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

COMMISSION A

Summary Record of the Tenth Meeting held on Friday 6 June 1947 at 2.30 p.m. in the Palais des Nations, Geneva.

Note: Since there exists no Verbatim Record of this meeting, the Secretariat has attempted to render this Summary Record more complete than those concerning previous meetings.

Chairman : H.E. Mr. Erik COLBAN (Norway).

Continuation of discussion of

Article 15

CHAIRMAN: In resuming the discussion of Article 15 I should like to remind the Commission that yesterday we were discussing the Cuban and Norwegian proposals to delete the second part of Paragraph 3 of Article 15. The discussion ended by the question put by the Delegate of the United Kingdom to the Delegate of the United States to explain the real intentions behind these two sentences. Perhaps the Delegate of the United States is now prepared to answer the question.

Mr. O.B. Ryder (United States): Yes, Mr. Chairman, the question was raised as to the interpretation of Article 15, paragraph 3, regarding mixing regulations. The language in the New York draft is as follows: "The provisions of this paragraph

shall be understood to preclude the application of internal requirements restricting the amount of proportion of an imported product to be mixed, processed or used." The proposed United States amendment at the top of page 6 of document W.150 does not change this language except to substitute the word "any" for the word "an" before the words "imported product" and to insert the word "exhibited" between the words "processed" and "used".

The U.S. Delegation is aware of the complexity of the problems presented by mixing regulations as they affect international trade, and the difficulty of an attempt to deal with them in Article 15. Here, as in many other places in the Charter, it is necessary to use words or phrases which may not be fully precise and which may raise questions of interpretation. And it may be that the phraseology in the New York draft and in the amendment proposed by the United States needs clarification.

In the view of the United States Delegation, however, the purpose of this provision is clear and should receive the general approval of all countries represented here. This purpose is to prohibit the use of mixing requirements in order to afford protection to the domestic production of a product.

Clearly, the mixing regulation described by the Delegate for Norway in his illustration could not be classed as protective in purpose. It would, therefore, in our view not be prohibited by the Charter, and the United States Delegation is prepared to consider in the sub-Committee the question of the need of an amendment to make this clear.

The case presented by the illustration of the Delegate for Norway is that of a mixing regulation which may be described as follows:

A regulation requiring a product to be composed of two or more materials in a specified proportion, where all the materials in question are produced domestically in substantial quantities, and where there is no requirement that any specified quantity of any of the materials be of domestic origin.

Stated in this way, it seems obvious that this case is not intended to be covered by Article 15.

The opposite case of mixing regulations to that covered by the illustration of the Delegate for Norway is where the regulation requires that a certain percentage of a product of domestic origin be used in the production of another product (e.g. that 25 per cent domestic wheat be used in making flour). Such a regulation would limit the use of the like foreign product and, hence, would under any interpretation be contrary to paragraph 3 of Article 15.

A third and more difficult case of mixing regulations are regulations which require that in producing an article a certain percentage of a specified material produced domestically be used when there is a competitive imported material which is not produced domestically in substantial quantities. Here the protective intent is clear. It corresponds in the field of mixing regulations to the type of excise tax sought to be prohibited, in so far as future action is concerned, by the amendment the United States Delegation has offered to paragraph 2 and which we discussed yesterday and referred to the Sub-Committee.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, we are very much obliged to the United States Delegate for the information he has just given. It seems that the second sentence of

the paragraph about mixing is just the complement logically following out of the first sentence. It lays down the principle that there shall be no discrimination in internal treatment as between imported and domestic products. Further, that mixing should not be used for protecting a directly competitive home product, such as in the case of the orange and the apple that I mentioned yesterday. I would not like, at this stage, to commit my delegation to any specific and precise wording, but as far as the general principle is concerned I would like to say that unless we have something of this kind in the Charter it is fairly clear that there will be a loophole for regulations, which would have the same effect as quantitative restrictions. It will be possible to procure the same effect by means of this kind of internal regulations which discriminate between imported and domestic products. I will reserve further remarks till later.

CHAIRMAN: Any further remarks on the question whether we ought to maintain or omit the last sentences of paragraph 3.

Dr. COOMBS (Australia): One point of clarification. We would like to have it quite clear whether in the proviso embodied in those two sentences the words "such requirement" refer only to the "requirements" referred to in the second sentence or whether they refer to "all laws, regulations or requirements affecting their internal sale, offering for sale, ... or use of any kind whatsoever," as stated in the first sentence.

CHAIRMAN: I do not know whether the United States Delegate would like to answer that. My own interpretation is that "internal requirements" in paragraph 2 comprises "all laws, regulations or requirements affecting ..." from the first sentence. If that is the case, the words "such requirements" apply to both the first and the second sentence. But I am not sure if my own way of reading it is the correct one. Perhaps the Delegate for the United States can explain this.

Mr. RYDER (United States): I do not know if I understood your remarks correctly. It seems to me that clearly "any such requirements" refer to the same "internal requirements restricting ..." as set out in the preceding part of the sentence.

Mr. R. J. SHACKLE (United Kingdom): Is it not clear that "any such requirement" in the proviso must refer to exceptions from the principle of the first sentence? It can only be where there is a departure from the principle of the first sentence that a proviso can apply. I would read the words in such proviso as referring to cases of mixing regulations which might be held not to conform to the requirements of the first sentence.

Mr. RYDER (United States): Whether or not it is made clear, the intent of the United States in proposing this was that such requirements referred to the first part of that sentence reading "internal requirements restricting the amount or proportion of an imported product permitted to be mixed, processed, exhibited, or used, are subject to the proviso, reading "Provided that any such requirement in force on the day of the signature etc."

Dr. COOMBS (Australia): Mr. Chairman, this is quite a matter of some importance. I do not read this in the same sense as the Delegate of the United Kingdom. I understand the structure of the first sentence lays down the general rule, the second sentence gives an illustration of the application of that rule to a particular class of provisions, then goes on to make a proviso. That proviso may apply to the examples given in the second sentence, or it may apply to the general rule. As I read it it would appear grammatically to be directed towards the examples only, but it is obviously a matter of some importance as to whether it does refer only to the examples or whether it applies

to the general rule of the first sentence.

Mr. RYDER (United States): I agree with the Australian Delegate that it is an important matter. I think if it is not already clear it should be made clear that such requirement refers to what Mr. Coombs called the example, rather than to all that is covered in the first sentence of paragraph 2.

CHAIRMAN: That would mean also that sentences 2 and 3 hang together and sentence 3 is only a further explanation of sentence 2.

Mr. MELANDER (Norway): In order to clarify the issue I might say this. I understand the explanation given by the Delegate for the United States to the effect that the second sentence of paragraph 3 is not a direct application of the first sentence. The first sentence refers to 'like products', in other words it should be prohibited to discriminate. Then we have, in the second sentence, mixing regulations, such as stipulations that a product should include a certain percentage of domestic raw materials and a percentage of foreign raw materials. That would be prohibited, in my view, in accordance with the first sentence of paragraph 3. The second point which to my mind was included in the statement of the United States Delegate was that the second sentence of paragraph 3 goes further than that. It would normally lead to the conclusion that a country would not have the right to introduce regulations which would in effect lead to a decrease in imports of raw materials, for example which had been, up to that time, normally imported into the particular country; that would be prohibited as far as I understood the interpretation of the United States Delegate. Here, I think, we have the issue. If this second sentence of paragraph 3 means that it would be prohibited for a country to lay down rules that products should

include raw materials of one category or another, and if these regulations, which may lead to a decrease of imports, should be prohibited, we could not accept this. The main point is that an essential part of a planned economic policy is to develop the natural resources of a country. If one were to decree, for instance, that houses should be built out of timber, and not out of any other material, this would mean that we would not import other building materials. In fact, in Norway, all houses are built of timber. Supposing we had fifty per cent of houses made of bricks and 50 per cent of timber, and supposing we found that the bricks were practically speaking all imported, in order to develop the natural resources of the country we might decree that houses should not be built of any other material but timber. That would be prohibited by the interpretation of the United States Delegate. Here is the issue, and I think we must be quite clear on that point.

CHAIRMAN: The Delegate for South Africa.

Dr. HOLLOWAY (South Africa): I doubt if we will get very far in this Commission with this question of mixing until we have a very much closer definition of what is meant by it. I feel this is not the place to examine it. There is a special problem of protectionism here which requires attention. I may give an illustration that in a certain country in Europe a Jew would not be admitted to a college unless he brought a Gentile with him at the same time and pay his fees. That is the type of thing we do not want to allow. For instance, that you are not allowed to sell a bottle of Scotch whisky unless you sell a bottle of soda water of domestic production with it. To define what should be included and what should not be included under the term

"mixing" can only be discussed in the sub-Committee.

The South African delegation put a reservation to this article and that reservation was put because some explanations given at Church House and at New York seemed to make "mixing" so wide that it could prevent things which are normally happening in international trade. The importation of parts to be further manufactured inside a country is a problem of mixing. Nobody dreams of saying that it is an illegitimate practice or that the rate of duty on parts must be the same as on the fully manufactured goods. We might discuss a large number of words in a Committee like this without making any progress in the solving of our problem.

CHAIRMAN: We have two suggestions before us to send the whole question to the sub-committee. I think it is the right procedure but before doing so we must have some more guidance for the sub-committee.

CHAIRMAN: The Delegate of Chile.

Mr. GARCIA OLDINI (Chile): I believe we find ourselves confronted with a very complex problem. The text of the Article is extremely wide and bold. For all these reasons I would have been inclined to agree with the Delegate of Cuba who proposed the deletion of part of the Article. But since this proposal has very little chance of being adopted, I find myself obliged to study the Article and try to find a wording of this Article which would be more in keeping with our own desires. This Article is endeavouring to include all possibilities and eventualities which could be at the disposal of a given state in order to protect a given product. In the application of this very bold principle there is first of all the rule of non-discrimination which is applicable in the case of what is called

"similar products" not even the same products, and this renders the application extremely difficult and uncertain. In addition, there are provisions which preclude the application of internal regulations restricting the amount of imported products allowed to be mixed. Under-developed countries generally foster their development in the following way. They start slowly and utilise some of their own raw materials in their industry and import other raw materials, machinery and so on. But at the same time they are trying to develop their own resources in order to improve the standard of living of their people; imports of foreign goods and the development of domestic resources are two parallel aspects of industrialization. In other words, new factories have to import some raw materials in order that little by little the industry of the country may advance. By and by its cultural life gains impetus and this again gives rise to new lines of production. At the outset, the new industry must be allowed to use imported raw material together with that of domestic origin. Paragraph 3 as it stands would paralyse very quickly this kind of development typical, at present, for many countries. I think in view of the very large field of application of the first sentence where we read "in respect of all laws, regulations or requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, exhibition or use of any kind whatsoever." We feel it is dangerous to apply this Article containing such an inaccurate definition. We do not think it would be easy to accept the text as it is proposed.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, as an illustration of the possible value of this type of Article it

would be quite conceivable, I think, for a country only to require synthetic and not natural products imported. I would think that it is definitely desirable to have this principle stated as regards like products and directly competitive products. When the question of balance of payments difficulties enters into it, this is covered by the provisions of Article 26 which allow you to restrict importation. That being laid down, there is no reason why you should allow an internal differentiation. The broad principle of this kind is desirable provided it is understood it is limited to like products or directly competitive products which are not exactly alike. Beyond that it should not apply; it should not apply to cases of mixing butter and margarine.

CHAIRMAN: The Delegate of Belgium.

Mr. FORTHOMME (Belgium): Mr. President. It may be that I speak out of turn, but I think the time may have come to explain the reasons for our Amendment. This amendment was submitted with many doubts and after many hesitations, because we were in principle in favour of the general rule provided in Article 15, and therefore we were reluctant to go in any way against that rule. We found reason for doing so in order to enable the interested parties to see their way in what is such a very complex set of provisions covered by Article 15. We have to consider the necessary protection which this Article affords, together with the consideration of the economic changes and various interests of both exporting and importing countries. We have therefore tried to find the proper criteria in order to limit the general principle.

We found, however, that it was difficult to find such criteria which would be applicable to define the limits of possible exceptions and therefore we adopted two criteria both flexible and so to speak psychological to restrict a measure of exception. In the second place we had to appreciate whether the measure of exception is more or less restrictive than other measures. We think that it would be a purely arbitrary criterion if only "existing" restrictions were permitted to be maintained. In our opinion the restrictions should be negotiable. If, however, the interested parties cannot agree by negotiation then the permitted exception must be less restrictive than other measures. If no agreement is possible then there is a strong possibility that the measure is more restrictive than other restrictions.

Mr. MINOVSKY (Czechoslovakia): I would like to say I have not yet been able to obtain a satisfactory interpretation of paragraph 3 Article 15. We have heard the Delegate of the United States state that its aims are perfectly clear, but I am afraid that the experience shows exactly the contrary. The second sentence may forbid to mix imported products with other products. "The provisions of this paragraph shall be understood to preclude the application of internal requirements restricting the amount or proportion of any imported product permitted to be mixed, processed, exhibited, or used....." I assume that the "mixing" and the "restricting" are closely connected because it is quite impossible to mix two products without restricting the quantity of one of the products to be mixed. The effect of this paragraph would practically forbid the mixing of a domestic product with an imported product, because mixing

is usually done to improve the quality of a given product, but this would be practically impossible, and the only results of the paragraph would be to forbid importation for the use of mixing in order to improve the domestic product. I do not suppose this is the aim of this paragraph. I can quote two examples from my country. In Czechoslovakia foreign and domestic iron ores are mixed in a certain proportion, that of foreign origin being of a higher quality. If the mixing is forbidden we shall be obliged to utilise only our own lower grade ore and shall not import high grade iron ore. Our domestic flour has to be mixed with imported flour to improve the quality. The importation of this imported flour would have to be stopped. We import Jamaica Rum to be mixed with our own and, as in the case of iron ore, we would have to utilize only domestic product without any improvement. The same applies to the production of Slivovice for which we import from Jugoslavia a product of higher quality. This would not only reduce foreign trade but be also contrary to provisions of the Charter which call for a development of our own natural resources.

Our Amendment consists of adding the words "other than those applied to like products of domestic origin".

I would like to repeat that generally mixing is not used to restrict an imported product but in order to improve the quality of the national product.

CHAIRMAN : Before calling on the next speaker I would say that I have understood one or two of the Delegates who gave examples, not of government restrictions, but rather of mixing arrangements made by private firms. This must, of course, fall entirely outside this Article. We must interpret paragraph 3 as referring only to restrictions imposed by government action.

MR. WEBB (New Zealand) : We associate ourselves with the Amendment which has already been spoken of by the Belgian and Czechoslovakian Delegates. After the speech of the Czechoslovakian Delegate there is very little for me to add, except perhaps to amplify one point which seems to me of importance, and that is the difficulty which I encounter with the word "restricting" in the second sentence of paragraph 3. It seems to me that the difficulty is that so often mixing regulations are essentially a definition of the proportion of an imported product which is to be mixed, and it is very difficult to decide whether the mere fact of defining a quantity of the imported product to be mixed constitutes a restriction. The CZECHOSLOVAKIAN Delegate gave the example of the mixing of imported flour with domestic flour. Our case is very closely parallel. We mix imported wheat of a higher quality than the local grain and define the mixing proportions at the flour stage, simply as a measure to ensure that the loaf produced is of a sufficiently high quality. In cases of such mixing regulations the word "restricting" becomes very difficult to apply in a definite and clear-cut manner.

The other reason why we have associated ourselves with this amendment is simply that it appears to us that the method of mixing regulations is in many cases a very neat and administratively efficient device as compared with other possible devices. Take the tobacco industry for instance, the alternatives are : mixing,

or subsidisation, or a higher customs tariff - neither would have been satisfactory. Finally, an illustration of Dr. HOLLOWAY'S point about the complexity of the whole subject of mixing. It is a point worth remembering prohibitions against mixing can also be restrictive of international trade. There are cases where the product of a country A will have a market in country B if they can be mixed and provisions against mixing in that case probably restrict international trade.

CHAIRMAN: The Delegate of France.

MR. ROUX (France): The French Delegation has so far refrained from pressing its point of view but the time has come to explain our position on paragraph 3. From the discussion which has taken place it seems to emerge that the almost unanimous opinion of the Committee is that the question of this paragraph is very complex and difficult. The debates in London, New York and here have shown clearly that numerous delegations are under the impression that the principle provided for in this paragraph is too general and too absolute in its application. It would be practically impossible for each country to conform its national regulations as a whole with the letter of this Article. In document E/PC/T/W 150, page 8, item 11, probably prepared by the Secretariat, we read: "It seems likely that certain countries which are not Members of the Preparatory Committee but prospective Members of the I.T.O. will attribute considerable importance to their mixing regulations, particularly when used for the purpose of agricultural production." Thus, if this provision is kept in the Charter, and is found to be advisable in principle, it is necessary to limit its scope properly. This cannot be done by enumerating all of the possible exceptions. The permissible exceptions

should be on a large scale and it seems to us that the proposals made by the Delegations of Benelux and Czechoslovakia provide a basis of discussion in the Sub-Committee. When exceptions are defined, the Organization would set up rules for their application and watch over the application of a general principle.

CHAIRMAN: The Delegate for the Netherlands.

Dr. C.H. BOGAARDT (Netherlands):

I wish to associate myself with the point of view expressed by my Belgian colleague. Perhaps I may add that as a part of the price mechanism, referred to in a note our delegation distributed as an annex to our list on tariff concessions, the Netherlands developed some requirements of mixing and processing on a comparatively minor scale.

I may point out that our system is parallel to the New Zealand system. Our home grown wheat is also of a lower quality than imported wheat, so we had to improve the quality of flour.

In the Netherlands, for instance, not the imported wheat has been made subject to mixing requirements, but the domestic wheat. The wording of Paragraph 3 as it stands, therefore, hardly seems to cover the case, but in no case it would seem appropriate not to admit mixing requirements at all whilst admitting other methods permissible under the Charter which have a far more serious effect on import trade. It obviously is not the nature of the restriction which is harmful, but it is the extent to which any measure is applied.

We therefore do not find it possible to change our policy as long as there merely is a difference of method. On the other hand we are quite willing by our methods not to go beyond what is done by methods practised by other countries.

To make this clear, I think our Amendment at least has the merit of being shorter than paragraph 3 as it stands, but I need not to say that I have no objection to have it submitted to the sub-committee for improvement of text.

CHAIRMAN: The Delegate for India.

Mr.PAI (India): It is clear that the Indian Delegation attaches considerable importance to the right to maintain mixing regulations. Whether these regulations are intended for the purpose of protectionism or maintaining the quality of a domestic product or for any other reason, the Indian Delegation attach considerable importance to the use of quantitative restrictions, whether at the source or by means of mixing regulations devised for the purpose of building up the industrial potential of the country and designed to facilitate the development of economic resources as yet undeveloped. We are frankly protectionist about it. The Amendment which stands in the name of the Indian Delegation has very much the same effect as the Amendments proposed by Benelux, Czechoslovakia and New Zealand, and it can perhaps be left to the Sub-Committee to decide which is better. Our own reason for preferring our amendment is that it does not contain anything to the effect of the words which start "unless the effect of the application of any such requirements is not more restrictive or burdensome than that of other measures, such as customs duties or subsidies", which might be a source of argument. We have mixing regulations intended to conserve certain resources, for example, in the case of bread we have mixing regulations, and in some parts of India alcohol has to be mixed with a certain proportion of petroleum. During the war regulations as to imported aluminium were enforced and had to be mixed with a percentage of Indian aluminium.

We do not wish there should be anything in the Charter which might lead to suspicion or subterfuge. The draft amendment as it

stands seems to make an exception in the case of films. For my own part I fail to see why films should be excepted when there are other more vital commodities which would merit more such exception.

CHAIRMAN: The Delegate for Brazil.

Mr. RODRIGUES (Brazil): The Brazilian reservation as to the requirements of mixing, processing etc. was made because we have some ruling requiring the importer to buy 10% of domestic coal. We have also problems with regard to the mixing of alcohol with gasoline. The general principle is a very sound one. We should like to follow it, but I think we are dealing with a very complex problem. As explained this paragraph deals with public laws not private requirements. If we cancel our legislation about mixing, mixing will go simply as private measure and decision. We must confess that we see much confusion.

We have asked our Government to give us its final instructions, and we shall revert to the matter at a later stage.

Mr.MINOVSKY: (Czechoslovakia). I merely wish to say you mention Article 15 referred only to government restrictions and requirements. It is quite true that I was aware of that fact. The Charter was not made only for today but also for the future. In the particular case of mixing of iron ores any day the Ministry for Industry may set up the prescription officially and this will become a government restriction.

CHAIRMAN: I take it this problem is not only one of Czechoslovakia but other countries as well. Several delegates suggested that the amendments should be considered by the Sub-Committee. We must decide whether we shall give the Sub-Committee specific terms of reference or whether simply we ask the Sub-Committee to consider the problem in the light of this discussion, and of the amendments enumerated in document E/PC/T/W.150. I think we had

better use the second alternative.

Mr.SHACKLE (United Kingdom): It would be understood that this does not cover the particular aspect of films. You asked us yesterday to reserve that.

CHAIRMAN: That is so. I take it this is agreed.

Mr. GARCIA-OLDINI (Chile): The impression I gather from this debate is that the majority of this Committee is opposed to this Article for various reasons, or at least to the way in which the question is treated in the Article. Can this be passed on to the sub-committee so that it was aware of the atmosphere of this debate.

CHAIRMAN: I have already said that the sub-committee will be guided by the report of this discussion, and I hope that will be satisfactory.

CHAIRMAN: Now we pass on to the Australian amendment and you will find this at the bottom of page 7, E/PC/T/W.150. We have had the same amendment concerning Article 14, paragraph 1. We then decided to ask the legal officer to go into it and we decided that the legal officer's opinion should be sent on to the Ad hoc Sub-Committee. I take it that the Australian Delegate today maintains the same attitude towards this proposal with regard to Paragraph 3 of Article 15.

Mr. COOMBS (Australia). As in the case of Article 14, the result may be that a general clause will be inserted in the Charter and then, of course, our amendment will become unnecessary. We think that Amendment should go to the Sub-Committee.

CHAIRMAN: Agreed, we pass on to Paragraph 4. There you have on pages 6-9 of Document E/PC/T/W150 a number of reservations and amendments. With regard to the reservations I would say that they have been replaced by new proposals, so we can start on with the United States proposal. I call on the United States Delegate

to explain his proposal with regard to films.

Mr. RYDER (United States). I explained yesterday what was proposed here, and I do not think I need to repeat much of that. Our proposal is to delete the present paragraph 4 and to revise paragraph 3. We think that the requirement restricting and apportioning imported films should terminate after three years from the coming into force of the Charter. Any extension should be subject to consultation.

I want to add that the United States Delegation agrees fully with the Delegate for India that there is no reason why special treatment should be accorded to the film industry. It does not seem to us that there is any good or sound reason why one of the largest United States products should be submitted to discriminatory national treatment in the various countries of the world. We think it is particularly important where we are seeking free trade all important industries should be treated alike.

Mr. R.J. SHACKLE (United Kingdom). Mr.Chairman, in spite of what the United States Delegate has just said I must say that we of the United Kingdom Delegation do feel that the case of film quotas is something quite distinct from other processing and mixing regulations. In the case of films it is not merely an economic and not even material question; it brings in a very important cultural consideration such as does not come in in the case of other commodities.

We think it is quite clear that countries will not allow their own film production which affects their own culture and ideas, to be swamped by imported films simply because the latter happen to be better organized commercially. Some perfectly reliable method of safeguarding domestic film production is needed and will in fact be insisted on by a great many countries. The method of the "screen-quota" is much the most effective, perhaps the only

effective method of attaining this desired object. We must therefore preserve our right to use this method.

We had hoped that as a result of the very long discussions which took place in New York with the provisions of Paragraph 4 of this Article there might have been an effective compromise and we are sorry to find that this is not so. The provisions of this paragraph of this Article represent the furthest that we can go. The provisions of this paragraph will put films on the same basis as other goods and subject them to tariff negotiations. But we cannot accept "screen-quotas" on a temporary basis as proposed in the United States amendment.

We regard the New York draft as a reasonable solution and I am afraid we could not in any case accept the suggestion that the continuation of screen-quotas should be subjected to the determination of the Organization.

Mr. MELANDER (Norway). Mr. Chairman. We are certainly in agreement with the United Kingdom Delegate as to the distinction between films and ordinary goods. I think that films ought to be considered quite from a different angle. Films ought to be considered as products of art. Certain films we import from the United States might have a similarity with art in higher sphere. We have to take into account the position in every country; one wants to produce films of national production and of course the reason being that films are exercising an influence on people's ways of life and in any country it is essential not only the ways of life of some other country should be shown. In a country whose language does not go far beyond its frontier, not a language like English, in a country like Norway, we make the same product but we have not at all the same commercial advantages.

Consequently, we do not think that films ought to be considered from a purely commercial point of view. The right solution would be to leave films quite outside the scope of the

Charter. It is a question which ought to be considered by other bodies of the United Nations Organization, such as the Human Rights Commission or the Economic and Social Council. There is to be a Conference on Information and Films this autumn, and we consider this would be the right angle from which to tackle the problems relating to films. In the case of Norway, and I imagine in most other countries, there is not at all the desire to exclude American films - most people prefer them, but there are also other sides to it. That is the reason why we should not consider it on the lines of ordinary goods. Consequently I think the most logical solution would be to take films right out of the Charter altogether

CHAIRMAN: The Delegate of Chile.

Mr.GARCIA-OLDINI: (Chile). It is true that films are goods but not all goods are comparable. Films are exceptional goods. As the delegate of Norway said not all films are artistic, but all films in general have cultural and educational value. There are simply marvellous films which appeal to the mind and should be protected. This is not the only case when regulations we prepared might defeat higher purposes. We are setting up regulations on films with commercial ideas in our mind. There is another product of the same kind as films. When we were speaking about mixing I refrained from mentioning. Take for instance newsprint which might also be restricted by measures we are at present discussing. When studying the question of films we should study it in connection with books and newspapers. In paper you have various mixtures of raw materials. The production of paper is in the process of development in many countries. At present all countries want to be free to produce their own paper, because paper is important in the cultural and political life of nations. There mixing regulation must be applied and countries should be free to use them.

Mr. H. ELBL (Czechoslovakia): Mr. Chairman, the Czechoslovak Delegation want to make the following statement regarding cinematograph films:

1. The Delegation welcome and fully endorse the theory regarding cinematograph films developed in the Norwegian amendment, document No.T/W.99 submitted on May 20th 1947 and requesting that the provisions of Article 15 of the Charter should not apply to cinematograph films.

2. The Czechoslovak Delegation themselves cannot consent to the inclusion of cinematograph films together with other rawstocks commodities and industrial products under the provisions of Article 15 or, this being a matter of principle under any other Article of the Charter which would try to regulate international and national handling of films on the assumption that films are just another commercial commodity or just another industrial product.

3. It is the opinion of the Delegation that films are neither a commodity nor an industrial product in the ordinary meaning of these terms. The correctness of this argument follows even from the method of trading with films well established during a long period of years. Films are never being sold as a piece of merchandise, only more or less limited rights to exhibit them publicly in a given territory are usually granted for a certain restricted period of time. That is a business transaction of its type but never a simple purchase and sale as is the case with practically all other commercial commodities. It does not make any difference whatever whether a mutually agreed lump sum or a percentual share of net box office receipts is paid in consideration of the rights granted.

4. Beside their purely material value, the value of rawstock and manifold work which make up their cost of production films - once

created - have a far greater and this time spiritual value the exact determination of which is almost totally dependent upon the varying appreciation of critics of art and of domestic or international audiences. Film trading itself depends precisely on this immaterial spiritual value of appreciation of films.

It is, therefore, the well considered opinion of the Czechoslovak Delegation that films, be they documents or works of art, which roughly speaking are the two main categories of films created today in the world, cannot and must not be handled as any other marketable piece of merchandise.

Commodities and industrial products which in the course of wholesale production usually attain an exactly measurable standard of quality are therefore from both the quantitative and qualitative points of view merely substitutional goods easily interchangeable which is never the case with films. Films are very individual and very unique creations of the varying artistic talents of the people who create them and cannot be substituted for each other. Therefore not every film is at all times and under same conditions acceptable in any country.

The same individual handling which pertains to the creation of any given film must be allowed to decide whether, when and how films will be distributed and publicly distributed.

It follows that the distribution and exhibition of films cannot be governed by the same purely commercial considerations which underlie practically all provisions of the Charter now under consideration by this Conference.

5. The Czechoslovak Delegation, therefore, recommend that it be expressly stated in the paragraph 4 of Article 15 of the Charter that the provisions of this Article do not apply to cinematograph films, or - still better - that such a statement be inserted in Article 37, dealing with general exceptions to Chapter V of the

Charter, making it absolutely clear that nothing in this Charter is intended to regulate international or national distribution and exhibition of films.

6. Instead the Czechoslovak Delegation proposes that the whole matter of international exchange of films be either left to bilateral negotiations of the interested countries, or, if a more substantial and unifying international regulation seems necessary that it be left for some other department or subsidiary agency of the United Nations Organisation to deal with.

The Film Division of the Secretariat of the United Nations headed by Mr. Jean Benoit Levy or UNESCO, might well be called upon to try in co-operation with the International Association of Film Technicians, which is going to be established this summer in Prague, to propose and to submit to Member Governments a draft of an international convention which would regulate and simplify at least certain aspects of the international exchange of films considered primarily not as a merchandise but as powerful vehicles of human thought and feeling and as a welcome means in the service of better international understanding which is the proper mission of any art.

It is our opinion that cinematograph films have as creations of art or as instruments of scientific or other documentation attained such a high degree of maturity that it is high time to decide whether we are going to continue to handle them indefinitely under same footing with shoes or lard or any other industrial products just because they necessitate and intricate technical workshop to be created in or whether we will finally acknowledge the facts and render to films what is

their view by birthright, i.e. to place them on equal level with all other artistic creations and means of expression and accord them the same equitable treatment.

I do not know that it is the intention of the authors of this Charter to regulate thereby the international exchange of paintings, statutes or musical scores and I take it that they did not have such an intention.

7. In conclusion, Mr. Chairman, I would like to stress two points:

1. That there is nothing new in this attitude of our delegation which means that it is not just another post-war fashion. As far as 1938 when we were negotiating for a new trade agreement with the United States and the American Delegation clearly intended to include films within the scope of that trade agreement, we succeeded in convincing them that it is far better for reasons flowing out of the subject matter itself to negotiate as separate individual film agreement and such agreement has been finally negotiated and signed in Prague to the mutual satisfaction of the parties concerned.

2. That although cinematographic films are expressly mentioned only in Article 15 of the Charter, we would have to discuss them again and again in connection with Article 27, 31 and 32 where there are provisions which, if films were involved, in the same spirit governing provisions of Article 15, would be just as much unacceptable to my Delegation as the provisions of Article 15.

The CHAIRMAN: The Delegate for South Africa.

DR.HOLLOWAY (South Africa): Mr.Chairman, there seems to me to be an implied assumption in the American amendment. In my opinion the film is a commercial article, but it seems to me there is a very important other factor, and that is the absorbative power of any country for films. This power has its limits and inside that absorbative power must be absorbed certain films of local cultural and educational character which can only be produced locally. Now if you apply the conditions of Article 15 to films then the time may quite easily come when you are faced with this position that owing to the great technical advantages of the American film industry they could squeeze out all your local films.

Well, you could not obviously allow that, so what remedies does the Charter offer you. Just push up the duty against American films sufficiently so as to make room for your own local cultural films which you must have. It seems to me that by assuming that a film is an ordinary commercial article, the Americans are sharpening a knife for their own throat. Sooner or later when you come to that absorbative power you will have to push up the duty to make room for certain domestic cultural films. So it seems better to leave room for a quota and once you leave room for a quota you are conflicting with the provisions of Article 15.

The CHAIRMAN: We have still an amendment of paragraph 4 submitted by the Delegate for New Zealand.

Mr. L.C. WEBB (New Zealand): Mr.Chairman, the reason for the amendment presented by the New Zealand Delegation is in the main explained on page 11 of the New York Report in

paragraph (c). It is, therefore, unnecessary for me to say more than that. The amendment is intended to cover the peculiar difficulty which we have found ourselves in. We came to the conclusion that customs duties were an unsatisfactory method of taxing films entering the country in that, applied on a basis of so much per foot, they made no distinction between the quality and value of films. Therefore we applied instead of a customs duty a "film hire tax" which seems to us a logical, fair and satisfactory method of taxing films, but unfortunately that appears to get us rather into trouble with Article 15.

There is a local film industry in New Zealand state-owned which produces films, and those films pay no film hire tax for the good reason that they are not sold or hired, they are distributed free. There is, I should add, a certain preferential element in the film hire tax and our amendment expressed our willingness to negotiate that preference. Whether this amendment is in fact necessary is not quite certain because it would rather depend on the view which the Commission takes of other amendments which have been presented. I would just like to add with reference to the more general and important question which has been raised in connection with paragraph 4, the question of whether films are commercial commodities in the ordinary sense that it has seemed to me, and I merely make the suggestion in order that it perhaps might be considered by the Sub-Committee, as to whether the matter might not be more satisfactorily dealt with in the way of an addition to Article 37, that is, whether the cultural aspect of films which I think legitimately worries small countries, might not be dealt with in an article dealing with general exceptions.

Mr. R.J. SHACKLE (United Kingdom): I would just like to add two or three words. We would like to support the New Zealand amendment. It seems to us that it is only right and proper that a "film hire tax" should be treated in the same way as film quotas. I still feel that paragraph 4 here is a reasonable compromise, and it is better to keep it than to replace it by an addition to Article 37. There is a big commercial interest in films and it definitely seems to me that in paragraph 4 as we have it we had the desirable compromise, and therefore we support the New Zealand amendment as given in W.106.

THE CHAIRMAN: As no other Delegate has asked to speak, I think we may call upon the Delegate for the United States.

Mr. RYDER (United States): Mr.Chairman, I had not thought until I heard this discussion that anyone would advocate rationing of art like pictures, etc. All we ask for is that the public who patronise moving pictures decide whether or not they prefer the foreign or the domestic film. We are willing to leave the matter to the audiences of the various countries. It is an objective of the Charter to break down barriers between peoples, not increase them. If films are more than goods and on a higher plane they should be free from trade barriers and from discrimination. Very seriously I want to appeal to the various delegates represented here not to press in this Article for a new extension of quantitative restrictions, designed to stifle international trade. If the Czechoslovak views should prevail and be adopted, films would not be subject to any negotiation.

Mr. ELBL (Czechoslovakia): Mr.Chairman, we have no intention in Czechoslovakia to stiffen the conditions of import of foreign pictures into our country. It was never our intention. We have since the liberation of our country negotiated various film agreements and in every case it was a short term agreement, because we are of the opinion that the quality of the various national productions of pictures are changing so rapidly from year to year. Take the example of today's British production. British films are of such high quality that they have acquired very particular interest in all European countries. We feel that we should be free to negotiate every single year a new agreement with any country producing pictures and we do not want to be bound by such an instrument as this Charter is. We would be bound, for whatever period of time the Charter would be in force, to certain policies regulating the expansion and distribution of cinematographic films in our country. This we really cannot admit and this is why we claim and stress the fact that films are not just another purely commercial commodity. It would be only proper to rule films out of the provisions of the Charter and enable all interested countries to negotiate bilateral agreements whenever they feel like it. We know that there are other interests which are not included in the Charter.

Czechoslovakia happens to be the only country here today represented which has a nationalized film industry and when we reach the sections dealing with stat.-trading we will have to raise the question of whether our nationalized industry under the provisions of this Charter will be placed on equal footing with private enterprises of other countries which had not nationalized their industry.

In conclusion, the provisions of this Charter as they are phrased today would bind the Czechoslovak Film Corporation, which is a government agency, to follow certain lines of policy whereas in other countries where the industry is in private hands no such obligation would exist. This would finally lead to the fact that international exchange of films would be a one-way track. This is what makes us fight for the freedom of negotiating bilateral agreements as far as films are concerned or, if there is really any necessity for an international regulations, this should be the task of some other body of the United Nations Organization.

The CHAIRMAN: I think we can close the discussion. We have now considered the New York text, the New Zealand text and the proposal of the Norwegian and Czechoslovak Delegations, and we have the re-draft presented by the United States delegation. We have not come very near to each other - there is a certain preponderance in favour of not considering films as ordinary goods, but I cannot say that there is any majority either way and therefore the matter will have to be thrashed out further in a Sub-Committee.

I propose that the Commission refers it to the Sub-Committee drawing the attention of the Sub-Committee to the different alternatives and asking the Sub-Committee to try and find a solution. Is that agreed?

(Accepted)

You will have seen from E/PC/T/W.150 that there are two proposals by the Norwegian Delegation for new paragraphs 3 and 4 to replace what in the Norwegian proposal has been struck out of paragraph 3 and to introduce certain new ideas.

I would ask the Delegate for Norway whether he wants to speak on this here or whether he prefers to send it straight to the Sub-Committee.

Mr. MELANDER (Norway): Mr.Chairman, I would just take this opportunity to say a few words on these proposals which I hope it will not be too difficult to accept. What we propose are exceptions from paragraphs 2 and 3 of the existing Article 15. The first one is paragraph 3 in our draft which says that the provisions of paragraphs 2 and 3 shall not preclude the regulation of imports, provided that such measures are not more restrictive of international trade than other measures permissible under the Charter.

This proposal is meant to extend the import regulation methods. It is intended to use this method of applying internal taxes or internal regulations in order to regulate imports, but only in the case where regulations of imports are allowed by authority of the existing Chapters or Articles, namely the articles relating to quantitative restrictions and restrictions for balance of payments, as set out in Articles 25 to 29. These methods which we have in mind do not provide for a complete exclusion of goods - it is really an additional method which is more flexible. Consequently we hope that our proposal will be acceptable.

The second proposal is one relating to price regulation. That proposal reads as follows:- "So long as different prices for like products exist on the world market, the provisions of paragraphs 1 and 2 shall not preclude the establishment of a national market of equal prices for like products, whether of foreign or domestic origin."

The point here is that at the present, as we all know, there does not really exist a world market price on certain commodities of basic importance, and it is necessary to

regulate the price in various countries in order to provide for an orderly distribution of those goods on the national market. The most efficient method through which this price regulation can be achieved is, in our opinion, to levy taxes or to make other regulations to provide for an equalization of all prices, both high prices and low prices, so that you get an internal price which is the common denominator of such goods on the home market. This is, of course, a method only meant to cover the transitional period which we hope will be of comparatively short duration.

The CHAIRMAN: Does any other Delegate wish to speak on these amendments?

Mr. SHACKLE (United Kingdom): It would be best for the Sub-Committee to consider them as it is a little difficult to express an opinion here and now.

The CHAIRMAN: Is that agreeable to the Norwegian Delegate that we send it on to the Sub-Committee?

(Agreed.)

We pass on to paragraph 5 of the New York Draft. We have almost disposed of one amendment, the one presented by the Norwegian Delegation and also the one about cinematograph films. There remains the United States amendment, the Indian amendment and a Chinese amendment.

Mr. RYDER (United States): The amendment we have presented is a revision of the text for clarification - no change in substance is intended. Since we presented this amendment, however, various matters have been brought to the attention of the American Delegation and so we think that to protect certain governmental operations in a number of countries that there should be added at the end of paragraph 5, as the United States Delegation redrafts it, the following sentence:

"Moreover, the provisions of this Article shall not apply to governmental purchases in carrying out any form of subsidy permitted under Article 30."

Mr. Chairman: I ask that the United States proposed amendment with the additional sentence be sent on to the Sub-Committee for consideration.

The CHAIRMAN: And then I take it that the Sub-Committee will also look into the Indian and Chinese amendments. The Indian amendment does not very much differ from the United States one.

The Chinese amendment, which is rather important, proposes the deletion of the words in square brackets in the New York draft, reading "nor for use in the production of goods for sale."

Mr. MINOVSKY (Czechoslovakia) (Translation): Mr. Chairman, I would like to draw your attention to the fact that paragraph 5 is directly connected with Article 31 and I do not see the possibility of establishing now a final text for paragraph 5 without knowing what the final form of Article 31 will be.

Dr. HOLLOWAY (South Africa): In my opinion, the Indian amendment is the very opposite of the United States amendment. Could we get clarity on that?

The CHAIRMAN (replying to Mr. Minovsky): Even if paragraph 5 may be read in conjunction with Article 31 I do not think there is anything to prevent us from discussing paragraph 5 now and if, after having discussed 31 we need to adjust and redraft it, that will be for the Preparatory Commission, but we should consider it now.

I ask the Delegate for India to speak on his amendment, and the question of Mr. Holloway.

Mr. RANGANATHAN (India): I do not think that the two amendments are the same even though the addition now made by the United States doesmeet our point up to a certain extent, it still leaves us in some difficulties. The amendment proposed by us contemplates the use by governmental agencies in the production of goods for sale. We have a somewhat mixed economy today and it is possible that we shall have more of this in the future. Our Railway system, for example, is completely state-owned and it is possible that shortly our electricity and coal will be state-owned. Of the two largest fertilizer factories in India, one is completely state-owned and the other one is largely state-controlled. We do foresee that certain governmental purchases in India would enter in some way or another into the production of goods for sale. This might not be a completely commercial transaction but it would be part of a commercial transaction. I feel that we would want a certain relaxation of paragraph 5 which is not covered by the addition made today by the United States Delegate to the amendment proposed by them earlier. I think we would be content to leave this to be thrashed out in the Sub-Committee if that suits the Commission, subject to the remarks I have made.

Dr. HOLLOWAY (South Africa): I would like to point out with regard to the United States amendment in quite an important field it takes away with one hand what it gives with the other. It obviously has in mind a very much simpler state of affairs than obtains. I think the other point could very well be met under section 31 which limits the state-trading to Most-Favoured-Nation treatment and not to national treatment as it does here. The government in South Africa, and I think the same applies in a number of other countries, produces a large number of veterinary medicines

These medicines are used for government purposes but they are also sold for farmers. As long as the government uses a particular bottle of medicine for veterinary purposes these rules would not apply, but as soon as a bottle is sold to a farmer, then a different set of rules applies. I think you have got to stick to Most-Favoured-Nation treatment as you have in state-trading.

The CHAIRMAN: Has the Delegate for China decided to speak on this amendment?

Mr. MA (China): We can accept the text as it originally stood, that is without the words in brackets. The words in brackets have very wide implications which do not allow us to accept this phrase. I shall take up the matter in the Sub-Committee. Permit me to say that the proposal to delete the words in square brackets applies also to the same phrase of paragraph 2 of Article 31.

The CHAIRMAN: I take it that the Commission agrees to send this paragraph 5 on to the Sub-Committee. The work of the Sub-Committee will be considerably more complicated than I thought. I had misinterpreted the Indian proposal and I see now that it is very far-reaching, but I suppose the Sub-Committee will go into it and let us hope that they come to a good result.

ARTICLE 15A.

It is late but I think we must give some consideration to the last item - that is the United States proposal for a new Article 15A, page 10, document E/PC/T/W.150, and unless we deal with it tonight I cannot tell you when we shall deal with it. The Delegates have had this text before them for a considerable time and I take it that everyone has more or less made up his mind. May I ask the Delegate of the United States if he has something to add to his proposal?

E/PC/T/A/SR/10
page 36,
missing: [illegible].

On this broad ground rather than out of any special preference for the particular type of State action which it is the intention of the proposed article to out-law, the Indian Delegation must oppose, and oppose strenuously, the incorporation of the proposed Article in the Charter.

Dr. COOMBS (Delegate of Australia): I understand that in discussion of other parts of the Charter doubts have been expressed as to the wisdom of including in the Charter measures designed to control international services. It is clear that this Article does in fact deal with that type of subject matter and I would suggest generally that we should ask the Sub-Committee not to reach a conclusion on this particular Article until it was aware of any general conclusion that might have been reached on the incorporation of services generally as an appropriate subject matter for the Charter.

In particular, I understand that the question of shipping in one form or another has received the attention of various Commissions and Committees with the result that it has been decided on almost each occasion, I believe, that it was preferable to leave the whole question of shipping to be examined by an appropriate international agency when all phases of the shipping problem would be considered. It does appear to us to be somewhat unwise to seek to deal in the Charter with one particular form of national assistance afforded to shipping while leaving outside the scope of the Charter the great bulk and variety of measures of that kind which are being practised by one country or another. I think it is wise for us to take those difficulties into account when we are referring this draft Article to the Sub-Committee.

Mr. MINOVSKY (Czechoslovakia):(Translation): I only wish to say, Mr. Chairman, that if we accept services in the Charter the United States new Article will be nothing but a supplement to Article 33 on boycotts.

The CHAIRMAN: I think the proper way of handling it would be to send it to the Sub-Committee and to ask them not to take any decision until they know what decision will be taken on the question of services. Is this agreed?

(Agreed).

Then we have a last item. It is at the bottom of page 9, document E/PC/T/W.150, which is a proposal by the Australian Delegation to make a certain addition to Article II of the General Agreement on Tariffs and Trade, which would mean a corresponding addition to Article 15.

Dr. COOMBS (Australia): My attention has been drawn to the fact that in a footnote on page 69 of the New York Drafting Committee's Report a suggestion was made that should be incorporated in the schedule of tariff rates - a provision substantially equivalent to the proposed Australian amendment. I have much pleasure therefore in withdrawing this addition.

Mr. RODRIGUES (Brazil): Mr. Chairman, you have not said anything about the Brazilian amendment in the last part of page 10 of W.150.

The CHAIRMAN: I thought it was understood that the Brazilian amendment should be sent together with the United States proposal to the Sub-Committee.

DELEGATE OF BRAZIL: Thank you.

The CHAIRMAN: The Delegate for Chile.

Mr. GARCIA-OLDINI (Chile) (Translation): Mr. Chairman, only a word in view of the very speedy way in which we are now

working and sending Articles to the Sub-Committee, I hope the silence of some Delegations, including mine, will not be interpreted as consent.

The CHAIRMAN: The silence of Delegations will not be interpreted as either consent or dissent and when the Sub-Committee presents its report a final decision will be made.

The meeting rose at 6.25 p.m.