

UNITED NATIONS

NATIONS UNIES

ECONOMIC
AND
SOCIAL COUNCIL

CONSEIL
ECONOMIQUE
ET SOCIAL

RESTRICTED
E/PC/T/TAC/PV/8
2 September 1947

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

VERBATIM REPORT.

EIGHTH MEETING OF THE TARIFF AGREEMENT COMMITTEE
HELD ON TUESDAY, 2 SEPTEMBER 1947, AT 2.30 P.M. IN
THE PALAIS DES NATIONS, GENEVA.

Hon. L.D. WILGRESS (Chairman) (Canada)

Delegates wishing to make corrections in their speeches should address their communications to the Documents Clearance Office, Room 220 (Tel. 2247).

Delegates are reminded that the texts of interpretations, which do not pretend to be authentic translations, are reproduced for general guidance only; corrigenda to the texts of interpretations cannot, therefore, be accepted.

CHAIRMAN: The meeting is called to order.

When we terminated our discussion last night, we were dealing with Article I and we had not completed the discussion on the suggestion of the Australian Delegate that Article I should be transferred to Part II of the General Agreement. The Australian and French Delegations had given some technical reasons why it would be difficult for them to give full effect to the provisions of Article I without a change in legislation during the period of provisional application. At that point we broke off the discussion and so I would suggest that we take up this point first before passing on to other questions arising out of Article I.

The Delegate of Cuba.

MR. H. DORN (Cuba): May I only mention, Mr. Chairman, that there may be similar difficulties also for Cuba because of the necessity of adapting national legislation to the requirements of Article I.

CHAIRMAN: Are there any other comments?

The Delegate of Syria.

MR. H. JABBARA (Syria) (Interpretation): The same difficulties exist for Syria.

CHAIRMAN: Will it be possible for the Delegates of Cuba and Syria to elaborate a little more specifically the difficulties that arise in this connection.

MR. H. DORN (Cuba): Mr. Chairman, the main point seems to us to be connected with the reservation we had to make to Article I,

that means to Article 16 of Chapter IV, as we have some internal taxes existing in Cuba which have to be adapted eventually to the dispositions in Article I, paragraph 1, and which cannot be adapted without special legislation. Therefore, it will not be possible to act immediately without previous legislation.

CHAIRMAN: The Delegate for the United States.

MR. W. BROWN (United States): Mr. Chairman, may I ask the Delegate of Cuba if it is not true that he also needs legislation to put the tariff rates in force?

MR. H. DORN (Cuba): Certainly it is. If you will allow me to say so, I think that has been declared already and is contained in one of the documents before us.

CHAIRMAN: Are there any other comments?

The Delegate for New Zealand.

MR. J.P.D. JOHNSON (New Zealand): The comment which I wish to make, Mr. Chairman, does not refer to any technical difficulty so far as the application of the provisions of this Article is concerned, it is more the general question as to whether or not this particular Article could be accepted.

It contains not only the provision for the extension of the most-favoured-nation treatment, but also a commitment regarding increased preferences. We feel that in subscribing to an undertaking of that nature we are giving away quite a substantial concession, and before we would be in a position to sign an Agreement of this nature, irrespective of which part of the Agreement it is in, we want to be certain that we are getting some adequate

compensation, either through action taken under the Agreement in the matter of general provisions or in the shape of tariff concessions. Therefore, our position would be that before we could sign an Agreement containing such a provision we would require to be in a position to make an assessment of the provision generally.

CHAIRMAN: Are there any other comments?.

The Delegate of the United States.

MR. W. BROWN (United States): Mr. Chairman, my Delegation considers that Article I of the Trade Agreement is an essential provision. I do not believe that we would be disposed to sign any trade agreement which did not contain it. We think that it should be in Part I to indicate its importance, so that it would not be subject to supersession, and we attach the utmost importance to having it included in that position.

We quite agree with the Delegate from New Zealand that no country here will sign the General Agreement unless they are satisfied that it is an Agreement that they want to sign, and in terms of the compensation they want to get. That is exactly our position, and one of the things that we consider essential is Article I. Article I has always been, or its equivalent has always been, in our Trade Agreement the key to our economic and foreign policy.

There have been certain technical difficulties raised by the Delegates of Australia, France and Syria, who suggest that they would need to make legislative changes in order to give even provisional application to Article I. My impression is that, in the case of the difficulties envisaged by the Delegate from Australia, most of them are already covered by the exceptions in Article I itself

or in other Articles which are now suggested for inclusion in the Trade Agreement, and the coverage of Article I is so insignificant that we, for our part, would be quite prepared to ignore them for the period of provisional application.

The same is precisely true with the difficulty raised by the Delegate of France, which this Committee has already, in the early stage of its deliberations, said that they recognised and that they would not want to insist on immediate correction. The Delegate for Cuba needs legislation even to put the tariff rates into force so at any event, to the extent that the other taxes are involved, he could correct them at the same time.

If the Chairman will permit me, I think it might perhaps facilitate the discussion if I revert for a moment to the suggestion made by Dr. Coombs at the end of yesterday's Session with regard to how the automatic or other supersession of the trade Agreement by the Charter could be arranged. Could I have your permission to speak on that point, Mr. Chairman?

CHAIRMAN: I am sure the Committee will have no objection to Mr. Brown referring to that important point raised in our discussion yesterday.

Mr. Winthrop G. BROWN (United States): Thank you, Mr. Chairman. We have given very careful thought to the suggestion made by Dr. Coombs, to the effect that the Trade Agreement should provide that it would be automatically superseded by the provisions of the Charter unless one of the contracting parties objected; and that if a contracting party objected we would meet again, with open minds, to consider that objection and see how it should be dealt with, and no priority to be given to what should be included or what should be excluded.

As I indicated in my remarks two or three days ago, my Delegation would prefer to have a Trade Agreement standing on its own feet, because it may be that a Charter involving 54 nations would be less satisfactory to the United States on certain important points than a Trade Agreement negotiated with a lesser number of countries. Such a separate Trade Agreement is what was quite clearly contemplated in London, as will appear from a reading of Section H of Annexure 10 of the London Report.

We fully share the views of the Belgian Delegation that tariff concessions are negotiated in the light of and reliance on certain key provisions of the General Agreement, and if we are to make and maintain tariff concessions to any country - whether as a part of a bilateral agreement or a multilateral agreement - we will have to be satisfied with and be sure of those essential general provisions. I am sure most other countries will find themselves in the same position.

That is why we could not - like the Belgian, Canadian and other Delegations - agree to automatic supersession. On the other hand, it is perfectly clear that other Delegations here attach great importance to having the provisions of the Trade Agreement superseded by the provisions of the Charter, and Dr. Coombs's suggestion - a very constructive one - was put forward in an effort to reconcile those two points of view.

The difficulty we find with Dr. Coombs's suggestion is that it puts the burden of proof on the parties who may wish to retain a satisfactory agreement rather than on those who wish to depart from it. If, for example, we were to be the objector because we were not satisfied, in a context of the Tariff Agreement, with some key provision which we had been willing to accept in the broader context of the Charter, we would have to face the choice of accepting something less than we had originally agreed or of withdrawing and jeopardizing the whole Trade Agreement. We would not enjoy being in that position. I do not think any country would enjoy being in that position, and we do not think it is quite proper for any country to be put into it.

Nor do we like the idea of the possible suggestion of re-opening this Trade Agreement right after the Havana Conference if differences do appear between the Agreement and the Charter on points of substance. It gives an impression of impermanence to the tariff concessions that we give and receive which we do not think very desirable. In short, we feel that we should reach a satisfactory Trade Agreement here and stick to it, unless there is very good reason to the contrary. That is

what we would like. But we recognise that others around this table would like something different and that they have real reasons for the position which they take up.

We have thought this matter over very carefully and, if the other Members of the Committee feel strongly on the subject and wish to press the point, we would be prepared to accept the suggestion made by Dr. Coombs, namely, that the Agreement should provide - and he will correct me if I am not accurate in stating his proposition - that Part II will automatically be superseded by the provisions of the Charter, unless one of the contracting parties object. If such objection is raised, there will be consultation among the contracting parties at which it will be decided what action shall be taken with respect to the Agreement.

At such consultation, I should imagine the issue would not involve the whole re-negotiation of the Trade Agreement but would be confined to the point of difference between the Charter and the Agreement: it would be confined to the point which had given rise to the objection. We could then agree, in the light of the facts as they existed, either to accept the Charter - and anyone who did not like that decision could, if he felt it essential, withdraw - or we could decide to retain the Agreement amongst ourselves, or some of us, with those who were not happy withdrawing, or we could find some other solution, but we would be dealing with a known fact and open minds.

As I say, this solution would not make us completely happy, but we believe it represents a constructive compromise between two widely divergent points of view. We are prepared to accept it and we would hope that other countries here present would do likewise.

CHAIRMAN: We have just listened to a very important statement by the United States Delegate which, if it meets with the acceptance of other delegations should, I think, help a great deal in clarifying the issues before us.

As I mentioned yesterday, this question of the supersession of Part II by the Charter is one of the most important issues which this Committee has to resolve. It is a question which has a very direct bearing on the position of countries which have reservations to Articles of the Charter which are also reproduced in Part II. This we discussed at length yesterday. I therefore think the statement that Mr. Brown has just delivered should materially assist us in clarifying an issue which I thought it would not be possible to clarify until we had considered various Articles and had come to Article XXVII.

No doubt the Australian and United States Delegations will be consulting together and will later on submit to us, in the form of an amendment to paragraph 1 of Article XXVII, their proposal in written form.

In the meantime I would not like to leave this question until we had had an opportunity of further comments from Members of the Committee and therefore, before taking up the detailed Articles again, I think it would be useful if we could have any comments which Delegations may wish to make at the present time on the statement just made by Mr. Brown.

The Delegate of the Lebanon.

M. Moussa MOBRAK (Lebanon) (Interpretation): Mr. Chairman, I would like to point out here that each time the Syrian Delegate will make a comment on this matter or will raise a point on this matter, he will also be speaking for the Lebanese Delegation, and vice versa, because our two countries have similar Constitutions and the same difficulties might arise on the same subject. Therefore if one of

our delegates speaks on this subject it will also be understood that he is speaking for the other delegation as well.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, it was with great appreciation that the Norwegian Delegation heard the statement just made by the United States Delegate. We do not feel able to consider immediately the proposal - we would like to see it in written form; but I can say that we certainly feel that it goes a very long way to meeting us and that we feel that on this principle the solution to the deadlock ought to be found.

CHAIRMAN: The Delegate of New Zealand.

Mr. J.P.D. JOHNSON (New Zealand): Mr. Chairman, I also appreciate the endeavour made by the Delegate of the United States to find a way out of this difficult problem, but I am just wondering whether it actually does solve the problem. I take it that there can be no question of automatic replacement of Part II by the corresponding part of the Charter until the Charter actually comes into force.

Now, the matter that concerns me is the position of countries which are unable to accept Part II of the agreement. I observe that in the proposal put up by the Delegation of the United States in document E/PC/T/W/516 the date of signature is put forward to 30 June 1948. It is quite possible that even at that time the Charter may not be effective. It seemed to me, therefore, that the position of the country which has not been able to accept an agreement with Part II in it is that, at the time of closure for signature of the agreement, that country would still be unable to determine its position.

In the light of that, I was wondering whether the solution would not be - and this proposal was made previously - that in the meantime all we can agree to is to give effect to the Tariff Schedules, which would be in operation only for a very limited period, and it could be on the understanding that the agreement containing those Tariff Schedules would be supplemented with general provisions immediately they were brought down in the Charter; and if the Charter did not actually come into force by 1 November 1948, which is the date mentioned in the Draft Protocol to the Agreement, then the countries could agree to meet again and consider what provisions should be made. It seems to me that there is that problem in connection with the position of a country that is not able to accept Part II in the meantime and which at time of signature of the Agreement might still not be in a position to accept Part II.

CHAIRMAN: The Delegate of Canada.

Mr. L.E. COUILLARD (Canada): Mr. Chairman, in discussing this question of supersession a few days ago the Delegate of Canada favoured the retention of Article XXVII as now found in the Draft Agreement. Possibly Mr. Brown misinterpreted our remarks at the time, as he mentioned a few minutes ago that we favoured automatic supersession. Such was not the case. Our view was quite strong at the time. We have never favoured automatic supersession and indeed argued on that day for the two-thirds majority.

However, we have given a good deal of thought to Dr. Coombs' suggestion, and it has now been clarified and qualified and made more precise by the remarks of Mr. Brown. We do feel that we have gone a long way from the original suggestion of the two-thirds majority. The first change was to a one-third majority and this

last proposal is to one country. We would have preferred to have seen a self-sufficient and self-contained Agreement. However, in view of what appears to be the majority opinion and desire, and in the spirit of compromise which has been shown here this afternoon, the Canadian Delegation would be ready to make this important step towards compromise - I say important, because we did consider very strongly, only a few days ago that the two-thirds majority was required. We would therefore align ourselves with those countries who would accept Dr. Coombs' suggestion.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, I must apologise to the Delegate for Canada if I gave the impression that I thought he approved of automatic supersession. What I intended to say, and what I thought I said, was that we, like the Canadian and Belgian Delegates, could not agree to automatic supersession.

V

CHAIRMAN: The Delegate of South Africa.

Dr. J.E. HOLLOWAY (South Africa): I am not quite sure that I understand what the procedure is. If a country objects to the change, is a decision ~~at then~~ by a simple majority - a two-thirds majority - or must all countries agree?

CHAIRMAN: I think we will have to wait until the proposal is ready, when we can see what it all means. I think Dr. Coombs put it very clearly when he explained it yesterday.

Dr. H.C. COOMBS (Australia): As I understand it, Mr. Chairman, the position would be that the ~~Member~~ objected to a particular part of the Charter forming the General Articles of the Agreement. Then his objection would be considered by the other contracting parties. If they agreed with the objection, then the appropriate change would be made. If they were quite convinced that he was mistaken, and that the provisions of the Charter should stand, then, as I understand it, the country would have to choose between staying in and accepting the provisions of the Charter as they stood, or withdrawing from the Agreement. There is the third possibility that they would agree upon a compromise or a "middle road", as I think Mr. Brown described it; but in each case there would need to be unanimous agreement amongst those people who were the remaining parties to the Agreement.

Dr. J.E. HOLLOWAY (South Africa): That only answers one part of the question, Mr. Chairman, because it assumes there is only one Member objecting, but there may be, among the seventeen, four or five or six objecting. How many are empowered to throw out those four or five or six? Can 51% throw out 49% or 67% throw out 33%?

You have got to make up your mind sooner or later about what percentage establishes agreement if you have more than one objecting party. You can have one objecting party, or two or three, or four or five.

CHAIRMAN: I would like to ask the South African Delegate not to press these matters of detail now. We are not discussing the proposal in detail. We have just listened to a very interesting statement by Mr. Brown, which he delivered with a view to clarifying the issues which were before us yesterday, and all I did was to invite comments on the proposal, which is simply set forth in general principles, not in detail. We will be able to discuss the details when we have a proposal before us in writing.

Dr. J.E. HOLLOWAY (South Africa): Mr. Chairman, I fail to see how one can comment on a proposal when what may be described as a detail which is an essential part of the working of the thing, is not before you.

CHAIRMAN: There is no obligation on any Delegate to comment at this stage. I simply invited comments in case any Delegate wished to do so.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, first of all I would like to thank the United States Delegate for the interpretation which he has given of Article 1, and I hope that in the record of this meeting, this interpretation will appear as that given by the Committee and that it will appear as the interpretation of Article 1 during the time of the provisional application of that Article by the French Government.

Now, on the suggestion made by Mr. Brown, I would like to state that this is a very important suggestion, and I would like also to join in the thanks which have been given to Mr. Brown for making it. I am certain that this suggestion will help to solve the many difficulties which have arisen here.

The French Delegation cannot pronounce itself yet on this suggestion; but I would like to ask urgently that we could have a text in writing as quickly as possible, so that we can send that text in writing to our Government in Paris and have the views of our Government on this proposal.

The French Delegation is not automatically in favour of the automatic substitution of the provisions of the Agreement, but we favour a system which will enable as many countries as possible to join the Agreement. We have envisaged the possible eventuality - I hope this case does not arise, but nevertheless we have to bear it in mind - that there might arise differences of substance between Part II of the Agreement and the provisions of the Charter after the Havana Conference. It is possible that after the Havana Conference there might be a situation entirely different from the one which was envisaged at first in London.

If after the Havana Conference the provisions of the Charter are different from the provisions adopted here, or if a more serious situation were to arise - that is to say, if no Charter were signed at Havana, then the approval of the Agreement would have to be taken up on an entirely different basis.

I think that we ought to start from scratch and consider the approval of this Agreement in quite a different light, that is, that the countries ought to be free to adhere to the Agreement, or not, and consider the possibilities with an open mind in the face of this new situation.

What we want to avoid is that two groups of countries should be formed -that is to say, that one group should be closely tied by the provisions and obligations of the Charter, and another group could withdraw from these obligations and form a sort of restricted Club. We do not mind joining such a Club, and we are ready to join such a Club if, of course, the rules of the Club are rules of good manners and good conduct. What we do not want is that in order to join such a Club we should have to prove that we have blue blood.

If no Charter is signed, the guarantees which appear in the Charter (I do not mean only the guarantees of the provisions of the Charter which are taken up in Part II, but the guarantees of all the provisions of the Charter) would go, and then all the contracting parties would have to be able to consider and examine this new situation with an open mind, in the light of new developments. Therefore, as I have stated previously, we want to study more closely the suggestion which has been made, and that is why we have intervened.

CHAIRMAN: The Delegate of the Netherlands.

Dr. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, I would like to say that I also think the American proposal, combined with Dr. Coombs' earlier proposal, is a constructive one, and I look forward to seeing it in writing.

CHAIRMAN: Are there any other comments?

Mr. R.J. SHACKLE (United Kingdom): I think I can say that although, of course, we have not had an opportunity of considering this matter very fully, this suggestion does appeal to us as the most helpful for finding a way out of this situation fruitfully.

It has, of course, only been sketched out very broadly so far, but I have rather the feeling that there will be some merit in not garnishing it with too much detail. It seems to me to be rather the essence of the proposal that we shall deal with the situation which arises when we know what it is and when we know all the circumstances. The method to be followed by the parties when they get together will have to be determined by the situation as they then find it, and I cannot help feeling that it would be a mistake, therefore, to try and write in detailed rules of the game at this stage.

I would only like to add one other remark, and that is as regards the suggestion that it will not be possible to start the work of possible amendment of the General Agreement till the Charter has actually been brought into force. I should have thought that that need not necessarily follow. After all, as soon as the Havana Conference is over we shall know what is in the Charter. It will then become simply a question either of that Charter or no Charter, and if the parties to the General Agreement desire to introduce amendments as soon as the text of the Charter is known, without waiting for its coming into force, they can do so. Equally, of course, they might prefer to wait until it had come into force, but there is no compulsion on them to wait until it had come into force and they would consider the situation freely and with open minds as it then presented itself.

It seems to me, therefore, that there will not necessarily be embarrassment in the fact that one is required to make up one's mind about the General Agreement by the middle of next year. I should have thought that by that time countries would be able to take a well-informed decision.

CHAIRMAN: Are there any other comments?
The Delegate for New Zealand.

MR. J.F.D. JOHNSON (New Zealand): Mr. Chairman, in the light of the comments of the Delegate of the United Kingdom, is it to be understood that on the termination of the World Conference the constitution of Part II of the Draft Charter would replace the General Agreement unless one of the contracting parties raised an objection, or would some time need to elapse?

MR. R.J. SHACKLE (United Kingdom): Is that not a matter, Mr. Chairman, which could be left to the judgement of the parties to the General Agreement? I should have thought that it would be.

CHAIRMAN: Are there any other comments?
The Delegate of Australia.

DR. H.C. COOMBS (Australia): I was only going to say, Mr. Chairman, that I think the willingness of the United States Delegate to accept this principle will certainly simplify the problem in the case of the General Agreement, and I would be happy to collaborate with him and work out a text on it.

CHAIRMAN: I think we can leave this question now. We will come to it again when we reach Article XXVII, by which time no doubt the Australian and the United States Delegations will have submitted their proposal in writing, and we will have had ample time to study it.

Do any other Members of the Committee wish to speak on the Australian suggestion that Article I should be transferred to Part II?

Do any Members of the Committee support the Australian proposal?

MR. A. FAIVOVICH (Chile) (Interpretation): Mr. Chairman, the Chilean Delegation supports this proposal.

CHAIRMAN: The Delegate for Norway.

MR. J. MELANDER (Norway): Mr. Chairman, we fully appreciate the logic in the Australian proposal, although this proposal does not directly concern Norway. The general most-favoured-nation treatment is part of our commercial policy and has been for many years, but I quite see the point of those Delegations to whom this clause would mean a fundamental change in their commercial policy.

I think it is logical to maintain that this principle is to have or ought to have an equal standing with the principles laid down in Part II of the Agreement. Consequently, the Norwegian Delegation would have no objection to the transfer of Article I from Part I to Part II.

CHAIRMAN: Are there any other comments?

The Delegate for Syria.

MR. H. JABBARA (Syria) (Interpretation): Mr. Chairman, the Syrian Delegation, as it stated previously, seconds the Australian suggestion to transfer Article I from Part I to Part II. We second that proposal all the more willingly because Article I, in fact, refers to Article III, which appears, of course, in Part II. It is stated in paragraph 1:- "with respect to all matters referred to in paragraphs 1 and 2 of Article III". Therefore, I do not see how these two Articles could not be of the same type. It seems to me that Article I is of the same nature as Article III and

Article II, and therefore ought to appear in the same Part, that is to say, Part II of the General Agreement.

CHAIRMAN: The Delegate of Canada.

MR. L. DOUILLARD (Canada): Mr. Chairman, the Canadian Delegation could not accept the proposed transfer as suggested by Dr. Coombs, namely that Article I should now be included in Part II. We consider, indeed, the principle of the most-favoured-nation treatment as the very basis of this entire multilateral agreement. The principle of the most-favoured-nation treatment is the very foundation of many existing bilateral agreements, and it was the foundation of Canadian commercial policy. We would regard this transfer as a step backwards, indeed as a retreat, from the principle of the most-favoured-nation treatment. We agree with the Delegate of the United States that to transfer this Article to Part II would be wrong for those reasons.

We regard Article I as being given due importance in its present place. We also regard its present place as important because it would not make Article I subject to supersession as required under Article XXVII.

I do not think that the point raised by the Delegate of Syria is a serious one since paragraph 1 of Article I merely refers to matters referred to in paragraphs 1 and 2 of Article III. As I see it, it is merely referred to^{to}/obviate the need for a lengthy listing of these matters.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, if I might express a rather personal opinion on this question, I should say that it would be a pity to transfer Article I to Part II. This is

an Article which is an essential part of its foundation and structure, and we want it to be a firm foundation.

The divergencies of existing legislation of certain countries, of which we have been told here, all appear to be of quite a minor character, and I should hope that we would be able to deal with them as we have previously agreed to deal with the French Rule of Provenance, that is to say, by just recognising that they may need some time to bring their legislation into line with this principle, and leave it at that.

It does seem to me that the other grounds which have been mentioned for transferring this Article to Part II are in quite a different category, and I am not sure if they are relevant, that is to say, the consideration that a big departure in commercial policy is involved. Surely, that is an essential question which every country will have to consider before it adheres to this Agreement. If it feels, as no doubt in the vast majority of cases countries will feel, that this is a matter of such importance that it must get its parliament's approval, well, no doubt it will get it, but it does seem to me that it is quite a different matter from the need to make certain detailed adjustments to existing legislation. I think it stands in an entirely different category, and I rather doubt if, from the point of view of the possible transfer of ~~to~~ Part II, it is really a relevant consideration.

CHAIRMAN: One hour ago I detected a spirit of conciliation in listening to our deliberations. That spirit now seems to be absent, because there is a very sharp division of opinion in the Committee.

Certain Members are of the view that Article I should be transferred to Part II; other Delegations have expressed themselves equally firmly to the effect that they could not contemplate Article I being transferred to Part II, because they consider that in the present position it is an essential part of the Agreement and that it relates to the granting of tariff concessions and therefore should stand on its own feet.

I am wondering if we could not find some common ground on which we could resolve this question so that we could move on and make progress. I would remind Members of the Committee that we have to finish this Agreement by the end of next week, and that therefore we should not spend too much time on a point of this kind.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, if I may intervene here for a moment, why not base a solution of this difficulty possibly rather on the lines that I suggested just now, that is, that we should recognise and take note that there are certain minor divergencies of legislation in certain countries from the principle of this Article. We could agree, as in the case of the French Rule of Provenance, to leave time for those governments to amend their legislations. If we do that, can we not leave Article I in Part I?

CHAIRMAN: The Delegate of the Netherlands.

DR. A.B. SPEEKENBRINK (Netherlands): Mr. Chairman, is it not more a question of stress laid on certain Articles? As I understand the situation, we have here in Part I certain Articles which we think will stay in the General Agreement on Tariffs and Trade, and in

Part II we have certain Articles which we visualise will be replaced by Articles as they will be framed in Havana. However, there is nothing which forbids this. Later on, when in Havana we find a better clause for the most-favoured-nation treatment, even if it get into the General Agreement on Tariffs and Trade, and even if Part II follows the proposal just made by the American and Australian Delegates, you will find yourself more or less in the same position, because if a Member disagrees they would have to take the consequences.

Therefore I see it in such a way that there is always the possibility of making a change in the General Agreement on Tariffs and Trade. I, for myself, can see no objection at all to keeping it in Part I of this Agreement.

CHAIRMAN: Mr. Shackle made a very useful suggestion and I am wondering if the Committee would agree with leaving this Article in accordance with the suggestion of Mr. Shackle.

Dr. COOMBS (Australia): What was that?

CHAIRMAN: That Article I should remain in Part I and that we should deal with those points on which countries find it impossible to give provisional application without legislative changes by recognizing that that situation exists and dealing with it in some other way.

The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I must apologise to Mr. Shackle, but I entirely agree with him and I would like to support his suggestion.

CHAIRMAN: Is that agreed?

Dr. COOMBS (Australia): I would just like to make one or two points clear on this, Mr. Chairman, before we pass on.

The suggestion which Mr. Shackle has made, which is, in essence, I understand, the same as was made by the United States Delegate, that their legislative problems should be recognized by ignoring them, is perhaps a possible solution to that particular difficulty. If, presumably, we can be content that no one will question the fact that we have not introduced any necessary legislation to give effect to the principles of this Article, that difficulty is overcome.

I would just like to make one point clear, as it may be relevant to later discussion on the Article. We had two reasons for suggesting the transfer of this Article into Part II. One was the legislative difficulty and the other, as I have said, is that this does represent a substantial change in the commercial policy of my country and if it is in Part II it is more provisional than if it is in Part I, and we get that much longer to see the outcome of the whole set of negotiations - tariff and Charter - to see whether the circumstances justify our making this change.

To make this point quite clear: it is true that Most-Favoured-Nation clauses are a traditional part of tariff agreements, but they have not, without any reservation, always been a part of all Treaties. In all the Treaties which have been concluded between countries which are members of the British Commonwealth and other countries, there has been a clause which reads something to this effect: "Nothing in this Agreement shall entitle (such-and-such country) to claim the benefit of any treatment, preference or privilege which may at any time be in force exclusively between the territories under the sovereignty of His Majesty, the King of Great Britain, Ireland and the British Dominions beyond the Seas," etc., etc., "or under his Majesty's suzerainty, protection or mandate."

That is a clause from an Agreement which has been concluded between a member of the British Commonwealth in the past and other countries and similar clauses existed in all the treaties concluded between such countries and others, including, if I may say so, the treaties concluded between the Dominion of Canada and other countries.

This is a departure for these countries and it is an important one. I am not seeking at this stage to justify or to excuse this policy. In many respects we have regarded it as an emergency policy designed fundamentally to deal with a particular type of situation and whether we can change it depends upon a judgment as to whether the circumstances are going to be fundamentally different; whether we can judge that depends upon the outcome of the whole set of these negotiations - Charter and tariff. Therefore, the second reason we have for wishing to transfer this into Part II was that it would give us that much longer to make the judgment as to whether the actions of other people and the obligations they were prepared to accept were sufficient evidence of a change which would warrant us concluding that the circumstances which we believe made that policy necessary no longer exist.

However, we are grateful for the suggestion which has been made about our legislative problems and we do not want to continue to be difficult over a question of this sort. To retain this Article in Part I will face us with a somewhat more difficult problem than if it were in Part II, but the basic situation will remain unchanged, that is, it will be necessary for my Government to make a judgment as to whether the outcome of the whole of the negotiations - Charter and tariff - warrant them accepting this. Since it is in Part I, they will have to make a significant part of that judgment on a hypothetical basis, not later on, when they know the content of the Charter, but between now and Havana, when the content of the Charter will in part, be speculative.

However, they will know the outcome of the tariff negotiations and will be able, perhaps, by people's actions in that respect, to judge whether acceptance of this principle is warranted.

Therefore, Mr. Chairman, in view of the fact that, despite support from a number of countries, we are apparently in a minority on this question, we will withdraw our opposition to the Article remaining in Part I, but making it quite clear that this does present my Government with a much more difficult problem than it would have been faced with if the Article had been in Part II.

CHAIRMAN: I thank the Delegate of Australia for having withdrawn his proposal. We can now pass on to the consideration of Article I, paragraph by paragraph.

Are there any comments with regard to Paragraph 1?

(Agreed).

Paragraph 2: are there any comments?

The Delegate of Australia.

Dr. COOMBS (Australia): For reasons which I have explained, until the position is clearer as to the outcome of the negotiations in which we are engaged, we would wish this Article to be confined to the preferences which are described and listed in the Schedules and to such other Most-Favoured-Nation treatment in respect of other duties but not other preferences.

We would suggest, therefore, that Paragraph 2 should be amended to read as follows: "The provisions of Paragraph 1 of this Article shall not affect any preferences in respect of import duties or charges not described in the Schedules to this Agreement or which do not exceed the levels provided for in Paragraph 3 of this Article and which fall within the following descriptions:

And, as a consequential amendment, there would require to be deleted from Paragraph 3 all words after "or if no preferential rate is scheduled", in the middle of the paragraph.

I would like to put that amendment forward, since that expresses the position which it appears to us it would be possible for us to accept in reference to Most-Favoured-Nation treatment in any circumstances, and whether we could withdraw that would be something which we could only decide later.

Mr. R.J. SHACKLE (United Kingdom): I wonder if Dr. Coombs would like to read his amendment more slowly, so that we could all take it down.

Dr. COOMBS (Australia): "The provisions of paragraph 1 of this Article shall not affect any preferences in respect of import duties or charges not described in the schedules to this agreement, or which do not exceed the levels provided for in paragraph 3 of this Article and which fall within the following descriptions:....."

And the consequential amendment is on the next page, in paragraph 3.

CHAIRMAN: The Delegate of Canada.

Mr. L.E. COUILLARD (Canada): Mr. Chairman, this is a rather new departure and I am not sure that I followed the text as proposed in all its implications. If I am correct, however, without discussing the reasons which Dr. Coombs might have in mind for making such a change, I fail to see the logic of it. To my mind it would mean that margins of preferences could be widened. Now, as I say, I fail to see the logic of that, because our tariff negotiations have been conducted on the basis of old Article 14, new Article 16, as reproduced here. In addition to acting in direct contravention of this laid-down and agreed principle, it would probably mean that the tariff negotiations would have to be reopened, because certain countries no doubt would wish to protect themselves against possible increases in preferential margins by inserting in the schedules all those items on which they would not want to see an increase in preferential margins. My understanding may be wrong, Mr. Chairman, If it is correct, however, then the full strength of my remarks will stand.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, I regret that we would not be able to accept the amendment suggested by the Delegate from Australia. As the Delegate from Canada has pointed out, the whole basis of our negotiations here has been that preferential margins would not be widened. That was set forth in Annexure 10 to the London Agreement. It is then contained in Article 24 of the London Draft, that principle is also contained in Article 24 of the New York Draft, and is now in the Article which we have agreed upon here for recommending to the Havana Conference. It is part of the General Most-Favoured-Nation Treatment for all products, not only those scheduled but those not scheduled, with the specific exceptions stated. I do not see how we can possibly accept a change in that basis at this stage.

CHAIRMAN: Are there any other comments?

Dr. COOMBS (Australia): May I just make an explanation in reply to the point raised by the Canadian Delegate, which seems to imply some misunderstanding?

Are you quite clear that what we are suggesting is not an amendment to the Charter? The original Article 14 of the Charter, as far as we are concerned, stands, as, when the Charter is signed, we will - we are prepared to - apply General Most-Favoured-Nation Treatment generally, and that was the relevance of our original agreement on that point in our discussions in London. The negotiations here have been concerned with requests, and I believe it was recognised in London that this did constitute a concession which should be taken into account.

Now it has been pointed out that this may make it necessary for countries to seek binding of specific items or possibly of all items. I see no objection to such a procedure. It is clearly

provided for in the basis on which we approached this question, and, if such a request were received and a mutually advantageous arrangement could be concluded in respect of such bindings, then clearly they would be listed in the schedule, either in aggregate, or together, or as a series of items.

So I cannot see there is anything inconsistent in what we have proposed here with what we have undertaken. Nor do I see anything inconsistent with the general approach here. All that this amendment does is to reserve the general position for decision when the whole of the outcome of these negotiations is known.

CHAIRMAN: Are there any other comments?

The Delegate of Canada.

Mr. L.E. COUILLARD (Canada): Mr. Chairman, I thank Dr. Coombs for his explanation. I might have led him to believe that my interpretation was wrong in the first place by referring to Articles 14 and 16. I should have been more specific and referred to the Annexure to Article 24 to which Mr. Brown referred. Dr. Coombs' explanation only confirms the stand which we took a moment ago on the question. It only confirms that stand.

CHAIRMAN: Are there any other comments?

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, in the light of my comments earlier in the discussion today to the effect that, as far as we are concerned, we should require to see what the results of our negotiations were, before we could come to a decision as to whether we could sign an agreement containing a provision of this nature, even though we did have no particular objection to the General Most-Favoured-Nation Clause, we think that the reasons put forward by the Delegate of Australia are valid and for that reason we would support his amendment.

CHAIRMAN: I take it from the remarks of the New Zealand Delegate and also from what Dr. Coombs has said that the reason for this proposal has some bearing on the tariff negotiations which are now being conducted. Perhaps it would be satisfactory to the Australian and New Zealand Delegations if we left this proposal for the moment, on the reservations by the Australian and New Zealand Delegations, and return to it at a later stage when the tariff negotiations have proceeded some step further.

The Delegate of Cuba.

Mr. H. DORN (Cuba): I would ask you, Mr. Chairman, to add Cuba to those delegations which will have to consider this proposal once more.

CHAIRMAN: Are the Delegates of Australia and New Zealand satisfied with that proposal?

Dr. COOMBS (Australia): Yes, Mr. Chairman.

Dr. A.E. SPEEKENBRINK (Netherlands): I would ask a question: when we at this moment negotiate preferences we do that keeping in mind the stipulations of this article regarding preferences as it stands now, and I think we have taken the same attitude in connection with preferences scheduled in regard to the Netherlands-Belgium-Luxembourg Customs Union, and I do not think that for the time being we can change that point of view, even if we wait for the result of the tariff negotiations before we take a decision with regard to this point.

Dr. COOMBS (Australia): Just before we leave the point, Mr. Chairman, I would like to quote from the London Report in which it says as follows:

"It was agreed that since preference-free treatment and quantitative restrictions were to be dealt with under general rules incorporated respectively in Article 14 (Most-Favoured-Nation Treatment) and Articles 25-28 (Quantitative Restrictions) of the revised text, they could not properly be included in the rules governing selective tariff negotiations. At the same time it was recognised that, in accordance with the plan for conducting tariff negotiations among the members of the Preparatory Committee, those countries would not be called upon to subscribe to the most-favoured-nations and quantitative restrictions provisions until selective tariff negotiations had been completed and vice-versa. It was believed that this circumstance would assure that due weight will be given in the tariff negotiations to the benefits to be derived from the elimination of quantitative restrictions and the general grant of most-favoured-nation treatment".

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, having recovered my copy of the London Report from Dr. Coombs, I would like to call attention to the document entitled "Procedures for Giving Effect to Certain Provisions of the Charter of the International Trade Organization by Means of a General Agreement on Tariffs and Trade Among the Members of the Preparatory Committee", namely, Annexure 10.

On page 49 of the Report, we see that the Rules provide for the base date for negotiations, and it is stated that Article 14 "would except from the Most-Favoured-Nation provisions preferences 'which do not exceed the preferences remaining after ... negotiations'". This means that all margins of preference remaining after negotiations would be bound against increase." Then it goes on to establish an elaborate procedure whereby you can find out the date and the nature of those margins so that they can be bound. I submit that the careful thought and action of the Committee in London has some meaning.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): I am not sure whether we should continue this text-quoting; but I should like to remind the United States Delegate that the Australian Government once specifically informed the Secretariat of the United Nations that they accepted the procedural memorandum solely as a provisional basis for action, and not in any sense as a commitment; and in relation to the base date, in particular, we agreed to nominate a base date for facilitating negotiations and specifically drew attention to the fact that the naming of such date did not imply an acceptance or commitment to which Mr. Brown has referred.

Dr. J.E. HOLLOWAY (South Africa): We reserved our position in the same way, but I do not want that to be interpreted as support for Dr. Coombs' proposal.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADAKAR (India): Mr. Chairman, I think it is our duty to state what the position of India is in regard to this new suggestion of Dr. Coombs. I should say straight away that, according to our understanding of the explanations we have heard of the implications of this reservation, it does not accord with the spirit in which countries have embarked on tariff negotiations here, as the countries negotiating for tariff reductions have started on the basis of Article 14 and Article 24. Article 24 definitely states the object to be reduction of tariffs and elimination of preferences, and therefore all countries negotiating have, I believe, started on the assumption that they need not ask for binding of existing preferential margins, but only for their reduction and all preferential margins not covered by negotiations are supposed to be automatically bound.

If this matter is to be left over until we know how far tariff negotiations have progressed, then I am afraid it will create a misunderstanding in the minds of many people here, and it might perhaps make people present fresh requests for binding of preferential margins which were considered unnecessary.

Apart from that, I venture to submit that the suggestion is not solely connected with the question of tariff negotiations. If the effect of this amendment is to permit countries having existing preferential agreements to widen margins of preference if they are not covered by negotiations, then surely it conflicts with the basic principle of non-discrimination, and apart from

tariff negotiations it has a vital bearing on the issue of new preferences.

This Article and other Articles included in this General Agreement prohibits the creation of new preferences, because new preferences would conflict with the idea of non-discrimination, and because countries having existing preferential arrangements have undertaken to eliminate those arrangements by steps. But if countries which have preferential arrangements are to be allowed, merely because they have those arrangements, to widen preferential margins if they are not covered by negotiations, then I think all the objections which have been raised to the demand for the creation of new preferences will fall to the ground.

Therefore, this amendment is connected not merely with tariff negotiations but also with the issue which is raised in the same connection. I suggest, therefore, that it should not be implied that amendments suggested by the Australian Delegation make any change whatever in the assumptions upon which the Delegations have been conducting the tariff negotiations, and, at any rate, the opposition of the Indian Delegation to the spirit of this amendment should be recorded.

CHAIRMAN: I wish to thank the Delegate of India for his very lucid and complete statement on his understanding of the position under which tariff negotiations have been conducted. Are there any other comments in regard to this question?

Mr. J.P.D. JOHNSON (New Zealand): Mr. Chairman, as far as New Zealand is concerned, there is no doubt as to the spirit in which we conducted negotiations. The only point at issue is how far commitments are to be entered into before we know just what the result of the negotiations will be.

CHAIRMAN: Are there any other comments?

M. Hassan JABBAR (Syria) (Interpretation): Mr. Chairman, as representative of the Syrian Delegation, I would like to state that we have not conducted our negotiations in the spirit which was pointed out by the previous Delegates. We have taken into account the principle of the Most-Favoured-Nation clause, and we have made observations and comments on our own situation, and we made certain reservations which nevertheless did not prevent us from proceeding as if these reservations did not exist.

Now, Mr. Chairman, on this Article I asked for the floor just now; but I am sorry that I was not able to catch your eye, and I would like to ask for a definition regarding this Article. Does this Article refer also to nations which are not key nations, and will this Article come into force for such nations during the time of the provisional application and before the final ratification of the Agreement? The second question is whether a revision of this Article will be possible after final approval of the Charter. Our final attitude regarding this problem will depend on the answers we receive to these two questions.

CHAIRMAN: I will do my best to answer the Delegate of Syria. This Article will have effect when any country gives provisional application to the Agreement, as from the date on which their provisional application becomes effective - just the same as any other Article in the Agreement. Also, if a country does not give provisional application to this Agreement, it will then have effect when the Agreement comes into effect for that country. As this Article is included in Part I of the Agreement, it will not be subject to change on the coming into force of the Charter unless the parties use the amendment procedure under the provisions for amendment of the Agreement.

CHAIRMAN: The Delegate of the Lebanon.

M. Moussa MOBARAK (Lebanon)(Interpretation): Mr. Chairman, if I understood correctly the explanation which you have just given, this discussion can only interest the key nations or those nations which can apply provisionally the Agreement without having to submit it to their Parliaments, but it does not concern those nations whose constitution prevents them from applying this Agreement without submitting it to their Parliaments - nations like Syria and the Lebanon - and^{who}/therefore cannot apply it before next June.

CHAIRMAN: Are there any other comments on paragraph 2?

We shall now pass to paragraph 3.

In document E/PC/T/W/317 the French and Czechoslovak Delegations have submitted an amendment to paragraph 3, which takes the place of the proposals which they circulated on September 1st, I therefore suggest that we first of all take up the proposals of the French and Czechoslovak Delegations. Would either of these two Delegations be in a position to explain the proposal?

(Interpretation):

MR. A. FAIVOVICH (Chile): If no French text has been circulated up to date, I request for an adjournment of the discussion until the French text is circulated.

MR. M. MOBARAK (Lebanon) (Interpretation): I share the point of view of the Chilean Delegate.

M. ROUX (France): (interpretation): Mr. Chairman, I would like to point out that the original draft was submitted by our Delegation to the Secretariat in French.

CHAIRMAN: I am sorry, I did not know that the French text had not been distributed. The Secretariat tells me that the French text will be here shortly. In the meantime, we might pass on to Article II.

The Delegate of the United Kingdom.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, before we pass to Article II, I would like to draw attention to a Note which was to be added to Article 16, which is the corresponding Article in the Charter itself.

This Note is contained in document E/PC/T/180 Corr.8, and it reads like this "In the footnotes immediately below the heading 'Article 16' insert the following paragraphs:

'The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference.

(i) the re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on 10 April 1947; and

(ii) the application to a particular commodity of a tariff item other than that which was actually applied to importations on that commodity on 10 April 1947, in cases in which the tariff law clearly contemplates that such commodity may be classified under more than one tariff item.'".

I think this is a case in which the question of Notes comes up. It does seem to me that this is a case where a Note should be picked up, whatever procedure we decide to adopt for linking officially interpretative Notes to the text of our General Agreement.

I would like to suggest that that Note be picked up there.

CHAIRMAN: The Delegate of the United Kingdom has raised the question of the interpretative Notes which have been attached to the various Articles which are common to the Charter and to the General Agreement. Have any Members of the Committee any views as to how these Notes should be dealt with?

The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I take it for granted that the Explanatory Notes to articles of the Charter would also apply to the Articles of the General Agreement. If that is the case, I do not think it would be necessary to have them attached specially to the General Agreement.

CHAIRMAN: The Delegate of Chile.

MR. A. FAIVOVICH (Chile) (Interpretation): Mr. Chairman, in spite of the comment which has just been made by the Norwegian Delegate, I have some doubts, because if this Article here is not to be provisional and, on the other hand, the Charter is to be revised, I do not see how, it being possible for this Note to disappear from the final text of the Charter, we could consult such a Note.

CHAIRMAN: The Delegate of South Africa.

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, these Notes were put in at various stages as a condition of certain Articles being accepted and this is one of them. If it is not put into the General Agreement, that will open the whole subject of the wording of those Articles again. It is an intimate part of the Article.

CHAIRMAN: The Delegate of Cuba.

MR. H. DORN (Cuba): Mr. Chairman, I agree with the explanation just given by the Delegate of South Africa, and I think that even if the Notes were accepted without any change in the Charter, legally it would not mean anything at all if they were not included in the Agreement.

Therefore, I think we will have to decide whether a Note has an explanatory character and binding interpretative force - in that case it should be included in the Agreement in order to make sure that it applies to the Agreement, without taking into account what will be its fate in the Charter.

CHAIRMAN: The Delegate for Czechoslovakia.

DrE. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I think what we should keep the Footnotes, because I think that they are essential to the meaning of the different articles. I suggest that we put them, as is usual in all treaties or international conventions, in a Protocol - a final Protocol or Protocol of signature.

CHAIRMAN: The Delegate of the United States.

MR. W. BROWN (United States): Mr. Chairman, I would agree with the suggestion of the Delegate for Czechoslovakia. It seems to us that the Notes should all be collected together in an Annex or Protocol with reference to the Articles to which they apply, so that they are part of the Agreement and all linked together in one place.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I do not want to waste time on a question which is mainly one of mechanics, but it does seem to me that there are two points, and the first is the sort of formula with which you attach these notes. I presume the sense would be that these are to be regarded as official interpretations of the text of the Articles. Then there is the question of place - either these Notes can be printed at the foot of the Articles or, as in some pre-war conventions, in a Protocol.

Having the Notes sandwiched between the Articles certainly makes for greater facility in reading, but on the other hand they might all be grouped together in one Protocol at the end. In that case, I imagine you will inform the person that he can look at the end if he wants to find an explanation.

I think it is a question of taste rather than anything else, but I am of the impression that it will be better to have the explanation with the Article.

CHAIRMAN: Dr. Augenthaler has proposed that these Explanatory interpretative Notes be collected together into a Protocol which will accompany the Agreement, and Mr. Winthrop Brown has seconded that proposal; Mr. Shackle has expressed a preference for the Notes to appear at the bottom of each Article to which they relate, but not a very strong preference. I wonder if we could obtain the sense of the Committee as to which of these procedures meets with the general wish.

MR. J.P.D. JOHNSON (New Zealand): Mr. Chairman, I am inclined to feel the same way as Mr. Shackle, that is, that it would be more convenient and easier for reference if the Note were put at the foot of the Article.

CHAIRMAN: The Delegate for Cuba.

MR. H. DORN (Cuba): May I support Dr. Augenthaler's and Mr. Brown's proposal, because I think that this form of Protocol has mostly been used in international treaties. It has one great advantage in that it makes quite clear the interpretative character of these Notes. The Footnote, as such, does not make the character so clear. Therefore, I want to agree with the two Delegates whom I mentioned before.

CHAIRMAN: Any there any other comments?

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that from a legal point of view the suggestion made by the Czechoslovak Delegate, supported by the Cuban Delegate, is quite a reasonable one and I hope that the preference which was mentioned by Mr. Shackle can be eliminated under the terms of Article I of the Draft Agreement.

Mr. R.J.SHACKLE (United Kingdom): Mr. Chairman, I do not want to press my point very hard. I think that so far as the question of the legal effect is concerned it could be covered by a reference somewhere in the Agreement. If the general preference of the Committee is, as it seems to be, in favour of assembling all these Notes in a Protocol, I will not press my point.

CHAIRMAN: I want to thank Mr. Shackle for his accommodating spirit. I think we can leave this question as more or less settled. I will ask the Secretariat to prepare a draft Protocol giving the interpretative Notes; we can discuss the form when we have that draft.

Can we now take up Article II?

Mr. H. DORN (Cuba): I have only one question if you will allow me, Mr. Chairman. There is the question of how to deal with reservations. If I understood it rightly, it is not necessary to mention this question for each Article, because you want to deal with all reservations together under Article XXVII, but I am not quite clear as to whether it is necessary to mention for each Article the existence of a reservation.

CHAIRMAN: I had hoped, after the statement which Mr. Brown made earlier in this meeting, that the question of reservations would no longer arise, but if there are to be any reservations I think they can best be dealt with when we have finally considered the whole text of the Articles; then we can see if there are any reservations which might have unanimous support or not.

Mr. H. DORN (Cuba): Mr. Chairman, if you will allow me, I understood that we would have to discuss this question of reservations, because it has a long legal history; it is not something new. I do not want to discuss it at this moment, but at all events I think the question of at what time the reservation has been made and maintained must be discussed before we can decide whether we have to insert it at the moment of signature. Therefore I think we can discuss it later and reserve our right to make reservations which will be maintained indefinitely.

CHAIRMAN: That will be more satisfactory. We will make better progress if Delegations do not mention, in the case of each Article, what reservations they have in mind. We will leave the whole question over until we have dealt with all the Articles of the Agreement.

Mr. DORN (Cuba): Thank you. It is not necessary to mention them?

CHAIRMAN: No, it is not necessary.

Can we now deal with Article II?

Are there any comments on Paragraph 1?

(Agreed)

Paragraph 2: in Document W/312 we have a proposal by the French Delegation for a new wording of Paragraph 2. Will the French Delegation explain the purpose of this proposal,

M. ROUX (France) (Interpretation): Mr. Chairman, the reasons why we have submitted this amendment are pointed out in Document W/287. The question was raised before the Working Party and relates to certain taxes which are neither customs duties covered in Article 1 nor internal taxes, this case being covered also in Article III. In the Tariff Schedules the freezing of customs duty has been envisaged and for other taxes on imports or exports it is not customary to freeze these taxes.

It does not mean, of course, that these taxes or charges should not be mentioned, because the increasing of such taxes or charges could compromise the concessions which are granted under the tariff negotiations and in the Tariff Agreement.

In Paragraph 2 of Article 89 the principle underlying Paragraph 2 is that "no contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for", and we propose here to add that the contracting party should not render illusory in a certain way the advantages which it has granted to another party by certain taxes or charges.

Here we have a precedent, that of the Trade Treaty between the United States and France signed in 1936, where a similar provision occurs. This similar provision applied to certain fiscal taxes and certain charges of a

special nature for services rendered, for example. It is possible to maintain these taxes at their present rates, but it would not be right or proper to have these charges increased so as to hinder in any way or impair the application of the Agreement. In fact, if one could look at the taxation legislation or administrative policy of many countries, one could find a certain number of such taxes or charges which are assessed for services rendered on goods, for instance, and which are not internal taxes and for fiscal reasons it could not be possible now to suppress such taxes.

As I say, we have a precedent here in the 1936 Trade Treaty between France and the United States, and that is the reason why we have proposed the amendment to Paragraph 2.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop G. BROWN (United States): Mr. Chairman, we have no disagreement whatever with the objective of the French amendment. It seems to us, however, that the point is already covered, practically in the same language, in the suggested Schedule, which was circulated as Document T/153 for the consideration of the Committee. It seems to us that Paragraph 1, plus Paragraph 2 of Article II as they now stand, plus the Schedule as suggested in Document T/153, completely meets the point made by the French Delegation, without the necessity for further changes in Article II, because the Schedule actually uses practically the same language as the French amendment.

CHAIRMAN: The Delegate of France,

M. ROUX (France) (Interpretation): Mr. Chairman, the question is precisely to know whether before the Schedules one has to put a certain number of comments to explain what the schedules are about, and this would mean overlapping, I think. I think that we ought to have a General Agreement which could stand on its own feet and only refer to the Schedules and to the Annexures without adding any comments.

The question is, as I have stated, therefore, to know whether before the Schedules one should put such comments and provisions, such as provisions relating, for example to anti-dumping duties, etc. This was the main purpose of the amendment which we submitted in document W/287 and therefore we think that the provisions ought to be contained in the Agreement itself and not in comments on the Tariff Schedules.

There ought to be an Agreement and then Tariff Schedules only but without comments. I think that the main reason for that is a question of clarification but nevertheless this is a matter of a general nature which we should have to take up and discuss maybe at a later stage.

Nevertheless I would like to thank the United States Delegate for stating that he agreed with the spirit of our amendment. To sum up what I have said, the question is only to know whether these provisions ought to be included in the Article or whether they should be included in comments before the Tariff Schedules, and explain those schedules and be a sort of heading to the Tariff Schedules.

Mr. H. DORN (Cuba): Mr. Chairman, I would be thankful to have some explanations about the content. Up till now I had the impression that the covering statement, the Tariff Statement, had

only an explanatory character, that means, it makes it clear what the result of the Agreement would be as for the accepted Schedules; and I thought that the main points covered by the new French amendment would be covered already by the Articles of the Agreement. I would be glad to know if this interpretation of the covering statement was a correct one.

And secondly I would be grateful to know if the last part of the French amendment is a limitation of the paragraph 2 as it stands now in Article II, because in Article II, as it stands up to now, it says, speaking about converting currencies: "... so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement", and in the new wording it says: "by altering its method of determining dutiable value or of converting currencies for calculating this value". That means limiting the wording. I am not quite sure if it limits also the sense, the meaning, but the wording at least would be limited.

I would be thankful to have some explanations about the two points mentioned.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, with your permission I would like to answer first the second question. It was not at all our intention to modify the meaning of this paragraph by adding the words "for calculating this value" to the words "of converting currencies". In fact the duties which are to be evaluated cannot be modified and we do not want to see the Customs Authorities changing at their will the tariff valuation.

As to the first point, I asked myself if this question of taxes was not covered already by the Agreement, but, as I have stated previously, some taxes are not customs duties, and they

cannot be considered either as internal taxes, because they have no equivalent in the internal fiscal system. For instance, we have the example of the sanitation tax, which is usually to reward the services of the sanitation inspector who inspects the cattle, for instance, or of a veterinary, or of a customs inspector: or we can have the case of fees which are to be assessed for overtime. These taxes of course cannot be considered as internal taxes. They are only minor taxes; nevertheless they could in some way hinder international trade.

Mr. Winthrop BROWN (United States): May I point out that the two points last raised by the Delegate of France are already covered in the Schedule, paragraph 3(o):

"Nothing in this Schedule shall prevent the Government of
..... from imposing at any time on the importation of
any product:

(o) fees or other charges commensurate with the cost of
services rendered."

Therefore, the sanitary inspectors can be properly compensated for their efforts and all those who work overtime can receive their due and proper compensation.

As for the basic question raised by the Delegate of France it would of course be possible to take care of provisions which so often appear in the Schedule by putting them all in Article II but it would require some very careful drafting to do so. It is a decision we have to take but I suggest it is a decision we had better take later, when we have had a look at the Schedules and decided the precise form. Everything which is in the French draft which appears in document E/PC/T/W/312 is, I submit, already taken care of in the draft Schedule recommended in document E/PC/T/153, especially taken in connection with paragraphs 1 and 2 of Article II as they now stand.

CHAIRMAN: Would the French Delegation be agreeable to leaving this question over until we have examined the Schedule? Then if they find it is not covered by what is in the heading to the Schedule they would have the right to refer again to this amendment.

M. ROUX (France) (Interpretation): Mr. Chairman, I agree to examine this question at a later stage, but I think that this question will raise other problems. We ought to try to gather in Article II various provisions which appear in various places of the Schedule; nevertheless our proposed amendment here is not quite the same as the provisions which appear in the headings of the Schedule.

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, I think that there may be some difficulty in transferring at any rate some of the headings of the Schedules to Article II. For instance, I see paragraph 2 on page 5 of document T/153 which relates to preferential rates of duty in favour of products of the territories of contracting parties entitled to receive preferential treatment. It seems to me that to transfer that to Article II involves considerable complication.

Another difficulty I notice is that the suggested heading to the Schedule contains as 3(b) a provision for anti-dumping or countervailing duty. If I read the French amendment rightly, the use of anti-dumping or countervailing duties would be limited to where the use of such measures is prescribed by legislation already in force, and therefore any new anti-dumping or countervailing duties would be prohibited. That is something we have to look at rather carefully if the French amendment is accepted. I mention that as a point which requires consideration when we come to the Schedules.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, I think there is a misunderstanding. The question of internal taxes is covered and settled by the Article which refers to internal taxes, and the question of anti-dumping duties is settled by the Article which deals with anti-dumping duties and not by the headings of the Schedules and it seems to me that^{here} there is a certain amount of overlapping.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I am sorry to intervene again, but I cannot help feeling that Article V, Anti-dumping and Countervailing Duties, would not by itself prevail over a provision which said that charges on importation were bound. I see nothing in Article V which would have that overriding effect.

CHAIRMAN: It is clear that we cannot make headway on this complicated question until we have considered the heading to the Schedule, and therefore I propose that we leave it over until we come to the Schedule, as the French Delegation have agreed.

Are there any other comments on paragraph 2?

The Delegate of Syria.

M. Hassan JABBARA (Syria) (Interpretation): Mr. Chairman, I would like to have an explanation concerning two points of the French amendment. We read in the French amendment that "No Contracting Party shall adopt measures likely to impair..... unless such measures are prescribed by legislation currently in force".

It seems to us, therefore, that the Government would be able to fix the amount of the tax even after the customs duties had been frozen or reduced following the tariff negotiations. Now, will the Government be in a position to increase the margin existing on such taxes, and can they do that if the internal legislation permits them to do so?

The second question I would like to ask relates to the words "imposed on, or in connection with importation". It seems to me that there is a certain confusion, because certain internal taxes are imposed on goods at the time of the importation, and, nevertheless, the fact that these taxes are received at the time of the importation does not change their character of being internal taxes. Therefore, I would like to have some explanation on these two points.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, the comments made by the Syrian Delegate proves to me with what care he has studied our amendment. He was able to discover new aspects of our amendment which had escaped the French Delegation!

The inclusion of the words "unless such measures are

prescribed by legislation currently in force" was referred to. We do not intend to open the way to misuse of this provision; but it was only included in order to avoid unpleasant surprises to the Contracting Parties, and that taxes which did not exist could be imposed on importations.

We do not want to cover abuses here, but we just want to take into consideration the situation which prevails at the time of the signing of the Agreement.

As to the second point referred to by the Syrian Delegate, that is, the expression "on or in connection with importation", this appears in many places in the Charter, and is one we have acquired from other Articles of the Charter. The French Delegation did not invent this expression, and although it may seem somewhat redundant, it might be a sort of precaution against cases where the taxes are not imposed at the exact time of the importation, but may be at a somewhat later stage -nevertheless, in connection with the importation. Of course, the internal taxes here are completely left aside, because, as I stated previously, the case of internal taxation is scheduled in a special Article on internal taxes, just as the case of anti-dumping duties is scheduled in a special Article. What we wanted to do through our amendment was to solve a certain number of cases of taxes which cannot be put into the general framework of normal taxes.

CHAIRMAN: As I mentioned before, we will be dealing again with these complicated questions when we come to deal with the heading of the Schedule. It is now time we adjourned. Tomorrow I propose we take up paragraph 3 of Article 1. The French and Czechoslovakian Delegations' proposals have now been circulated, and we will begin tomorrow at 2.30 p.m. with the French and Czechoslovak proposals. The Meeting is adjourned.

(The Meeting rose at 6.20 p.m.)