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

VERBATIM REPORT

NINTH MEETING OF COMMISSION A

HELD ON THURSDAY, 5 JUNE 1947 AT 2.50 P.M. IN THE
PALAIS DES NATIONS, GENEVA.

H. E. MR. ERIK COLBAN (Chairman) (Norway)

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

CHAIRMAN: The Meeting is open.

I think we may start, even if some Delegates have not yet arrived.

Do you remember that the Article we are going to discuss to-day, Article 15 of the Draft Charter, was not drafted at the London Session, and the Drafting Committee, on the basis of the discussion in Commission 2 in London, has tried to set up a text which is inserted in the New York paper. Obviously this places this Article in a slightly different position from the Articles which were drafted at London, and that perhaps is the reason for the very great number of Amendments we are going to go through.

Nevertheless, I hope we shall be able to boil down the differences so that it can be put to the Sub-Committee to dispose of.

You will see in the New York paper, under the heading "General Comments", that one Delegate, the Delegate of Brazil, proposed adding a new paragraph. I would like to ask the Delegate of Brazil whether he wants to speak on this suggestion?

Mr. RODRIGUES (Brazil): Mr. Chairman, we have received instructions from Brazil to withdraw this reservation.

CHAIRMAN: Thank you. I hope we can go on with the same result for others.

The second point, in the General Comments in New York, was made by the Delegate of Cuba, but I think that when he said nothing he meant to reserve his position. That is now covered by his definite proposal for certain Amendments.

Mr. GARCIA-OLDINI (Chile) (Interpretation): May I suggest, Mr. Chairman, that we defer your last question until the Representative of Cuba has arrived?

CHAIRMAN: I regret I did not notice that the Delegate of Cuba was not present.

We pass on then to paragraph 1. There you will see, in Doc. W/150, that the Delegations of the United States, Cuba and Norway propose the deletion of the first paragraph of the New York Article 15.

The Delegate of China proposed a certain Amendment to this paragraph, but if the paragraph should be omitted altogether, that Amendment would, of course, disappear, and I do not think we need to deal with that Amendment in the first instance, whether or not we decide that the U.S. proposal is accepted.

Mr. SHACKLE (United Kingdom): Can I ask a question, Sir? I assume that the U.S. proposal is dependent on the addition they suggest at the end of what is now paragraph 2. Is that so?

CHAIRMAN: It is my own opinion, but I wanted to ask the U.S. Delegate to answer the question.

Mr. Oscar RYDER (United States): Mr. Chairman, I do not know whether I would say "dependent"; but "closely connected", as regards the two Amendments; and in the original proposal which we considered at the London Meeting, in paragraph 2 it was provided that Members recognise that the imposition of internal taxes on the products of other countries for the purpose of affording protection for the domestic production of competitive products would be contrary to the spirit of this Article, and they agreed to take such measures as may be open to them to adopt a new or higher tax of this kind within their territory.

Now, at the New York Meeting of the Drafting Committee, that provision was dropped out, and apparently the first paragraph of the present Draft was inserted. Now that paragraph is binding on no one, it expressed an auditory principle, and I see no useful

purpose that it serves, to retain it in the present Draft of Article 15.

Now the problem which Article 2 of the old preceding Draft was intended to cover is covered by the Amendment which the U.S. Delegation are offering to paragraph 2, which, if this paragraph 1 comes out, will become paragraph 1; and that reads: "Moreover, in cases in which there is no substantial domestic production of like products of national origin, no Member shall impose new or higher internal taxes on the products of other Member countries for the purpose of affording protection to the production of competitive products."

That makes the meaning much clearer than it was in the original United States proposal.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, after the explanation which the United States Delegate has just given, I say that I support his amendment: that is to say, the present paragraph shall be deleted on the understanding that it is replaced by the sentence which he proposes to add at the end of what is now paragraph 2.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, our proposal for the deletion of paragraph 1 is not dependent upon the inclusion of the last sentence of paragraph 2 which is included in the new American proposal--in fact, we would not be able to accept the new proposal to paragraph 2 suggested by the United States. We maintain our proposal that paragraph 1 should go out, and then when we come to paragraph 2, which would then be new paragraph 1, we could take up the other problems.

CHAIRMAN: The Delegate of China.

Mr. K.S. MA (China): Mr. Chairman, what the Norwegian Delegate has said in regard to paragraph 1 represents our views too.

CHAIRMAN: Are there any other remarks? The Delegate of Belgium.

M. MOSTIN (Belgium) (Interpretation): Mr. Chairman, the Belgian Delegation ask for the maintenance of paragraph 1.

CHAIRMAN: The Delegate of Chile.

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, may we ask the Norwegian Delegate to indicate why he suggests the

deletion of paragraph 1 without favouring any addition to paragraph 2? We would like to know the reasons for this suggestion.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, the reason is that, in our view, paragraph 1 in the existing draft would be, practically speaking, equal to the existing paragraph 2 and the first sentence of paragraph 3. In other words, paragraph 2 and the first sentence of paragraph 3 are, in our view, the complete application of the principle laid down in paragraph 1. We feel, however, that paragraph 1 is not as clear as it should be. Consequently, we suggest that it be deleted. On the other hand, of course, we maintain that the present paragraph 2 and the first sentence of paragraph 3 be maintained.

CHAIRMAN: The Delegate of Cuba.

M. G. GUTTIERREZ (Cuba): Mr. Chairman, when this paragraph 1 of Article 15 was discussed, the Cuban Delegation reserved its position. Now we have presented an amendment for the deletion of paragraph 1. We are very sorry to state that we are absolutely unable to accept the text of the New York draft, because it clearly says something that in our opinion no country can fulfil. It says: "The Members agree that neither internal taxes nor other internal charges nor internal laws, regulations or requirements should be used to afford ^{protection} directly or indirectly for any national product". We must state very clearly that our country is having laws enacted every day and is continually enacting laws to protect its national interests, because there is no other way for the industrialisation of the country. If we accept that wording, we would be acting against an accepted law and we cannot accept that.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I would say this: that I would agree, I think, that paragraph 1 of this Article, as it is drawn, is too widely worded. At the same time, I think there is quite a definite case for the addition which the United States suggests to make to the end of the present paragraph 2. I might illustrate by an example. Let us suppose that some country in its negotiations has secured the binding of the duty on oranges. Country A gets a duty on the binding of oranges from Country B. Now, Country B after that can proceed to put on an internal duty of any height at all on oranges, seeing that it grows no oranges itself. But by putting on that very high duty on oranges, it protects the apples which it grows itself. The consequence is that the binding duty which Country A has secured from Country B on its oranges is made of no effect, because in fact the price of oranges is pushed up so high by this internal duty that no one can buy them. The consequence is that the object of that binding is defeated. It seems to me that that is a point that has got to be taken care of, and I think that the United States amendment is well-conceived to take care of it.

CHAIRMAN: The Delegate of Belgium.

M. PIERRE FORTHOMME (Belgium) (Interpretation): I believe that, if it is true that the Cuban delegate has made a point, it would be excessive to draw the conclusion from that point that we should proceed with the suppression of paragraph 1. It is perfectly true that a certain number of laws or international regulations are meant to be in favour of the industrialisation of the country, and therefore they have, in some respects, their influence on imports in this country. However, a great number of laws are directly and specifically meant for the protection and therefore I should think that even taking into account the observations made by the honourable representative of Cuba, the suppression of paragraph 1 would not serve the purpose and to restrict only the meaning of Article 15 to duties and taxes would be to limit it to too great an extent.

M. GARCIA OLDINI (Chile) (Interpretation): I think that two arguments have been brought forward in favour of the suppression of paragraph 1. However, we could deal with this question before we continue with the study of paragraph 2 as it stands. Therefore, I would like, Mr. Chairman, to ask to divide the discussion into two, just to restrain ourselves.

CHAIRMAN: I was just going to make a suggestion on the same lines, with a slightly different result. Some delegates would be willing to agree to the suppression of paragraph 1 on the condition of the American addition to paragraph 2 being accepted. So I think in order to clear the discussion we will deal first with the American proposal with regard to paragraph 2, and in the light of the result of that discussion we could then decide whether we should maintain or not maintain paragraph 1.

Mr. K.S. MA (China): Mr. Chairman, I want to support the views of the Chair, just expressed.

CHAIRMAN: If there is no objection, we shall then deal with the American proposal of addition to paragraph 2. The text has already been read to you by the American delegate, and I would like to hear the opinion of other delegates.

Mr. J.J. DEUTSCH (Canada): Mr. Chairman, I would like to support the American amendment to paragraph 2.

M. GARCIA OLDINI (Chile) (Interpretation): However attentively I have been listening to what has been said up to now, I have not got the impression that enough arguments have been put in favour of considering the addition of this new text, without taking it into relation with paragraph 1.

CHAIRMAN: Obviously, when we discuss whether we shall accept the American addition to paragraph 2, we will know that after having done that, we shall go back to paragraph 1. We have the two paragraphs in mind, but we look upon the two paragraphs from the point of view of the American amendment to paragraph 2.

Mr. J. MELANDER (Norway): In addition to what I said a few minutes ago, I would like to come back to the American proposal. The case mentioned by the United Kingdom delegate is a point which I think we have to meet in one way or another, but his point was really one where you have an extreme case of a country, having agreed to tariff reductions, introducing internal taxes in order to defeat the purpose of the agreement on tariffs already concluded. That is a very extreme case and a case which I think is very

unlikely to happen in the form he mentioned. That is the reason why I do not think we should accept the American proposal in its present form. The main reason is, to my mind, that we are laying down in Article 15 the principle of national treatment, in other words that goods of foreign origin shall be treated on the same lines as goods of national origin. That is the principle and to introduce any amendments to that principle, which would so to say lead to foreign products being treated in a different way, would to my mind go much too far. However, as I said, I think that we could perhaps try to find ways and means to meet extreme cases like the one the United Kingdom delegate had in mind. But I think that in principle we should stick the rule as it stands in the present paragraph of Article 15, and try to solve that other extreme case in a different way.

CHAIRMAN: The Delegate of China.

Mr. K.S.M. (China): Mr. Chairman, on this question of national treatment, our new Treaty of Commerce with the United States, to which we attach great importance and which we regard as a concrete expression of the cordial relationship that has existed all along between the two countries, expressly states that national treatment is confined to taxation only.

This is as far as we can go. Any provision or any amendment that would extend the application of national treatment beyond taxation would place a serious restraint upon the government concerned to make the necessary improvisations to meet the needs of the constantly changing conditions inherent in the initial stages of industrialization.

The extension of national treatment beyond the purview of taxation would jeopardise the position of an under-developed country in its industrialization, which requires, from time to time, readjustments to new conditions. It will stifle its growth and is, therefore, contrary to the aims of the chapters on Economic Development in the Charter. Expansion of international trade and economic development of Member countries must go hand in glove. An impoverished China will benefit no country, even though international trade be free of all restrictions and tariffs. For that reason, we are unable to accept the United States amendment, particularly in regard to the second part of the paragraph from "Moreover" onwards. We propose the deletion of that part. We can accept the first sentence in this paragraph.

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium) (Interpretation): Mr. Chairman, we would agree with the United States amendment with one

slight amendment - a sub-amendment, if I may say so - because we are not agreed upon the introduction of the words "impose new or higher internal taxes on the products of other Member countries. . .". I think it will be quite sufficient if we leave the sentence as follows: "Moreover, in cases in which there is no substantial domestic production of like products of national origin, no Member shall impose new or higher internal taxes on the products of other Member countries for the purpose of affording protection to the production of competitive products." This seems to meet the point which has been made by the United States Delegation.

CHAIRMAN: Before calling upon the next speaker, I would like to ask the United States Delegate what he thinks of the suggestion just made by the Delegate for Belgium.

Mr. Oscar RYDER (United States): Mr. Chairman, first I would like to make a few remarks about the statement of the Delegate for China.

The United States amendment to this particular Article does not deal with anything other than taxes. It recognizes that national treatment may, in fact, be violated when an importing country places a tax on a product which it produces in negligible quantity, if at all, and does not place that tax on a highly competitive domestic product.

Mr. OSCAR B. RYDER (United States): Mr. Chairman, first I would like to make a few remarks about the statement of the delegate from China. This United States amendment to this particular Article does not deal with anything other than taxes. It recognises that an international agreement may in fact be violated when an importing country places a tax on a product which it produces in negligible quantity if at all and does not place that tax upon a highly competitive domestic product, and it was to cover that situation that this amendment was introduced.

Now, as to the suggestion of the delegate from Belgium, it was the purpose of the American Delegation in introducing this amendment to ensure that there be no new or increased internal taxes imposed in the situation I have just outlined. We did not think it was advisable to try to force the repeal of all the existing measures of this kind which, as we understand it, are relatively few. In our opinion such taxes should be treated in the same way as protected duties.

M. E.C. RODRIGUES (Brazil): Mr. Chairman, I support the second part of the United States amendment, but I doubt if I should speak now about the first part which is the same as the New York draft, because I see the words "directly or indirectly" before "on like products of national origin." If this is the proper time I should like to express my views about that.

CHAIRMAN: I should like to finish the discussion on the American amendment first.

M.F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, as you have pointed out very properly yourself, I think that in the discussion which we have started on paragraphs 1 and 2 of Article 15, we should take as the basis of our discussion the draft which has been prepared by the New York drafting committee.

As far as I am concerned I do not see any relation of substance between paragraph 1 as it now stands in Article 15 and the amendment submitted by the United States delegation. Paragraph 1, in fact, establishes a basic principle and says that excessive protection must be avoided in certain given circumstances. The United States amendment, as I see it, refers to an entirely different matter, and, as the issue is not quite clear, the wording of the amendment is obviously fairly involved.

Let us read it together to see the points of obscurity which I personally find in this amendment. In addition to the problem of "directly or indirectly" to which the delegate from Brazil has already referred, there are several other points which are open to interpretation and to discussion. Thus, for instance, in the first line, the amendment refers to "cases in which there is no substantial domestic production." What is the actual meaning of the word "substantial"? Obviously such an expression, vague as it is, calls for varying interpretations. Then, again, in the following lines you find the words "production of like products." The discussions which have taken place at this Conference and at previous meetings of the Trade and Employment Conference have shown that the definition of the word "like" in connection with production is far from being an easy matter. Finally, at the end of the amendment it says "the purpose of affording protection to the production of competitive products." As obviously in the matter which we are discussing the problem will not be of comparing identical products but to find out whether some product of a different nature may be considered as competitive, there again it will be necessary to indulge in detailed definitions, and, maybe, complicated issues.

The very fact that in this amendment, as I have attempted to point out very briefly, there are so many loopholes, and so many terms which require proper definition, would, I should state, be a sufficient reason for not accepting this amendment. Therefore, I wish to state that the amendment as it is now drafted goes beyond the scope of the problem which is laid down in paragraph 1 of Article 15. There are very few States, I believe, which would be willing to accept a clause by which a foreign umpire would have the power to decide whether an internal tax imposed by the State is or is not acceptable for the reasons claimed by such State.

CHAIRMAN: The delegate of France.

M. A. KOJEVE (France) (Interpretation): Mr. Chairman, as much as the French delegation has been sorry not to see eye to eye always with the delegate of Chile, I am this time particularly happy to say that I agree entirely with what has been so clearly and aptly put by the delegate of Chile.

CHAIRMAN: The delegate of India.

MR. S. RANGANATHAN (India): Mr. Chairman, our delegation also finds itself completely in agreement with the point of view expressed by Chile.

Even if we were to accept the general principle underlying this American amendment, in practice we anticipate considerable difficulties for the very same reasons which Chile has pointed out - there will be disputes about substantial production.

The position is also complicated in India by the fact that, for example, our Provinces have the power to levy sales tax, and every time any Province introduces sales tax on some commodity, it will be open to dispute whether the intention underlying that levy is for a protective purpose or not, and also whether it does infringe on this concept of a competitive product or not. It was mainly with that object in view - that is, because of the distribution of tax in India - that a reservation has already been made, even for the first portion of paragraph 2.

So, even if we were to accept the principle underlying this amendment and welcome it, because it restricts the use of this Article by removing from it matters other than taxes, we feel it will in practice give rise to considerable difficulties. Also, it may be unwise to put in a provision which is more likely to

lead to disputes than to the settlement of disputes - more likely than paragraph 2 without such provisions.

CHAIRMAN: The delegate of Belgium.

M. P. FORTHOMME (Belgium) (Interpretation): I have listened with a great deal of attention to the very lucid explanation given by the delegate of Chile.

However, I would like to put one question. Does the delegate of Chile mean that it would be good to find, perhaps, another draft in order to do away with the difficulties which he envisaged, or does he want to let drop entirely the principle involved in paragraph 2 as it stands?

M. F. GARCIA-OLDINI (Chile) (Interpretation): Mr. Chairman, I have already stated at the beginning of my last remarks that, as I see it, the whole of the United States amendment is outside of the scope of the Charter, and more particularly of paragraph 1 of Article 15.

I have already also stated that I did not believe that any government would accept a clause which is open to such wide interpretation. Consequently, the only solution that I would consider, as I suggested, is to drop this entirely.

CHAIRMAN: The delegate of the United States.

MR. O.B. RYDER (United States): Mr. Chairman, the delegate for Brazil complains that the words "directly or indirectly" have the same meaning as the amendment offered by the American delegation. I do not think that that is correct, because the phraseology is "charges of any kind higher than those imposed, directly or indirectly, on like products of national origin", and the American amendments desires to take care of products that are not "like".

Mr. RYDER (United States): Now I would like also to make a few remarks on the very interesting statement of the Delegate from Chile. I think we will all have to agree that in this Charter we have to use words which are difficult to find; and I cannot see that "like" as used in the sentence we propose to insert is more difficult to interpret than "like" in the preceding sentence, and I cannot see, from my own experience in dealing with questions of similarity and competition, that it is any more difficult to define products that are competitive than it is to define what products are like.

CHAIRMAN: The Delegate of Brazil.

Mr. RODRIGUES (Brazil): Mr. Chairman, I have nothing to say against it, the second part of paragraph 2 as it stands in Document TW/150. I think the second part is the only Amendment of the American Delegation: but as the American Delegation had put in the same Amendment - the first part of paragraph 2 - it is the same Draft as the New York Draft, and as I do not agree with the expression "directly or indirectly" included in this first paragraph in the fifth line of the New York text, I should like to explain my views. Everybody knows in taxation there exists a very clear division between direct and indirect tax.

In spite of being criticised, it is generally certain, and if these two words "directly or indirectly" remain in the first part of this paragraph, later on the Organisation and every person who has to deal with this matter will have trouble, because we are concerned with all these products, and the indirect tax cannot be imposed upon products. I should like to ask a question of the representative of the United States.

The United States corporation income tax which is imposed with some discrimination upon foreign countries - would it be prohibited

in the light of this Draft in the New York text? It is a direct tax - it is not on a product, because I do not know of any direct tax upon products; but there is no doubt that the tax, the corporation tax, is not a personal tax. But a real tax should be regarded as a discriminatory tax upon products, and you have the same thing in Brazil, and all the countries we represent have the same situation.

If the representative of the United States can explain any other meaning of these words, I perhaps can change my idea about them.

CHAIRMAN: The Delegate of the United States.

Mr. RYDER (United States): Mr. Chairman, the question that the Brazilian Delegate raises is a technical question, and one that probably should be dealt with in Sub-Committee. There are examples, which I gave, of a tax, not a tax on a product as such but on the processing of the product, which are covered by the word "indirectly" here.

It might be better, however, to delete the words "directly or indirectly" in the fourth line, and insert them in the second line, before internal taxes, so as to read "exempt from direct or indirect internal taxes". However, as I said, this matter we are discussing at this moment is a technical one.

CHAIRMAN: The Delegate of South Africa.

Mr. HOLLOWAY (South Africa): Mr. Chairman, I had not intended to speak about Article 1, or the re-draft of Article 2 which now takes its place, because it seemed to me such an obviously necessary counterpart of what we are doing in the tariff negotiations that I was a little bit surprised at any discussion except on the wording; but it seems to be necessary just to make this point.

There does not seem to me to be any purpose served at all, but if any Delegation should give and exchange benefits for the purpose of getting a rate of duty for the introduction of its goods into another country, that country is immediately free to put on an internal tax to stop the concession it has given. That seems to me to be perfectly obvious.

When the Delegate for Chile says that this Article 1 is in conflict with the purposes of the Charter, I just do not know where I am, because if that is the case the value of all the concessions we are getting must be discounted very severely - because one never knows what sort of internal taxes may be imposed by a country to take away the benefits they have given you.

CHAIRMAN: The Delegate of Chile.

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I want to clear up one point. I never said that paragraph 1 was in conflict with the spirit of the Charter. I said, on the contrary, that paragraph 1 conformed to the spirit of the Charter. What is against the spirit of the Charter is the United States amendment, because it conflicts with the spirit of paragraph 1.

CHAIRMAN: Now, eleven Delegates have spoken on this question and opinions seem to be divided. I would like to make the following suggestion, that the ad hoc sub-Committee be asked to see whether some re-draft of paragraph 2 of Article 15 is possible, so as to meet such points as the one presented to us by the Delegate of the United Kingdom and so as to clear away the objections of the Delegate of Chile; and also to see whether, in the light of the draft they arrive at, it would be right to omit paragraph 1 and make the New York paragraph 2, No.1.

Are there any observations on this suggestion? ...Then that is agreed. We pass on to the next item in Document W/150. The Chilean Delegation proposes an addition to paragraph 2. It proposes to add: "The provisions of this paragraph shall not imply exemption from internal taxes imposed on imported products to bring them into line with the taxes imposed on national products". Before asking the Chilean Delegate to kindly explain further, I would like to say that my immediate reaction when I read that proposal was that what it says here should be obvious from the text already before us, but there may be some meaning which I did not catch.

The Delegate of Chile.

M. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I do not understand your doubts as to the amendment suggested by the Chilean Delegation.

CHAIRMAN: (Interpretation): Only this, that I find your amendment so obvious a conclusion drawn from the New York text, that I was asking myself if I had misunderstood your point.

M. GARCIA OLDINI (Chile) (Interpretation): As many other delegates, the Chilean delegation have had some doubts in respect to this Article as well as to other Articles, as to whether certain essential problems and certain aspects of the question which are essential for our national economy were actually applied in the draft of the Articles. The situation to which our amendments refer is more or less the following. After the depression in 1929/1939 the Chilean government, for obvious reasons, had to introduce a tax which corresponds more or less to a turnover tax. Such a tax was not very popular and in view of the adverse reaction of the consumers, we had to change our system and to establish, in lieu of this turnover tax, a tax at the basis, in other words a direct tax which was represented by the turnover tax which had to be changed into an indirect taxation. We consequently are faced, in our country, with two separate systems, one dealing with direct taxation and the other with the indirect taxation. We are anxious that taxes so imposed nationally could be balanced by equivalent taxes which we want to impose on imported products. This is an explanation of the amendment which we have submitted, reading "The provisions of this paragraph shall not imply exemption from internal taxes imposed on imported products so as to bring them into line with the taxes imposed on national products".

If this statement is implied in the present draft of Article 15 paragraph 2; and if such facts can be officially acknowledged either in the footnotes to the Charter or in some other official document of the Conference, we will then be satisfied. If this was not clearly stated, we would have to insist on our point of view and develop it at greater length.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, if I understand, the point raised here is really a question of whether tax on imported goods is charged. In the case of a home product it naturally is charged within the country - that is obvious. In the case of an imported product it may be much more convenient to charge it at the point at which the goods come through the customs. That is a very common practice indeed, I believe. I certainly see nothing in the Article which would rule that out at all. I expect most countries would want to be sure that it is permissible. I imagine that it is permissible already.

I would like to add just one thing more. If you look at Article VIII on Schedules of Concessions on Particular Products, on page 69 of the New York text, you will see two footnotes. The first one of those notes deals with the following point. The last part of the note says: "Such products shall also be exempt from all other duties or charges imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter, under laws (name of the country) in force on that day provided that this sentence shall not prevent the government of (name of country) from imposing at any time on the importation of any product a charge equivalent to an internal tax imposed in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part." But it is suggested in that footnote that the words on those lines should not appear in the text of the tariff schedule. So it seems that, at any rate, the purposes of a general agreement on tariffs and trade and the schedule of the Drafting Committee was contemplated in New York.

M. GARCIA OLDINI (Chile) (Interpretation): Just one point, Mr. Chairman. It would be understood that the drafting of paragraph 2 of Article 15 as it now stands, would not conflict with the spirit of the amendment which the Chilean delegation has submitted, and that the footnote which has been read by the delegate for the United Kingdom would also apply in its spirit and definition to the Charter itself.

CHAIRMAN: Unless there is any objection to this, I will take that we agree to that interpretation.

We now pass on to paragraph 3 of Article 15. There we have, in the New York document, a number of reservations. I have gone through them, and I find that practically all of them have been made subjects of new amendments submitted to our Commission and incorporated in W/150. I should think it will be the most practicable way of considering paragraph 3 in dividing it. On the first sentence, we have an amendment by the South African delegate. He proposes the deletion of the word "transportation", in the seventh line of the New York draft.

Dr. J.E.Holloway (South Africa): There was a long discussion in Commission B on a counterpart of the same subject as is dealt with by the South African amendment to this paragraph. The question was dealt with in Commission B, whether transportation, telecommunications, insurance, banking and certain other services should be dealt with in the chapter on restrictive business practices.

The Commission gave a considerable amount of time to it and ultimately came to a conclusion, which will come before the Preparatory Committee at a later date, which is contained in Document W.144. <

In effect, the trend of their discussion was that, whilst there are many serious problems affecting international trade in transportation and these other services, it was the feeling of that Commission that the laying-down of rules in detail to deal with those matters would probably go beyond the competence of this Conference and would in any case be undesirable to do.

The Commission therefore has recommended to the Preparatory Committee another method of dealing with this matter and that will come up later.

I could at some length explain what difficulties would be encountered if we simply put this one word "transportation" into the text and left it at that. It would be a fulmination against this particular type of sin but there would be no further discussion of what the sin was and in what circumstances it had to be avoided. That is what Commission B found, too.

I do not propose to take up the time of this Commission by going into details and saying how difficult it would be for this Conference to draft the rules that would be a necessary adjunct to having transportation in this Article, unless of course

there is a great deal of pressure to keep the word. In that case, I would have to press the matter further.

I suggest, Mr. Chairman, that if you cannot deal with the type of transportation which goes between the border of one country and the border of another country in the Chapter on restrictive business practices, it is as difficult to deal with the portion of transportation which takes place inside the country. After all, the transportation which enters into international trade is not the bit which starts at a border and ends at a border; the goods come from some point inside a country and go to some point inside another country, and therefore that transportation is one whole subject. There is no difference between inland transportation and oceanic transportation from that point of view.

I would therefore suggest, Mr. Chairman, that the word "transportation" should be deleted from this paragraph and that when we come to it in the Preparatory Committee we might deal with the whole subject of transportation on the basis of the Report from Commission B. If, however, that is not acceptable to this Commission, I fear I shall have to go at some length into the question why internal transportation is not a suitable subject for treatment by this Conference.

Mr. PIERRE FORTHOMME (Belgium) (Interpretation): The Belgian delegation is opposed to the deletion of the word "transportation" in paragraph 3 of Article 15. The argument drawn by the representative of the Union of South Africa from the comparison between the decisions or suggestions which Commission B made concerning Chapter VI and the clauses in the Article which we are now discussing seems to be somewhat broad, and in any case I wish to remind you that when Chapter VI was being discussed the Belgian delegation always favoured the inclusion of "transportation" in the clauses of that Chapter. We should never forget that what we are dealing with now are protective measures and it seems obvious that the reason for manipulating rules for freight for transportation of goods is that they may become a protective measure as many others are. We all know from experience that it may well happen that an imported product which comes from a point 15 miles perhaps beyond the national boundary may actually be the object of a protective measure, if the rate imposed for such a short distance which this article has to be transported inside the national territory is higher than that for a national product of the same character travelling hundreds of miles inside the national territory.

Mr. E. RODRIQUES (Brazil): Mr. Chairman, because we fully agree with the delegate for Belgium, we also think we must maintain the word "transportation".

CHAIRMAN: Any further remarks?

Mr. STANISLAV MINOVSKY: Mr. Chairman, I only wish to mention the fact that the representative of the Union of South Africa has mentioned the long discussion which has taken place on this problem and I would like to remind you that the Commission finally decided that the problem of services should be included in the Charter; a majority

decision was taken on this fact, consequently we are faced with that decision of our predecessors.

Mr. M.P. PAI (India) The Indian delegation, Mr. Chairman, finds that the words "like products" in the sentence which we are discussing is likely to lead to dispute in the actual working of the Article and for that reason we feel that the balance of advantage would lie in accepting the proposal of the South African delegation that the word "transportation" would be deleted from this sentence.

Mr. R.J. LACKLE (United Kingdom): Mr. Chairman, I would like to say this: that if it is a question of deleting the word "transportation" purely because of this apparent ambiguity of the phrase "like products", surely that argument goes very much further indeed; if that argument is a valid argument it would mean that the whole of this paragraph ought to disappear altogether. So far as the interpretation of "like products" is concerned, my impression is that, in practice, that is a term which has been in Treaties for a very long time and it has not given rise, so far as I know, to any particular difficulties of interpretation - I think for this reason: that "like products" is related to the tariff classification of the country concerned. The products which fall within a certain heading of the tariff classification and are therefore subject to a particular rate of duty are all treated as "like" and therefore when comparing domestic products with imported products it is just a question of what section of tariff classification the particular products would fall in if imported. That is a question which comes up every day, I take it, in the normal routine of Customs operations, to decide under what headings of classification a product falls, and that determines what are "like products." So I don't think there is any serious ambiguity in the term "like products", and therefore no reason for contemplating the deletion of this

paragraph which I think would be the logical outcome if we were to decide that "like products" was too difficult to interpret.

Dr. G. GUTIERREZ (Cuba): The Cuban delegation really does not desire to go back again through this question of the rôle of transportation and other services in international trade because we were happy in the sub-committee to reconcile the different points of view so as to draft a new text which gives satisfaction to the principle that these services are an important part of international trade and also to the contrary idea that nevertheless they cannot be dealt with in detail in this Charter, but transferred to the specialised International Agencies, in the cases where those Agencies exist, or taken care of by the Organisation if there is no such specialized agency. But here "transportation" comes, in our opinion, in a different sense. This is an article which is trying to avoid a discrimination on products coming into a country by means of taxes or any sort of laws, regulations or requirements affecting their internal sale, offering for sale, distribution or use of any kind, and there is no doubt that transportation is a way to bring those products in. So the Cuban delegation wonders if it would not be wise to leave in suspension, as we say, "on the table", the word "transportation" until we dispose of that special article that was put before the ad hoc sub-committee of Commission B. and then decide. Because if we decide on the first problem, then this will be easily understood.

CHAIRMAN: The delegate of India.

MR. M.P. PAI (India): Mr. Chairman, I would like to clarify the point which I tried to make earlier. It is not our view that transportation should be used for the purpose of protection at all. The point is that in India, and perhaps in some other countries as well, rating policy is based to some extent on the intrinsic value of goods moved, and for that reason rates may be different in the case of goods which are more or less similar but not exactly the same. It is for that reason that I thought that the words "like products" might lead to dispute when it comes to a matter of comparing the rates charged on imported and indigenous goods.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I wonder whether I might adjust one point which I made earlier. I was saying just now that one could interpret "like products" in the sense of customs tariffs. In the particular case which the Indian delegate has just mentioned, it is slightly different. One would interpret "like products" in the sense that if the particular goods fall within a particular item, then they are "like products" for this purpose.

CHAIRMAN: The delegate for South Africa.

DR. J. HOLLOWAY (South Africa): Mr. Chairman, as I said at the beginning, I am trying to save the time of this Commission, because the subject was discussed during the whole session of Commission B, I think. It is clear, however, that all the members of this Commission are not aware of the course that this matter took, and perhaps I may just say a few words on that.

In Commission B, it was admitted on all sides, both by those who wanted to include services in the Charter and those who wanted

to exclude services, that there are problems and very serious problems affecting international trade concerned with transportation and other services - and I should say that I am in full agreement that those problems are serious to us all. The attitude taken, however, by those members of Commission B who did not consider that we could deal with transportation and other services in the same way as we are dealing with other subjects, is that the matter is far too complicated to be dealt with in a few all-embracing sentences.

After a very long discussion, the matter was referred to a sub-committee. That sub-committee considered the matter very fully and came to a unanimous conclusion, which is the one to which I referred before, given in document W/144. I shall read just the necessary parts of that to make clear what the approach was of that Commission, and I wish to suggest that that covers the whole of the subject also for Chapter 5.

CHAIRMAN: Do you not think that all the members of this Commission have read it?

DR. J. HOLLOWAY (South Africa): Well Sir, it is quite clear from the discussion that they have not all read it.

The reports says: "Members recognize that transportation, telecommunications, insurance, banking and certain other services are substantial elements of international trade, and that any restrictive business practices in relation to them may have harmful consequences similar to those described in Article 39. Such practices shall be dealt with in accordance with the following paragraphs of this Article.

If any Member should consider that there exist restrictive business practices in relation to an international service in the meaning of Paragraph 1 which have or are about to have such

harmful effects, and that its interests are seriously prejudiced by this situation, the Member may submit a written statement explaining the situation to the Member or Members the public or private enterprises of which are engaged in the services in question. The Member or Members concerned shall give sympathetic consideration to the statement and to such proposals as may be made with a view to affording adequate opportunities of consultation and effecting a satisfactory adjustment of the matter.

If no adjustment can be effected, the matter is referred to the Organization which then transfers it to the inter-governmental agency if this exists. If they do not exist then the Organization can make recommendations for, and promote international agreements on, measures designed to improve the conditions of operation of the service in question so far as they affect the purposes of the Organization".

Now that, I think, is as far as we can go. The subject of transportation is not two subjects. As I have said, internal transportation and external transportation is the same, just in the same way that you have got to take into account railways and waterways, you have got to take into account internal transportation, you have got to take into account airways.

All these things are vastly complex, and I claim, as one of the members of Commission B claimed, that this Conference is not competent to deal with those rules in detail. The matter is much too complicated. I will give you an example of that. In the sphere in which this Conference is competent to act, we have brought our experts, and for the simple matter of defining the two words "actual value" for duty purposes, we have had a sub-committee, which met for many many weary hours, and it has referred this to a further sub-committee, which has spent more and

more weary hours, so that some of the members had to drown their sorrows at the "Mere Royaume" last night! Now, that Committee is within sight of agreement, after having spent what would be about three or four days of the time of this Commission on two words. I ask you, Gentlemen, where shall we be if we try to define what sort of practices in all the types of transportation, internal linked up with international transportation, have got to be ^{banned} and which ones have got to be allowed?

It is simply impossible for us to deal with the problem. We recognise the problem, and I suggest that the draft I have read out to you which covers inland transportation is as far as we can go, but if you leave the word "transportation" in Chapter 5, then a lot of consequences follow from Chapter 5, and it is to prevent those consequences following from a matter which has not been considered more than in just the barest outline that I move the deletion of the word "transportation".

CHAIRMAN: The Delegate of the United States.

Mr. RYDER (United States): I am much impressed by the remarks of the Delegate of South Africa. There is a difficult transportation problem. I can well understand that in drafting a Chapter on restrictive business practices it would be very difficult to conclude without transportation. Here in this particular paragraph of Article 15 we may be inclined to establish a separate principle that there shall not be discrimination against like products in the internal transportation of the marketing countries; and I should like to ask the Delegate of South Africa: What serious problem do you think would arise in connection with such a provision?

CHAIRMAN: The Delegate of South Africa.

Mr. HOLLOWAY (South Africa): Mr. Chairman, I would mention one specific example - one specific effect. The imported goods start at Point A - which is the coast - and go to Point B, which is the interior; and the local goods also start at Point A, on the coast, and go to B, which is the interior. But in actual practice that is not the way things happen. A little bit of trade does go along that way, but immediately you get beyond that simplest example you get into difficulties.

Suppose that your competing local goods do not go from the coast to inland centre B, but from another inland centre to inland centre B. How are you to relate those two things?

Let us take a further case which happens in our country, and which happens in most countries. Suppose that one of those routes is an uphill route, having steep gradients, mountain passes, and the other one is on the plain or downhill. How are you to relate those two things? That is obviously a problem of railway economics. You have got to run a railway system as one system, and immediately you pass beyond the very simplest case

you have a problem of what does this limitation or prohibition mean. It requires the expert knowledge of people accustomed to running railways under very different conditions to solve that problem. It is a problem of railway economics, and as every railway system has to run as a whole, and as every railway system has to take into account in some form or other the principle of charging the product, by putting in a simple general principle like this you are just barging like a bull in a china shop into a very complicated system which has got to be built up over many years.

The second specific case,

The second specific case, the effect of including this as a definite prohibition in para. 5, for inland transportation, when you do not include it in para. 6 for international transportation, is this: That you will be hitting at particular countries that have inland transportation but no international transportation. The people with international transportation systems are still free to resort to these practices and do not pretend that they do not do it. They do it every day. You are discriminating against inland transportation and leaving the international transportation free.

Well, I do not think that is a thing that this Conference can stand for: - to introduce a thing which is deliberately discriminatory, because we cannot deal with another part of it. It seems to me to be very highly unfair towards a country which has only the type of thing which falls inside the limited scope of Chapter V.

CHAIRMAN: The Delegate of Belgium.

M. Pierre FORTHOMME (Belgium) (Interpretation): The explanations given by the Representative of the Union of South Africa confirm me in my previous opinion that it is essential to maintain the word "transportation" in the first sentence of paragraph 3 of Article 15.

I am fully aware of the difficulties and of the complexity of the problem, and I also recognize, with the Representative of the Union of South Africa, that the practical application of the principles which we are setting down is a matter for the specialists. But the document of which the honourable representative of the Union of South Africa has read a portion establishes the very fact that the Organisation, as such, is competent in respect of the problem of services, and that consequently the Charter is applicable in this respect; and only in cases where the Organisation deems that it is not competent does it say that it may refer such problems to any other intergovernmental agencies, if such agencies exist.

All we want to do is to establish this well-recognized principle in the Charter and leave it to the Organisation to seek, by the appropriate methods, the principles applicable to the practical measures to be taken in this respect. The large part of the honourable Delegate's observations does not apply to the English text.

CHAIRMAN: We have heard a number of Delegates, and the general impression is that the Delegates are not very much in favour of leaving out the word "transportation", although they appreciate the very complex and difficult technical aspects of the question.

If before sending the matter on to the ad hoc sub-committee

I might be allowed to give my personal impression, it would be this, that if we are going to accept the unanimous report of the sub-Committee on services, it would then be quite logical that we should apply the principle of such an act in some specific case where we can see at once that services can be run in a way which will be harmful. If we say that to run transport in a certain way would discriminate between national products and imported products, then I feel that it is natural to say so, and we do not by doing that prejudice in any way other aspects of the harmful effects, or the way in which services are conducted. But I am no expert, so I am speaking with considerable diffidence. I just wanted to indicate some line of thought that might perhaps be of some help to the sub-Committee when we send the matter on to them.

Dr. J. HOLLOWAY (South Africa): Mr. Chairman, I am sorry that you leave the matter at that. I indicated, when I opened the discussion, that I was trying to save the time of this Commission by linking up with the other Commission, but evidently I have failed in that, and I must carry the point one stage further. It seems to me perfectly obvious from the discussion that has taken place, that the point there that discrimination includes one sort of transportation and excludes other sorts of transportation has not been taken into account by this Commission at all, and if transportation is left here, then this Commission, in order to be consistent, must go in for international transportation, inland waterways and aerial transportation, and the whole caboodle. That is one point.

The next point that I would have made if I ^{had} not tried to save the Commission time, is this. You cannot judge the running of a railway system by one little bit of a railway system. That is completely impossible. I quoted one case to the American delegate where, if that was the whole of the railway, there was clearly discrimination but the matter is not as simple as that, because every bit of a railway system is part of every bit of a railway system. The railway system has to maintain very expensive permanent ways. It is a matter of great importance for it whether it can use the permanent ways to full advantage. Therefore, on occasion, it must charge a rate which does not pay for very much more than its prime expenses in order not to have empty trucks running to and fro. Now, in the course of doing that, it may charge a rate which happens to be of an advantage to only one type of trade and which is lower than the rate on imported goods. The question has got to be solved by experts whether in that case there is an actual case of discrimination against the imported articles. Members here seem to

think they can make one general rule and that it is simple to apply it. I tell you, Gentlemen, it is not simple to apply it. You must look upon a railway system as a whole system. You are putting yourselves, by one general rule which is ascribed to a general management of a railway system, in a position that you tell that railway system: "You must hold yourselves to this general rule, and if your whole railway system loses on it that is not our concern". Surely that is a most unreasonable and unbusinesslike attitude to take up for any international body. The problem is one of how to manage an exceedingly complicated system. Now if you have a system which is under one management, let us say a state railway which serves all parts of a single country, at least you have one control, but in actual practice you will have that in the case of some countries. In the case of other countries you have a large number of railway companies running separate railways where the control of the government is immediately less close than it is in the case of its state railway. So again you are discriminating against the countries with the state railways in favour of the countries with private railways.

Then you get a further complication. You get a country where you have both private railways and state railways, and sometimes you have a country where you have private railways and state railways running next to each other in competition. You get complications there that people do not dream of here, and to come along with one general rule which you will, I think, admit you cannot interpret at this Conference, and say: "Whatever happens you have got to follow that rule", is, I submit to you, the most unrealistic thing that this Conference can do, but if this Conference insists on including one portion of transportation I want to challenge anybody to give me any argument why it should not include at the same time ocean transport, canals, airways, motor transport in every country in the world or in every country that becomes a member of this Organization. You can answer this question if you like.

CHAIRMAN: The Delegate of Australia.

Dr. H.C.COOMBS (Australia): Mr. Chairman, I feel some sympathy with the Delegate for South Africa in relation to this matter, because of the very wide range of possibilities that are brought in under this article.

When we came to look at it for ourselves, I think we came to the conclusion, with customary modesty, that in these matters we were perhaps, on the whole, not unduly wicked and that therefore the burden of accepting this would not be particularly severe: in fact, on balance, we might gain something from the elimination of other people's extravagances, which in this respect at any rate were greater than our own. But we did feel some trepidation about accepting it, because of the multiplicity of things which it might cover. We tried to track some of these down and found the oddest of provisions here and there in our economy for giving slight and unimportant elements of protection to local products and it would, quite frankly, be an exceedingly difficult task to find those things in all their ramifications and remove them by legislative action within any reasonable specified time.

Similarly, in relation to transportation, particularly where Government-owned railways and other forms of transport are concerned, the issue is particularly complex, since the matters which Dr. Holloway has referred to are sometimes imposed by law, or by some form of legislation, and sometimes are imposed under the authority of the manager of the enterprise under some form of legislative authority which he is given. In those cases, it would appear that if he had the good fortune to fix his rates in terms of a general authority given to him, then he would be

free to discriminate in any way he liked, as transport authorities - as I gather - ordinarily do by discriminating against those people who can pay most. On the other hand, if it happened that it was the normal practice to require that the freight rates had to be laid on the table of the Legislature and receive Parliamentary approval - or at least lie there sufficiently long for it to be assumed that the Legislature did not object - then they would be subjected to this discrimination for something which arose from a form of procedure in regard to the legislative customs of the country.

It just did occur to us that a lot of these things are not terribly important, and we wondered therefore whether we might not avoid a lot of difficulties for the countries concerned if this rule were made so that it applied in full to laws, regulations and requirements which might be established in the future and applied to those in the past insofar as complaints were received and it could be established that the law or the requirements complained of were, in fact, discriminatory against the imported product. That would mean, I think, that a lot of trivialities would pass unnoticed and that countries concerned would be saved a lot of hard work in finding them and would be saved any implication of bad faith because they happened to overlook them.

It would also mean that in the case of the rather complex type of thing which Dr. Holloway has referred to - where you might get things like freight rates, determined by a multiplicity of factors, etc., which, on the face of it, might appear to be discriminatory but were determined on quite different principles - it would be necessary for it to be established that they were, in fact, discriminatory before a country would be expected to do anything about them.

I want to make it clear, Mr. Chairman, that we are not seeking to evade the obligation proposed in this part of the Charter, but we do suggest that if it is taken as it is, in its present form, many countries will find it exceedingly hard to observe the letter of the Article and identify all the oddities of protective practice which they may have embodied in their local laws in one way or another. I believe that, if we can put it around in that way, some of the difficulties which Dr. Holloway has in mind might well be overcome.

CHAIRMAN: The delegate for Belgium.

M. P. FORTHOMME (Belgium) (Interpretation): Gentlemen. I apologise for taking the floor so often, but I want to point out, first of all, that I consider the explanation just given by Dr. Coombs highly constructive and we should do well to take it into consideration for our future work.

As far as Dr. Holloway is concerned, I would first of all point out that, when I speak of transportation, I mean all kinds of transportation from a man's back to jet propelled rockets.

On the other hand, if, as far as international transportation goes, there is such a high degree of competition among our transportation agencies that I can hardly imagine a case where one transport organization would be brought to a point at which it should discriminate in favour of its own national product. - I quite agree that if such a case did arise, I would be quite prepared to have this international transport on those conditions treated in exactly the same way.

Finally, as far as the complexity and highly complicated nature goes, on which Dr. Holloway so forcibly insisted, I would like to say that once the principle is admitted, then the delegations, on the part of the Organization, could form a specialized organization of experts, which would be charged by the Organization itself to fulfil the principles as established by the Charter and the reasons for maintaining the principles in the Charter itself.

DR. J. HOLLOWAY (South Africa): I am prepared to accept that procedure, Mr. Chairman. Let it go to the sub-committee, and if the sub-committee is prepared on the suggestions of both Dr. Coombs and Monsieur Forthomme to take the whole field of

transportation in its stride, well let them try. I have no objection to them finding out the difficulties.

As for the question of competition in international transportation, he must be thinking of narrow seas. Let me tell him that shiploads of things coming from western European ports were charged the same rate of freight as ship-loads carried by the same ship from Durban to Mombassa; from Liverpool and Southampton and Rotterdam rates would be the same to Mombassa, and from Durban to Mombassa, practically next door. There is a good deal of that international discrimination against the trade of certain countries, and we have suffered from that.

It is particularly for that reason that I must draw attention to the difference in the treatment of this subject in this Commission and in Commission B. In Commission B, where the subject of international transportation was discussed, the Commission was strongly against dealing with it by some broad general condemnation. Commission A, where only certain types of national transport is discussed, is strongly in favour of condemning what is happening only in certain countries, and I think certain of the delegates here do not realise that that condemnation may be applied to their own countries, while international transport which affects their international competition is free from those rules.

CHAIRMAN: The delegate of the United States.

MR. O.B. RYDER (United States): Mr. Chairman, I have very little to add to what has already been said. I always recognise that there are great difficulties in applying a general principle of this kind, and many of those have been brought out here.

Probably the most difficult one is the principle in the Charter of administration of transportation charges and what the traffic will bear. I think that if, for this reason, this provision were adopted, each country would try to conform to this provision.

CHAIRMAN: The Delegate of the United States.

Mr. RYDER (United States): Mr. Chairman, I have ^{recognised} invariably, and I think all of us recognise, that there are great difficulties in applying a general principle of this kind, and many of those have been brought out here. Probably the most difficult one is the principle of basing transportation charges on what the traffic will bear.

I think that if this were the danger, this country would try to conform to this provision, and, as the question was raised with the Australian Delegate, that a country would correct such practices as it was aware of and would rely upon complaints naturally from other countries to catch things of which they were not aware.

So I think that phase of it is rather easily handled. In applying the principle of what the traffic will bear, the country applying that principle would, of course, base its regulations upon that principle, and if any country felt the need they would make a complaint under article 35; and if the practice was a reasonable practice, in conformity with the usual standards observed in the transportation rates of the country concerned, there would probably be very little difficulty with it.

In any case, if it went beyond that, the burden of proof would be upon the complaining country, and it might be that as a result of complaints of that kind you might get some practical application of these principles which might be worth while.

CHAIRMAN: Well, I think we can consider the discussion closed; and as for terms of reference to the ad hoc Sub-Committee, I think we might say that they should not try to come to any decision on this until after Commission B has dealt with the unanimous Sub-Committee Report on the services. When that has been done and if that Report is adopted by Commission B in the name

of the Preparatory Commission, then our ad hoc Sub-Committee has a safer background for their examination of this question, and then they will be guided by the discussion that has taken place here.

May I take this as agreed?

Then I would like to say that it is only half-past 5, and we could still go on; but we shall not be able to terminate the discussion on article 15 to-day and that is quite what I expected; and we must then decide whether you will try to do it in the morning meeting to-morrow - we cannot to-morrow afternoon because B is meeting, and in principle we should not meet at the same time; but if you all agree, we could meet at 10.30 to-morrow morning.

One more word. Mr. Wyndham White just tells me it has been arranged that there will be Sub-Committee meetings for to-morrow - rather important ones - so he raises the question as to whether we could possibly meet to-morrow afternoon at 2.30, at the same time as Commission B; but I must then turn the question back to him. Is he able to provide interpreters and organise the various staffs to-morrow afternoon?

Mr. WYNDHAM WHITE: Yes.

CHAIRMAN: May we then decide that we meet to-morrow afternoon at half-past 2, and then we go on with the examination of our paper.

We are discussing paragraphs 1 and 2, and I have already said that on paragraph 2 there was an Amendment by the South African Delegation, but also by the United States. We find it on page 6 of Document 150, and as far as I can see, that is part of the United States proposal which does not contain many alterations from the New York text. He inserts the word "purchase" and also the word "exhibition" in the text, and the last alteration, I take it, is connected with the rest of his proposal, and I would suggest that we pass by this until we take it on the Amendments on the cinematograph films afterwards.

Mr. RYDER (United States): That is satisfactory, Mr. Chairman.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. A. J. SHACKLE (United Kingdom): I take it that in discussing this United States text we are supposed to turn "a Nelson eye" wherever we see the words "exhibited" and "cinematograph films", and discuss the paragraph as if they were not there, reserving the subject of films until later.

CHAIRMAN: But before that I would like to mention the proposal of the Chinese Delegation, because that seems to be the most radical one. They propose the complete deletion of this paragraph. I do not know whether the Chinese Delegation, after having read all the different amendments, maintains this rather radical proposal.

The Delegate of China.

Mr. K.S. MA (China): Mr. Chairman, I have already explained our position in our discussion of paragraph 2. I said those words somewhat in anticipation of this third paragraph. As I have already said, any attempt to extend the scope of national treatment beyond taxation would be going too far to be acceptable to us, so I do not think I shall go over the same ground again. Our point has, I think, been made clear.

CHAIRMAN: Then we have in the middle of page 6 of Document W/150 the next radical proposal by the Delegation of Cuba. That Delegation proposes to delete the second part of paragraph 3. We have also proposals by the Delegations of Benelux, Czechoslovakia and New Zealand for a new draft of paragraph 3, similarly from the Delegations of India and Norway. Finally, we have the proposal of the United States Delegation already mentioned. Does the United States Delegate wish to speak on this amendment now?

Mr. Oscar B. RYDER (United States): Mr. Chairman, I think the amendment of the United States needs little explanation. In the New York Draft there was a separate paragraph in regard to the cinematograph film, saying there shall be no restrictions upon regulations restricting the amount of foreign films shown in a particular country, but subjecting them to negotiation. The United States Delegation cannot accept that proposal. It leaves wide open the door for violating fundamental purposes of this Charter.

What we propose here is that in the case of cinematograph films they should be permitted to continue for a period of three years after the Charter entered into force. Further regulations--there is a question here of mixing regulations--are permitted to continue for a year. In that instance, we are in agreement with the New York Draft.

Then there is a provision that the "requirements permitted to be maintained under the foregoing proviso shall be subject to negotiation for their liberalization". There is also a provision that "such requirements"--that is, the abolition of film regulations in three years and other regulations in one year--"may be continued for additional periods in respect of any product if the Organization, after consultation with the other Members whose trade is substantially affected by the requirement, determines that in the special circumstances alternative measures permissible under this Charter would not be practicable".

The language chosen there: "in the special circumstances alternative measures permissible under this Charter would not be practicable" replaces the words in the New York draft: "concur that the requirement concerned is less restrictive of international trade than other measures permissible under this Charter".

Now, whether a requirement of one type is more restrictive than another depends upon the degree of different restriction. Whether or not a given mixing regulation is more restrictive than a given tariff duty depends on the height of the duty and the nature of the mixing regulation; and it is in order to afford a real measure for determination here that we suggest the adoption of the term "alternative measures permissible under this Charter would not be practicable" in place of "the requirement concerned is less restrictive of international trade"

CHAIRMAN: May I ask the Delegate of Cuba if he would like to support his proposal, namely, to strike out completely the second part of paragraph 3?

Dr. G. GUTIERREZ (Cuba): Mr. Chairman, our reason is very simple. We consider that this matter is so complicated that attempting to establish international rules to handle internal matters is something that goes beyond our power, so we are humble enough not to insist.

Mr. J. MELANDER (Norway): Mr. Chairman, the Norwegian delegation is in complete agreement with the Cuban proposal to delete the two last sentences of paragraph 3 of Article 15. I think perhaps that it might be useful to the members of the Commission to try to indicate, in a more general way, the reasons why we are of that opinion.

We feel that the problems which we are to solve through this Charter, are to regulate the external trade of the countries. We feel, further, that it is quite obvious that, if the different member countries shall have the right which is provided for, to develop an economic policy in changing circumstances and especially to introduce, or to continue, degrees of planned economy, it will be necessary to introduce regulations, laws, requirements etc., which may have the effect of interfering with the external trade. In this respect, however, I think we shall have to distinguish. It is quite obvious that a great many countries represented here and most of those represented at the final Assembly, are in the position that they have not got typical economic systems like, for example, the United States, or a typically clear-set regulated system like the Soviet Union. We shall find that most countries are somewhere in between, and the provisions in the last part of paragraph 3 of Article 15, in our view, would go much too far. They would, for example, exclude the possibility for a country to lay down that, in

order to develop their economic life, they should have the right, for example, to fix that a product should be composed of certain categories of raw materials, some of which might be of foreign origin and some of domestic origin. That I think is quite out of the question. It is really one of the methods through which a planned economy is developed, and to cut that out would be quite outside the scope of this Charter. On the other hand, as we have indicated in our memorandum, if we lay down that, for example, electrical equipment should be made of certain raw materials, this or that category in that case, we will not have the right to decide that a certain quality should be included in such a way that qualities coming from outside should not be allowed, whilst qualities coming from the/^{domestic}production should be allowed. In that respect, we should have no discrimination. That would, however, be provided for through the first sentence of paragraph 3 as it now reads. In other words, we feel that we have, in this case, the most typical example of a clash between the methods through which we shall try to regulate the external trade of a country, and regulate the internal domestic policy. To put it in a nut-shell, I think we can say that here is one example where we shall have to see whether it will be possible to provide for a comparatively free and liberal external commercial policy, at the same time, maintaining to a certain extent, a planned economy on a domestic level. That test we shall have to come across several times, not only in this case but later on as well. Here is one example where I think it is quite clear that we shall get it. That is the reason why we think that the last two sentences of paragraph 3 ought to go out. Further, I would at the same time mention that paragraph 2 and the first sentence of paragraph 3, in our view, would need some exceptions, though however I shall return to that at a later stage.

Mr. R.J.SHACKLE (United Kingdom): Mr. Chairman, I would like just to ask a question to make sure that I understood the Norwegian Delegate's point correctly. I do not know whether what he desires is to be free to treat domestic products differently from like imported ones or whether, on the other hand, what he wants is to be free to require that certain domestic raw materials shall be used which are not like the imported raw materials which they substitute.

It seems to me that is an essential point here, because if it is No. 2 - the question of using certain domestic raw materials which are different - I do not see that that clashes with the principle of this paragraph. If, on the other hand, it is a question of leaving freedom to treat like domestic products more favourably than like imported products, it seems to me that there is a very direct clash with the principle of this paragraph, and I think, in order to appreciate the bearing of this point, it would be as well to have that point clear.

CHAIRMAN: The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I think the answer is comparatively simple. I will try to illustrate it by way of an example.

In Norway we would normally have a regulation to define that margarine should include a certain amount of butter. Margarine is produced either in Norway or imported. For practical purposes, it is produced in Norway, because we can knock out any foreign competition on that.

With regard to butter, the answer would be that if we decided that, for example, margarine should include 20 per cent of butter, we would not lay down that that should be totally Norwegian butter, to the exclusion of foreign butter, but,

whether of Norwegian or foreign origin, it would be on an equal footing so that in a case where a foreign country - like Denmark, for example - exports butter to Norway, that would be completely equal to Norwegian-produced butter in that respect. I think that covers the question.

Mr. R.J.SHACKLE (United Kingdom): Gentlemen, in view of that explanation I should like to raise the question whether there really is any conflict with the provisions of this paragraph, because, as I had understood them, this paragraph is concerned with like products. If we read the last two sentences correctly, it surely must mean that this is meant to "preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed. . ." exactly, and if I understand the Norwegian Delegate's explanation rightly, that is not what he wants to do.

CHAIRMAN: The Delegate of Czechoslovakia.

M. Stanislav MINOVSKY (Czechoslovakia) (Interpretation): Gentlemen, I want to point out that it is not perhaps as simple as it seems. If we read the provisions of this paragraph as "to preclude the application of internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed or used", it all depends if we say 20 per cent or if we say 40 per cent. If we go down to 20 per cent, it means a restriction of the amount of imported products.

The whole thing seems to us so involved that we cannot grasp it.

Mr. J. Melander (Norway): Mr. Chairman, I would suggest answering the Delegate of the United Kingdom by saying that we have not read the last part of paragraph 3 in the way in which he has read it. We read it in the way that we would not have the right to lay down a regulation which would, in fact, result in the cutting down of goods, raw materials and so on, which we have hitherto imported.

Mr. R.J.SHACKLE (United Kingdom): Well, Gentlemen, I wonder whether, in that case, we might ask the United States Delegation - as it is their amendment - if they can give us an opinion as to what is intended, because we certainly had read the whole of this paragraph as referring throughout to like products and nothing but like products.

Mr. Oscar RYDER (United States): Mr. Chairman, the point raised here is a very interesting and complex one and it involves some aspects to which I have not given consideration. I would therefore prefer not to answer that question now but to defer my answer until tomorrow, if that is agreeable to the Commission.

CHAIRMAN: As it is already ten minutes past six, I think we can close the discussion and come together again at 6.30 tomorrow afternoon.

The Meeting rose at 6.10 p.m.