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

VERBATIM REPORT.

ELEVENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE
HELD ON FRIDAY, 5 SEPTEMBER 1947 AT 2.30 P.M. IN
THE PALAIS DES NATIONS, GENEVA.

Hon. L.D. WILGROSS (Chairman) (Canada)

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CHAIRMAN: The meeting is called to order.

We now come to Article VII in the General Agreement on Tariffs and Trade, to be found on page 17 of document T/189. This Article deals with formalities connected with importation and exportation.

Have any Members of the Committee any remarks to make regarding the inclusion of this Article in the General Agreement?

Does the Committee favour the retention of this Article in the General Agreement?

Mr. Winthrop BROWN (United States): Mr. Chairman, we do not feel strongly about the matter one way or the other. We have a very slight preference for retaining this one, but, as I say, if any other Delegate has any objection, we do not feel very strongly about it.

CHAIRMAN: Are there any objections to the inclusion of this Article? I take it that the Committee approves of the inclusion of the Article.

Article VIII - Marks of Origin.

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I was only wondering why we have deleted paragraphs 1 and 2 of Article 36 of the draft Charter, particularly paragraph 2 - that is the Most-Favoured-Nation clause for marks of origin.

CHAIRMAN: It was considered that those particular paragraphs were not very applicable for inclusion in the General Agreement, particularly the paragraph dealing with Most-Favoured-Nation treatment, which was considered to be covered by Article I, the Article dealing with General Most-Favoured-Nation treatment.

Are there any other comments with regard to this Article?

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, if there are no serious reasons against it, I would suggest that we include paragraph 2 of Article 36 of the Charter in Article VIII.

CHAIRMAN: Dr. Augenthaler suggests that paragraph 2 of Article 36 of the Charter should be included in this Article. Are there any objections to the proposal of the Czechoslovak Delegate?

I take it that the Committee is agreeable to the proposal of the Czechoslovak Delegate to include paragraph 2 of Article 36 as-(to Dr. Augenthaler) the first paragraph of this Article?

H.E. Z. AUGENTHALER (Czechoslovakia): Yes, I think as the first paragraph.

CHAIRMAN: Is that agreed?

(Approved)

Are there any other comments with regard to Article VIII? Are there any objections to the inclusion of this Article in the General Agreement?

Then I take it that it is agreed that this Article should be included, with the addition of the second paragraph of Article 36, as the first paragraph of the Article.

(Agreed)

Article IX, Publication and Administration of Trade Regulations. Are there any comments on this Article?

Have any of the Members of the Committee any objection to the inclusion of this Article? The inclusion of this Article is therefore approved.

Article X, General Elimination of Quantitative Restrictions. Are there any comments on this Article?

The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I think that Article X has to be considered in connection with Articles XI, XII, XIII and XIV -that is, all the Articles dealing with quantitative restrictions in the Charter, and particularly those dealing with quantitative restrictions in order to safeguard the balance-of-payments position of Members.

Now, if we are to include these Articles in Part II of the General Agreement, we feel that they ought to be counter-balanced by the appropriate Articles in Chapter II, namely, Article 5 dealing with the removal of maladjustments in the balance-of-payments and Article 7 dealing with safeguards for Members subject to external deflationary pressure.

The reason for this proposal is that we feel that the Articles X - XIV, that is, the section of the Commercial Policy Chapters dealing with quantitative restrictions, will have to be interpreted in connection with Articles 5 and 7, and not only interpreted in connection with them, but Articles 5 and 7 ought to be given an equal standing with the other Articles dealing with balance-of-payments problems. Consequently, we would be willing to accept the inclusion of Articles X - XIV in Part II on the condition that Articles 5 and 7 were also included.

CHAIRMAN: The Delegate of Norway has proposed that there should be included in Part II of the Agreement Articles corresponding to Articles 5 and 7 of the Charter. Are there any comments on this proposal?

MR. F. GARCIA OLDINI (Chile) (Interpretation): Mr. Chairman, one would have to know first the exact draft of the Articles which were to be inserted in the Agreement, because the Articles could not be taken out of the Charter and just put into the Agreement without any modification.

CHAIRMAN: That same question has been troubling me on looking at these two Articles. Perhaps the Delegate of Norway would give some suggestions as to how this matter might be handled if this proposal were accepted.

MR. J. MELANDER (Norway): Mr. Chairman, when I suggested the incorporation of Articles 5 and 7, it was, of course, not on the basis that one should necessarily have exactly the same texts, but one would have to have the basic ideas of those Articles.

We do not think that it is necessary to make any major alterations in the text. As far as I can see, roughly the only need for alteration arises out of the reference in Article 5, paragraph 1 to Article 3. If we do not include Article 3 in Part II, it might perhaps be said that, from a technical point of view, it would be difficult to have this included. Personally, I do not think that that is a major consideration.

The Charter will, in any case, be referred to in the Protocol so that we shall have the complete text of the Geneva Charter for reference and therefore paragraph 1 of Article 5 will then only have

to be altered to the effect that the reference is to Article 3 of the Charter referred to in the Protocol, or something to that effect. That, as far as I can see, is the only alteration necessary in Article 5. In Article 7 I cannot see, for the time being at any rate, any need for alteration.

CHAIRMAN: I might mention for the information of the Norwegian Delegate that, when the Tariff Working Party were considering the Draft Agreement, it was found that it would be advisable for technical reasons to avoid cross references to the Charter wherever possible, because it is still a Draft Charter, and it was felt that it was better to use a slightly longer wording in order to avoid a reference to any particular Article of the Charter.

This could be done, I think, in this case if the proposal of the Norwegian Delegate were accepted by using some such words as these: "which handicap them in taking action designed to achieve and maintain full and productive employment and large and steadily growing demand within their own territories". I think that would fully meet the point of the Norwegian Delegate and it would get over a cross reference to the Charter.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, may I make a practical suggestion?

When Articles 5, 6 and 7 of the Charter were discussed by the sub-committee which was entrusted with the drafting of these Articles, the sub-committee recommended in its Report that the Report of the Plenary Commission should contain an Article or provision specifying that the case mentioned in Article 7 of the Charter was one of those

cases justifying the provisions provided for in Article XXI of the Tariffs and Trade Agreement, and also justifying the derogations which are provided for by the states in accordance with paragraph 6 of Article XXIII of the Tariffs and Trade Agreement. I think that we should take up this idea here and insert such an interpretative note in the Protocol. We would not have to refer specifically to Article 7 of the Charter, but we could just describe the cases mentioned there within this Article. We could state that the cases provided for in paragraph 3 of Article XXI can be applied here, and also that the derogations provided for in paragraph 6 of Article XXIII find a justification in their application in such a case.

DR: H.C. COOMBS (Australia): I would like to support very strongly the suggestion put forward by the Norwegian Delegate. It seems to me that some change would be necessary also in Article 7 to make it appropriate, but I think that the comments of the French Delegation indicate the way in which it ought to be amended.

Article 7 says: "The Organization shall have regard, in the exercise of its functions under other provisions of this Charter". Well, clearly so far as the Agreement is concerned there will be no Organization in its early stages, and it will not be appropriate, therefore, to refer to the Organization, but it can quite clearly refer to the Members, both in their individual capacity and with regard to their taking action under Articles XXI or XXIII where joint action by the contracting parties is contemplated.

I would suggest, therefore, that Article 7, when it is inserted in the General Agreement, might read: "Members individually and in their joint capacity shall have regard, in the exercise of their functions, including those contemplated in Articles XXI and XXIII, to the need of Members to take action to safeguard their economies against deflationary pressure...etc.". I think the inclusion of these two Articles would replace the specific proposal of Articles X, XI, XII, etc. in their appropriate content.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I wanted only to support the proposal of the Norwegian Delegation.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop G. BROWN (United States): Mr. Chairman, I have a confession to make to the Committee; that is, that I have not the slightest idea what the attitude of my Delegation towards this suggestion would be. I would like to ask the indulgence of the Committee to take advice on the matter and reserve our position until I have had a chance to do so. I can see it might present difficulties for us. On the other hand, it might be acceptable. I shall just have to take instructions.

CHAIRMAN: Are there any other comments?

Baron P. DE GAIFFIER (Belgium): Mr. Chairman, may I ask the same permission.

CHAIRMAN: In view of the requests of the United States and Belgian Delegates, would it be in order for us to leave over these five Articles - Articles X to XIV inclusive - and the proposal of the Norwegian Delegate for a subsequent meeting? Is that agreed?

(Agreed).

I would therefore like to propose that we come back to these Articles and the proposal of the Norwegian Delegate at our meeting on Monday. Is that agreed?

(Agreed).

We will now take up Article XV - Subsidies. Are there any comments? Are there any objections to the inclusion of this Article?

The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I only want to repeat the statement made before by the Cuban Delegation, that we wish to maintain the reservations we have made to Articles of the Charter which have been repeated in the General Agreement.

CHAIRMAN: The Delegate of Syria.

Mr. Hassan JABBARA (Syria) (Interpretation): Mr. Chairman, it seems to me that this question has been decided already, and it is quite clear that the reservations which were made by the various Delegations to the Articles of the Charter are maintained, if they have not specified to the contrary, in regard to the Articles inserted in the General Agreement.

CHAIRMAN: The Syrian Delegate is partly correct and partly not correct in his interpretation. The question of these reservations was raised by the Cuban Delegate some meetings ago. (It was another Delegate, not Dr. Gutierrez). He asked if it was necessary to mention these reservations when we came to each Article. I said it was not necessary; that the question of reservations had been held over and they would be dealt with when we had considered Article XXVII of the Agreement, when we would return to them.

We had a very full discussion, lasting more than two-and-a-half hours, on the subject of reservations and no definite conclusion was reached, but the feeling of a substantial body of Members of the Committee was that the only reservations which could be accepted at the time of signature of the General Agreement were reservations which had been generally accepted. They were chiefly concerned with provision for the automatic

supersession of Part II by the Charter. That was why the Chair proposed that all questions of reservations should be taken up again when we had dealt with Article XXVII.

Then the Cuban Delegate asked me if it was necessary, when discussing each Article, to mention the Cuban Delegation's reservation on that Article. I said it was not necessary and to save time we would deal with the whole question of reservations later.

The Delegate of Cuba.

Dr. GUTIERREZ (Cuba): Mr. Chairman, I wish to thank you for the information. I had had it from the other Cuban Delegate, but I just wanted to put myself on record.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop G. BROWN (United States): Mr. Chairman, my copy of the Charter indicates that the reservation of the Cuban Delegation is to the portions of the subsidy provisions which are not included in the General Agreement. In consequence, the reservation does not relate to the first paragraph.

If I am wrong, perhaps he will correct me, but if I am right he has no reservation to this particular paragraph which is suggested for inclusion in the General Agreement.

CHAIRMAN: The Delegate of Cuba.

Dr. GUTIERREZ (Cuba): I do not want to take up the time of the Committee about that, because we made the reservation to this paragraph at the beginning. I was not speaking about the reservation on this Article or any other Article, but to those Articles of the Charter where we have introduced reservations,

and I thought it was a good time to say it.

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, this question of reservations is a very serious one and I fear that some misunderstanding may have arisen. If I understood it correctly it was that the whole of this question should be taken up again and discussed at the same meeting at which the Article which the Chairman mentioned would come up for discussion. Nevertheless, we did not agree on anything precise on the reservations themselves.

If I understood it correctly, there was a tacit agreement that this question of reservations and the question of automatic supersession of Part II should be taken up at the same time. There was also a tacit agreement that the reservations which had been made to the Charter would be mentioned either in the records of this meeting or possibly in the Final Act.

If I remember rightly, it was also stated that even a formula might be devised by which, at the time of signature of the Final Act, these reservations could be maintained.

I should like this position to be clarified, because I have made no reservations as yet in the course of the discussion, although I could have made a certain number of reservations. If I did not make any reservations it was because I understood that the debate on this question had been adjourned for some time, but I would like the position to be quite clear and I do hope that the Syrian Delegate and I have not misunderstood the position.

CHAIRMAN: I think the position is quite clear and I hope that what I have just said did not tend to confuse the issue. No decisions were reached when we discussed this question the other day. We had an exhaustive discussion, but it was very clear that there was no possibility of reaching unanimity on the question of reservations until we had considered the question of supersession of Part II by the Charter.

It was for that reason I proposed a decision should be deferred until we reached Article XXVII. Various views were expressed for and against various methods of dealing with reservations. A substantial body of opinion expressed the view that the only reservations which could be entertained at the time of signature of the Agreement were those which were unanimously agreed to by all the contracting parties. There were other views expressed, but no decision was reached and it was agreed that we should leave this matter until we dealt with the supersession of the Agreement by the Charter. It was not considered necessary for Delegations to mention the reservations which they had made to corresponding Articles of the Charter, because we could deal with the whole question of reservations at the same time.

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

CHAIRMAN: Have any Member of the Committee any objection to the inclusion of Article XV - Subsidies?

I think we can therefore take it that the inclusion of Article XV is approved.

CHAIRMAN: Article XVI - Non-discriminatory Treatment on the part of State-Trading Enterprises.

The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, before going into that, you will remember that the Article relating to Subsidies was divided into two Articles - at least I remember Articles 25 and 26 - and I only wanted to ask why Article 26 which deals with "Additional Provisions on Export Subsidies" was not included in the General Agreement.

CHAIRMAN: It is the general basis of the General Agreement on Tariffs and Trade that it deals with the treatment of imports into the various customs territories. Article 25: "Subsidies in General" was considered to have some relation to the importations into certain countries and therefore it was included, but the other Article, "Additional Provisions on Export Subsidies" relates to the treatment of exports, that is exports of one country in competition with exports of another country, and therefore it was considered that those particular provisions, while perfectly suitable for inclusion in the Charter, were not quite proper for inclusion in the General Agreement on Tariffs and Trade which dealt with imports into rather than exports from a given customs territory.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I thank you for your information, although really I am not convinced, because I suppose export is a part of the Trade Agreement and we are not only making here an Import Agreement. But, as I say I would always favour the exclusion of a ~~text~~ and not the inclusion of it, I will not depart from that previous statement.

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): : Mr. Chairman, without going as far as the Cuban Delegate, I think that the positive part of Article 26 should be inserted here, that is at least the first paragraph which reads:

"No Member shall grant, directly or indirectly, any subsidy on the exportation of any product, or establish or maintain etc."

Because there is a rule, and there are exceptions, and I think that the rule being established in one case we have also to establish the order which is given to the Members, the obligation which is imposed on Members, not to establish any system of that sort directly or indirectly.

CHAIRMAN: Well, we have passed Article XV dealing with Subsidies, but, with the unanimous consent of the Committee, we can go back to it and deal with the proposal which is made by the Delegate of Chile. He has suggested, I think, that the first sentence of paragraph 1 of Article 26 be included. Is that right?
The Delegate of China.

Mr. C.H. CHEN (China): Mr. Chairman, we support the proposal of Cuba to include the Article dealing with Additional Provisions on Export Subsidies in the Agreement, as amended by the Delegate of Chile.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, the Article XV was included because of the fact that a domestic subsidy for increasing domestic production could have a limiting effect on imports and therefore tend to nullify the effect of tariff concessions and therefore would be something which ought to be subject to consultation in order to protect our concession.

As you pointed out, the further provisions of Articles 26 and 27 dealing with export subsidies get into the realms of competition between countries in markets of a third country. That is not the area which is covered by the General Agreement. The General Agreement covers the treatment of the commodities of each country in the markets of the other country. It is for that reason that it seems to us quite inappropriate that Article 26 or any part of it should be included in the General Agreement.

I have the further point to make that if paragraph 1 of Article 26 were included, paragraphs 2 and 3 and 4 would certainly have to be included, because what we have agreed upon here is a rule with certain exceptions, and you cannot put in the rule without putting in the exceptions. I would expect that if Article 26 is included other delegates would want Article 27 in, and you would have a very substantial increment to the Agreement in an area which it is not designed to cover and including provisions to which certain delegates have serious reservations.

We have therefore come to the conclusion that it would be undesirable to include any part of Article 26 in the Agreement.

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I appreciate greatly the explanations which were given by the United States Delegate, but nevertheless I cannot hide the bad impression which I had when these Articles on Subsidies were discussed in the Sub-Committee and also when the Article on Dumping was discussed in the Sub-Committee. The impression I had at the time was that one avoided making a direct condemnation of both of these practices.

In spite of the repeated proposals, and very clear ones, made by the Cuban Delegate, dumping was not condemned as such and there

was no condemnation of dumping in the Article, but only a set of rules for dumping practices was drawn up.

In the case of Subsidies, one condemns here the principle of subsidies and a general principle is laid down in the Articles 25 and 26. It is true here that we have a general principle and that there are exceptions here, but I do not ask that the Articles of the Charter should be transferred as a whole from the text of the Charter to the General Agreement. What we could do here is to draft an Article which would condemn the principle of subsidies. As I have stated, in the Charter there is a general principle condemning the principle of subsidies, but what we could do here is to pass a resolution aiming at the obligations of Members not to practice subsidies, and after that we could put in a certain number of exceptions. Therefore we could have, in a few words, a rule, and provide for the exceptions which would seem necessary here.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADAKAR (India): Mr. Chairman, I hope the Chilean Delegate is thinking of the export subsidies and not production subsidies, domestic subsidies, when he is asking for a principle to be embodied here.

With regard to the explicit point that we should include in Part II Articles 26 and 27 or any part of those Articles, I would submit two considerations: one is that the existing Article on Subsidies, Article XV, which has been included in Part II, is, according to our understanding, applicable to both domestic subsidies and export subsidies, subsidies of both sorts. If this Article alone goes into Part II the effect is that, whenever a Member gives any subsidy, whether production subsidy or export subsidy, which results in stimulating the exports of products from the territory

of the Member to any extent, or which results in an undue reduction in imports, there will be consultation. The other consideration is that the effect of including Article 26 would be that, so far as export subsidies are concerned, they would be banned altogether. But we must remember that if paragraph 1 of Article 26 were included, paragraphs 2, 3 and 4 would also have to be included and also Article 27. But if that is done, then the prohibition of export subsidies will come into operation only 2 years from the date on which the Charter enters into force, and since the General Agreement will have an initial term of 3 years, or will be terminable at the end of 3 years, this particular obligation not to resort to export subsidies at all will probably not come into force until 3 years. That being so then from a practical point of view it seems to me that nothing much is to be gained by including Article 26 or Article 27.

CHAIRMAN: I take it that the Delegate of Chile no longer insists on the proposal to include Articles 26 and 27 of the Charter, or even the first paragraph of Article 26; but he has made another proposal, which I fear might run contrary to the ruling I made yesterday. This proposal is, in effect, that we re-draft this Article on subsidies and, as I pointed out, these Articles are taken directly from the Charter and we cannot, at this stage, permit proposals for changes in substance in these Articles because that would be equivalent to commencing the work of the Preparatory Committee all over again, and we would run the danger of being here till well after Christmas.

I therefore hope that the Delegate of Chile, after the explanation he has heard from the United States and Indian Delegations, will permit us to proceed with the other Articles in the General Agreement.

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I regret to say that I am not convinced at all, but I see that the other Members of the Committee are not convinced by what I have said and therefore I will not press my point.

CHAIRMAN: I thank the Delegate of Chile.

We take up now Article XVI, Non-discriminatory treatment on the part of State-Trading Enterprises. Are there any objections to the inclusion of this Article?

Mr. J. MELANDER (Norway): Mr. Chairman, I have no objection to the inclusion of this Article in the General Agreement; but I would only, for the sake of order, make reference to the discussion we had the other day about Article II, when the question of the inclusion also of Article 31 was raised.

This matter is the subject of discussion by a Sub-Committee and I may say that it is certain that we shall come to a unanimous agreement as to how to deal with Article II. Whether that will provide for the inclusion of Article 31 or not I do not know at the moment, but I just wished to mention the possibility that the question of the inclusion of that Article could be raised again.

CHAIRMAN: That, of course, is understood, and if the Sub-Committee recommends that we should give consideration to the inclusion of Article 31 we can do so after the Report of the Sub-Committee has been presented.

Are there any other comments on Article XVI? I take it, therefore, that the inclusion of Article XVI in the General Agreement is approved.

Article XVII - Adjustments in Connection with Economic Development. Are there any comments on this Article?

Are there any objections to the inclusion of this Article? The inclusion of Article XVII is approved.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, before going on to Article XVIII, I wish to ask for some information from the Chair as to why Article 14 of the Charter has not been inserted here. Article 14 of the Charter is an Article precisely devoted to Transitional Measures. I do not see why there has been so much consideration given to the transitional measures to be taken after the Charter has been approved, and yet this Article dealing with transitional measures is not included in a commercial treaty which is going to come into operation earlier than the Charter.

CHAIRMAN: Article 14 of the Charter was not included because it was considered that it related more to the Charter itself and it was not necessary to include it in the General Agreement. I do not think I can say more than that. There was not any long discussion on it by the Tariff Negotiations Working Party: it was felt that it was necessary to include Article 13, but not Article 14.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I wish to thank you most heartily because you have brought me back to my childhood, when I first started to study. In one of the books we had this question: "What is a Christian?" and the answer was "A Christian is a person who believes in Christ". In the same way, the Chair has just told us that this Article of the Charter was not included in the Agreement because it was covered in the Charter! If that is the case, I think I should move that this Article be inserted in the Agreement.

CHAIRMAN: The Delegate of Cuba has proposed the inclusion of Article 14 of the Charter in the General Agreement. Are there any comments on this proposal?

Mr. B.N. ADAKLAR (India): Mr. Chairman, I think it is generally agreed that Article 14 is part of a scheme which starts with Article 13, and therefore it would be reasonable to include Article 14, otherwise Article 13 may seem incomplete. Therefore, I would strongly support the proposal of the Cuban Delegate.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman,

Article 14 seems to me to provide for action which must be taken by the parties before the signature of the General Agreement on Tariffs and Trade, and if they have taken that action, then it is not necessary to provide for it in the General Agreement itself. Article 14 states: "Any such Member who is a signatory of the General Agreement on Tariffs and Trade shall have notified the other signatory governments not later than thirty days prior to the day of the signature of the Agreement". It does not seem to me that this Article is appropriate for inclusion in the General Agreement.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUTIERREZ (Cuba): In our opinion, Article 13 covers a different field from Article 14. Article 13 takes into consideration the possibility of Member Governments proposing to establish new methods that would be inconsistent with the Charter, and Article 14 relates to Members who wish to maintain any non-discriminatory protective measure which has been imposed for the establishment, development or reconstruction of particular industries. If you could incorporate that idea in Article 13, I would be delighted, but at present Article 13 relates only to future measures.

Mr. Winthrop BROWN (United States): I think that perhaps the Delegate of Cuba has got a point there, and I think Article 14 would not be appropriate in its present form but that the subject matter which it covers might be appropriate for inclusion, in some different language, either as a part of Article VII or as a separate Article. I would like to think it over and see what language would be appropriate. Certainly at present Article 14 is not suitable for inclusion.

CHAIRMAN: The Delegate of Cuba.

Dr. Gustavo GUILERREZ (Cuba): Of course, I am in accord with what the Delegate of the United States has said, because when we were talking about Article 14, we were not considering the insertion of the full text, because most of Article 14 relates to the question of the signing of the Charter and of the Agreement; but I was referring to the transitional period and that is the principle which should be inserted in some way in the Agreement.

CHAIRMAN: Could we leave it to the United States and Cuban Delegations to consult together with a view to drafting a proposal for the wording of an Article based on Article 14 of the Charter which might be inserted into the General Agreement? We could then consider that proposal, if it is submitted to us in writing, when we come to deal with these Articles a second time.

Dr. Gustavo GUTIERREZ (Cuba): I would be very glad to co-operate with the United States Delegate, but I think he is quite capable of doing it alone!

CHAIRMAN: Well, we may leave it that the United States Delegation will draft the proposal and submit it to the Delegation of Cuba and the Delegation of Cuba will submit it to the Committee.

Is that agreed? We now pass on to Article XVIII - Emergency Action on Imports of Particular Products. Are there any comments on this Article? Are there any objections to the inclusion of this Article in the General Agreement?

The inclusion of this Article is approved.

Article XIX - General Exceptions.

Are there any comments?

DR. J.E. HOLLOWAY (South Africa): There is just one point, Mr. Chairman. It seems to me that there is a comma missing here and a superfluous full-stop at the end of the third line in subparagraph (b) as the sentence is intended to run on.

CHAIRMAN: I think that is quite correct.

Are there any other comments?

Are there any objections to the inclusion of Article XIX?

MR. H. JABBARA (Syria) (Interpretation): There is a mistake in the French text, Mr. Chairman. Instead of the word "Agreement" there is the word "Charter".

CHAIRMAN: Due note will be taken of this mistake.

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I would like to present a few comments on the provisions of this Article.

In the Charter this Article appeared divided into two different parts, and Part II allows recourse to be made to the Organization, but Part I which deals with political matters does not allow such steps to be taken, that is, Members cannot make recourse to the Organization.

I would suggest that it would be best if we also divide this Article into two parts in the Trade Agreement, and have one Article XIX and the other Article XIX(A).

CHAIRMAN: Is the suggestion of the Delegate of France approved?

MR. R.J. SHACKLE (United Kingdom): It rather occurs to me that it might be best if paragraph I becomes Article XIX(A), on the grounds that there might be something to be said for putting it after the narrower exceptions of paragraph II.

CHAIRMAN: Is the Delegate of France in accord with the suggestion made by Mr. Shackle?

M. ROYER (France) (Interpretation): I quite agree, Mr. Chairman.

CHAIRMAN: Are there any other comments on the proposal of the Delegate of France?

MR. R.J. SHACKLE (United Kingdom): The title of this Article is a slight problem.

CHAIRMAN: I think that the solution of this problem would be so insoluble as to make it difficult to carry out the suggestion of the Delegate of France.

MR. R.J. SHACKLE (United Kingdom): I wonder if I might make a compromise suggestion, Mr. Chairman, namely, that Part II becomes Part I and Part I becomes Part II and they both remain in the same Article!

M. ROYER (France) (Interpretation): Mr. Chairman, nevertheless, I think that it would be possible to find a title - even two titles. I think that for the second part we could adopt the following title "Exceptions" only, or: "Exceptions to the Rules of Conduct of Commercial Policy", but for the first part we would have to say:

"Exceptions to the Obligations of Members".

MR. W. BROWN (United States): Mr. Chairman, why not call the first Part: "Security exceptions" and the second Part: "General Exceptions".

CHAIRMAN: Are there any comments on this very difficult problem of finding titles for the two Parts which are now covered by one Part with one title.

MR. R.J. SHACKLE (United Kingdom): It seems to me, Mr. Chairman, that the United States Delegate's proposal would meet the case.

CHAIRMAN: I take it then that the proposal, which has now been modified by the suggestions which have come out during the discussion, would be that there would be one Article XIX, that is, "Security Exceptions", and another Article XIX(A) headed "General Exceptions", or vice-versa.

MR. R.J. SHACKLE (United Kingdom): Might I rather suggest vice-versa.

CHAIRMAN: Does the Delegate of France agree with that?

M. ROYER (France) (Interpretation): Yes, Mr. Chairman.

CHAIRMAN: The proposal is that we split Article XIX into two, the first Part commencing with paragraph II and headed "General Exceptions", and the second part would be Article XIX(A), which would consist of paragraph 1 and would be headed "Security Exceptions".

Is that agreed?

H.E. Dr. Z AUGENTHALER (Czechoslovakia): I have no objection, Mr. Chairman. I only want to make a remark that in this case the protection of public morals is not a security!

CHAIRMAN: That comes into Part II, which will now be headed "General Exceptions".

Does the Committee agree with this proposal?

I think, for my own protection that I should mention that I could not rule this to be a question of substance. Therefore, I did not rule the proposal of the French Delegate out of order.

Are there any comments on Article XX - "Consultation"?

Are there any objections to the inclusion of this Article?

The inclusion of this Article is agreed.

Are there any comments on Article XXI - "Nullification or Impairment"?

MR. J. P. D. JOHNSON (New Zealand): Mr. Chairman, I notice in the first paragraph there is a reference to the "accompanying Protocol". Presumably we will have to come back to that after it has been determined what the Protocol is going to be.

CHAIRMAN: The Delegate of New Zealand is quite right in pointing this out because there have now been more than one Protocol, and somewhere or other it will have to be identified with this. It is, of course, that referring to the principles of the Charter.

I think that that is a drafting point/^{with}which we will be able to catch up when we come to deal with the Protocol.

Are there any other comments?

Are there any objections to the inclusion of this Article?

The inclusion of Article XXI is approved.

J.

We now come to Part III of the General Agreement on Tariffs and Trade.

Article XXII - "Territorial Application - Frontier Traffic - Customs Unions".

I will draw the attention of Members of the Committee to the comments on page 4 of document E/PC/T/W/312.

The Australian Delegation in document E/PC/T/W/277 suggests that this Article be transferred to Part II of the Agreement.

The Czechoslovak Delegation in document E/PC/T/W/285 suggests that paragraphs 3, 4 and 6 be deleted.

The Australian Delegation suggests that the opening words of paragraph 3(b) be revised to read: "No contracting party shall put into operation" in the place of the words: "No contracting party shall initiate". This suggestion is also found in document E/PC/T/W/277.

I think it would be best if we first of all deal with the Australian proposal to transfer this Article to Part II.

Mr. J. FLETCHER (Australia): It is the view of the Australian Delegation, Mr. Chairman, that the bulk of this Article is new material and is not material that is ordinarily met with in a trade agreement. It is true that in most trade agreements you have a provision excepting privileges given to customs unions and to frontier traffic from the general provisions of the agreement, and so far as those two points are concerned we have no objection to their inclusion in Part III, but we do feel that the remainder of the Article applies to new material that appropriately belongs to Part II and not to Part III.

CHAIRMAN: The Delegate of the United States.

MR. W. BROWN (United States): Mr. Chairman, we agree in part with the suggestion of the Australian Delegate. It seems to us that paragraph 1 of Article XXII properly belongs to Part III, that is, the Territorial Application of the Agreement. We also feel that paragraph 2(a) and the first part of paragraph 2(b) belong in Part III, since they are usual trade agreement clauses, the only new matter being the reference to the interim Agreement. That certainly should be in the Trade Agreement and, in part, it seems to us that it fits more logically in this Article in Part III than it would in Part II, since it is directly related to the matter of Territorial Application and the matter of Customs Unions.

As far as paragraphs 4 and 5, which contemplate the possibility of new preferential arrangements relating to programmes of economic development, is concerned, we rather feel that the Australian suggestion has merit and that it would be more logical to have paragraphs 4 and 5 as part of Article XVII than as part of Article XXII, since they relate directly to matters of economic development.

CHAIRMAN: Does the comment made by the United States Delegate meet the wishes of the Australian Delegate?

Mr. FLETCHER (Australia): As regards Paragraph 1 of Article XXII, I think the matter of its inclusion in Part III of the Agreement as distinct from Part II depends a good deal on whether we fit it in with Article III. I think it ties in with Article I.

Mr. Winthrop G. BROWN (United States): Mr. Chairman, I am afraid I do not understand the point made by the Delegate of Australia.

Mr. FLETCHER (Australia): The point is that Paragraph 1 of Article XXII does affect preferential arrangements as between Australia and her territories and there are questions revolving round Article III which affect those same territories. That would call for adjustments in our legislation if we have to adopt either Article III in its entirety or Paragraph 1 of Article XXII.

It is evident from the wording of this that this does affect the obligations of the parent country towards a territory to which it is granting preferences and other so-called forms of discriminatory treatment.

CHAIRMAN: Is not the point covered by Annex A, which lists the Dependent Territories of the Commonwealth of Australia?

Mr. FLETCHER (Australia): It is all right so far as

tariff preferences are concerned, but when we come to internal taxes it is a different question.

Mr. SHACKLE (United Kingdom): Mr. Chairman, surely the fact that Article III is already in Part II does convey, does it not, that it applies only insofar as it concerns existing legislation, so that you already have your let-up by virtue of the fact that Article III is in Part III. It does not mean that you have also to transfer Article XXII to Part II. That would cause some difficulty, because it is needed as part of the definition of the effect of Article I, which is in Part I.

Mr. Winthrop BROWN (United States): It seems to me, Mr. Chairman, that the situation is exactly as Mr. Shackle has described it.

Mr. SHACKLE (United Kingdom): This is, in fact, a definition Article really. It just says that, for purposes of the application of, shall we say, Article I - General Most-Favoured-Nation Treatment - each unit shall be a separate customs territory.

Mr. FLETCHER (Australia): The effect of this is much more than that of a definition, to my mind. It really is to create these territories, or to place these territories in the position of a Member country. The nature of our arrangement with these territories is rather peculiar. In addition to tariff preferences, we even pay bounties on products produced in the territories: that is one way of encouraging their development.

My objection to seeing this go into Part III is that Part III requires immediate application of its provisions. In Article II, which goes into Part II, we do get an opportunity to delay these adjustments. That is the reason why I think its proper place is in Part II rather than Part III.

Mr. SHACKLE (United Kingdom): Mr. Chairman, the effect of this paragraph, as I see it, is to say, what are the units for the purpose of applying the obligations throughout this Agreement? For the purposes of Part I they will be the unqualified obligations of Part I for which these units will apply as such. For the purposes of Part II they will be the qualified obligations of Part II.

Mr. FLETCHER (Australia): I feel constrained to ask. Is there any substantial reason why this should go in Part III rather than Part II, seeing that the bulk of it is new material?

CHAIRMAN: I think one reason would be that when Part II is superseded by the provisions of the Charter there will be no provision in the Charter corresponding to this Paragraph 1.

Mr. Winthrop G. BROWN (United States): Well, Mr. Chairman, as I understood the point made by the Delegate of Australia, if Australia gave certain financial assistance to the territories in question there would certainly be nothing in any part of this Agreement which would prevent that. In fact, at an earlier stage in our deliberations the Head of the Austrian Delegation called attention to the

fact that there were some special relationships with one or two of the territories near to Australia which may conflict in some way with the provisions of the Charter or of the Agreement. He was not disposed to make them a subject for discussion, but he felt they were perfectly justified and he was quite confident that the Committee would concur in what Australia was doing to assist those territories.

Mr. FLETCHER (Australia): May I suggest that we defer consideration of this Paragraph 1 until we know the outcome of the Czechoslovakian amendment to Paragraphs 3, 4 and 6 of this Article.

CHAIRMAN: We will therefore take up now the Czechoslovak proposal, that Paragraphs 3, 4 and 6 of this Article be deleted.

Mr. SHACKLE (United Kingdom): Mr. Chairman, I cannot understand what Paragraph ⁵ would be doing when Paragraph 4 has disappeared. It seems to me that Paragraph 5 has no raison d'être once Paragraph 4 has disappeared.

Mr. Winthrop BROWN (United States): I think, Mr. Chairman, the reference of the Czechoslovak Delegation is to the old draft and it is paragraphs 4, 5 and 6 of that draft which are meant.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, what we are proposing here to delete is for the following reasons: we thought that we are making here an Agreement for tariff reductions and not an Organization - an Organization which may, in certain circumstances, have tremendous political

powers, because, as the matter stands, customs unions or other preferential arrangements referred to in Paragraph 4 may have an exceptional political importance. It may, for instance, be Anschluss, and we thought the Tariff Agreement should have only such provisions as Mr. Brown mentioned, which are in all normal commercial treaties.

Nothing we have here exceeds largely the normal commercial treaty provisions, but may have great political importance, especially as, according to Paragraph 4, the Committee, possibly by a simple majority, may decide on some such arrangement as those proposed once between Mr. Brüning and Mr. Seipel.

That is why we thought there should be no Organization, especially as this Organization has no connection with the Economic and Social Council or the United Nations. The Committee should have no powers of this kind; it should be purely a treaty of customs and nothing more. Our comments and our proposals are all directed from this point of view.

CHLIRMLN: Are there any comments on the proposal of the Czechoslovakian Delegate?

The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, it seems to me that in all commercial treaties it was stipulated that when a Customs Union was established this meant a derogation and a waiver of the most-favoured-nation clause. If in commercial treaties such a clause was inserted, then it did not mean that, before a Customs Union was to be established, the States signing that commercial treaty were undersigning or approving in advance the formation of such a Customs Union, if one considered it from a political point of view. Dr. Augenthaler referred to the question of the Anschluss but this is a particular question, a special one.

I think that the Customs Unions, once they are formed, can be considered from two points of view, and therefore we have to mention it in the Charter not because of their political repercussions, but because of their economic repercussions, that is to say for instance the repercussions they have on Article I of this Agreement which relates to the most-favoured-nation clause. There is a definition in every commercial treaty, and which we must have here, that is that a Customs Union means obviously a derogation of the principle of the most-favoured-nation clause. A Customs Union, if there is one, is obviously a derogation of this clause.

It is possible of course that in this Tariffs and Trade Agreement we are going somewhat further than is usually done in the normal Trade Agreements, because we are here providing for a preparatory period. I do not think however that we can

say that, if the Members of the Committee decide, during a preparatory period or after the formation of a Customs Union, that the formation of such a Customs Union is a derogation of the most-favoured-nation clause, they are going beyond their terms of reference, that they are intruding in someone else's field, or that they are working outside their own field, and we certainly would not say they would be infringing on the domain of the Economic and Social Council.

I think that bringing in here the intervention of the Economic and Social Council is a new idea. If we consider the Customs Union which was recently formed between Belgium, the Netherlands and Luxembourg, we can see that these three countries did not need the prior approval of the Economic and Social Council before concluding their Customs Union and if those three countries did not need the approval of the Economic and Social Council I really do not see why any other country should need the approval of the Economic and Social Council in the future if they are to benefit by the advantages of Article XXII of this Agreement.

One must distinguish between the two different aspects of this question. One is the economic repercussions of such a Customs Union and that is a question of fact which can quite rightly be taken up by the Committee dealing with the Trade Agreement, and the other question is the political repercussions of such a Customs Union and there it is for all the Members of the United Nations to take appropriate action and bring the matter before any organization they think fit to consider this question.

CHAIRMAN: Dr. Augenthaler.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I think there is some misunderstanding between what I meant and what I said. I have no objection against Customs Unions: we have no objection against Customs Unions with the exception of the Customs Union known under the Anschluss. That is not what we are objecting to. We are not objecting that there should be in a Tariff Agreement normal exception to the most-favoured-nation clause in favour of Customs Unions. We have no objections against that. We have this exception in all our existing commercial treaties and we see no reason why such normal exception should not be also in this Tariff Agreement.

What we object to is something else - that we are creating a Committee with powers to approve or not to approve such Customs Unions. That is why we did not ask or did not propose the elimination of paragraphs 1 and 2 but we propose the deletion of those paragraphs where the Committee approves or disapproves such Unions.

Also I never said that some countries would need approval of the Economic and Social Council of the United Nations to create or not create Customs Unions, because of course it is not within the competence of the Economic and Social Council. I said only that we are giving here to some Committee for Tariffs powers such as to approve or not to approve Customs Unions, especially as it is a question of some Committee which is not even dependent on the Economic and Social Council.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): Mr. Chairman, we entirely agree with Dr. Augenthaler, that we do not desire here, we are not attempting here, to set up an international organization in advance

of the ITO. What we are doing in reference to the Committee in this Agreement, and in Article XXIII which follows, is to provide a mechanism - an orderly mechanism - for consultation between the contracting parties where they can decide upon action which affects them all and which they would want to take in their joint capacity.

Now, of course, in a bilateral agreement, there are always provisions for consultation between the two parties and for their action together. In a multilateral agreement with a number of parties those provisions must necessarily be somewhat more elaborate. In this particular case there is no question of the Committee, the contracting parties acting together, having any power to approve or disapprove a Customs Union. What paragraph 3 contemplates is simply that if a country which is a Member of this Agreement enters into an arrangement with another country, be it a Member or a non-Member, which involves preferential arrangements which are not consistent with its obligations under Article I, and justifies that departure from its obligations on the ground that it is a step towards a Customs Union, then the contracting parties should have a chance to have a look at those proposals and see whether they are in fact as represented. And if the Committee, the parties acting together, find that the proposals made by the country that is making them will in fact lead towards a Customs Union in some reasonable period of time, why they must approve it. They have no power to object.

It is simply a mechanism foreseeing, if necessary, that some Member does not find a way out of its obligations under paragraph 1 under the guise of entering into a Customs Union when it is really not likely that a Customs Union will eventuate. It seems to us that such an opportunity for a check by all the signatories to this Agreement is a very reasonable and necessary one.

CHAIRMAN: Are there any other comments?

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): May I complete my statement, by adding a few words? It is stated "This Agreement shall supersede any prior international obligations", and this applies also to existing commercial treaties. Now, those already existing commercial treaties give us certain rights. Supposing there should be a case covered by some provision of this Article which is not covered by existing commercial treaties, and that a Government, for some reason, would like to object because it conflicts with the commercial treaty. It would be unable to do so, because it renounced, through the Tariff Agreement, the rights of the commercial treaties and agreed that a simple majority or two-thirds majority should decide whether something should be done or should not be done.

CHAIRMAN: Are there any comments?

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I will not speak on the same point. I am going to speak on paragraph 4 of Article XXII. We are faced here with the same difficulties as have already been mentioned and which derive from the fact that these Articles are transferred to the Agreement from the Charter -that is to say, they are transferred to an Agreement from a text which has not yet been approved.

I am referring to the words in square brackets in the draft of paragraph 4, which concerns the provisions relating to voting. In the Charter, no decision was taken on that point, and it was decided to defer this question to the Havana Conference. It seems to me that if we now make a decision on the same point, we shall pre-judge the issue which is to be taken up at the

Havana Conference. Of course, one solution would be to eliminate this point, but that is not a proper solution because we cannot eliminate this question from the Agreement, as this question relates closely to the substitution of the text of the Charter for the text of the Agreement. I feel, as a number of Delegates do, that we should adjourn the debate on paragraph 4 of this Article pending the decision of the Committee on the provisions of Article XXVIII of this Agreement, which relate to the automatic substitution of the text of the Charter for the text of the Agreement.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADAKAR (India): Mr. Chairman, I do not see any difficulty in eliminating paragraphs 4 and 5 altogether. It is obviously impracticable to leave square brackets in the final text of the Agreement. On the other hand, if we seek to settle this issue as to whether approval for regional preferential arrangements should be granted by a two-thirds majority or by a simple majority, we cannot possibly succeed. This matter was left over to the World Conference and it is best left to that Conference.

If we try to retain these two paragraphs and substitute some other words for the words in square brackets, we can only do that by making a reference to paragraph 6 of Article XXVIII; but that would not change the position - it would only prejudge the issue by indicating that it was the view of the signatories to the General Agreement that regional preferential arrangements should be approved by a two-thirds majority. Nothing is to be gained by retaining these two paragraphs.

If we delete these two paragraphs, we shall not be prejudging the issue, and by retaining these paragraphs we shall not be improving on the position we would otherwise obtain.

I would therefore suggest that we should agree to the deletion of these two paragraphs altogether. If that is done, then until a separate provision on regional preferential arrangements is incorporated into the General Agreement, approval for such arrangements would have to be given under whatever procedure is laid down in paragraph 6 of Article XXIII.

I would only add one point. It is at present contemplated that Part II of the General Agreement should be substituted, in due course, by the corresponding provisions of the Charter, and since there is nothing at present in Part II on the subject of regional preferential arrangements, it will have to be stated somewhere that when the substitution of Part II by the corresponding provisions of the Charter takes place, some specific provision would be inserted, that is, Article 15 of the Charter would find its place in Part II.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I would like to support the proposal that has just been made by the Indian Delegate. It seems to me that the course he suggests, namely, the dropping of paragraphs 4 and 5, is the only way to avoid encroaching upon a question which we have already decided to leave to the Havana Conference. It is, I think, the only way out of that difficulty.

CHAIRMAN: The Delegate of the United States.

Mr. Winthrop BROWN (United States): I would like also to

support the suggestion of the Delegate of India.

H.E. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I also support this proposal. I do not insist on the deletion of paragraph 3, and as to paragraph 6, that was a mistake: it should be paragraphs 3, 4, 5 and not 6.

Mr. C.H. CHEN (China): The Chinese Delegation also supports this proposal of the deletion of these three paragraphs; but in addition we suggest the deletion of paragraph 7, which seems to us quite unnecessary.

CHAIRMAN: Are there any objections to the proposal of the Delegate of India? The proposal of the Delegate of India to suppress these paragraphs 4 and 5 appears to have the support of the Committee, but I would ask that this decision be only a tentative one, because the Delegate of Chile made the request that the decision in regard to this matter should be held over until a later occasion, and unfortunately he had to leave the Committee. I think it would be only fair to him that we should leave it as a tentative decision to be confirmed later.

Dr. Gustavo GUTIERREZ (Cuba): Mr. Chairman, I was just going to make the suggestion that we leave the final decision until the Chilean Delegate can be present.

CHAIRMAN: Is that agreed? We will regard this as a tentative decision, and we will take it up at a later occasion to be confirmed when the Delegate of Chile is present. We can now deal with the propose amendment to paragraph 3(b) suggested by the Australian Delegation. It is to replace the word "institute" in the first line of paragraph 3(b) by the words "put into operation", so that

paragraph 3(b) would read: "No contracting party shall put into operation or maintain any interim agreement.." etc.

Are there any objections to this drafting change?

Mr. Winthrop BROWN (United States): Mr. Chairman, I think the Australian suggestion was addressed to an earlier draft, in which the word "initiate" appeared, rather than to the word "institute" which now appears, and I wonder if this word "institute" does not carry the same meaning as the words suggested by the Delegate of Australia and therefore would be satisfactory to him.

Dr. H.C. COOMBS (Australia): It is correct, Mr. Chairman, that our amendment was directed to an earlier draft which did have the word "initiate". However, I feel that "put into operation" is clearer - at least, I know what it means and I am not sure that I know what "institute" means in this text.

Dr. H.C. COOMBS (Australia): We entirely agree, Mr. Chairman, with Australian Delegate.

CHAIRMAN: I imagine there is no objection to this slight modification to the text of the Charter.

Dr. H.C. COOMBS (Australia): I do not think I attach any great importance to that, I think they are much about the same.

CHAIRMAN: Perhaps for the sake of uniformity between the Charter and the Agreement we can let it remain as it is.

The only other point which we have to clear up is with regard to Article XXII - it is the Australian suggestion that paragraph 1 should be transferred from Part III to Part II.

Dr. H.C. COOMBS (Australia): Well, Mr. Chairman, we think that would be an improvement. We are concerned about this Article because, like certain other Articles to which we have referred, we are not entirely certain of the nature and extent of the obligation which we are accepting under it. Reference has been made to the fact that we have territories which are separate customs territories, and paragraph 1 says that: "The rights and obligation arising under this Agreement shall be deemed to be in force between each and every territory, which is a separate customs territory and in respect of which this Agreement has been accepted". On the assumption that we would accept this Agreement both for the Australian customs territory and territories of New Guinea and Papua, that would mean that the rights of application in this Agreement would not merely be between Australia and other participating countries, but between New Guinea and Papua, and also between

Australia and New Guinea. Now, quite frankly, I am not quite sure what is implied by that. What would be involved in applying the whole of the provisions of this Charter as between Australia and New Guinea is just a problem to which we have not given any thought at all, and it may involve legislative provisions or it may not. Therefore, we consider that it would be preferable if this Article were included amongst the section of the Agreement where acceptance was not merely provisional, but was limited to what could be done within existing legislative authority, or whatever is the precise wording of the qualification of that covering Part II.

Similarly, we have in Paragraph 7 undertaken that each contracting party shall take such reasonable measures as may be available to it. Well, I have great faith in the precise quality of this word "reasonable", but we are a Federal State and some of the matters covered by the various parts of this Agreement are the exclusive concern of States which constitute our Federation, and whether it would be sufficient protection to say that it would not be reasonable to put any sort of pressure on those States to make changes in their practices in order to conform to this Agreement while it was in its provisional stage, I would not know for certain; but, while any doubt exists, it does seem to me that it would be safer to put this in Part II in order that we would be protected there also.

Furthermore, there does seem to me to be a good deal in this Article which is not properly described as territorial application. The provisions relating to Customs Unions and means by which they might be established and the limitations thereto do appear to me to

be substantive provisions of the Agreement, while identical in character to those which at present form the substance of Part II. If this Article were one exclusively designed to describe the territories to which the provisions of the Agreement would apply, there would be much less objection to its being here.

So, Mr. Chairman, for those three reasons - firstly, because this may involve us in obligations with regard to the relationships between Australia and its various territories which are separate customs territories, because it may involve us in action taken in relation to the States which constitute the Federation or Commonwealth of Australia, and because it contains provisions essentially similar in character to other Articles included in Part II, we think there is something to be gained by putting this in there.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I apologise for repeating such arguments ~~as we~~^{which} have used already, but I must say that I am still not clear as to what the effect of making this change would be, nor I am I convinced of its necessity.

The way the matter appears to me is this: This paragraph 1 of Article XXII does not lay down any substantive obligations at all. It is really a definition Article. Well now, if that is so, I really do not see quite what the effect of transferring this paragraph to Part II would be. On the face of it, it would introduce the qualification that this is not consistent with existing law, but I do not see that ^{that} it would have any meaning - either these are separate customs territories or they are not - so the qualification that this ~~is~~ "not consistent with existing law" seems to be irrelevant to this paragraph.

It seems to me that where the relevance does come in is in relation to Articles of substantive obligation, of which, of course, Article III is one, which sets up substantive obligations on national treatment as regards internal taxation and regulation, and I should have felt that, insofar as there might be any question as to whether the regime between Australia and these territories was consistent with Article III or not, it would be covered at present by the qualification that it is not consistent with existing law. There may possibly be some question of Article I - and I am under the impression that Dr. Coombs has mentioned that before - but I thought that it was left that the facts would be communicated to the Committee.

So, for those reasons, it does seem to me that it would be almost motiveless to change this paragraph and I think it would be better to leave it here. I do not think it could possibly affect the substance as regards the questions in which Dr. Coombs is interested. That is how it appears to me.

CHAIRMAN: Are there any other comments?

The Australian Delegate mentioned that, in connection with Article I, the Australian Delegation had not had time to fully study the implications of this particular paragraph, that is, paragraph 1 of Article XXII, so perhaps the best thing would be for us to leave the Australian proposal over until we can confirm the tentative decision which we took with regard to paragraphs 4 and 5. We can then deal with the whole Article. Is that agreed?

Well, we will therefore leave over Article XXII and return to it when we take up the question of the deletion of paragraphs 4 and 5.

CHAIRMAN: We still have some time left; I therefore suggest we take up Article XXIII - Joint Action by the Contracting Parties. There are a great number of amendments to this Article, which will be found on Pages 4 and 5 of Document W/312. I think, therefore, the best way in which to proceed is to take up this Article paragraph by paragraph.

Mr. Winthrop BROWN (United States): Mr. Chairman, my Delegation has been giving some thought to this Paragraph, particularly in view of the blanks which it now contains, and we are prepared with some suggestions as to how those blanks should be filled in. The document is being circulated this evening and should be on the desks of all Delegates first thing in the morning.

I hope it would be helpful to the Committee to have a specific suggestion as to the texts of paragraphs 4, 5 and 6, which are now blank, in their consideration of the Article as a whole. Since that could be available first thing in the morning, perhaps it might expedite the general work if our suggestions were before the Committee, as well as those contained in Document W/312.

CHAIRMAN: In view of the statement by the United States Delegate, I think it might be better to terminate our work today and take up this Article as the first thing at our next meeting.

Mr. SHACKLE (United Kingdom): Mr. Chairman, before we break up, might I raise a point. It affects Article 24, particularly Paragraph 3(b), and Article 28. Those two paragraphs concern the status which territories would have which adhered to this General Agreement but were themselves not

independent sovereign States but were autonomous in matters covered by the Agreement.

I refer to Burma and Southern Rhodesia. The point affects them very much. It is a question of their Membership and I would like to ask whether the Committee would agree that representatives of Burma and Southern Rhodesia, who are here in Geneva at the moment as advisers to our Delegation, might be allowed to be heard when these paragraphs are under discussion.

I think it would be Articles 24 and 28 particularly - probably the whole of those Articles - on which they would wish to be heard.

CHAIRMAN: The Delegate of Czechoslovakia.

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to propose that we should meet the representatives of Burma and Southern Rhodesia when we discuss these Articles.

CHAIRMAN: It has been proposed by the United Kingdom Delegate, seconded by the Delegate of Czechoslovakia, that, when we are discussing Articles 24 and 28, representatives of Burma and Southern Rhodesia should be admitted to take part in the discussions. Are there any objections to this proposal?

(Agreed).

Mr. SHACKLE (United Kingdom): I wish to thank Mr. Augenthaler for his support and the Committee for agreeing to the suggestion.

CHAIRMAN: I would now like to take the sense of the Committee as to what time we should meet tomorrow. I think it

is very necessary that we meet on Saturday, because we have to get through this work before September 14, after which we shall no longer have the services of the Interpreters.

I would propose that we meet tomorrow morning at 10.30.

There is a meeting scheduled for the Sub-committee on Paragraph 3 of Article II also at 10.30 tomorrow morning, but I trust it will be possible for Delegations to send representatives to this Committee and to the Sub-committee if they are held at one and the same time.

Mr. SHACKLE (United Kingdom):

Mr.

Chairman, I know that meetings on Saturday afternoons are unpopular, but I am afraid there is really nobody who could understudy me on the Sub-committee. Therefore I can only suggest we have the sub-committee meeting in the afternoon.

CHAIRMAN: I think this Committee has priority over the Sub-committee and therefore I think it will be necessary for us to ask the Sub-committee to meet in the afternoon.

Mr. SHACKLE (United Kingdom): I apologise to Members of the Sub-committee.

CHAIRMAN: We will meet tomorrow at 10.30 a.m. in this room.

The Meeting is adjourned.

The Meeting rose at 6.p.m.