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

VERBATIM REPORT

TWENTIETH MEETING OF COMMISSION A  
HELD ON SATURDAY, 28 JUNE 1947 AT 10.30 A.M. IN THE  
PALAIS DES NATIONS, GENEVA

DR. E. COLBAN                      (Chairman)                      (Norway)

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CHAIRMAN: The Meeting is open.

Some Delegates have not yet come, but I think we can start. We are going to examine the Articles 16 - 23 and 37. You remember we had the same articles in what was the Working Party and we hardly agreed on a re-draft of these Articles, partly because some of them were referred to Sub-Committees. Four or five of these Sub-Committees got through in time to report to the Working Party, but some few Sub-Committees were not ready when the Working Party had to see Commissions A and B, but their Reports are now included in the Document T/103, which thus contains both Articles on which the Working Party arrived at more or less final conclusions, and the Reports of the Sub-Committees that had/<sup>not</sup>been reported to the Working Party.

I take it that you all agree to use Doc. 103 as our Agenda for to-day.

We start by Article 16, Freedom of Transit. You will see on page 2 of Document 103 the proposal adopted by the Working Party in the first reading. It simply copies the New York Draft, with one small but rather important addition to paragraph 1, "but shall apply to air transit of goods and baggage". That was agreed in the Working Party, and I would note, as it also is noted in 103, that the Delegate of Chile and the Delegate of Canada wanted to confine the Article 16 to goods only, in which case other means of transport should be deleted.

I would ask the Delegate of Chile whether, after having the opportunity of re-considering the matter he finds it possible to join in with the majority.

Next I would ask the Delegate of Canada.

Mr. URQUHART (Canada): Well, Mr. Chairman, I think I prefer

to refer the discussion of this until I hear the Chilean Delegate. We simply associate ourselves with... (Oh, here he is now.)

CHAIRMAN (Interpretation): The Chairman explained to the Chilean Delegate where we were now standing, and asked the Chilean Delegate if he could join the Members of the other Delegations in accepting the paragraph as drafted.

Mr. GARCIA OLDINI (Chile) (Interpretation): The Chilean Delegate apologises for giving the Chairman this excess of work, and is sorry to state that he has to maintain his reservation for the time being, as long as his Government has not had time to study all the implications of this proposal.

Mr. URQUHART (Canada): I think I still associate myself with the Delegate of Chile.

CHAIRMAN: I hope it may be possible for those two Delegates to obtain more precise instructions on the subject before, finally, the Report is passed through the Preparatory Committee.

Then we find, on page 3 of Doc. 103, the following remark. "The Working Party agreed that the wording of paragraph 1 covered transit from one point to another in a given country across the territory of another country". That was, as far as I remember, unanimously agreed, and to my mind is correct.

The question is only whether it should go on being a remark and explanation to paragraph 1, or not. I do not want to force the minds of Delegates, but I would only say that of course the fewer remarks, the fewer comments, attached to the Drafts of the Charter submitted to the General Conference, the better.

CHAIRMAN: Could we add that you have seen the paper from the Steering Committee concerning the Draft in the form of the Report of the Preparatory Committee, and there it is suggested that it is an Annexe to the text of the Charter. We could give some explanations and some comments, in order to help better to understand the implications of the text we propose. Perhaps the simplest thing would be to leave it to be considered at a later stage of the work of the Preparatory Committee; and the commentary ought to be included in that Annexe, and if such an Annexe is prepared, this is a case in point.

CHAIRMAN: The Delegate of the United States.

Mr. Osear RYDER (United States): Mr. Chairman, I want to refer to the reservation of Chile and Canada, and ask them what status it has. Does that mean that the reservation goes to the World Conference - it would be unfortunate if it did; or does it mean that it will come up again in the Commission or where? What is the status of it?

CHAIRMAN: I would say, in answer to that, that I have already taken upon myself to express the hope that before the termination of the Preparatory Committee it may be possible for the Delegates of Chile and Canada to obtain instructions enabling them to forego their reservations. If they are unable to obtain such instructions, of course, I do not see any other solution than to let the reservation go on, with the Report of the Second Session of the Preparatory Committee, to the World Conference; but I would also repeat what I said just now, that the fewer reservations - the fewer exceptions - the better. The Delegate of India.

Mr. S. RANGANATHAN (India): Mr. Chairman, there is one other minor complication to which I might draw the attention of this Commission. Most of these Articles will also go into the General Agreement on Tariff and Trade. What will be the position of these reservations in relation to the General Agreement?

CHAIRMAN: In New York, we decided to send on the draft Tariff Agreement as a Working Paper for the second Session of the Preparatory Committee, and we said that all reservations made to the Articles of the Draft Charter

were also, provisionally, reservations to such Articles of the Draft Charter as might be incorporated in the Tariff Agreement. I am perfectly aware, however, of the complications resulting from that, and there are, in my view, two ways out: either to get rid of these reservations or to try to keep out of the Tariff Agreement those parts of the Charter on which reservations are maintained.

The Delegate of South Africa.

Dr. J.E. HOLLOWAY (South Africa): Mr. Chairman, I would like to raise a general question on Note (b), which refers to all similar notes throughout this document - that is, to all explanatory notes. The idea now is that these Explanatory Notes will go into an annexe or such notes as are ultimately passed for inclusion in the annexe.

Now, throughout our discussions we have found refuge in explanatory notes to get over difficulties in the drafting of the Charter. The question has repeatedly occurred to me, what is the status going to be of these explanatory notes when one day we are delivered, bound hand and foot, into the hands of the lawyers? I have had a good deal of experience of the way lawyers go to work in interpreting a document: they follow the pure wording of the law and are bound by that wording. They say that if a thing could have been put more explicitly in a certain way, and it was not put more explicitly in a certain way, that is because the law did not want them to put it more explicitly. In other words, my feeling about the matter is that the lawyers assume that the law-makers are all-wise and omniscient and that therefore they have expressed their meaning exactly. Therefore, anything which gives an explanation the lawyers are generally going to disregard. That, of course, is not essential, and we have really got over

quite a lot of difficulties by these notes.

It seems to me that it would be necessary for the World Conference, at some stage - perhaps in its own Interpretation Article in the Charter, to lay down a rule that the interpreted notes included in the annexure are part of the material of the interpretation of which the lawyers, in interpreting the Charter afterwards, have to take account. I fear that if we do not do that, we shall have a good deal of difficulty, because a large number of Members have accepted certain parts because the note has given an explanation which has made it perfectly clear that that is as they like to see the matter, but if those notes fall away, God alone knows what the lawyers will make of it!

I suggest at this stage - the very first stage at which I can suggest it - the same thing occurs every time we have an explanatory note, so that the matter can be considered by whoever is the appropriate person to deal with it, in order that we can have clarity about this matter. I think we should have this clarity before we get to the World Conference, because if these explanatory notes are not to have the status of interpreted material, it is quite easy for you, Mr. Chairman, to see how much trouble you would have with new drafts of the Articles themselves.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I second this suggestion.

CHAIRMAN: Any further remarks? May I perhaps say that I have thought a little bit about this problem, and my own feeling is that, in the Preparatory Committee we cannot do better than go very carefully through these explanatory notes - I am not talking about reservations but about explanatory notes - and only to maintain laws which really can help the great conference to understand better the text. I also agree whole-heartedly with the delegate of South Africa, seconded by the delegate of Chile, that the great conference ought to, if they keep these explanatory notes annexed to the Charter, have some statement somewhere perhaps even in the Charter itself that in the annex there will be found some explanatory notes that should be taken into account in all questions of interpretation on the relevant Articles of the Charter; but as I said, that should be done by the Conference and not by us.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, of course it would be for the Conference to decide upon this point, but I think we can suggest this point to the Conference because we ourselves know the question far better than the other Members who would join the Conference. Therefore, I think it is for us to do so, because we are better acquainted with the difficulties of the Charter than the other Members of the Conference.

CHAIRMAN: We are going to discuss the form of the Report of the Preparatory Committee in the Chairmen's Committee one of these days, and I am quite prepared to raise the question there.

We have still not quite finished with Article 16, paragraph 1. There is a document which was distributed only this morning T/109, containing some questions referring to explanatory notes. You have

not had this document for twenty-four hours, but unless there is any objection, we might perhaps just go through it. This document reads:

"The French delegation desires to make the following observations affecting both the French and English texts of document E/PC/T/103.  
(Article 16:1)

"It might have been advisable to state that:

"The Netherlands delegation enquired whether the principle of freedom of transit was applicable to goods of foreign origin arriving in a country without the final destination being known at the time and subsequently consigned to a third country after being in bond in the country in question. By a majority vote, the Working Party considered that the answer to this question was in the affirmative."

You will see that the enquiry presented by the Netherlands' delegation only got an affirmative reply by a majority vote, and I do not know whether it would be of any help to the Conference to insert some explanatory notes on the subject.

Mr. M.C.E. MORTON (Australia): Mr. Chairman, I suggest that as we are in the mood to give consideration to this explanatory note, we leave out entirely any reference to the matter that was discussed on 16 May, on the grounds that it is entirely unrelated to the conditions set up in paragraph 1 of Article 16. Paragraph 1 of Article 16 refers to freedom of transit. It says: "... when the passage across such territory ..... is only a portion of a complete journey, beginning and terminating beyond the frontier of the Member across whose territory the traffic passes".

The note of the Netherlands delegation<sup>s</sup> enquiry related to an entirely different set of circumstances. It refers to a case where goods were shipped from one country to another, went into the frontiers of that country, and were shipped to a third country; when they arrived in the third country it was not a case of goods for sale from their original country, but from the second country. There were certain implications in the thing which may not have been properly understood. It is a desirable thing at all times for transit to be given to goods travelling round the world, but there are certain cases where such a thing may not be very desirable. Whiskey may be sent from Scotland to Antwerp - I cannot understand why it could not be consumed at home - when it arrives in Antwerp it is put into bond and later on a portion of it is sent to France. Thereafter the transaction in those goods on arrival in France is one between the merchant in Antwerp and the importer into France, and not one<sup>with</sup> the original supplier in Scotland. Supposing whiskey was in short supply in Antwerp, and the transportation was prohibited, the Government in Antwerp would be perfectly within their rights in not allowing those goods to go forward to France. There would be no question of the freedom of transit in that case, because it does not involve an instance where the passage across that country was a portion of the complete journey beginning and terminating beyond the frontiers of the member across whose territory the traffic passed.

CHAIRMAN (Interpretation): I would like to ask the French delegate if, in the light of the explanation which has been given, he still presses his point.

M. ROUX (France) (Interpretation): This question was raised by the Netherlands delegation and not by myself, and the document which we have had distributed this morning is only to clarify the matter, and to draw the attention of the delegates to a situation which might have escaped the attention of the Secretariat. Of course, as I took no part in the discussion, I must leave it to the Netherlands delegate to defend the case. If we look at the summarised records of the meeting where the question was discussed, we will see the Netherlands delegate reserved his right to take up the matter again in the full Commission. Therefore, our document was only meant to clarify this matter, and I will not discuss the substance of the question.

CHAIRMAN: I will call on the delegate of the Netherlands.

Dr. S. KORFEGG (Netherlands): This is a special case, but of course we could study other cases which have a contrary effect, namely, that if whiskey is sent to Antwerp and sold to France, it is not necessarily the merchant in Antwerp who takes the business, it is also possible for England to take a certain part; in such a case it is perfectly clear that the goods are in transit. From my point of view, I should say that in most cases these questions of transit can be satisfactorily settled. It is necessary to take account of the related questions of transit and their effect on the channels of commerce; questions of duty may arise; it does not seem to be a point of special importance to note the countries that goods have gone through.

CHAIRMAN: The delegate of New Zealand.

MR. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, I agree with the comment made by the delegate of Australia. It seems to me that the paragraph as it stands is quite clear and that, if a note were inserted along the lines of that included in document T/109, it would only confuse the issue. I think we should let it stand as it is.

CHAIRMAN: The delegate of the United Kingdom.

MR. W.E.H. RHYDDERCH (United Kingdom): Mr. Chairman, I agree with the delegate of Australia and the delegate of New Zealand. This, as it stands, seems to me to be likely to introduce the ordinary idea of goods in transit - a very dangerous concept and unjustifiable extension.

We in the United Kingdom should not regard the particular case mentioned by the delegate of Australia or the delegate for the Netherlands as being in transit at all. We might call it entrepôt trade, which is rather distinct from trade shipped in transit, but to bring this conception, even by an explanatory note in the Article, would be very dangerous.

CHAIRMAN: The delegate of Belgium.

M. DE SMEDT (Belgium) (Interpretation): Mr. Chairman, the cases which were mentioned just now, cases of transit of such nature, have always existed and have always, in our trade, been known and registered as cases of transit, and I do not see why, with goods which are brought to harbour and shipped away from that harbour, whether straight away or at a later date because the final destination is not known or because the ship on which they are to

be re-exported is not available straight away, we should not call cases like that transit cases. We have always done so in our own country.

CHAIRMAN: I think we are all in agreement with the text of paragraph 1. If there is a question of any explanatory note, then such an explanatory note is of value to the general conference only if it represents the concerted views of all the delegations here. If there is, as I have gathered from this discussion, considerable difference of opinion on the application to special cases of the text of paragraph 1, I do not think it serves any useful purpose to underline that difference of opinion which I feel quite certain in practical life will work out to be of very little practical importance.

I would like to ask the delegate of the Netherlands whether, after this exchange of views, he can forego the insertion of any explanatory note, which he himself has not asked for.

DR. S. KONTEWEG (Netherlands): Mr. Chairman, you are quite right. I was not the one who asked to insert it, and it seems to me a queer position to have to defend an insertion which we have not asked for. I think it would not be right to insist on it for I fully agree with you that it would not give to the conference much light about this paragraph. Nevertheless, it is perhaps possible to see if that majority vote which is mentioned here still exists in this Committee, and possibly you would be so kind as to find out the difference of opinion on this point in this Committee.

CHAIRMAN: The delegate of Canada.

MR. G.B. URQUHART (Canada): Mr. Chairman, there are two different considerations involved here in this article. The first one is in paragraph 1 and the second one is in paragraph 6. Paragraph 1 deals with the treatment by the country through which the goods pass; paragraph 6 deals with the treatment by the country of the final destination. Now, as explained by the delegate for Australia, paragraph 1 says that it is only a portion of a complete journey, and to insert a comment or explanatory note in the draft to the effect that the transaction such as described by the delegate for Australia should be treated as in transit is not in accordance with the actual provisions of paragraph 1. It would imply that a country would be forced to refund customs duties paid on goods which were imported and re-exported, and I do not know that any country here is going to be bound by any consideration such as that.

MR. O. RYDER (United States): Mr. Chairman, I see no useful purpose for the insertion of the note.

CHAIRMAN: I have been told by the Netherlands Delegate that although he does not insist on this being inserted as an explanatory note, he would like to know whether the Commission are in favour of the clarification of paragraph 1 as given; but I feel very doubtful as to whether that is wise, because we are not here to underline our differences but to try to simplify them, and the Netherlands Delegate can raise the question of interpretation without our getting any further, if I tried to ask for the general view of the Committee; so I would rather seize the opportunity given me by the Netherlands Delegate himself, when he said that he did not really insist. He had to know whether a number of his colleagues here share his view, but I do not think it would help any; I am afraid it would simply deepen the difference and prevent the Working Party, in practice, from obtaining a reasonable interpretation of paragraph 1.

I hope that is satisfactory to the Netherlands Delegate.

Mr. KORTEWEG (Netherlands): I do not think it is quite satisfactory, but I do not see that it is so dangerous as you think; but nevertheless I will agree with your proposal.

CHAIRMAN: Thank you.

Then we go on to paragraph 2. There is no remark on the text already unanimously approved by the Working Party. I think we pass that in second reading now.

Paragraph 3. The same. No remarks? Agreed.

Paragraph 4. No remarks. Approved.

Paragraph 5. There we have a comment with regard to Transport Charges. The Working Party understood that the

principle of paragraph 5 refers to like products being transported under like conditions. That is an explanatory note unanimously agreed to; and I think that that is a note to be dealt with in the same way as Note B on 16, paragraph 1.

Is that agreed?

Agreed.

Paragraph 6. There we have a comment that the Working Party was in favour of the retention of this paragraph as adopted by the Drafting Committee, subject to a reservation by the French Delegation, who will raise this matter when Article 14 is discussed; and in Doc. 109 distributed this morning you will see that the French Delegate draws attention to the discussion which took place in Commission A on June 3rd, 1947, on the corresponding problem in relation to Article 14.

I would now like to ask the French Delegate to speak in the light of the results which have been achieved in the discussion of Article 14. He has some comments to make now on this paragraph 6 of Article 16.

Mr. ROUX (France) (Interpretation): I would say, Mr. Chairman, that we only wanted to draw attention in this note to the reservations which were made by the French Delegation as regards also Article 14, because we stated that it might not be possible to adapt in time the French legislation to the provisions of this Charter, whenever this Charter would come into force; and when I look at the note on paragraph 6 I would like to make a comment on it, subject to a reservation by the French Delegate who will raise this matter when Article 14 is discussed.

The matter was raised already in Doc. 109 when the matter came into discussion on 3rd June. I would like, again, to draw the

attention of the Members of this Committee to the fact that it might not be materially possible for the French Government, when the Tariff Agreement comes into force, to modify accordingly the French legislation. We hope to have the necessary legislative provisions passed before that, but we are not certain that by that time the French laws will be modified, and that was the position that was explained by the head of our Delegation recently.

I would like to point out that the French Delegation was opposed, with a number of other Delegations, to the inclusion of paragraph 6 in Article 16.

CHAIRMAN (Interpretation): I would like to ask the French Delegate if, in the light of the discussion which took place on Article 16, it is still necessary to maintain the second part of paragraph 6.

M. ROUX (France) (Interpretation): Mr. Chairman, the second part of paragraph 6 of Article 16 was added at the request of a certain number of Delegations, among which the French Delegation was not included. In fact, we oppose the insertion of the whole of paragraph 6; but as paragraph 6 was adopted by a majority of the Members, we submitted to the majority rule, and we made no other reservations as regards paragraph 6, Article 16 than we made for Article 14, because the question at issue is exactly the same.

CHAIRMAN: Then I take it that unless any other Delegate wants to submit any amendment on the text of paragraph 6, the text is unanimously approved?

The Delegate of the Netherlands.

Dr. S. KORTEWEG (Netherlands): Mr. Chairman, I do not wish to speak on the contents of this paragraph, but only on the place. I am not quite sure that this is the right place for this paragraph in the Charter. It does not deal with the question of transit, but only with the way in which countries have to collect duty, and therefore I should say it would be better if it was added as a special paragraph to Article 14, for instance.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. W.E.H. RHYDDERCH (United Kingdom): Mr. Chairman, the suggestion made by the Delegate of the Netherlands was very fully discussed in the sub-Committee, and I think I am right in saying that we generally came to the conclusion this was the proper place for this particular paragraph.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, I would

like to point out that if it is decided to maintain this paragraph in Article 16, then the title of Article 16 does not appear to me to be appropriate, because one sees in the title "Freedom of Transit", and paragraph 6 does not deal with freedom of transit; therefore, the appropriate title, if you want to leave it in Article 16, would be "Transit".

CHAIRMAN (Interpretation): I would like to point out to the French Delegate that this suggestion was made by myself in the Working Party, and the suggestion was not adopted by the Working Group.

In reply to the Delegate of the Netherlands, I might perhaps suggest that the final place of paragraph 6 can just be left to the Legal Drafting Committee and that provisionally we maintain it here.

Now it only remains to be decided whether we wish to maintain the comment on Article 16 (6) as is found on Page 5 of Document T/103. I wonder whether there is any necessity for keeping it in at all?

(Interpretation) The important question is the interpretation of Article 14, and a note, summing up the position of the French Delegation, will certainly appear on Article 14, and therefore it is useless to repeat that commentary here on Article 16.

The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, I must press my point here, as although, of course, our reservation applies in a larger measure to Article 14 than to Article 16, it would, nevertheless, not be proper for the French Delegate to see Article 16 adopted without a comment on its part, because the French Delegation knows quite well that it may not be able to

apply the provisions of Article 16, paragraph 6, as soon as the Charter comes into force. This is not an absolute reservation: it may only be a temporary reservation, but, nevertheless, it is only loyal on the part of the French Delegate to state this reservation,

CHAIRMAN: Unless any other Delegate has any objection, we should then maintain the comment, in the following wording:

"The Working Party was in favour of the retention of this paragraph as adopted by the Drafting Committee, subject to a reservation by the French Delegate who will raise this matter when Article 14 is discussed".

Is that agreed? (Agreed).

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, I would like to point out that when you read the commentary in English, the Interpreter does not always read the full text of the commentaries in French. I think that the delegates follow the text in French while you, Mr. Chairman, are reading it in English. Nevertheless, that was not the case when we were dealing with paragraph 5, and I did not have time to raise a question. In paragraph 5 my remarks apply to the words "like products", and I would like to ask if these words are interpreted in a restrictive way and, in that case, the word "like" should mean "similar" or "analogous".

CHAIRMAN:(Interpretation): I would like to point out that the word "like" is used both times in the English text, and in French once it says "similaire" and the other time "analogique". Perhaps the French delegate would clarify this matter for us.

M. ROUX (France) (Interpretation): Mr. Chairman, I am very grateful for the honour that you are bestowing upon me now, but I would hate to discuss the word "like" because this word was discussed at length, not only here but in New York and London, and I suppose many times in Geneva before. The only important question is not quite the word "like" in itself, but the exact translation of the word which should be used always. After having taken advice from experts in the Secretariat, we should stick to the translation and always use it.

CHAIRMAN: I think it was not the intention of the translators to use two terms of different indication, but "similaire" and "analogique" were alternatives of practically the same value. But if we can forego the duties of language, I think it would be preferable to use one term in both cases and personally, I have the feeling that "similaire" covers "like". I think it would be better

to leave the matter to the Secretariat, and eventually to the Drafting Committee.

Mr. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, it was not only a question of drafting which I was raising. I am fully aware of the discussions which took place on the words "like products", but it seems to me that this question had not been clarified and very often the meaning of the word "like" would not be of great importance, but at other times it would, and we have to see the meaning behind the word. In fact, I think that the words "like products" must have a restrictive meaning, otherwise, in certain cases, some products could be considered as like products, and benefit from the advantages of goods in transit, and this of course we do not want.

CHAIRMAN (Interpretation): For the reasons I expressed just now, I prefer to use in French the word "similaire" to the word "analogique", as it has a more restrictive meaning.

We have now finished with Article 16, with the exception of one reservation by the delegate of Chile and one by the delegate of Canada. We hope to be able to clear away these difficulties before we terminate our work.

CHAIRMAN: We now come to page 7 of Document T/103. We will take paragraph (a):

"(a) The delegates for Australia, Lebanon-Syria, New Zealand and the Union of South Africa may wish to reconsider Article 17 in so far as it bears on the question of rates of exchange in the light of what may be agreed under Article 18, paragraph 2 (c) and Article 29."

I only wanted to mention this reservation. There is no positive proposal, but if any delegate wishes to make a suggestion on any of the paragraphs in the Article, I take it it will be made when we reach the appropriate paragraph.

There is a comment in paragraph (b).

"The delegate for Cuba criticised the way of approach to the problem of dumping by Article 17 which confines itself to restricting the rights of Members affected by dumping, whilst not condemning those practising it. He would have wished to introduce it by an express statement of condemnation."

Mr. HERBERT DORN (Cuba): The representative of Cuba in the sub-Committee did not make any formal reservation on this point, but the point he raised is quite clear; I felt it was necessary to give a special disposition and make it clear that in principle there should be no dumping. Therefore the question was only one of drafting, and framed to stress the point; there is no formal reservation made at this point.

CHAIRMAN: We will pass on to the examination of paragraph 1 of Article 17. I take it that you have all carefully studied the text submitted by the sub-Committee on this paragraph so that I do not need to read it out. We must, however, deal with the comments on page 9.

"(a) The majority of the sub-Committee is of the opinion that hidden dumping by associated houses (that is, the sale by the importers at a price below that corresponding to the price invoiced by the exporter with which the importer is associated, and also below the price in the exporting country) would constitute a form of price dumping."

Mr. OSCAR RYDER (United States): I was not a member of the sub-Committee, but my understanding was that there was no minority view in the sub-Committee; I think the note was unanimously approved.

CHAIRMAN: I take it that we agree to strike out "The majority of" and the paragraph will read: "The Sub-Committee is of opinion..." Is that agreed?

(The Meeting agreed)

CHAIRMAN: I would like to mention that with regard to the comment we may have to alter the words "The Working Party agreed", "The Working Party was of opinion", and say: "The Sub-Committee is of opinion". Of course, all these opinions in the name of the Working Party may afterwards become our opinion, and then we shall say: "The Preparatory Committee is of opinion". I just mention this to emphasise the importance of the remarks which will eventually be passed on to the Plenary Conference. May I take it that you are in agreement on this?

(The Meeting agreed)

CHAIRMAN: We pass on to Comment (b) -

"(b) The Sub-Committee considers that in accordance with Article 35 the obligation to justify the imposition of anti-dumping and countervailing duties, if challenged by another Member, lies in the first place with the Member applying this measure."

I call on the delegate of Chile.

M. F. GARCIA OLDINI (Chile) (Interpretation): The application of the anti-dumping and countervailing duties is only the consequence of the dumping methods. Therefore, if a Member applies anti-dumping and countervailing duties it is because he accuses another Member of in fact applying dumping measures, and it is the Member who is applying these dumping measures who ought to bear the burden of the proof, and prove that there is no dumping. It ought not to be for the Member who applies anti-dumping and countervailing duties to prove that it was right to take these measures; it is for the Member who is, in a sort of way, committing the dumping to show that the anti-dumping and countervailing duties are unjustified.

I am taking up again in an indirect way the criticism made by the Cuban delegation as regards this Article when it was said that the practice of dumping has been condemned by the Charter. In fact the Charter does not ignore dumping measures, it allows Members to defend themselves against these measures. If the practice of dumping were condemned formally, then it would be the Member who is practising dumping who would have to bear the burden of the proof, because in fact the Member who is defending himself is already accusing the other Member of practising dumping which is illegal. What we ought to get at is not the effect but the cause, and the cause is dumping, and it is the Member who is the cause who ought to bear the burden of proof.

CHAIRMAN: The delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, we all agree that dumping is an illegal practice and that it is quite normal and lawful to fight dumping, but we had another preoccupation when we drafted this Article - the preoccupation against the mis-use of anti-dumping measures - which was to render impossible the fact that nations could, in effect, nullify the most-favoured-nation provision by raising the customs duties in the guise of anti-dumping measures and, of course, anti-dumping measures have to be justified. We do not want to see the results of the most-favoured-nation clause impaired and nullified by an illegal procedure.

The reference to Article 35 is quite normal here and, in fact, we had to mention Article 35 here because we think that these provisions apply here, and because the provisions of Article 17 fall within the scope of the Charter. In fact, there are no provisions here which can be applied against Members which are applying these anti-dumping measures in a lawful way, and what we want to do is to prevent the mis-use of these anti-dumping measures.

CHAIRMAN: The delegate of Cuba.

MR. H. DORN (Cuba): Mr. Chairman, I only want to call attention to the fact that in my opinion that is quite a pure juridical question which is dealt with in this comment. There are two possible bases of challenging an imposition. First, the basis that there is no dumping at all and therefore the whole measure is unjustified, and second, that there is an exaggeration of the reaction against existing dumping.

That means that there are two quite different juridical points which have to be dealt with, and I personally am of the opinion that that is a pure legal question, which has to be dealt with under the heading of Procedure. I am doubtful if the Committee which deals with the question of Article 17 can give a general rule in such a case, and I think it would be a question for the Legal Adviser and the Legal Drafting Committee, if they could find a general rule, to put it in. Therefore, I have some juridical doubts about the general content of this note.

CHAIRMAN: The delegate for South Africa.

DR. J.E. HOLLOWAY (South Africa): Mr. Chairman, I would like to support the point raised by the Cuban delegate. It seems to me that in disputing this point the main question was lost sight of, that is, whether we are going to write little scraps of law of evidence in the note. Well now, I do not know whether this sub-committee is juridically able to write law of evidence, but this is an attempt at law of evidence, an attempt to lay down where the burden of proof lies in this matter.

Surely, if we are going to have examination of complaints under Article 35, we must assume also a certain amount of legal sense in the people that deal with it, and if we want to write little scraps of law of evidence in these notes I can see ourselves getting into a lot of trouble. I think the mischief here is not caused by whether it ought to be the burden of proof or not, but by having a foot-note on a subject which has nothing to do with the Article itself, but which has simply to do with how you prove the thing. I think the foot-note should go completely.

CHAIRMAN: The delegate for France.

Mr. ROUX (France) (Interpretation): Mr. Chairman, I must come back to the history of this footnote (b), because this footnote (b) was inserted following a note which was presented by a certain number of Delegations, including the French Delegation, regarding the burden of the proof.

The burden of proof, we were told, lay with the importing country, and therefore the note which we had presented when that answer was given to us, saying that according to Article 35 the burden of proof lay with the importing country, was withdrawn; and we only ask that this answer should be mentioned in the text in a commentary and be taken into account, and that the interpretation regarding the burden of proof be inserted in the commentary.

We are told now, however, that this is a juridical question, and that we are not here to deal with juridical questions, but may I say that an interpretation of a text given here, or even of the Charter as a whole, will always be a juridical act; and therefore each time we study the Charter and give a meaning to any provision of the Charter, we will be committing a juridical act; and, in fact, the Body which will deal with the interpretation of the Charter will always find it more useful to find commentaries telling it what interpretation lay in the mind of the Charter makers; and it will be very useful for them to have the explanation on the spirit of the Charter, when the letter of the Charter is not clear.

Now, if the Committee maintains the interpretation which was given to us, that is to say that according to Article 35 the burden of proof lay with the importing country, then this interpretation is maintained, and the only thing we ask is that this interpretation be given here in the commentary.

On the other hand, if this interpretation is not maintained, then a note will have to explain here what interpretation is to be given; but, of course, if this former interpretation is not maintained, then the French Delegation will have to reserve its right to present the Amendment which it had withdrawn in the matter previously.

CHAIRMAN: The Delegate of Canada.

Mr. URQUHART (Canada): I agree somewhat with the Delegate of South Africa, that this thing as a comment should be withdrawn. I do not think it makes very much difference whether we have it in there, or not. Article 35 is quite explicit. It says,

"Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by any other Member with respect to the operation of customs regulations and formalities, anti-dumping and countervailing duties, quantitative and exchange regulations, subsidies, state-trading operations, sanitary laws and regulations for the protection of human, animal or plant life or health, and generally all matters affecting the operation of this Chapter; and shall, in the course of such consultation, provide the other Member with such information as will enable a full and fair appraisal of the situation which is the subject of such representations."

I think it is quite explicit in Article 35, and does not need any commentary in Article 30.

CHAIRMAN (Interpretation): By including the words "in accordance with Article 35" in the note the intention of the note is destroyed, because I do not see why, if we put the

words "in accordance with Article 35", we ought to defend here an interpretation which is quite clear in fact, because the interpretation of that Article is clear.

On the other hand, the text, and the presentation and appearance of the text and commentary, would not be good; and, in fact, there would be no use for the note, because, in fact, the words "in accordance with Article 35" were included.

Mr. ROUX (France) (Interpretation): Mr. Chairman, do I understand that the Committee is unanimous on this interpretation of Article 35?

CHAIRMAN (Interpretation): I cannot speak in the name of the Commission. Up to now I have heard no dissenting voice, but that does not mean that each Member of the Commission is agreed on and linked by this interpretation; - but this interpretation, as regards myself, is quite obvious.

I would like to know if, in the light of the discussion which has just taken place, you consider it necessary to maintain this footnote?

M. Roux (France) (Interpretation): I do not see why, if this interpretation is so obvious, we should hesitate to insert it here, because if it is so obvious it may help when cases arise and when cases have to be solved.

CHAIRMAN: The Delegate of Chile.

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, to my mind the procedure of Article 35 is perfectly clear, and I would like to put the question to the French Delegate the other way round. If the procedure is quite clear, then there is no question at stake. On the other hand, by quoting Article 35 here, the French Delegate seems to doubt that this procedure is so clear. Then why does he quote it?

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, if I have expressed doubt and wished to press my point, it is on account of the first explanations given by the Chilean Delegate himself, who seemed to express doubt as to this Article 35 and the procedure of Article 35 applying to importing Members. If, therefore, the Chilean Delegate - and I am happy to see that he has the same opinion as in Article 35 - does not consider that there will be legal measures - that the procedure will apply to importing Members, then, of course, there is no question left and there is no doubt left in my mind.

CHAIRMAN: The Delegate of the Lebanon.

Mr. George HAKIM (Lebanon): Mr. Chairman, I beg to dissent from the view that in accordance with Article 35 there is an obligation to justify the imposition of anti-dumping and countervailing duties, which lies, in the first place, with the Member

applying this measure. Article 35 provides for consultation and for furnishing of information. Now, I think the obligation to justify the imposition goes beyond the mere consultation and furnishing of information.

I think the Working Party were not right in giving this interpretation of Article 35. If it is necessary to give this interpretation, then something must be done in Article 35 itself, and I do not know whether we are competent to deal with Article 35 here. There is a sub-Committee which is studying Article 35; there are also legal experts who can furnish us with the interpretation of this Article. We cannot interpret Article 35 here under Article 17, so I believe the question is more difficult than appears at first sight, and I should think it must be referred to those who are dealing with Article 35, and the legal experts, for a final decision.

CHAIRMAN: The Delegate of South Africa.

Dr. J.E. HOLLOWAY (South Africa): Mr. Chairman, my only motive in suggesting that we should delete this Article was that I could see that, most of us, being laymen in the law, we were running a very great risk of getting bogged by a long discussion on the law of interpretation. The law of interpretation is the most complicated law that the lawyers have, and the lawyers know something about it. As for myself, I do not know a great deal about it, and I would hate to see another day spent on a discussion of the law of interpretation, when our time is so short and when, as far as I am concerned, I am quite incompetent to discuss the law of interpretation.

CHAIRMAN: The Delegate of France.

M. ROUX (France) (Interpretation): Mr. Chairman, as an amendment on this matter was presented some time ago, and this amendment was very precise, we must know the solution to be given to this problem. I have no objection to this question being referred to the legal experts or to the sub-Committee which is dealing with Article 35, but if the interpretation which has been given here up to date is not confirmed, then the French Delegation must reserve its right to present anew its amendment.

CHAIRMAN: I personally do not think that very much will be gained by referring it to the Legal Experts on the Secretariat. This is a question which has got beyond the technical advice that we can get from the Secretariat. However that may be, I repeat what I have said, that in saying "in accordance with Article 35" you make the note superfluous. If it is in accordance with Article 35 - and I personally believe it is - then it is absolutely superfluous. If it is not in accordance with Article 35, then the argument of the South African delegate must prevail. Then we cannot here in this Commission enlist the legal assistance of the Secretariat to start interpreting another Article of the Draft Charter. So I do not see any other solution than that the Commission agrees to leave out comment (b), reserving the right of the French delegate, if he so deems right, to submit the amendment he spoke about to be considered at our next meeting.

May I take this to be agreed?

Agreed.

On the second paragraph of Article 17 we have the following comment:

"It is the understanding of the Sub-Committee that multiple currency rates may in certain circumstances constitute a subsidy to exports which could be met by countervailing duties under paragraph 2 of this Article."

This is, of course, something that has been mentioned during the discussion in the Sub-Committee and some delegate probably has expressed rather strong feelings about it and has obtained the unanimous assent of the Sub-Committee. The question is whether you consider this explanatory note sufficiently important to be maintained and submitted to the Preparatory Committee as a definite recommendation, or whether we can simply pass it by.

Mr. J. G. CHERRY (South Africa): Mr. Chairman, the South African delegation raised this matter of multiple currency rates in relation to what we term "exchange dumping duties". We had these expressions of opinion and we withdrew our endeavours to get the proposed new paragraph 7 written into this particular Article, by virtue of the fact that

this commentary was to be included in the notes of this meeting.

CHAIRMAN: Is there any objection, on the part of any delegate, to maintain this explanatory note?

M. ROUX (France) (Interpretation): Mr. Chairman, I wonder if we could not make more precise the words "multiple currency rates". In fact, as the representative of the International Monetary Fund pointed out when he gave us the explanation of the matter, there may be sometimes multiple currency rates to favour the export of certain products and apply certain rates to products of one kind and other rates to another category of goods. For instance, they will apply a certain rate to a product which they want to sell and which is very useful, and then they would apply quite a different rate to certain other goods in the export of which they are not so much interested. Of course, the official adoption of this multiple currency rate is to foster the exportation of a country, and this is a condemnable practice of course which must be forbidden under the provisions of the Charter. I would like to state here that we cannot consider as multiple currency rates, the fact that sometimes you will have an official rate according to the rules which are fixed by the International Monetary Fund, and different <sup>parities</sup> applied on certain Stock Exchanges and in certain transactions which we call in France, Black Market transactions. Here of course, you will not have the intention of a country to handle its currency to stimulate its exportation but you will have the official rate which will be applied to all transactions and on the other hand, you will have certain rates which will be dealt with in the Black Market dealings. Therefore, I think that the second case must not be considered as a multiple currency rate case and that is our opinion. I suppose it is the opinion of all the Members of this Commission.

CHAIRMAN: I call on the delegate of the United States.

Mr. OSCAR RYDER (United States): I was going to suggest that the phraseology might be made a little clearer if we replace the word "all" by the word "practice." I wonder whether this change would meet the wishes of the delegate of France.

I might add that the word "practices" would probably be better - "governmental practices" might even be better still from the standpoint of France.

M. ROUX (France) (Interpretation): I would like to thank the United States delegate for his proposal which meets our wishes, but nevertheless, I think it might be best to draft the phrase in the following way: "that multiple rates are the currency officially practised in certain circumstances by a State."

Mr. OSCAR RYDER (United States): I think we would have to consider the phraseology suggested by the French delegate rather carefully. I would not like to express an opinion off-hand.

CHAIRMAN : As it almost one o'clock, and as we shall not be able to get very much further to-day, I would suggest that we leave this matter until our next meeting which will take place on Wednesday afternoon according to the present programme. I am rather disappointed that we have not made more progress, but I hope it will be possible to do the rest of our work on Wednesday.

(The meeting rose at 12.55 p.m.)