

**ECONOMIC  
AND  
SOCIAL COUNCIL**

**CONSEIL  
ECONOMIQUE  
ET SOCIAL**

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ORIGINAL: ENGLISH

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

COMMITTEE II

SUB-COMMITTEE ON PROCEDURES

First Meeting  
Held on Monday, 28 October 1946  
at 11 a.m.

Chairman: DR. COOMBS (Australia)  
Later: MR. SPEEKENERINK (Netherlands)

1. Introductory remarks by the Chairman

The CHAIRMAN stated that the work of the Sub-Committee at the initial meeting would be devoted to questions of procedure and to the study of the most-favoured-nation clause; that tariffs and preferences would be discussed by the Sub-Committee later, following on the general consideration of these subjects by Committee II, when that was complete.

He referred to the summary of views expressed by various delegations on topics of interest to the Sub-Committee, and suggested that additional material might be included in the summary as a result of the Sub-Committee's discussions.

2. Election of Chairman

The CHAIRMAN stated that the work of the Sub-Committee in its relation to Committee II would be facilitated, if there could be close liaison between the respective Chairmen, and suggested the election of Mr. SPEEKENERINK (Netherlands), Vice-Chairman of Committee II, as Chairman of the Sub-Committee on Procedures.

The Sub-Committee elected Mr. SPEEKENERINK as its Chairman unanimously.

3. Discussion of First Sentence of Paragraph 1, Article 8

There followed a discussion of the best method of procedure for the Sub-Committee's work. Mr. HAWKINS (United States) inquired whether it was the intention of the Sub-Committee to use Article 8 of the Charter suggested by the American delegation as the basis for discussion and to proceed by examining amendments to the American draft.

The CHAIRMAN indicated that he considered such procedure preferable but that additional suggestions would be welcomed.

Mr. LECUYER (France) asked whether the United States proposal was substantially different from the most-favoured-nation clause as evolved by the League of Nations. He asked also whether the reference to governmental contracts for public works should not be considered separately

The CHAIRMAN proposed, on the basis of the general discussion, that the ensuing discussion be based upon paragraph 1 of Article 8 of the United States draft proposal, excluding the last sentence, and that other subjects, such as quantitative restrictions, be considered at subsequent meetings. He pointed out that it was the duty of the Sub-Committee first to discuss the general principle of non-discriminatory treatment and later to consider exceptions, which were still under discussion by Committee II.

Mr. HAWKINS (United States) explained that the United States draft text of the most-favoured-nation clause was based upon the standard text of the League of Nations clause, with certain minor variations. As an example of the variation, he pointed out that the phrase "with respect to all matters relating to internal taxation or regulation referred to in Article 9", which appeared in the United States draft, did not appear in the League of Nations clause. The United States draft also included a reference to "the international transfer of payments", which did not appear in the League of Nations clause.

Mr. McHINCH (Canada) asked whether the draft most-favoured-nation clause submitted by Brazil had been considered. The Canadian delegation preferred to use the United States draft as a basis for consideration.

The Sub-Committee agreed that paragraph 1 of Article 8 of the United States draft proposal, excluding the last sentence, should be recommended to Committee II for acceptance.

4. Discussion of Second Sentence of Paragraph 1, Article 8 Regarding Public Works

The CHAIRMAN referred to the extensive discussions which had taken place with respect to the extension of the most-favoured-nation clause to public works. The sub-committee should decide what change should be made in the proposal by the United States delegation.

Mr. McKINNON (Canada) pointed out that the Canadian delegation had no objection to the reference to "governmental contracts for public works" in the sentence under discussion, or to the clause "including laws and regulations governing the procurement by governmental agencies of supplies for public use other than by or for the military establishment", as it appeared in Article 9. It was his suggestion, however, that similar wording should be used in both Articles. He suggested the following substitute for the second sentence of paragraph 1, Article 8 of the United States draft:-

"The principle underlying this paragraph shall also extend to purchases by governmental agencies other than for military establishments."

He added that perhaps "purchases by governments" would suffice. He suggested the need for defining the phrase "governmental agencies", and thought that the phrase "for administrative use" might also be added. He restated his proposed sentence as follows, reminding the Sub-Committee that it was not his intention to submit precise wording:

"The principle underlying this paragraph shall also extend to laws and regulations covering purchases by governments or governmental agencies other than for the military establishments."

Mr. SHACKLE (United Kingdom) agreed in general with Mr. MCKINNON's remarks. He referred to the ambiguity of the term "public works" and suggested that another term, possibly "purchases by governments", be used to indicate its application to goods only and not to services.

As a second point, he referred to the necessity for defining "governmental", and pointed out that it might be construed to refer to a central government, to state or provincial governments, or even to local or municipal governments. It was difficult to insure observance of regulations by local governments in practice, and he felt that it would be wise to confine discussions to a central government.

He added that in British Commonwealth countries preferences were extended to supplies from Commonwealth countries, and these should not be wiped out by a general provision. Limits should be defined.

He said that what he had in mind was governmental purchases and not state trading. The line of distinction might be whether the goods were for resale. If not for resale, they would be covered in Articles 8 and 9; if for resale, in the Articles referring to state trading.

The CHAIRMAN suggested the following wording to meet the points made by the United Kingdom delegate:

"The principle underlying this paragraph should also extend to laws governing purchase of goods not for resale by central governments other than for the military establishment."

Mr. ALAMILLA (Cuba) stated that if consideration was given to the rewording of Article 8, to include the clause from Article 9, he would wish to comment. Cuban law provided that when national and foreign products are offered in the Cuban market at the same price and under comparable conditions, Cuban products must be preferred. If exceptions were made in purchases for military establishments, an exception should be made here to cover his point.

The CHAIRMAN stated that this kind of exception could be discussed later.

Mr. VIDELA (Chile) wished to discuss tied loans. Tied loans had an important bearing on the question of most-favoured-nation treatment.

The CHAIRMAN suggested that the Sub-Committee should (a) frame a new sentence to take the place of the last sentence of Article 8, paragraph 1, (b) discuss any extension to the provisions made in the newly framed sentence, and (c) add any necessary exceptions.

Mr. ABANKAR (India) welcomed the Chairman's suggestion. He agreed that the word "governmental" should apply only to central governments, but suggested it should also be limited to state-owned or state-controlled enterprises, and should not cover government-sponsored companies.

Mr. LEQUETIER (France) firstly suggested that the word "regulations" should not be used; secondly the question of resale was bound up with the problem of excluding state monopolies. Governments when making purchases were often not in the position of knowing whether they would eventually resell those purchases. A cross reference to the provisions of Articles 26 and 27 would suffice.

Mr. HAWKINS (United States) remarked that most-favoured-nation treatment should also apply to the awarding of government contracts. But it could not be applied to government purchases with the same precision which was possible in the case of fiscal measures. That was why the phrase "fair and equitable treatment" had been used in the Draft Charter.

He agreed with the new text proposed by the Canadian delegate; but suggested that additional provision should be made for fair and equitable treatment in awarding governmental contracts.

Mr. VIDELA (Chile) agreed with the United States delegate.

Mr. MCKINNON (Canada) suggested that the new text should be extended by the following clause:

"and also in the respect of awarding contracts for public works, when fair and equitable treatment shall be awarded to members of the ITO" "

Mr. ADARKAR (India) remarked that contracts for public works should not be understood to include contracts for defence works.

Mr. MCKINNEN (Canada) agreed with the addition of the phrase "not for resale"; otherwise it would be necessary to make a cross reference to Articles 26 and 27.

Mr. HAWKINS (United States) thought that the phrase "not for resale" would be in accord with the idea of fair and equitable treatment; but why distinguish between goods for resale and goods not for resale?

Mr. SHACKLE (United Kingdom) maintained that there was a case for making a distinction, because there would be a rather different set of rules for tariff protection and preference in cases of goods for re-sale and in cases of goods not for re-sale.

Mr. VIDELA (Chile) recalled the Chinese delegate's proposition at the meeting of the Committee to delete the last sentence of Article 8 paragraph 1. He suggested that this subject might best be dealt with in Articles 26 and 27.

Mr. HAWKINS (United States) said that the word "regulations" had been purposely used in the Draft Charter to prevent discrimination; and to omit the word "regulations" at that point would imply disregard of the law referred to in Article 8. Many countries, including the United States of America, had laws favouring local purchases, which would be affected by the proposal.

Dr. ALAMILLA (Cuba) agreed that Article 8 should deal with the application by one nation of most-favoured-nation treatment to all foreign members of the International Trade Organization. He suggested that it should be stipulated that most-favoured-nation treatment should apply to the awarding of contracts, to purchases by governments and to laws and regulations governing such purchases.

The meeting agreed to instruct the Secretariat, in consultation with the members concerned, to make a new draft of the last sentence of

paragraph 1, article 8 of the Draft Charter, taking into consideration the amendments proposed during the course of the above discussions, for consideration at the next meeting of the Sub-Committee.

4. Date of Next Meeting

Wednesday 30 October 1946 at 10.30 a.m.

The meeting rose at 12.50 p.m.

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