

UNITED NATIONS

NATIONS UNIES

ECONOMIC
AND
SOCIAL COUNCIL

CONSEIL
ECONOMIQUE
ET SOCIAL

RESTRICTED
E/PC/T/TAC/PV/16
11. September 1947

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

VERBALTIM REPORT.

SIXTEENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE
HELD ON THURSDAY, 11 SEPTEMBER 1947 AT 2.30 P.M. IN
THE PALAIS DES NATIONS, GENEVA.

Hon. L.D. WILGROSS (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.

The next Article we come to in our consideration of the General Agreement on Tariffs and Trade is Article ~~XXX~~ - Status of Contracting Parties. In connection with this Article, I would like to draw the attention of the Committee to the proposed re-wording suggested by the United States Delegation and given on Page 2 of Document E/PC/T/W/316. The changes in wording suggested by the United States are consequential upon the decision which we have already accepted in principle, to take Art. ~~XXXII~~ providing for Provisional Application out of the Agreement and cover Provisional Application by a protocol.

Therefore, I think it would be best, that we should adopt as the basis of our discussion the text suggested by the United States Delegation of Article ~~XXX~~ given on Page 2 of Document 316.

Are there any comments on Paragraph 1 of the United States re-drafting of Article ~~XXX~~.

Dr. Z. AUGENTHALER (Czechoslovakia): I think that this paragraph would need re-drafting - only re-drafting - because, as it reads now, a country which would not sign the Agreement would not be considered to be a contracting party. I think our French colleague has already prepared some re-drafting of this paragraph.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I have prepared a new draft of this Article, but I wonder if my draft covers the point which was mentioned by Dr. Augenthaler. The draft I would suggest would be: " The Contracting Parties to

this Agreement shall be understood to mean the Governments which have accepted this Agreement pursuant to Article 24 or would apply provisionally the provisions of this Agreement pursuant to the Protocol". I do not know if this draft would give satisfaction to Dr. Augenthaler.

Mr. R. J. SHACKLE (United Kingdom): I am not sure that I quite understand the difficulty. Does it consist in referring to the text of the main Agreement or to the Protocol of Provisional Application? I am not sure that it is necessarily an insuperable objection. I think all that we could do would be to add something to the Protocol of Provisional Application to pick the point out. I imagine it would be sufficient if we add something to the Provisional Protocol to say that any Government provisionally applying the Protocol shall, for the purposes of such Protocol application, be considered as a contracting party under Article ~~XXI~~. Paragraph 1 of the General Agreement.

I have not thought out all the implications of that but it seems to be the only way if we must not on any account put the Provisional Application in the text.

CHAIRMAN: Any other speakers?

Dr. Gustavo GUTIERREZ (Cuba): I would wish for some information. According to Article XXX the Contracting Parties to this Agreement are held to mean only those countries which are applying the provisions of this Agreement pursuant to Art. XXIV, or to the Protocol of Provisional Application and the nations that sign this treaty not according to Article XXXII but sign the document in the period set forth up to June 30, 1948, are they not signatories and are they not contracting parties?

CHAIRMAN: As I proposed at the outset of our meeting, we are taking as the basis of our discussion the amendment proposed to this Article suggested by the United States Delegation, and given on Page 2 of Document 316. According to this definition the contracting parties would be those who are applying the provisions of the Agreement according to Article XXIV or to the Protocol of Provisional Application. In other words, the country which has signed the General Agreement but is not yet applying its provisions would not yet be a contracting party according to this definition.

It might be useful, first of all, to deal with the proposal submitted by the French Delegate, which is, I take it, to change the words "are applying the provisions" in the third and fourth lines to "have accepted", and in the fifth line to add the words "which are applying the provisions of this Agreement pursuant to the Protocol of Provisional Application". So, if the French Amendment were adopted, the text would read: "The contracting parties to this Agreement shall be understood to mean those governments which have accepted this Agreement pursuant to Article XXIV or which are applying the provisions of this Agreement pursuant to the Protocol of Provisional Application accompanying this Agreement."

Mr. G. Winthrop BROWN (United States): I think the suggestion of M. Royer is an improvement on our draft and makes it clearer.

Mr. SHACKLE (United Kingdom): I withdraw my excessive purism. I think there is no objection to referring to the Provisional Application because, after all, the Protocol of Provisional Application is directly annexed to the Agreement.

CHAIRMAN: Are there any objections to the amendment proposed by the French Delegation.

(Agreed).

Any other comments on Paragraph 1 as amended by the French Delegation?

I take it then that the Committee agrees with Paragraph 1 of Article XXX as amended.

Paragraph 2 of Article 30.

The United States re-wording of this Paragraph reads as follows: "At any time after the entry into force of this Agreement pursuant to Paragraph 5 of Article XXIV may decide that any contracting party which has not so accepted this Agreement shall cease to be a contracting party."

Are there any comments on Paragraph 2.

Dr. Z. AUGENTHALER (Czechoslovakia): I have only a drafting point. I would suggest that instead of "may decide" we say "may state" because it is not a question of decision but a question of stating the fact.

Mr. Winthrop BROWN (United States): Mr. Chairman, I do not think that would give quite the right impression in English which we want to give. The point is that the contracting parties can make a decision to the effect that someone who has waited too long in their provisional application status shall cease to be a contracting party; and after that it does cease to be a contracting party. Whereas if we just say that they say so, it does not carry any connotation of that established fact. But the French may, of course, have a slightly different interpretation.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that there would be some interest in adding a few words at the end of this second paragraph, words reading as follows:

"..... may decide that any contracting party which has not so accepted this Agreement shall cease to be a contracting party until the time when it will have accepted this Agreement pursuant to the provisions of paragraph 3 of Article XXIV".

It seems that unless those words were added a party which did not ratify the Agreement under the conditions laid down here would not have the possibility to become a contracting party, and I think we should leave the door open for a contracting party to have the possibility to transform its provisional application into a definitive acceptance of the Agreement. In the meantime its right could be suspended.

Mr. Winthrop BROWN (United States): If you did that, then you would have to spell out what happened if the party did not become a contracting party definitely at the end of the period, and it is much better to leave this as it is because then the contracting parties can decide on any terms they want. They are not likely to reach a decision of this importance unless there was a clear case of one of the parties adopting dilatory tactics, and I think it likely that they would consult before they took any action of this kind. Is it not better to leave the parties free to decide on what terms, if any, they think it suitable to make their decision, rather than try to define it here, which would mean putting in some long and complicated sentences.

CHAIRMAN: Are there any other comments?

The Delegate of China.

Mr. D.Y. DAO (China): Mr. Chairman, our definition is given in paragraph 1 of Article XXV: the contracting parties mean the governments which ^{have accepted} ~~are applying~~ the Agreement. In paragraph 2 it says that those contracting parties which have accepted this Agreement pursuant to paragraph 3 of Article XXIV may decide that any contracting party which has not so accepted..... I think there is some confusion. I would like to change it to "may decide that any government signatory to the Final Act which has not accepted".

Mr. Winthrop BROWN (United States): I think the interpretation of the Delegate of China would be correct if it were not for the fact that paragraph 1 also refers to a party which is provisionally applying under the Protocol of Provisional Application and paragraph 2 simply takes care of the case where most of the contracting parties accept the definite obligation

of the Agreement and then decide that one of the contracting parties which is still on a provisional basis won't make up its mind and come in definitely or else stay out. So I think it is necessary to have this to take care of such a case.

CHAIRMAN: Are there any other comments?

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, just one question. I read here that the parties which will be considered as contracting parties are the Governments which apply the provisions of this Agreement pursuant to paragraph 3 of Article XXIV. Are we referring exactly here to paragraph 3 of Article XXIV?

CHAIRMAN: I think there has been a re-numbering of these paragraphs, which is confusing. Paragraph 3 of Article XXIV is the old paragraph 2, and paragraph 5 is the old paragraph 4.

M. F. Garcia OLDINI (Chile) (Interpretation): Thank you, Mr. Chairman.

CHAIRMAN: Are there any other comments on this paragraph? Is there any support for the suggestions which have been made in respect of this paragraph?

Can I take it that in the light of the discussion which has taken place, the Committee is in accord with the wording of this paragraph as given on page 2 of Document W/316?

Agreed.

Article XXXI - Adherence. We find on pages 10 and 11 of Document W/312 various suggestions with regard to this Article.

First of all, the United Kingdom Delegation proposes to change the title from "Adherence" to "Accession", and to substitute in line 1 the word "accede" for the word "adhere".

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, this is purely a question of conventional terminology. In the conventional terminology which we, at any rate, use in our commercial treaties (I do not know whether it has universal acceptance or not, but it is our standard practice), we use the terms "accede" and "accession" to apply to the case of countries who become parties to an Agreement after it has come into force. On the other hand, the word "adhere" is completely timeless, and denotes a country which becomes a party at any time. It is in order to preserve this distinction that this change was suggested, but, as I say, it is purely a question of

our conventional terminology, and if other people's terminology is different, I do not want to press it very hard.

CHAIRMAN: Are there any objections to the changes proposed by the United Kingdom Delegation?

M. ROYER (France) (Interpretation): Mr. Chairman, it would be understood that there would be no change in the French text.

Dr. GUTIERREZ (Cuba): Mr. Chairman, this term has a very well-known meaning in international law, and I quite agree with the suggestion made by the British Delegate; but I do not see how we can say "accession" in the English text if we cannot say it in the French.

CHAIRMAN: May we agree to the word "accession" in English, and leave the Legal Drafting Committee to decide how it should be expressed in French?

Is that agreed? Agreed.

Dr. GUTIERREZ (Cuba): Mr. Chairman, before passing on, I would like to know what the position is going to be in relation to "Governments not parties to this Agreement". We should not say "Governments", we should say either "countries" or "States".

CHAIRMAN: We have already had a lot of discussion concerning the word "Governments".

Dr. GUTIERREZ (Cuba): I know, but it was accepted by the Czechoslovak Delegation and not by us. I thought we had left this question open.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I am in general agreement with what Dr. Augenthaler just said, for the reason especially that this Protocol may very well be signed after the Havana Conference, and it would seem a bit odd to sign a Protocol where you make certain references to a Conference which has not already been held. I think it is better to leave out that reference and go directly to the main point which is the last paragraph.

Mr. R.J. SHACKLE (United Kingdom): A small point, Mr. Chairman. It seems to me that the form suggested by Dr. Augenthaler would be quite all right, except that I feel you have to make some reference to the Governments, because this is not a personal agreement between individuals, so you have to say something like "agree as follows on behalf of their respective Governments" and then set out whatever the Agreement is. I think it is necessary that there should be some reference to the Governments. Otherwise I think the suggestion of Dr. Augenthaler would be satisfactory.

CHAIRMAN: Could we agree on some such text as that and meet Mr. Melander's point by deleting the reference to the Conference and simply refer to the Charter?

Mr. J.M. LEDDY (United States): I do think we must refer to the Charter recommended to the Conference by the Preparatory Committee. That is the only document that any of us know about, and some of us will be signing before the Conference.

CHAIRMAN: Perhaps, as the hour is getting late and we have to adjourn in order to be back here for our meeting at 9 o'clock, we could leave it to the Secretariat to redraft these first

of provisional application, we would consider the Reports of the two Sub-Committees which have already circulated their Reports, and whose Reports have been in the hands of Delegations for more than twenty-four hours. We have the Report of the ad hoc Sub-Committee on paragraph 3 of Article I, given in Document T/192 of 9th September.

M. ROYER (France) (Interpretation): Mr. Chairman, do we, for the time being, reserve the formulae of the Agreement - "In Witness Whereof...?"

CHAIRMAN: No, we can deal with that, perhaps, now. It would be just as well to take that up, and I am glad the French Delegate reminded me of it.

Mr. D.Y. DAO (China): Before you go on to the Report of the Sub-Committee, may I call the attention of the Committee to the fact that on page 11 of Document W/312 there is a suggestion from the Chinese Delegation that a provision may be added to the Agreement regarding registration of the Agreement?

CHAIRMAN: I thank the Chinese Delegate for calling that to my attention. It seems to me that we have been inclined to go too quickly, and we have overlooked two important parts of the Agreement. I think it might be logical to take up, first of all, the proposed new Article, suggested by the Chinese Delegate. The text of this Article is given on page 11 of Document W/312. The Article is headed "Registration of the Agreement".

Mr. D.Y. DAO (China): Mr. Chairman, if acceptable to the Committee, I would suggest that the provision might well be added at the end of Article XXIV, and the title of Article XXIV be changed to "Signature, Entry into Force and Registration".

CHAIRMAN: The Chinese Delegation proposes that this new text be added as a final paragraph to Article XXIV and that the title of that Article should then read "Signature, Entry into Force and Registration".

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, in the Charter of the United Nations, Article 102 reads:

"Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations".

I wonder, therefore, if there is any need for this Article, which only says that the United Nations is authorized to effect the registration, while in the Charter we have an obligation to register the treaties. I do not think there is any need of this new provision.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, this provision is parallel to paragraph 3 of Article 98 of the Charter, and I recall that when we were discussing Article 98, paragraph 3, the point which Dr. Gutierrez has raised was also raised then, and the answer given, as I remember it, was that this is, in fact, an authorized labour-saving device in

that under Article 102 of the Charter of the United Nations, every individual party would have a separate obligation to register this treaty with the United Nations. This is with a view to making that combined operation-- at least, it is not a combined operation - it is a multiple operation-- unnecessary, and a single registration, as I understand it, can be effected by the Secretariat of the United Nations under the powers which they have already been given. That was the explanation which was given on Article 98, paragraph 3, as I recall it.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, that may be the reason for the new text, but that is not said in the new text. If the wording of the text is changed so that it states what has been expressed, I am willing to accept the Chinese amendment; but at present it does not state it.

CHAIRMAN: Are there any other comments?

Mr. R.J. SHACKLE (United Kingdom): There is one question which occurs to me, and that is, whether this registration would be effected on provisional entry into force or only definitive. I do not know whether one can suggest the answer to that.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I think this is a question to be considered by the Legal Drafting Committee.

CHAIRMAN: I fear that that would be going outside the terms of reference of the Legal Drafting Committee. They are not supposed to decide questions of substance - only legal and drafting points, and this is a question of substance

in which all Members of the Committee are interested. Therefore, I think we should take a decision on the Chinese amendment. It would be quite in order to have a small group study it, but I think we should avoid referring it to the Legal Drafting Committee. Questions which really are matters of substance and of interest to all Delegations.

J.

CHAIRMAN: The Delegate of France.

M. ROYER (France (Interpretation)): Mr. Chairman, I think that the draft would be improved if, instead of saying "The United Nations is authorised", one said "The United Nations is requested to effect the registration of this Agreement". In fact, using the word "authorised" would ^{be} contrary to the United Nations Charter, and we do not authorise the United Nations to do something which it is already authorised to do.

As regards the question raised by Mr. Shackle, I do not think that that is the point here, because the text of the Agreement never speaks of provisional entry into force, it only speaks of entry into force meaning the definitive entry into force of the Agreement. It only speaks of the provisional application of the Agreement and never of the provisional entry into force.

CHAIRMAN: The Delegate of China.

MR. D.Y. DAO (China): Mr. Chairman, we accept the amendment proposed by the Delegate of France to change the word "authorised" to "requested".

As to the question of whether it means the definitive entry into force of the Agreement or the provisional application of the Agreement, when we suggested the amendment we had in mind the definitive entry into force of the Agreement.

CHAIRMAN: The Chinese Delegation has accepted the suggestion of the Delegate of France to change the word "authorised" to "requested", so that the text will now read: "The United Nations is requested to effect the registration of this Agreement as soon as it comes into force".

Are there any comments on this proposal?

The Delegate of France.

M. ROYER (France) (Interpretation): It would be clearer to insert the word "hereby" before the word "requested", which is the same formula which was adopted to convene the meeting.

CHAIRMAN: Are there any other comments?

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I would just remark that in due course this question might possibly arise with regard to Article 93, paragraph 3, of the Charter.

CHAIRMAN: I would like to obtain better the sense of the Committee regarding the Chinese proposal. The Chinese proposal has been supported by the Delegate of the United Kingdom, but has been opposed by the Delegate of Cuba. It is very hard to tell how the other Delegations feel about this and I would welcome any expression of opinion.

DR. G. GUTIERREZ (Cuba): Mr. Chairman, I agree with the new text as suggested by the French Delegate.

M. ROYER (France) (Interpretation): Mr. Chairman, I would simply express the wish now that the United Nations finds a simpler mechanism to register the treaties which are concluded under its auspices than inserting in each treaty which is signed a clause by which the registration has to take place. The same situation occurred before the war at the time of the League, and one never had to insert then a special clause in the treaties which were signed, the registration was done automatically.

CHAIRMAN: I think myself that a clause to this effect is unnecessary, and, as the Delegate of France has said, this clause would be superfluous. By the Charter, each Member of the United Nations has to register treaties or agreements, and the only point in having a clause like this in would be for the same reason that Mr. Shackle referred to in connection with the corresponding Article in the Charter, that is, the saving of the time of all the Members of the International Trade Organization from having to take steps to register the Charter. In this case, I think the provision is somewhat different, and I doubt whether a clause to this effect is really necessary.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I wonder if it would be worth while asking the Legal Advisers of the Secretariat about this, because I am under the impression that there is a ~~resolution of the UN~~ ^{resolution of the UN} ~~method of assembly~~ ^{about} registration, and we could ask them how this is done. We could return to the question of whether it is really necessary when we have heard from the Legal Drafting Committee.

CHAIRMAN: I think that is a useful suggestion of Mr. Shackle's, and if the Chinese Delegation have no objection I suggest that we act upon it.

We will now take up the Formula at the end of the Agreement starting with the words: "IN WITNESS WHEREOF the respective Representatives.....". The United States Delegation have suggested some amendments to this Formula which are given on the bottom of page 2 in document E/PC/T/W/316, so we can consider the Formula in the light of the proposal for the changes submitted by the United States Delegation. Are there any comments on this Formula as

J.

amended by the United States Delegation?

MR. R.J. SHACKLE (United Kingdom): I just wanted to ask a question, Mr. Chairman, it may be a silly one. I do not quite understand how "Done in a single copy" works. I suppose you will have a parallel text, as it were, in English and French, and a single set of signatures at the end. Is that what is contemplated?

CHAIRMAN: I might state for the information of the Committee that this question was studied yesterday by the Tariff Negotiations Working Party when they were considering a circular shortly to be issued by the Secretariat dealing with the mechanics of the final stages of these deliberations.

The conclusion which was reached by the Tariff Negotiations Working Party was that it would probably be best to have the document signed in two copies, one copy in English and one copy in French. Certain Members of the Tariff Negotiations Working Party did express a slight preference for a single copy, which does envisage parallel columns, that is, either parallel columns or English on one side and French on the opposite page. We felt that that would give rise to certain complications in connection with attaching schedules, and therefore we came to the conclusion that the best form might be to have a signature on two copies, that is, one copy in English to which would be attached the copies of the schedules in English, some of which would be authentic and some of which would not be authentic; then, there would be a signature of the copy in French to which would be attached copies of all schedules in the French language, some of which would be authentic and some of which would not be authentic, according to which, whether ^{the} French or English copy of the Schedule, each Delegation decided was to be the authentic copy in that particular

case.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I must state that I was one of the Members of the Working Party who thought that the English and French texts ought to appear in a single copy side by side. It was not to economise the signatures of this Agreement, but we thought that it would be the best presentation. Nevertheless, we would not press our point in view of the difficulties which were mentioned by the Secretariat.

Now, I think that we will have to modify this draft slightly with regard to the words "and have affixed their seals hereto". I do not know if the Legal experts of the Quai d'Orsay will think that the Agreement is valid without affixing a seal, but nevertheless I hope that they will not raise too many difficulties.

CHAIRMAN: The question of the seals was also discussed at the meeting of the Tariff Negotiations Working Party yesterday, and their recommendation /^{which} will be circulated in the paper to be issued by the Secretariat was that there should be no seal. So, if we agree with that, we can delete the words "and have affixed their seals hereto" in paragraph 1, and if we also agree on having two copies signed, one in English and one in French, we shall return to the former wording "Done in duplicate" in the English and French languages". I would like to know if the Committee agrees with both those suggestions.

MR. W. BROWN (United States): Mr. Chairman, I would entirely agree with that suggestion, owing to the difficulty of transporting the seals from Washington.

CHAIRMAN: Are there any other comments?

Those changes are agreed.

Are there any other comments with regard to the Formula?

Approved.

CHAIRMAN: We can now take up the reports of the Sub-committees. The first report of the Sub-committee for us to deal with is that of the ad hoc Sub-committee on Paragraph 1 of Article 1 in Document T/192.

Dr. Coombs, the Chairman of the Sub-committee, is not present and I am wondering if Mr. McCarthy would give us a short report on the deliberations of the Sub-committee.

Mr. E. McCARTHY (Australia): I would like to say, Mr. Chairman, the Draft as circulated, in the view of the Sub-committee, correctly states what was believed to be the original intention laid down in the Draft and, whilst one or two of the Sub-committee did subsequently think that sub-paragraph (a) might be rather improved in language, we still believe that it correctly states the objective of the paragraph. We would be prepared to suggest a slightly altered wording to 3(a) but we think it could be handled by the Legal Drafting Committee.

CHAIRMAN: Any other comments.

The Delegate of Brazil

Mr. E. L. RODRIGUES (Brazil): Mr. Chairman, my colleagues have read a request in the meeting dealing with this matter which I feel was not taken up by the Sub-committee. If we accept that the margin of preference should be reduced - if it is the common purpose of this Conference - I think it would be wise and fair to take into consideration the percental relation and not only the arithmetical basis between preferential rates and the Most-Favoured-Nation rates. Otherwise, in some instances, instead of reducing really the margin of preference it will increase it. I believe it will be preferable, if we cannot have the draft to take care of this, to have at least an explanatory note to assure

every interested country that in no case would the margin of preference be raised. I have a great admiration for all countries who sign the preferential rates and understand the political and economic reasons for that, but if this conference intends to increase the margins of preference, I think we have arrived at the time to deal properly with this matter, and because the Brazilian Delegation takes a great interest in this matter, they would ask you and the other Delegates to arrive at a conclusion about it.

Mr. SHACKLE (United Kingdom): I have the impression that this paragraph^{is} simply intended to place on record the results of the negotiations. In a sense, it is an explanation of the too short and simple wording used in the London version. I would not have thought we should enter into such questions here and I do not see any need for a reference of this kind.

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, it is possible that the suggestion which was made by our distinguished colleague from Brazil may offer certain difficulties if we want to stress it. But the Brazilian Delegate pointed this fact out himself. Nevertheless, the aim of such a note, I think, should be recorded here. If I understood rightly what the Brazilian Delegate meant, it was that we ought to insert a note stating that it was understood that the preferences should not be raised and that the margin of preferences should not be raised. In fact this principle appears in the Charter and I see no inconvenience that this principle should also appear in the Agreement in one form or another in any draft.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): It seems to me the whole point of Paragraph 3 is to say that margins of preference shall not exceed certain levels which have been arrived at in the course of these negotiations. Therefore the principle of not increasing margins of preference is the purpose and the fact of this paragraph as it now stands. I do not see why it needs to be changed. So far as the question of future negotiations is concerned, the guiding rule should be whether the absolute margin of preference governs all the salient points in the preference. It seems to me that is a practical matter which has been decided, because we started out in these negotiations last April on the basis of using the absolute margin and if we change that principle now we would have to draft out our own negotiations.

CHAIRMAN: The Delegate of Brazil.

Mr. E. L. RODRIGUES (Brazil): Mr. Chairman, perhaps the real meaning of my remarks was not understood by the Delegate of the United States. I understand that this Article 1, and especially sub-paragraph 3, constitutes a kind of machinery for dealing with preferences for the treatment, and generally Most-Favoured-Nation treatment, including preferential rates. We are not taking into consideration the present aspect of this problem; we are more concerned with the future consequences of this problem. We understand that through tariff negotiation we reached a certain level of the margin of preferences, but later on, in regard to negotiations between countries which have no preferential rates there will be some intention to make some further reduction of tariffs to include the countries with preferential rates, and the practical result will be, in many

cases, that instead of reducing the margin, the real difference between both the preferential rates and the Most-Favoured-Nation rates will have increased the rates for the preferential rates; that is, assuming that at present we have a preferential rate for a certain article of nine per cent and ^{later} in the Most-Favoured-Nation rate of ten per cent. Later on we reduce the preferential rates to four per cent and the Most-Favoured-Nation rate to five per cent. In the first case we have 10 per cent of difference; now we have 20 per cent; and this also could be increased to 50, 100 and so on, and there is no limit.

I believe the intention of everybody is to increase the tariff on both sides. If so, I think we must take care of these facts. I believe that the representative of Chile has expressed my own views in the proper way.

CHAIRMAN: I do not want to curtail the discussion of the point raised by the Delegate of Brazil, but I am wondering if he is quite correct when he states the purpose of Article 1 is to set up machinery or the organization for giving effect to the Most-Favoured-Nation clause and the reduction of preferences. I think that this point has arisen before in a number of other Articles, and we have to make a clear distinction between the rules governing negotiations and expressing the results of the negotiations in the General Agreement. That is all we are endeavouring to do in the General Agreement - to set forth the results of the negotiations. The rules governing the negotiations are set forth in the Charter, and we have in Article 17 ^{of the} Charter the rules governing the reduction of tariffs and the elimination of preferences. Therefore, the point which has been raised by the Delegate of Brazil would have been

quite a proper one for him to have raised when Article 17 of the Draft Charter was being discussed; but it has, I think, from the outset been assumed that the margin of preference means the difference between the preferential rate and the Most-Favoured-Nation rate, and that has been the basis on which our discussions have been conducted in London, in New York and in Geneva.

It is therefore a little difficult for us at this stage to take into account a proposal of this kind particularly as it is one relating to the rules under which negotiations took place, and such a discussion more particularly belongs to the discussion of a relevant Article in the Charter than the relevant Article in the Trade Agreement which is giving effect to the results of the negotiations.

The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I do not think that you were quite right when you stated that the Brazilian Delegate ought to have raised that question when Article 17 was under discussion, because I think this point is already included in Article 17. In Article 17 the following principle is spelt out: "No margin of preference shall be increased". I quite agree that the Charter provides a mechanism for future negotiations but nevertheless we find no corresponding Article relating to this principle in the Agreement which we have now before us. I think we ought to insert this principle which is an essential one and in fact it would translate into the real facts the provisions of this principle. What I mean is we ought to translate in the Agreement the provisions of paragraph 2 of Article 17. There is an aim which we are seeking to achieve here, when we speak of margin of preference and preferential rates, and in the text which was submitted to us by the Sub-Committee^{we}/see that there is a certain listing of cases in which the margin of preference shall not exceed..... etc. Therefore, if we state that in certain cases the margin of preference shall not exceed, I do not see why this should not serve us as an opportunity to insert the principle to which I have referred.

M. Pierre FORTHOMME (Belgium): Mr. Chairman, it seems to me that the debate shows that it would be useful for this Committee to go on record as being of the considered opinion that:

First of all, as the Draft Charter which the countries here represented, being constituted in Preparatory Committee, recommend to the World Conference stipulates that in all tariff negotiations conducted with a view to accession of the General Agreement on Trade and Tariffs no margin of preference should be increased, we were of opinion that in the - we could say - original and founding negotiations of the General Agreement on Tariffs and Trade no margin of preference should be increased.

Secondly, that for practical purposes we have agreed that, for these negotiations and for all future negotiations, the margin of preference should be considered to be not the proportionate difference between the Most-Favoured-Nation rates and preferential rates but the absolute difference; I say "for practical purposes" because I think that what is important from the commercial point of view, from the trade point of view, is not so much the proportional difference between two rates but the translation of that difference of rates into the prices which exporters of a Most-Favoured-Nation country and exporters of a Preferential Rate country have to charge in order to be able to compete in a market.

Another practical consideration is this: that I do not see how the proportionate principle will work in the case where the preferential rate is exempt from duty and the Most-Favoured-Nation rate is any duty whatever. What is the proportion between nothing and any given quantity is I think a mathematical problem.

CHAIRMAN: The Delegate of Brazil.

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, I am sorry to delay the work of the Committee, but I always try to learn from you and from the other Members of the Committee, and if at this time I insist, it is not because I do not accept your views: I accept them but they have not convinced me.

First, I should like to emphasise that even if you do not think it is a very proper time to deal with this matter, because it should have been treated during the discussion of Article 17 of the Charter, I have some reason for raising this question at this time, because we have the word "difference" included in Article I, paragraph 3, and the real meaning of this word will cover our case. If you put the word "real" before it, then, if that meets with the acceptance of the Committee, it will meet our desire that there

will be no case in which any country could increase the real margin, the real difference, between Most-Favoured-Nation and preferential rates. I think my point is very clear. If you can get agreement I should be very glad, because I feel this is a very important matter not only for Brazil but for any country represented here.

The explanation given by Mr. Forthomme to a certain extent would be sound, in my opinion, but in some cases, especially in regard to some special product, it would not; because everybody knows that the real burden of taxation means, in the case of a great concession, a great deal. In regard to coffee, for instance, and other products, an increase by way of diminution of the absolute figures of both rates will give to a country a much better position to compete. Because of this, without the intent to delay the work of the Committee much further, I should like you to give some attention to my remarks.

Mr. R. J. SHACKLE (United Kingdom): Mr. Chairman, it seems to me that at any rate part of the answer to the Brazilian Delegate's point is surely that these negotiations are not necessarily final ones. But if as a result of ^{autonomous duty changes} increase of efficiency of production a situation arises that a particular rate is inequitable or damaging to a country's interests, presumably it would ask for re-negotiation at some future date. That is not excluded.

I should have thought there ^{could be} ~~was~~ the utmost idifficulty in introducing a proportionate rule, and while I am not a mathematician it seems to me that the relation between nought and any other digit is ^{infinite} ~~infinite~~ and if you had a free entry rate all things would be permissible! I would ask that that remark should not be taken seriously.

As regards the suggestion made by Mr. Forthomme, it seems to me that the purpose of this General Agreement is to place on record the agreed results of the negotiations which at the time of signing

will already have taken place, and for that reason I do not really see the relevance of laying down general rules which it seems to me will exclusively relate to the process of negotiation. At the time this General Agreement is signed we shall all have ~~got~~ agreed on ex hypothesi mutually advantageous results and surely, so to speak, that will be that. I do not see the use of introducing rules which are only relevant ~~to one case~~ while negotiations still continue and, as I have said, the point of this paragraph 3 will only be to set on record what are the preferential margins which in future may not be increased. That I should have thought was its sole purpose. Thank you.

CHAIRMAN: Are there any other comments?

The Delegate of the Lebanon.

M. Moussa MOBARAK (Lebanon) (Interpretation): Mr. Chairman, the margins of preference can be calculated as an absolute value or as a percentage, and this depends on the bilateral agreements which have been signed by the various countries.

In the case of the Lebanon and of Syria, and of the Agreements which link these two countries with neighbouring countries, the margins of preference are calculated in percentage, and the difference -that is, the margin of preference- is one-third of the Most-Favoured-Nation rate, and if the rates should be raised or decreased, these differences would also be calculated as a percentage.

CHAIRMAN: The Delegate of Australia.

Mr. E. McCARTHY (Australia): With a view to assisting in getting at the sense of the meeting, Mr. Chairman, we should like to record our views. This particular paragraph is designed purely to record the position of the tariffs of the countries subscribing to the Agreement when all the negotiating work is done.

There is, I think, a good deal in principle in the point raised by the Brazilian Delegate, but that point, as I think you yourself said, could ^{have been} raised when the basis of the negotiations for the alteration in the tariff rates was being considered. But when this work is finished, there will be new rates as a result of the negotiation on the Trade Agreements and of the signing of the Trade Agreements, and there will be the old rates which have not been altered at all. This paragraph is designed to set out the relationship between the two rates

and the tariff which should be drawn up.

I, too, think that if you did admit the principle that you should express any alterations in the rates by percentages or by proportionate calculations, that you would have to contemplate other directions in which the incidence of the tariff was frequently altered after it had been arrived at.

It would be a much greater anomaly - and cases do arise - when specific rates are decided upon for some years and then the currency value is altered and you find the ad valorem equivalent of the specific rates altogether unchanged, and that certainly alters to a degree the value of the preferential margin.

I think it could be admitted that there is a certain anomaly in recording the actual rates and deciding that any change has got to be expressed in those rates; but we cannot see any method by which you could alter it, and we do think that if it had been introduced as a factor in negotiations, it would have an almost impossible task to assess the changes which take place, and to try and get at the actual incidence of the rates.

Our view would, therefore, be that whilst we agree that there is a good deal in the principle put forward by the Brazilian representative, we do not see that it can be altered in this particular paragraph at all, and even if it had been introduced when the basis of negotiations for the alterations in tariffs were under consideration, great difficulty would have been experienced then in setting down a set of rules for assessing margins and rates other than on an absolute basis.

(after interpretation): Mr. Chairman, could I add

something which I forgot to say?

I would not wish what I said to be an encouragement to the idea that you could negotiate margins on a percentage basis, because that would affect your negotiations. Your margins are arrived at, in all cases where they are a result of your negotiations, by negotiation, and if you alter the measure of the margins you are negotiating, that affects your negotiation. So the recording of the Trade Agreement results is a result of factual negotiation, and that would mean, if your method of assessing your margin were altered, the value or the weight that was attached to the alteration.

CHAIRMAN: I think we are under a debt of gratitude to the Brazilian Delegate for having raised this question, because it has shown that there are some doubts in the minds of certain Delegations as to the interpretation which should be put on sub-paragraph (iv) of sub-paragraph (a) of paragraph 1 of Article 17 of the Charter, which reads "No margin of preference shall be increased".

I think we have assumed all along that margins of preference meant the difference between Most-Favoured-Nation and the preference rate, and that has been the basis on which the negotiations have been conducted. I think it would be wise for the Delegations here to give consideration to this particular provision in the Charter, and if there are any doubts, I think it would be well if they could be cleared up at the Havana Conference.

Like the Lebanese Delegate, I might say that Canada also has preferences which are expressed in the form of percentages. That was a common practice some years ago of expressing preferences. Then the development took place whereby margins

of preference were expressed in terms of the difference between the Most-Favoured-Nation and the preference rate, so we have both types of preferential arrangements; but I do not think we would consider that we would be following out the provisions of Article 17 if, in the case of a country to which we had accorded 50% preferential difference, we were to increase the duty, which is now a dollar, and therefore the preferential rate of 50 cents would be increased to two dollars. We would not feel that we were carrying out the provisions of Article 17 if we merely increased the preferential rate to one dollar, even though that would be according to the terms of the Agreement signed with that country. We would consider that the provisions of Article 17 would require that the margin of preference should not be greater than 50 cents.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, up till now I had no doubts, but now I have some doubts! If you reduce the margin of preference without touching the tariff, you will merely increase the duties for that nation and that is perfectly acceptable. It does not go against the principle, which is not to increase the margin of preference - it does not say anything about duties.

Our interpretation has been, during the negotiations we have had (and we also are a country in which the duties are specified in many cases in percentage and all the preferences are in percentage), that we should not increase the margin of preference but we may reduce the margin of preference and in some cases that may result in an increase of duty for the nation that had the preference. That is the way we have proceeded in all our negotiations.

CHAIRMAN: Are there any other comments? Can we now accept the Report of the Sub-Committee and the new text of paragraph 3 of Article 1?

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, do you mean sub-paragraph (a) or all of paragraph 3?

CHAIRMAN: All of paragraph 3.

Dr. Gustavo GUTIERREZ (Cuba): Then I wish to comment on the fact that in the text of T/192, we see (a) and (b) in small letters, and finish with a full stop, and then paragraph 3 is continued with a small letter. Is the letter "i" intended to be a small letter or a capital letter, because it changes the text absolutely if it is a small letter? If it is made a capital letter, that is all right, but if not, that is a different thing and we have to present a complaint.

CHAIRMAN: Mr. Shackle pointed this out at the commencement of our discussion, and we agreed to change the little "i" to a big "I".

DR. G. GUTIERREZ (Cuba): There is another point, Mr. Chairman. Paragraph 3(b) relates to products not described in the Schedules and it says: the difference between the most-favoured-nation rate and the preferential/^{rate}existing on the 10th April, 1947. We have nothing to say against this wording, but we want to state that we consider that the general preferential clause of the Treaty on Commerce between Cuba and the United States, which grants preferences of 20% for all articles not included in the Schedules, is not affected by this provision but, on the contrary, is included in it.

CHAIRMAN: Are there any other comments?

Is the new text of paragraph 3 of Article I accepted?

Agreed.

The Committee will find the Report of the ad hoc Sub-Committee on Paragraph 3 of Article II in document E/PC/T/191. I would ask the Chairman of the Sub-Committee, Mr. Melander, to introduce this Report.

MR. J. MELANDER (Norway): To start with, Mr. Chairman, I would say that I think the Members of the Sub-Committee would all agree that the text we have produced is rather far from perfect. As Chairman, I would say that it is illogical, it is not very neat and, as I said, it is very far from perfect. Still, the Sub-Committee started to discuss this problem on the basis that there were roughly three against and three for regarding the divergent views, and this text is a compromise and must be read as such.

I think perhaps that I should mention that the Sub-Committee primarily aimed at covering three points. First of all, they would cover the point where there had been tariff negotiations between two parties and where one of the parties had an import monopoly and where the parties agreed to a very definite and exact agreement as to any price margin, whether in percentages or in amounts, and it was obvious to the Members of the Sub-Committee that such a concrete agreement, based, of course, on the principles for negotiations laid down in Article 31, which was included in one Schedule, would be accepted and go before the general rules contained in the Charter, especially in Article 31. That was case number 1. That is provided for in the text here in line 4 where it says "except as provided in the Schedule or as otherwise agreed between the parties to the negotiation of the concession".

The second case we had in mind was the one where there existed an import monopoly, but where the negotiations for tariff binding or reduction had only resulted in the binding of the tariff but not in any concrete arrangement regarding the margin for the sale of the goods in question in domestic markets. In that case, the Committee considered that the principles of the Charter would apply, especially the rules laid down in Article 31 of the Charter,

Thirdly, we had in mind the case where an import duty has been fixed in a case where, at present, there is no import monopoly, but where we consider the possibility that an import monopoly might be established in the future. There the Sub-Committee considered that the tariff duty already fixed should, of course, stand, and that any sales in the domestic market of products covered by that tariff item should be covered by the principles of the Charter especially, of course, Article 31.

Now, these two latter cases, the case where you have an existing monopoly and the case of future monopolies is covered in the latter part of the sentence where we refer to the rule that the monopoly shall not operate so as to afford protection on the average in excess of the amount of protection provided for in such Schedule. But there is a reference to the other provisions in the last sentence: "This paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement", and by the reference to this Agreement we had in mind the General Agreement, and also the Protocol, and especially, of course, we had in mind Article 31 of the Charter. You will see that we have referred to that in the Report itself, that is, at the bottom of page 1 of the Report.

That, I think, covers the main points. There were a lot of other points also considered, but I consider those to be more or less subsidiary.

CHAIRMAN: Are there any comments on the Report of the Sub-Committee?

MR. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, the original text of paragraph 3 followed rather closely the provisions of the Charter, and I wonder if the text which is now before us covers the situation which is provided for in the Charter.

If I consider the text which is now before us I see that only one sentence in that text can be interpreted as covering a case provided for in the original text, that is the part of the sentence in paragraph 3 which says "shall not... operate so as to afford protection on the average in excess of the amount of protection

provided for in such Schedule".

The original text provided for two different cases. One was the maximum margin of profit which a monopoly could make^{which} was covered by the text, and the other was the quantity of the product which the monopoly could import. These two points, which are very important points, were fully discussed in the Commission which had to draft the text of the Charter. We see, in fact, in the original paragraph 3 that the monopoly shall import from the territories of contracting parties and offer for sale at prices charged within such maximum margin such quantities of the product as will be sufficient to satisfy the full domestic demand for the imported product. Therefore, I think that we now run the risk, if we do not give a very clear interpretation to the text which we are now proposing to adopt, of not knowing exactly what is to be done. In fact, it is the contrary. If we did not give a clear interpretation, it seems that we would give more freedom to the monopoly to import any quantity of the product which it might wish to import, to charge and fix such prices which it considers proper.

I do not need to elaborate on the very clear consequences of that freedom given to a monopoly, and I think that it is useless for me to go into details because everyone can see the details for himself. Nevertheless, we have to take account here of what has been done and what has been drafted in the Charter, and with your permission, Mr. Chairman, I would like to ask the Chairman of the Sub-Committee to tell me that the two cases which I have just mentioned are covered here in the present text of paragraph 3 of Article II.

MR. J. MELANDER (Norway): Mr. Chairman, in answer to the question from the Chilean Delegation I would say that, to start with,

the answer is: "Yes".

First of all, we considered paragraph 3 of Article II in the original draft and we came to the conclusion that it refers only to two particular cases which ought to be covered, namely, the one referred to on price margins and, secondly, the one relating to the importation of such quantities as are sufficient to satisfy full domestic demand. During the discussion in the Sub-Committee we all agreed that especially the provision relating to the price margin ought to be qualified with the principles contained in Article 31 of the Charter, paragraphs 6 and 7, and the reason why we cut out the reference to the two first cases, the reference to price margins and to the satisfying of domestic demand, is that we considered it sufficient to refer to the principles in paragraph 1(b) of Article 31. Paragraph 1(b) says that if a Member establishes or maintains or authorises a monopoly, such Member shall negotiate with the object of achieving, in the case of an import monopoly, arrangements designed to limit or reduce any protection that might be afforded through the operation of the monopoly to domestic producers of the monopolised product, and so on. Then, in paragraph 2 of Article 31, there is a reference to what should be done to satisfy the requirements contained in that general principle, and also in paragraphs 4, 5, 6 and 7 of Article 31 there are rules which qualify certain of the principles laid down in paragraph 2 of Article 31.

Consequently, we came to the conclusion that in this paragraph 3 of Article II we would either have to include all the essential rules of Article 31, in other words, in addition to those already included in the original draft, or to include reference to

paragraphs 5 and 6 of Article 31. In fact, it would really lead to including the whole of Article 31 in paragraph 3 of Article II, and we considered that that would be going too far, and consequently we agreed on stating the main principle only, but the point is covered, I think, by the last sentence in our draft where it says: "This paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement. That is meant to cover Article 31 also, so that it would cover, for example, paragraphs 2(a) and 2(b) and paragraphs 3, 4, 5, 6 and 7 of Article 31, and so the whole thing should be covered.

The only point which is, perhaps, a little doubtful is the question of whether we ought not to be completely on the safe side and say "by other provisions of this Agreement or the accompanying Protocol", to cover Article 31. The reasons why I mention that is that Article 31 is, so far, not included in the General Agreement as such. The solution would be either to include Article 31 in Part II of the General Agreement, or else to state at the end of this draft "this Agreement or the accompanying Protocol". Whichever of those solutions one chooses would be completely satisfactory as far as I can gather.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. SHACKLE (United Kingdom): There is one point to which I think it may be useful to call attention by way of supplement to the explanation which Mr. Melander has given, which I feel I may perhaps be entitled to call attention to as one of the members of this very-hard-worked sub-committee. It is a paragraph at the foot of Page 1 in which we suggest that a note be included in the Protocol. "The Sub-committee recommends this text of Paragraph 3 in the belief that, except where otherwise specifically agreed between the parties to a particular negotiation, the concept of protection by a state monopoly would necessarily follow the provisions of Article 31 of the Draft Charter annexed to the Protocol. The Sub-committee further recommends that a note to this effect be included in the Protocol of Interpretative Notes."

We felt that by a note of that kind we should avoid a very great deal of ^{Spelling} spreading out of detailed provisions in the text of this Article which, we felt, would encumber it unduly. I think there would be considerable virtue in a note of that kind.

One other point. I gather it is suggested to add at the end of the new Paragraph 3 of Article II, that is to say, on Page 2 at the end after the words "provisions of this Agreement": "or of its accompanying Protocol".

I personally would see no objection at all to making that addition. Thank you.

CHAIRMAN: The Delegate of the United States.

Mr. J. W. EVANS (United States): I am glad that Mr. Shackle mentioned the note at the bottom of the Report of the Sub-Committee and would support his suggestion that it be included in the Protocol of Notes. I have some slight doubt myself as to

whether the addition of the words "or/^{of}its accompanying Protocol" in the paragraph itself are necessary or desirable. If we adopt the note, I think it would be quite unnecessary. As to whether it is desirable, it occurs to me that there may possibly be some question as to whether if the Protocol is mentioned here where we use the word "agreement", it may not be necessary in other parts of the agreement to do the same thing. That is the question I should be quite happy to leave to the Legal Drafting Committee; but perhaps we can avoid placing that problem before them if we agree that the inclusion of the proposed note at the bottom of the first page of the Report would take care of the situation.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, speaking now as the Norwegian Delegate I would like to come back to this problem. I think there is some advantage in either having a special reference to the Protocol or, if that is not done, then to include Article XXXI in Part II of the General Agreement. The reason is that if you have any other reference to this Agreement as it is stated in the Sub-committee's text, then it might lead to difficulties in interpretation especially when we have in the General Agreement Article XXI on the Nullification or Impairment, - a special reference to the Agreement or its accompanying Protocol. If we leave out here the reference to the Protocol it might be interpreted in such a way that the Protocol does not operate even if you have the accompanying note. I think it is really better to have either, as I say, Article XXXI included in Part II - that is perhaps the best solution - or else, I think it would be better to have a special reference to the Protocol in the paragraph itself.

CHAIRMAN: Are there any other comments?

Mr. John W. EVANS (United States): Mr. Chairman, I do not like to press this point at great length. I think that it is a rather dubious one. But I should like to point out this: that during the discussions in the Sub-Committee itself there was some question as to whether a phraseology like this last sentence was desirable at all. In an earlier form instead of "any form of assistance" it said "any form of protection". That raised a question as to whether we might not in the final sentence actually be nullifying the provision laid down in previous Articles, in view of the fact that Article 31 was not included in the Agreement, and if the word "protection" was used this could be interpreted to mean (by a rather strained interpretation) that a state-trading monopoly could do anything that it wanted because there was nothing in the Agreement which said that it could not do it. And therefore this would be a total nullification of what went before in the preceding sentence.

I may have been over-legalistic in making that argument, and when the word "assistance" was suggested instead of "protection" I agreed. The purpose of inserting the words "or of its accompanying Protocols", I understand, is to include Article 31, which is hardly relevant, because Article 31 does not in its exceptions specify any particular kind of assistance to producers, unless the word "protection" is to be considered as the synonym of "assistance". My personal preference would be to omit this sentence entirely as the Note which we have suggested for the first page covers not only the rules but the exceptions in Article 31. Another reason I am a little reluctant to elaborate on this last sentence is that we have now mentioned all of the exceptions and we have not mentioned the rule in the Article itself.

I wonder if the other delegates would not agree that the Note itself is sufficient to take care of that.

Mr. R.J. SHACKLE (United Kingdom): I should like to call attention to the fact that the last sentence of this paragraph to which Mr. Evans called attention is taken verbatim from Article 31 of the Charter where it forms paragraph 7, and the words there used are "any form of assistance" and not "any form of protection". Now I do feel that this sentence serves a useful purpose. In the sentence which precedes it we have said that a monopoly "shall not, except as provided in the Schedule or as otherwise agreed between the parties to the negotiation of the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in such Schedule". Now, the word "protection" is in itself a wide one and may include such things as subsidies. It is not the intention, I take it, to affect by this the rules about subsidies which are given elsewhere in the Agreement; but if we do not have that sentence in, I think a genuine doubt may arise as to whether, the moment a monopoly had concluded some concession which was included in the Schedule, it might automatically surrender its right to use subsidies. That would not be an acceptable conclusion and I think that for that reason this sentence is necessary.

I would like to call attention to the obvious point that this paragraph, like the rest of Article II, is concerned purely to express the results of negotiations that have taken place. It does it in a shorthand way, but I think it does it satisfactorily, I do not myself feel distressed by the appearance that it includes a lot of exceptions. I think it is unnecessary perhaps to refer to the Protocols specifically, for the reason that in the Interpretative Notes we propose to refer to the provisions of Article 31 of the Draft Charter and its Protocols and that will include of course paragraphs 6, 5, 4 and so on. So I have the feeling that we have here, given that all this is shorthand, said enough. But at the same time I should see considerable difficulty if it were decided to omit the last sentence of paragraph 3.

Thank you.

CHAIRMAN: Mr. Melander.

Mr. J. MELANDER (Norway): Mr. Chairman, I believe it would be better if we could get a General Agreement which is as clear as possible without the reference to Notes. I think that if we included Article 31 in Part II of the General Agreement then this text here as it stands now would be quite clear, and a reference to an Interpretative Note would not be necessary. If any delegate wanted to have it, it would not do any harm, but in my view it would not be necessary. As the text stands now, it is, as far as I can see, from a legal point of view, not quite clear, and to clear up that unclarity by a Note, when you can do it in the legally correct way by introducing the Article which we all have in mind, is I think not the right way to approach it and I would like to ask if there is any objection to the inclusion of Article 31 in Part II. That would I think solve the whole problem.

Mr. R. J. SHACKLE (United Kingdom): I do not think there is any objection of substance to adding Article 31 to Part II but there is a formal objection which perhaps is of some importance, although it is only a formal one.

In this General Agreement we have set ourselves just to express the results of negotiations. We have not included anything which would correspond to Article 17 of the Draft Charter which lays down the rules for negotiation about reduction of tariffs and elimination of preferences which may take place in the future. If we are to preserve the parallelism, it seems to me, from the moment we added Article 31 which deals with those negotiations in the case of state-trading monopolies, we ought also, in symmetry, to add Article 17 which deals with ^{reduction} ~~elimination~~ of tariffs and preferences under ~~private~~ systems of private trading; and we should lengthen the Agreement considerably if we did that. I rather doubt if the amount of space taken up would be justified by the results. I still think

this
that ~~the~~ "shorthand note" is probably sufficiently good shorthand for our purposes.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, with regard to what was just expressed by Mr. Shackle I would say I am not so sure that he is right in saying that Article 31 only lays down the rules for future negotiations. Supposing we have the case where a country has an import monopoly, and supposing in the negotiations here the only thing which has been negotiated and settled is the maximum import duty, in that case nothing has been said about the price margin for sale of the products in the domestic markets and the rule which would govern that price margin would be paragraph 4 of Article 31 as qualified by, for example, paragraph 6. So that Article 31 does really affect negotiations which have already taken place in so far as these negotiations have only led to a maximum import duty being fixed. In the case where you have not only fixed a maximum import duty but have also laid down that the maximum price margin shall not exceed, say, 40 to 50% of the import price, then of course that will go into the Schedule and will be covered automatically by Article II paragraph 1. But in the first case I mentioned one will, of course, have to deal with Article 31. That is why I think it would be useful to have a reference to it, either by including it in Part II or by a special reference to it at the end of this sub-paragraph.

Mr. John W. EVANS (United States): Mr. Chairman, I have little to say except that I wanted to comment on an earlier explanation by Mr. Shackle as to the existence of this final sentence. I agree with him completely as to why it is there and what "form of assistance" meant, but the whole point of my objection to the addition of the words "or of its accompanying Protocols" is that the purpose of that is to include Article 31,

and that casts doubt on the interpretation of the words "any form of assistance". In view of Mr. Shackle's explanation, however, I will withdraw my suggestion that the final sentence be deleted. I agreed to this wording in the Sub-Committee and I am perfectly willing to accept the report of the Sub-Committee as it stands, with the Note on the first page.

I do believe that Mr. Melander's feeling that the exceptions permitted in Article 31 are not covered is unfounded. I think ^{the} that/words "any form of protection" are rather vague. I suggest that if any Member were to invoke this paragraph, saying that the country maintaining the monopoly had violated the paragraphs, he would necessarily have to go to Article 31 to prove his case, and when he went to Article 31 he would find in it all the exceptions which are written in that Article. So I agree with Mr. Shackle that this "shorthand" wording is adequate for the purpose. > The only other solution would be to write all of Article 31 and place it in Part I in place of this, or place it in Part II in addition to this. But although the problems Mr. Shackle raises are important problems, I think it raises very little question about the form of the Agreement.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): I wonder whether Mr. Melander's difficulties might possibly be removed if we were to adopt a somewhat more precise wording in the interpretative note than it has at present? At present it speaks of "the concept of protection by a State monopoly", and that is certainly a vague phrase. I wonder whether we might possibly substitute for it some other words, so that the whole paragraph would read like this:-

"The Sub-Committee recommends this text of paragraph 3 in the belief that, except where otherwise specifically agreed between the parties to a particular negotiation, in the application of the provisions of the paragraph those provisions would be interpreted by reference to the provisions of Article 31 of the Draft Charter annexed to the Protocol".

That, I think, would clearly say that one should go to Article 31 for guidance whenever one is in doubt.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): That is acceptable, Mr. Chairman.

CHAIRMAN: I think we have now reached agreement on this question. I take it that paragraph 3 of Article II would be inserted in the form in which it is given in the Report of the Sub-Committee without any additions and the interpretative note would be changed in the sense just read out by Mr. Shackle, and would then read as follows:

"This paragraph was agreed in the belief that, except where otherwise specifically agreed between the parties to a

particular negotiation, in the application of the provisions of the paragraph these provisions would be interpreted by reference to the provisions of Article 31 of the Draft Charter annexed to the Protocol".

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I think the Legal Drafting Committee might be asked to direct their attention rather specifically to that note, with a view to making its drafting more elegant!

CHAIRMAN: With that reservation, is the general principle underlying this note agreed?

M. ROYER (France) (Interpretation): Mr. Chairman, does this mean that the Draft Charter will be attached to all the documents?

CHAIRMAN: I do not think that the intention was that it should be attached to the Protocol. I wonder where the Sub-Committee got that impression.

Mr. R.J. SHACKLE (United Kingdom): "Annexed" is the wrong word. It should be "referred to".

CHAIRMAN: "Referred to in the Protocol" would be the right words. Are we agreed? Adopted.

May I now return to the proposal of the Chinese Delegation to add a paragraph to Article XXIV regarding registration of the Agreement? The Committee will recall that when we were considering this matter less than three hours ago, Mr. Shackle suggested that the Secretariat should consult the Legal Adviser. They have sent a telegram to the Legal Adviser in New York and have already received a reply. The reply is as

follows. Mr. Reynolds (the Legal Adviser) says:

"Mr. Shackle is quite correct. We should put the same provision in the General Agreement as is now in the Charter."

That, of course, would imply that we should stick to the same wording as is in the Charter and not accept the suggestion which had been made by the Delegate of France to change the word "authorized" to "requested". The way the provision of paragraph 3 of Article 98 of the Charter reads is as follows: "The United Nations is authorized to effect registration of this Charter as soon as it comes into force".

Are there any comments?

M. ROYER (France) (Interpretation): Mr. Chairman, I shall not press my point, but in spite of the short delay and the speed with which the answer was given, it seems that the solution which has been adopted is not an excellent one.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): I only want it recorded that I prefer to make no complaint!

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, could we not get out of this difficulty by saying simply, "This Agreement shall be registered with the United Nations"?

CHAIRMAN: I do not think that would meet the point to which Mr. Shackle has referred. That would then require each of the seventeen countries which are Members of the United Nations to register themselves with the United Nations. The purpose of this provision is to save the various Members of the

United Nations the trouble of registering themselves, and the United Nations would then register the Agreement automatically as it is a multilateral Agreement.

Are there any other comments? I believe that was the purpose the Chinese Delegation had in bringing forward this proposal in the first place.

Is the proposal agreed? Agreed.

This will then be added as another paragraph to Article XXIV, the heading for which will now read "Signature, Entry into Force and Registration".

I would like to inform the Committee that I fear we are making very slow progress if we wish to get through this second reading of this Agreement by Saturday. I would therefore propose that we should hold a night session tomorrow evening in order to obviate the necessity of sitting on Saturday afternoon. I think if we have a meeting tomorrow afternoon and tomorrow evening and Saturday morning, there will be a good chance of our getting to the end of the Agreement and its accompanying documents - the Protocol, Final Act and Annexes. If we do not hold a meeting on Friday evening, I am afraid it may be necessary for us to hold a meeting on Saturday afternoon. I would therefore like to obtain the sense of the Committee regarding the proposal to hold a meeting tomorrow evening.

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I am opposed to holding a meeting tomorrow night, but I think it is unnecessary for me to express my reasons.

Mr. J. MELANDER (Norway): Mr. Chairman, I would much

rather have a meeting tomorrow night than forfeit my Saturday afternoon!

CHAIRMAN: I would remind the Delegate of Chile that there is a possibility that we may not have the services of the interpreters very much longer, and it would be very difficult for us to conduct our proceedings without interpreters.

Mr. F. Garcia OLDINI (Chile): That can only mean, Mr. Chairman, that our work has been ill-organized.

Mr. LACARTE (Deputy Executive Secretary): We are in the hands of the Committees.

CHAIRMAN: I would remind the Members of the Committee that the Secretariat sent out a circular two weeks ago, informing the Members of the Committee that on account of the holding of the session of the General Assembly in New York, it would be necessary to withdraw the interpreters by September 14th, and Members were invited to raise any objections, if they had any. I do not believe that any objections were raised. I think we will be able to keep the interpreters beyond September 14th, but we cannot hold them here indefinitely.

Mr. B.N. ADARKAR (India): We would also prefer a meeting tomorrow evening.

CHAIRMAN: I think, on a question of procedure of this kind, it is quite in order to take a vote, and therefore will all those in favour of meeting tomorrow evening rather than

Saturday afternoon please raise their hands?

The majority seem to be in favour of meeting tomorrow evening. We will meet tomorrow afternoon at 2.30 and tomorrow evening at 9 o'clock.

The meeting is adjourned.

(The meeting rose at 6.10 p.m.)