use it for their daily work. Therefore, I believe that not only are headings necessary, but that after the official edition of the Charter is published it will be necessary to provide for an annotated edition such as now exists for Codes and people concerned with the law. I would ask you not to press for the deletion of the headings, and also to leave the door open for a further edition of the Charter with footnotes and references.

CHAIRMAN (Interpretation): I am grateful to the Delegate for Chile, and I certainly have no objection to anything that he has said. As a matter of fact, I did not insist on the omission<sup>of</sup>/the titles, I warned the Committee against a misapprehension to try and interpret the substance of the Articles from the titles: Even although it is possible that in the signed and ratified copy of the Charter all titles may be omitted from the Articles, there is nothing to prevent future editions containing titles.

We pass on to paragraph 1. There is no comment and I take it that as the alterations proposed by the Sub-committee are only formal, we all agree.

(Agreed)

CHAIRMAN: Paragraph 2. There are no comments but I should like to make a comment of my own. In Article 18, Paragraph 1, the Sub-committee dealing with that Article proposes to replace "is authorized to" by "may"; and here in Article 19, Paragraph 2 another Sub-committee maintains the wording "is authorized to". I do not want to make any suggestion

but I feel that these matters should be referred to the Drafting Committee.

I take it that you all agree to the draft presented by the Sub-committee on Paragraph 2.

(Agreed)

CHAIRMAN: We pass on to Paragraph 3. There we have some comments on Page 25.

"(a) The Delegate for China reserved his right to request at the second reading of this paragraph the insertion of the words "and upon due consideration by the Organization of its merits" after "Member" in the fourth line."

Mr. F. Garcia OLDINI (Chile) [Interpretation]: I suppose the Delegate for China was prevented from attending this afternoon, and on his behalf I would ask you to defer the question until another session.

CHAIRMAN: I will ask the Secretariat to communicate with the Delegate of China and find out whether he maintains that reservation.

We will pass on to Comment b on Paragraph 3:

"(b) The question was raised by the Representative of the International Monetary Fund if there was any provision in Article 19 which could be interpreted as prohibiting a Member from employing multiple currency practices, or equivalent thereof, for balance of payments purposes when the action of such member is taken in accordance with the recommendations or approval of the International Monetary Fund. It was pointed out that while Article 19 does not cover the use of multiple rates of exchange as such, paragraphs 1 and 5 would condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; it was clear, however, that if a Member is using multiple currency exchange taxes for balance of payments

reasons. with the approval of the Fund, the provisions of paragraph 3 would fully safeguard its position since that paragraph merely requires that the taxes be eliminated at the earliest practicable date."

That seems to me to be a sufficiently explanatory note. Does the Commission agree that it should be retained in the Document?

MR. OSCAR RYDER (U.S.A.): Mr. Chairman, I would just like to make a remark about the next paragraph. I may be out of order but you will probably agree. It seems to me that the next paragraph is unnecessary in view of (b).

CHAIRMAN: Yes, I intended to come to that. I agree that that seems to be superfluous. If we maintain (b) we might omit (c) which reads:-

- (c) The Ad Hoc Sub-Committee recommends that an explanation be included in the report of the Preparatory Committee to the effect that sub-paragraph 5(d) is without prejudice to the provisions of the Charter relating to safeguarding balance of payments and to exchange control.

Are we all agreed that comment (b) covers the whole problem and (c) may be omitted?

Agreed.

MR. E. STURC. (International Monetary Fund): Mr. Chairman, I should appreciate it very much if in this explanatory note you could change the expression "taxes" in the last part of comment (b) for "fees", the reason being that in the Article itself you speak about fees and charges while in the explanatory note you speak about taxes and there might be some misconception later on; so maybe it would be better to change it to "fees".

CHAIRMAN: Where in (b) does that come?

MR. E. STURC (International Monetary Fund): In the latter part.

CHAIRMAN: "Fees" instead of "taxes"?

MR. E. STURC (International Monetary Fund): Yes: "...multiple currency exchange taxes for balance of payments reasons...". It is the fourth line from the end.

CHAIRMAN: Yes. Well, with that explanation given by the representative of the International Monetary Fund, we all, of course, accept his redraft and we will change our draft accordingly.

MR. E. STURC (International Monetary Fund): There are two places in the line before the last and in the fourth line from the end.

MR. G.B. URQUHART (Canada): It occurs in three places.

CHAIRMAN: In the middle of (b) you will find "would condemn the use of exchange taxes or fees."

MR. E. STURC (International Monetary Fund): That would not bother me because that is a general statement. It is just the second part.

CHAIRMAN: Then that is maintained. Thank you.

We now pass on to paragraph 4. You have seen that there is a complete new draft by the sub-committee, and I think that it was very thoroughly discussed at the first reading and that it expresses entirely the views which were common to all the Members of the Commission. Is there any comment?

MR. E.L. RODRIGUES (Brazil): Mr. Chairman, because I was a new Member of the sub-committee, I could not follow very thoroughly paragraph 4 of this article 19. However, I think the expression "without fraudulent intent" - it is the third line from the end - is not very clear. In my opinion - and I am speaking from professional experience - it is not so easy to know when it is a fraudulent intent, especially if you think that this matter will be dealt with, in the first instance, by the administration without much documentation, and without having time enough and material enough to judge if it is, or is not, fraudulent intent. I think it is a very hard matter to put this here as a general principle for diminishing the penalty. I call your attention to this because I have only the intention of helping, and by giving my opinion about that, I am not opposing the drafting.

MR. W.E.H. RHYDDERCH (United Kingdom): In answer to the Delegate of Brazil, I think it is probably the experience of all the delegates here that the administration is quite competent

after long experience to determine whether there is any fraudulent intent or not from the documents. I think his fears are quite unfounded.

MR. C.E. MORTON (Australia): Mr. Chairman, I agree with the Delegate from Brazil that it is extremely difficult to distinguish fraudulent intent in a transaction. I agree with the Delegate of the United Kingdom that people who have to deal with those transactions acquire a very great amount of facility in the matter, but I draw your attention to the use of the word "obviously" in this clause. Wherever it is "obviously made without fraudulent intent" it is easy to distinguish, and in such cases only is action required to be taken which should not be greater than necessary to serve merely as a warning. Wherever there is the slightest doubt you take what action you choose.

G.

CHAIRMAN: Well, I take it that after this discussion we can pass paragraph 4 as it stands. It is obvious to me that if the Customs Officer is in doubt, then the State concerned will have under the ordinary rules of all our Criminal Courts to prove that there was fraudulent intent. If the Government concerned does not find it worthwhile to try to prove it, then they should only impose a very slight penalty. I do not think there is any danger.

The Delegate of Brazil.

Mr. RODRIGUES (Brazil): Mr. Chairman, I do not want to spend time unnecessarily, because I did not take part in the prior discussion; but I am convinced that I am quite in co-operation with your interpretation.

CHAIRMAN: Well then we agree to the draft of para. 4.

We pass on to paragraph 5, which gave rise to most of the discussion, in the first reading. I hope the Recommendation of the Sub-Committee will be accepted by you, and assume there is no comment.

Agreed.

We pass on to Article 20. Marks of Origin. Paragraph 1.

No comment.

Agreed.

Paragraph 2. No comment. Agreed.

Paragraph 3. There is no comment. "The Delegate of the United States maintains provisionally his reservation made in the Drafting Committee in favour of the word "shall" (instead of "should".) I would like the Delegate of the United States whether he maintains his reservation.

Mr. RYDER (United States): The U.S. Delegation feels very strongly that it should be "shall" instead of "should"; but if that/<sup>Draft</sup>is what the Delegates would agree to, we would not make a new reservation.

CHAIRMAN: Is paragraph 3, then, accepted in the wording of the Sub-Committee?

Agreed.

Paragraph 4. No comment. Agreed.

Paragraph 5. There is the following comment:

"While approving this paragraph with the slight change involved in the substitution of the word "study" for "investigate", the Working Party thought it desirable that the discussion of this paragraph at its meetings, as well as at the Drafting Committee and at the First Session of the Preparatory Committee, should be considered by the Organisation when studying the problem of "the early elimination of unnecessary requirements as to marks of origin".

We also have a suggestion by the Delegate of France that it would be desirable to add a reference to what took place at our first reading of this Article, where the importance attached by us to the word "early" in this paragraph was emphasised.

I would suggest that we maintain this comment to para. 5 by omitting the first two lines, and add, "the Working Party also wanted to underline the word 'ly' in the beginning of this paragraph".

CHAIRMAN (Interpretation): This meets the wishes of the French Delegation.

Mr. ROUX (France) (Inter): Thank you.

Yes quite, Mr. Chairman,

CHAIRMAN: May I take it that we all agree to this explanatory note?

(Agreed)

We pass on to Paragraph 6. The United States Delegation made the same proposal with regard to "shall", instead of "should" as in the earlier paragraph. May I ask the Delegate of the United States whether he wishes to make any remarks?

Mr. Oscar RYDER (United States): I have the same remark to make, Mr. Chairman, except that here the "shall" would be even more desirable; but I will not press any reservation.

CHAIRMAN: I take it that the sub-Committee being composed of very many Members of this Commission, they maintain their view, and we can only thank the United States Delegate for being willing to forego this reservation. Is that agreed?

(Agreed)

Paragraph 7. We have an entirely new draft on page 30 and we see, on page 31, "The Delegate for Chile reserved his position as to the version of this paragraph recommended by the Working Party". May I ask the Delegate of Chile whether he can withdraw that reservation?

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I am sorry to say that, at least for the time being, I have to maintain my reservation.

CHAIRMAN: It might help us if we have some indication of the main reason for the reservation.

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, this is hardly a matter for discussion here. The instructions I have say that this is a technical problem which competent

Organizations should deal with. Until I receive new instructions, I will not be able to change my present position.

CHAIRMAN: Thank you. There is nothing for it, then, but to maintain this reservation. (Following remarks made in French, but not translated):

M. F. GARCIA OJEDINI (Chile) (Interpretation): Mr. Chairman, I wish I could substantiate your hopes, but for the time being I am unable to do anything about it.

CHAIRMAN: I would like to say, concerning the text of the new paragraph 7, it now appears as three paragraphs. I wonder whether, in order to bring it into line with the rest of the Charter, it would be necessary to amalgamate them into one paragraph, or, if not, to call them (a), (b) and (c). I think we will leave that to the Legal Drafting Committee, but I just wanted to mention it here.

I take it that we agree with the reservation of Chile to the text of paragraph 7? (Agreed).

Article 21 - Publication and administration of trade regulations, advance notice of restrictive regulations.

(Interpretation). We also have a suggestion from the French Delegation proposing the insertion of a new commentary. You will find it on page 2 of Document T/109.

The Drafting Committee considered that the Organization should be responsible for collecting, analysing and publishing in the most accessible form all laws, regulations and decisions concerning foreign trade and for the periodical collection, in the form of detailed studies, of information concerning the regulations of member States on a given point. This idea was re-stated in an amendment proposed by the Delegations of

France, Belgium, the Netherlands and Luxembourg. The Working Party noted this suggestion but in view of the provisions of sub-paragraph (a) of Article 61 considered it unnecessary to include it in paragraph 1 of Article 21."

(In English) Does the Delegate of France .....  
(question completed in French, not translated).

M. ROUX (France) (Interpretation): Mr. Chairman, I do not attach great importance to this note. I simply wanted to draw the attention of the Commission to that point. If you think a useful purpose might be served by inserting it, I should be very pleased and see only advantages in it; but if you decide against it, I will raise no objections.

CHAIRMAN: (Interpretation): You are laying a great burden of responsibility on my shoulders. However, if I have to be quite candid, I must say that I am striving at present to bring the commentaries down to a minimum. Personally, I would be against the insertion of this note. May I ask the other Delegates whether they have any views on the subject? Is there anybody who is very strongly in favour of this commentary being inserted?

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I fully appreciate your point which strikes me as being the best one. However, I have doubts on this point concerning whether the insertion of this note will lead to subsequent discussions or difficulties or whether it is the omission of this note which will lead to difficulties.

CHAIRMAN (Interpretation): No, I meant the insertion of the note might later on give rise to a misunderstanding of the real meaning of the text, because we might be asked "Why did you feel compelled to insert such an explanation?" and that would lead to unnecessary discussions. Therefore, I think, unless you raise very strong objections, that it would be better to omit it altogether.

I wish to thank the Delegates for France and Chile for their agreement with us, and therefore we probably will adopt unanimously the text of paragraph 1 of Article 21.

In paragraph 2 there is a comment on page 33: "This new paragraph was proposed by an Ad Hoc Sub-Committee composed of delegates for Czechoslovakia, France, the Netherlands, the Union of South Africa, the United Kingdom and the United States. The paragraph was adopted by the Working Party on the understanding that the Members of the Sub-Committee might wish to propose alterations in the wording when the Article is discussed in Executive Session". If there is no Delegate who has any better suggestions to make, then I would suggest that we adopt the recommendation of the Ad Hoc Sub-Committee. You will remember that we discussed this very thoroughly in the first reading. We really had a first, second and third reading of it, and I do not think any different purpose would be solved by continuing this discussion, so I submit that we adopt paragraph 2 as it now stands. Paragraph 2 is then approved? Agreed.

Paragraph 3 on page 35. There you see a comment: "The text of the new paragraph 3 shown opposite has not been approved by the Working Party but is suggested by an Ad Hoc Sub-Committee composed of Delegates for Canada, the Netherlands, the United Kingdom and the United States." The fact that it was not approved by the Working Party does in no way mean that we need not discuss it. We should discuss it very thoroughly, and I consider that the draft submitted by that Ad Hoc Sub-Committee really incorporates the findings at which we arrived in the Working Party.

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, the position with regard to paragraph 3/<sup>only</sup>was that the final sentence was considered by the Ad Hoc Sub-Committee. The first and second sentences were considered by the Working Party only, and the two reservations at the bottom of page 16 of the Drafting Committee Report will stand.

New Zealand is fully in accord with the first sentence which requires that laws, regulations and decisions shall be administered in a uniform, impartial and reasonable manner. Subscription to those principles has been a feature of customs administration in New Zealand.

We are concerned, however, with the second sentence of this paragraph which provides that Members shall maintain or 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.

We understand that provision which enables appeal to be made to a Court conforms with this requirement. So far as valuation for duty is concerned, there is provision in the New Zealand customs law under which an importer may, if he so desires, appeal to the Minister

of Customs against a valuation made by a Collector of Customs and he also has access to the Court.

The matter which concerns us, however, is a provision in the New Zealand law bestowing upon the Minister of Customs power to interpret the meaning of certain words relating to classification of goods under certain general headings of the tariff. This provision reads as follows: "Where any dispute arises as to the true meaning and application of any terms used in the tariff and therein printed in italics, the Minister may determine such dispute in such manner as appears to him just, and his decision thereon shall be final".

Examples of the types of tariff terms to which this applies are inorganic acids, insulin substitutes, braces and similar articles, gloves, principally of leather. In the two latter cases the words "similar" and "principally" are italicized and are subject to interpretation by the Minister. This provision was made to facilitate administration and has operated most satisfactorily and in the interests of the importers. In substantiation of this I quote, Mr. Chairman, the following extract from the report made in 1934 by a Royal Commission which investigated the tariff of New Zealand on the occasion of its revision, and considered this particular provision. This is how it reads:

"In our opinion the present law and practice are in the public interest, and should stand unaltered. It will be appreciated that, with the multiplicity of tariff items, and the infinitely greater multiplicity of commodities imported, the tasks of classification are difficult and complex, demand a highly technical knowledge of various commodities which can be acquired only by considerable experience, and are not matters upon which Supreme Court Judges are specially qualified by experience and training to adjudicate, and upon which we are inclined to think they would be unwilling to be asked to adjudicate. Most of the questions over which real difficulty arises involve rather fine distinctions, and for the purpose of satisfactory administration require to be settled expeditiously. The Supreme Court, if this class of case were forced upon it, would have no precedents arising out of its own experience for its guidance, and would presumably have to decide the issue on the basis of hearing a number of witnesses on both sides. This would cause very considerable delay, and possibly considerable trouble through conflicting decisions by different judges, because the questions at issue are in the main matters of fact and not of law.

It might congest the work of the Supreme Court, cause considerable uncertainty in customs administration and make the tariff difficulty of consistent and expeditious administration. Incidentally, especially if appeals on points of classification went beyond the Supreme Court, the situation thus created might in some instances be ridiculous. The present procedure is likely to give a much more expeditious and satisfactory decision on matters of Customs classification than the Law Courts of the land. The suggestion that the Minister, in exercising his discretion under the Act, is acting as judge in his own case is a travesty of the situation. The Minister is not judging his own case, but acting as arbiter between the community as a whole and the importer, and, after taking the advice of his responsible officers, is a much more competent arbiter for this class of problem than any lay tribunal possibly could be."

I think it will be recognised from this report that the procedure referred to is fully justified, and that there should be no obligation to change it. We could not, in fact, in the face of that report, and of the situation as we know it which is completely satisfactory to importers, contemplate any change.

I should make it clear that this procedure applies only to terms printed in italics. In other cases the importer may, if he so desires, appeal to the courts, but I have no knowledge of any such appeals having been made.

Apart from the position which I have outlined, I have no doubt that many instances exist, particularly in the case of small or dependent territories where the procedures in force, while not conforming strictly to the requirements of the Article as at present drafted, nevertheless are completely satisfactory in their operation.

I should be glad, therefore, if the Commission would consider an amendment of the proposed paragraph so as to provide for the continuance of existing procedures used by any country which conforms fully to the principle and spirit of the Charter.

A suitable provision might be as follows:-

"Nothing in this paragraph shall require the elimination or substitution of existing procedures which conform fully to the principles of this paragraph".

I should be glad to consider any other provision that might be suggested. I just put that up for the consideration of the Commission.

CHAIRMAN: I think we should thank the Delegate of New Zealand for his constructive suggestion. In discussion in the Working Party - speaking for myself, at any rate - we had the feeling that we were up against an almost insoluble problem, but of course we cannot take any decision on this question this afternoon. Delegates must have time to think it over, but my first impression is that it is certainly a proposal that may lead to a unanimous decision on this paragraph.

I think we have worked enough today to be able to adjourn now. We shall continue tomorrow - it was suggested to me by the Secretary that we should start at 2.15, but I said "No, it must not be before 2.30. We cannot work without having a reasonable break", and I am sure you all agree.

So, we will meet again at 2.30 tomorrow and begin by the examination of the New Zealand proposal, and then go on with the rest of our task, taking Article 18.

MR. C. E. MORTON (Australia): Can we arrange, Mr. Chairman, to have at least one week before Article 18 is considered, starting, say, today week, as it is necessary for Australia to consider the instructions received from their Government?

CHAIRMAN: For my part, there is not the slightest objection to passing by Article 18 for a week if the Commission agrees. The main thing is to arrive at a unanimous conclusion. I cannot think that the rest of the Charter is held up because of these technical Articles, and so we can satisfy, I think, the Australian Delegate.

The meeting is closed.

The meeting rose at 5.00 p.m.