UNITED NATIONS *NATIONS UNIES*

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL

RESTRICTED
E/PC/T/TAC/PV/14
9 September 1947

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

VERBATIM REPORT.

FOURTEENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE HELD ON TUESDAY, 9 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.

We will resume our discussion of the General Agreement on Tariffs and Trade by taking up Article XXV and the Articles following.

On Article XXV - Withholding or withdrawal of Benefits - we have a proposal by the Czechoslovak Delegation, which is given on Page 7 of Document W/312, in which they propose an amended wording for this Article.

Are there any comments on the Czechsolovak proposal?

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, as far as I can see, there is no substantial difference of meaning here at all; the amendment is purely one of wording. As far as I can see, it makes the passage read rather more clearly. The only point at issue is the substitution of the word "State" for the word "Government." As Dr. Augenthaler no longer feels strongly about this, and as we have not in any case used the word "State" before in this General Agreement, I would like to suggest we retain the word "Government;" otherwise I have no particular remark to make.

CHAIRMAN: The Delegate of Czechoslovakia.

H. E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, as we stated yesterday, we have no objection to the word "Government" remaining.

Mr. J. M. LEDDY (United States): Mr. Chairman, there is one substantial point in the suggestion; that is, the deletion of the provision whereby it would be the contracting Committee which would determine whether a particular contracting party had a substantial interest in the product concerned. We attach no

particular importance to keeping that provision.

CHAIRMAN: Are there any other comments on the Czechoslovak proposal?

Does the Czechoslovak Delegate attach importance to the deletion of the words "the Committee determines to have"?

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would prefer these words to be deleted, because as it stands now it means all the contracting parties. There is no question of an Executive Board, as for the Charter. It is quite natural that those contracting parties which are interested will come forward and approach the other countries, so I do not see why there should be special mention of the Committee.

CHAIRMAN: Are there any other comments on the Czechoslovak proposal?

Does the Committee agree to accept the Czechsolovak proposal, with the substitution of the word "Government" for the word "State"?

Dr. COOMBS (Australia): I just wanted to raise one question, Mr. Chairman. In what way would it be done? How is the Committee to determine whether the contracting parties have a substantial interest in the matter?

CHAIRMAN: Would Mr. Augenthaler like to answer that question.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, as the country would have the obligation to inform all contracting parties, and would also have the obligation to enter into negotiations upon request, it means that any interested country would come forward.

CHAIRMAN: Are there any other comments on this proposal?

I take it then that the Czechoslovak proposal, with the substitution of the word "Government" for the word "State", is approved.

(Agreed).

Article XXVI - Modification of Schedules. The United Kingdom Delegation suggest that the word "Modification" in the title should be deleted and replaced by "Variation".

Mr. SHACKLE (United Kingdom): And, similarly, Mr. Chairman, in the last line but two, where we suggest substituting the word "very" for "modify." The word "modify" seems to us rather inappropriate; it seems to suggest there should be a further reduction, whereas this may be a change either way. "Variation" can cover either increase or reduction, whereas "modification" seems to us rather to imply reduction. That is the reason why we suggested the change.

CHAIRMAN: The Delegate of China.

Mr. D. Y. DAO (China): Mr. Chairman, there is just a point on which I should like some clarification. May I refer back to Article XXV?

CHAIRMAN: Yes, but ------

Mr. D. Y. DAO (China): With reference to the words "at any time"; does this refer to any time after the entry into force of the Agreement or any time after the provisional application of the Agreement?

CHAIRMAN: I think the words "at any time" apply to any time the Agreement is in force, whether provisionally or definitively; that is, a contracting party could withhold concessions from another country or withdrew concessions at any time it saw fit, even at the time of giving effect to provisional application.

Mr. D.Y. DAO (China): Mr. Chairman, according to the present paper there will be an interval of about six months probably between the provisional application of the Agreement and the definitive entry into force of the Agreement. It does not mean that during the six months any contracting party who has applied provisionally can withdraw or withhold benefit?

CHAIRMAN: If a country has not become or ceases to be a contracting party, then the countries which are applying the Agreement, whether provisionally or definitively, could withhold or withdraw concessions which they negotiated with that country. I take it that that is the meaning of that Article.

M. ROYER (France) (Interpretation): Mr. Chairman, the remark I want to make concerns only the French text. The words "which has not become or has ceased to be a contracting party" in the English text have been translated into French by a sentence which means "A government which has not in the following period adhered to the Agreement" and this provision then would seem to be covered, not by the provisions of the Articles mentioned before, but by the provisions of Article XXXI. Therefore I think we have to modify the French text to put it into harmony with the English text.

CHAIRMAN: Due note will be taken of the remarks of the French Delegate in preparing the French text.

Mr. Dorn.

Mr. H. DORN (Cuba): May I only ask one question. Does this refer also to the time during which the Agreement is open to signature? That I think is something which must be settled, because there is a time in which one part of the Governments, of the States, have signed, and the Agreement is open for signature up to a fixed date, and the question is whether in the meantime this right to resort to withdrawal is legally possible.

CHAIRMAN: I think the meaning of the Article is quite clear because it says "Any contracting party shall at any time be free to withhold or to withdraw", so it does cover also the period when the Agreement is open for signature.

The Delegate of the United States.

Mr. J.M. LEDDY (United States): I should like to suggest - if the suggestion has not been already made and agreed to - that we should have for this Agreement a Legal Drafting Committee, such as we had in regard to the Charter, to go over it very carefully; we could then refer to the Legal Drafting Committee such questions as to whether the phrase in Article XXVI should be "modification" or "variation". I have some difficulty with the word "variation" and I do not have any with "modification". It seems to me that clearly means modifying in any way, and this was used in other Articles of the Agreement, for instance in that dealing with Emergency Action.

But I would like to stress the advisability now of agreeing upon a Legal Drafting Committee, to which we could, perhaps, refer some of these questions which we have just dealt with and which are difficult for us to decide here.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I do not want to press this suggestion to change "modify" to "vary". I think it is a matter of the same words meaning different things to different people. To me, "modify" implies that you have something extreme; you tone it down and make it less extreme. That is modification. To take something which is already moderate and make it extreme is not, in my mind, modification. Still, that is merely a question of taste, and I am not prepared to press my suggestion.

CHAIRMAN: I would like to say a few words with regard to the suggestion of the United States Delegate to set up a Legal Drafting Committee. It had been my intention to bring this question before the Committee but I thought that the proper time to do so would be when we had completed our second reading of the Draft Agreement and the Secretariat had then prepared a clean text. I do not think there would be anything for the Legal Drafting Committee to work on until that stage had been reached. I would therefore suggest that discussion on this question be left over to another occasion.

The Delegate of the Lebanon.

M. Moussa MOBARAK (Lebanon) (Interpretation): Mr. Chairman, I am not competent to discuss the substitution of the word "vary" for "modify", but I know that in French if, instead of "modification," we had "changement" this would not be good French and anyway there is a difference of meaning between those two words. I would like to have the opinion of the French Delegation on this question.

M. ROYER (France) (Interpretation): Mr. Chairman, is seems that the tendency within the United Nations is, when a draft is "modified" in English to "modify" the French text accordingly, even if the French word which is used after that is not the correct one. And the only correct word in French which could appear in this draft is the word "modification".

Also, I would beg the Secretariat to change or to modify the word in French which has been translated from "Schedules" in English. The word in French appears to be "barème", but "barème" is, in French, something corresponding to what is known in English as "quick reckoning method" and therefore we prefer the word "liste".

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, with regard to the Legal Drafting Committee for this Agreement here, I agree that it is too early for the Legal Drafting Committee to start work, but I suppose most of us hope to be able to go home on Sunday, and it might perhaps be useful to consider the establishment of the Committee so that the Members could be prepared to work rather quickly and so that, when we come to the stage when we can let them work, they can work immediately.

CHAIRMAN: It is because I wish to complete the consideration of the General Agreement as quickly as possible that I wanted to avoid a debate at this stage on the setting up of a Legal Drafting Committee. Perhaps it might satisfy the Committee if we were to approach the Tariff Negotiations Working Party to consider this question and then they might be able to suggest the composition of the Legal Drafting Committee, which would save us from having to go into this matter in detail here.

The Delegate of Cuba.

Mr. H. DORN (Cuba): Thank you so much, Mr. Chairman.

CHAIRMAN: Is that suggestion approved?

The Tariff Negotiations Working Party will therefore consider this question at their meeting tomorrow with a view to making their report subsequently to the Committee.

The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): There is not very much left for me to say, Mr. Chairman. I quite agree to the suggestion about the Legal Drafting Committee. As to my amendment, I have already "modified" it by withdrawing it.

CHAIRMAN: We have another amendment of the United Kingdom Delegation in which they suggest that the words "on or after November 1, 1950" should be replaced by the words "after three years from the date of provisional application of this Agreement". The Czechoslovakian Delegation considers that mention of a date should be avoided.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I presume we shall need to name a period if we do not name a date, and I take it that to say "three years from the date of provisional application" is probably the right sort of sense. I suppose if we definitely decide that provisional application is to take place on 1st January, than 1st January 1951 is the date we would name, but if it is preferred to say three years from the date of provisional entry into force, that is what we suggested.

CHAIRMAN: I should like to point out to the United Kingdom Delegate that there appears now to be some difficulty in referring in the text of the General Agreement to provisional application, as that is no longer part of the General Agreement. It is going to be covered by a separate Protocol, and therefore as we have more or less agreed that the date for provisional application shall be January 1st, perhaps the simplest thing would be to change the date November 1st to January 1st 1951.

Mr. R.J. SHACKLE (United Kingdom): Quite agreeable.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, we propose the deletion of the first words. We are an exporting country and we are greatly interested in the stability of customs duties and so on; but, on the other hand, we recognize that today we are living in a world which is changing extremely rapidly. We have been negotiating on certain presumptions which may be entirely different in one year's time, so that is why we wish to keep open the possibility of negotiations taking place between the interested countries any moment they wish, even before the date 1st November 1950.

CHAIRMAN: The Czechoslovak Delegation has proposed the deletion of the words "On or after January 1st 1951. Are there any comments on this proposal?

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, I believe that Article XVIII will give to any country the possibility of avoiding the difficulty of which the Delegate for Czechoslovakia has spoken. I believe that by using this Article in such an emergency, there would be no necessity for changing the date.

CHAIRMAN: Are there any other comments on the Czechoslovak proposal?

Mr. J.M. LEDDY (United States): Mr. Chairman, it think it would be preferable to keep this paragraph of this Agreement intact during the first three years of its life, and I think that the amendment proposed by the Delegation of Czechoslovakia would be a rather serious one if the Committee should adopt the amendment which has been put forward by the Delegation of Australia, which would permit a country to withdraw the concession if it failed to reach agreement.

In the circumstances which would confront many countries during the next three years, I wonder if there is going to be any real need to enter into tariff adjustments at the time that Dr. Augenthaler mentioned. I should suspect that many of the countries will, in any event, be influencing restrictions for balance-of-payments reasons, and that in many countries the tariff will not be a substantial factor in trade. I should like therefore to support the Delegate of Brazil in keeping the paragraph as it is.

CHAIRMAN: Are there any other comments? Are there any other Delegates supporting the proposal of the Czechoslovak Delegate? Then I take it that the sense of the Committee is that the words "On or after January 1st 1951" should remain.

There is another proposal of the Czechoslovak Delegation, which suggests the deletion of the words "...and subject to consultation with the other contracting parties which the Committee determines have a substantial interest in the trade in the product concerned...".

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, this suggestion is the same as we made concerning Article XXV, because we thought that whoever is interested will cry out loudly enough. It is not necessary for the Committee to put some nails on his chair!

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that after the modification which was made in Article XXV, we ought to modify Article XXVI on the same lines and adopt a formula similar to that which we have now adopted for Article XXV. In fact, if we were to support the words which the Czechoslovak Delegation suggests, then the Article would mean that the modification could occur through bilateral agreement between the two parties, and that the other Contracting Parties which have an indirect interest would not be able to be heard. Therefore, I think that we ought to adopt a formula similar to the one that we have adopted for Article XXV and state that other Contracting Parties, upon request, will be able to consult with the Contracting Parties which have a substantial interest in the product concerned.

CHAIRMAN: Would that suggestion meet with the approval of the Czechoslovak Delegate?

Mr. H. DORN (Cuba): May I only draw attention to the fact that in this case the legal situation would be that when a country thinks it has a substantial interest and is not approached, Article XXI would have to be applied? I only draw attention to the fact because I think you must know that before you decide about the modification of the wording. In order to avoid all these difficulties, the words "the Committee" have been inserted. Without these words, the real situation would be that the country which has a substantial interest and is not approached would be entitled to invoke Article XXI. I thiuk that interpretation is correct.

CHAIRMAN: Are there any other comments on the proposal of the Czechoslovak Delegation, as modified by the French Delegation?

Mr. J.M. LEDDY (United States): I wonder whether a solution could be found simply by deleting the words "which the Committee determines" and changing the word "have" to "having"? There is a difference between Article XXVI and Article XXV. Article XXV permits a country to take action first; in other words to determine that a particular concession it negotiated with a country which does not become a Contracting Party will be withheld. In the case of Article XXVI, the intention is, I think, that consultation shall precede the withdrawal of the concession - that is to say, the modification of the concession. The action will not be taken first and consultation later. Therefore, I think that it would be better to adopt the amendment as suggested.

CHAIRMAN: Are the Czechoslovak and French Delegations in accord with the suggestion of the Delegate of the United States?

M. ROYER (France) (Interpretation): Mr. Chairman, could the United States Delegate read out again the proposal he has just made?

CHAIRMAN: It is to suppress the words "which the Committee determines" and to change the word "have" to "having", so that the sentence would read "and subject to consultation with the other Contracting Parties having a substantial interest in the trade in the product concerned".

Dr. H.C. COOMBS (Australia): Mr. Chairman, we would not wish to see those words omitted. The purpose of this particular part of the paragraph is to limit the right of other countries to hold up or delay or prevent the withdrawal or modification of the Schedule between the countries with which they have been negotiating. It is necessary to recognize that negotiations are sometimes conducted with one country where a number of other countries -perhaps one, or a larger number - have as substantial an interest in the commodity as the country with whom the negotiations were completed, and in our opinion, other Contracting Parties who have a substantial interest are entitled to be consulted before an item is withdrawn from the Schedule, but we believe that that right should be limited to those countries which have a substantial interest.

Now, in the absence of any method of determining finally what countries have a substantial interest, the procedure involved might be unduly protracted. It would be possible for any country to claim that it has a right in any concession, with

whatever it was negotiated, because under the multilateral system of recording the results of these negotiations, those concessions are granted as a matter of right to all the participating countries. Therefore, any country can claim that it has an interest in any item in any Schedule, and if they wish to be difficult, it would be possible for them to hold up a modification of the Schedule by claiming an interest in a commodity, their interest in which was exceedingly remote.

We were anxious, therefore, that there should be some method of setting an end to the claims of so-called interested parties, to prevent their holding up a concession of this sort, and it seemed to us that the obvious thing to do was to give the right of decision to the Contracting Parties, acting together, so that if a country claimed an interest and the country which had granted the concession did not think that that interest was sufficiently significant to give the country the right to be consulted, then it could be settled by majority vote of the Committee.and you could get on with the business. We think it is important, therefore, that there should be in this paragraph a way of determining whether, in fact, a country claiming a substantial interest has an interest sufficiently substantial for the purpose of this paragraph.

CHAIRMAN: The Delegate of India.

MR. B.N. ADARKAR (India): Mr. Chairman, it seems to us that, in addition to the reasons just given by the Delegate for Australia, there is one further reason why the words: "which the Committee determines" should remain in Article XXVI.

The situation dealt with in this Article is very similar to that dealt with in paragraph 3(a) of Article XVII, the Article which deals with Adjustments in Connection with Economic Development. Both these provisions deal with the procedure to be followed when a Member wants to vary or modify a negotiated tariff concession. In one case, the variation is required for economic development, and in the other case it may be required for any other reason, and it seems to us that it would be fair to prescribe an identical procedure for these cases.

In paragraph 3(a) of Article XVII, which lays down the procedure by which a Member could secure relief from an obligation it has incurred through negotiations with another Member, it has been provided that the necessary consultations between the Contracting Party and the other parties which would be substantially affected would be sponsored and assisted by the Committee. That being so, it follows that, so far as paragraph 3(a) is concerned, the Committee which will sponsor the negotiations will obviously decide which contracting parties would be substantially affected and which would not, because the negotiations are intended to be sponsored by the Committee. It seems to us to be appropriate that under Article XXVI also it should be left to the Committee to decide which countries have a substantial interest and which have not, because we

believe that the procedure in the two cases should be identical.

We would also, by supporting the Australian Delegation on this point, not like to support the further amendment which they have suggested in document E/PC/T/W/326, because that would involve a different procedure under Article XXVI as compared with the procedure under Article XVII. We think that the procedure should be the same, and if the Australian amendment in document E/PC/T/W/326 is adopted for Article XXVI, a similar amendment would have to be made to Article XVII.

CHAIRMAN: The Delegate of Belgium.

Mr. P. FORTHOMME (Belgium):(Interpretation): Mr. Chairman, I should like to support the proposal made by the Australian Delegation. In fact, the text which is now before us was originated by our Delegation who wished, at the time, that the Committee should sponsor multilateral consultation, while a change should be brought to the joint schedules.

Therefore, we like the present text very much better because it is more elastic, and we would like it to be maintained.

CHAIRMAN: The Delegate of Cuba.

MR. H. DORN (Cuba): May I only point out, Mr. Chairman, what the difference between the two alternatives is. If we leave the wording as it is, then the Committee has to determine right from the beginning which are the countries having a substantial interest; if we strike out these words, then the Committee has to determine too in the case of doubt, because a country not approached, which believes itself to have a substantial interest, is entitled on the basis of

Article XXI to first approach the country which wants to change the Schedule, and if the other country does not want to consult with it, then the Committee decides. That means that the only difference is that you have two stages of procedure instead of one stage of procedure.

I only wanted to make that clear as it may, perhaps, influence the decision.

CHAIRMAN: The Delegate of the United States.

MR. J.M. LEDDY (United States): Mr. Chairman, we are perfectly satisfied with Article XXVI as it stands. The Delegate of Australia has given some good reasons for keeping this procedure in whereby the contracting parties acting together will determine what countries should be parties to the negotiations for modification or withdrawal.

I recognise that it may involve some additional procedure, but, on the other hand, it will avoid possible disputes, and I think that that is a wise thing to do.

With regard to the provision for determination by the Committee, I would say that, any country having a substantial interest in the product, if that country asserts that it has a substantial interest, then there is some danger that it may lead to disputes without this provision for settling the matter in advance.

CHAIRMAN: The earlier part of the discussion of this Czechoslovak proposal seemed to be in its favour, but the latter part of the discussion has indicated that there are strong objections on the part of certain Delegations to the adoption of the proposal, and the trend of the discussion seems to be against it.

I would therefore suggest to the Czechoslovak Delegation that we allow this text to stand as it is now, and we proceed to consider the amendment submitted by the Australian Delegation to this Article.

The Australian proposal is given in document E/CONF.2/C.T/W/326, which was circulated this morning. The Delegate of India has already expressed his views on this proposal, but I take it that the Delegate of Australia would wish to comment on this proposed amendment.

DR. H.C. COOMBS (Australia): Mr. Chairman, this addition to the Article concerned is designed to make effective what we have always been led to believe, that is, that the Agreements that we enter into here have a time-limit of three years in respect of any commodity which we bind.

If a country - and I think this is a point of very great interest to the Indian Delegation and to any other Delegation representing an under-developed country - agrees to bind an item in its Tariff Schedule in one of these Agreements, it is binding it for three years. Now, it is true that if it does not specifically take action to unbind it it continues, but the obligation that we are accepting here in respect of a tariff item is initially to bind the item at the rates set out in the Schedule for three years, and we want to make sure that, at the end of that three years when we have fulfilled the obligations which we undertook, we are free without accusation, without bad faith or without unduly complicated procedure to exercise the right which we never gave up, that is, to unbind the item after the expiration of the period for which we bound it.

That makes a very important distinction between the procedure which the Delegate for India has referred to in relation to Industrial Development Provisions. The provision in Article XVII which deals with Industrial Development was designed to deal with a request by under-developed countries to unbind an item while it had an obligation to bind it, that is, during the period for which it had undertaken to bind the item.

Now, what we are concerned with is not that, but we are concerned with making sure that, at the end of the period for which we bound the item, we are free to do what we like with it without difficulty, without charges of bad faith and without an unduly complicated procedure and, furthermore, without the danger of the whole of the Agreement which we entered into going down the drain.

So, Mr. Chairman, the first paragraph of this clause clearly sets out your right to modify the Schedule, but it makes it subject to agreement with the parties concerned. Now, we would wish, of course that any change of this sort be made by agreement, because if we wish to take an item out of our Schedule then clearly it is fair and proper that the countries with whom we negotiate should be free to make the corresponding changes in their Schedules in order to restore the balance. We are not seeking unilateral benefits in this matter, but we would merely wish to exercise a right which we clearly have, and we want to make it quite clear that if we choose to exercise that right any country with whom we have negotiated itself is free to modify its Schedule correspondingly, but we want any such exercise to be limited to what is corresponding and not to be used in a punitive way.

It is quite clear that we can, under the first paragraph, unbind an item after three years if the other countries primarily concerned agree. We believe that in the majority of cases there will be no difficulty. There might be a little discussion about what would be the corresponding alteration in the benefits accorded by the other countries, but in the great majority of cases it will be possible to reach an amicable solution. But we cannot put ourselves in the position in which the other country is unwilling to reciprocate and in which a freedom which we have never given up can be taken away from us.

We want to put in a subsequent paragraph which says that, if agreement is not possible after consultation has taken place, we are then free to take the item out of the schedule and do what we like with it, but, in so doing, we recognize we must free the other parties to act in the same way. Our suggestion is subject only to the Committee agreeing that the action which they take is roughly corresponding to the cause which it is designed to meet.

So, under this procedure, Mr. Chairman, the first action would be consultation with a view to agreement between the parties primarily concerned, by which we would take out of the schedule the items which correspond to such concessions as the other parties have made to us which we can agree appear to be reasonable. If we cannot reach such agreement, then we take out the items anyway. Then the other parties take what action appears reasonable to them.

I think our amendment is perfectly reasonable and I think the Delegate for India will agree with me that it is a substanitally different situation from a request to modify a schedule during the period for which the schedule was originally bound.

CHAIRMAN: The Delegate of India.

Mr. B. N. ADARKAR (India): Mr. Chairman, I thank the Delegate of Australia for the explanation he has given. Our objection arose from the fact that in Article XVII no time limit has been prescribed; in other words, that Article continues to be imposed during the lifetime of the Trade Agreement. If, however, it is understood that Article XVII is subject to the provisions of Article XXVI - that is to say, if the procedure laid down in Article XXVI will apply whether the modification of schedules is desired for purposes of economic development or for any other reason - if that understanding is clearly recognized by the Committee, then we will be quite prepared to accept the amendment proposed by the Australian Delegation.

CHAIRMAN: The Delegate of France.

M. ROYER (France)(Interpretation): M. Chairman, I fully recognize the value of the arguments just put forward by the Delegate of Australia, but I do not think the solution which he proposes for this problem is quite in agreement with the spirit of the Charter.

It seems to me that the work we have done could be easily compared to knitting, and, if we pull the wool at one end, then all the knitting will come to pieces. For instance, if Country 'B' withdraws the concessions it has made to Country 'A' because Country 'A' has withdrawn the same concessions, then other parties who are interested, not in the concessions granted to Country 'A', but in the concessions granted to Country 'B' will, in their turn, withdraw the concessions which they have themselves granted, and nothing will remain of the Agreement.

As I have said, I can quite well see the value of the Australian Delegate's arguments, but I wonder if we could not find a solution which would be different from the one he proposes. We could, I think, find a solution in the provisions of Paragraph 4 of Article II, which state that if a country withdraws concessions, it ought to offer concessions for an equivalent amount on another item, for instance. Therefore the balance of the concessions made and granted by the countries would not be disturbed and we could thereby maintain the minimum of concessions which appear in the present Agreement.

There is another point which is troubling me. This Agreement will be signed for a period of three years, but we hope that in three years' time another step will be taken towards the reduction of trade barriers, because we do not really think that what we have achieved here is an eternal solution for the reduction of trade barriers. But we have provided nothing for this eventuality and there is nothing in the Agreement which would enable a new Agreement to be signed or this Agreement to be improved without denouncing the present Agreement.

I think we ought to provide here for a provision stating that nothin in the present Agreement precludes the contracting parties from entering into a new Agreement with the other contracting parties, or, as the case is stated here, to deteriorate the situation prevailing at the time, but, on the contrary, to improve the conditions prevailing at the time. Therefore we think the present Article should be completed by such a provision.

CHAIRMAN: The Delegate of the United States.

Mr. J. M. LEDDY (United States): Mr. Chairman, I have not had an opportunity of consulting my Delegation on this amendment, which was circulated this morning, and I would like to do so before we take up a position on it.

I should say that it is a rather serious amendment. It materially affects the stability of the Agreement and it does, I believe, go somewhat farther than it has been usual to go in bilateral agreements in the past. Under bilateral agreements the usual practice, I think, is to make the Agreement subject to determination at six months' notice, or some short notice after the initial period, but not to permit the withdrawal of individual items.

On the other hand, the determination of a bilateral agreement is a much less serious thing than determination or withdrawal from an Agreement of this size, covering, in the case of some countries, many hundreds of items, and I think there may be need for more flexibility than we now have in Article XXVI.

Without coming to any decision on the matter at present, I wondered whether, perhaps, a suggestion along the lines of that put forward by the French Delegate would not be a better one.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I read the Australian proposal as a means of, so to say, establishing a compromise method as between the one laid down in Article XXVI and the one laid down in Article XXVIII. Article XXVIII says that on or after 1 November 1950 any party can withdraw completely on six months' notice. Now the reason why we have Article XXVI relating to Modification of Schedules is, of course, to provide for a possibility of not going to the drastic step of completely withdrawing. The amendment proposed by the Australian Delegation to my mind is an attempt to make Article XXVI more flexible in order to prevent parties, in case they do not agree, in accordance with Article XXVI, from then taking the rather drastic step of withdrawing completely.

If that is the reason, and I think that is the way in which it must be interpreted, I would not consider it as being contrary to the spirit of the Agreement. I would say it would be in conformity with the spirit of the Agreement. If one is allowed to withdraw completely, and then of course be in a position of starting fresh negotiations at scratch, I think it would be useful to have a provision for not going to that drastic step. Consequently, I feel that the Australian proposal is reasonable, and I would support it in principle. I do not deny that there might be some minor change in the text, but in principle I think the amendment is sound.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, I think the Delegate of Norway has given part of the answer which I wanted to give. The proposal certainly in my opinion is not in any conflict

with the general spirit of the Agreement; in fact it does seem to be a very necessary one if the spirit of the Agreement is to be observed.

As regards the Delegate of France's homely analogy, it does seem to me there are time when unwinding a bit of knitting is a good idea. If the pullover no longer fits, it is quite a good idea to unwind it and knit it again so that it does fit. And that is precisely the type of situation which this provision is intended to cover. That is, it may be perfectly reasonable for a country to accept a binding of certain items now, but in a few years time when its industrial developments have gone a little further, the lines may have changed and it may well want to shift the balance of its activities and change the direction of its protectionist policy, and in those circumstances it seems to me perfectly proper that it should be able to take advantage of a right which it has not given up, that is a right to unbind an item after the period for which it has agreed to bind it.

That does not mean to suggest, as the Delegate of France appears to consider, that we will go on progressively reducing the scope of the Schedules. On the contrary, we have never assumed that they were the last tariff negotiations which would take place between the countries here present and other countries. We have assumed that it would be a continuing procedure. We hope there will be a bit of a gap here and there so that we can spend some time at home! But we did anticipate that tariff negotiations would in the future be a standard part of the procedure of the ITO and that, as a result of those negotiations, there would be a continually changing pattern in the Schedules; so that it would be perfectly possible that a country which had held out certain items for negotiation during the period in which it was important to get the industry concerned established, would subsequently be ready to

unbind or reduce tariffs on that item.

So there is no reason to assume, merely because you permit a country to withdraw an item at the end of the period for which it has bound it, that you are freezing the content of the Schedules with the exception of the item you have withdrawn from it. On the contrary.

If, however, the Delegate of France considers it necessary to make any specific provision in the Agreement for new negotiations some time in the future, we would have no objection, though we understand it is perfectly well catered for in the Charter at present. Any country is at liberty to negotiate if it is invited to do so. Therefore it seems to me there is ample provision for new negotiations and extension of the content of the Schedules as well as for the change in their content in the way in which we suggest.

And, further, Mr. Chairman, I want to emphasise the point I started with: that is that we have been told here and we have been negotiating on the basis of the fact that any binding we undertook was a binding for three years. We do not think it reasonable that we would have to withdraw from the Agreement merely because we want to exercise a right on one item. In other words, what we are asking for here is to make specific a right which I think every one of us understood we all possessed. If we cannot have such a provision, not necessarily in the words I have suggested but a provision along those lines, then, to extend the Delegate of France's metaphor a bit further, we can only conclude that somebody has been pulling the wool over our eyes.

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium): Mr. Chairman, it seems to me that the Australian amendment in fact just states that no-one can be forced to maintain a concession beyond the date of the initial engagement if the party wishing to withdraw the concession is willing to forego the advantages it received for having given that concession. I have some doubt as to the necessity of making that statement. It seems to me that this principle is already in the text of Article XXVI and that to spell it out is to sound and to be unduly pessimistic.

It seems to me that the fault of this amendment is that it presupposes that in three years time we will all be eager to do just one thing and that is to withdraw concessions we have given as quickly as we can and as many of them as we can.

Secondly, it seems also to presuppose that any attempt to withdraw a concession will meet with unrelenting and unreasonable opposition.

I do not think it will be so. I do think that if negotiations are open with the other contracting party and if the party wishing to withdraw a concession makes it very clear from the outset that it intends to withdraw this concession because it judges it is a vital interest for it to do so, then other countries will then confine their negotiations to either trying to obtain a compensating advantage or, if no compensating advantage can be obtained, to determining which of their own concessions they will withdraw as an equivalent of the advantage they are losing. In these conditions I think that it would not happen that a proposal to withdraw one or two or a few concessions of vital interest to a country would meet with unreasonable opposition from the other countries.

The only cases where a deadlock in the negotiations would occur would be if the amount of the proposed withdrawals was so considerable as to imperil the whole plan and structure of the Agreement. At that time we would find ourselves confronted by a lack of will to continue and we would probably see the whole Agreement fall to pieces; and I do not thing either the introduction of this amendment or the lack of it would prevent the Agreement falling to pieces if the will to maintain it in force were absent. But as long as the will to maintain the Agreement is existent, I am perfectly certain that, with the present text, it would be possible for any country to withdraw any concession which is of vital interest to it.

CHAIRMAN: The Delegate of Syria.

M. Hassan JABBARA (Syria) (Interpretation): Mr. Chairman, the Agreement and the tariff negotiations which are part of the Agreement are valid for three years. After a period of three years, the States concerned may wish to be free again or to maintain the Agreement in force. Article XVII provides for modifications of the Agreement during the period of application of the Agreement, if the economic conditions of the country requesting a change warrant such a modification of the Agreement.

Article XXI provides also for adjustment in case of the default of one of the Contracting Parties during the period of application of the Agreement; but what the Agreement does not provide for is an examination. Once the period of three years has elapsed, there should be an examination of the general situation, to consider the results of the Agreement during this three-year period and to start new negotiations taking into account the benefit of three years' experience and also considering the conditions prevailing in the countries taking part in the Agreement at that time.

I would suggest, therefore, that Article XXVI be modified to include such a provision, stating that after three years, new negotiations will take place and that in these negotiations the modifications in the condition of the Contracting Parties will be taken into account, and that the tariff negotiations will be reviewed and readjusted in the light of the conditions prevailing at the time. Such a provision would, in my opinion, avoid a country taking such a drastic step as is provided for in Article XXVIII, and therefore, after negotiation with the other interested party, a country will be able to say whether it determines to stay within the framework of the Agreement or

to withdraw from the Agreement.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, in principle I would like to support the opinion of the Australian Delegation, because I think that it is wise and that it corresponds to the realities of life. As the Agreement stands, it would mean that if any country would like to withdraw some concession the country concerned (I am speaking only of after 1950) would either have to quit entirely, or set in motion a general customs war. In this case, I think the role of the substantially interested countries would be the role of the Irishman who, seeing some men fighting in the street, asked "Is this a private fight or can anyone join in?"

Well, as to the third or, as we call them, substantially interested countries, they paid for certain concessions, and I suppose that the negotiations were equitable. If I negotiated with Country A, I gave certain concessions and I got concessions and there should be equity in those concessions. The same applies to Country B. Now, if I withdraw a concession from Country A, I agree that Country A should be entitled to withdraw his concession too; but I do not see why Countries B, C and D should withdraw their concessions, because they did not pay for the concession I gave to Country A.

To arrive at a just solution, I would suggest that instead of "provided that the Contracting Party having a substantial interest" we put "provided that the Contracting Party with which such treatment was negotiated". This would stop the further withdrawal of concessions. No customs war would be set in

motion, and the third substantially interested parties would be free to negotiate with the country withdrawing the concession, on the assumption that they are willing to give to this country some concession, because otherwise there would be no equilibrium in the concessions.

CHAIRMAN: The Delegate of the United States.

Mr. J.M. LEDDY (United States): Mr. Chairman, I think there is truth in what has been said by the Delegate of Australia and the Delegate of France, and I was wondering if we could not, in some way, put their two suggestions together and perhaps arrive at a solution.

What I had in mind was that we might perhaps add to the existing text a provision that in the negotiations the Contracting Parties concerned could endeavour to maintain a general level of mutually advantageous concessions which would not, on the whole, be less favourable to trade than those provided for in the Agreement now, and then go on to say that if, however, agreement cannot be reached, the country desiring to withdraw an item from the Agreement may do so and the other country may suspend equivalent concessions. I think that would keep before us the objectives of the Charter to achieve a substantial reduction of tariffs, and, at the same time, permit the necessary flexibility for withdrawing individual items as an alternative to complete withdrawal from the Agreement.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): It seems to me that Mr. Leddy has suggested a possible happy solution, and I would like to suggest that it be carefully gone into.

CHAIRMAN: The Delegate of Cuba.

Mr. H. DORN (Cuba): Mr. Chairman, I would also be grateful to have again the text of the proposal made by the United States Delegate, because I think that there are two very valuable ideas contained in this proposal. If we change the words "having a substantial interest", I think that we have to take into account -- and that was the real reason of the proposal made by the Australian Delegation -- the multilateral character of the negotiations, because I think that a country will have taken into account not only the direct concessions made in the negotiations with the other country, but also the indirect concessions made by the same country to third countries. Therefore, I think that if there is a change in the Schedule, then the countries which made concessions based on the concessions which the other party gave to a third country, have to ask if the equilibrium is maintained or not in relation to the country which withdraws the concession, or if there is anything to be done in order to re-establish the equilibrium. But I think that this point may be cleared up easily, and that we cannot only limit the action to the country directly negotiating the product in question. This last point can, I think, also be taken up in the proposal made by the United States Delegate and, therefore, I think it would be very useful to have his wording before us in order to decide about the Australian Delegate's proposal.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, if I understood the United States Delegate's suggestion properly, it would mean that in the first instance, the country wishing to withdraw

an item would seek to restore the balance by adding an alternative concession rather than asking its opposite number to withdraw, and we would agree heartily that that would be a desirable procedure, and I think that the deletion of some words of the kind suggested by the United States Delegate would probably meet the situation, provided that the provision which we suggested to the same effect followed on, to make it clear that if a deadlock did occur, it could be resolved.

I would like to emphasize, in view of what the Belgian Delegate said, that we are not anticipating such deadlocks -in fact, we do not expect that they will ever occur; but we think it is bad constitutional practice not to provide for the possibility of deadlocks, and for their being resolved. I think, Mr. Chairman, that a solution to this problem can be found along the lines suggested by the United States Delegate,

CHAIRMAN: It seems that we are on the road to attaining agreement on this question. What is necessary is that there should be further explanation of the various ideas which have been put forward at this meeting, Therefore, I think that the best procedure would be to set up an ad hoc sub-committee to consider the question. I should like to know if the Committee is agreeable to this proposal.

Are there any objections to the setting up of a sub-committee?

I would therefore propose that the following Delegations should comprise an ad hoc sub-committee to give further consideration to the Australian amendment in the light of the discussion which has taken place at this meeting:- The Delegations of Australia, Belgium, Czechoslovakia, France, India, Norway and the United States. I would like to nominate the Delegate of India as Chairman of this sub-committee, the sub-committee to meet tomorrow morning at 10.30.

Are there any comments?

The proposal to set up a sub-committee is approved.

We now pass on to Article XXVII - "Amendments". We have the amendment of the Australian Delegation, which is given in document E/PC/T/W/323, providing for a new text to replace paragraph 1. At the same time, we might give consideration to the proposal of the United Kingdom Delegation that paragraph 1 could be detached from the rest of the Article and made into a new Article with the title: "Suspension and Supersession".

MR. R.J. SHAEKLE (United Kingdom): Mr. Chairman, our amendment is obviously not one of substance at all, it is purely a matter of arrangement.

Our feeling is that the first paragraph, which deals with supersession by the Charter, is quite a distinct matter from the other

miscellaneous amendments which might be thought desirable in this Agreement, and we feel that that justifies having two separate Articles.

We would propose that paragraph 1 should be kept in one Article with the title: "Suspension and Supersession", while the remaining paragraphs should be a new Article headed: "Amendments". That involves one consequential amendment, namely that in the second line of paragraph 2, after the words "provisions of this Article", one would add "or of Article XXVII".

As I say, this is not an amendment of substance, it is purely a matter of arrangement and clarity.

CHAIRMAN: Are there any objections to the proposal of the United Kingdom Delegation?

There being no objection, we can take it that the proposal of the United Kingdom Delegation is approved.

We can now pass to the consideration of the draft amendment submitted by the Australian Delegation for the revised text of paragraph 1.

Are there any comments on the Australian proposal set forth in document E/PC/T/W/323.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I must confess that there is one point on which I have some doubts, although I think we entirely agree with the general scheme of this suggested Article.

We have certain doubts about the opening words of paragraph 2. You will see that in the General Agreement it says that if there is an objection by a contracting party then there is to be consultation between the contracting parties, but the opening words of paragraph 2

say that that meeting with the contracting parties shall only happen within the sixty days after the necessary 20 ratifications, which are required to bring the Charter into force, have already been deposited. Well, by the time that that has happened the situation would, so to speak, be no longer fluid, and the judgement of the contracting parties would be lessened.

It does seem to me that that may have a number of awkward consequences and, amongst others, it may have the effect of delaying the ratification of the Charter, because it may well happen that a contracting party may have certain doubts about the changes that have been made and it may wish to get the views of other contracting parties. Having done that, it would be in a position to decide what it would do about ratification, whereas, if there had been no such discussion, it may feel that the wisest plan would just be to sit back and wait and see what other countries do, and if you get a lot of countries doing that it may mean that the Charter will not come into force, or that its entry into force will be quite considerablly delayed.

For that and other similar reasons, my feeling is that it is not advisable to prescribe that this meeting shall be delayed until the ratification of the Charter has come in. I suggest that we should say something like this:. First of all, you have the sixty days within which the objection has to be made; then, within a further sixty days there should be a meeting of the contracting parties to discuss the situation, and I think one might possibly wind up by saying that in any event there shall be a meeting within the sixty days after the 20 ratifications have been deposited, and that at that meeting some unanimous or definite decision will have to be reached. That is rather the scheme that I would suggest.

The provision leaves over the meeting until the 20 ratifications have already been deposited, when it necessarily follows that the Charter will come into force. It may have some very unintended consequences, I think.

I would just like to make a small suggestion as to a draft which, I think, would give effect to my point. The first paragraph would consist of some such words as this: "Thereupon within sixty days following the notification of the objections the contracting parties shall meet to consider the situation", and you will then add, at the beginning of paragraph 2, which would otherwise remain as it is "In any case, this objection has been raised under paragraph 1" and then go on as before with "Within the sixty days days..... etc.". The effect therefore, would be that, if there is an objection, there would be a meeting of the contracting parties within two months to consider the situation but, in any case, if the matter has not been cleared up in that way then there will have to be a meeting after the 20 ratifications have been deposited to come to some definite decision. That would be my suggestion.

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

MR. L.C. WEBB (New Zealand): Mr. Chairman, I just wanted to raise a point of procedure, which I think possibly is not really important, that is, you say the Australian amendment says any contracting party may object. Now, it seems to me that two questions arise there. The first is to whom does the contracting party object? Where does it lodge its objection? The second question is, when an objection has been lodged, to whom is the objection circulated? I would assume that it would be circulated

to the countries which are signatories of the Final Act, but I would like those points cleared up because it seems to me that it is desirable, if this amendment is adopted, to change or give that part of it a greater precision.

This also, to my mind, raises a question which arises in connection with many of the Articles of the General Agreement, and it is a question which it may not be appropriate to raise at this moment, but it is simply this: that the General Agreement has imposed upon the contracting parties a whole series of highly important duties which are, in effect, the duties - or correspond to the duties - which will be discharged by the Organization under the Charter, and yet there is no provision for regular meetings of the contracting parties.

We do not know who summons the meetings. What is more important: it would appear that no provision has been made for any sort of Secretariat and I find some difficulty in envisaging how a Secretariat would be provided.

As I say, I do not know whether this is the appropriate place to raise this particular question, but I feel it is a matter which we shall have to consider at some time in these deliberations on the General Agreement.

CHAIRMAN: This question is really covered by Article XXIII, which we considered the other day, and during the course of our discussion the United States Delegation agreed to submit a re-draft of this Article in the light of the general agreement which had been reached in the Committee to replace the word "Committee" by the words "contracting parties."

If the Delegate of New Zealand will refer to Article XXIII he will see that in Paragraph 2 the position is met, by saying: "The Secretary-General of the United Nations is hereby requested to convene the first meeting of the contracting parties." No doubt at that first meeting the contracting parties will take whatever steps are needed to settle such questions as future procedure, Secretariat, and such other arrangements which may be necessary for them to carry out their functions during the very short time in which it is envisaged that it is necessary for joint action to be taken by the contracting parties, because in Paragraph 7 of Article XXIII provision is made that as soon as the International Trade Organization has been established and is capable of exercising its functions, the contracting parties may discontinue the meetings provided for in Article XXIII and may transfer to the Organization the function of giving effect

to the provisions of the Agreement. In other words, once the Organization is in being, the Tariff Committee considers it will be the Organization which will undertake these functions.

The Delegate of Chile

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I fear that the Australian amendment would only lead to the result that you would never be able to replace the Articles of the Agreement by the Articles of the Charter once the Charter is adopted, and I do not see how this Agreement will function if the substitution of these Articles is impossible.

I think the remarks made by the New Zealand Delegate are quite pertinent ones and that one would be, in fact, creating a second small organization at the side of the ITO. If we request here unanimous agreement for the substitution by the Articles of the Charter for the Articles of the Agreement, it may be a very elegant way, but indeed a roundabout way, of introducing the right of veto. The veto was eliminated in the Economic and Social Council, but here we are introducing this right of veto within the Committee, except of course, that the Committee is not called a Committee any more, but is only called "the joint action of the contracting parties," and the word "veto" is obviously not mentioned.

But if it only requires one voice to prevent the substitution, then I think we will have, to all eternity, the Articles of the Agreement and not the Articles of the Charter in Part II. Therefore it seems to me it would be more logical to follow the suggestion of the New Zealand Delegate and provide for a Secretariat, maybe a budget, and maybe other things also, so that we can have the Agreement functioning properly.

I would like to state now that the Chilean Delegation cannot accept the text of this amendment, and I wonder if all the Delegations here are ready to accept such a text.

It seems to me it is only logical that the text which we adopt should, on the other hand, be in accordance and in harmony with the purposes for which we gathered here. I believe these purposes can only be met if we adopt the principle of automatic substitution. Any other device might be very ingenious, very clever, but it could only lead to the result that the Articles of the Agreement will never be replaced by the Articles of the Charter. Therefore, Mr. Chairman, if the interpretation I have given is the correct one, the Delegation of Chile will never be able to accept this amendment.

CHAIRMAN: The Delegate of India.

Mr. B. N. ADARKAR (India): Mr. Chairman, we have to consider, under this Article, three types of amendment. It has been suggested by the Tariff Negotiations Working Party that amendments to Part I of this Agreement should be effective only by the unanimous consent of all the parties. The Indian Delegation would be quite prepared to accept that decision.

Another type of amendment would be to go forward with the replacement of Part II of the Agreement by the Articles of the Charter, and the third type of amendment would be all other amendments which do not conform to the description of the first two types of amendment.

As regards the replacement of Part II by the provisions of the Charter, that is an amendment which requires special treatment for two reasons: in the first place, Part II involves obligations which are substantially different in nature from the obligations

involved in tariff concessions. Secondly, tariff concessions cannot be withdrawn except by unaimous consent, but, so far as the obligations laid down in Part II are concerned, they raise wider issues of commercial policy and therefore unanimous consent should not be required in respect of those obligations.

Moreover, by the time the replacement question would arise, something may have become known about the fate of the Charter. If the ITO Charter is adopted at the World Conference, and if the contracting parties accept the ITO Charter by joining the ITO, then presumably they should have no objection to the replacement of Part II by the Charter. Therefore a somewhat easier procedure should be adopted, so far as the replacement of Part II by the Charter is concerned, than the procedure indicated for changes in Part I or changes in the tariff concessions.

We thought the Australian Delegation was in favour of providing for a simpler procedure for replacement of Part II by the Charter and we would therefore like to be sure that the amendment suggested by them is consistent with their intention.

It seems to us, on reading this amendment - and I speak subject to correction - that if any of the contracting parties objects to any provision of Part II being replaced by the corresponding provision of the Charter, and if such a contracting party maintains the objection throughout the deliberations which will follow, the replacement cannot come about: that is to say, that any of the contracting parties can exercise a veto on the replacement.

If that is the intention, the result is that the procedure suggested by the Australian Delegation would make replacement far more difficult than the procedure suggested by the Tariff Negotiations Working Party, and that is a position which we consider to be most

inconvenient. It would place the country objecting to replacement in a more favourable position than the country which desires the replacement. A country which wants the existing provisions to be maintained can maintain its objection throughout and thus block the replacement.

On the other hand, a country which wants replacement has only one alternative, namely, to withdraw from the Agreement. That alternative is open to it only if the country has not given definitive application to the General Agreement, but such a country will not know whether or not replacement is going to come about until 60 days have elapsed after the ITO Charter comes into force; therefore a country which wishes Part II to be replaced by the Charter will have to delay its definitive application of the General Agreement until 60 days have elapsed and until further consultations have taken place. That places a country which wants the replacement to come about in a less favourable position than the country which is objecting to the replacement by the Charter.

Secondly, it is this Article of Amendment which will determine the relation between the General Agreement and the ITO Charter. Nothing is said in the Australian amendment as to whether contracting parties will or will not join the ITO Charter. If it is to be understood from the terms of the Australian amendment that Part II will be suspended and superseded by all the provisions of the Charter, then we have to provide for a situation in which a contracting party may be prepared to accept all the provisions of the Charter which is eventually adopted which correspond to the provisions at present included in Part II but may have difficulty in accepting other provisions of the Charter and may, for that reason, have to keep out of the ITO.

In such a situation I do not understand what will happen. If any of the contracting parties fails to join the ITO, not because it has any difficulty in accepting either Part II of the General Agreement or the corresponding provisions of the Charter which will be eventually adopted, but because it has difficulty in regard to other provisions, is it to be understood that such a country will be forced to withdraw from the Agreement? I do not know what the answer is, but we should like to have clarification on the point.

This difficulty does not arise in the original draft, which states that the question of supersession of Part II of the ITO Charter will not arise unless all the contracting parties have become members of the International Trade Organization. If any of the contracting parties does not join the ITO then the replacement will come about by the process of amendment, indicated in paragraph 2 of Article XXVII. We would therefore like to have clarification on this point.

We, for our part, were quite happy with the existing draft, with the draft suggested by the Tariff Working Party, subject to certain amendments. We proceeded on the understanding that if all the contracting parties joined the ITO there should be no difficulty in replacing Part II by the Charter: we would prefer "by the corresponding provisions of the Charter" but we would be quite prepared to accept any other alternative which meets with general agreement. But some discretion should be left to the contracting parties. It may be possible to make some provision for a fresh review of the position, but the provision should not be quite as rigid as that in the original draft, and we therefore proposed that the decision at the time of such a review should be taken by a simple majority and not by a two-thirds majority.

That was the main amendment which we have suggested and we think that, with that amendment, the procedure for replacement

would be simple enough and would not give rise to the sort of difficulties we feel about the Australian amendment. However, it may be that, in view of the positive assertions on the part of the Australian Delegation on earlier occasions, they would favour automatic supersession of Part II by the Charter. We were somewhat puzzled by the terms of the amendment proposed by them and would therefore like to have clarification as to whether or not our understanding that this amendment makes supersession much more difficult than the provision indicated by the Tariff Negotiations Working Party is correct.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, may I state that we have devoted many hours to discussing this question of trying to find a solution to this very thorny problem in this Working Group, but I think it is impossible to find a solution which would satisfy everyone. We had the feeling that we could not accept or come to a solution with the conviction that this was the perfect solution. The Working Party envisaged a certain number of solutions, and a form which would be given to those solutions, but, after pondering them, they did not find one of the solutions which had been envisaged satisfactory.

I would like to point out to the Indian Delegate, in reference to the remark he made that it is possible for a contracting party to the Agreement to stay outside of the ITO, that this is a solution which will not occur, because the Preparatory Committee has provided that the benefits and the advantages granted to a contracting party should be withheld if the contracting party did not join the ITO.

M. ROYER (France) (Interpolation in English): No, I did not say that. I said that the Preparatory Committee submitted three alternative solutions, one of which provides....

(Interpretation, continued): .... The Preparatory Committee submitted three alternative solutions and in one of these solutions it is provided for that the benefits and advantages of the concessions should be withheld from a contracting party which did not join the Organization, and therefore there would be a contradiction to think that a contracting party could not or should not join the ITO. Therefore the solution which was proposed by the Indian Delegate cannot be a complete one.

Now, if we come to the Australian amendment it seems that the Australian amendment has some good points in it but also it tries to solve a problem which has no solution, like the problem of squaring a circle. I would like here to draw the attention of the Chilian Delegate to the fact that, in spite of appearances, it seems that the Australian amendment tries to avoid the use of veto and in fact deletes the use of a veto right, because when will these provisions function? We have two cases in history where a condition of unanimity is requisite; that is first in the case of a jury and secondly in the case of a conclave which proceeds to the election of a Pope. This condition of unanimity seems illogical in itself, but nevertheless these two bodies do function properly, and juries give their opinion on matters which are submitted to them, and also Popes have always been elected up to this day, and I do not see here why this same provision should not function properly here. If in a jury there is one dissentient voice raised nevertheless it is not this dissentient voice which carries the day, and in a conclave it is the same

thing and it is not the voice of the dissenting Cardinal which also carries the day for the election of the Pope. I am certain that the same would apply here and that one dissentient voice within the contracting parties acting jointly would not carry the day.

Therefore I think that, in spite of appearances, it would be best for us to adopt the Australian amendment and I think that all the cases which might eventually arise will not happen, and I hope and believe that the Charter which will emerge from the deliberations of the Havana Conference will correspond in fact to the text which we have now before us and to the Charter which was adopted in Geneva.

CHAIRMAN: The Delegate of Syria.

M. Hassan JABBARA (Syria) (Interpretation): Mr. Chairman, the Syrian-Lebanese Delegation have spoken more than once on this point and shown their desire to see the provisions of Part II replaced automatically by the provisions of the Charter when once the Charter is adopted, and on this point we find ourselves in complete agreement with the statement made by the Chilean Delegate.

I think that the form of unanimity which is provided for in the Australian amendment cannot work in the way it is put forward here, and if this form of unanimity were to be adopted, I think that it could only work in the opposite way -that is to say, that unanimity would be required if the principle of automatic substitution were adopted, and so to modify this principle.

If this amendment were so modified, it would cover our wishes; otherwise, we have to agree with what the Chilean Delegate said, that is, that this amendment would lead nowhere and, in fact, would lead to no substitution of the provisions of this Agreement.

I do not think that the comparison which was made by the French Delegate could sway our decision, because if we consider the election of the Pope, it is possible that a dissenting Cardinal might be swept away by the Holy Spirit, and, on the other hand, within a Jury one dissenting member may be convinced by his colleagues and may be reasoned with so as to see the truth. But here we will have representatives of important interests discussing and perhaps clashing with other representatives of important interests of other States, and I do not think that they could always be convinced by the arguments of the opposite parties. On the other hand, in many cases they may wish to maintain their

position and only consider the interests of their own States and their own trade. I doubt, therefore, very much whether this principle of unanimity could work harmoniously.

Now, coming to the amendment itself, it seems to me that paragraph 3 of the amendment ought to be modified so as to clarify the whole amendment. We read "On November 1st 1948, or such earlier date as may be agreed, should the Charter not have entered into force, the contracting parties shall meet to agree unanimously whether the General Agreement should be amended, supplemented or maintained". This is not what the amendment ought to state. It ought to state that the contracting parties should gather to review the situation in the light of the decision made at the Havana Conference regarding this Charter, and not to decide unanimously whether the General Agreement should be amended.

CHAIRMAN: The Delegate of Australia.

Dr. H.C. COOMBS (Australia): Mr. Chairman, I have listened with considerable interest to Mr. Jabbara and other Delegates, as a result of which I do not feel so proud of this draft as I did when I started. A number of points have been raised, some of which I feel to be valid criticism.

I think the New Zealand point that it should be clear from the text where objections are to be lodged and who should be notified of those objections is one which should be covered in the draft, quite clearly.

With regard to the point raised by the United Kingdom, it would be desirable to have a meeting as soon as objections have been lodged, without waiting for the period which we refer to in the second paragraph. I am less certain about that, but I think

perhaps there may be something in it.

The reason why we suggested that consultation should take place in the period of sixty days after the deposit of instruments of acceptance by twenty governments is that it is only when twenty instruments of acceptance have been deposited that you know that the Charter is going to come into force, and it seemed to us to be a bit academic to be considering what you should do about objections to the Charter replacing provisions of the Agreement if you did not know whether the Charter was in fact going to come into force or not.

But, at the same time, as the United Kingdom Delegate has pointed out, the content of the Agreement may be one factor influencing a country deciding whether it will in fact deposit an acceptance to the Charter, and it may be desirable, therefore, to allow for consultations to take place at any time after the closing date for objections.

I think that could be obtained just by deleting the first three lines and a bit, of paragraph 2, and inserting the word "thereupon", which would enable the contracting parties to confer at any time it was convenient, so to speak, after the closing date for objections, but before the Charter in fact came into force.

The Delegate of Chile raised objections to the inclusion of the word "unanimous" in these two paragraphs. I agree that the appearance of that word is perhaps a little unfortunate, but my understanding of this is that you cannot have an Agreement of this sort unless all the parties to it consent to what is in it. If they do not consent to what is in it, they will not become parties.

I think that some of the difficulties felt by the Delegate of

Chile and also some of those felt by the Delegate of India, will be removed if I explain what sort of procedure I had in mind when we prepared this draft. It seems to me that the first part of the first paragraph makes it clear that s supersession by the provisions of the Charter would be automatic, and if nobody objects, the Charter provisions take the place of those of the Agreement. Now, supposing somebody objects: then, it seems to me, you have a meeting at which the objector has to explain why he does not think the relevant provision of the Charter should take the place of the provision of the Agreement. The onus of proof is on him, and if he is in isolation - if he is the only one who is not prepared to accept the provisions of the Charter, then -unless, of course, he is a very important Delegate- the outcome will presumably be that he will have to make up his mind -that is, his Government will have to make up their mind- whether they accept the Agreement with the supersession of the clause from the Charter, or whether they stay outside the Agreement. Or, at any rate, he would have to persuade a sufficient number of the others to agree to his proposal, whatever it was, for them to be unanimous and for the remaining minority to be faced with the choice of joining or getting out.

Therefore, the use of the word "unanimously", as we saw it, merely recognized the fact that you cannot have an Agreement of this sort to which all the contracting parties are not unanimously consenting,--perhaps unwillingly in some instances, but still consenting--to the content of the Agreement, because if they do not consent, they will stay out.

I may say that in the original wording of this, the word "unanimously"did not occur, but was put in at the request, I think, of the French Delegation, who drew attention to the

necessity to recognize the facts of life.

The other point that the Indian Delegate raised I do feel some more concern about, and that was when he drew attention to a confusion which I think is a real confusion in this draft, as to two problems associated with the relationship between the Agreement and the Charter. The first is that the provisions of the Agreement are narrower than the provisions of the Charter, and one of the concerns of some of the Delegations here (including my own) has been to ensure that all countries party to the Agreement accepted the other obligations which are incorporated only in the Charter.

If there were no Charter, then presumably we would look to an extension of the Agreement, so that it incorporated at least the essential provisions relating to employment, industrial development, commodity policy and so on. On the other hand, there is the question of the precise form of the commercial policy provisions in the two documents and the problem arises as to whether it is practicable or desirable to have two sets of provisions relating to commercial policy, one in the Agreement and one in the Charter, which are not identical, and that is a slightly different question.

I think it is possible to have two different sets of provisions provided they are not in conflict. It would be possible for the parties to the Agreement to perhaps agree on a somewhat closer set of provisions than it was possible to give the General Agreement, and that would not necessarily be objectionable; but again it would be essential that the onus of proof that a closer set of provisions was necessary or desirable in the Agreement should be on those people who are dissatisfied with the provisions of the Charter.

The substance of what I had to say, Mr. Chairman, indicates, I think, that in certain respects, at any rate, the draft which we have put before you is less than satisfactory, although I do believe that the main principles underlying it--i.e. that in the absence of objection, supersession of the provisions of the Agreement by those of the Charter should be automatic and secondly, that the onus of proof should be on the objector, and thirdly that in the event of objection the parties should meet and confer, and that the result should be something to which all the parties who remain parties to the Agreement do concur in,- are, on the whole, sound; but if I can make a suggestion, Mr. Chairman, we would be grateful if the Committee would give us another try at this - not necessarily by ourselves - but perhaps in consultation with other Delegations interested because we feel that there are changes which could with advantage be made in this draft.

CHAIRMAN: The Delegate of Cuba.

Mr. H. DORN (Cuba): Mr. Chairman, I fully agree with the proposal to review the formulation in the light of the discussion. Therefore, I only want to add a few words about the legal situation as it stands based upon the formulation before us.

If you apply the general rules of interpretation accepted in international law, you come to the following conclusion: paragraph 1 contains the automatic supersession. Therefore, there must be a special clause for the consequence if there is one objector, and the natural consequence in international law would be that there must be a decision about the objection, and only about the objection. That would mean that the second paragraph would have to state that you may retain or amend the clause of agreement by unanimous decision, but if you cannot get unanimous decision then the principle as stated in paragraph 1 would be valid.

This interpretation is only made doubtful by one word contained in paragraph 2 in the words which you find here: "... shall be superseded, retained or amended" If you strike out the word "superseded", then, practically, the interpretation which I gave would follow the lines of the rules generally accepted in international law.

That is the first point, and the second point that I want to add is that there will be a great difficulty, if you do not accept the supersession, because the clauses of the Charter would be international obligations between the same contracting parties covering the same field, and the general rule of international law is that subsequent obligations supersede prior international obligations between the same parties if they cover the same field.

I do not really see, up to this moment, how, without a special clause contained in the Agreement, you could avoid this legal consequence, and I only wanted to state these two points for the reconsideration which is going to be made of the proposal of Dr. Coombs.

CHAIRMAN: The discussion which has taken place on the Australian amendment has enabled certain delegations to point out objections which they have to the Australian draft. Dr. Coombs has recognised the validity of certain of these objections, and has asked for the opportunity of submitting a revised proposal in the light of the discussion which has taken place here. I think that the Committee would wish to grant this request of the Australian Delegation.

I therefore suggest that we defer further consideration of the first paragraph of Article XXVII until the Australian Delegation has had time to submit a revised draft.

I therefore propose that we adjourn the discussion now and that tomorrow we shall take up the other paragraphs of Article XXVII. Is that proposal agreed?

Agreed.

The meeting is adjourned until 2.30 p.m. tomorrow.

The meeting rose at 6.25 p.m.