

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

VERBATIM REPORT

FORTIETH MEETING OF COMMISSION "A" (1) \*  
(Articles 25 & 27, 26, 28 & 29)

HELD ON FRIDAY, 15 AUGUST 1947 AT 10.30 A.M.

IN THE  
PALAIS DES NATIONS, GENEVA.

M. Max SUTENS (Chairman) (Belgium)

\* For report of proceedings of Commission "A" (2) (Technical Articles) see Summary Record, E/PC/T/A/SR/40(2).

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

We meet today in order to examine Articles 25 and 27, and, at a later stage, Articles 26, 28 and 29. As to Articles 25 and 27, these Articles were examined by the sub-Committee under the Chairmanship of Mr. Melander. The report of this sub-Committee is contained in Document E/PC/T/141. The Legal Drafting Committee has also examined this text, and made a report in Document E/PC/T/142 dated 12 August. I will now ask the Chairman of the sub-Committee, Mr. Melander, to introduce his report, and also ask him to tell us if he agrees to take the text of the Legal Drafting Committee as a Working Paper.

Mr. J. MELANDER (Norway): Mr. Chairman, on behalf of the sub-Committee, I have the honour to introduce the report of our Committee. I do not think it calls for any general comments at this stage, except perhaps that I ought to mention, as you will observe from paragraph 1 of the General Notes in the Paper E/PC/T/141, that some of the amendments which were made to the New York text were transferred to the sub-Committee dealing with Chapter IV: those were amendments connected with the economic development of the particular countries.

Apart from these amendments, the sub-Committee considered all the principle proposals on the report of the sub-Committee as unanimous except for certain reservations on special points. I think the text of the Legal Drafting Committee ought to be acceptable as a Working Paper here for discussion in the Commission.

CHAIRMAN (Interpretation): I thank Mr. Melander for his words. We will now start with Article 25 and take the text of the Legal Drafting Committee as a basis. Article 25 - General Elimination of Quantitative Restrictions, paragraph 1. Does anyone like to

speak on this paragraph?

Mr. H. HAWKINS (United States): Mr. Chairman, I suggest that the word "import" before the word "licenses" in the fourth line probably should be deleted since the paragraph relates to restrictions both on imports and exports.

CHAIRMAN (Interpretation): Are there any observations or remarks on the modification suggested by Mr. Hawkins?

Mr. J. MELANDER (Norway): Mr. Chairman, I do not think there is any objection in substance; the only point I can see is that the first part of the sentence apparently refers to importation, which is probably the reason why we had import licenses, while the latter part of the sentence refers to exportation. I have no objection to taking out the word "import", however. But I think that is the explanation.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, I have no particular objection to the deletion of the word "import", but I think, as "licenses" is a very vague word, it might perhaps meet Mr. Hawkins's point if you put in "import or export licenses."

CHAIRMAN (Interpretation): Do you all agree?

We therefore shall say: "import or export licenses." Are there any other remarks?

Paragraph 2, sub-paragraph (a).

Mr. E. McCARTHY (Australia): It will be noticed that we have sent a circular proposing the deletion of the word "critical" in paragraph 2(a). We have done that <sup>the</sup> on/instructions of my Government, and it has not been raised sooner because we were not members of the sub-Committee, and this is the first opportunity we have had of raising this point since the original meeting of the Commission.

The reason why we suggest that this word be removed is that it is feared that export prohibitions on merino sheep which are imposed, might be prevented by the strict qualification of the word "shortages". We feel that whilst we have suffered very heavy shortages, it would be difficult with our sheep population to describe them as "critical." In the drought which occurred a little over a year ago we lost 20 million of sheep in a period of a few months, and it caused something of a crisis at the time, but the effects of a drought do not wear off until very many years have passed. Notwithstanding, it would be difficult to say that it is critical: the critical element passes rather rapidly, but the effects remain for some years. It is realised that, even with our large flocks to get back anything like a loss on 20 million sheep takes time. I have therefore to ask the Commission that we move for the word "critical" to be removed

and to explain that it is designed to meet our present position on the prohibition of merino sheep, a position which might be expected to recur periodically. We could contemplate removing this prohibition perhaps in a year or so, but our problem is that if we have another drought in perhaps 3, 4, 5 or 6 years time, we would not be able to reimpose this prohibition, or if we did reimpose it, we would only be able to keep it on during the very critical period of the result of the drought.

M. de SMEDT (Belgium) (Interpretation): Mr. Chairman, I appreciate the arguments put forward by the representative of Australia, and I also understand his desire to keep these merino sheep in sufficient numbers, but I do not see why the elimination of the word "critical" helps their aim. I understand that this is already covered by the present text as it is now, and if in the present text it would not be sufficient, the Charter provides another restriction for exhausted natural resources. I would not like to weaken the present text still more, and I am convinced that this Article, and the other Article in the Charter that I just mentioned, cover the point and should give satisfaction to the representative of Australia.

CHAIRMAN (Interpreted): I will ask the Australian Delegate one thing. I understand that, in the French text "critique" is not exactly equivalent to the English "critical", and in the French text I am convinced that we should maintain the word "critique" because there is no other word that could cover the situation. The case is, I believe, covered by the present text in French, and I wonder if we could not keep it.

Monsieur Kojève.

M. KOJEVE (France) (Interpretation): Mr. Chairman, I would agree if this text really concerned a critical situation, but it concerns the prevention of critical shortages and it is very often difficult to foresee if there will be a critical shortage or a critical situation.

I do not insist on other words, but I am not opposed to accepting another text if this can give satisfaction.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I really do feel that the amendment that the Australian Delegate suggested is a manifestation of hyperconscientiousness. It does seem to me that the situation which Mr. McCarthy described can properly be called "critical" in English, as well as "critique" in French, and I should be very sorry to see this text weakened. It does seem to me that if you take out the word "critical", almost any product which is essential will be alleged to have a degree of shortage and could be brought within the scope of this paragraph.

I feel that, in a text like this, it is unnecessary and undesirable to delete the word "critical".

CHAIRMAN (Interpretation): In view of these facts, I wonder if the Australian representative insists on his amendment?

I believe that he has the assurance that, both in French and in English, "critique" and "critical" cover the situation he mentioned exactly. Moreover, the minutes of this meeting will always be at his disposal to indicate the feeling of this Committee.

MR. E. McCARTHY (Australia): My instructions are rather precise on this subject, Mr. Chairman, and I should like to hear the views of just a few more members before reporting back.

CHAIRMAN: Mr. Deutsch.

MR. J.J. DEUTSCH (Canada): Mr. Chairman, I just want to say that I agree both with what you have said and with what the Delegate of the United Kingdom has said, that is that the existing words - especially if you consider the words "prevent critical shortages" - would cover the case that Mr. McCarthy mentioned.

CHAIRMAN: Mr. Webb.

MR. L.C. WEBB (New Zealand): Mr. Chairman, we are interested in the same problem which has caused the Australian delegation to raise this question. I understood from you, Mr. Chairman, that the word "critical" in the English text is slightly more severe in its connotation than the word "critique" in the French text, and I wonder whether, in the circumstances, it might not solve the problem to replace the word "critical" in the English text by the word "serious", a word which has been used elsewhere in similar circumstances in the Charter, I think, and to regard "serious" as being translated by "critique".

CHAIRMAN: The Delegate for the United States.

Mr. H. HEWINS (United States): Mr. Chairman, I simply want to say that I agree with the views expressed by the other Delegates. I think that the measures contemplated by the Australian Delegate would be covered by this text as it stands for the reasons given by the Canadian Delegate, that is, the reference to the word "prevent".

CHAIRMAN (Interpretation): - Could I give some assurance to the Australian representative if the Commission would unanimously declare that it recognises that the case is covered by the text as it is, and then we will not change the text at all. Would the Australian representative accept this solution?

Mr. E. McCARTHY (Australia): Mr. Chairman, I think I can say that I have the ideas of the Commission. I feel that if something on the lines that you suggest were put into the minutes it would assist; but first I would like to know that the suggestion made by Mr. Webb is also not favoured by the Commission.

CHAIRMAN (Interpretation): I would ask you not to insist on this point. If we start to discuss the relative values of the words "critical" and "serious" we will be discussing the matter for an hour or more. I believe that you can be sure that the case you have indicated is entirely covered by the text as it stands, and I suggest that you accept that the text should be maintained as it is.

Mr. E. McCARTHY (Australia): Could I ask one question, Mr. Chairman? The only reasons against the deletion of this word have been that as it stands it meets the position. Does the Commission fear that if it is removed difficulties will arise in other directions? If that were stated, I think it would help.

CHAIRMAN (Interpretation): In the name of the Commission I can say, yes, certainly.

Everyone agrees now on paragraph (a)? (Agreed)

Paragraph (b).

M. KOJEVE (France) (Interpretation): Mr. Chairman, I object to the word "etalonnage" in the French text and suggest "contrôle de qualité".

CHAIRMAN (Interpretation): Does everyone agree to the

change in the French text?

Then we will say "controle de qualité" in the French text.

Mr. R.J. SHACKLE (United Kingdom): I would like to ask why the words at the end <sup>(b):</sup> "under paragraph 6, Article 22" are in square brackets. It does seem to me that there is a case for retaining them, because if they are not retained, and the question arises as to what is meant by "internationally agreed", the word "international" need mean no more than that there is an agreement between two countries. Well, surely this is meant to look to a wider measure of international agreement than that? On the face of it, I would have thought that there was a case for keeping the reference to paragraph 6 of Article 22, which I believe contemplates standards agreed under the auspices of the Organization. I would like to hear the reasons for the placing of these words in square brackets.

I might add that the brackets seem to have been added by the Legal Drafting Committee, as they were not in in the Sub-Committee stage.

CHAIRMAN (Interpretation): May I ask the responsible Member of the Drafting Committee to give the answer to this question? (Pause)

We therefore maintain the text as it is in Mr. Melander's Report. Are there any other remarks on sub-paragraph (b)?

(Adopted)

We pass on to sub-paragraph (c).

Mr. R.J. SHACKLE (United Kingdom): There is a note- No.7 - in the Sub-Committee's Report which sets out the agreed understanding of the Sub-Committee about the words "in any form". That note, we think, is important, and we should like to see it carried forward with the text to come out as part of the official interpretation. It has been the practice in some of the Sub-Committees, I know, to put an asterisk against notes of the Sub-Committees, I know, to put an asterisk against notes of that kind, and it does seem to me that if we follow that method, this is a case of putting an asterisk against note No 7. I wonder if that would be agreeable to the Commission?

Mr. FAIVOVICH (Chile) (Interpretation): In London and later on in New York the Chilean Delegation made a reservation concerning this point (c). The reservation was that the basis of this paragraph should apply also to industrial products.

As it now does not apply to industrial production, we are obliged to maintain our reservation.

Then on point (d), where it speaks of restriction of the quantities permitted to be marketed or produced of the like domestic product, or if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted:-

Here we also have an observation to make. We consider that this extension, which did not exist in the original Text, makes the exception more delicate, and it would be necessary to indicate exactly what one means by a similar product.

Now finally, the Chilean Delegation wants again to remind the Sub-Committee that it has always defended the point of view that whale hunting is not a similar group to fishery products, and in this connection we want, again, to have it recorded in the Minutes that we do not consider whale hunting as being included in fishery products.

CHAIRMAN: (Interpretation): We now have to decide what we are going to do with Mr. Shackle's suggestion. As you remember, Mr. Shackle's suggestion, contained in point 7 of Document T/141 is an explanation of those terms, and says "It is the understanding of the Sub-Committee that the term "in any form" covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction

on the fresh product ineffective".

This would be added as a Note with an asterisk, placed in an appropriate place in the Text itself.

Mr. SHACKLE (United Kingdom): I would like to say that it is not necessary in my proposal that this explanation should be a part of the Charter. It is only that I conceive there will be a number of Notes which require to have a definite official standing, and maybe included in an official procès verbal. I do not want to prejudice my object in putting it on record as part of the official Record of the Conference.

CHAIRMAN: (Interpretation): Do you all agree to maintain this Explanatory Note?

Now, as far as the observations of Mr. Faivovich are concerned, we first notice that he has a reservation to make on point (c). Here we can only register this declaration as a reservation.

He has also made two other observations on the Text, and I would like to ask him if he intends to submit Amendments on this Text.

Mr. FAIVOVICH (Chile) (Interpretation): Mr. Chairman, I do not intend to submit Amendments. I would ask the Committee to indicate in the Minutes that whenever we speak of fishery products we do not include, in this, whaling; and secondly, I would suggest that we indicate somewhere in the Text that it would be convenient to give a definition of the term "similar products".

CHAIRMAN (Interpretation): On the first point, there is no difficulty; that will be done. On the second point, regarding a better definition of the words "like products", I will ask Mr. Melander if he can give us a better definition than the one we have in the text.

Mr. J. MELANDER (Norway): A better definition of the words "like products", Mr. Chairman? Well, I could not do that. I have no suggestion to make.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R. J. SHUCKLE (United Kingdom): I must confess I have heard it alleged that a whale is not a fish but a mammal, but I am inclined to think that zoology is not relevant here; we are dealing with an economic question. I do not see why whale products should be treated differently from fish products. In fact, I think, in common parlance, fishery is regarded as covering whales.

In the official statistics of the Journal of Commerce and Navigation of the United Kingdom you will find two headings - "Whale Fisheries, British" and "Whale Fisheries, Foreign." If, for the purpose of those statistics, whales are included in fishery products, I think we might consider it good enough for them to be covered by fisheries here. So far as economics are concerned, I see no reason to differentiate.

CHAIRMAN (Interpretation): The Delegate of Brazil.

Mr. E. L. RODRIGUES (Brazil): Mr. Chairman, with regard to the words "like products," I feel that all of us have some difficulties, but at the same time I could give an example of some countries which have special agencies for dealing with those products. We have in Brazil a Commission

of like Products - "ComisEo de Similares". For the work of this Commission we have some definitions, but a more precise definition should be left for a later stage, when the work of the ITO will allow us to have a better idea of the subject.

CHAIRMAN: The Delegate of Norway.

Mr. MELANDER (Norway): Mr. Chairman, I may perhaps add that the Sub-committee did not discuss the term "agricultural or fisheries products", so we have really not discussed at all whether fisheries products should also include whale products. We did discuss, to a certain extent, the terms "like domestic products", but, as the Brazilian Delegate said just now, we came to the conclusion that to try to make any sort of definition was really impossible and one would, we felt, have to wait until complaints were made to the Organization. It would then be for the Organization to evolve gradually a sort of, shall I say, Case Law, as these complaints arise.

CHAIRMAN (Interpretation): May I ask the representative of Chile if he agrees with the points of view expressed by Mr. Rodrigues and Mr. Melander; that is, that on this term "like products" we should leave it to the ITO later on to establish a jurisprudence on the meaning of this term.

Mr. Angel FAIVOVICH (Chile) (Interpretation): I accept the suggestion which has just been made. It indicates clearly that there was a need to put this question. We realize that in each country there is a somewhat different interpretation of this term and it will be good to arrive at a common definition at some later time.

As far as the declaration of the representative of the United Kingdom is concerned, I would remind you that in the discussions in London it was indicated that the two things - fishery products and whaling - should not be mixed together. So far as I can remember, the representative of Norway was also of the opinion that they should be considered separately.

(Correction - following the interpretation):

What I said at the end was that, though the whale is a mammal, I would not like anyone to profit by its milk.

Mr. R.J. SHACKLE (United Kingdom): I do not wish to prolong the discussion, but I would like to suggest that in the case of the whale the I.T.O. should be left as the body of jurisprudence to settle the question of whether the whale is a mammal.

CHAIRMAN (Interpretation): We shall then temporarily content ourselves with the declaration and reservation of the Chilean delegate.

Mr. N.J. WU (China): Mr. Chairman, The Chinese delegation, as recorded in the report, has made three reservations on this paragraph 2 (c). The first reservation concerns the interpretation of the term "special factors" as used in paragraph 2 (e) of Article 25, or 2 (c) of the new text. The Chinese delegation found itself unable to agree to the interpretation, and has made a reservation on it. However, having <sup>re-</sup>examined the whole Article in a conciliatory manner, the Chinese delegation is now prepared to withdraw its reservation on this point.

The second reservation has reference to the proposed amendment of the Chinese delegation to paragraph 2 (c) old text, or 2 (a) revised text, contained in paper W.75. Upon the rejection of this amendment by the sub-Committee, the Chinese delegation formulated their reservation. The Chinese delegation has at a later stage proposed a second amendment contained in W.260 for inserting an additional separate paragraph (d) to paragraph 2 of Article 25. The Chinese delegation is now prepared to withdraw its reservation in the first case, that is the amendment contained in paper T/W/75. We will insist, however, upon our position on a certain amendment contained in T/W/260.

The third reservation of the Chinese delegation refers to that amendment, as I have just stated. This amendment (W.260) when it was proposed at a sub-Committee, was considered by the Sub-Committee to have

reference to protecting measures. Therefore we thought that it should be referred to the sub-Committee on Chapter IV. It was referred to and discussed by the sub-Committee on Chapter IV. The Chinese delegation thereupon made its reservation in the original sub-Committee on Article 25 pending the conclusion arrived at by the sub-Committee dealing with Chapter IV. Now that the sub-Committee on Chapter IV has concluded its deliberations and found itself unable to accept the amendment, the Chinese delegation has included it in its Minority Report to Commission A.

Mr. Chairman, with your permission, I wish to repeat a few words here about this amendment (W. 360). It proposes an additional subparagraph (d) to paragraph 2 of Article 25 leaving paragraph 2 (c) of the new text entirely intact. This amendment has for its purpose the protection of particular industries of agricultural products which is of vital importance to a Member State. The procedure for obtaining release as proposed in this amendment is different from the procedure in Article 13, 13(A) and 13 (B) in that in the present case no prior consultation is necessary, but only immediate notification is required. That is to say, a Member State applying import restrictions in this amendment shall notify the Organisation as soon as possible. If any Member or Members complain of any such restrictions, the Organisation shall invite the applying Member and the complaining Members for a consultation.

The Chinese delegation firmly believes that for the protection of industries or agricultural products of no great importance the procedure described in 13, 13(A) and 13(B) may be sufficient and should be followed, but for industries or agricultural products of vital importance prior consultation should be dispensed with. The Chinese delegation therefore wishes to maintain its proposed amendment and reserve its position on the whole of paragraph 2 (c) in the new text pending the receipt of new instructions from its Government.

CHAIRMAN (Interpretation): I believe we should take the various parts of this article in their regular order. We have, under (c), a number of paragraphs. We have already discussed the preamble and I suggest that we now limit the discussion to point (1), beginning with "to restrict the quantities.....". Are there any remarks on this point?

DR. G. GUTIERREZ (Cuba): Before passing on to the next paragraph, the Cuban Delegation did not think that the preamble or first sentences of (c) had been formally approved, and so if it is considered that it is to be approved, I wish to state the position of the Cuban Delegation in relation to (c), because we are not satisfied with the principle stated in the preamble. As other delegations know, the reference to industrial production in this paragraph has forced the Cuban Delegation to seek an amendment on Article 25.

The Cuban Delegation considered from the beginning that the provisions of the New York Draft Charter on the national treatment of international taxation covered by Article 15, quantitative restrictions included in Article 25 and subsidies in Article 30, would practically freeze the economic development of its country, and presented therefore amendments to those Articles along the lines suggested in documents E/FC/T/W.29, E/FC/T/W/194 and E/FC/T/W.186. We will not deal now with Article 15, because it is not the subject of our discussion today.

In relation to Article 25, the Sub-Committee on Articles 25 and 27 expressed on page one of its report (E/FC/T/141), that "proposals specifically dealing with these problems were not discussed by the Sub-Committee but brought to the attention of the Sub-Committee dealing with Chapter IV".

In relation with this matter, the Cuban Delegation had previously presented the following amendment, as I said, to Article 25, which is included in document E/PC/T/W/194, and I am not going to repeat it.

This amendment was intended to secure the under-developed countries the indispensable means for fostering their economic development using quantitative restrictions to protect or maintain their infant industries, giving at the same time clear and sufficient guarantees that those measures could not be misused.

The amendment is in full accord with the main purposes of the Charter to expand world trade by increasing world production and consumption. Its leading idea could be, as economic history proves, equally acceptable to the fully industrialized and to the under-developed countries.

The Cuban Delegation has no objection to stating within the framework of Article 25 the necessary conditions for applying the quantitative restrictions in the interest of economic development as far as they are not inconsistent with the basic aim of this development, and have no prohibitive or unnecessarily onerous character.

The Cuban Delegation recognised fully the effort made in this direction by a proposal that the Rapporteur presented and expressed its disposition to accept in general the suggested special sub-paragraph to paragraph 2 of Article 25 with the changes which are indicated in the following draft. That would mean that following letter (c), in order not to make a disturbance in the text, of (c), a new sub-paragraph should be added reading like this:-

"Import restrictions imposed for promoting the establishment, maintenance, development or reconstruction of an industry or an agricultural or fishery production, provided that such restrictions may be imposed only where to achieve the

same purpose:

- (1) the payment of a subsidy is not possible because:
  - (a) the taxable capacity in the Member concerned is exhausted or inadequate, or
  - (b) the general fiscal condition of the Member concerned is unstable, or
  - (c) the technical capacity of the Member concerned is not sufficiently developed to determine and pay the subsidy concerned, and
- (2) the imposition of a tariff would result
  - (a) in a greater rise in the price of the commodity compared with the method of import restriction, or
  - (b) in a tendency for total consumption of the commodity to fall, compared with a previous representative period, or
  - (c) in a tendency for distribution to be inequitable

and provided that if such restrictions are imposed:

- (1) simultaneously with their imposition a full statement is submitted to the Organization showing why, in accordance with the provisions of this paragraph, a subsidy or a tariff is not being used,
- (2) no restriction will operate completely to prohibit imports,
- (3) licenses issued for imports will be unrestricted as to source of supply, or will be based on a representative period,
- (4) while the restrictions are in force:
  - (a) an annual budget of supply and demand showing the amount to be supplied from local and foreign sources will be submitted to the Organization six months in advance of the budget period,
  - (b) information as to costs selling prices and methods of distribution of the locally produced commodities will be supplied to the Organization upon request,
  - (c) information as to methods of determining and granting licenses will be supplied to the Organization upon request.
- (5) the Organization may at any time, with or without consultation with other Members affected, request the modification or withdrawal of the restrictions if they have not been established according to the provisions of this sub-paragraph, in which case Members undertake to give immediate effect to such request."

Nevertheless, the Cuban Delegation considering this text, which has not appeared in any printed document except for the restricted use of the Members of the Sub-Committee, somewhat complicated and perhaps its substance subject to too many conditions,

offered the following alternative text, to be inserted as one more exception, after paragraph (c), to the general principle set forth in paragraph 1 of the said Article:

"Any import restriction for promoting, the establishment, maintenance, development or reconstruction of an industry, or an agricultural or fishery production, provided that the quantitative restriction applied to imports does not exceed fifty percent of the consumption of a given product in the domestic market."

As nothing of the substance of this or any of the previous amendments suggested on this subject by the Cuban Delegation have been accepted in relation to the new wording of Article 13 which has a different approach to the problem, the Cuban Delegation requests that the suggested amendments on Article 25 be transferred to the Sub-Committee on Article's 25 and 27, or, if the Sub-Committee has finished its work, directly to the Plenary Commission.

That is why we sent a paper to the Secretariat and this paper, with other items is issued in document E/PC/T/W/206. I do not think that, at this stage of the discussion, there would be any use discussing this amendment because of the pre-established majority in relation to this fact, so I would simply suggest that the amendment that we have presented might be rejected without discussion if we wish to accelerate our work, and we wish to make a formal reservation of our position in regard to Article 25.

CHAIRMAN (Interpretation): We will therefore continue the discussion and take the Cuban suggestion when we finish with sub-paragraph (c).

No remarks? We pass now to sub-paragraph (ii).

Any remarks?

Sub-paragraph (iii)?

Then we see at the end of sub-paragraph (c) the following: "Any Member applying restrictions on the importation of any product.." and so forth.

The Chinese Delegate withdraws his amendment regarding the expression "special factors".

Agreed? (Agreed)

Mr. R.J. SHACKLE (United Kingdom): There is a note about the term "special factors" which is No.2 on page 1 of the Sub-Committee's Report. That again is a case where we think that it is an important note, and we should like to suggest that this also be marked with an asterisk.

CHAIRMAN (Interpretation): Does everybody agree?

(Agreed)

We now come to the Chinese amendment which consists of inserting a new sub-paragraph (d) in Article 25, paragraph 2. It is contained in Document E/PC/T/W/260. Are there any remarks on this suggestion?

M. Pierre FORTHOMME (Belgium) (Interpretation):

Mr. Chairman, I believe that the proposal of the Chinese Delegation is covered by Articles 13 and 13A.

Mr. N.J. WU (China): Mr. Chairman, I must say that it is not covered by Articles 13, 13A and B. As I explained just a

few minutes ago, the procedure is different in each case. In the present case, - the procedure is that the Member applying the restrictions should only notify the Organization as soon as possible, and the Organization in turn should notify all the Members; and if any Member or Members complain about the restrictions, then the Organization should call those Members applying the measures and those Members affected, for a consultation. It is quite different from the procedure described in Articles 13, 13A and 13B.

CHAIRMAN (Interpretation): I would not like to see too long a discussion on this amendment. Is there any Delegation which is opposed to this amendment?

Mr. SHACKLE (United Kingdom): I think we are prepared to accept neither of those.

CHAIRMAN (Interpretation): Would those Delegates who oppose the Amendment please raise their hands. Those in favour?

The Amendment is rejected.

We come now to the Amendment of the Delegate of Cuba. Mr. Gutierrez himself said that he thought that probably his Amendment would be rejected. Are you all in agreement to reject this Amendment?

The Delegate of China.

Mr. WU (China): Mr. Chairman, before proceeding to the Cuban Delegation's Amendment, I wish to say that the Chinese Delegation wish to place on record that the Chinese Delegation maintains its reservation on this question.

CHAIRMAN (Interpretation): Agreed. Mr. Faivovich?

Mr. FAIVOVICH (Chile) (Interpretation): No.

CHAIRMAN (Interpretation): If I understand him well, if the Amendment is rejected, the Cuban Delegate will then make a reservation on this point.

Mr. FAIVOVICH (Chile): Yes.

CHAIRMAN (Interpretation): Does this mean that the Chilean Delegate will also eventually make a similar reservation?

The answer was in the affirmative.

CHAIRMAN (Interpretation): We pass on now to paragraph 3.

The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): I have a small point which I think is not really a change of substance but is perhaps a necessary clarification. This paragraph says that "the terms "import restrictions" or "export restrictions" include restrictions by state-trading enterprises to an extent greater than would be permissible under article 32."

Well, I think that to cover the point entirely it is necessary to cover not merely the extent that would be allowed in article 32, but also the possibility that, corresponding to the departures from the principle of non-discrimination which are allowed by article 28, where it is a case of restriction imposed on private trade, it should be permissible for the State trader in exactly the same circumstances and for the same reasons to make departures from the principle of non-discrimination.

Well now, that result can be secured by a simple amendment which I will read to you. It would consist in adding, after the words "State-trading enterprises" - that is at the top of page 6 of the Drafting Committee's Document - "applied in a manner other than, or" - and we then go on in the same way as the existing Text "to an extent greater than would be permissible under", and then at the end change "Article 32" to read "Section E". That is the state-trading section.

Well, the effect of that is that it would become permissible for a state-trading enterprise on balance of payments grounds to make the same departures from the principle of non-discrimination as would be permissible in the case of import restrictions on private trade under Article 28. The motive for substituting the reference to Section E for article 32 is that it is Article 31, and not 32, which lays down the principle of non-discrimination of state-trading enterprises.

I do not think that there is any substance in that change at all, it is simply to clarify the intention, as I understand it. Thank you.

CHAIRMAN: The Delegate of Czechoslovakia.

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, I consider the proposition of Mr. Shackle as a formal Amendment to this Article, and I would put in a request to have it written before it is discussed.

Mr. SHACKLE (United Kingdom): I will send it to the Secretariat.

Mr. LUGUERY (France) (Interpretation): I also agree with Mr. Augenthaler.

CHAIRMAN: We then resume the discussion of para. 3 as soon as we get the Text.

Mr. AUGENTHALER (Czechoslovakia): Mr. Chairman, if I understand rightly, the proposed Amendment should be circulated twenty-four hours before the meeting concerned?

Mr. SHACKLE (United Kingdom): In the case of an important Amendment.

CHAIRMAN (Interpretation): I hope you see no impossibility in discussing this Amendment as soon as it can be distributed.

CHAIRMAN (Interpretation): We pass to Article 27 - Non-discriminatory administration of quantitative restrictions. Paragraph 1. Are there any remarks?

(Agreed)

Paragraph 2 - Preamble and sub-paragraph (a).

The Delegate of Norway.

Mr. J. MELLINDER (Norway): Mr. Chairman, I might perhaps mention that the Sub-committee on Paragraph 2 made a change which is more a formal change than a change in substance, I think. You will observe from the New York text that Paragraph 2(a) in that text has been altered, in the form that, in the Sub-committee's Report, it represents the introductory sentence and the wording has been altered slightly. You will observe especially that the Sub-committee has taken out the words "as the result of international competition" in Paragraph 2(a) of the New York text, so that in the Sub-committee's Report there is no special reference to that. That alteration was also made in conformity with the alterations which the Sub-committee made to Paragraph 2(e) in the New York text, to which perhaps we may come back at a later stage.

I would say that the paragraph as it reads in the Sub-committee's Report, namely: "In applying import restrictions to any product Members shall aim at a distribution of trade in such product ..." and so on, ending with "... might be expected to obtain in the absence of such restrictions . . .", does not alter materially the New York text on that point. Particularly, of course, international competition would mean that factors like price or quality, and so on, would have to be taken into account.

I mention this, which is, I think, more a formal alteration than a substantial alteration, just as an explanation of the

Sub-committee's alteration here.

CHAIRMAN: The Delegate of France.

M. LUGUERY (France) (Interpretation): Mr. Chairman, I would remind you that France had made a reservation, which is contained in the Report of the Sub-committee. It says there that "the French Delegate reserved his position in respect of the omission from this provision of the words 'as a result of international competition', or, alternatively, 'as a result of international trade based on commercial considerations.'"

We believe that it is useful to mention international competition, that our text is more balanced and that the definition of this term is more precise in this text which we submit. On the other hand, it would permit each State Member to be himself the judge of the way the distribution is made. Therefore I would submit our suggestion for this amendment.

CHAIRMAN: The Delegate of New Zealand.

Mr. G.D.L. WHITE (New Zealand): Mr. Chairman, since this subject has made a connection with sub-paragraph (d), I would like to ask your permission to refer to a Note to Sub-paragraph (d) which appears in the Sub-committee's report. I would like to ask that this Note, which is Note 4 on Page 4 of Document T/141, should be maintained.

I think the position of the Sub-committee was that in deleting this phrase from the Preamble it considered that the matter could be dealt with by the way in which sub-paragraph (d) is now drafted. Partly at the request of our Delegation, this Explanatory Note was added to sub-paragraph (d) and I would like to ask that this Note be maintained, in the same way that some other previous Notes have been maintained in the text.

CHAIRMAN: The Delegate of Norway.

Mr. Melander (Norway): Mr. Chairman, as I said in my introductory remarks, I do not think the deletion of the words had really any substantial effect; it was just a question of form. That was how I understood it. Speaking as the Norwegian Delegate and not as Chairman of the Sub-committee, I would say we would have no objection to introducing the words proposed by the French Delegate; we think the result would be practically the same whether they are there or not.

CHAIRMAN (Interpretation): Are there any objections to accepting the suggestion of the French delegate? Between the two suggestions he made, I believe the first one "as a result of international competition" is probably the best.

Mr. G.D.L. WHITE (New Zealand): Mr. Chairman, this subject has already been discussed in the sub-Committee but we have some objection to introducing the phrase "international competition" at this stage. I do not want to go over that in detail, but the objection is simply that the term cannot be defined and that the words "international competition" might be taken to mean short-term competition referring to different price levels and competitive conditions as they existed in a given moment, without taking due regard to rather more long term considerations such as customary sources of supply and things like that. Therefore we objected to the introduction of those words in the Preamble, and there was quite an argument about it in the sub-Committee. The sub-Committee decided that the best thing to do was to delete the words and refer only to the shares which might be expected to obtain in the absence of such restrictions, and we would strongly oppose the reintroduction of those words. We think that the situation is covered by the note which I referred to previously, to sub-paragraph (d).

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I would like to support the suggestion made by the New Zealand delegate.

Mr. HARRY HAWKINS (United States): I would also like to support that view. This paragraph is merely a statement of principle which is set out in detail in the sub-paragraph.

CHAIRMAN (Interpretation): I think I can conclude from these observations that the Commission does not want to change the text.

I would therefore ask the delegate for France if he would be ready to abandon the suggestion, and to be satisfied with the note of the New Zealand delegation which is on page 4 and deals with sub-paragraph (c).

M. LUGUENY (France) (Interpretation): I do not want to complicate the discussion, and I withdraw my suggestion.

CHAIRMAN (Interpretation): Are there any other observations on the preamble and (a)? (b)? (c)?

Monsieur Augenthaler.

H.E. DR. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, the Czechoslovak Delegation made a reservation on this point, but we are ready to withdraw our reservation if article 29, paragraph 8 (ii) is accepted. I therefore withdraw the reservation provisionally, but if article 29, paragraph 8 (ii) is rejected, in that case I will be obliged to make the reservation again.

CHAIRMAN (Interpretation): We will therefore deal with this this afternoon.

Are there any other remarks?

Are there any observations on (d)?

Mr. G.D.L. WHITE (New Zealand): Mr. Chairman, is it agreed that the Note will be maintained?

CHAIRMAN (Interpretation): Does the Commission agree to maintain Note 4, which is in the middle of page 4 of the English text, which refers to sub-paragraph (d)?

M. A. FAIVOVICH (Chile) (Interpretation): Mr. Chairman, I would like to indicate that this new text is an improvement on the New York text. In the New York text (it was then under (a)) the Commission's considerations were the main basis for the distribution of quotas and now, in the present text the Members have more latitude for the distribution of quotas. Therefore, we are glad to approve the new text.

CHAIRMAN (Interpretation): Are there any other remarks? We therefore adopt paragraph (d) with the Note.

Are there any remarks on paragraph 3 (a)? Paragraph 3 (b)?

M. LUGUERY (France) Remarks applicable to French text only.

CHAIRMAN (Interpretation): Are there any other remarks on sub-paragraph (b)?

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, Czechoslovakia made a reservation concerning paragraph 3(b) and (c). We are obliged to maintain that reservation - I hope only provisionally - until we see at the World Conference which countries will be applying these rules: especially, whether the same rules will be applied by those countries with which we do a substantial part of our trade.

CHAIRMAN (Interpretation): No other remarks?

Sub-paragraph (c). No remarks?

Paragraph 4. No observations?

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, we are now dealing with paragraph 4, the consultation clause. The Cuban Delegation has presented an amendment to this paragraph which has been printed as Document W/259.

The reason for this amendment is this: When we had a discussion on this matter in the Sub-Committee on Chapter IV, we said that a party could not act unilaterally to withdraw all quotas or act in any way as a means of applying sanctions because other Members have failed to fulfil their obligations under the Charter; but the procedure established in the Charter should be followed.

The Sub-Committee considered that the matter was broad enough to not only be taken into consideration in relation to the matters that are the subject of Chapter IV, but should be inserted in Chapter VIII, as a general rule to apply in all cases. At a special joint meeting of representatives of <sup>the</sup> Sub-Committee dealing with Chapter IV and the sub-Committee dealing with Chapter VIII, it was arranged that a proper text should be found.

After many meetings this joint ad hoc Committee came to an agreement and sent in a text that was approved by the Sub-Committee on Chapter IV and recommended to the Legal Drafting Committee with the approval of the Committee on Chapter VIII. That text is inserted in the new text that will come up for the consideration of the Commission, establishing the principle, very wellknown in national as in international relations, that decisions for action cannot be left to a unilateral decision. But as we noticed yesterday there are consultation clauses all along the different Chapters. Will this especial consultation clause inserted here not be deleted on account of the general procedure for consultation in Chapter VIII? We presented the same Amendment here, which had the same idea - that is to say, that a Member country by itself cannot establish conditions or formalities, as has been said already and approved, and if it does so establish certain conditions and formalities, or in some way alter provisions relating to the use of the quotas, any of the other Members concerned should have the right to use the method established in paragraph 4.

If we come to para.2 (d), we see that it has been established that "No conditions or formalities shall be imposed which would prevent any Member from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate." And then the document refers to cases, and the para. 4 reads: "With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) of article 24, the selection of a representative period for any product and the appraisal of any special factors affecting the trade in the product shall be made initially by

the Member applying the restriction; Provided" (and here comes the restriction) "that such Member shall, upon the request of any other Member having a substantial interest in supplying that product or upon the request of the Organisation, consult promptly with the other Member or the Organization regarding the need for an adjustment of the proportion determined or of the base period selected or for the re-appraisal of the special factors involved". And our Amendment is to continue: "or for the elimination of conditions, formalities or any other provisions established unilaterally upon the allocation of an adequate quota or its unrestricted utilization", so as to bring the consultation procedure in line with letter (d) of this Article.

CHAIRMAN: Does anyone wish to speak on the Cuban amendment?

The Delegate of the United States.

Mr. H.G. HAWKINS (United States): Mr. Chairman, I have no disagreement at all in substance with the Cuban Delegation's proposal. I think it is clear that Members should consult on all those matters referred to. My concern is purely a formal one, whether this provision which he proposed to add fits the context of that paragraph. The paragraph deals with the selection of a representative period and the adjustment of that period for special factors. The addition would deal with other things, such as the size of quotas and measures for their utilization. I think the substance of the added provision is covered in Article 35, Paragraph 1, unless that has been changed, so it seems to me that what they want is provided for.

I repeat that my concern is only a formal one; whether it should be added to this particular paragraph. It seems rather extraneous that it should.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): When the text is read for the first time, it does appear so. It gave me the same idea, but we found we were obliged to present an amendment in relation to this Article, because the Article starts by saying: "With regard to restrictions applied in accordance with Paragraph 2(d) of this Article or under Paragraph 2(c) of Article 25. If you go back to Paragraph 2 (d), it says: "In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota."

and so forth, and at the end it is established that "No conditions or formalities shall be imposed which would prevent any Member from utilizing fully the share of any such total quantity. . ."

The question is this: we are dealing with the way in which the country is going to make the allocation of quotas. That Member would take into consideration certain elements of judgment, but the principle is that, after that Member has made the allocation of quotas, that allocation becomes a right of the other Members to furnish or supply the merchandise or the goods covered by the quota, and that quota cannot be changed on account of conditions or formalities which would prevent that Member from utilizing fully the share of any such quotas. So the whole wording of the way to deal with a quota is dealt with in Paragraph (d). That is why, inasmuch as this Article 27 refers to the system of consultation in relation to the use of Paragraph 2 (d) of Article 27 and Paragraph 2(c) of Article 25, we found no other place where we could insert this provision, which is only a consequence of a general principle.

Of course, if Article 27 itself were deleted as a whole as we deleted yesterday paragraph 3 of Article 12, and as we supposed that at the end of the Havana Conference all the special consultation clauses will be deleted because there is already a general procedure established in Chapter VIII we would have no objections to withdrawing our amendment. While we have this Article 27 inserted as a special type of consultation, the legal interpretation will be that the procedure established in Chapter VIII is a general procedure and that this special procedure is an exception from the general procedure of Chapter VIII, and that is why we were forced to insert it here because we do not see any other place to insert it especially when Article 25 has been modified.

M. LUGUERY (France) (Interpretation): I believe that the remarks just made by the representative of the United States are very pertinent and the addition suggested by the representative of Cuba deals with formalities which could paralyse the quotas on the side of the exporter, and if these conditions can paralyse these quotas, I believe that there are other dispositions of the Charter which are opposed to such a procedure.

Dr. GUTIERREZ (Cuba): Mr. Chairman, we are not dealing with the matter as the delegate of France has looked at it. We know that there is a provision of the Charter that prohibits, and says that when those things happen the Member affected will have the right to get in touch with the other Members and claim for the elimination of this provision. That is precisely why it is introduced. There is no inconsistency with the principle.

CHAIRMAN (Interpretation): If I understand them well, both the representatives of the United States and of France are not opposed to the Cuban amendment. Is there anyone who would like to express his opinion on this subject?

MR. J. MELANDER (Norway): Mr. Chairman, I have no objection to the Cuban amendment.

CHAIRMAN (Interpretation): Does everyone accept the Cuban amendment?

agreed.

Are there any remarks on paragraph 5?

(M. LUQUERY (France) made a suggestion to change the French text, and the CHAIRMAN explained that the French term as it is in the text is already generally adopted, and asked the French Delegate not to insist).

Mr. R.J. SHACKLE (United Kingdom): It is only the tiniest point. It is the reference at the end of paragraph 5 to paragraphs 3 and 4 of Article 15. The final shape of Article 15 is not quite settled, so those paragraph numbers had better be left blank or put in square brackets. Paragraphs 3 and 4 may turn out to be the wrong numbers when the shape of Article 15 is established. I therefore suggest we omit the paragraph numbers and put dots, or put square brackets round the numbers.

(Agreed)  
CHAIRMAN (Interpretation): We still have to decide on the amendment suggested by Mr. Shackle. The text of this amendment has now been distributed.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, as it is rather late and this matter has come to our knowledge so suddenly today - another amendment has been distributed by the British Delegation in relation to State-trading - I think it would be very wise to adjourn and so give us time to study this matter and consult with other Members of the Delegations about its implications.

CHAIRMAN (Interpretation): The afternoon meeting will take place at 2.30.

The meeting is adjourned.

(The meeting rose at 1.05 p.m.)