

PREPARATORY COMMITTEE OF THE INTERNATIONAL CONFERENCE  
ON TRADE AND EMPLOYMENT

COMMITTEE II

SUB-COMMITTEE ON PROCEDURE

MULTILATERAL TRADE-AGREEMENT NEGOTIATIONS

Procedures for Giving Effect to Certain Provisions of  
the Proposed ITO Charter by Means of a General Agree-  
ment on Tariffs and Trade Among the Members of the  
Preparatory Committee.

REPORT OF SUB-COMMITTEE ON PROCEDURE TO COMMITTEE II

#### INTRODUCTION

The Preparatory Committee has agreed to recommend to the governments concerned that the Committee sponsor tariff and preference negotiations among its members to be held in the spring of 1947. This agreement is set forth in the Committee's resolution of \_\_\_\_\_. Upon the completion of these negotiations the Preparatory Committee would be in a position to complete its formulation of the Draft Charter and approve and recommend it for the consideration of the general international conference on trade and employment; and the general international conference would be in a position to adopt the Charter because of the assurance afforded as to the implementation of the tariff provisions.

#### PROPOSED NEGOTIATIONS AMONG MEMBERS OF PREPARATORY COMMITTEE

The results of the negotiations among the members of the Preparatory Committee will need to be fitted into the framework of the International Trade Organization after the Charter has been adopted. The negotiations must, therefore, proceed in accordance with the relevant provisions of the Charter as already provisionally formulated by the Preparatory Committee. In the light of these provisions, the comments and explanations which follow may be useful as a guide to the negotiations.

#### General Objectives

An ultimate objective of the Draft Charter, elaborated in Article 18, is to bring about the substantial reduction of tariffs and the elimination of tariff preferences. The negotiations among the members of the Preparatory Committee should therefore be directed to this end, and every effort should be made to achieve as much progress toward this goal as may be practicable in the circumstances, having regard to the provisions of the Draft Charter as a whole.

#### GENERAL NATURE OF NEGOTIATIONS

The Draft Charter, in Article 16, provides that tariff negotiations shall be on a "reciprocal" and "mutually advantageous" basis. This means that no country would be expected to grant concessions unilaterally, without action by others, or to grant concessions to others which are not adequately counterbalanced by concessions in return.

The proposed negotiations are also to be conducted on a selective, product-by-product basis which will afford an adequate opportunity for taking into account the circumstances surrounding each product on which a concession may be considered. Under this selective procedure a particular product may or may not be made the subject of a tariff concession by a particular country. If it is decided to grant a concession on the product, the concession may either take the form of a binding of the tariff against increase or a reduction of the tariff. If the tariff on the product is reduced, the reduction may be made in greater or lesser amount. Thus, in seeking to obtain the substantial reduction of tariffs as a general objective, there is ample flexibility under the selective procedure for taking into account the needs of individual countries and individual industries.

The same considerations and procedures would apply in the case of import tariff preferences, it being understood that, in accordance with the principles set forth in Article 8 of the Draft Charter relating to most-favoured-nation treatment, any preferences remaining after the negotiations may not be increased.

The various observations in this report regarding the negotiation of tariffs and tariff preferences should be read as applying (*mutatis mutandis*) to the negotiation of state trading margins under Article 27 of the Draft Charter.

GENERAL RULES TO BE OBSERVED IN NEGOTIATIONS

Paragraph 1 of Article 18 of the Draft Charter sets forth the following, self-explanatory, rules to be observed during the negotiations:

"(a) Prior International commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require the modification of existing international obligations except by agreement between the contracting parties or, failing that, by termination of such obligations in accordance with their terms.

(b) All negotiated reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of preference.

(c) The binding or consolidation of low tariffs or of tariff-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences."

MISCELLANEOUS RULES OF GUIDANCE

There are a number of additional questions which should be borne in mind in preparing for the proposed tariff negotiations among the members of the Preparatory Committee:

Base Date for Negotiations

Article 8 of the Draft Charter, as developed by the Preparatory Committee, would except from the most-favoured-nation provisions of the Charter preferences "which do not exceed the preferences remaining after ...negotiations." This means that all margins of preference remaining after negotiations would be bound against increase. Also, as explained above, Article 18 requires that reductions of most-favoured-nation rates of duties shall operate "automatically" to reduce or eliminate margins of preference.

In order to determine what residual preferences shall be bound against increase under Article 8, and in order to determine what preferences shall be reduced or eliminated automatically under Article 18, it is necessary to establish a date which will fix the height of the preferences in effect prior to the negotiations.

It would be desirable for such purposes to fix a single date, common to all the countries participating in the negotiations. However, the discussions during the first session of the Preparatory Committee indicate that the establishment of a common date presents certain difficulties and may not be practicable. It is therefore suggested that immediately following the close of the first session of the Committee each member of the Committee concerned should inform the Secretariat of the United Nations as to the date which it proposes to use as the base date for negotiations with respect to preferences. The Secretariat will promptly inform the other members. The base date for negotiations established by any country granting preferences should hold good for its negotiations on all products with all other countries members of the Preparatory Committee, and should not vary from country to country or from product to product.

Avoidance of New Tariff Measures

It is important that members do not effect new tariff measures prior to the negotiations which would tend to prejudice the success of the negotiations in achieving progress toward the objectives set forth in Article 18, and they should not seek to improve their bargaining position by tariff or other measures, in preparation for the negotiations. In cases where it is necessary to convert a specific tariff to an ad valorem tariff, the substitution should not have as a consequence an increase of the protective incidence of the tariff.

#### Principal Supplier Rule

It is generally agreed that the negotiations should proceed on the basis of the "principal supplier" rule, as defined in this paragraph. This means that each country would be expected to consider the granting of tariff or preference concessions only on products of which the other countries, members of the Preparatory Committee, are, or are likely to be, principal suppliers. In determining whether, on the basis of the "principal supplier" rule, a product is to be included in the negotiations, reference should be had not merely to whether a particular member of the Preparatory Committee is, or may become, a principal supplier, but to whether the members of the Committee, taken as a whole, supply, or are likely to supply, a principal part of the product in question. In other words, if a principal part of total imports of a particular product into a particular member country is supplied by the other members of the Preparatory Committee taken together, then the importing member should, as a general rule, be willing to include that product in the negotiations, even though no single other member of the Committee, taken by itself, supplies a principal part of the total imports of the product. In estimating the future prospects of a member, or the members taken together, to become a principal supplier of a product, consideration should be given to the probable disappearance of ex-enemy countries as suppliers of certain products and of the changes in the currents of trade created by the war.

#### Form of Tariff Schedules

It is contemplated that the tariff negotiations among the members of the Preparatory Committee would be multilateral, both in scope and in legal application.

Thus, there would result from the negotiations a total of sixteen<sup>x</sup> schedules of tariff concessions, each schedule setting forth a description of the products and of the maximum (concession) rates of duty thereon which would be applicable in respect of the imports into a particular country. In this way each member of the Committee would be contractually entitled, in its own right and independently of the most-favoured-nation clause, to each of the concessions in each of the schedules of the other members.

The multilateral form of the tariff schedules agreed to among the members of the Preparatory Committee is designed to provide more stability than has existed in the past under bilateral tariff agreements, to assure certainty of broad action for the reduction of tariffs, and to give to countries a right to tariff concessions on particular products which such countries might wish to obtain, but could not obtain under bilateral agreements because of their relatively less important position as a supplier of the product concerned. The multilateral form also gives expression to the fact that each country stands to gain when another country grants tariff reductions on any product, even though primarily supplied by a third country.

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<sup>x</sup> If the principles indicated in Article 28 of the Draft Charter should prove acceptable to the USSR, those may, in addition, be a schedule relating to an undertaking by the USSR to purchase annually products valued at not less than an aggregate amount to be agreed upon.

Status of Preferential Rates of Duty

The formulation by each member of the Preparatory Committee of a schedule of tariff concessions which would apply to all other members raises a question as to the method of relating to such schedules preferential rates of duty which have been negotiated as well as preferential rates on products for which most-favoured-nation rates have been negotiated. There appear to be two methods which might be followed:

1. Such preferential rates might be incorporated in the multilateral schedules, qualified by the requirement that they apply only to the products of the countries receiving preferred treatment.
2. Such preferential rates might be incorporated in separate schedules which would apply only to the preferred countries.

It should be left for the country concerned to determine which of the two methods indicated above it desires to follow. However, a single schedule containing both most-favoured-nation and preferential rates would seem to facilitate the work of both traders and governments.

PROCEDURES FOR CONDUCTING NEGOTIATIONS  
AMONG THE MEMBERS OF THE PREPARATORY COMMITTEE

It is believed that the tariff negotiations among the members of the Preparatory Committee can best be conducted in four stages:

1. First Stage. Each member should transmit to each other member from which it desires to obtain tariff concessions, as soon as possible and preferably not later than 31 December 1946, a preliminary list of concessions which it proposes to request of such other member. This list should set forth for each product concerned

- (a) an indication of the existing rate of duty (where known)
- (b) an indication of the requested rate of duty. Thirty copies of this list should be sent simultaneously to the Secretariat of the United Nations, which will transmit one copy to each of the other members of the Preparatory Committee.

In order to facilitate the negotiations, each member of the Preparatory Committee should transmit to the Secretariat of the United Nations, as soon as possible and preferably not later than 31 December 1946, thirty copies of its customs tariff showing the rates of duty currently applicable. The Secretariat will promptly transmit one copy to each of the other members of the Committee.

2. Second Stage. At the opening of the second session of the Preparatory Committee, each member should submit a schedule of the proposed concessions which it would be prepared to grant to all other members in the light of the concessions it would have requested from each of them.

3. Third Stage. Notwithstanding the multilateral character of the negotiations, it will usually be found that only two or three countries will be directly and primarily concerned in the concession on a particular product, and that the interest of other countries, although material, will be secondary. It is therefore proposed that the third stage of the negotiations will ordinarily consist of discussions on particular products between two, or possibly three or four countries. For the purpose of engaging in such negotiations, therefore, each country should to the extent practicable have separate groups of persons competent to negotiate with each of the other countries with which important negotiations are likely to be conducted.

The number of negotiating groups required by each country will of course tend to vary with the scope of its trade relations. In the case of large trading countries having important trade relations with most or all of the other members of the Committee, a large number of negotiating groups will be required. In the case of countries having less extensive trade relations, a smaller number of negotiating groups will be sufficient. In any event the timing of negotiations between particular groups will need to be scheduled, and in order that the United Nations Secretariat may have adequate notice to prepare for such scheduling, it would be desirable for each member of the Committee to notify the Secretariat, as far in advance as may be practicable, of the number of negotiating groups which the member proposes to send to the negotiating meeting, and of the country or countries to which each negotiating group relates.

4. Fourth stage. The progress of the negotiations should be subject to general review by the Committee as a whole periodically during the negotiations and also in the final stage. General review by the Committee as a whole will enable each member to assess the benefits which it is likely to receive from the series of negotiations in the light of its total contribution, and will offset the tendency toward limiting concessions which results from a comparison of benefits exchanged between two countries alone.

It is clear that the general review by the Committee as a whole cannot take the form of a detailed examination by the Committee of each concession. Rather, the Committee would review the general level of tariff reduction achieved, as indicated in summary reports. At the same time, each member should be entitled to receive, on request, detailed information as to the status of negotiations on particular products between other members in order that it may be in a position to assert an interest in such negotiations.

In order that the negotiations may proceed in an orderly fashion, it is desirable that a Steering Committee be established as soon as the various delegations have assembled at the meeting.

#### RESULT OF THE NEGOTIATIONS

If the tariff negotiations proceed successfully along the lines set forth above, there should emerge from the negotiations a tariff schedule for each member, each schedule containing concessions granted to all of the other members in their own right. These schedules might be identified as follows:

<u>Name of Country</u>	<u>Schedule</u>
Australia	Schedule I
Belgo-Luxembourg-Netherlands Customs Union, Belgian Congo and Netherlands Overseas Territories	Schedule II
Brazil	Schedule III
Canada	Schedule IV
Chile	Schedule V
China	Schedule VI
Cuba	Schedule VII
Czechoslovakia	Schedule VIII
France and French Union	Schedule IX
India	Schedule X
New Zealand	Schedule XI
Norway	Schedule XII
Syro-Lebanese Customs Union	Schedule XIII
Union of South Africa	Schedule XIV
Union of Soviet Socialist Republics	Schedule XV +
United Kingdom and the overseas territories for which it has international responsibility.	Schedule XVI
United States	Schedule XVII

Note: Separate, or possibly sub-divided, schedules may be necessary in the case of certain countries in order to provide adequately for certain overseas territories.

#### GENERAL AGREEMENT ON TARIFFS AND TRADE

Once agreed upon, the tariff schedules resulting from the negotiations among the members of the Preparatory Committee cannot easily be held in abeyance pending action by the general international conference on trade and employment and the adoption of the Charter by national legislatures.

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+ If the principles indicated in Article 28 of the Draft Charter should prove acceptable to the USSR, this schedule would relate, not to tariff concessions, but to an undertaking to purchase annually products valued at not less than an aggregate amount to be agreed upon.

It is therefore proposed that the tariff schedules be incorporated in an agreement among the members of the Preparatory Committee which would also contain, either by reference or by reproduction, those general provisions of Chapter IV of the Charter considered essential to safeguard the value of the tariff concessions. These provisions would include Article 8 of the Charter relating to most-favoured-nation treatment; Article 9 relating to national treatment on internal taxation and regulation; Articles 19 through 22, relating to quantitative restrictions; Articles 23 and 24, relating to exchange restrictions; Article 26, relating to equality of treatment by state trading enterprises; Article 29, relating to emergency action on imports of particular products; Article 30, relating to nullification or impairment; and such other related provisions as may be appropriate. The General Agreement should contain a provision under which the signatory governments could make any adjustments in the Agreement which may be desirable or necessary in the light of the action taken by the International Conference on Trade and Employment on the Draft Charter. A draft outline of the General Agreement on Tariffs and Trade is attached. The Drafting Committee provided for in the Resolution of the Preparatory Committee of \_\_\_\_\_ should be instructed to consider this outline and to prepare a more complete draft for the consideration of the Preparatory Committee at its meeting in April.

The General Agreement on Tariffs and Trade should be signed and made public at the close of the tariff negotiations. The Agreement should be legally independent of the Charter and should be brought into force as soon as possible after its signature and publication.

Countries should be free to withdraw from the agreement, at the end of three years or thereafter on giving six months prior notice. This will provide an opportunity for a review of the agreement and any adjustment of the tariff schedules which may be considered desirable.

The agreement should conform in every way to the principles laid down in the Charter and should not contain any provision which would prevent the operation of any provision of the Charter.

The tariff concessions granted under the agreement should be provisionally generalized to the trade of other countries pending the consideration by the International Conference on Trade and Employment of the question whether benefits granted under the Charter should be extended to countries which do not join the International Trade Organization and which therefore do not accept the obligations of Article 18.

CREATION OF PROVISIONAL AGENCY PENDING  
ESTABLISHMENT OF INTERNATIONAL TRADE ORGANIZATION

Certain of the provisions of the General Agreement on tariffs and trade, for example those incorporating Article 29 of the Charter (emergency action on imports of particular products) and Article 30 of the Charter (nullification or impairment), will require for their successful operation the existence of an international body. It is proposed, therefore, that the members of the Preparatory Committee which make effective the General Agreement on tariffs and trade should create a provisional international agency for this purpose. This provisional agency would go out of existence upon the establishment of the International Trade Organization.

RELATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE  
TO THE INTERNATIONAL TRADE ORGANIZATION  
AFTER THE ORGANIZATION IS ESTABLISHED

1. Interim Tariff Committee

The draft Charter as now formulated provides in Article 56 that the countries which make effective the General Agreement on Tariffs and Trade shall constitute the original members of the Interim Tariff Committee to be set up within the International Trade Organization after the International Conference on Trade and Employment has met and the Organization has been established.

The Interim Tariff Committee would have the function of determining whether (with respect to any negotiations subsequent to those culminating in the General Agreement on Tariffs and Trade) any Member of the Organization has failed to live up to its obligations regarding tariff negotiations and, under paragraph 3 of Article 18 of the Charter, of authorizing complaining Members to withhold tariff benefits from offending Members. The following points should be noted with regard to this function:

- (a) A Member of the Organization may be admitted to membership in the Committee when the Member has completed tariff negotiations "comparable in scope or effect" to the negotiations already completed by the original members of the Committee. Thus, what is achieved by way of tariff action in the General Agreement on Tariffs and Trade will become the standard to which Members of the Organization will be expected to conform in order to obtain membership on the Interim Tariff Committee. In applying this standard the Committee should have regard to the provisions of the Charter as a whole.

(b) Since it is agreed that the original members of the Interim Tariff Committee will have taken adequate steps toward fulfilment of the tariff obligations of the Charter in respect of negotiations among themselves (See Article III of the draft General Agreement on Tariffs and Trade), the Committee may not authorize one original member of the Committee to withhold tariff concessions from another original member of the Committee. This would be without prejudice, of course, to any decisions reached, under the auspices of the Organization, regarding a second series of tariff negotiations among the members of the Committee.

(c) Members of the Interim Tariff Committee must, in negotiations with Members of the Organization which are not members of the Committee, be prepared to consider concessions on products of interest to the latter which were not dealt with in the original negotiations. Refusal to negotiate on such products might warrant a legitimate complaint. Accordingly, the Committee could in such cases authorize a Member of the Organization which is not a member of the Committee to withhold tariff benefits from a member of the Committee. However, the extent to which a member of the Organization which is not a member of the Committee might withhold tariff benefits from a member of the Committee would be limited only to tariff concessions which the former had already made pursuant to Article 18 and general tariff penalties could not be applied.

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It should be pointed out that the Organization, as distinct from the Committee, could authorize an original member of the Committee to withhold benefits from another original member of the Committee under certain other provisions of the Charter.

(d) The authority of the Committee would in all cases be limited to granting permission to a Member of the Organization to withhold tariff benefits from another Member; in no event could the Committee compel a Member to withhold benefits.

2. Procedure for Broadening Membership in Interim Tariff Committee through Additional Tariff Negotiations.

Procedures must be developed for assuring, by negotiation, action for the reduction of tariffs and the elimination of preferences by Members of the Organization which are not parties to the General Agreement on Tariffs and Trade and hence would not be original members of the Interim Tariff Committee. The following alternative procedures are suggested for consideration:

(a) The original members of the Interim Tariff Committee would negotiate separate bilateral agreements with Members of the Organization which are not members of the Committee, and the latter would negotiate such agreements between themselves. The Committee would judge as to when a particular country had completed enough such agreements to entitle it to membership in the Committee.

(b) A Member of the Organization which is not an original member of the Committee might offer to negotiate with the Committee a multilateral schedule of concessions similar in scope and legal application to the schedules appended to the General Agreement on Tariffs and Trade concluded among the original members of the Interim Tariff Committee; and the original members of the Committee would agree to amend the multilateral schedules appended to the General Agreement on Tariffs and Trade to the extent necessary to assure appropriate

concessions on products of which the country not a member of the Committee was a principal supplier. Whatever procedure is adopted, due weight should be given in the negotiating process to concessions already made as a result of prior negotiations.

TEMPERATIVE AND PARTIAL DRAFT OUTLINE  
OF  
GENERAL AGREEMENT ON TARIFFS AND TRADE

The governments in respect of which this Agreement is signed;  
Having been named by the Economic and Social Council of the United Nations to prepare, for the consideration of the United Nations Conference on Trade and Employment, a draft Charter for an International Trade Organization of the United Nations;

Having, as the Preparatory Committee for the Conference, recommended to the Conference the provisions of such a Charter, the text of which is set forth in the Report of the Preparatory Committee dated \_\_\_\_\_, 1947; and

Being desirous of furthering the objectives of the Conference by providing an example of concrete achievement capable of generalization to all countries on equitable terms;

Have, through their respective Plenipotentiaries, agreed as follows:

Article I

1. During the life of the Agreement each signatory Government shall make effective in respect of each other signatory government the provisions described below of the draft Charter for an International Trade Organization of the United Nations recommended in the report of the Preparatory Committee dated \_\_\_\_\_, 1947:

- (a) Article 8, relating to most-favoured-nation treatment;
- (b) Article 9, relating to national treatment in respect of the internal taxation and regulation of trade;
- (c) Articles 19 through 22, inclusive, relating to quantitative restrictions on trade;
- (d) Articles 23 and 24, relating to exchange restrictions;

- (e) Article 26, relating to the application of the most-favoured-nation principle to trading by the state;
- (f) Article 29, relating to emergency action on imports or particular products;
- (g) Article 30 (to the extent that nullification or impairment of any object of this Agreement may be involved).

2. Functions entrusted to the proposed International Trade Organization under any of the provisions of the draft Charter incorporated in this Agreement by virtue of paragraph 1 of this Article shall, pending the establishment of the Organization, be carried out by a provisional international agency consisting of delegates appointed by the signatory governments.

#### Article II

With regard to Articles 18, 27 and 28 of the draft Charter, which relate to negotiations for (a) the reduction of tariffs and the elimination of tariff preferences and (b) parallel action by state-trading enterprises, the signatory governments declare that they have, by virtue of Article III of this Agreement, taken this step towards fulfilment of the obligations of these Articles in respect of themselves and that they stand ready, in conformity with the spirit of these articles, to undertake similar negotiations with such other governments as may desire to become members of the proposed International Trade Organization.

#### Article III

Each signatory government shall accord to the commerce of the customs territories of the other signatory governments the treatment provided for in the appropriate Schedule annexed to this Agreement and made an integral part thereof.

ARTICLE IV

(This Article would set forth the general exceptions provided for in Article 32 of the draft Charter)

Article V

(This Article would reproduce the provisions of Article 33 of the draft Charter relating to territorial application)

Article VI

(This Article would permit revision of the Agreement, by agreement among the signatories, if necessary or desirable in order to take account of changes in the draft Charter effected by the International Conference on Trade and Employment)

Article VII

(This Article would provide for the entry into force of this Agreement, its duration, and its termination. The Agreement would remain initially in force for three years. If not terminated at the end of the three-year period (which would require six months' prior notice), it would remain in force thereafter, subject to termination on six months' notice).

NOTE: In addition, there would be a number of purely technical or legal provisions.

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