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PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

COMMITTEE II

SUMMARY RECORD OF MEETINGS

Third Meeting
Held on Friday, 25 October 1946
at 11 a.m.

Chairman: Dr. COOMBS (Australia)

1. Schedule of Meetings

The CHAIRMAN regretted that the Technical Sub-Committee had been unable, owing to a misunderstanding, to hold its meeting as arranged: but it would meet that afternoon, the 25 October 1946. The Joint Committee on Industrial Development would meet on Saturday, 26 October 1946, and the meeting of Committee II, which was to have taken place on Saturday, 26 October 1946, had been cancelled.

2. Discussion of Third Stage of Proposed Outline of Work of the Committee

The CHAIRMAN stated that the third stage of the proposed outline of work dealt with Items 4, 1 and 5 of the proposed Agenda and provided for discussions on "Most-Favoured-Nation Treatment".

Mr. VIDELA (Chile) referring to item 5 of the proposed outline of work, thought that a Drafting Committee of four members would not be large enough to deal with the many items referred to it.

Mr. TUNG (China) agreed with the Chilean Representative and suggested that seven members be appointed.

The CHAIRMAN thought it would be preferable to leave the question of the composition of the Drafting Committee until after the general discussion had taken place.

Mr. HAWKINS (United States) stated that, in his opinion, substantial reductions of tariffs were necessary to the expansion of trade: but he considered that as much weight should be given to the binding of low rates as to the reduction of high tariffs. The United States, he said, agreed with the principle of tariff preferences and proposed to deal with them on a selective basis, i.e., by process of negotiations.

He felt that existing contractual commitments should not be permitted to stand in the way of action with respect to tariff preferences. Also that all negotiated reductions in most-favoured-nation import tariffs should not operate automatically to reduce or eliminate margins of preferences. He further suggested that the Procedure Sub-Committee be given wider terms of reference, to include the question of tariffs and preferences. In addition, he proposed that the Cuban Representative be appointed to this Sub-Committee.

The CHAIRMAN preferred to postpone decisions on questions of procedure until the end of the day's discussions.

Mr. TUNG (China) stated that his country had always adhered to unconditional most-favoured-nation treatment. Her future adherence to this, however, would depend on the position taken by other nations and the number of exceptions made. In the meantime China might wish to enter into some mutually advantageous preferential arrangements.

Referring to Section B, Article 8 of the Charter, he felt that the last sentence of paragraph 1 was unnecessary and proposed its deletion.

Mr. KUNOSI (Czechoslovakia) asked whether there would be an opportunity for the revision of the result of the proposed tariff negotiations, in the case of a change in economic conditions.

Mr. HAWKINS (United States) agreed in principle that tariff rates established as a result of negotiations to take place next spring should not be rigid, and suggested that they could be revised after, say, three years' time. In addition, the agreement might contain a provision giving consideration to the need for revision prior to that time. He felt that a Sub-Committee could usefully consider this problem.

Mr. McKINNON (Canada) asked that the following two points be elucidated, before reference to the Drafting Committee:

(a) Was it the intention that the provisions of Article 8 should be narrower than those of Article 9? In Article 8 the phrase "governmental contracts for public works" was used and in Article 9 "the procurement by governmental agencies of supplies for public use other than by or for the military establishment". In the latter phrase he suggested the deletion of the words "by or".

(b) There existed the inference that any preference greater than in July 1939 was not subject to the exception provided for in paragraph 2 of Article 8, but must be eliminated.

He had many points to make, which would not be necessary if the Sub-Committee's terms of reference were widened as suggested by the American Delegate.

The CHAIRMAN invited the Meeting to expose their views on details which affected principle, so that the Drafting Sub-Committee might be kept small.

Mr. VIDELA (Chile) stated that he had circulated the paper proposing that further exceptions be included in Article 8, paragraph 2, to cover the establishment of a preference in the future. Such establishing of preferences was usually a stage on the way to customs union.

Referring to Article 19, paragraph 2, it was necessary for agricultural countries to know the regulations about quantitative restrictions, before agreeing unconditionally to most-favoured-nation treatment. Also the Committee must eventually decide on what constituted the representative period, on which to base the provisions.

He also enquired what effect Article 8:1 would have in regard to tied loans.

Mr. NEHRU (India) stated that enormous difficulties arose in connection with the last sentence of Article 8, paragraph 1, especially in regard to national defence projects. Therefore he proposed the deletion of this sentence.

Mr. SPEEKENBRINK (Netherlands) asked how it was proposed to deal with the issues involved in connection with Article 8, paragraph 1, i.e. the problems of:

(a) fair and effective treatment in cases of tied loans;

(b) agreements on shipping under the flag of the exporting country;

(c) preferences for national territories overseas.

He also asked for clarification of paragraph 2 of Article 8.

Mr. FRESQUET (Cuba) thought that Article 8 meant that, if any member offered a contract for public works, he should give equal opportunity to all members.

Mr. SHACKLE (United Kingdom) thought that there were many points to be clarified. Firstly, would the word "governmental" apply to central governments only and not to state provincial or municipal governments? Secondly, what goods were covered by the phrase "contracts for public works"? Articles 8 and 9, on the one hand, and Articles 26 and 27 on the other, provided rather different sets of rules on the same subjects. He drew attention to the difficulties connected with ties loans and the shipment of goods.

Mr. McCARTHY (Australia) stated that in all agreements made by the Australian Government some form of wording had been used to safeguard States' rights.

Some clarification would have to be made in Article 8, paragraph 1, to conform with other principles included in the Draft Charter.

Mr. AUGENTHALER (Czechoslovakia) agreed to the last sentence of Article 8, paragraph 1, which quite clearly dealt with public works.

Mr. BRUMAES (Norway) could not agree with the last sentence of Article 8, paragraph 1, until it was clarified.

Mr. JOHNSEN (New Zealand) asked whether the principle of "fair and equal treatment" implied, for instance, that the exchange value of currencies could be taken into consideration.

Mr. HAWKINS (United States) answered that Article 8 dealt with the fair and equitable treatment of foreign countries, and did not preclude preference being given by a country to its own nationals. The last sentence laid down a general principle. The precise implementation of that principle might have to be defined. The phrase "fair and equitable treatment" did not mean division of contracts, but free competitive bidding for these contracts.

He agreed with the Canadian Delegate that Articles 8 and 9 should be drafted to cover the same ground. He also agreed to the deletion of the words "by or" as proposed by the Canadian Delegate.

In response to the Netherlands Delegate as to the intent of paragraph 2 of Article 8, he replied that the exception contained in that paragraph applied only to tariff preference and not to other forms of preference which were covered by the provisions of Article 1. As the difficulties referred to in connection with tied loans and shipping were not provided for in the charter, he suggested that the Delegates should submit written proposals on these subjects.

The meeting rose at 12.45 p.m.

COMMITTEE II

Third Meeting (continued)
held on Friday, 25 October 1946
at 3 p.m

The CHAIRMAN enquired whether it was the pleasure of the Committee to consider immediately two points with reference to preferences on which the United States delegate had asked for clarification or to continue with the general statements on the most-favoured-nation principle.

The Committee decided to continue with the general statements.

1. Continuation of Discussion of General Most-Favoured-Nation Treatment and Tariff Preferences.

Mr. PRESCUET (Cuba) said that Cuba favoured agreement among nations for the reduction of tariffs and trade barriers. Cuba had suffered greatly from trade restrictions in its efforts to find foreign markets while foreign products had entered the Cuban market freely. He stated that in spite of Cuba's present low tariff and limited possibilities for tariff reductions it would be prepared to make some reductions in tariffs primarily of a fiscal character. However, Cuba might have to create certain new tariffs and modify certain tariffs in order to protect infant industries.

The most favoured nation clause provided fair treatment for all; but some modification might be necessary in cases where unsatisfactory labour conditions prevailed.

On the question of preferences he stated that Cuba's only existing Treaty providing for preferential treatment was that between Cuba and the United States of 1902. It was the basis upon which Cuba had built its entire economic structure. It had developed out of the highly integrated nature of Cuba's relations with the United States.

The Cuban-United States preferences constituted no real

discrimination against any other country.

Cuba did not consider that relationship unchangeable. Without committing his delegation he said that Cuba admitted that in the future some change might be made, but was not prepared to take any action immediately which would lead to a fundamental change in that relationship. Cuba could not subscribe to the removal of preferences without special study and direct negotiation between the two countries concerned.

DR. SPEEKENBRINK (Netherlands) referred to the difficult position in which his country found itself and said that, in the negotiations to be undertaken in the future, it would be unable to give much in return for tariff reductions by other countries. The Netherlands had made use of quantitative restrictions rather than tariffs for protection. In his opinion an offer to consolidate tariffs should be considered a concession.

He referred to the contemplated Customs Union between the Netherlands and Belgium. The rates of duty of the two countries were not on the same level, and a middle point would have to be found, necessitating the raising of some Netherlands' rates. He expressed the hope that this situation would be in line with the provisions of paragraph 2 of Article 8, since the Customs Union was decided in 1945.

Another difficulty which would have to be taken into account was that most products of the Belgian Congo entered Belgium free of duty, whereas products of the Netherlands East Indies did not have duty-free status upon importation into the Netherlands. He hoped some solution would be found to the question of Colonial products.

He referred to difficulties which might arise in connection with the application of the most-favoured-nation clause in view of certain obligations and treaties with other countries which could not be readily denounced.

He brought up the question of the relation with non-members, and said that some declaration on this point should be made at the present Meeting or at the next Conference.

He queried whether special problems with which several countries were faced could be solved by an open convention, and wondered whether by endeavouring to cover too much less would be attained.

MR. SHACKLE (United Kingdom) agreed generally with the suggestion of the United States Delegate for the use of selective methods of tariff and tariff-preference negotiation, on the understanding that the results of such negotiations would be part of the mutually advantageous arrangements which it was hoped would be reached as a result of the present discussions.

Referring to paragraph 1 (a) of Article 18, he said that the United Kingdom would agree to the paragraph as explained by the United States Delegate, on the assumption that the word "action" meant "agreed action" - i.e., in so far as modification of preferences was agreed upon by the parties concerned in negotiations, prior international commitments would be modified to that extent. The assumption implied a general willingness to modify such preferences to that extent.

As he understood the position, just as reductions in tariffs would be negotiated in accordance with Article 18, paragraph 1, so reductions of the margins of protection afforded by state trading (Article 27) would be negotiated.

He felt that the proposal for the "double deadline" of 1 July 1939 and 1 July 1946 made in paragraph 2 of Article 8 was unrealistic in its use of both a pre-war and a post-war date. He considered both dates arbitrary and suggested that the date selected be a date related to the actual negotiations, such as the signature date of the tariff agreement. He felt that any preferences

arranged in the period up to that date would not require additional concessions for their removal.

He pointed out that paragraph 2 of Article 8 referred to preferences covering ordinary import customs duties, whereas paragraph 1, providing for unconditional most-favoured-nation treatment, related to "customs duties and charges of any kind imposed on or in connection with importation or exportation" and expressed the view that the wording of paragraph 2 should be changed to include "other charges imposed on or in connection with importation."

With reference to paragraph 2 (a) of Article 8 regarding "preferences in force exclusively between territories in respect of which there existed on 1 July 1939 common sovereignty", he felt that the formula did not cover the constitutional complexities of the British Commonwealth, and suggested that perhaps a schedule of countries would have to be drawn up. He hoped shortly to suggest an amended version of Article 8:2.

Mr. KUNOSI (Czechoslovakia) asked why the suggested charter submitted by the American Delegation did not deal with the question of unification of customs nomenclature, and whether the United States Delegation would agree to include some such provision in the draft charter.

Mr. HAWKINS (United States) replied that it was a proper subject for consideration, and that he would agree to its inclusion in the suggested charter.

Mr. DIMECHKIE (Lebanon) stated that some countries had too small a market to guarantee the development of their industry, and suggested that they might find it convenient to grant preferences looking towards the formation of a customs union. Such preferences he considered to be essential, and suggested that a paragraph must be added to the charter in that sense. He felt that preferences

should be judged on merit and asked whether the United States would consider adding to its draft a provision for the formation of customs unions or the establishment of preferences considered to be an essential step towards that goal.

Mr. NEHRU (India) referred to the phrase "substantial reduction of tariffs" in paragraph 1 of Article 18, and suggested that it be carefully defined.

He said that India would not be in a position to grant substantial reductions in tariffs, since at the moment it had the minimum of protection for its industries. He added that undeveloped countries with industrial ambitions wanted freedom to develop their industries under tariff protection, and suggested that the inclusion of penalty clauses in Article 18 would make them hesitate to enter an international trade organization.

He said his country was reluctant to enter into tariff negotiations but that, if the general feeling was that such negotiations should be undertaken, India would do its best to co-operate by making whatever concessions it could in its present state of development.

India fully favoured the elimination of preferences. It had everything to gain by the removal of discriminations, and would therefore do everything possible to eliminate preferences. But that must be done on a mutually advantageous basis, through negotiation.

Referring to paragraph 2 of Article 8, he said that the use of dates seemed unnecessary, and suggested that, if any date were used, it should be that on which the agreement came into force.

All forms of exempted preferences were not included in the sub-paragraphs of paragraph 2. He felt that regional arrangements should be permitted. They would contribute to the general expansion of trade, not on the basis of political, but of economic and geographical, factors.

Mr. McCARTHY (Australia) pointed out with respect to the last sentence of Article 8 paragraph (1) on the subject of contracts for public works, and Article 9 concerning internal taxation, that a large part of Australian Law on these general subjects was State or Local Law rather than National.

He felt that preferences to be negotiated pursuant to provisions of Article 18 should be those existing at the time of the negotiations.

With respect to sub-paragraph (b) under paragraph (1) of Article 18 concerning reduction of margins of preference, he felt that it might be desirable to negotiate reductions of the preferential rate as well as of the most-favoured-nation rate. Reduction of both rates would not necessarily mean that there would not be an accompanying reduction in the preferential margin.

He felt that preferences based on quotas should be negotiated in the same manner as tariff preferences. A country consenting to the reduction or elimination of a quota-based preference should receive some benefit in return for that action.

He pointed to the difficulties which would be involved when once Dominion within the British Commonwealth, which had not been granted preferential treatment by another, negotiated with Dominions which had been recipients of such preferential arrangements.

He asked whether tariff reduction would be negotiated in the case of a product, the principal supplier of which was not one of the eighteen countries taking part in the Spring negotiations.

Just as there was an escape clause in the charter making possible remedial action in cases where tariff reductions brought about substantial harm to an industry, there should be a similar clause making possible special action when the reduction of a preference caused extreme damage to an industry.

Mr. PINHEIRO (Brazil) commended that the most-favoured-nation clause did not completely cover the case of treaties between members of the international trade organisation, of bilateral agreements between particular members of the organisation, or of agreements between members and non-members. He proposed the following revision of Article 6 of the suggested charter submitted by the United States Delegation:

"Article 6. Reciprocity and Equality of Treatment among Member Countries

The member countries shall apply the principle of equality of conditions of commerce and the reciprocity of advantages in their foreign trade. In order to improve commercial relations, they shall enter into reciprocal and mutually advantageous negotiations directed to the conclusion of multilateral trade agreements.

Each of the contracting parties of such multilateral trade agreements shall be entitled to the same advantages, favours, privileges or immunities in all matters concerning customs duties and charges of any kind imposed on, or in connection with, importation or exportation, or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all matters relating to internal taxation or regulation referred to in Article 9.

The member countries which are not contracting parties of a multilateral trade agreement, and therefore are not entitled to the reciprocal advantages granted to one another by the contracting parties, may at any time ask for the privilege of becoming a party to this multilateral trade agreement, provided they enter into negotiations in order to grant equivalent advantages to the member countries which are contracting parties of the multilateral trade agreement, in return for the advantages received when they became contracting parties.

Two or more member countries may enter into negotiations directed to the conclusion of a trade agreement, provided they consult the other members of the International Trade Organization as to whether they desire to take part in the negotiations. If the members consulted were not parties in the negotiations, and a trade agreement is concluded among the countries taking the initiative of the proposal, this trade agreement will stay open, and other member countries may adhere to the agreement on the conditions referred to in the above paragraph. The provisions of paragraph 2 of Article 31 relating to the treatment of trade of non-members shall be applied to bilateral agreements between members and non-members.

The principle of reciprocity and equality of treatment of this Article shall also extend to the awarding by members of governmental contracts for public works."

He suggested that this revision would have the same effect as the most-favoured-nation clause included in the United States proposals, but would reach that result in a different way.

He also proposed the following addition to paragraph 2 of Article 8:

> "(c) Restrictions to the equality of treatment already adopted in commercial conventions, which were admitted by reason of special geographical, political and ethnical conditions."

He suggested that this addition covered a wide field, and remarked that many preferences already in existence by virtue of their inclusion in commercial agreements were not actually put into practice, such as the favours granted by Portugal to Brazil or the advantages reserved to each other by the Republics of Central America.

Mr. FRESQUET (Cuba) requested that, when delegates referred to the preferences mentioned in paragraph 2 (b) of Article 8, they would refer to them as "preferences between the United States and Cuba" and not as "Cuban preferences".

Mr. JOHNSEN (New Zealand) was fully in accord with the statements made by the Australian Delegate regarding Articles 8 and 18. He said that preferences based on quotas were just as important to the countries obtaining them as were tariff preferences, and countries should not be asked to give them up except by negotiation.

He believed that technical difficulties would arise if 1 July 1939 was taken as the established date for preferences, and he fully concurred in the statement by the Australian Delegate regarding the difficulties which would arise because of the varied Commonwealth preferences.

Mr. KUNOSI (Czechoslovakia) asked whether his country would be free to accord most-favoured-nation treatment to any country, if it became a party to multilateral agreement.

Mr. PARANAGUA (Brazil) replied that, if Czechoslovakia was willing to enter into a customs union with other Danubian countries, the situation would be no different from the Belgo-Luxembourg and other customs unions.

Mr. ALPHAND (France) stated that France was in accord with the most-favoured-nation principle, but made reservations for the transitional period. He suggested that the question of the application of the principle to non-members was most important.

He requested clarification of the last sentence of paragraph 1 of Article 8 relating to governmental contracts for public works.

He said it was not possible for France to take any other date than 1 July 1939 as the basis for determining preferences.

Mr. TUNG (China) indicated that China was prepared to enter tariff reduction negotiations in spite of its present under-developed state. Its tariff reductions would be selective, not general. It was prepared to reduce, or even eliminate, import duties on a number of products, such as machinery; but reasonable protection would be required for its industries, particularly during the transition period. He restated a previous suggestion as to the completion of the transition period.

With regard to preferences, he stated that China did not want to maintain them, but reserved the right to do so if it should become necessary.

Mr. McKINNON (Canada) pointed out that a detailed and technical discussion of Articles 8 and 18 was necessary, and asked whether a sub-committee should be instructed to draft the Articles or whether they should be considered by the whole Committee. It was his opinion that further discussion would be unrewarding, pending the redraft of Article 8: 2 which would be supplied by the United Kingdom and the redrafts which might be suggested by other countries.

With a view to guiding the work of the Sub-Committee, the Chairman summarized the basic points of the discussion on the provisions of the charter for most-favoured-nation treatment (Article 8) and for reduction of tariffs and elimination of preferences (Article 18).

With respect to the last sentence of paragraph 1 of Article 8, he felt there was reason to hope for agreement in principle on the subject of according fair and equitable treatment to the commerce of other nations in the awarding of contracts for public works; but in this connection he suggested that the Sub-Committee should give particular attention to, and work out solutions for, the following problems:

(a) the scope of the contracts (relating to "works" or also to goods);

(b) the scope of government organizations involved (central, state and local governments, nationalized industries and Crown companies);

(c) classification of purposes (e.g., contracts for military or administrative purposes), consideration being given to the "test of re-sale" suggested by the Delegate of the United Kingdom; and

(d) the practicability of covering in a general statement a matter involving so many possible qualifications and exceptions.

Concerning the general most-favoured-nation provisions, the basic questions for further study were:

(a) possible modification of the provisions in order to cope with problems raised by unsatisfactory labour conditions in certain countries;

(b) the relationship of these provisions with treaty or other contractual obligations already in existence, particularly with countries outside of the proposed Organization; and

(c) the adequacy of, and need for, such provisions in the light of the fact that there will be three main types of undertakings by members of the Organization, namely:

(i) multilateral arrangements among members of the Organization;

(ii) bilateral agreements among members;

(iii) treaties or agreements between members and non-members.

There seemed to be general agreement that reduction or elimination of preferences should be a matter for negotiation. Basic points needing further consideration by the Sub-Committee included:

(a) whether the negotiated reduction to be required would differ according to (i) the stage of economic development of the country concerned, (ii) the level of its tariff in operation;

(b) whether preferences subject to negotiation should be those existing at the time of negotiations or those existing at a prior date 1 July 1939 or 1 July 1946;

(c) whether, in order to reduce margins of preferences, only the most-favoured-nation rate, or both the most-favoured-nation and the preferential rates, might be reduced;

(d) whether preferences subject to negotiation should be limited to tariffs or include those based on price arrangements in granting of contracts and quota arrangements;

(e) whether preferential arrangements, which had already been agreed upon but had not actually been effected, might be implemented or extended;

(f) whether provision should be made for the establishment of new preferences as a step in the direction of the formation of a Customs Union; and

(6) whether an escape clause should be included, so as to make possible remedial action in cases where industries were seriously injured because of reduction or elimination of preferences.

The meeting accepted the Chairman's summary of the basic issues requiring detailed consideration by the Sub-Committee.

Mr. HAWKINS (United States) said that he was prepared to answer many of the questions raised during the day's discussion, and asked whether such answers should be given to the full Committee or to the Sub-Committee.

Dr. SPEEKENBRINK (Netherlands) felt that the views of the American Delegate should be given to the full Committee, since only a few of its members were represented on the Sub-Committee.

It was agreed that Mr. HAWKINS should give his views on issues raised during the discussions at the next meeting of the full Committee.

The CHAIRMAN suggested that the questions which had been raised with respect to the principal supplier rule should be referred to the Sub-Committee on Procedure. The suggestions of the United States Delegate that the terms of reference of the Sub-Committee on Procedure should be broadened so as to include the question of tariffs, and that Cuba should be added to its membership were agreed to by the Committee.

Mr. KUNOSI (Czechoslovakia) reminded the Committee that the United States Delegate had agreed that provisions concerning customs nomenclature might be added to the charter. The CHAIRMAN suggested that this matter might be referred to the technical Sub-Committee.

Mr. FRESQUET (Cuba) thanked the Committee on behalf of his country for including Cuba on the Sub-Committee. He congratulated the Chairman on his summary of the basic issues requiring study by the Sub-Committee.

It was agreed that the Committee should meet on Tuesday, 29 October, at 11 a.m.

In response to a question by Mr. ALPHAND (France), the CHAIRMAN indicated that at its next meeting the Committee, besides concluding the discussion on tariffs etc., would discuss quantitative restrictions. This would be in accordance with the outline of work agreed to at the previous meeting.

Mr. VIDELA (Chile) indicated that members of the Sub-Committee on Procedure hoped that meetings could be so arranged that members would be able to participate in the work of both the full Committee and the Sub-Committee.

The meeting rose at 6.15 p.m.
