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

VERBATIM REPORT

EIGHTEENTH MEETING OF THE TARIFF AGREEMENT COMMITTEE HELD ON FRIDAY, 12 SEPTEMBER 1947 AT 9.P.M. IN THE PALAIS DES NATIONS, GENEVA.

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

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CHAIRMAN: The meeting is called to order.

Before we broke up this afternoon I said that the Secretariat would prepare a redraft of the first two paragraphs of the Protocol of Signature in the light of the discussion. The draft of the first two paragraphs as prepared by the Secretariat has been circulated and I think it is now before each Member of the Committee. We regret very much that, owing to pressure of time, it has not been possible to circulate a French text, but I trust that we can consider the text in English.

Are there any comments with regard to the text prepared by the Secretariat?

Dr. Augenthaler.

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mrm Chairman, I would suggest that we finish the first paragraph at "duly authorised" and that we delete the rest: "by their respective governments". We think it is not necessary and that, with regard to the signature it could be, for instance, "On behalf of the Government of the United Kingdom" and, in the case of Czechoslovakia, it could be "On behalf of the President of the Republic", and so on.

CHAIRMAN: The Delegate of New Zealand.

MR. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, I was just wondering whether an undertaking of this nature would be given by Governments and not by representatives. I thought that perhaps it might read this way: "At the time of signing the General Agreement on Tariffs and Trade, the undermentioned Governments through their duly authorised representatives".

CHAIRMAN: We have now got two opposite proposals.

Dr. Augenthaler

H.E. Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, as this is an international obligation, I chose a text as it is in hundreds of different protocols and treaties, because it is entirely neutral, and I thought that it would accommodate everybody.

CHAIRMAN: I think that if we carried out the suggestion of Dr. Augenthaler the first paragraph would read as follows: "At the time of signing the General Agreement on Tariffs and Trade, the undersigned duly authorised representatives". Would that be the way you suggest?

The Delegate of New Zealand.

MR. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, that is not quite consistent with the form of the Agreement itself, as we refer there to the Governments of certain countries. Is it a matter for the Legal Drafting Committee?

Mr. SHACKLE (United Kingdom): Mr. Chairman, I wonder if we could not say "by the respective Governments and Heads of States," and then everybody who is authorized by Heads of States and everybody who is authorized by Governments would be satisfied.

M. ROYER (France) (Interpretation): Mr. Chairman, if you just say plainly "duly authorized" everyone ought to be satisfied, because some of the representatives would be authorized by the Foreign Office, others by the Head of State. This depends entirely upon the constitutional rules of each State.

CHAIRMAN: Are there any other comments?

Cannot we find some solution of this difficulty? I understand that the New Zealand Delegate and the United Kingdom Delegate attach importance to the retention of the word "Governments." The Czechoslovak Delegate, supported by the French Delegate, thinks it is sufficient if we just say: "The Undersigned duly authorized representatives."

Mr. SHACKLE (United Kingdom): Mr. Chairman, I would not like to be understood as insisting in any way about it. We shall no doubt have some provision to allow for the Government of the United Kingdom, Great Britain, Northern Ireland, etc. I suppose that really, in an indirect way, conveys the sense.

Mr. J.P.D. JOHNSEN (New Zealand): We shall get into another difficulty, too, when we look at the third paragraph of this Article.

CHAIRMAN: The Delegate of the United States.

Mr. J. M. LEDDY (United States): I wonder whether it could be solved by saying that at the time of signing the General Agreement on Tariffs and Trade the Governments in respect of

which, or on behalf of which, this Protocol has been signed, having agreed, undertake, etc.

CHAIRMAN: Would that give satisfaction to the Delegate of Czechoslovakia?

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): I am sorry, but I cannot sign any Agreement on behalf of the Government.

Mr. SHACKLE (United Kingdom): Why not "State or Government on whose behalf"?

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I do not understand. The formula is taken exactly as it stands here, and now we are making such difficulties.

Mr. SHACKLE (United Kingdom): Mr. Chairman, in the last resort I am quite indifferent as to the exact terms.

CHAIRMAN: Can we then agree on "The Undersigned duly authorized representatives" ? Are there any objections?

Then we come to the next paragraph. Mr. Leddy suggests "having agreed" instead of "agree."

Mr. LEDDY (United States): Well, Mr. Chairman, that does not quite make sense. If we say "the Undersigned duly authorized representatives" we must say they have agreed on behalf of or in respect of their Governments. If the representatives agree, it makes no difference.

I think, if you use the form you suggest, Mr. Chairman, that "the Undersigned duly authorized representatives, having agreed on behalf of their respective Governments", you must say that in order to make the thing effective.

Mr. SHACKLE (United Kingdom): In that case, Mr. Chairman, I would renew my suggestion of State or Government. Would not that perhaps give satisfaction to Mr. Augenthaler?

H.E. Mr. Z. AUGENTHALER (Czechoslovakia): Is there any contradiction between State and Government, Mr. Chairman?

Mr. SHACKLE (United Kingdom): I should not have thought there was any necessary incompatibility. Those who are authorized to sign on behalf of their Governments would sign on behalf of their Governments, and those who are authorized to sign on behalf of States would sign on behalf of States. I should have thought it would work.

CHAIRMAN: We do not seem to be able to get away from Governments.

Mr. SHACKLE (United Kingdom): Mr. Chairman, surely we shall all sign this on behalf of somebody or something. If it is not a Government, what is it? Is it the Head of a State or is it a State, or what?

Mr. LEDDY (United States): I thought this problem had been solved for the Trade Agreement by the word "Government."

CHAIRMAN: I agree that was the case in regard to the General Agreement. We had agreed that in the Preamble the word "Governments" could remain.

CHAIRMAN: Having omitted the word "Governments" from the first paragraph, perhaps Dr. Augenthaler would agree to have it in the second paragraph:"having agreed on behalf of their respective Governments"?

Dr. Z. AUGENTHALER (Czechoslovakia): I am sorry, Mr. Chairman. I stated that I had no objection and our Legal department has no objection, to its beginning with "Governments" and so on, but I stated that as to the signature, this would be on behalf of the President of the Republic.

I have taken here a formula which has existed for I do not know how long, and I would like "at the moment of signing the convention of today's date relating to the simplification of customs formalities, the undersigned, duly authorized, have agreed as follows" (now come the provisions, and at the end we have "Germany, Austria" etc. and signatures). It is the internal affair of each country who is authorised to sign. In one country it is the Government, in other countries it is the President, in other countries it may be signed another way; but it is the internal affair of each country.

CHAIRMAN: TheDelegate of France.

M. ROYER (France)(Interpretation): Mr. Chairman, I will make another attempt to find a compromise here. The only important undertaking by the Governments is the last undertaking, "The Governments undertake pending the entry into force of a Charter". It is the only thing, in fact, which is important from the undertaking point of view. This is the last paragraph of this Protocol, and whether we mention "the Governments" before for the other paragraph does not really matter.

I wonder, therefore, if we could not say that "the Representatives...agree to the following" and then we would state the contents of the first paragraph, and when we came to the last paragraph we would say:

"The Governments as represented undertake, pending the entry into force of the Charter" etc.

The French Delegation would have no difficulty in accepting the word "Governments", but there might be some difficulty in inserting here the word "States", because the object was not to commit the State but only the executive power -that is, the Government, and therefore I think that the formula which I proposed might give satisfaction to everyone.

CHAIRMAN: Are there any comments on the proposal which has just been made by the Delegate of France?

Dr. H. DORN (Cuba): I only want to raise one question. I see that it is said "at the time of signing the General Agreement". Is it really the intention that in signing the General Agreement, one signs at the same time the so-called Protocol of Signature? Or is that not something quite different under the new conditions? Is that signed before, or at the same time? When you sign the Agreement, you will sign this Protocol - is that the idea?

CHAIRMAN: We had a very lengthy discussion of this point this afternoon, and it was agreed that the General Agreement and its accompanying Protocols should be signed at the same time. The Secretariat were instructed to prepare a document setting forth the various considerations in relation to

signing the various documents, and that will be circulated tomorrow morning. The Delegate of Cuba was not there at the time, and therefore I can understand he was not aware of what took place this afternoon.

Dr. H. DORN (Cuba): Thank you very much, Mr. Chairman.

M. ROYER (France) (Interpretation): Mr. Chairman, I would like just to close the brackets which the Cuban Delegate opened. I think that there is a link which is missing now. In the Protocol of Provisional Application we ought to mention also the Protocol of Signature, and not only the Protocol relating to Parts I, II and III of the Agreement.

CHAIRMAN: The Delegate of Cuba.

Dr. H. DORN (Cuba): Mr. Chairman, would you allow me to add something, because Mr. Royer touched upon just the point I wanted to raise. I have the impression that the words "Protocol of Signature" were chosen at a time when the whole situation was quite different from the present situation. Therefore, first of all, I would prefer to give another title to this Protocol, because it is not the Protocol of Signature but its content is more far-reaching. Perhaps that can be discussed.

The second point is the question whether you will at the moment of the provisional application, also apply this Protocol? Is it not necessary to insert something about the application of the principles of the draft Charter and the moment of the provisional application?

CHAIRMAN: The Delegate of Cuba this afternoon did propose that the title should be changed, and I said at the time that after we had established the text of the Protocol, we could then

be in a better position to decide what title there should be.

With regard to the relationship of the Protocol of Signature to the Protocol of Provisional Application, we have already passed the Protocol of Provisional Application, but, as I understand it, the Delegate of France and the Delegate of Cuba propose there should be some reference in the Protocol of Provisional Application to the Protocol of Signature.

Mr. J.M. LEDDY (United States): As I understand it, Mr. Chairman, the Secretariat will prepare for us a paper setting out the relationship of the several documents and the possible time of signature of each, and I suggest that the point raised by the Delegate of Cuba, which is an important one, should be held over until we have the document, because I rather suspect that his point will be met by the timing of signature.

In other words, if we agree that you must sign the Trade Agreement if you sign the Protocol of Provisional Application, then you will have covered the Protocol of Signature. On the other hand, anybody signing the Trade Agreement without signing the Protocol of Provisional Application will also be required to sign the Protocol of Signature, because it refers to the moment of signing the Trade Agreement; but I think we had better wait for a detailed discussion of this until we get the paper.

CHAIRMAN: I think the suggestion of the United States Delegatation is a good one because when we have the Secretariat's paper we will see more clearly the implication of the signing of these various documents.

Can we get back now to the text of the Protocol of

Signature, particularly the difficult question as to whether or not to refer to "governments"?

Baron P. de GAIFFIER (Belgium): Mr. Chairman, would it not be a very simple way of meeting the Czechoslovak Delegate's point by just keeping the first paragraph and adding after "Governments" "or Head of State as the case may be"?

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I do not find it very elegant, but I have no objection.

Mr. J.M. LEDDY (United States): Mr. Chairman, I think the Delegate of France has pointed the way to a solution of this problem, and has also indicated a possible objection to the proposal by the Belgian Delegate.

He points out that the basic undertaking here is on behalf of the executive authority. The understanding is that the last paragraph extends the executive power to follow the principles of the Charter. Now, if we say "The Heads of States or Governments as the case may be", I think we shall draw a distinction between the executive power in some cases and the whole power of the Government in other cases. What I would suggest is that we might say in the first paragraph:

"At the time of signing the General Agreement on Tariffs and Trade, the undersigned, through their duly authorised representatives, having agreed that the objectives laid down" etc. "undertake, pending the entry into force of a Charter, to observe to the fullest extent of their executive authority the principles of the draft Charter" etc. Then there would follow "for the Government of so-and-so" or "for the President of so-and-so". But I think that "the undersigned" would mean the authorities listed below, and the inclusion of the words "executive authority" in the last paragraph would avoid any implication that some undertakings were more extensive than others.

CHAIRMAN: Does the proposal of the United States Delegate get us out of the difficulty?

Any objections to the proposal of the Delegate of the United States? Then the first paragraph would read: " At the time of signing the General Agreement on Tariffs and Trade, the undersigned through their duly authorised representative....." Then the next paragraph will start off: "Having agreed that.... etc." Is that right?

Any other comments in regard to the second paragraph?

Mr. F. Garcia OLDINI (Not interpreted).

Dr. Z. Augenthaler (Czechoslovakia): May I suggest the French text as it stands here "Au moment de procéder à la signature les soussignés, dûment autorisés, sont convenues de ce qui suit."

M. ROYER (France) (Interpretation): Mr. Chairman, I would not wish to refer the matter to the Legal Drafting Committee but I wonder, nevertheless, if this would not be the proper solution.

CHAIRMAN: I think we will have it set out the way we agreed and then we will see if the Legal Drafting Committee can make any improvements.

Any comments with regard to the third paragraph?

Mr. J.P.D.JOHNSEN (New Zealand): I do not know whether this paragraph actually sets out the requisition. It says there that the Members of the Preparatory Committee of the Conference recommend the text of the Draft to the Economic and Social Council. I have not before me a copy of the actual Draft sent forward

but I notice on Page 3 of the Report of the Preparatory Committee it refers to the draft adopted as a basis for discussion at the World Conference. I think in the light of that after the word "recommended" we should have the words "for consideration" - "recommended for consideration."

Mr. SHACKLE (United Kingdom): Would it not be best to say: "... recommended the text of a draft Charter for consideration by the Conference..."? That would be a little better.

CHAIRMAN: Is the proposal of the New Zealand Delegate, as amended by Mr. Shackle, approved?

Mr. LEDDY (United States): With a very slight change. I think if we make that change, with which I agree, we ought to have the phrase ". . . through the Economic and Social Council of the United Nations."

CHAIRMAN: If the proposal if the New Zealand Delegate is adopted, the paragraph would read as follows: "HAVING, in their capacity as Members of the Preparatory Committee for the Conference, recommended to the Social and Economic Council of the United Nations the text of a draft Charter for consideration by the Conference." Is that agreed.

(Agreed)

M. ROYER (France) (Interpretation): Provided that this question of majority is settled because although governments are Members the Heads of States cannot be Members of the Preparatory Committee.

CHAIRMAN: I think we have agreed that that problem is one suitable for the Legal Drafting Committee. Is that paragraph as amended, approved?

In the last paragraph, I think Mr. Leddy has proposed the wording "executive power" for the word "authority" in the second line.

Mr. LEDDY (United States): There is one other suggestion I would like to make. There is a phrase in the Protocol which came to us from the Drafting Committee in New York. I think it is probably better than the phrase we have here "pending the entry into force of the Charter". The reason why I think it is better is because it lends more precision to the undertaking. In response to the request by the Delegate of Australia the other day that we should make it as clear as possible so that we should know where we stand, I would suggest deleting this phrase - "pending the entry into force of the Charter" - and substituting in lieu the phrase "pending their acceptance of a Charter in accordance with their constitutional procedures." That would mean that only the signatories accepted a Charter of the kind we are talking about. They would be obliged to observe to the fullest extent of their executive authority the principles laid down in the draft Charter. I do not think that is quite clear from the existing text.

CHAIRMAN: Are there any objections to the proposition just made by Mr. Leddy?

Mr. J.P.D. JOHNSEN (New Zealand): I do not wish to raise an objection, Mr. Chairman, but I would just make an observation. I was wondering whether we should not relate the Charter to the Charter adopted by the Conference: whether you had in mind a particular Charter. In that case I would suggest the wording might be:

"Pending their acceptance in accordance with their constitutional procedure of a Charter as adopted by the Conference".

CHAIRMAN: The Delegate of Chile.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, this paragraph raises two questions.

The first is a question of drafting, linking this text to the definitive text of paragraph 1. I cannot think that we can make a decision on this last paragraph before we know the final draft of paragraph 1.

The second question is a question of substance and I thought that we had decided to postpone the debate on these questions of substance until we had seen the document which the Secretariat is to prepare to establish the relations between the signatures of these various documents.

CHAIRMAN: We are just endeavouring now - I do not think there is any decision to the contrary - to establish a text of this Protocol so that we can include it in the new clean draft which the Secretariat are going to get out for our second reading. If we keep deferring every subject until we deal with something else we shall never make any progress, and I would like to have a text agreed at that second reading stage so that we could finally approve it in our third reading.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, as Chairman I think that you are quite right to try to speed up our debates and the procedure which we are now following; but if we read the first paragraph and see that it is stated that "the undersigned, duly authorised ....." and so forth and then we read the last paragraph and see "undertake .... to observe to the fullest extent of their executive authority ....." then it seems to me that this has no sense.

Furthermore, if we do not know the place of the Protocol and to what other document this Protocol will be attached, then of course we cannot discuss it.

CHAIRMAN: The Delegate of Chile proposes that the question of this particular Protocol be left in abeyance until we receive the document from the Secretariat setting forth the various stages of signature, and I think it is perhaps preferable that we should leave it because we do need a little bit more time to think over the first paragraph; it is quite obvious that we are not going to have a satisfactory document if we leave it in the form we have decided. The proposal to refer it to the Legal Drafting Committee is not a very good way of solving this problem because the Legal Drafting Committee consists of representatives appointed in their personal capacities and this question of whether we mention governments or not is of very great interest to certain members of the Committee who are not on the Legal Drafting Committee.

So I think it would be wise to leave this Protocol of Signature over until we have had that document from the Secretariat and to then, perhaps, consider it tomorrow morning.

Mr. R.J. SHACKLE (United Kingdom): Purely for the purposes of a clean text, Mr. Chairman, would it not be a good thing to write in Mr. Leddy's amendment and Mr. Johnsen's addition to it?

I have the feeling that that is a serious question and I think, for the purposes of a clean text for our consideration later, we might do worse than write that in.

CHAIRMAN: If that would meet with the agreement of the Committee, the Secretariat could prepare another draft of the Protocol of Signature including the amendments which were suggested by Mr. Leddy, as amended by Mr. Johnsen.

Mr. J.P.D. JOHNSEN (New Zealand): Mr. Chairman, there is another point of substance I wish to raise in connection with the paragraph, but if you prefer I can let it stand over until tomorrow when you next consider it.

CHAIRMAN: I think it would be better to leave it over until tomorrow.

Dr. H. DORN (Cuba): Mr. Chairman, may I make only a practical proposal in order, possibly, to save time?

This morning the Legal Drafting Committee tried to clear up, as far as possible, the relations between the different documents to be signed, and it would perhaps be useful if the Secretariat were to cooperate with the Legal Drafting Committee in preparing the new document: because we tried to find a way of clearing these points; I am not quite sure that we succeeded in doing so, but perhaps by combining the work we could save time later on.

CHAIRMAN: I was anxious to have that document circulated tomorrow morning so that we could consider these matters tomorrow. We want to get a clean text of this Agreement finished by tomorrow so that we can circulate it over the weekend.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I would like to observe here one thing which is very amusing and that is that we have reason to celebrate that, in the Protocol of Signature,

we have for the first time baptised the Charter which we have been discussing for so long. Up till now, nowhere has the Charter been named, and now here we are putting in its name because we say "a Charter for an International Trade Organization". That is the first time I have met the name of the Charter. I do not know if it is the right name or not but anyhow I would like to observe this curiosity.

CHAIRMAN: We will now take up the Protocol of Interpretative Notes to the General Agreement on Tariffs and Trade. The Secretariat prepared a draft which is given in document W/318 of 3 September. There is also Addendum 1 which gives a Note to Article XI.

We will first of all consider the title and first paragraph of this Protocol.

The title given to this Protocol is Protocol of Interpretative Notes to the General Agreement on Tariffs and Trade. Are there any objections to the title?

Mr. J.M. LEDDY (United States): Mr. Chairman, I just want to say this on the subject of these Protocols. I was wondering whether we could not avoid having one more Protocol. Could we not make these Interpretative Notes simply another Annex to the General Agreement, an integral part of the General Agreement, saying that the following Notes shall serve as a basis for interpretation of the provisions of the Trade Agreement? Then we might save having another Protocol.

CHAIRMAN: The Delegate of the United States has suggested that instead of a Protocol we have these Interpretative Notes set forth in the form of an Annex to the General Agreement.

MR. J.M. LEDDY (United States): Mr. Chairman, I might explain that if there is any question as to the validity, one could put a very simple provision in the Agreement saying that the Annexes form part thereof.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, after all, we shall have several Protocols anyway, and I do not think that it will matter whether we have one more or one less. We might even resort to a scheme of numbering protocols, Protocol 1, 2, 3, etc. I would rather hesitate to embark upon a brand new form of drafting, but I do not think that it makes any difference to the substance at this stage.

CHAIRMAN: Are there any other comments?

Monsieur Royer.

M. ROYER (France) (Interpretation): Mr. Chairman, I think that if we want to have one Protocol we could have one Protocol of Signature only and insert under (i) the contents of what now appears in the Protocol of Signature, under (ii) the Interpretative Notes, and then if we wish we could even have (iii) for something else. Of course, we would have another Protocol which would be the Protocol of Provisional Application, but this might be a saving of signatures.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I am sorry to break in with another suggestion, but I think that these Notes are part of the placing on record of the text. In the Final Act, we place on record the text of the Draft Agreement, and these are interpretations of the Draft Agreement, so it seems to me that their right place is in the Final Act and the Interpretative Notes are part

of the text itself.

CHAIRMAN: The Delegate of Cuba.

DR. H. DORN (Cuba): Mr. Chairman, I have the impression that we have to start with the question of what are the Annexes to the Final Act. The Agreement has to be authenticated and then we will have to ask for the other parts of the Agreement which have to be authenticated, and that will be the Interpretative Notes and will be I think, the Reservations. Therefore, I think all these will have to be put as Annexes to the Final Act. Therefore, I thought that it would be useful to ask, from a purely legal point of view, what will be covered by the Signature of the Final Act, and what will be authenticated? Then, we will have the whole thing together and we will see what has to be finally signed. In my opinion, we must have first the Final Act with all its Annexes, and afterwards there is the question of what documents have to be signed after that.

CHAIRMAN: The question before us now is whether the Interpretative Notes should be included in the Protocol or in an Annex of some other document in the General Agreement.

Monsieur Royer.

M. ROYER (France) (Interpretation): Mr. Chairman, I have no objection to inserting these Notes in an Annex appended to the General Agreement, nor do I have any objection to inserting these Notes in a Protocol which would be signed at the same time as the General Agreement, but the system which has been devised by the Secretariat does not satisfy me, and I would like to explain briefly why.

Delegations have asked that the Notes should have an authentic character and should be placed on an equal footing with the text of the Agreement. Therefore, the procedure must be the same and the validity of the undertakings regarding the Interpretative Notes and the Agreement must also be the same. If we only have a Signature given in the Final Act, only the Delegates in their personal capacity will be committed and not the Governments, and this is not what we are seeking. Therefore, I think that the Notes have to be placed on the same footing as the Agreement, and they must have the same value as the Agreement. There are two ways of achieving this result, one is to append these Notes in an Annex to the General Agreement, the other is to insert them in a Protocol which will be signed at the same time as the General Agreement, but once again it seems that we are faced with the problem which we had this morning in 'chassé-croisé', that is, that we are trying to provide for the entry into force of an Annex before the entry into force of the document.

CHAIRMAN: I would like to mention with regard to the reference to the Secretariat that we did agree that these Interpretative Notes should be placed in the Protocol, and it is on the basis of those instructions that the Secretariat has prepared this document. Their task was to set forth the various Interpretative Notes which appeared in the relevant Articles of the Charter and they have presented a text to us for our consideration, so that the Secretariat were simply carrying out the instructions that we gave them.

As regards the time of the signature of the Protocol, it was understood when we came to a decision as to the Protocol that it would be signed at the same time as the General Agreement.

M. ROYER (France) (Interpretation): Mr. Chairman, that is just the point. The proposal of the Secretariat differs from what you have just stated, because the Secretariat does not provide for the signature at the time of the Signature of the General Agreement, but at the time of the Signature of the Final Act.

CHAIRMAN: The reference was done at Geneva, and that is the formula which we have been using.

M. ROYER (France) (Interpretation): Mr. Chairman, in the French text there is the word 'homologuer', which appears to be the equivalent of the word "certifying". Therefore, it seems to me that it would not correspond to the time of the signature of the General Agreement, but to the time of signature of the Final Act. "Homologuer" means that the Protocol has been signed, or one Annex to a document has been signed, before.

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, I would like to make a suggestion. First, I will eat my words about the parallel Final Act. Monsieur Royer has convinced me that I was quite wrong about that, it clearly should be on the same principle as the General Agreement. If we decide to keep the Protocol form we should surely have the same type of heading as that which we will eventually adopt for the so called Protocol of Signature. Whatever form is adopted for that should be adopted for this.

Mr. E. McCARTHY (Australia): Mr. Chairman, the view that the interpretative matter should be attached to the Agreement appeals to us and we should like to recall that it seems to us quite sound to have the Agreement, then an Annex interpreting the various aspects of the Agreement, and when you sign the Agreement you automatically sign the interpretative provisions as well.

As Mr. Shackle has eaten his words, I will not make the reference I was going to make. Put into the Final Act, that appeals to us as being purely to certify the correctness of the text and we do not think it should contain anything else. Again we would prefer the Annex to the Protocol. The Protocol would serve the purpose but it seems not to be as simple and certainly is not more effective than having the Annex to the General Agreement.

CHAIRMAN: The Delegate of Cuba.

Mr. H. DORN (Cuba): Mr. Chairman, I have the impression that there is a misunderstanding here which impedes the Agreement. I think we have two different questions to solve. The first is the question of the Final Act and the certifying of texts and we have to answer the question of what shall be certified in this way, the General Agreement or the so-called Protocols. Then we have the Annex to the Final Act; all this is only for the purpose of certifying. But that is quite a different question from the other one; what has to be signed later on if we have to sign the Agreement?

Then we have to ask what is the relation between the General Agreement and the so-called Protocols. I think the General Agreement has some Protocols which always have the nature of

Annexes. That means they have the same legal force. There is first the so-called Protocol of Signature: that means a Protocol which talks about the observance of the principles of the Draft Charter.

Secondly, there is the Protocol of interpretative notes, and perhaps a third one which contains reservations. These three Protocols form an integral part of the Charter and they can take the form either of an Annex or a Protocol if you insert a clause into the Agreement clearing up this relationship.

But there is another Protocol which stands on its own feet; that is the Protocol of provisional application, and that has nothing to do with the Annexes to the Agreement. You can sign the General Agreement later on, giving the so-called Protocols the character of Annexes. Then you have one signature. But you can also sign a Protocol in itself, as has been the case in the history of international treaties, saying, within the Agreement, that the contents of the Protocol have the same legal force as the Agreement itself. We have always had it so in commercial treaties, in treaties on double taxation, and so on.

Therefore, I think we have to make a clear distinction between the Final Act and its Annexes on the one side, and between the documents which have definitely to be signed, on the other side. I think those documents should be the contents of the Note of the Secretariat, in order to make clear what has to be signed first here in Geneva, together with the Final Act, and then what documents have to be signed definitely.

CHAIRMAN: The Secretariat will take due note of the comments just made by the Delegate of Cuba.

There is developing a difference of opinion in the Committee as to whether the interpretative notes should be included in a Protocol or an Annex to the Agreement. I think it is necessary

that we should develop the sense of the Committee on this question, in order that we may be able to know how we should frame the document which will carry these interpretative notes.

The Delegate of Norway.

Mr. J. MELANDER (Norway): Mr. Chairman, I think they ought to be in an Annex to the Agreement; they ought to be an integral part of the Agreement.

Mr. G.A. LAMSVELT (Netherlands): Mr. Chairman, I am of the same opinion as the Delegate of Norway.

Mr. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, I am also of the same opinion.

CHAIRMAN: There appears to be general support for the proposal first made by the Delegate of the United States, that these interpretative notes should be in the form of an Annex attached to the Agreement. I also take it that should mean there should be some reference in one of the Articles to the Annex of the Agreement.

Are there any objections to this form of procedure? No objections.

I take it the Committee agrees to the proposal that these interpretative notes should be in the form of an Annex. Could we have some suggestions as to what sort of heading should be given to this Annex?

Mr. R.J. SHACKLE (United Kingdom): Annex of Interpretative Notes is the obvious thing.

Mr. LEDDY (United States): I suggest we make it Annex A, Mr. Chairman, and underneath put "Interpretative Notes".

CHAIRMAN: The Delegate of Cuba.

Mr. DORN (Cuba): Mr. Chairman, may I say only that then we would have to add to one of the Articles, before the words which you will find in Article II (1), that they are annexed and hereby form an integral part of the Agreement.

CHAIRMAN: Yes. The Delegate of the United States had pointed that out. I am not quite sure where that Article would come, or whether we would make it part of another Article.

Mr.LEDDY (United States): I think that what we might add is simply in a separate Article to say: "The Annexes and Schedules to this Agreement are hereby made an integral part thereof."

M. ROYER (France) (Interpretation): Mr. Chairman, I have only one slight objection; that the Schedules must be attached to Part I of this Agreement, because unanimity is required to modify the Schedules. I wonder if we want to have this rule of unanimity to modify the interpretative notes.

Mr. LEDDY (United States): In that case, Mr. Chairman, I withdraw my suggestion. I think it is quite correct. We could have a provision in Part II to say that the Annex will form part of that Agreement and the other Annexes which relate to Part I will relate to that Part. I think that is a question which we might well pass to the Legal Drafting Committee for examination.

CHAIRMAN: Will it do if we place this Article at the end of the last Article, to take the place of the present Article XXXII, and then leave it to the Legal Drafting Committee to decide whether it should be in some other place?

Does the Committee then think there should be any introductory paragraph to the Annex, or should it just start off with the interpretative notes?

Mr. J.M. LEDDY (United States): Mr. Chairman, if nobody else has any suggestion to make, I do not think that any heading is needed.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I agree with Mr. Leddy. I would only suggest that we should put at the end of the Interpretative Notes: "The Interpretative Notes will have the same force, effect and duration as the Articles to which they refer".

M. F. Garcia OLDINI (Chile) (Interpretation): Mr. Chairman, would we not have to mention this fact in the corresponding Article itself?

CHAIRMAN: The Delegate of Cuba.

Dr. H. DORN (Cuba): Mr. Chairman, I understood that the general clause which Mr. Leddy proposed should cover this idea, and it is not necessary to repeat the fact in every Article, because this clause would say that the Interpretative Notes have the same force - legal binding force - as the Articles. The question is, whether we could add that they have the same force, effect and duration.

I think that that is not necessary, because they have only the character of interpretative notes. That means that they have no standing on their own account. Therefore, we know that in the event [illegible] being changed at a certain point, the note in itself would have no special effect.

I think the general clause of Mr. Leddy's would cover the idea completely. Another question relates to whether it is

necessary for there to be an introduction saying that "in interpreting the following Articles, these Notes shall be taken into account". I do not think that that is indispensable; because it goes without saying: if one says "Interpretative Notes" and mentions the Articles, and then gives the content, I think it is not legally necessary; but perhaps it would be useful to let the Legal Drafting Committee think it over once again.

CHAIRMAN: I think the Committee is in agreement that all that is required is the title "Interpretative Notes" without any further heading. We can leave it at that.

The only comment I would like to make is that I do not think this should be labelled "Annex A" but rather "Annexe I". If we refer to the Annexes, Annex A, Annex B, Annex C, Annex E, Annex F and Annex G all refer to Article I. I think it is therefore logical they should come first, and this Annex on Interpretative Notes should be the last of the Annexes. Is that agreed?

Now, these Interpretative Notes have been compiled by the Secretariat from the notes of relevant Articles of the Charter. I take it that as we have not heard from any Delegation, there has been no note omitted with the exception of the note to Article XI, to which attention was called by one of the Delegations. This note is given in Addendum 1.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I think there is one other note which will be needed to be added. It arises out of the Report of the Sub-Committee on Article II, paragraph 3, in document E/PC/T/191. You may recall that yesterday we somewhat amended the final paragraph on page 1 of

of Document T/191 and produced an extremely inelegant result. I have since attempted to produce something a little better, and suggest the following:

"It is understood that except where otherwise specifically agreed between the parties to a particular negotiation, the provisions of paragraph 3 of Article II will be applied in the light of the provisions of Article 31 of the draft Charter referred to in." (I have put the Protocol in square brackets because I do not know what title is going to be given). That is the wording I would give to that note.

CHAIRMAN: Is the new text of this note, as proposed by Mr. Shackle, agreed?

M. ROYER (France) (Interpretation): Mr. Chairman, if I have understood correctly, this note would replace the note which appears in Document W/318, which would now be of no use.

There is another small suggestion I want to make and that is that when one refers to the Article, one could use the small Latin preposition "ad".

CHAIRMAN: The Delegate of the United Kingdom.

Mr. P.J. SHACKLE (United Kingdom): As regards Mr. Royer's first remark, I presume that he means that the note which is at the head of page 2 of Document W/318 would be replaced, and there I agree with him.

CHAIRMAN: Is that agreed? Agreed.

Mr. J.M. LEDDY (United States): Are all of these notes what we call "starred" notes -that is, notes that are

essential to an interpretation and understanding of the particular provisions about which there was some doubt in the drafting? Or do some of these notes cover provisions that were simply put in with a view to bringing out what might not have been apparent at a casual reading? I think we should go through these notes and see if we cannot confine them to the absolute minimum - those which are really necessary to bring out obscure points.

For example, I find at the bottom of page 2 it is stated as to what the signatories of the draft have considered, and why they decided not to do something other than what they did. I do not think that sort of note is helpful. It is helpful to the World Conference, but it is not helpful as far as the interpretation of the Agreement is concerned, and I think there may be other notes of that character. 1

CHAIRMAN: I think the remarks of Mr. Leddy are very relevant, and I think it would be desirable that we should go through each one of these notes to decide whether or not they should be retained.

We first of all come to the note to Article I on the first page of Document W/318. Are there any objections to the inclusion of that note?

Mr. J.M. LEDDY (United States): Mr. Chairman, I am not quite certain as to what our procedure should be. I wonder if it might not be better simply to go through the notes and decide whether they should go in or not, and then go on to any drafting points.

CHAIRMAN: We will first of all go through the notes and see whether or not they should be included, and then return to

any drafting points.

Are there any objections to the inclusion of the notes to Article I? No objection.

The note to Article II, paragraph 3, has already been replaced by the text proposed by Mr. Shackle, so we can take that as being included.

Note to Article IV, paragraph 5.

Dr. Z. AUGENTHALER (Czechoslovakia): Mr. Chairman, I apologize for coming back to Article II, but I would like to say that we made a proposition -that is, about the value of the Czech crown, in which we agreed that where rates of duties are expressed, it is understood to be the par value, and so on, and if these currencies depreciate, in accordance with the Articles of Agreement of the International Monetary Fund, the Czech Government reserves its right to adjust its specific rates of duty in proportion to the depreciation of its currency. Now I was wondering whether we should place a general note here as an interpretative note to Article II or whether we should put our proposition directly in our master list.

CHAIRMAN: These Interpretative Notes have been confined to what we call Starred Notes appended to the Charter. They are interpretations of the Charter; they do not include anything in the nature of reservations submitted by one or more Delegations.

Mr. SHACKLE (United Kingdom): Is it not rather a question of the basis on which the particular negotiations take place? If in the case of any particular country the negotiation was on the basis that there was this devaluation of specific duty, I think the note should relate to that particular country and not to others where the basis of negotiation may have been different.

CHAIRMAN: I think the proposal of the Czechoslovak Delegate originally was that this note should be appended to the Schedule.

Dr. H. DORN (Cuba): Mr. Chairman, may I ask a question. This reservation is practically a general question of substance because there is the question in the case of depreciation of money. The general idea which was expressed in the London Report was that adjustment of the specific duties does not mean an increase of the duty. That is the general idea which was expressed in London but which is not taken up in the Agreement and if I understand the idea expressed by the Delegate of Czechoslovakia then it would mean just the same principle as was expressed in London.

CHAIRMAN: The Delegate of Czechoslovakia.

Dr. Z. AUGENTHALER (Czechoslovakia): I think this note should be placed as a General Note. I do not mind if other countries are ready to renounce it. In this case we would place it in our list, but I think it would be fair to have it as a general note because in Paragraph 1 of Article II where it says: "Each contracting party shall accord to the commerce of the other

contracting parties treatment no less favourable than that provided for in the appropriate Schedule annexed to this Agreement and hereby made an integral part of Part I thereof", the margins in the scale would be a customs duty of, say, 100 crowns. Supposing that in 10 or 15 years the crown would have only 1/10th of its value, according to this provision I would still be bound to a duty of 100 crowns which would mean only 1/10th of the agreed protection. That is why I think it should be made a general note because it is a normal proviso which is in most commercial treaties.

Mr. SHACKLE (United Kingdom): I would like to repeat the point of view which I have already expressed, that it is surely a matter of the understanding on which particular negotiations have been conducted. If these negotiations have been conducted on the basis of this understanding, I presume that the parties to the negotiation would find no difficulty. If, on the other hand, money negotiations have not been conducted on this understanding then I consider that note should not go into the Schedule because the negotiations were conducted not on the basis of that understanding.

Mr. J. M. LEDDY (United States): I suggest the proposal has no place in our present discussion. It is an interpretative note. We are dealing here with particular provisions of the Agreement. The suggestion that specific duties may be raised in conjunction with the depreciation of currency is quite a different matter which has nothing to do with the general provisions of the Agreement at all. It is quite a separate provision and should be discussed on its own merits. I think we might set it aside and go on with the discussion.

CHAIRMAN: The proposal of the Czechoslovakian Delegation was originally made in connection with the Schedule. I therefore propose that we discuss this paper submitted by the Czechoslovak Delegation when we come to consider the Schedule.

The Note to Article Iv, Paragraph 5. Any objections to the inclusion of this Note?

Article V, Paragraph 1. Any objections to the inclusion of this Note?

Article V, Paragraph 2. Any objections?

Article V, Paragraph 7. Any objections to the inclusion of this Note?

Mr. LEDDY (United States): I have a question on that Note, a question as to the wisdom of putting it in. Prohibitive measures other than the application of duties is, of course, subject to the right of any country to invoke emergency provisions to permit quantitative restrictions, for example, in the event of an increase in imports which threatens damage to a domestic industry. I realise the importance had the inclusion of this Note/in the Charter with respect to the position of some Delegations on that particular paragraph, but the objection I have to include it in the Trade Agreement in the form in which we are including it here, that is to say, in the Annex which is to be used as a basis for interpretative agreement, is that it may throw some doubt on other provisions. As a matter of fact, all the provisions of the Trade Agreement are subject to Article XVIII of the Emergency Provisions and I see no reason for taking out a particular paragraph and saying that this paragraph is subject to Article XVIII. I wonder, therefore, whether we could dispense with this particular Note. It really is not essential to an interpretation of the Article, and the Note does appear of course in the Charter as it will serve as an explanation to the World Conference and to Governments.

CHAIRMAN: Mr. Leddy has proposed that this Note be omitted. Are there any objections to the omission of this Note?

Agreed. The Note will therefore be omitted.

Article VI. Paragraph 1.

Mr. E.L. RODRIGUES (Brazil): Mr. Chairman, the Note under paragraph 7 was omitted?

CHAIRMAN: Yes.

Mr. E.L. RODRIGUES (Brazil): I know we have the Notes in the Charter but I think for that same reason we ought to have it in the Agreement. The Brazilian Delegation attaches great importance to this Note.

Mr. J.M. LEDDY (United States): The only suggestion I can make is to broaden the Note and say that the obligations set forth in paragraph 7, as in the case of other obligations under this Agreement, are subject to the provisions of Article XVIII. That would make it clear that this does not refer exclusively to paragraph 7.

M. ROYER (France) (Interpretation): Mr. Chairman, I would second Mr. Leddy's proposal. If we left the text as it stands now we would give the impression of an argument per contra that the other provisions of the Charter are not referred to in Article XVIII.

CHAIRMAN: Are the words proposed by Mr. Leddy agreed to as an addition to this Note? Would you give us the words again, Mr. Leddy?

Mr. J.M. LEDDY (United States):

" "The obligations set forth in paragraph 7, as in the case of other obligations under this Agreement, are subject to the provisions of Article XVIII".

CHAIRMAN: That is agreed.

Paragraph 1 of Article VI. Are there any objections to the inclusion of this Note?

Mr. L.E. COUILLARD (Canada): We would agree, Mr. Chairman, with Mr. Leddy's original proposal that this Note be dropped.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I would ask that this Note be maintained. I think it is a pleasant one and in its somewhat ironical form it pleases us. When we discussed Article VI, may I remind the Committee that we requested the deletion of the words "as soon as possible" and we were told that the text of the Charter was sacrosanct and that we could not touch it, therefore that the words "as soon as possible" would be maintained; but, as a compromise, we would be given an Interpretative Note. This was a meagre satisfaction, but therefore I would request now that this meagre satisfaction should not be withdrawn from us.

CHAIRMAN: I think the Delegate of France is quite correct in his recollection as to what happened when we were considering Article VI and therefore I take it we would have no objection to the maintenance of this Note.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I feel that our discussion has shown that every one of these Notes is specially dear to the heart of one delegation or another; and I remember also that all these Notes have been thrashed out with a great deal

of toil and care in Sub-Committees. So I wonder if we could not take all the rest as read, subject to any particular objection which any delegation wishes to raise?

CHAIRMAN: I was of the same opinion as Mr. Shackle at the beginning of this discussion; I was only hoping that none would be added. However, as we have embarked on them, I propose we hurredly go through them. I will read the Notes off and if any delegation has any objection to the inclusion of any Note I would ask him to stop me.

Article VI. Paragraph 2.

Article VII, Paragraph 4.

Article X. Paragraph 2(c). Is there any objection to this Note?

Article X. Paragraph 2, last sub-paragraph.

We now come to Article XI and I think this would be the place to add the Note which is given in document W/318, Addendum 1. Are there any objections to the inclusion of the Note to Article XI?

Article XI. Paragraph 3(b)(i).

Article XII. Paragraph 2(d).

Paragraph 4.

Article XIII. Paragraph 3.

Article XIV. Paragraph 4.

Article XVI. Paragraph 1.

Paragraph 1(a).

Paragraph 1(b).

Paragraph 2.

We now return to these Notes for ony drafting changes. Will the delegates please indicate to which Notes they would like to submit drafting amendments.

Mr. J.M. LEDDY (United States): Mr. Chairman, I have come to the conclusion that these Notes are really more sacred than the text. I would hesitate to suggest anything in the way of drafting changes; but I hope that the Legal Drafting Committee will look at them carefully.

CHAIRMAN: I am sure the Legal Drafting Committee will give a very careful review of these Notes with a view to improving the drafting if at all possible.

We shall therefore leave the Interpretative Notes and, in the time that is still at our disposal, I would like to introduce the Report of the Sub-Committee on Article XXVI. This Report is given in document T/194, on the second page of which is an alternative text of paragraphs 1 and 2 of Article XXVI.

I would ask Dr. Adarkar, the Chairman of the Sub-Committee, to introduce this Report.

MR. B.N. ADARKAR (India): Mr. Chairman, the revised text of Article XXVI was unanimously accepted by the Members of the Sub-Committee.

I should like to draw attention to two principle changes which have been made in this Draft as compared with the original version. The first important change will be found in the last two sentences of paragraph 1. It was thought necessary to state that any negotiations which will follow a Member's proposal to modify or withdraw concessions might include provision for compensatory adjustment with respect to other products.

The same paragraph also provides that in such negotiations the contracting parties shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the present Agreement. This was a suggestion made by the Delegate for the United States and it was approved in full Committee.

The second important change will be found in the new paragraph 2. This paragraph is divided into two parts; it takes into account the amendment suggested by the Delegate for Australia, the principle of which was also approved in full Committee. It covers two cases, one in which there is no Agreement at all between the contracting parties primarily concerned, and the other in which there is agreement between the contracting parties primarily concerned, but some other contracting party which is substantially affected is unable to accept the Agreement.

It was agreed in the Sub-Committee that both the contracting parties with which a concession was initially negotiated and a contracting party which was substantially affected should have the

right to withdraw substantially equivalent concessions. What was a substantially equivalent concession would be determined in the light of what the party concerned had paid for the concession which had been withdrawn.

It was also agreed that, since the contracting party which proposes to withdraw a concession or to modify a concession has, under the proposed draft, been given the right to act if negotiations break down without having to seek the approval of the Committee or the contracting parties taken as a whole, the same right should be given to any other contracting party which is affected by the action.

These are the only important points which need to be noticed with regard to this Draft.

CHAIRMAN: I wish to thank the Chairman of the Sub-Committee for the very thorough explanation he has given of his Report, and I wish to congratulate him, and through him the Sub-Committee, for the success achieved in reaching unanimous agreement in one meeting.

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

MR. R.J. SHACKLE (United Kingdom): Mr. Chairman, there is just one question which I would like to ask which is a point of clarification. At the end of paragraphs 2(a) and 2(b) there are the words: "application to the trade of the contracting party taking such action, of substantially equivalent concessions". That is, of course, very similar to Article XXI, the Nullification or Impairment Article. Am I right in understanding that that implies a suspension, which is, so to speak, discriminatory and directed against the trade of that particular party? It seems to me that that is a point which it is desirable to make clear. One could read it in two ways -

either it would not be contrary to Article I, or, on the other hand, the concession would be suspended in respect of that particular party alone, and that would be contrary to Article I. I think we should be clear what the answer is, I am not quite sure about it myself.

CHAIRMAN: Mr. Adarkar.

MR. B.N. ADARKAR (India): Mr. Chairman, this question was not discussed in the Sub-Committee, but, if I may venture my personal opinion, I would state that the negotiations in question will proceed more of less on the lines of the negotiations taking place here.

It would therefore seem to follow that if a particular contracting party decides to withdraw an item from its Schedule, the action which would be taken by the other contracting parties will also be in the same form, that is to say, they will remove the item from their Schedule, and the removal will therefore affect not merely the contracting party taking the action, but all the contracting parties. Therefore, it seems to me that it is not intended that any discriminatory action should be taken, but this is purely my personal opinion, and I might state that it might be the opinion of our Delegation, but this aspect was not considered in the Sub-Committee.

CHAIRMAN: The Delegate of France.

M. ROYER (France) (Interpretation): Mr. Chairman, I would like to adhere to the interpretation which has just been given by the Delegate for India, and it was on the basis of this interpretation that we accepted Article XXVI.

There is only a question here of withdrawal of concessions; there is no question of discriminatory measures against a particular country. The text may not be very clear, but I would like, as an excuse, to point out that the Sub-Committee only met once and, as one author said, we had no time to make it any shorter.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): I think the relative term here is drawn from the Nullification or Impairment clause. There it clearly means - and I think it clearly means here - I think, that the language does mean the concession is suspended in respect of the trade of a particular Member. That is certainly the case with regard to the Nullification or Impairment clause. If a particular Member takes action contrary to the Charter, other Members may suspend the application to the trade of that Member of concessions granted. That means that other countries should not be penalized because one country has failed to carry out its commitments.

But this, I think, is probably a different thing and if it is the desire of the Committee to provide for the withdrawal of concessions negotiated with the country which initially withdraws the item from the Schedule, I think we had better say so, because this language definitely does not mean that. It reads "If such action is taken, the contracting party with which such treatment

was initially negotiated and other contracting parties .... shall be free to suspend the application to the trade of the contracting party taking such action of substantially equivalent concessions."

There is no authority to suspend the application of those concessions to the trade of other contracting parties who are entitled to the concessions. I think we need to re-cast that and make it clear. I think probably the non-discriminatory action provision is the right one.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, I wonder whether there would be any objection to deleting the words "to the trade of the contracting party taking such action" in Paragraph 2 (a), and also the similar words - "to the trade of the contracting party taking action under such Agreement" - in Paragraph 2 (b), in order to make the point clear.

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): Mr. Chairman, I think if we mean non-discriminatory action to adjust the balance of the Schedules we mean withdrawal and not suspension of concessions. I would like some changes to be made before the formulation of the last four lines of Paragraph 2 (a) and Paragraph 2 (b). It would then read as follows: "Shall then be free, not later than six months after such action is taken, to withdraw upon the expiration of 30 days after written notice of such withdrawal is received by the Committee of such substantially equivalent concessions as have been initially negotiated with the contracting party taking such action." The same changes would be made in the last four lines of sub-paragraph (b).

CHAIRMAN: The Delegate of China.

Mr. D. Y. DAO (China): Mr. Chairman, I know it is very difficult to cover all the cases we can think of. I think this is the best text we can produce. However, even with the amendment suggested by the United States Delegate, we have not covered the case in which a contracting party which may be affected by the withdrawal of substantially equivalent concessions withdrawn by the country taking the counter action against the first contracting party.

However, if it is understood that the contracting party which is affected could take action under the Nullification or Impairment clause, I would be satisfied with the text.

CHAIRMAN: The Delegate of the United Kingdom.

Mr. R.J. SHACKLE (United Kingdom): Mr. Chairman, I think we have got to put a limit to what I may call the widening ripples, and it does seem to me it is probably not desirable to carry it beyond the stage of the original action and the counter measures. I think we may find ourselves in great confusion if we do.

I have the feeling that if unfairness does result from the practical action of those measures, it will have to be sorted out by the Committee. I do not think we could possibly follow out all the repercussions.

I might say I would agree with Mr. Leddy's drafting and I do feel that this is the right interpretation of the Article, because this is, so to speak, a negotiation in reverse. It is not like the Nullification Article; it is something which we might describe as misbehaviour and the penalty for misbehaviour.

CHAIRMAN: The Delegate of India.

Mr. B.N. ADARKAR (India): Mr. Chairman, I think the substitution of the word "withdraw" for "suspend" is an improvement, but as regards the second suggestion made by Mr. Leddy, I wonder whether some terminology could be employed under Paragraph 2 (b), because in this case the action is taken by a contracting party having a substantial interest in the product, and, in the case of such a contracting party, the concessions which it withdraws may or may not have been initially negotiated with the contracting party taking such action.

I am not sure of the point, but if that is the intention then it should be confirmed. In that case, of course, with a slight modification we could say "of the substantially equivalent concessions as have been negotiated with a contracting party taking such action under the terms of such Agreement."

CHAIRMAN: The Delegate of the United States.

Mr. LEDDY (United States): Yes, Mr. Chairman, I think Mr. Adakar is right. The second sub-paragraph - Paragraph 2 (b) would read "with a contracting party taking action under such Agreement" instead of "the contracting party taking such action," because Paragraph 2 (b) is broader than Paragraph 2 (a). A contracting party might be dissatisfied with the compensatory adjustments which might have been necessary on the part of the country which did not initiate the action in the first place but agreed to it as part of a general arrangement.

CHAIRMAN: Is the Committee now agreed as to the changes proposed by Mr. Leddy?

Agreed.

Any other comments?

Dr. H. DORN (Cuba): Mr. Chairman, I only wish to ask a question. I understood the original proposal of the Sub-Committee to mean that they used the wording "suspend the application" in order to make clear that this concession does not work any longer against only one country. That really excludes the application of the Most-Favoured-Nation clause, because that is a counter-action against an action taken by this contracting party, and they said, as I understand it, "suspend the application" in order to imply that the concession as such is maintained: that means, it is maintained in favour of all the other countries, and "suspend" applies to the action country. But now it seems to me one speaks of withdrawal of the concessions and that it applies to all countries. That is a substantial change of the sense and not of the wording.

CHAIRMAN: It was agreed that there was no intention to in any way interfere with the operation of the Most-Favoured-Nation clause. This Article is headed "Modification of Schedules". It refers throughout to concessions negotiated under paragraph 1 of Article II, the Schedules, and there is no reference in the Article to Article I, which is the Most-Favoured-Nation clause. Therefore, I think the intent is clear: that in no way should this Article interfere with the operation of the Most-Favoured-Nation clause.

Is the text of Article XXVI recommended by the Sub-Committee as modified by the amendments we have agreed today approved?

Agreed.

Mr. D.Y. DAO (China): Mr. Chairman, may I ask whether the same amendment will be made to paragraph 2(b)?

CHAIRMAN: The amendment to paragraph 2(b) is that as changed by Mr. Leddy, and paragraph 2(b) would read:

"to withdraw upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the Committee such substantially equivalent concessions as have been initially negotiated with a contracting party taking action under such Agreement".

Are there any other comments?

The text as amended is approved.

Tomorrow morning we shall meet at 10.30 and we shall first of all take up Document T/195, which is a draft prepared by the Secretariat in preparation for the signature of the Final Act and the General Agreement on Tariffs and Trade and the Protocols.

After that, we shall take up the proposed new Article XVII, paragraph 6 and 7, as proposed by the United States Delegation, as given in Document W/328, and after that, the text of Article XXIII of the General Agreement also proposed by the United States Delegation, as given in Document W/330. We will then deal with any other points that are necessary to clear up the text.

The meeting is adjourned.

(The meeting rose at 12.10 a.m.)