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

VERBATIM REPORT

THIRTEENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE
HELD ON MONDAY, 8 SEPTEMBER 1947 at 2.30 P.M. IN THE
PALAIS DES NATIONS, GENEVA.

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

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CHAIRMAN: The Meeting is called to order.

When we broke up on Saturday morning we had been considering Article XXIV and there had already been a considerable amount of discussion on the first paragraph of the United States proposal given in document E/PC/T/W/316. I therefore think that today we should begin again with Article XXIV and endeavour to complete consideration of that Article, and then if there is still time we could go back to the Article dealing with Quantitative Restrictions which we had announced we would take up on Monday.

The first point I would like to take up with the Committee is the United States proposal to amend the title to read: "Signature and Entry into Force".

Are there any objections to this change of title?

Approved.

During our consideration of the first paragraph of the United States proposal the Australian Delegation suggested the deletion of the first sentence. The Delegation of the United States indicated that they had no strong objection to the deletion of the first sentence and therefore, if this sentence were deleted, the paragraph would read: "The present Agreement shall be open for signature until " etc.

Are there any objections to the proposal of the Australian Delegation?

Is the Australian proposal to delete the first sentence approved?

Approved.

The next proposal which we had at our meeting on Saturday was the proposal of the Norwegian Delegation

Dr. H.C. COOMBS (Australia): Mr. Chairman, I think we also suggested the omission of the last clause.

CHAIRMAN: Yes, I am coming to that later. The next proposal we had in connection with that first paragraph was the proposal of the Norwegian Delegation to replace the words "until 30 June 1948" by some words indicating "four months after the conclusion of the Havana Conference". Are there any objections to this proposal?

Mr. Winthrop BROWN (United States): Mr. Chairman, I wonder if it would not be as well to wait until the Delegate of Norway is present?

CHAIRMAN: We shall then take up the last suggestion which was given on Saturday with regard to this paragraph: that was to delete the words at the end "which shall not have signed this Agreement on this day". This was proposed by the Australian Delegation and agreed to by the United States Delegation. Are there any objections to the suppression of these words?

There being no objections, we can take it that the Committee agrees with the suppression of these words.

We can now take up the suggestion of the Norwegian Delegation to change the words "until June 30 1948" to words which would signify that the closing date for signature would be a period four months after the closing of the Havana Conference. The United States Delegation at our Saturday meeting indicated that they did not agree with this suggestion, so I think we should now consider this particular point.

The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, as I said the last time we discussed this point, we do not have any strong views on this particular date. I agree also that there might be some advantage in taking a fixed date instead of just a reference to the

end of the Havana Conference, and, in view of the other points of view which have been expressed here, we do not want to press the point, and we withdraw our suggestion.

CHAIRMAN: I thank the Norwegian Delegation for withdrawing their suggestion.

Are there any other comments with regard to the first paragraph proposed by the United States Delegation in document W/316?

Paragraph 1 is approved, with the amendments we have agreed to this afternoon.

We now return to page 55 of document E/PC/T/189. The first paragraph of the Article, which now becomes paragraph 2, was approved at our Saturday meeting. The second paragraph was also approved, subject to further consideration of the word "government" after we have considered the Preamble.

CHAIRMAN: We then turn to paragraph 3(a) which now becomes paragraph 4(a) and there the same reservation with regard to the word "Government" will apply.

The Czechoslovakian Delegation (on page 6 of Document W/312) propose the deletion of the words "and which is not self-governing in matters provided for by this Agreement". I think that must apply to paragraph 3(b). Are there any other comments on paragraph 3(a)?

Dr. Z. AUGENPALER (Czechoslovakia): Mr. Chairman, I had an opportunity to get in touch with our authorities in Prague, and I am pleased to inform the Preparatory Committee that we are ready to accept, in the Preamble and also in the text, the words "the Governments" should remain, on the understanding that, so far as Czechoslovakia is concerned, it means actually the President of the Republic: that the Agreement will be signed on behalf of Czechoslovakia, full powers being delivered by the President of the Republic, and also that acceptance or ratification will be carried out on behalf of the President of the Republic. I hope that in this way the difficulties we have had will now disappear. I do not know what the situation is in regard to other countries, but the Legal Advisers found that this course could be followed by Czechoslovakia.

Therefore, I would like to withdraw our amendment here concerning self-governing territories, because we think the text may stand as it is.

That is the first statement I wished to make. The second is of secondary importance, and that is that we have several times made reference to "sons of unborn mothers". Well, I find that in the book of the Food and Agricultural Organization it is stated;

"...bien qu'elle soit la fille del'Organisation des Nations Unies, assez ^{sur} ~~sur~~ gulierement elle est nee avant sa mere". It means that we have not only sons of unborn mothers, but daughters of unborn mothers.

Mr. R.J. SHACKLE (United Kingdom): I wish to thank Dr. Augenthaler very sincerely for rescuing me from a position of considerable embarrassment in which I had either to withstand the sense of this Committee or else brand myself forever a heretic with the Legal Advisers of the British Foreign Office:

M. ROYER (France) (Interpretation): Mr. Chairman, I would like to state that the French Delegation has also consulted with its legal experts in Paris, and therefore, we can accept the original formula, because we are advised that according to the French Constitutional laws, the word "Government" could be construed so as to include the Head of State.

CHAIRMAN: I wish to add my congratulations to those which have been accorded to Dr. Augenthaler for the settlement of this difficulty. We can now, I think, accept paragraph 2 of the original text of Article XXIV without reservations.

I would like to ask the French Delegate one question. I take it that in view of what he has said he would wish the words "French Republic" to remain in the Preamble rather than for it to be changed to "French Union"?

M. ROYER (France) (Interpretation): Mr. Chairman, the question you have just raised might be a very complicated constitutional one, and therefore we think that it would be better to leave "French Republic" as it appears in the original text. (Further comments applicable only to the French text).

CHAIRMAN: Are there any other comments on paragraph 3(a)?

Dr. G.H. LAMSVELT (Netherlands): Mr. Chairman, I regret to have to remind the Committee of certain reservations made by Dr. Speekenbrink at the meeting of 20th August regarding overseas territories of the Netherlands, on page 25 of the Verbatim Report.

CHAIRMAN: Due note will be taken of what the Netherlands Delegate has just said. Are there any other comments on paragraph 3(a)? Paragraph 3(b). We have some suggestions given on page 6 of Document W/312. The United Kingdom Delegation suggests the deletion of the words "undertake the obligations" and the substitution of "apply the provisions". Are there any objections to this proposal?

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, the text states that "a government may at any time accept this Agreement on behalf of any separate customs territory for which it has international responsibility and which is self-governing in matters provided for by this Agreement and which is willing to undertake the obligations of this Agreement. The government of such separate customs territory shall thereupon be entitled to appoint a representative to the Committee". This means that such a Government has the right to appoint separate representatives to represent it within the Committee; but it seems to me that a separate Customs territory which is autonomous in these matters is not politically autonomous, and therefore does such a Government exist? That is something which seems to me somewhat contradictory, because I do not see how, if the Government does not exist, it could appoint representatives.

CHAIRMAN: We shall be coming to that point in a moment,

because there are two proposals with regard to the last sentence. I would first of all like to know if the Committee agrees with the suggestion of the United Kingdom Delegation to substitute the words "apply the provisions" for the words "undertake the obligations" in the fifth line of this paragraph. If there are no objections, we can take it that the United Kingdom Delegation's suggestion is approved.

We can now deal with the point which has been raised by the Delegate of Chile, and Members of the Committee will note that the Czechoslovak Delegation proposes the deletion of the second sentence of this sub-paragraph.

Mr. R.J. SHACKLE (United Kingdom): The situation which this paragraph is intended to cover may be rather peculiar. I do not think it is necessarily exclusively peculiar to the British Colonial Empire, but certainly cases do occur there where there are territories which do not have full international responsibility for foreign affairs, but which nevertheless are self-governing in all external commercial matters. They have Governments which have a limited jurisdiction, and that limited jurisdiction does cover external commercial affairs. Now, it is evident, I think, that for the purposes of this Agreement, that jurisdiction over external commercial affairs is sufficient to allow the Governments of those territories - they are in fact Governments - to be Members or Contracting Parties to the Agreement. That is the position in our case, and we wish to suggest that that be position at any rate as regards those autonomous territories which have been represented here at Geneva and which have negotiated on tariffs.

CHAIRMAN: The representative of Burma.

U NYUN (Burma): Mr. Chairman, I am very grateful to you and the Members of the Committee for granting me permission to state the case of independent customs territories before this meeting. What I am going to say is not motivated by the interests of Burma exclusively, for as you are aware, Burma is now in fact an independent country, and she is merely awaiting legal recognition of her independent status before the end of the present year. I am only motivated by a desire to see that equity and fair play is given to the so-called self-governing customs territories.

I find, Mr. Chairman, that despite the best efforts made by the Delegations gathered in Geneva to achieve a large measure of agreement by consultation and compromise to cover the special needs of various countries which have a share in international trade, autonomous customs territories have been placed in an anomalous position in regard to the acceptance and signing of the Final Act, the Protocols and the General Agreement. This seems to me to be due to lack of appreciation of the fact that these countries are fully independent in all matters relating to the Charter. The Burmese Government has full authority to frame its own tariff and commercial policy and Burma can enter into Trade Agreement or tariff negotiations with any foreign country freely and independently. The Tariff Negotiating Teams of the various delegations gathered in Geneva will bear strong testimony to the fact that all tariff negotiations have been conducted by Burma freely, independently and of her own accord. All tariff negotiations were conducted direct by Burma and not through the U.K. and the latter has no say whatsoever in the negotiations conducted by Burma. So far, Burma has already concluded tariff negotiations with Australia, Benelux, China, Czechoslovakia, Lebanon-Syria, South Africa and U.S.A. and she expects to be able to conclude tariff negotiations with Norway and France in the near future.

Under present arrangements the Schedule of Tariff Concessions by Burma which embodies the result of the tariff negotiations conducted by Burma in Geneva will form an annexure to the General Agreement in common with the tariff schedules of other countries. The anomalous position therefore arise, Mr. Chairman, under which Burma, though a contracting party regarding the negotiations, will not be in a position to sign the General Agreement in her own right. In other words the tariff concessions offered by Burma to other countries will be attached to the General Agreement but there will be no signature of the actual contracting party in the General Agreement undertaking to give effect to the various rates mentioned in the tariff schedule.

It is proposed in paragraph 3(b) of Article XXIV of the General Agreement that a Government may accept the Agreement on behalf of any separate customs territory for which it has international responsibility and which is self-governing in matters provided for by the Agreement and which is willing to undertake the obligations of the Agreement. In view of the fact that all tariff negotiations are conducted direct by these autonomous customs territories as already stated by me, there seems to be no reason why these countries should not be given an opportunity to sign the General Agreement in their own right. It seems unnecessary and anomalous that the United Kingdom which has nothing to do with the tariff negotiations conducted by Burma should come into the picture only at the stage of signing of the Agreement. Such a procedure will have the effect of bestowing upon the metropolitan territory more authority and power over autonomous customs territories than it ever possesses in actual practice. The seriousness of the implications arising out of such an artificial procedure will be apparent when it is taken into consideration the fact

that the United Kingdom will itself have to negotiate separately and on equal terms with Burma for tariff concessions. We will then have an anomalous position whereby the receiver, and not the giver, of concessions will be signing the concessions to be received by it as authentic offers.

The position will become clearer, Mr. Chairman, if we realise that the General Agreement is primarily a tariff agreement, the general provisions serving ONLY as safeguards for the effective application of tariff concessions. The proper and practical criterion is not who is the metropolitan territory in charge of Burma but where lies the power and authority competent to give effect to the various obligations laid down in the General Agreement. That power, Mr. Chairman, undoubtedly lies in the hands of the Burmese Government and not in the hands of the United Kingdom. This position has been duly recognised in Article XXIV 3(b) of the General Agreement by the inclusion of the words "Any separate customs territory which is willing to undertake the obligations of this Agreement." I submit, Mr. Chairman, that, having recognised that autonomous customs territories can have wills of their own, the Article should take a more practical line of action and make suitable provision to enable these countries to sign the General Agreement by themselves and on their own behalf. By allowing these countries to sign the General Agreement on their own behalf, responsibility for carrying out the various obligations of the Agreement will be placed squarely on the shoulders of these countries and this straightforward procedure will do away with unnecessary complications later of such customs territories refusing to carry out the obligations of the Agreement on the ground that they were not parties to the actual contract. In this connection I am proud to be able to say that Burma has throughout her international commercial

career scrupulously respected and complied with all international conventions regulating trade and commerce. For instance, during the Sino-Japanese war when all the sea-ports of China were closed, we kept the Burma Road open and we allowed free transit of goods through Burma to China in compliance with the Barcelona Convention at great risk and serious cost to ourselves. I am mentioning this to show that undertakings of international obligations are not always in favour of the country accepting the obligations. Very often such undertakings have serious effects on the economy of individual countries. Yet, in spite of this, we assure you that we in Burma are prepared to place our own interests in the background in co-operating with other countries in framing a code of conduct in the sphere of international commerce. I would take this opportunity to mention that, should Burma decide to accept the General Agreement, she would be fully prepared to apply it provisionally with effect from the date of public announcement of the General Agreement. We find it difficult to understand, Mr. Chairman, that an international body whose avowed object is to put down old trade barriers and to build a world organization for equity and fair play irrespective of divergent ideals of different economic systems of the world should try to put difficulties and formalities in the way of countries with a substantial share in international trade who are doing their best to pull their weight and who merely ask to be given due recognition and status so that they may with self-respect and without loss of face continue to serve the Organization.

Other international bodies such as the Food and Agricultural Organization which is now having a conference in Geneva have shown sufficient foresight and breadth of vision and practical thinking by admitting Burma as a full Member of the Food and Agricultural

Organization by a unanimous vote. Will the Preparatory Committee of the International Trade Organization, which is going to be the sister Organization to the Food and Agricultural Organization, allow themselves to be influenced by groove thinking and lag behind the times and still insist on putting anachronistic formalities in the way of young countries with old culture and civilisation, who are eagerly awaiting to be given an opportunity to co-operate in your worthy task? I strongly submit for the sympathetic consideration of this Committee that provision should be made to enable Burma to sign not only the General Agreement but also the Final Act and all the Protocols in her own right in recognition of her status as a fully independent and qualified contracting party in the tariff negotiations. Unless this is done, Mr. Chairman, we would feel that all efforts made by us in Geneva in co-operating to bring the tariff negotiations to a successful conclusion have been done in vain.

For the same reasons stated by me, Mr. Chairman, I would strongly oppose the amendment proposed by the Czechoslovak Delegation for the deletion of the second sentence in paragraph 3(b) of Article XXIV of the General Agreement. This amendment if accepted will deprive countries in the position of Burma of the right to appoint a representative to the Tariff Committee. For the same reasons also I would oppose the proposal made by the Australian Delegation to revise the second sentence of Article XXIV, paragraph 3(b) suggesting the addition of the words "with the consent of the Committee and upon such terms as the Committee may determine". This proposal, though not so retrogressive as the proposal made by the Czechoslovak Delegation, is a half-measure which would only result in giving the unfortunate impression to the affected countries and to the outside world that discriminatory treatment and inferior status are all that

can be expected by small countries in the proposed International Trade Organization however willing and ready they may be to co-operate with the bigger countries for the common welfare of humanity. It is very disheartening to think that Burma, which is the biggest exporter of rice and teak in the world and whose share of international trade is substantially more than some of the countries who are Members of this Conference, should be subject to such discriminatory treatment by an Organization whose avowed object is not to perpetuate out-of-date political ideas but to promote the expansion of international trade. I strongly submit, Mr. Chairman, that in the name of practicality and fair play these autonomous customs territories and Burma, who have shown themselves fully competent to comply with the obligations of the General Agreement, should be given the undisputed right to appoint their representatives to the Tariff Committee. Then, only, will the Tariff Committee be given an opportunity to hear the views of these countries and be able to put up recommendations which will be fair to big and small countries alike, and which will be worthy of the name of a world-wide Organization which the proposed International Trade Organization purports to be. I would, with these remarks, strongly appeal to you, Mr. Chairman, and to the delegates gathered at this table to consider the claims of countries, in the position of Burma, sympathetically and fairly and to make suitable provisions in the relevant documents to enable these countries to sign the Final Act, all the Protocols and the General Agreement on their own behalf, and to enable them to appoint their own representatives to the Tariff Committee.

If my suggestion is accepted, it will be necessary to provide for the inclusion of Burma in the Preamble of the General Agreement and all instruments relating to the Agreement, and it will also be necessary to make suitable amendment to paragraphs 3(b) of Article XXIV of the General Agreement. Thank you.

CHAIRMAN: The Delegate of Czechoslovakia.

H. E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I have not much to say. When we proposed the deletion of this paragraph and other paragraphs of the Charter and the T-riff Agreement, and when we proposed the deletion of the respective words, it was not, as I said before, because of lack of sympathy on our side with those young territories, many of which are probably older than we are. We welcome them in our midst.

We had two considerations in view. The first was a purely legal consideration, from the point of view of International Law, and we were aware of one fact; that you must not only declare the principles of International Law yourself, but they must be recognized by others. I think there should be a provision to cover cases of this kind.

I should state immediately that we have no intention of not recognizing the participation of Burma, Ceylon and Southern Rhodesia, but, as a general principle, I am rather afraid of the fact, or the possibility, that some country may at any moment declare that some territory is self-governing, and, by the pure fact of this declaration, the country in question would become a Member of some organizations and be party to some agreements.

On the other hand, since we have withdrawn our reservation with regard to the word "Governments" in the whole Charter, we see no difficulty if the last sentence stands.

I would suggest only one small addition; that is, we should say "Such separate customs territory shall thereupon be entitled, with the consent of the other parties, to appoint a representative to the Committee." I hope that will satisfy our colleague from Burma.

We thought, when we made this proposal, that it was on the lines of the views of the United Nations Organization, especially when we see the latest decision of the Economic and Social Council. As you know, we were not in favour of the decision that the countries invited to the Havana Conference should be deprived of their right to vote, but the Economic and Social Council decided so. In the light of that decision, we thought it should appear here somehow, but, as I said before, I do not want to insist on our amendment. I would only suggest that a few words be added.

I would like to say immediately that we agree with the participation of Burma, Ceylon and Southern Rhodesia, and I hope our Burmese colleague will not consider us reactionary. We are considered to be Red; we are considered to be behind the Iron Curtain, but I hope we are not considered to be reactionary.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I should like to say that I entirely and warmly support the request which the representative of Burma has so eloquently made to the Committee. The territories which are in the position he has described - that is to say, territories which are autonomous in the matter of their external commercial relations - are Burma, Southern Rhodesia and Ceylon. The representative of Ceylon is not at present in Geneva. Had he been here, I should have had the honour of proposing to the Committee that he also should be represented here today, and I have no doubt the Committee would kindly have agreed as they have done in the case of Burma and Southern Rhodesia.

There is one explanation I should add, namely, that the position of Burma is special, in that she is about to enter upon independent constitutional status.

The proposal which the representative of Burma has put to the Committee would, as I see it, involve amendment of sub-paragraph 3(b) of this Article. As for the line on which it should be amended, my suggestion would be that those territories autonomous in the matter of their external commercial relations which have here participated in the Geneva tariff negotiations on their own account should be entitled to sign the Final Act and the General Agreement and its Protocols and should be entitled unconditionally to send representatives to Meetings of the Contracting Parties.

In the case of other autonomous territories which have not participated in the present tariff negotiations, my feeling is that the present scheme of the paragraph might stand, with the result that the metropolitan governments would, when the time comes, accept on their behalf when the territories concerned are willing to apply the provisions of the Agreement. I may say that that is at the moment a theoretical possibility and I have no practical cases in mind.

As regards the suggestion ^{which} Dr. Augenthaler made on the last sentence of this paragraph, namely that the government of the separate customs territories should be entitled to appoint representatives to the Committee - or, I should say, should be entitled to be represented at Meetings of the Contracting Parties - if the other contracting parties agree, to that I would say that I would be willing to accept that suggestion as regards separate customs territories which have not participated on their own account in the Geneva tariff negotiations, but as regards those territories which have participated, that is to say Burma, Southern Rhodesia and Ceylon, I would suggest that the last sentence of the paragraph should stand as it is.

If these proposals should be agreed to by the Committee - and I hope they will be - there will be a job of drafting to be done and

for that purpose I would like to suggest that a special small Sub-Committee might be appointed at the close of our discussion.

Thank you.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, the Republic of Cuba welcomes the presence of Burma in this Preparatory Committee and supports and seconds the idea that he be permitted to sign, and act as any other one of the nations here represented. That is one thing. But the idea set forth in paragraph 3(b) of Article XXIV that a territory of this kind, just because it would be willing to apply the provisions of the Charter - which is something very different from the wording we had before, because the text proposed to the Preparatory Committee by this group stated "which is willing to undertake the obligations" and to undertake the obligations is quite a different thing from being willing to apply provisions - to say that that territory, just because it would be willing to apply the provisions of this Agreement, shall be entitled to appoint a representative and become a full member of this group of signatories of the Treaty is a radical departure from what was agreed upon by this very same Preparatory Committee when we were discussing Article 68 of the Draft Charter relating to membership of the International Trade Organization.

At that time this matter was discussed for weeks and weeks. It even was discussed when the invitation for the Havana Conference was being prepared. We had a unanimous idea in relation to this matter and the Economic and Social Council, which is the political body of this Organization, did not approve of what we had done in the matter of limitation and set the ruling as to how it should be conducted. So when this matter was finally approved in the text to be submitted to the World Conference

the position of the different territories was clearly stated, and it was done without any reservation whatsoever except for a slight interpretation of the Delegation of South Africa. And on this point Article 68 of the Charter says:

"any separate customs territory not invited to the United Nations Conference on Trade and Employment, proposed by the competent Members having responsibility for the formal conduct of its diplomatic relations and which is autonomous in the conduct of its external commercial relations and of the other matters provided for by this Charter and whose admission is approved by the Conference ... shall be entitled, ..."/and so forth, "... upon acceptance of the Charter"

So, according to what we have set forth in the Charter of what is going to be the International Trade Organization there are to be three things:

first, that the responsible government take the lead in the matter,

second, that the territory accept the Charter,

and third, that the admission of that territory be accepted by the Conference.

According to what is stated here, only by setting forth that the territory is willing to apply the provisions of the Agreement it shall have ipso facto the right to appoint a representative and the right to become practically a Member.

So I do not see why we should depart from what we have established in the Charter for the International Trade Organization and accept this new system, of which we really do not know where it will take us.

So, without any prejudice to any of the possible rights of all these territories, of which we do not know the number, nor

their importance, we think it is very well, as I said at the beginning, that we accept with great pleasure and honour the co-operation of Burma in the full exercise of their rights, but I would oppose to settle that as a rule for any territory whatsoever.

CHAIRMAN: The representative of Burma.

U NYUN (Burma): Mr. Chairman, I thank the Delegate of Czechoslovakia for the very kind gesture made by him in withdrawing his proposal for the deletion of the second sentence of paragraph 3(b) of Article XXIV. I would, however, beg leave to request of him, for the reasons already stated by me, to be so good as to allow the present wording of this paragraph to stand as it is, in so far as Burma is concerned.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, like Dr. Augenthaler it was a new experience for me to be labelled as one of the reactionaries, but I think the point is that, in the case of the Governments of Burma, Southern Rhodesia and Ceylon, their participation in the negotiations here and the fact of their negotiating tariff reductions has demonstrated their right to participating in this Agreement. Whether that will be true of all Governments in this position I am not in a position to say and the sole intention we had in putting forward our suggested amendment was, first of all to keep the phraseology as close as possible to that which has been incorporated in the Charter itself, and secondly to ensure that under this provision Governments of separate Customs territories would not, so to speak, become members of the Club without paying the subscription fee.

(Continued, after interpretation).

May I just add, Mr. Chairman, that the point we had in mind would be fully covered by the suggestion which the United Kingdom Delegation has made.

CHAIRMAN : The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, it seems to me that there are two questions which are somewhat different. We have the cases of Burma, Southern Rhodesia and Ceylon on the one hand, and the case of the hypothetical territories which might ask to join at a future date on the other hand.

If we consider the case of these hypothetical territories, I do not think that the question arises here, because if such new territories should ask to join the Agreement, they would have to do so under the provisions of Article XXXI, which apply not only to such territories but also to sovereign States. In that case, I think that the distinction is perfectly clear, and they ought to join under the provisions of Article XXXI and not under the provisions of Article XXIV. Therefore, if we have this distinction clearly present in our minds, it seems that the special case of Burma, Southern Rhodesia and Ceylon could be dealt with by adopting the suggestion just made by the United Kingdom Delegate, and then we could delete paragraph 3(b) of Article XXIV, since there would perhaps be no further reason for it to stand.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, as it is generally recognized that Burma, Southern Rhodesia, and Ceylon will be entitled to sign this Agreement and the Final Act on their own account, I think it is quite possible - it is a matter requiring more detailed consideration - that for them we would not need to keep paragraph 3(b) of this Article.

As regards the question of whether it would need to be kept for hypothetical territories later, I am, at the moment, inclined to think that it would need to be kept, and in the case of such territories, I think the amended wording that we suggested: "Willing

to apply the provisions of this Agreement" instead of "undertake the obligations" would probably be appropriate, because in such case it would be the Government who would be acting on behalf of the hypothetical territory.

As regards the question as to whether Article XXXI should somehow be amended so as to provide for the adherence of any of these territories, I am not sure that that is necessary. I take it that if it is admitted that Burma, Southern Rhodesia and Ceylon may sign on their own account, then they would come in at the start. As regards other hypothetical territories that may come along later, I think that it may be desirable, perhaps, to retain paragraph 3(b) of Article XXIV in order to cover their case; but I would emphasize that all this requires rather careful consideration in detail, and it may be that the best way would be to have a sub-Committee study the matter.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, I would like to say that my Delegation also would welcome the participation of Burma, Ceylon and Southern Rhodesia in signing and adhering to all of the documents that we are considering, and, if I may add a personal word on behalf of our Delegation, after the combination of confidence and good humour which we encountered in negotiations we have had with them, we are looking forward to meeting them again at the further sessions of the "Club".

As far as the technical process of arranging that is concerned, I should have thought that if those three countries signed the Agreement separately with all our accord that it would meet their case, and as for the future hypothetical situation, that could be left entirely to Article XXXI which permits, in

very general terms, adherence on terms to be decided by the Contracting Parties, and sub-paragraph (b) of paragraph 3 of Article XXIV could be omitted.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, I would like to say that the Indian Delegation would also welcome the participation of Burma, Ceylon and Southern Rhodesia in the General Agreement as independent Contracting Parties. If that is done, these countries would automatically be entitled to appoint representatives to the Committee and in that case, paragraph 3(b) of Article XXIV would not apply to such countries.

It is, therefore, of interest how the second sentence in paragraph 3(b) is worded. As far as the Indian Delegation is concerned, they would have no serious objection to the amendment proposed by the Czechoslovak Delegation, but this is a matter which may need further consideration.

Mr. R.J. SHACKLE (United Kingdom): As regards the suggestion of Mr. Winthrop Brown, I admit that it has a very attractive simplicity. The only thing that I am rather doubtful about is that if we leave the case of all future territories which may apply to be dealt with under Article XXXI, it is my feeling that we are going to be confronted with the difficult problem of "screening" the applications, because, after all, it is necessary to be sure that a territory admitted in this way is autonomous in matters covered by the Agreement. Someone has got to testify to that fact, and it does seem to me that it would naturally fall to the metropolitan country to attest that that is the position. I am a little inclined to feel that --expressing an off-hand opinion--

there might be considerable difficulty in screening the many applications that might come along. For that reason, I am inclined to think that there might still be a case for having something like paragraph 3(b) of this Article, even though we recognize it will not apply to the cases of Burma, Southern Rhodesia and Ceylon. I feel this is a matter of rather complicated technical detail on which one cannot speak finally and definitely now; but very likely it would be the best way if there were a small group to consider the drafting requirements, and that would enable me to obtain any necessary advice from London.

CHAIRMAN: A number of Delegations have expressed themselves in favour of the full participation as Contracting Parties to the Agreement of Burma, Ceylon and Southern Rhodesia. At the same time, there is a varied expression of views regarding the effect that would have on paragraph 3(b), and therefore I think that probably the best course is to agree with the proposal of the United Kingdom Delegate to set up a working group which would give full study to this question and report back to us. I would like to know if the Committee is agreeable to that proposal.

M. F. GARCIA OLDINI (Chile)(Interpretation): Mr.Chairmen, I would like to know if this question taken as a whole -that is to say, the two questions- would be referred to the sub-Committee.

CHAIRMAN: I should think the terms of reference of the sub-Committee would be the two questions: the full participation of Burma, Ceylon and Southern Rhodesia as Contracting Parties, and then the technical details as to how this would affect the drafting of the Agreement.

Mr. R.J. SHACKLE (United Kingdom): I am bound to say that I feel doubt as to whether it is necessary to refer to a sub-Committee the first of the two questions. It appears to me that if it is the general sense of this Committee, as I gather it is, that Burma, Southern Rhodesia and Ceylon should be entitled to sign on their own account, that would dispose of that question, and the sub-Committee would not need to consider it further. The question to refer to the sub-Committee, it seems to me, is whether it is necessary or not to make special provision to deal with hypothetical future cases, and if so, what the form of such provisions should be. That is rather how the question appears to me.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I suggest that we adopt the proposal of the Chilean Delegate, that is, to refer the whole question to the sub-Committee. I am not ready now to state the position of our Delegation on the suggestion made by the United Kingdom Delegate, and it is absolutely indispensable for me to get the opinion of our Government in Paris, so that we should, as the Cuban Delegate pointed out, take a decision in conformity with the decision which was made on the matter by the Economic and Social Council.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, as the United Kingdom Delegate pointed out, it is the general sense of the Committee that there is no objection whatever to admitting Burma, Ceylon and Southern Rhodesia to full participation in the General Agreement. Therefore, no technical question remains to

be examined, and it can be taken as being the general view of this Committee that participation of these countries, in view of the facts stated by the Delegate of Burma, is desirable. In these circumstances, if any Delegation considers it necessary to consider the matter further, it can reserve its position. As this Committee will be carrying on its work for some time, there will be an opportunity for any Delegation which wishes to reserve its position to do so now and to report to the Committee later the result of its further consideration.

CHAIRMAN: The Delegate of the Netherlands.

Dr. G.A. LAMSVELT (Netherlands): Mr. Chairman, I have to support the opinion of the Delegate of France, and I have also to refer this matter back to The Hague.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I do not think that decisions such as we are about to take now should be taken without referring the whole question to a sub-committee. It is usually sufficient that Delegations ask that a question be referred to a sub-committee and ask that sufficient time be given to refer the matter to their Governments to obtain a decision. If this reason were not sufficient, we think that this matter is important enough for a sub-committee to study as a whole, and also that sub-committee should present to this Committee a very clear Report.

Here, we are gathered as representatives which have been appointed by the Economic and Social Council to establish a Committee, and we want, of our own will, to introduce new Members in that Committee. This is, I think, a very delicate question, and although I am not at all opposed to the admission of new Members and without indicating my decision, I think that there are external forms of which we have to take account, and as this is an exceptional case I think that we should apply these forms rigidly in this case.

What we want is a clear Report from a sub-committee stating exactly what the reasons are which will lead us to accept the admission of these new Members.

CHAIRMAN: Would it meet the general wishes of the Committee if the terms of reference of the sub-committee were to examine the situation respecting the participation as full Contracting Parties of Burma, Ceylon and Southern Rhodesia, and to submit recommendations, if this was decided upon, as to what way the text of the General Agreement should be changed?

Are those terms of reference agreed?

Is the proposal to set up a sub-committee with those terms of reference agreed?

Agreed.

I would propose that the following Delegations should constitute this sub-committee:- Cuba, France, India, Netherlands, United States and the United Kingdom. I would also suggest that, after they have elected their Chairman and determined their rules of procedure, the sub-committee should invite representatives of Burma and Southern Rhodesia to be present while matters of interest to those countries were being discussed. Is that agreed?

The sub-committee should meet tomorrow morning at 10.30 in order to elect its Chairman, decide its rules of procedure and transact any other business which it considers desirable.

We will now pass on to paragraph 4.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, before going on to paragraph 4, I would like to state that it would be possible that the negotiations which France conducts for Indo-China would not be concluded before the authentication of the Agreement, that is, before the signature of the Final Act, and, in spite of the provisions of paragraph 3(a), I would like to be clear that France would sign reserving the adherence of France on behalf of Indo-China until these negotiations are terminated.

CHAIRMAN: Paragraph 4, which is now numbered paragraph 5. I would call the attention of the Committee to the amendments to this paragraph proposed by the Delegations of the United States, which are given at the bottom of page 1 of document E/C/T/W/316.

The Delegate of the United States.

MR. W. BROWN (United States): As I explained before, the amendments are consequential upon the decision taken on Article XXXII. However, the Agreement contains the Protocol of Provisional Application and therefore this concerns only the entry into force. I wanted to make a distinction between the definitive entry into force and the provisional entry into force.

CHAIRMAN: Are there any objections to the proposed amendments of the United States Delegation?

MR. F. GARCELA OLDINI (Chile) (Interpretation): Mr. Chairman, I would like to have some explanation to clarify the situation deriving from difference between the final entry into force of the Agreement and the provisional application of the Agreement.

MR. W. BROWN (United States): Mr. Chairman, I am not sure that I understood the point of the Delegate of Chile, but the difference is that the word "definitively" has been omitted from the first line. It simply says "This Agreement shall enter into force". Then, a reference is made at the end of the amendment to Governments which are signatories of the Final Act, thus identifying the Governments taken into consideration to account for 85%. The whole matter of the provisional entry into force is taken care of in the Protocol of Provisional Application, which we will come to consider later, a suggestion for which appears on page 3 of document E/C/T/W/316.

CHAIRMAN: Are there any other comments?

The Delegate of Brazil.

MR. E.L. RODRIGUES (Brazil): Mr. Chairman, I have some doubts

about the full implication of this paragraph 4, now paragraph 5. In spite of the United States amendment, which I think is a great improvement on the draft, I still have some doubts concerning a country who has not signed before the countries which form 85% of the total trade of the territories have deposited their instruments of acceptance. What would be the situation of a country who is not in a position to sign at this time? Suppose that Brazil has not signed before the acceptance by other countries reaches 85%, what would be the position of Brazil? I think it will be much the same position as the signatory countries. The position will be the same with any other country.

CHAIRMAN: I am not quite sure whether I understand the suggestion of the Brazilian Delegate, but I think the meaning of this paragraph is quite clear, that is, the Agreement enters into force when countries which account for 85% of the total trade of the territories have deposited their acceptance. If Brazil had not signed at that time, then, of course, Brazil would not be a party to the Agreement, and Brazil would only be affected when the positive acceptance of Brazil had been deposited.

MR. E.L. RODRIGUES (Brazil): Yes, Mr. Chairman.

If you look at Annexure H you will see my reason, that is, that it will be very easy to reach 85% within that period, and the date of June 30th does not mean much for the other countries who are not covered by the 85%

M. ROYER (France) (Interpretation): Mr. Chairman, I think that there is something missing here in the text of this paragraph and we ought to have a provision similar to that which appears in the Charter,

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stating that the Agreement will come into force sixty days after the deposit of the instruments of acceptance. Here, we do not say when the Agreement will enter into force for those States which have signed after the States representing 85% of the total world trade. If the Agreement comes into force after it has been signed by seven or eight countries, for example, then we ought to state when it will come into force for the countries which will be the ninth or tenth country to accept.

MR. W. BROWN (United States): I think the difficulties arise as there is not a clear distinction between the signature and the definite acceptance after ratification by the Parliaments of the countries concerned. This paragraph 5 is concerned with the definitive entry into force, binding the Governments of the respective countries after their Parliaments have acted and ratified the Agreement. That is quite a different matter from the signature which the executive affixes under paragraph 1, which, I think, in the case of Brazil, has a conditional precedent to submit it to their Parliament.

Then the situation would be that when countries covering 85 per cent of the total trade involved had deposited their formal instruments of acceptance - that is to say, when their Parliaments had ratified that agreement definitively - the Agreement would enter into force as among those Governments definitely and they would be bound as Governments. Later on, if another Government deposited its instrument of acceptance, it would become definitely bound by the Agreement. I think perhaps that would meet M. Royer's point that it should be made clear that other Governments can formally accept after the Agreement has come into effect among those representing 85 per cent of the total trade.

The position of the Government which had not ratified would, I think, depend upon whether or not they had put it provisionally into effect. If they had put it provisionally into effect they would be receiving the tariff concessions from the other Governments on a provisional basis. If they had not put it provisionally into effect, they would not be getting the benefits of the Agreement during that interim period.

CHAIRMAN: The Delegate of Brazil.

Mr. E. L. RODRIGUES (Brazil): Mr. Chairman, in spite of the explanation given by the representative of the United States, I still have doubts, because if the idea of the entry into force is a definitive one it means that the Agreement shall enter definitively into force even as a result of having this draft as amended by the suggestion of the United States Delegate. The consequence of that, in my opinion, would be to include countries other than the original countries which reach 85 per cent of the total trade involved, and they would not be ⁱⁿ the same position as the original Members of the Agreement. I see no other way of judging our position.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop G. BROWN (United States): Mr. Chairman, I think the Delegate of Brazil is correct. The countries that have not formally accepted the Agreement will be in a different position from the countries which have.

Mr. RODRIGUES (Brazil): I am sorry to intervene again, but that is not my point. We are willing to accept the Agreement. There is no doubt about that. But we are not a position to accept it as soon as the other countries. I am not a specialist in International Law, but I have the impression that we would be put in a different position from that of the original Members. Perhaps I am wrong.

CHAIRMAN: I think the Delegate of Brazil will find his case is covered by the suggestion of M. Royer. That was the intention, but there is some obscurity. The intention was that after the Agreement had entered definitively into force a country which did not make up the 85 per cent could still become one of the original Members of the Agreement by depositing the instrument of ratification. It would not be necessary for that country to invoke Article XXXI - the adherence clause.

The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I think I have so many papers before me that I still feel a little confused. As this is a highly practical question, I would like to be entirely clear as to how the whole story will run. First, we shall come on September 30 to sign the Final Act, which says only that we have negotiated and that we have agreed to something. Then on November 15 we come to the signature of this Agreement. Then we have to state that we will be ready to apply the Agreement provisionally from January 1.

Either all countries will state that from January 1 they are ready to apply it, or not all countries will state that. I should like to know what will happen if only some of the countries are ready to apply it. In that case, the whole of the Schedule would have to be reviewed.

After January 1 the Agreement would come into force provisionally and we would be accepting the definitive entry into force of the Agreement. Probably different countries will come forward and sign and later they will signify their acceptance or, as we generally call it, ratification; and as soon as there are 85 per cent of ratifications the Agreement would enter into force definitively. For whom? For all those countries or for the remaining 15 per cent of countries which have not deposited their instruments of ratification? Would those countries which compose the 15 per cent, and which apply the Agreement provisionally, have the same rights as the other parties?

By-and-by would come the ratification, because it would go through their Parliaments - in our case, anyhow, we can deposit the instrument of ratification before it goes through Parliament - and so the other countries would successively accede to the Agreement.

In any case, I should be extremely obliged to the Secretariat if they would prepare for our use some simple document showing how the whole story will run.

CHAIRMAN: Since there have been so many papers, it is possible that Dr. Augenthaler has lost Document W/313, on Page 3 of which the Secretariat did endeavour to set out a tentative time-table of developments as agreed upon after our general discussion. I think that is about as simple a statement as can be made at the present time regarding the effects of these various provisions and the dates which would result from them.

The Delegate of Australia.

Dr. COOMBS (Australia): There is a small drafting point which may have some relevance to this particular uncertainty. The paragraph would, I think, be clearer if the underlined portion in the second line read: "as among the Governments which have accepted it," rather than "as among the Governments accepting it."

Mr. Winthrop BROWN (United States): Mr. Chairman, I think that is an improvement.

CHAIRMAN: Does that suggestion of the Australian Delegate meet with general approval? Does it meet the point raised by M. Royer?

Mr. ROYER (France) (Interpretation): Mr. Chairman, I think, nevertheless, that we should insert here a provision similar to the one which appears in the Charter, specifying when this Agreement will enter into force in the case of those countries which will only accept the Agreement after the countries which represent 85 per cent of world trade.

CHAIRMAN: I wonder if the French Delegation would be so kind as to submit a proposal in writing dealing with this point.

The Delegate of Cuba.

Mr. H. DORN (Cuba): Mr. Chairman, I think our French colleague is right in asking for a small amendment to Article XXIV, because there are three cases which have to be covered legally, in order to make clear the entry into force for three categories of countries. First we have the countries which sign the final Act and belong to the 85 per cent; secondly, the

the countries which sign the Final Act and do not belong to the 85 per cent, because they accept at a later stage, and, thirdly, the countries which have not signed the Final Act and which are covered by Article XXXI.

I think we could make the necessary amendment if the wording were changed slightly in Paragraph 2 of Article XXIV, which at present runs as follows: "Each Government accepting this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations, who will inform all interested governments," and so on. We could say, I think: "Each Government may accept this Agreement by depositing an instrument of acceptance." In this case it would be clear that the acceptance is the basis of the entry into force for each country which accepts. That is the only thing lacking up to now, because we only know from Paragraph 2 what is the definite entry into force for the 85 per cent and not for those who accept later.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I thank you for drawing my attention to Document W/313. I did not receive this paper, probably by some mistake or because I was unlucky.

Now I have ^{had}/a look at this paper, I would like to state that the tentative time-table is not correct, because it has been changed, so I would still like to request the Secretariat to prepare a new time-table for us.

CHAIRMAN: The only change which has been proposed since the document was prepared is that June 30 has been proposed as the final date for general acceptance - that is the date on which the Agreement closes for signature, under No. 7.

I am afraid if the Secretariat proposed another time-table there would be one more document to add to the many we have to keep track of. I wonder if Dr. Augenthaler would not be satisfied with that explanation, that the only change would be under No. 7, changing the date from February 28 to June 30.

The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, the point I wanted to make was this: it arose out of something which was said by the Brazilian Delegate. I should think that the question of who are the original members of the Agreement is decided surely by the question of signature; it is the countries which have signed up to 30 June 1948 and had the opportunity of becoming original members when they put in their acceptances. Countries which had not signed up to the date of 30 June 1948 would come in under the mechanism of Article XXXI.

That, it would seem to me, would be the answer to the Brazilian Delegate's question, but I speak subject to correction.

CHAIRMAN: The Delegate of the United States. You asked for the floor about twenty minutes ago, Mr. Brown.

Mr. Winthrop BROWN (United States): I am sorry, Mr. Chairman. The point has been made by others.

CHAIRMAN: In a few minutes we will have in writing a suggestion of the Delegate of France covering this point, which I think we might consider without going through the form of having it circulated in writing.

In the meantime I would like to refer to the suggestion of the Delegate of Cuba that the situation might be met if we changed the words in paragraph 2 "Each government accepting this Agreement" to the words "Each government may accept this Agreement by depositing" I doubt if that would achieve the purpose which the Delegate of Cuba has in mind, because the difficulty is really relating to this paragraph 4 which we have been considering now. I think the meaning of paragraph 2 is quite clear.

The Delegate of Cuba.

Mr. H. DORN (Cuba): May I only add, Mr. Chairman, that my idea is that we have to express what is the date of the entry into force of the Agreement for the countries which do not belong to the 85%, and in saying that each government may accept this Agreement by depositing, and not adding any more, we say that its acceptance is the date of the entry into force. But I would prefer to say that explicitly and add that the date of the acceptance is the date of the entry into force, under paragraph 4, and that must be expressed. If you do that, then you cover both things.

CHAIRMAN: Perhaps the Delegate of Cuba will allow us to come back to his suggestion after we have considered the proposal of the Delegate of France for the addition of a sentence to this paragraph 4 to cover the case of the countries representing the remaining 15%. The French Delegation proposes to add a sentence as follows:

"The instrument of acceptance of each other government signatory to the Final Act shall take effect on the thirtieth day after the day on which such instrument was deposited".

That is a translation from the French.

The Delegate of Cuba.

Mr. H. DORN (Cuba): That covers exactly my idea in principle, but I think we shall have to add "each other government which has signed the Final Act" because the other governments are covered by Article XXXI and if you do not do that then you cover, I think, the others, too.

CHAIRMAN: The proposal of the French Delegation is: "The instrument of acceptance of each government signatory to the Final Act...."

Mr. H. DORN (Cuba): Oh, I did not hear that. I am sorry, Mr. Chairman. That covers it exactly, then.

CHAIRMAN: Is this proposal of the French Delegation now approved?

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, I would like to say that I agree with the French suggestion and I accept it because of the explanation given by the Delegate of the United States.

CHAIRMAN: Paragraph 4, which is now to be 5, will therefore read as in the American draft excepting that in the second line the words "accepting it" after "governments" will be substituted by "which have accepted it" and then there will be the addition of this sentence proposed by the French Delegation. Is that approved?

Approved.

Does the Delegate of Cuba wish to revert to his proposal regarding paragraph 2?

Mr. H. DORN (Cuba): No, thank you very much, Mr. Chairman. It is covered.

CHAIRMAN: Thank you very much. That concludes our discussion of Article XXIV and, as I said at the opening of this meeting, it had been our intention to revert today, that is on Monday, to the Articles dealing with Quantitative Restrictions, which we deferred in order that there should be time given to the consideration of the proposal of the Norwegian Delegation which was afterwards circulated in document E/PC/T/W/324. This proposal envisaged the addition of two Articles to the General Agreement based on the present text of Articles 5 and 7 of the Charter. Before taking up the Articles dealing with Quantitative Restrictions I think it would be advisable to deal with the Norwegian proposal.

The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, I appreciate the indulgence of the Committee in allowing me to take advice on the proposal made by the Norwegian Delegation. As I indicated, and as I have confirmed now, that proposal would cause considerable difficulty for the United States.

We feel that to take one or two Articles out of Chapter III and insert them in the General Agreement would be a mistake. Chapter III is a unit, and if you take one or two Articles out, the question arises why not take others as well. The Protocol to the Agreement, as suggested, will embrace within its scope all of the Chapters on Employment and Development and it seems to me that it is greatly preferable to deal with them in their totality in that way rather than singling out one or two particular cases and giving them prominence in Part II of the Agreement.

Moreover, the needs of countries which are applying quantitative restrictions because of the necessities of their situation would seem to us to be fully met by the exceptions to the

rule against quantitative restrictions which are contained in Articles X through XIV as they appear in the Agreement now. That is to say, practically all the cases which countries have foreseen in which they would need to use these quantitative restrictions have been provided for in the Quantitative Restrictions Articles themselves. Therefore the needs of such countries are taken care of in the Articles as they now stand.

So far as the more general provisions of Articles 5 and 7 are concerned, and the other provisions dealing with Employment and Development, in addition to the Protocol specific reference is made in Article XXI on Nullification or Impairment to the provisions of the Protocol. So that if the situation should arise in which considerations came up under Chapter III which were not dealt with under the exceptions already provided for in Articles X through XIV, a party could invoke the Protocol specifically under Article XXI.

For these reasons we feel that it would be undesirable to include the substance of Articles 5 and 7 in Part II of the General Agreement.

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CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, when we proposed these two new Articles as part of the General Agreement, it was, as I said, when we discussed it last time, in order to put these two Articles on the same footing as Articles X - XIV. We agree with what the Delegate of the United States just said, that it would, of course, be clear that any party to the General Agreement who wanted to invoke some of the Articles X - XIV would have under the Protocol the right to take into account, and ask the parties to the General Agreement to take into account, the factors laid down in these two Articles.

Consequently, we feel that although we do not then obtain formal equality between the Articles X - XIV, we do get real equality through the application of the Protocol: that is the main point from our point of view, and if there is any difficulty for any Delegation to accept the inclusion of these two Articles in the General Agreement as we suggest, we are willing to take that into consideration. In view of what the United States Delegate has said, we are, therefore, willing to withdraw our proposal to include these two Articles in Part II of the General Agreement.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, in view of the attitude that has been taken by the Norwegian Delegation on this matter, we would not oppose the withdrawal of these two Articles, but I would like to make reference to two matters in connection with their withdrawal.

Reference has been made to the provisions of the old

Article 35, by which circumstances such as those it contemplated would be covered by these Articles could, in fact, be taken into account. That is true, but the circumstances in the absence of these two Articles are substantially different.

For instance, there may be a situation in which most of the countries in the world are experiencing balance-of-payments difficulties because of a positive balance-of-payments in another country or group of countries. Now, with these two Articles in, the position is clear that a country or group of countries have accepted an obligation to direct their domestic and international economic policies in ways which are designed to correct that situation, and the position of other countries who are experiencing difficulties on account of it is one of equality at least with the country where the difficulties are originating. If they need to seek modification under Article 35, they have these two Articles to refer to as evidence that the position is a serious one. In other words, they come not as someone begging for concessions - for privileges - but as someone coming to claim a right: a right which they exercise in view of the fact that another country or group of countries has failed to give full effect to obligations which they have accepted. Therefore, it seems to me that agreement to the withdrawal of these two Articles is a very substantial concession.

The other point that I would like to make refers to the importance which the withdrawal of these Articles attaches to the Protocol. Now, the argument has been put forward that by the acceptance of the Protocol, the countries will, in effect, be accepting the same sort of obligations,--perhaps to a different degree or in some rather mystical way different from if the Articles were in there, but still substantially the same.

Now, I hope that is true, but it places particular emphasis upon the request which I made at a previous meeting of this Committee, in which I asked countries for guidance as to what interpretation they thought would be placed by their Governments on the obligation written into the Protocol. I recall that my request was greeted with some hilarity, but I should just like to point out that the issue with which we are faced here does make that request not only a serious one, but one of very great importance. If we are to accept the Protocol as an effective substitute temporarily, provisionally and subject to reservations for all the Articles which we are agreeing to omit from the General Agreement, then it is important that we should know what the nature of the commitment is which we and other countries are accepting in that Protocol, and what degree of weight can be placed on it in an emergency.

CHAIRMAN: The Delegate of New Zealand.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, I would like to associate the New Zealand Delegation with the remarks that have just been made by Dr. Coombs, and in particular with what he has said about the need for somewhat clarifying the status of the Protocol.

CHAIRMAN: Are there any other comments?

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I must first apologize to the Norwegian Delegate, but I do not understand why he started by withdrawing the proposal which he had made. Perhaps he sees in the atmosphere of the meeting that this proposal meets with some resistance on the part of certain Delegations -that is, his proposal to include these two Articles

in the text of the Agreement. But for my part I see no reason why we should not include these two Articles in the text of the Agreement. I have listened very carefully to the reasons which were expressed by the United States Delegate, and I must state now that the situation is quite different from the situation arising out of Articles X - XIV, and that in some ways these Articles are supplementary Articles which complement the provisions of these Articles. I am not certain of the exact place in which we should insert these Articles, but I am certain we should insert them somewhere.

CHAIRMAN: Are there any other comments? The proposal of the Norwegian Delegate having been withdrawn and there being no further speakers on this subject, I would suggest we now pass to the Articles on Quantitative Restrictions, commencing with Article X, General Elimination of Quantitative Restrictions.

Are there any comments? Is the inclusion of this Article in Part II of the General Agreement approved?

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, we have no objection to the inclusion of this Article in the Tariff Agreement. I wanted only to remind the Committee of our reservations. Will these reservations be dealt with afterwards?

CHAIRMAN: Yes. As I have mentioned before, I think it is better that we should deal with the question of reservations all at one time. I have been giving further study to that question. I think the best time to deal with the question of reservations is when we come to consider the Final Act. There has been a proposal of the Tariff Negotiations Working Party for an addition to the Final Act, which is intended to meet, in part, the

position of those countries with reservations. Are there any other comments on Article X?

Article XI, Restrictions to Safeguard the Balance of Payments. Are there any comments? Are there any objections to the inclusion of this Article in Part II of the General Agreement?

Article XII, Non-discriminatory Administration of Quantitative Restrictions.

Mr. R.J. SHACKLE (United Kingdom): There is one observation I should like to make which relates both to Article XII and to Article XIII - more particularly, perhaps, to Article XIII, and that is that in the present circumstances, the United Kingdom would be bound to ask for some postponement of the application of the Articles for reasons which I do not need to elaborate upon - I think they are well-known to you through the newspapers. A formula which would give effect to the kind of postponement we have in mind has been prepared. I do not think it would serve a useful purpose for me to read it out now. What I would suggest is that it be put into the hands of the Secretariat and distributed overnight, in order that it may be considered before the debate on this question. I prefer it that way, but, in any event, some postponement of the application of these Articles would be necessary for us.

CHAIRMAN: We will give consideration to the proposal of the United Kingdom after it has been circulated, and I would ask the United Kingdom if they would be agreeable to passing the texts of Articles XII and XIV subject to the United Kingdom receiving satisfaction with regard to their proposal?

MR. R.J. SHACKLE (United Kingdom): Yes, Mr. Chairman.

M. ROYER (France) (Interpretation): Mr. Chairman, I would like to add here to the observations which have just been made by the United Kingdom.

As is well known, France finds itself in the same situation in very many respects as that of the United Kingdom and therefore we will have to request a period of mercy to adjust our commercial policy to the provisions of Articles XII and XIII. In accepting Articles XII and XIII, therefore, this should not prevent us from presenting an amendment to this Article, and this amendment will better find its place at the end of Article XIII.

CHAIRMAN: Due note will be taken of the observations of the United Kingdom and the French Delegations.

Are there any other comments on Article XII? Are there any objections to the inclusion of Article XII, Part II in the General Agreement?

Article XIII? The same position will apply with respect to the position of the United Kingdom and French Delegations in regard to this Article - "Exceptions to the Rule of Non-discrimination". Are there any comments? Are there any objections to the inclusion of this Article in the General Agreement?

Article XIV - "Exchange Arrangements". Are there any comments? Are there any objections to the inclusion of this Article in Part II

of the General Agreement?

That concludes the consideration of the Articles dealing with quantitative restrictions, except that we will have to consider, at a later date, the proposal of the United Kingdom and French Delegations with regard to an additional paragraph to Article XIII.

The Delegations will no doubt wish to have a sufficient amount of time to study this proposal and therefore I suggest that we bring it up at a later date.

It is now nearly six o'clock and this seems to be a good time at which to terminate our work. Tomorrow we can commence consideration of the Articles in Part III, commencing with Article XXV.

The Committee will meet tomorrow at 2.30 p.m. in this room.

The meeting is adjourned.

The meeting rose at 6.00 p.m.