

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

VERBATIM REPORT

FIFTEENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE  
HELD ON WEDNESDAY, 10 SEPTEMBER 1947 AT 2.30 P.M.

IN THE

PAI AIS DES NATIONS, GENEVA.

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CHAIRMAN: The Meeting is called to order.

I wish first of all to inform the Committee that the Tariff Negotiations Working Party met this morning and, in pursuance of the mandate given them by this Committee yesterday, they considered the question of setting up a Legal Drafting Committee.

The Tariff Negotiations Working Party wishes to suggest the following names of persons they consider would be qualified to act as a Legal Drafting Committee: -

Dr. Dorn (Cuba), Chairman; Mr. Catudal (United States); Baron de Gaiffier (Belgium); M. Royer (France) and Mr. Whittome (United Kingdom).

These five gentlemen would constitute the Legal Drafting Committee. They would arrange their own meetings at whatever time suited them, and it would be the responsibility of their Chairman to arrange the meetings.

The terms of reference we would suggest would be similar to those of the Legal Drafting Committee which considered the Draft Charter, with the qualification that the major responsibility for seeing that the French text conforms to the English text should rest with the representatives on the Legal Drafting Committee of the French-speaking Delegations.

We also felt it was desirable to call the attention of the Legal Drafting Committee to the fact that it is, of course, understood that those Articles which are common to the Charter and the General Agreement should not deviate in respect of their texts except to the extent necessary to adapt the text of an Article in the Charter to the General Agreement.

Are there any comments on the proposal of the Tariff Negotiations Working Party?

Does the Committee agree with the names proposed for the composition of the Legal Drafting Committee?

(Agreed)

Is the Committee also in agreement with the terms of reference of the Legal Drafting Committee?

(Agreed)

I will therefore ask Dr. Dorn to act as Chairman of the Legal Drafting Committee and to take the responsibility of calling the first meeting when he considers it necessary.

At our meeting yesterday we had decided to defer further consideration of Paragraph 1 of Article XXVII until the Australian Delegation had had an opportunity of submitting a revised text in the light of the discussion which took place at our meeting yesterday. We will therefore now take up Paragraph 2 of Article XXVII.

Are there any comments on this paragraph?

Mr. H.M. CATUDAL (United States): Mr. Chairman, it seems to me there is a slight gap in this paragraph, rather similar to the gap in Article XXIV pointed out by the French Delegation I believe; it says "Other amendments to this Agreement shall become effective in respect of those contracting parties which accept them upon acceptance by two-thirds of the contracting parties", but it says nothing about when they become effective, after they have become effective for the two-thirds. I wonder if we could not include the phrase:

"and thereafter for each other contracting party upon acceptance by it",

the language that is in the Charter now.

CHAIRMAN: Are there any comments on the suggestion of the United States Delegate?

The Delegate of China.

Mr. D.Y. DAO (China): Mr. Chairman, we have some difficulty about the first sentence of paragraph 2.

First we find that there is a difference in the procedure for amendment to, say, Article I of the Agreement and to the corresponding Article in the Charter which I think is Article 16, and which could be amended by the acceptance of two-thirds of the members. Here we provide that an amendment to Article I could be effective upon acceptance by all of the contracting parties. I think the same difficulties as those which we tried to avoid in respect of Part II by the use of automatic supersession will arise if the amendment to the provision in the Charter is carried by a two-thirds acceptance and the corresponding Article in the Agreement cannot be amended except by unanimity.

The second difficulty is this: according to Article II the Schedules will be considered as an integral part of Part I. Now, amendment to Part II will require unanimity. We see that exceptions are made in paragraph 4 in respect of paragraph 4 of Article II and Articles XXV and XXVI, but under Articles XVII, XVIII and XXI actions may be taken under these provisions which may result in the modification or withdrawal of concessions provided in the Schedules.

Then under these three Articles actions may be approved by contracting parties, presumably by a simple majority, where here we say that amendments to Part I which we believe will include the Schedules could be made effective by acceptance of all contracting parties. So we find there is an inconsistency between this first paragraph and the other three Articles which I mentioned, namely XVII, XVIII and XXI.

In our opinion we think that, with regard to the first difficulty, probably procedures for amendment to Part I could run along the same lines as the second sentence, which I believe corresponds to the similar provisions in the Charter with regard to amendments, that means acceptance by two-thirds of the members or two-thirds of the contracting parties.

As regards the second difficulty, we think something can be added to paragraph 4 saying that "Actions taken under paragraph 4 of Article II or under Articles XXV and XXVI, or under Articles XVII, XVIII, XXI which may result in the modification or withdrawal of concessions provided in the Schedules . . . ." I think the second difficulty may be met by some addition to paragraph 4.

CHAIRMAN: Are there any other comments?

The Delegate of the United States.

Mr. H.M. CATUDAL (United States): I am not sure I understand the first point raised by the Delegate of China, but in regard to the second point it seems to me there may be two answers: one, the Agreement already provides for certain action to be taken which may result in a modification of the Schedule. If it is felt that must be specifically covered here, and avoid the condition of unanimity, it seems to me that the first sentence of paragraph 2 should read:

"Except as otherwise provided for in this Agreement, amendments to Part I ....." and so on.

But I think that the real answer here is that amendments here look toward amendments of the Schedules, which amendments are not specifically provided for in the Agreement.

CHAIRMAN: Are there any other comments?

Dr. H. DORN (Cuba): I agree with the Delegate of the United States, Mr. Chairman, that it would be very useful to add "Except as otherwise provided for in this Agreement"; but then I think we would have to adapt paragraph 4 which gives a specific exception about actions under some paragraphs and Articles of this Agreement. Perhaps it would be unnecessary to add/<sup>to</sup> paragraph 4 if we would say generally "Except as otherwise provided for in this Agreement."

The second question, the first raised by the Chinese Delegate, seems to me to be connected with a more general question. Part I as it stands now is regarded as a special agreement which has nothing to do, so to say, with the Charter, because only Part II shall be eventually superseded, and therefore I think that is a special disposition regulating this part of the Agreement which stands on its own feet. Therefore I do not think that it would be contrary to the Charter if you were to provide for unanimity in order to change Part I.

CHAIRMAN: The Delegate of China.

Mr. D.Y. DAO (China): Mr. Chairman, my suggestion that the same procedure should be followed in respect of amendments to Part I is because I find that the reason why we accept the idea of automatic supersession of Part II is to avoid a situation in which a country, being both a party to the General Agreement and a Member of the ITO, finds that it has to accept different obligations. That is why we accepted the idea of automatic supersession of Part II.

Now, Part I contains two Articles: the first Article corresponds I think, to Article 16 in the Charter. This Article could be amended by the acceptance of two-thirds of the members. Here we say that this Article I could not be made effective except by unanimity. I suppose if one-third of the members which did not accept the amendment to the provisions of the Charter could object to the amendment introduced here to Article I of the Agreement, therefore amendment to Article I of the Agreement could not be effective, thus resulting in a difference between Article I of the Agreement and Article 16 of the Charter. Therefore to avoid such a situation I would suggest that the same procedure should be followed in the case of amendment to Article I of the Agreement as in respect of Article 16 of the Charter, taking place along the same lines as the amendment submitted.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Speaking subject to correction, I would like to state my understanding in this matter. Part I of this Agreement is meant to be a provision to which are attached the Schedules embodying results of the tariff negotiations

which have already taken place. Those negotiations have taken place specifically on the base of the provisions about the Most-Favoured-Nation treatment and so on which will be embodied in Part I. There is nothing in the Charter to which one can attach the Tariff Schedules already negotiated. The Charter provisions only look to future negotiations. Therefore one has to have something to which the results already achieved may, so to speak, be attached. That is the reason for the provision in Part I, and, just as it is contemplated that, subject to such special rules as are made, the contents of the Schedules shall continue unaltered, so it is necessary to provide that the base on which they are made and attached shall also remain unaltered. For that reason I think it is right that Part I should only be changeable by unanimity and not by a two-thirds majority.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I feel that we are putting an extremely complicated construction upon something which is, to my mind, extremely simple, and I would go to the basic principle of international law - not because I am so keen on lawyers, solicitors and so on, but because I think that international law is essentially full of wisdom. There is one basic principle - that is, that when two treaties made between the same States at different dates conflict, the latter treaty prevails, it being assumed that it is in substitution for the earlier treaty.

To my mind, this principle applies not only to Part II but also to Part I and Part III of our Tariff Agreement, because if all the present countries sign the Charter at Havana, it means that there is unanimity that some rules other than those in the Tariff Agreement should apply. This principle also applies to Article XXIX, where we read "This Agreement shall supersede any prior international obligations between contracting parties inconsistent therewith". I think it is entirely unnecessary, because it is self-evident and, to my mind, anything we say here has no legal value, because as soon as the present countries agree and sign the Charter, it will be the Charter which governs the relations and not the Tariff Agreement.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that the Czechoslovak Delegate has over-simplified the problem. There are cases where the provisions of two treaties do not clash and can exist simultaneously, and it is certain that if the

provisions of two treaties were to clash, then the rule which was stated by Mr. Augenthaler would apply, but we would be faced with another difficulty, in the case of the date of the Charter and the date of the Agreement, to know which would prevail. It will not be the date of signature of the Agreement or of the Charter which will be taken into account, but the date of entry into force of the Agreement or of the Charter, and therefore it is quite possible that the Charter will enter into force before the Agreement, and the difficulty which would face us would not be the difficulty stated by Mr. Augenthaler, but the opposite one.

Now, as to matters of substance, there are two questions. One relates to Part I and the other relates to the different points which were raised by the Chinese Delegate.

As to this question relating to Part I, we are discussing here a multilateral agreement, and although it is a multilateral agreement it is one of a type and only one of many trade agreements. Therefore, the rule must be the rule applied in ordinary trade agreements - that is, that these trade agreements can only be modified with the unanimous consent of the parties taking part in them.

Therefore, it is the normal rule which is followed here regarding Part I, and it is the exceptional rule which is followed regarding Part II. We have taken an exceptional rule in the case of Part II because there are exceptional circumstances which may justify the supersession of these provisions by the provisions of the Charter. But it is certain that if an important amendment was presented to Article 16 of the Charter - let us say, for instance, the limited maintenance of preferences, no one could allow Article I to apply as it stands now, and this Article should

be notified. It seems to me that the problem is fairly simple here, for when the amendments would bring about essential differences then, of course, the rule of unanimity would be required; but when these amendments would only bring minor differences, then it is certain that the Delegations would not object to minor modifications of these Articles.

Regarding the second point - that is, the observations made by the Chinese Delegate relating to Article XXVII and other provisions of various Articles of this Agreement, I think that here we can have two solutions. We can adopt the suggestion made by the United States Delegate and supported by the Cuban Delegate, to insert the words "as otherwise provided for elsewhere in this Agreement"; or we can state that the provisions of different Articles in this Agreement do not conflict with the provisions of paragraph 2 and shall not be considered as amendments to the provisions of the Agreement.

I do not, however, think that we can combine the two things, because if we say that these provisions do not constitute amendments to the provisions herein stated, we have no amendments and we cannot apply the provisions of paragraph 2. Nevertheless, a difference should be made. The Chinese Delegate spoke of amendments, and he mentioned cases of the suspension or withdrawal of the provisions of the Agreement or the suspension of concessions. I think that is something quite different, because amending the Agreement means amending the text of the Agreement, and the other cases - withdrawal or suspension - are matters of fact which have to be dealt with in a slightly different way and from a juridicial point of view. I think that the difference ought to be stated.

CHAIRMAN: Are there any other comments?

Dr. H. DORN (Guba): Mr. Chairman, may I just draw attention to one consequence of paragraph 2, if we have in paragraph 1 the supersession of the wording of the Agreement by the Charter? As it stands now, the Charter would be decisive in regard to Part II and you would have the situation that possibly an Article of the Charter would be changed later on. Then you would have to take over in the Agreement the new wording, as amended, of the Charter. The wording of paragraph 1, as it now stands, states: "...superseded by the provisions of the Charter for such time as the Charter remains in force". That would mean that the changed wording of the Charter would have to be applied, and a consequence of paragraph 2 would be that the coincidence which you have created through paragraph 1 could be destroyed by the second phrase of paragraph 2, because there would be the possibility of changing the wording of Part II on the basis of this phrase. I think that these two provisions are not compatible with each other. Therefore, I think that the formulation of paragraph 2 will depend upon the definite formulation to be found for paragraph 1.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R J. SHACKLE (United Kingdom): I must say that I doubt whether we need be greatly exercised about the apparent possibility of conflict to which Mr. Dorn has called attention. It seems to me that these two provisions of the Article - paragraph 1 and the second sentence of paragraph 2 - are meant to operate at different times.

Paragraph 1 is on the assumption that the Charter is in force and that supersession has taken place. The second sentence

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of paragraph 2, on the other hand, if I understand rightly, is meant to apply during such time as that has not happened - a time when the General Agreement is in operation but the Charter has not yet come into operation. Now, we do not know whether it will be a long time or a short time, but however it may be, there is always the possibility that during that time there will be some need to amend Part II of the Charter as it stands, and this simply enables that to be done. I should have thought that from the moment the Charter had come into force and had been agreed, its provisions should supersede Part II, and the second sentence of paragraph 2 would cease to operate.

CHAIRMAN: The Delegate of Cuba.

DR. H. DORN (Cuba): I agree with the Delegate of the United Kingdom that one should arrange paragraph 2 in this sense with regard to Part II, but at all events it would be necessary to express this idea and say, for instance, "as long as the Charter is not yet in force and with regard to Part II", but then we would have no provision at all for Part III, because we speak of Part I in the first sentence and we would speak, if we follow the idea of the Delegate of the United Kingdom, of Part II, but then we would have no provision at all for Part III.

Therefore, I think, at all events, that we will have to change the wording in order to make clear that, as far as Part II is concerned the sentence would only apply as long as the Charter is not yet in force, and then we will have to find a solution for Part III.

CHAIRMAN: I should have thought that in the way the text reads now it is quite clear that the words "Other amendments" apply both to Part II and to Part III. We want to have a provision to enable Part II to be amended as long as Part II is part of the Agreement, but paragraph 1 provides that when Part II is superseded by the Charter it is suspended, that is, Part II is no longer a part of the Agreement, it is suspended. It may be put back into the Agreement if the Charter ceases to be in force, but otherwise Part II is suspended. Therefore, the wording we have now really takes account of all eventualities and I think if we start trying to define it we might get into difficulties.

DR. H. DORN (Cuba): I agree completely with you, Mr. Chairman, but only if we maintain paragraph 1 as it stands. Therefore, I have permitted myself to say that if/<sup>we</sup>change paragraph 1 we will have to adapt paragraph 2 to comply with paragraph 1. As it stands now, it is quite clear because we have no Part II as long as the Charter supersedes Part II of the Agreement.

CHAIRMAN: Could we deal with paragraph 2 on the assumption that paragraph 1 will not be changed substantially, in that particular sense to which we have been referring, from the text as it is now given, because I notice that the Australian proposal which we considered yesterday also has the words: "Part II of this Agreement shall be suspended and superseded". I think that point is even covered by the Australian amendment, and so I think we can consider this paragraph 2 now on the basis that there will not be any substantial change so far as that point is concerned in paragraph 1.

The Delegate of China.

MR. D.Y. DAO (China): Mr. Chairman, I entirely agree with Mr. Shackleton when he says that the tariff negotiations here are conducted on the basis of that most-favoured-nation treatment. We are not questioning this Article 1, what we are worried about is that, as there is a difference of procedure for amendments, this difference of procedure may result in the difference of the two corresponding Articles, one in the Agreement and one in the Charter.

Now, according to Dr. Augenthaler, it would be quite alright if the Charter comes into force after the Agreement and then the situation would not arise, but there is a possibility that the Agreement may come into force after the Charter and then the difficulties will still be there. That is why we suggest that, in order to

facilitate amendment to Article I and Article XVI without difficulty, the same procedure of amendment is provided for in this Agreement as is provided for in the Charter.

As to the modification of Tariff Schedules which may result from action taken under provisions, say, under Adjustment for Economic Development and Emergency Action and Nullification or Impairment, I think the case could be met by adding something to paragraph 4 of this Article so as to make exceptions to the procedure laid down in paragraph 2. As to any amendment to these Articles, we are quite satisfied with the provisions of the second sentence of paragraph 2.

CHAIRMAN: The Delegate of China has proposed that amendments to Part I of the Agreement should also become effective upon acceptance by two-thirds of the contracting parties. Is that the proposal of the Chinese Delegation?

MR. D.Y. DAO (China): Yes, Mr. Chairman.

CHAIRMAN: Do any other Delegations wish to speak on the proposal of the Chinese Delegation?

It would not appear that the other Members of the Committee support the proposal of the Chinese Delegation. I therefore think we might take up the suggestion of the United States Delegation with regard to a drafting point to add to the last part of this paragraph the words "and in respect of any other contracting party upon acceptance by it".

MR. H.M. CATUDAL (United States): The words were "and  
other  
thereafter for each/contracting party upon acceptance by it". It

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simply fixes the date.

CHAIRMAN: Are there any comments on the proposal of the United States Delegation?

Are there any objections to the proposal of the United States Delegation?

The Delegate of Cuba.

DR. H. DORN (Cuba): May I only hear the full wording as proposed by Mr. Catudal.

CHAIRMAN: It is to add at the end of the paragraph "and thereafter for each other contracting party upon acceptance by it".

Is that agreed?

The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, up to now I did not wish to intervene in the discussion, but I have listened most carefully to the debate which has taken place. If I did not intervene it was because our Delegation has stated more than once that we are opposed to a solution which did not take into account the principle of automatic substitution of the provisions of the Agreement by the provisions of the Charter.

We could perhaps accept that the provisions of the Agreement be substituted by the provisions of the Charter after a decision taken by the vote of a simple majority, but of course the Chinese proposal would nevertheless be better than the rule which is stated here, the rule of unanimity, which, as I said yesterday, corresponds in fact to adopting a veto rule.

I have not been able to understand, all through the discussion, why certain Delegations resisted the automatic replacement of the provisions of the Agreement by the provisions of the Charter. It has been said that if we adopted such a principle then we would be adopting something which is not yet known and the results which have been achieved here through the tariff negotiations might be jeopardized by the results of the forthcoming Havana Conference. But it seems to me that what we are leading up to here is the inevitability of the provisions of the Agreement and of the text of the Agreement.

I wonder if we could not find another way by which we could, at the same time, maintain the provisions of the Charter and more or less give a safeguard to those who fear the results of the Havana Conference and, on the other hand, make it possible to amend these provisions.

In the Charter it has been stated, in various provisions, that if the advantages acquired through the tariff negotiations are withdrawn, a certain procedure is to be followed, that measures under this procedure can be taken against the Member withdrawing the advantages, and that the other Member may also be able to withdraw the concessions he had made. This would be done in order to restore the balance of give-and-take which had been established.

I wonder if we could not find out and devise a similar provision here in this part of the Agreement. We could perhaps at the same time provide for a text which would write in the principle of automatic substitution of the provisions of the Agreement by the provisions of the Charter, or at least the substitution after a vote taken by a simple majority of the Members, and, on the other hand, take into account the situation prevailing at the time.

Therefore - I am not proposing a draft but just stating a principle - if we followed the principle of substitution of the provisions of the Agreement by the provisions of the Charter, it might result in a loss of the advantages acquired through the present negotiations, and it could be that a Member, with the agreement of the Committee - that is to say, with the agreement of the contracting parties - might take measures against those Members through whom they might suffer that loss of advantages. They might take measures to restore the balance of give-and-take, as I have said, and, if a contracting party wished to do that, such measures might be taken.

I think that if we adopted a provision of this kind, we could avoid the difficulties which are now confronting us and we would be able to reconcile the logical order with the natural order which we are now destroying or ignoring. At the same time we could

give satisfaction to those Delegations which are not willing to risk waiting for the results of the Havana Conference and to those Delegations which think that the principle of automatic substitution is essential if the aims which prompted them to take part in these negotiations, and which they hope to see carried out, are to be achieved.

CHAIRMAN: Are there any other comments on the question of these amendments.

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, as M. Royer pointed out, I think there are really two alternative ways in which we could deal with the question of changes which may be made to these provisions; that is to say, two alternative ways of treating the question of whether they are to be regarded as amendments or not.

The first relates to the principle at present embodied in Paragraph 4, enumerating certain provisions and saying that action taken under them shall not be considered as an amendment. The other way is the one suggested by the United States Delegate, namely, to add, at the beginning of Paragraph 2, the words "As otherwise provided for in this Agreement."

I think I agree with M. Royer that we could take one way or the other, but not both. I am a little inclined to feel that the suggestion which the United States Delegate has made is perhaps the better of the two, because it seems to me that the enumeration in Paragraph 4 may possibly not be exhaustive. It is difficult to say. I think the paragraphs mentioned in the present Paragraph 4 are on the principle that they are cases where there may be permanent modifications made to the Schedules. The Schedules are part of this Agreement; therefore it might be argued that in making permanent modifications you are amending the Agreement.

I think I see why those particular items have been referred to in Paragraph 4, but I am not sure that that enumeration is exhaustive, because you might have action under Article XVII - that is to say, the let-out for economic development - which would also result in permanent modification of the Schedules. If so, the question arises whether Article XVII should be added to the enumeration.

I do not think there is any necessity to mention this Article again, because under both those provisions the action would be purely temporary; it would be merely suspension. There is a sufficient margin of doubt. For that reason, I rather prefer the omnibus form of words involved in Mr. Catudal's amendment. If we accept that, then I think we should delete Paragraph 4.

There is just one other thing: I think we ought to add the word "and" between the first and second sentences of Paragraph 2. Mr. Catudal's amendment would then read as follows: "Except as otherwise provided for in this Agreement amendments to Part I of this Agreement or to the provisions of this Article shall become effective upon acceptance by all of the contracting parties and other amendments to this Agreement shall become effective in respect of those contracting parties. . . ." and so on.

CHAIRMAN: Is the Committee in agreement with the proposal just made by Mr. Shackle on the basis of the proposal first suggested by Mr. Catudal?

The Delegate of China.

Mr. D. Y. DAO (China): Mr. Chairman, although I suggested adding something to Paragraph 4 to cover the cases I mentioned, I am quite prepared to accept the amendment suggested by Mr. Catudal and Mr. Shackle.

CHAIRMAN: Are there any other comments? Are there any objections to the proposal of Mr. Shackle?

Therefore the proposal of Mr. Shackle is agreed.

We have now a small consequential amendment to deal with, which was proposed by the United Kingdom Delegation. It results from the action which we took yesterday of providing for a separate Article to cover Paragraph 1, headed: "Suspension and Supersession." There would then be a new Article commencing with Paragraph 2, headed: "Amendments." As a consequence of that, the United Kingdom Delegation suggests that after the words "provisions of this Article," in the second line, there should be added "or of Article XXVII."

Is the Committee in agreement with that proposal?

M. ROYER (France): (not interpreted).

CHAIRMAN: The way it would now read, if this proposal is accepted, is: "Except as otherwise provided for in this Agreement, amendments to Part I of this Agreement or to the provisions of this Article or of Article XXVII . . ."

Is that agreed?

M. ROYER (France): (Not interpreted).

CHAIRMAN (In reply to M. Royer): Yes.

There would not be two sentences; the word "and" would come between ". . . contracting parties" and "other amendments . . ." in the third line. At the end would be added the wording proposed by the United States Delegation, reading as follows: "and thereafter for each other contracting party upon acceptance by it."

Is the text of Paragraph 2, as now amended, approved?

(Agreed).

As a consequence, Paragraph 4 will be deleted.

We now come to Paragraph 3. The Indian Delegation suggests the deletion of the second sentence of this paragraph.

The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, we suggested the deletion of the second sentence because we thought that somehow it is in some way inconsistent with the second sentence of paragraph 2. Under the second sentence of paragraph 2 the contracting parties can refuse to accept a particular amendment and the amendment will then not become effective with respect to such parties. Under the second sentence of paragraph 3 the contracting party which fails to accept an amendment can be expelled, more or less, from the Agreement. This provision contained in paragraph 3 involves the element of coercion and we thought that it would be undesirable, after having given the contracting parties the option to decide which amendment they will accept and which they will not, to retain this element of coercion in paragraph 3. It has the effect of taking away from the contracting parties the right which paragraph 2 confers on them. We are aware that there is a similar provision in Article 95 of the Charter. We do not like that provision as far as the Charter is concerned and thought we should take this opportunity of bringing this matter to the notice of this Committee.

Moreover, although it is true that, so far as Part II is concerned, the provisions of the Agreement should as far as possible correspond to those of the Charter, the same necessity does not arise in regard to Part III. We could devise for Part III provisions which are different from those of the Charter.

At any rate if this suggestion of ours does not meet with the acceptance of the Committee, we would suggest incorporating here in the General Agreement provisions which are at least similar to those of the Charter, that is the provisions of Article 95. Under Article 95, although it has been provided that a Member not accepting an amendment to the Charter might in certain circumstances

be excluded from the Charter, a provision has been made whereby the Conference may, by a majority vote of two-thirds of the members present and voting, determine <sup>that</sup> this particular provision shall prevail with respect to any such Member.

There is also a further provision in Article 95 that a Member not accepting an amendment shall be free to withdraw from the Organization upon the expiration of six months from the date upon which written notice of such withdrawal is received by the Secretary-General. It seems to us that either we should delete the second sentence of paragraph 3 or else if the retention of this coercive element is considered necessary for the purpose of the General Agreement then we should at least amplify the provisions of paragraph 3 on the lines of paragraph 2 of Article 95.

CHAIRMAN: Are there any comments on the proposal of the Indian Delegation?

The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I think there is much in the Indian proposal here. As far as I can see, the second sentence of paragraph 3 would provide that the Committee - I take it by a majority decision - could make a decision which would lead to the exclusion of one party, whilst the second sentence of paragraph 2 provides for a two-thirds majority for amendments other than those to Part I becoming effective. I would therefore think that there is something to be said for the Indian proposal on this particular paragraph. I am not quite certain whether it would be right to delete completely the sentence in question but I think there is need for some alteration to be made so that paragraph 2 and paragraph 3 would become consistent.

CHAIRMAN: Any other comments?

The Delegate of the United States.

Mr. H.M. CATUDAL (United States): I think also that the language of Article 95 in general is preferable to the language that is at present in the General Agreement. It would need certain modification of course, to make it conform to the form of the General Agreement.

The reason why I think it preferable is that it is clear that there may be some amendments which are made which are of such importance that it is necessary that all the contracting parties agree to those amendments if they are to continue to be part of this Agreement; but those are the exceptional cases. As the language now stands it does seem to give the impression that at any moment the Committee may by some arbitrary action force a Member to get out if he has not agreed to even a minor amendment.

Having said that, I might add that I do not agree with the proposal of the Indian Delegation, however, that the final sentence of paragraph 2 of Article 95 of the Charter be included in this proposal: that was the provision which said that a Member which did not accept an amendment - any amendment - should be free to withdraw from the Organization. It seems to me that here the tariff concessions and other concessions in the Agreement are being made for a period of three years and that if an amendment were adopted, even a minor amendment, which a contracting party did not accept, it would then have a change to get out of the tariff obligations.

So my proposal would be to take the second sentence of paragraph 2 of Article 95 and adjust it to replace the language of the second sentence of paragraph 3, to read something as follows:

"The Committee may decide that any amendment under this Article is of such a nature that all contracting parties which have not accepted it within a time specified by the

Committee shall be required to withdraw from the Agreement; providing that the Contracting Parties or the Committee may, by the affirmative votes of two-thirds of the parties present and voting, determine the conditions under which this requirement shall be waived with respect to any such contracting party".

CHAIRMAN: The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, I would just like to add a few words on the desirability of including in the General Agreement the last sentence of paragraph 2 of Article 95 which gives the right to a member not accepting an amendment to withdraw from the Organization, a right which corresponds to the right of the Organization to exclude such a member. I would only point out to the Delegate from the United States that this process actually enhances the power of the individual Member and particularly an influential Member, a Member who is very important in international trade, to influence the nature of the amendments which are likely to be adopted by the majority.

I would illustrate my point by a simple example. Supposing Part II of the Agreement is not superseded by the Charter and if, let us say, the provisions of the Agreement concerning Economic Development are amended by the majority or by two-thirds majority - such a majority might be conceivable as the membership of the Agreement increases - if the provisions of the Agreement concerning Economic Development are amended by a two-thirds majority on lines which are not acceptable to a Member like the United States, such amendments will certainly not be applicable to a Member like the United States, but in any case those amendments were not intended to apply to such a Member but only to Members which are interested in securing further economic development.

Now, although such amendments are not applicable to the United States, still the standing of the General Agreement taken as a whole may in the view of such a Member substantially diminish as a result of the carrying out of those amendments. In such a situation a Member like the United States would be in a position to threaten to withdraw from the Agreement and thus influence the prospects of such amendments being carried out. It is therefore a privilege which is of value to Members because it gives them a right which corresponds to the right given to other contracting parties to exclude such a Member.

CHAIRMAN: The Delegate of the United States.

Mr. H.M. CATUDAL (United States): Mr. Chairman, I recognize that the Delegate of India has a point. I feel that I have made a point, too, which, it seems to me, overweighs the other point - namely, that by refusing to accept even the most minor amendment, a country would be able to turn this three-year Agreement, insofar as the tariff concessions are concerned, into a very short-term Agreement, and so get out of it. I think that is important.

In the second place, with respect to the particular point made by the Delegate of India, as he has pointed out, a country which does not accept such an amendment would not be bound, insofar as it is concerned, by the amendment. Therefore, it could only be indirectly a factor. It is true that it might be a factor in the sense that the whole Agreement might now become less attractive to it than before. I should be inclined to believe that in those circumstances there would be sufficient recourse under the nullification and impairment provision for it to get satisfaction. In other words, I think we would be prepared to take the risk which is suggested.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): I seem to remember a French maxim about the better being the enemy of the good, and on that basis I rather feel that the good consists in adding the second sentence of paragraph 2 of Article 95 with its proviso, and the better consists in adding also the last sentence. I would therefore suggest adding the second sentence with the proviso, but not the last sentence!

CHAIRMAN: The Delegate of India.

Dr. B.N. ADARKAR (India): If the second sentence of Article 95 is adopted, we would press for the adoption of the third sentence of paragraph 2 of Article 95.

CHAIRMAN: There seems to be developing in the Committee general agreement to the substitution of paragraph 3 by the second paragraph of Article 95 of the Charter, with the proviso; but there is a difference of opinion as to whether or not the last sentence of paragraph 2 of Article 95 should be added. I should like to obtain the sense of the Committee with regard to these proposals, particularly the latter point as to whether or not the last sentence of paragraph 2 of Article 95 of the Charter should be added.

Mr. D.Y. DAO (China): Mr. Chairman, I think that there are two ways of dealing with the situation created by a Member not accepting an amendment. One is that the Contracting Parties would ask the other Contracting Party not accepting the amendment to withdraw. The other is that the Contracting Party not accepting the amendment withdraws himself. If we provided one without providing the other, I think the balance would be tilted.

Furthermore, if the Contracting Party wished to avail itself of the provision relating to impairment and nullification, he could not take such action without the proper cause: the cause is that some other Contracting Party has taken action to which he objects - then he can withdraw under the provision of impairment and nullification. It is a question of whether you accept or do not accept, and if you do not accept the amendment, then you either stay until the other Contracting Parties ask you

to withdraw or you yourself withdraw, so I think that if we provide the one we should provide the other.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): A possible compromise occurs to me. I am afraid it involves laying hands upon the sacred wording of the Charter, but it is this - I am taking the second sentence of paragraph 2 of Article 95 - and it runs like this: "The Contracting Parties may at any time determine that any amendment under this paragraph is of such a nature that all Contracting Parties which have not accepted it within a period specified by the Contracting Parties shall be permitted or required to withdraw from the Organization, provided." etc.

The point of it is that this limits the permission to withdraw or requirement to withdraw to those particular amendments which the Committee regards as important. It does not provide the opportunity for every minor amendment, and I venture to think that it is only in the case of important amendments that there should be the right to withdraw, equally with the power to expel. That is the basis of my compromise suggestion - the words "permitted or" in front of the words "required to withdraw".

CHAIRMAN: Are there any other comments?

Mr. J. MELANDER (Norway): Mr. Chairman, I think the proposal made by Mr. Shackle is a good solution and I support it.

Mr. H.M. CATUDAL (United States): I entirely agree with the proposal - I think it is an admirable solution.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I think

that the solution suggested by Mr. Shackle is the right one. I would only suggest a little different wording and that is the following: "The Contracting Party shall be free to withdraw or could remain party to the Agreement with the consent of the the Contracting Parties". There would be nothing about expulsion. As the amendment is so important, it amounts actually to an entirely new Agreement, so in that case, the Party should be free to withdraw or could remain party to the Agreement with the consent of the Contracting Parties.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I second the proposal just made by Dr. Augenthaler. I think that the substance of the proposal is the same, but the form is a more pleasing one.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I too agree. I think, however, that we would need to add the word "only" in the English version "shall be free to withdraw or could remain party to the Agreement/<sup>only</sup>with the consent" and so on.

Mr. I.C. WEBB (New Zealand): Can we have the text read again?

CHAIRMAN: Would Mr. Shackle read the suggested text?

Mr. R.J. SHACKLE (United Kingdom): It is only the addition of the word "only": "shall be free to withdraw or could remain a Contracting Party only with the consent of the Contracting Parties". I think that the word "only" is needed in English to point the meaning.

CHAIRMAN: If your proposal is adopted, that means that the proviso no longer applies?

Mr. R.J. SHACKLE (United Kingdom): At first sight, I should think we would need to keep the proviso. I am not sure about that.

CHAIRMAN: I have made a draft of the proposal of Mr. Shackle as modified by the suggestions in the Committee and have adapted it, as far as it has been possible, to the language of the Agreement. I think it would then read as follows:

"The Committee may decide that any amendment made effective under this Article, other than an amendment to Part I of this Agreement or to the provisions of this Article or to the provisions of this Article, is of such a nature that any Contracting Party which has not accepted it within a period specified by the Committee shall be free to withdraw from the Agreement, or may remain a Contracting Party with the consent of the Committee, provided that the Committee may, by the affirmative votes of two-thirds of the Contracting Parties present and voting, determine the conditions under which this requirement shall be waived in respect of any such Contracting Party".

Mr. R.J. SHACKLE (United Kingdom): If I might interrupt before the translation, I suggest that we add the word "only", I think, on second thoughts, that the proviso is unnecessary and can disappear. In any case, the word "requirement" is no longer appropriate.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that we could give this task to the Legal Drafting Committee. The words "other than an amendment to Part I of this Agreement or to the provisions of this Article" are useless, because in fact they have to be agreed upon unanimously, and therefore they do not fall within the scope of this provision.

MR. H.M. CATUDAL (United States): Mr. Chairman, I wonder if we need give a draft to the Legal Drafting Committee, I certainly agree with the comments made by Monsieur Royer that these words are superfluous, and it seems to me that we might strike them out at once.

CHAIRMAN: I think it would be desirable to agree at least upon a tentative text which would be brushed up by the Legal Drafting Committee.

Would this text meet the ideas that have been expressed in the Committee: "This Committee may decide that any amendment made effective under this Article is of such a nature that any contracting party which has not accepted within a period specified by the Committee shall be free to withdraw from this Agreement or remain a contracting party only with the consent of the Committee".

Does the Committee agree with that text?

Agreed.

Are there any other comments on paragraph 3?

We will now come to Article XXVIII - "Withdrawal". I would first of all like to suggest that we now change the date, which, of course, was based on the assumption that provisional application would be from November 1st, as we did in the case of Article XXVI. I think we could agree now to change the date to January 1st, 1951.

On page 8 and page 9 of document E/PC/T/W/312, the Norwegian Delegation have certain comments to offer with regard to this Article. The Czechoslovak Delegation expressed a view that any contracting party should have the right to withdraw at any time, since otherwise such contracting parties might find themselves subject, simultaneously,

to two different and equally effective international conventions.

Are there any comments on Article XXVIII?

MR. R.J. SHACKLE (United Kingdom): I have merely two points, Mr. Chairman. In the third line the word "one" should be "any".- that is merely an improvement in the English language. As regards the last line but two, I do not understand the motive of the words "not less than" in front of the words "six months". In the corresponding Article of the Charter, which is Article 97, paragraph 2, it simply says: "A withdrawal under paragraph 1 of this Article shall take effect upon the expiration of six months from the day on which written notice of such withdrawal is received by the Director-General". I cannot see the motive of the words "not less than", but there <sup>may</sup> have been some reason to add it of which I am not aware.

CHAIRMAN: I take it that there is no objection to the first of the changes suggested by Mr. Shackle, that is, to change the word "one" in the third line to the word "any".

Agreed.

The second suggestion of Mr. Shackle is to delete the words "not less than" in the sixth and seventh lines. Is that agreed?

Agreed.

Are there any other comments with regard to Article XXVIII?

The Delegate of China.

MR. D.Y. DAO (China): Mr. Chairman, I have a small point which, I think, can be well taken care of by the Legal Drafting Committee. It is the question of whether it is necessary to have a cross reference because under Article XXI a Member can withdraw.

CHAIRMAN: The Delegate of India.

MR. B.N. ADARKAR (India): I notice that, in the corresponding provision in the New York Draft of the General Agreement, a reference is included to the Article dealing with Nullification or Impairment. It starts by saying "Without prejudice to the provisions of Article XIX", which is the Article on Nullification or Impairment. Similarly, we could say here: Without prejudice to the provisions of that Article and the Article on amendments.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I think that the corresponding passage in the Charter is the opening sentence of paragraph 1 of Article 97. I would suggest that the Legal Drafting Committee should have that in front of them when considering this text.

M. ROYER (France) (Interpretation): There are other texts which should be mentioned here. For instance, Article XXVII, paragraph 2, which we have just adopted here and to which we should also refer.

CHAIRMAN: Is the Committee in accord with regard to leaving the question of cross references to the Drafting Committee?

Agreed.

Are there any other comments with regard to Article XXVIII?

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I only wanted to state that I withdraw our amendment, because when we drafted it it was not quite clear what the position would be with regard to provisional application.

CHAIRMAN: I thank the Delegate of Czechoslovakia.

Are there any other comments on Article XXVIII?

Approved.

Article XXIX. On page 9 of document E/PC/T/W/312 we find that the Czechoslovakian Delegation proposes that the present Article be deleted and replaced by the following text: "The contracting parties shall put in force the provisions of this Agreement by way of their existing commercial treaties. Where there is no commercial treaty existing among the respective countries, this Agreement shall provisionally take the place of such a treaty".

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to withdraw our proposal and propose instead the deletion of the whole of Article XXIX.

I think that the first part is not at all necessary for the simple reason, as I have already stated today, that any later Agreement substitutes the earlier, so that it means that any commercial treaties we have amongst ourselves are superseded by the provisions of this Tariff Agreement, and the first part of Article XXIX is not necessary.

As for the second part, we meet our dear old acquaintance Relations with Non-Members. Well, we were unable to decide in the Draft Charter about what text to propose to the Havana Conference, and the reason was that many countries felt that they could not decide upon this matter because they did not know who would be the future Members of the Organization. Here, there is an even more restricted circle than we may expect at Havana. As for Czechoslovakia, for instance, there is not one single neighbour of

Czechoslovakia present here. We started on this crusade with lofty principles, but also with practical ideas to secure full employment and expand world trade, and so on. I think that no country should be obliged to maintain in relation to non-Members the principles of this Agreement, because it is not sure that the other party would accept those principles, and so long as there is no injury to other Members or other parties to the Agreement, I do not see why any international obligations should be terminated.

To come back to the first part again, I still think that it would be better to omit it because, when we were discussing the question of international obligations and so on, we came to the conclusion that it would also be applied, for instance, to peace treaties and many other international obligations, so we think that it is better to delete the whole of Article XXIX as it stands, especially as the Agreement is a provisional one, and I doubt if any country would be willing to terminate its international relations because of some provisional Agreement.

CHAIRMAN: The Delegate of the United States.

Mr. H.M. CATURDAL (United States): Mr. Chairman, I agree with the Delegate of Czechoslovakia that Paragraph 1 does seem superfluous. We would be agreeable to its deletion.

With respect to Paragraph 2 and the Australian Delegation's proposal to amend it, at the top of Page 10 of Document W/312, I wonder whether there could be any real objection to such a provision. Once the Agreement has definitively entered into force, it seems to me that a country would have to terminate any prior existing international obligation to the extent that any such prior obligation were inconsistent with this Agreement. I am wondering therefore if the Australian amendment here would not be a reasonable compromise which Dr. Augenthaler could accept.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, as the preceding speakers have done, I would like to state also that I think Paragraph 1 of Article XXIX is not indispensable; in fact, it may cause some trouble in certain countries where there is a certain constitutional procedure for the revision of treaties.

As regards Paragraph 2, I wonder if this paragraph is really indispensable. The Australian amendment tends to leave the solution of the question in a rather uncertain way until the definitive entry into force of the Charter. Once the Charter comes into force in a definitive way, the relations with non-Member States will be specified and it is possible that the non-Member States may not be the same as those parties to the Agreement.

We can have two cases: we can have the case of relations with non-Member States because they are not Members of the Organization and we can have relations with Members who are not parties to the Agreement. The second case will be governed by certain rules of the Charter; in the first case the relations with non-Members of the Organization will be provided for by the rules dealing with relations with non-Members of the Organization. I think, therefore, that Paragraph 2 is also superfluous.

CHAIRMAN: The Delegate of Belgium.

Baron P. de GAIFFIER (Belgium) (Interpretation): Mr. Chairman, I do not agree with what has been said by the preceding speakers. I think that Paragraph 1 presents a certain interest. Its provisions are customary in most commercial agreements and it is usual to state that the provisions of a new agreement supersede the provisions of former agreements. This may be an obvious rule of International Law, but it is nevertheless customary to state it.

But it seems to me we have here an Australian amendment to Paragraph 1 and I think Paragraph 1 could be replaced by the suggested Australian text.

As regards Paragraph 2, we would prefer to see it maintained as it now stands, but, in an effort to compromise, we are ready to study Paragraph 2 in the light of the Australian amendment.

CHAIRMAN: The Delegate of Brazil.

Mr. E. L. RODRIGUES (Brazil): Mr. Chairman, I regard this Article XXIX as a very complex one. If we admit that we are dealing with a multilateral agreement, we have to accept the fact that it will be very difficult to have a general provision dealing with this very complex matter.

I would call your attention - if you will allow me, Mr. Chairman - to the different dates for the entry into force of the Agreement. We have a group of countries which can put this Agreement into force at a certain date, and another group which can do so at another date - a much later one. It will be very difficult, especially in regard to tariff concessions, to have supersession of prior international obligations by this multilateral Agreement.

In regard to the amendment of the Australian Delegation, I see more difficulties. I think it will be very hard at this time to have a real idea of what will happen in the near future, especially by June 30, 1948. Because of this, I believe it will be better to delete both paragraphs of Article XXIX.

CHAIRMAN: The Delegate of Cuba.

Mr. H. DORN (Cuba): Mr. Chairman, I agree with all those Delegates who have stated that Paragraph 1 of Article XXIX is superfluous.

As for Paragraph 2, I want to draw attention to a question of substance which, in my opinion, is not quite solved by this Paragraph 2, because it is not quite clear what it means by prior international obligations which are inconsistent with this Agreement. Does this mean that the position obtaining from an international treaty with a third country which has another and different interpretation is inconsistent, or is the inconsistency only if the international treaty with a third country impedes - and that is, in my opinion, the only correct meaning - the maintenance and realization of the obligations stated in the Agreement. Only to this extent could there really be inconsistency between this Agreement and a treaty with a third country.

I think if one could clear up this point it would perhaps be easier to get a formula which would be acceptable to all of us.

CHAIRMAN: The Delegate of the United States.

Mr. H. M. CATUDAL (United States): Mr. Chairman, I am glad that the Cuban Delegate has made this point. It seems to me there has been some misunderstanding and some unnecessary fears because of the language here, which is open possibly to different interpretations.

I have a suggestion to make here, slightly modifying the Australian amendment, which I think would make it very clear and remove some of the objections to this proposal.

I suggest that the paragraph should read as follows: "The contracting parties shall, after the Agreement shall have entered into force under Article XXIV, take all necessary steps to terminate any prior international obligations with any non-contracting party to the extent that such obligations would prevent such contracting part from giving full effect to the provisions of this Agreement."

It seems to me this makes it very clear that this is not a question on a par with the non-Member provisions of the Charter, whereby it may be decided that the Members of the Organization must refrain from giving certain benefits of the Charter to non-Members. All you are asking here is that a contracting party, after the definitive entry into force of the Agreement, should terminate any obligation with a non-contracting party which would prevent the contracting party from giving full effect to the provisions of this Agreement.

I think that is a reasonable compromise upon which we might be able to agree.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): Well, Mr. Chairman, I was going to say this before I saw Mr. G. tudal's amendment. I am not sure whether it is not still perhaps a valuable point.

I am a little distrustful of putting in cast-iron points of this kind. One does not know what the future may bring forth. I should like to see, prefaced to this paragraph, some such words as "unless in any particular case the Committee otherwise decides." This would provide a sort of safety valve, whatever the subsequent decision on the paragraph may be.

CHAIRMAN: The Delegate of China.

Mr. D.Y. DAO (China): Mr. Chairman, you will notice that the Chinese Delegation has produced an amendment to Article XXIX suggesting the suppression of paragraph 2. So we share the view expressed by the Delegate of Czechoslovakia that paragraph 2 seems to us not<sup>to</sup>/be necessary. As long as the text in the Charter relating to relations with non-Members is still undecided we think that it is better to leave out this paragraph until the Charter is made definite in respect to the Members' relation with the non-Members.

Furthermore, in the Charter the non-Member is given a definition. Here we refer to "non-contracting parties". We do not know who are the non-contracting parties. We believe that the Agreement will be open for adherents. Besides these seventeen or twenty nations here who will probably be contracting parties to the Agreement, there will probably be many others who will join the Agreement, so by the time when so many countries have joined the Agreement the proportion of the non-contracting parties will be reduced and then, probably, the difficulties will not be so great; but at the present moment, we find that there may be difficulties for some contracting parties to take steps to terminate their prior international obligations with non-contracting parties.

CHAIRMAN: The Delegate of New Zealand.

Mr. L.C. WEBB (New Zealand): Mr. Chairman, we agree with those delegations who think that Article XXIX could very probably be deleted without endangering what is essential in the Agreement, since we would assume that countries which have initiated tariff reductions have done so with due regard for their existing international obligations.

If, however, the sense of this meeting is against the total deletion of Article XXIX, then we would feel that the most desirable compromise would be really to combine the suggestions which have been made by the United Kingdom and the United States Delegations; that is, that we should take the Australian suggestion for paragraph 2, as amended, very necessarily I think, by the United States Delegate, and then preface it by Mr. Shackle's phrase - I do not know if I caught it correctly - "except as the Committee may otherwise provide". It seems to us absolutely essential to leave some discretionary power in the hands of the Committee because it is absolutely impossible to foresee the type of situation which may arise under Article XXIX, paragraph 2.

CHAIRMAN: The Delegate of Australia.

Mr. E. McCARTHY (Australia): Mr. Chairman, the question seems to us to be in two divisions. As to whether this particular Article is needed at all, our view would rather be that we do not feel very strongly on the question as to whether it should or should not. We would not be very disturbed if it were removed; on the other hand, we would not move to have it remain. But if the view is that it should remain we would be inclined to think that it goes without saying that, if you have signed this Agreement and it is in conflict with other obligations you have entered into, you have either <sup>got</sup> to adjust those obligations or you cannot sign the Agreement.

If it is to remain, however, we are of the view that it should be qualified something in the lines that we have suggested. We would not object to the amendment proposed by the United States representative; in fact, we rather think that it improves the wording that we have suggested. We have some doubts regarding Mr. Shackle's proposal because it does seem that we are trying to

define what might be a legal position that would arise out of our signing the Agreement, and it is just possible that the Committee might take a view that would embarrass a particular country in its relations with a party with which it had an agreement. In other words you have got something which might have rather firm legal implications and you have given the Committee certain discretionary power, and I must say that I am in some doubt whether that would actually work out in practice without some difficulty. I cannot see that there is much room for embarrassment or difficulty where you are defining that. Any obligations that you have entered into in the past and which will prevent you making this Agreement will have to be in some way dealt with; either you will have to approach the people with whom you had obligations and ask them to amend them, or you will have to take some steps to reconcile the fact that you have made a new Agreement which in some way is inconsistent with the prior obligation.

So our view would be that, if it is decided to retain Article XXIX, it should be qualified in the way that we have suggested, and we are prepared to accept the amendment, but we cannot quite see the implications of the United Kingdom proposal and we fear that it might turn out to involve a particular country in some embarrassment with the country with whom it had the prior obligations.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, the Indian Delegation also will support the deletion of the entire Article XXIX for reasons which were so well stated by the Delegates of Czechoslovakia and France.

We would prefer that this question be left over until the final terms of the Charter on questions relating to relations with non-Members are decided. We do not expect that any serious practical difficulties would arise if this Article were deleted.

While the amendment suggested by the Delegate of the United Kingdom goes some way to easing the position, we are afraid that, if we give discretion to the Committee to decide in which particular cases the operation of this Article might be suspended, it might create a serious embarrassment to particular countries. For these reasons we would strongly support the proposal to delete Article XXIX altogether.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I do not want to prolong this debate, and I would only say in defence of my impromptu suggestion, that I do not think it would cause any actual clash. The words I suggested were "unless in any particular case the Committee otherwise decides". The Committee would look at each case on its merits. It seems to me if you had these words there, that is, so to speak, a qualification of the obligation of the parties to this Agreement. That is to say, if there were a conflict with some prior obligation which they had toward a third party, they would only be called upon to adjust that inconsistency if the Committee, on considering the particular case, decided that they ought to do so. I quite see that it may place a discretion which may sometimes be embarrassing on the Committee; but I am afraid the Committee may have to exercise a great many embarrassing discretions anyhow.

So I still think there may be some merit in my suggestion, but I have no strong feelings in the matter.

CHAIRMAN: Are there any other speakers? Mr. Evans.

MR. J.W. EVANS (United States): Mr. Chairman, Mr. Catudal kindly let me take his chair because I had been involved in the

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debates on the Relations with Non-Member clause. But before I say anything I should like to ask whether or not the amendment, with the proposal of Mr. Catudal does not in fact take care of the fears which have been expressed by the Czechoslovak Delegate and the Delegate of France. They were proposed specifically to meet the points and I rather think they do.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I should like to insist that the whole Article XXIX be deleted entirely. My reasons are as follows:

If there is a clash between this Tariff Agreement and some obligations of the respective country with some - I won't say whether non-Member or non-contracting party, there would certainly be a great headache for the respective country as to how to solve this problem, either to remain party to the Agreement or to terminate the other obligations. I do not doubt that the respective party would do its best to do what could be done in the circumstances. If, anyhow, the contracting party would have obligations such as would frustrate any of the other contracting parties, then they might have appeal to Article XXI in which it is clearly stated: "If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement....." and so on "...is being impeded as a result of (1) the failure of another contracting party to carry out its obligations under this Agreement or the accompanying Protocol.....".

So, if I do not carry out obligations of this Tariff Agreement, anybody may come and appeal to Article XXI. If I carry out my obligations under the Tariff Agreement, why should I be obliged to terminate any of my obligations?

The other reason is that here we are placing Article XXIX, dealing with Relations with Non-Members, in Part III. Well, we have not decided what should be in the Draft Charter and here we are placing Article XXIX, which is not even superseded automatically by what should be decided in the Charter. So it means that we renounce for the future any other arrangement which may be in the Charter.

That is why I would strongly insist that the whole Article XXIX be deleted.

Mr. John W. EVANS (United States): I asked for the floor primarily to dispose of any misunderstanding there might be as to the relationship between this clause and the debate on the Non-Member provisions.

In supporting the retention of the clause as amended to accomplish this purpose, we do not feel that the argument bore on the argument which took place concerning Non-Member provisions. The principal point of difference there was the question as to whether or not Members should be permitted to extend to Non-Members the same privileges which they extended to other Members. That point is not at issue here. The only question is whether a signatory may actually violate this Agreement in favour of another Member, and there we would have thought there was no argument at all.

The only problem would seem to be whether you need to express the natural obligation which goes with the acceptance of the Agreement. As to the question of whether it is necessary to express this obligation, frankly we have not felt too strongly that it was necessary to have it expressed, and probably would agree to the deletion of the clause if it were not for the debate that has taken place today and the possible danger that some of the remarks of some Delegates might be misunderstood - and I mean misunderstood - to mean that they feel that they do not have an obligation to terminate an existing Agreement which would conflict with this, I do not believe that there is any Delegate here who would say that this Agreement should be accepted by his country if it is in conflict with an existing agreement, unless he is willing to dispose of the existing agreement. But I am afraid that some of the discussion might be so interpreted. That being the case, in view of the

debate that has taken place and is now on the record, we would prefer to retain the Article with the suggested amendment; but we share with the Australian Delegate some doubts and fears as to the desirability of the wording proposed by Mr. Shackle, and we would suggest that be not included.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I do not wish to prolong the discussion, but it seems to me that there is a misunderstanding. Article XXIX, to my mind, adds nothing to the obligations of the Members. The obligations of the Members appear in the Agreement and we do not make them any stronger by stating it a second time here in Article XXIX.

I think that we all agree here that the obligation undertaken by the Contracting Party to its other Contracting Parties must be carried out, and if a Contracting Party does not live up to its obligation, then Article XXI of the Agreement will come into force.

In Article XXI, there is no difference between a Contracting Party which does not live up to its obligation in the sense that it does not in fact grant the advantages that it granted in the negotiations to another party, and the conflict which might occur between the obligations of the Member under the present Agreement and its obligations under a previous agreement. In fact, Article XXIX has no advantage: it adds nothing, and it may be somewhat embarrassing for certain countries.

Furthermore, under Article XXIX certain legal problems might arise, because it is possible that any provisions could

be added in the Tariff Agreement - new provisions which we have not in mind at the present time. For instance, if anything were added here which would change the scope of paragraph 2 and make it different from the scope which we envisage today, the situation might be embarrassing perhaps for certain countries. This Article is not embarrassing to the French Delegation, but nevertheless as it might be embarrassing to other Delegations, we think that, as this Article does not add anything, it would be far better to exclude it.

CHAIRMAN: The Delegate of the Netherlands.

Dr. G.A. LAMSVELT (Netherlands): Mr. Chairman, notwithstanding all that has been said against this Article, I am still in favour of retaining it, and therefore I would like to support the proposal made by the Delegate of the United States. I would like to go farther and say that I do not see any harm in paragraph 1. It may be superfluous, as has been said, but, at the same time, it is quite true, as has been pointed out by my Belgian Delegate, that you find such provisions in nearly every treaty of commerce.

CHAIRMAN: The Delegate of Canada.

Mr. L.E. COUILLARD (Canada): Mr. Chairman, I merely want to state that I agree with the last remarks of Mr. Royer. I had thought, personally, at first that Article XXIX did more or less complete the Agreement. It is a question which will be in the minds of people reading it as to what happens to prior international obligations; but on reading paragraphs 1 and 2, particularly with the amendments as added by the United Kingdom and the United States Delegations, it seems to me that this

Article does not state anything which is not already taken for granted and which will not be done in any case, as Dr. Augenthaler stated, by the Contracting Parties. Therefore we would support Dr. Augenthaler's suggestion that Article XXIX be deleted.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHLOCKIE (United Kingdom): Mr. Chairman, after listening to this discussion, I have come to the conclusion that it makes no matter what words stand in this Article, or if no words stand there at all. What will happen in any particular case will be precisely the same. If one party considers that another party has some relation with a third party which injures its interests and infringes its rights, it will make a complaint to the Committee under Article XXI or in some other way. The Committee will have to consider the matter and try to sort it out as best it can, and under any formulation or no formulation, we shall have exactly that result. So in view of the majority sense of the Committee, I would be in favour of dropping the Article.

MR. J. MELANDER (Norway): Mr. Chairman, I entirely agree with the statements of the Delegates of the United Kingdom, France and Canada.

There is perhaps one point which could be taken care of. The Delegate of the United States said that he would really also agree to the deletion were it not for certain remarks which had been made during the discussion. I think perhaps that, if there is any doubt about any statements or any arguments made, one could clear up those at the next meeting. I suggest that the United States Delegate goes through the Verbatim Report and that, if there are any doubts, he raises at the next meeting any points on which he feels doubtful, and has the thing squared up completely.

CHAIRMAN: The Delegate of the United States.

MR. J. E. EVANS (United States): Mr. Chairman, I think that the easiest way to clear up this is to have the last word.

In view of the strong feelings<sup>expressed</sup> by many Delegates who would rather have the paragraph out, we should agree to do so on a very definite condition, that is, that we understand, in spite of anything that may have been said today, that no Delegate here challenges the fact that the definitive acceptance of the General Agreement would require that it should not allow any prior obligations to stand in the way of carrying out the provisions of this Agreement, even though that requirement might lead to the termination of existing agreements. Now, if no one disagrees with that statement, we are perfectly willing to see the Article deleted.

J.

CHAIRMAN: I am sure that no Member of the Committee would question the statement just made by the Delegate of the United States, and as the sense of the Committee has been in favour of the deletion of this Article I hope that it will now be possible for the Committee to unanimously agree that Article XXIX be deleted.

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to thank my colleagues for their understanding of this situation.

CHAIRMAN: The deletion of Article XXIX is agreed.

I think that we have done a good day's work, although we have only covered three Articles, but they were not particularly easy Articles.

Tomorrow I propose to take up Articles XXX and XXXI, after which I think we had better consider the Reports of Sub-Committees which have already been submitted and circulated. We will then take up Provisional Application of the Agreement and the Final Act.

The next meeting will take place tomorrow at 2.30 p.m.

The meeting is adjourned.

The meeting rose at 6.15 p.m.