E/PC/T/C.II/PV/7

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT.

Verbatim Report

of the

SEVENTH MEETING

of

COMMITTEE II

held in

The Hoare Memorial Hall,
Church House, Westminster, S. W. 1.

on

Friday, 1st November, 1946

at

3. 0.p.m.

CHAIRMAN: DR H. C. COOMBES (Australia)

(From the Shorthand Notes of
W.B.GURNEY, SONS & FUNNELL,
58, Victoria Street,
Westminster, S.W.1.)

THE CHAIRMAN: Gentlemen, you will recall that it was our intention at this meeting to consider the remaining items, Emergency Provisions, etc., and Territorial Application; and also to make a start on the Quantitative Restrictions and Exchange Control, in so far as they were necessary for the protection of the balance of payments. Since that meeting several delegations have approached me and they have pointed out that they are in the process of re-examining the views that they have expressed on these matters and that it is possible that fairly substantial modifications may be made of a kind which would, they believe, facilitate agreement on what may well be one of the most difficult sections of our work. They have therefore asked that we defer consideration of that matter until they have had time to complete a review of the positions which they have taken up. As I said yesterday, I am unwilling to defer any matter longer than is absolutely necessary, but I have been convinced that we do stand to gain by some delay in this matter. It would, I believe, facilitate our subsequent work if the views as stated in full Committee, when we come to consider this matter, are views which have taken into account fully the possibilities of compromise. I have therefore, subject to your concurrence, agreed to leave until next week consideration in this Committee of the matters relating to the protection of the balance of payments. I shall be glad to know whether that is acceptable to the Committee.

MR SHACKLE (UK): Mr Chairman, does that also cover exchange control and quantitative restrictions, because the two subjects are fairly closely connected?

THE CHAIRMAN: Yes; I take it that it is not worth while discussing exchange control except in relation to the general balance of payments proper. If that is acceptable to the Committee, we will defer consideration of the matters arising out of the protection of the balance of payments and we will consider this afternoon only the remaining items which deal with emergency provisions, etc., and territorial application. We will take first the section dealing with emergency provisions. This is covered in the

United States draft Charter by Articles 29 and 30. We might usefully begin by again asking the United States delegate to outline the views of his experts on this matter.

MR HAWKINS (USA): Mr Chairman, I will discuss first Article 29, which provides for emergency action on imports of particular products. The purpose of the Article, generally speaking, is to give some flexibility to the commitments undertaken in Chapter IV. Some provision of this kind seems necessary in order that countries will not find themselves in such a rigid position that they could not deal with situations of an emergency character. Therefore, the Article would provide for a modification of commitments to meet such temporary situations. In order to safeguard the right given and in order to prevent abuse of it, the Article would provide that before any action is taken under an exception, the member concerned would have to notify the Organization, and consult with them, and with any other interested members.

It provides, further, that, if no agreement were reached on the proposed action, any Member who was decisive could take compensatory action by withdrawing concessions from the Member that had invoked the clause. That, in essence, is the character of the Article. As I said, it seems to us to be a necessary provision in a document or an agreement or charter of this kind.

Mr Chairman, shall I go on with the next article?

THE CHAIRMAN: Article 30?

MR HAWKINS (U.S.A.) Yes.

THE CHAIRMAN: I think they are fairly close together, and it might be as well to deal with them.

MR HAWKINS (U.S.A.): Article 30 provides for consultation, nullification or impairment: the first part of that article is simply a general obligation to consult regarding any of the undertakings in chapter 4. The second part, or the so-called impairment clause, would give any Member a right to complain of the action of any other Member who it thinks is failing to meet the commitments laid down in the Charter, either in letter or in spirit. Provision is made whereby a Member whose complaints are unsatisfied, who feels that another Member is not acting in accordance with the letter or the spirit of the Charter, could take compensatory measures. I think that is all I have to say on those two articles.

THE CHAIRMAN: The subject matter of these two articles is now open for discussion. Will Delegates who wish to speak on this please indicate?

MR AUGENTHALER (Czechoslovakia): Mr Chairman and gentlemen, I have only a few words to say about Articles 29 and 30. I am pleased to state (and I hope Mr Hawkins will not mind) that we are in full agreement with the United States suggested text. I would just like to draw the attention of the Members of this Committee to the fact that Article 30 refers also to State trading operations, and that the Members should bind themselves to give sympathetic consideration to representations or proposals made, with a f view to effecting a mutually satisfactory adjustment of the matter. If no such adjustment can be effected, every Member would be free to refer the matter to the Organisation. These dispositions, I think, speak even more in favour of the proposition we had the honour to make lately, that Article 26, about

State trading, should be restricted to an announcement of a general principle of non-discrimination, and that any further details should be left out; particularly is this so, as in Article 30 full opportunity is given to any Member to settle this extremely complicated matter in a just and reasonable way. I thank you.

MR SHACKLE (United Kingdom): Mr Chairman, I think I will first address my remarks to Article 29, the Article on emergency actions. The United Kingdom Delegation recognise that the inclusion of an escape provision on these general lines is likely to be necessary. At the same time, they are definitely apprehensive of the possible consequences of drawing it too widely, since excessive use of thelatitude which it would give might seriously impair the value of the Charter as a whole, and might, we think, undermine the confidence in its effectiveness. The right to withdraw or modify a negotiated tariff concession will be rendered the less necessary, we feel, if it is recognised, as we think it must be recognised, that provision will have to be made permitting tariff bindings negotiated at the outset of the negotiations to be subsequently revised by agreement. If we assume, for example, that these bindings will, in the first place, remain effective for, let us say, three years, and that after that they will be subject to six months' possible notice of withdrawal, then it seems to us that considerable room will have been left for changes to meet changed conditions; and to that extent a sudden emergency action should be the less necessary, though the need for it may not be entirely eliminated. In any case, we feel that the scope of the clause should be more narrowly drawn than it is in the present draft. The present draft covers not only tariffs but also quantitative restrictions, subsidies, State trading, and indeed it seems, all the commercial policy obligations of the Charter. We feel that this liberty would be unduly wide and, moreover, we find it difficult to see what, in many cases, it would mean in practice. We assume the intention to be that in availing itself of the Article, no Member would be entitled to impose less favourable treatment or more severe restrictions than it was applying before the Charter is signed. It seems sufficiently clear what this would mean in the case of

tariffs; it would mean, we take it, a complete or partial reversion to the rates that ruled before the tariff agreement came into effect, but what will it mean in the case of quantitative restrictions or of subsidies, for example? How can we precisely define what was the actual treatment accorded to other countries before the agreement came into force? And how can we ensure that the withdrawal of concessions granted under the Charter in these respects does not result in treatment of imports even more unfavourable than than which was given before the Charter came into force?

I have one other point relating to tariffs: One of the methods of emergency action to be recognised as legitimate might, I suppose, consist in limiting the application of the reduced duty to a specified quantity of imports. If that were so, then it is a point which I think deserves consideration, whether it could be stipulated that that specified quantity of imports should not be less than the aggregate imports in a previous representative period. The United Kingdom Delegation has another and rather more substantial objection to the inclusion of quantatitative restrictions within the scope of this Article, since it seems that this would involve a recognition of the use of quantitative restrictions definitely for protective purposes, which, it seems to us, is in general alien to the scheme and objectives of the draft as it stands. In that connection, I do not need to repeat our objections to the general use of quantitative restrictions for protective purposes.

To sum up, then, the United Kingdom would wish to see the scope of this Article confined to emergency action in the tariff field. But whatever scope it may ultimately be decided to give to this Article, we think that the escape which it affords in respect of, let us say, the most-favoured-nation tariff rates, or in respect of other forms of protection, should be equally applicable to preferences already afforded by any of these methods, for it is clear that equally serious disturbances to the established pattern of trade may result from sudden influxes of imports in regard to which a preference has been reduced, as in the case of imports upon which a tariff rate has been reduced. The United Kingdom Delegation will be prepared, at the proper time,

to suggest a form of words for this purpose.

My remarks, so far, have related to the first paragraph of this Article. I have another point on the second paragraph: it is that we have doubts about the provision for prior notice of the emergency measures to be taken. It is precisely in the case of sudden influxes of imports, such as those which are envisaged in this Article, that prior notice and procedural delays would be most difficult to contemplate. Not only is almost immediate action likely to be needed in such cases, but any prior publicity with regard to the intended action would be likely to lead to forestalling and an accelerated rate of importation, and so would tend to defeat the object of the action. We do not, of course, oppose the requirement of notification, nor that of consultation, nor the arrangement for possible subsequent measures to deal with unjustified use of this procedure.

But we think that it may fairly often be necessary for the notification to be simultaneous with, and not prior, to the taking of action under this Article. I would like to finish with one or two words about Article 30, nullification or impairment. We are in agreement with the substance and also generally with the drafting of this Article, and we think that it is needed.

MR. LE BON (Belgium-Luxembourg) (Interpretation): This Article talks about the supposition that the imports of a product may be unduly increased to such a degree that it may injure or threaten to injure seriously national producers of similar products. Such an increase in quantity may occur at any moment, and it is not mentioned in this Article to what norms or standards such an increase can be compared or against which it can be measured. Secondly, this way of determining an increase in imports may be seriously injurious to comparative producers. There are frequently cases where such restrictions are brought about and have the effect of lowering the imports of a specific product.

In the first case, it is good to put into practice temporary economic systems here considered. In the second case, all injured states ought to enter into consultation and examine the situation together. Would it not be proper in this last possibility to leave to the international trade organisation the duty of deciding whether certain sacrifices should not be offered by everyone for the good of the world? In any case, it would be at least reasonable to submit every situation of every particular product to the provisions of Article 30.

We are entirely in agreement with the remarks made by the Delegate of the United Kingdom. It does, however, seem impossible to find a proper type period. That is why we believe that common mutual examination of the situation is necessary, and the only way of arriving at an equitable and just decision.

MR. SPEEKENBRINK (Netherlands): To a great extent we can agree with this Article even as it is worded now, but I would like only to make one or two remarks. One is with regard to the use of quantitative restrictions, and here again, I should like to refer to what I said earlier in these meetings, that there is a difference between a country which has given concessions with regard to the height of its former tariffs and a country which starts these negotiations from a lower tariff basis.

I think it is extremely difficult to restrict this Article only to tariff reductions which can be withdrawn, and I think that certain possibilities should be left for countries, which I mentioned in the latter category, to use quantitative restrictions instead. I would like to agree with the Delegate of the United Kingdom that prior notice may not always be practicable.

MR. LOKANATHAN (India): On the whole we are in favour of Articles 29 and 30 in their present form. We should like, however, to add that so far as prior notice is concerned, we agree with the United Kingdom Delegate that in cases where sudden injury is likely to be inflicted upon a country it may not be possible to give long notice. We are also in agreement with the United Kingdom Delegate in regard to preferences being included. If they are there, I think they should also be treated on the same footing as tariffs. But we are not in agreement with the views put forward by the United Kingdom Delegate in regard to the limitation to be imposed upon this Article, that is to say, the attempt to narrow the scope of this provision by excluding a quantitative restriction. That should be treated exactly like every other form of restrictions. I think the purpose of this Article is intended to cover all cases of injury, and I do not think it is possible for us to agree to anything by which any restriction upon our action, whether it refers to tariffs or to quantitative restrictions. Subject to these remarks, we are in sympathy with Article 29, and on Article 30 I have no comments to make.

MR. McKINNON (Canada): Regarding the point raised by Mr. Hawkins, in which he expressed the fear that action taken by a Member because of threatened or real injury might mean a complete reversion to the rates that existed prior to the agreement, I should like to ask Mr. Hawkins whether or not the last ten or twelve words about modifying the concession could be construed as meaning that the rate might not only revert to the pre-agreement rate, but to any figure at all. Is that the meaning of those words?

MR. HAWKINS (United States): That is correct.

MR. JOHNSEN (New Zealand): I would like to support the view put forward by the United Kingdom Delegate to the effect that preferences should be considered along with any other tariff concessions that might be involved in this particular Article, but I could not agree with him when he wants to limit those concessions merely to tariffs and preferences. It seems to me that this deals purely with the modification or withdrawal of concessions, and it would be quite wrong to differentiate between one type of concession and another. It would mean that there would be discrimination between the countries that might be affected. We know that the United Kingdom has put up certain views regarding quantitative restriction. We would prefer to use the term "quantitative regulation". I think that we can make a case for the use of "quantitative regulation" and we hope that we will be able to convince some of the Delegates here that that can be justified.

MR. HELANDER (Norway): We are a bit in doubt as to the wisdom of having such an exception clause as the one outlined in Article 29,(1). We feel that this exception is probably so formulated that it leaves rather a big gap in the whole scheme which we have so far discussed relating to all the rules proposed under the Chapter dealing with

general commercial policy. We think that if it should be necessary to have such an exception, such an escape clause as the one here put forward, it would be necessary to have it so formulated that only in strictly necessary and very strictly defined cases should it be allowed to revert to the sort of exceptions of the kind here indicated.

MR. NATHAN (France) (Interpretation): I have no remarks to offer on the subject of Article 30. The French Delegation believes that the more consultations take place between the Members, the better the work will go. As far as Article 29 is concerned, I believe that at the same time as we are doing it, Committee No. 5, which is concerned with organisation, is also studying the conditions under which a Member might ask to have certain obligations suspended in his favour. I am afraid that if we do not know what is at the moment being discussed by Committee No. 5, the Committee which will have the task of drafting a proposed Charter will find itself facing an impossible task because of the divergencies which may occur between what is said here and what is being said in Committee No. 5. Therefore, I think it is indispensable that we should be informed of what is going on in Committee No. 5 before we go on with our discussion.

THE CHAIRMAN: I think we can take it, in regard to the point raised by the Delegate for France, that Committee No. 5 would be concerned solely with the procedural aspects of the operation of any escape clause. I have not been in touch closely with the work of Committee No. 5, but I think the relevant clause is probably clause 2 of Article 55, in which it says that the Conference of the Organisation may by a vote of two-thirds of its Members determine criteria and set up procedures for

waiving in exceptional circumstances the obligations of Members undertaken pursuant to Chapter 4. The emphasis there, I take it, is on the procedural aspects of any such waiving of obligations. However, I will take up the point raised by the Delegate for France with the Chairman of Committee No. 5, and if it is necessary to advise Delegates of anything to the contrary, I will see that that is done.

However, that does raise a question of a matter which is being discussed in another Committee, which it had been my intention to refer to here, so that Mr. Hawkins could perhaps refer to it. As I pointed out, there is that clause in Article 55, which indicates that the Conference, by a certain majority, can determine criteria and set up procedures for waiving in exceptional circumstances obligations of members undertaken pursuant to Chapter 4. In Committee No. 1, a proposal has been advanced which does have some bearing on this. Committee No. 1, you will recall, is concerned primarily with the problems of the maintenance of employment, economic activity and effective demand, and it has been suggested there that, in the event of a failure, for whatever reason, of effective demand to be maintained, and in the event of that failure adversely affecting the economic conditions of a Member country, it should be possible to have obligations accepted under Chapter 4 of the Charter reviewed.

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I do not think it is desirable that we should discuss that here since it is preferable that Committee I should reach finality on the matter in the first instance; but I think we do need to note that discussion is taking place and that if Committee I reaches the conclusion that some such provision or modification is desirable it would be necessary for this Committee to consider the insertion of an appropriate clause, perhaps, in this section. That does lead to another point on which we might, I think, seek clarification from Committee V, or in consultation with Committee V, and that is in relation to the wording of paragraph 2 of Article 55, where it says that "The Conference may....determine criteria and set up procedures for waiving, in exceptional circumstances..." It does need, I think, to be clear whether that phrase, "in exceptional circumstances", refers only to the various provisions of Article 4, where the nature of the circumstances is prescribed, or whether it is a more general provision covering not only those exceptional circumstances but such other exceptional circumstances as may not be specifically referred to in the Charter. Are there any further comments from delegates?

MR McCARTHY (Australia): Mr Chairman, under the heading of tariffs and preferences we raised a matter of the application of this clause to preferences the reductions in the margins of which had been negotiated to be treated in the same way as tariffs. I should be glad if that were noted for the information of the Drafting Committee under this heading also.

DR SPEEKENBRINK (Netherlands): While we are referring to other Articles, perhaps I might draw your attention also to paragraph 4 of Article 50, which says that one of the functions of the Organisation will be "To consult with Members regarding disputes growing out of the provisions of

this Charter and to provide a mechanism for the settlement of such disputes." On this point we have rather definite views, and we feel that as this is such an important document and most of these provisions can have such an important bearing on economic conditions in the various countries, we should as a rule provide for an impartial body in a last effort to settle such disputes. Further on in the draft the International Court of Justice is mentioned. I do not want to start a discussion on this point now, but I would like to propose that when we deal with Articles 29 and 30 we should take this possibility into consideration.

THE CHAIRMAN: We will take a note of that as a point for discussion at the appropriate time. If no other delegate wishes to speak, we might ask the delegate for the United States whether he has anything he wishes to add in the light of the various comments that have been made by the different delegations.

MR HAWKINS (USA): Mr Chairman, the comments of the United Kingdom delegate I think covered a good deal of the discussion, since a number of other delegates commented on them; and I should like to say a few words on his suggestions also. His first point, as I understood it, was that the provision for revision of tariff commitments after, say, three years (which is what has been talked of) might take care of the situation with which Article 29 is intended to deal. I think the answer to that is that the type of situation envisaged in Article 29 might occur at any time within three years as regards some particular product owing to some special and temporary circumstances. The purpose of Article 29 is not to give an opportunity for a permanent revision of a commitment; it is a temporary relaxation of the commitment. His second suggestion was that the clause should be narrowed down. As it is, it covers everything in

Chapter IV, that is to say, all commitments in Chapter IV, or undertaken pursuant to Chapter IV. He thinks that too much latitude is given when it would be permitted to impose quantitative restrictions. I must say that I have a great deal of sympathy with his viewpoint, but if you are going to provide latitude to deal with an emergency the means to be used to deal with it should not be limited. It seems to us, therefore, that the let-out should relate to all of the obligations in that Article. Incidentally, in that connection I would point out to Mr McCarthy that tariff preferences would be obligations undertaken pursuant to Chapter IV, and hence I believe would be covered by the Article. Whether that is wise or not is another question.

Now, as to the danger of abuse which several delegates mentioned, that is, of course, a matter about which we should all be concerned. In preparing the draft we had that in mind. That is the reason for the sanction given in the last part of the Article. A country will certainly be somewhat restrained in making undue use of the provision if it may cost it something. Moreover, in the consultations which are contemplated the fact thatother countries can withdraw concessions would give them something of a negotiating position, so to speak; it would make their representations carry more weight. That was the purpose of the provision for the compensatory withdrawal of concessions in the last part of the Article.

A further point made by the delegate of the United Kingdom was that advance notice should not be required for taking the emergency action provided for. He makes the point that if the emergency arises there will be no opportunity for prior notice. He also makes the point, which has some merit, that if too much advance notice is given it may stimulate a flood of imports which would aggravate the

situation.

All these are cogent points which the Committee ought to consider. I would only say that in the draft as it is now framed it does provide for prior notice, but does not stipulate that it should be very long. It is as long as practicable. In some circumstances it might have to be very short. I think I have already answered the New Zealand delegate's point.

The Norwegian delegation expressed doubt about the Article, I think, on the same ground that some other delegates had doubts about it, namely, that it leaves too big a gap. I have already commented on that to the best of my ability. The point is - and the point that the Committee has to answer is - should there be some relaxation to deal with emergency situations? Is it desirable that commitments should be absolutely rigid?

There was another question with which I have some difficulty, and I think it needs further consideration. The Chairman mentioned Article 55, paragraph 2. The question that arises there - and it is only a question because I have not thought it through - is whether it would not be necessary to have a provision coming into operation before the organisation and the procedures can be set up - given the fact that negotiations are contemplated for next year. I think, Mr Chairman, that about covers the question.

The delegate of Czechoslovakia did make a suggestion, I think: he felt that there should be more reliance on consultation to cover particular cases rather than so much specification as appears, he said, in Article 26. My only comment on that particular Article would be - if that is the only one he has in mind - that that does lay down only a pretty general principle, so that it would seem to meet his

point. I think that is about all.

THE CHAIRMAN: Gentlemen, I think this matter has reached a stage where we can refer it to a Drafting Committee. There seems to be general agreement as to the need for provision for emergency action.

There are some doubts as to how wide that provision should be, whether it should cover all types of obligations except under Chapter IV. or arising out of Chapter IV, or whether it should more properly be limited to specific parts of those obligations. Generally, I think the majority of countries apparently feel that the need for action along these lines might arise in relation to the removal or the modification of any existing protective practices, and that since that is so the provision for emergency action should be applicable to all forms of protective action which may be removed or modified and so lead to the emergency situation. I think that there is a mechanical difficulty in relation to the problem of prior notice which may be overcome by the point which the United States delegate has referred to, that the period of notice is not specified, and it can only, therefore, be interpreted as requiring notice as early as practicable, which might in fact almost coincide with the imposition of the changed rates. I do not think there are any other basic issues which face our drafting committee, and I suggest that in view of the fact that this relates very closely to the work of the sub-committee dealing with tariffs and preferences, we might refer it to the same committee. That will bring about the difficulty, of course, that that Committee is not the Committee dealing with quantitative restrictions, but I should think that the operation of the provisions for emergency action would not differ from one case to the other, and we might reasonably, therefore, leave it to the same sub-committee. Would that be acceptable to the Committee?(Agreed) Very well, I suggest we refer the matter to the Committee dealing with procedures, tariffs and preferences.

I suggest we pass now to a consideration of the section of the Agenda dealing with Territorial Application, which is covered in the United States Charter by Article 33, which couples with territorial application in this chapter customs unions and frontier traffic.

MR HAWKINS (USA): Mr Chairman, Section J, Article 33, deals with certain technical matters, although they are matters of some importance. The first

paragraph is intended to make it clear that the provisions of Chapter IV are to be applied by each separate customs territory vis-a-vis all other customs territories. For example, to illustrate it, the Virgin Islands territory of the United States with a separate tariff would apply its trade regulations for example in a non-discriminatory manner, that being one of the stipulations in Chapter IV. The second paragraph sets out certain basic exceptions, first of which relates to frontier traffic. That exception does not relate, as I am sure you understand, to regional preferential arrangements; it is a technical matter to facilitate trade between bordering countries in situations where a frontier may run through the middle of a city. It is normally limited in treaties to a narrow zone, I think normally fifteen kilometers. The exception for customs unions is to the effect that, in general, it carries out the idea that in general customs unions are desirable, with the limitation there which has to do with the height of the tariffs surrounding the Union and has to take account of the fact that if the tariffs around the customs union were too high the advantages to outside countries which cause them to recognize the customs union as a proper exception would be largely destroyed - in other words, the greater amount of trade generated by a largely free trade area would not accrue to the advantage of foreign countries if the customs barriers around the customs unions were made so high that they could not share in it. Again, that is a practical standard exception in commercial treaties and agreements. The third paragraph merely relates to reports to the Organization on proposed customs unions and I think is self-explanatory. The final paragraph contains a definition of what we mean by a customs territory. If the tariff of one area is fully assimilated to the tariff of another area, the first area is not a customs territory within the meaning of this Charter. If it is not fully assimilated, that is to say, if the first area has a number of rates of its own for the protection of domestic producers in the area, then it would be considered a separate customs territory for the purpose of this chapter.

THE CHAIRMAN: The subject matter of this section is now open for discussion.

MR SPEEKENBRINK (Netherlands): Mr Chairman, this is a subject about which we have not thought at great length, and there are a few questions I should like to ask, also with regard to another point in paragraph 1 of this Article, and perhaps I may refer to that first. The Article as it stands at present, in the second sentence, reads: "If there are two or more customs territories under the jurisdiction of any Member, each such customs territory shall be considered as a separate Member country" and so on. Now the Netherlands kingdom is, as you know, at this moment, in a state of evolution. We have certain important discussions in the political field with the Netherlands Indies, and we are to have a conference later on at which all the oversea parts of the kingdom will be present and take part, in which will be defined the status of those parts of the kingdom. Now, in that case, as far as we can see at the moment, they would have a common Sovereign, and then they would have a kind of dominion status. It is therefore rather difficult for me, at this moment, to judge the full consequences of this article with regard to the future status of these oversea parts of the kingdom, so that I would only mention it at this moment and say that we have to reserve to a certain extent our attitude here.

The second point is about the customs unions, which are dealt with in paragraph 2 (b): "the union for customs purposes of any customs territory of any Member country and any other customs territory: Provided, that the duties and other regulations of commerce imposed by any such union," and so on. Here I would like to receive some clarification on this part of Article 33. When you conclude a customs union you have to combine two different sorts of tariff systems, and it may be that one country will have no duty at all and the other will have about 10 per cent; another agreement may be the difference, say, between 14 and 20. Now also between those two countries it is often a matter of negotiation, how you will apply the duty and which duty should be applicable after the formation of the customs union, and it will not be a question of

split the difference; and I am inclined to read from this article that they should split the difference; so that I would like to hear from Mr Hawkins as to whether that would really be the case. He will remember that in the exchange of Notes with his Government we have already referred to this point and found that we could not accept the article as it is framed now. In the third place, paragraph 4 of Article 33, we find the sentence: "A union of customs territories for customs purposes shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that all tariffs and other restrictive regulations of commerce as between the territories of members" and so on. Now, we know by experience that to conclude a customs union is something that you do not do in two or three months. You first start with a common tariff system and later on you have to try to combine all these regulations as well as possible. As it reads here, I think this article is too definite and we should at least have the word "ultimately" included here somewhere. Thank you.

MR NATHAN (France) (Interpretation): Mr Chairman, I should like to begin by saying something about paragraph 1 of Article 33. Several statements have already been made here in order to recall to us the fact that the French Government represent all the French colonial territories, including Indo-China, which has at the moment Dominion status. I should like to say it once more in regard to the statements which were made a moment ago by the Netherlands delegate on the subject of sub-paragraph (b) of paragraph 2, and I should like to offer a remark on the same subject. To institute a customs union may bring about grave and many difficulties; such difficulties may last for a long time; and it might be useful to foresee in this case also an interim period, for such a period would allow a customs union to be prepared and perhaps experimented with, before some definite form for it is decided and legally fixed. I think that such a matter should be mentioned in the proposed Charter and I submit this idea for examination by my colleagues.

MR SHACKLE (United Kingdom): I have only a few small points to put forward on this Article. First of all, on the question which comes up in paragraph 2.b. If this principle of the average level of the pre-existing tariffs is to be accepted, and we should not wish to dispute its desirability, I think one has to recognise that it is a thing which may in practice be rather difficult to apply. A particular point which might not be considered is whether, in attempting to assess the average, one should have regard to the relative shares of trade of the constituent areas, so that it would be, so to speak, a weighted average.

My second point relates to paragraph 4. I should like to ask a question in regard to the last sentence. The last sentence provides that in a customs union "all tariffs and other restrictive regulations of commerce as between the territories of members of the Union are substantially eliminated and the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union." If I understand that correctly, it means that what I may call the internal customs barrier as between the component parts of the union is to be only substantially and not necessarily fully eliminated. But as regards the tariff which the union applies to imports from other countries, that has to be absolutely and completely uniform. I am not sure whether that is the intention or not, or whether it was intended that the qualification implied by the word "substantially" should apply to both limbs of the sentence, that is to say that you may require only substantial abolition of the internal barrier and only substantial uniformity of the internal tariff. I think perhaps there may be a good case for reading it that way, because I believe there are certain cases where territories which are effectively in a customs union, while they have tariffs which, as regards all protective purposes, are entirely uniform, there nevertheless are certain variations as regards duties which are purely for revenue purposes. There are certain cases of that kind. I think it is only the protective element in tariffs which is likely to interest us, and it may

well be, therefore, that a certain measure of latitude for differences in revenue duties might reasonably be regarded as permissible. In that case, the word "substantially" might apply to both limbs of that sentence.

MR McCARTHY (Australia): There is one small item that we would like to refer to in this discussion. We would like the terms of this Article so drawn that it would admit of the continuance of special tariffs and other arrangements which operate between Australia and certain neighbouring islands which come under Australian jurisdiction. Normally, it could be said that they would come under a customs union, or they would be included, as they could be, from any legal point of view under the conditions of our tariff; they could be part of it. This, however, might impose hardship on them, and we would like them to be treated, or the wording so arranged, that they would not be disturbed. It is not very great and, as I say, it is purely in the interests of these small territories that our present arrangements exist. We will submit a note giving the detail, and we would ask that the Drafting Committee consider it.

MR LE BON (Belgium):(interpretation): I would just like to say that the Belgian Delegation has taken everything that has been said by the French and by the Netherlands Delegations into consideration.

MR LOCKANATHAN (India): There are only two points which I should like to mention at this stage. The first is this: The scope of paragraph 1 of Article 33: this refers to the customs territories of the Member countries. Reading that paragraph 4, it seems that this might apply to certain Indian States which are customs territories as defined in paragraph 4, namely that they are territories which have "separate tariffs or other regulations of commerce .... with respect to a substantial part of the trade of such area". I quote a specific case of the State of Kashmir, from which I originated. Kashmir is a separate customs territory, but it is not under the jurisdiction of the Member country, namely India. The relationship between Kashmir and India, I do not think, would be covered by the phrase "under the jurisdiction of the Member". That might create some difficulty, and I think we would have to go further into this matter before we commit ourselves to

this Article.

The second point is about the regional arrangements which were discussed some time ago. I am not sure that this is not the appropriate Article where we should have a separate provision, let us say a subparagraph c. to paragraph 2, to cover advantages afforded by any Member country to adjacent countries, provided these advantages are consistent with the general purposes of the Organisation, namely, to develop production and expansion.

MR BRENNAN (South Africa): Mr Chairman, we feel that the definition, as it is drawn up at the moment, is somewhat too rigid, that is, the definition in paragraph 4 of Article 33, In that, it prescribes that the same tariffs and other regulations are applied to each territory of the union. South Africa has had a customs union with Northern Rhodesia for quite some time. The tariffs of both countries resemble each other substantially, in classification, but the levels of the tariffs, and, owing to the independent policies of each of them, the tariff structures of these territories, differ to some extent. The main criterion of a customs union, however, namely, the substantial elimination of a customs barrier between the two territories, exists, and satisfactory arrangements are in operation and have been in operation for some time, whereby the division of customs revenue ~~xxx~~ on imported goods is divided between territories in proportion to the consumption of such goods consumed in each territory. For many years prior to 1935, a customs union existed between South Africa and Southern Rhodesia. During that year it was substituted by a preferential trade agreement, and it is not impossible that the customs union will be re-established. The South African Delegation therefore supports the views which have been expressed in one form or another, that a period of grace should be given for the evolution from the ~~xxxxxxxx~~ intermediate stage to a customs union. Such union may not be formed at short notice; there may possibly never be a decision arrived at in regard to a date, a period. We think the difficulty could be overcome. In our case, for example, where these operations have been in course of negotiation and do operate in various forms and degrees, it could be quite finalised, say, over a period of whatever is

decided on by the Organisation: it may be 5, 10 or 15 years. We feel we would like to have that taken on record, as we feel we must reserve our position in case it is not taken on record.

THE CHAIRMAN: Is there any further discussion? Does the United States Delegate wish to reply to the one or two questions which were put to him?

MR HAWKINS (U.S.A.): The point made by the Delegate of the Netherlands, that the exact status of the East Indies is not yet worked out, is of course a pertinent point. I can only say that you cannot decide what the application of the Article is until that has been clarified. It is simply in process.

The second point regarding the level of tariffs surrounding a customs union: the question was whether that required that he took the two tariffs involved on any two particular items, and split the difference. That is not the intention. The language of the Article is: "Provided: That the duties and other regulations of commerce imposed by any such union in respect of trade with other Member countries shall not on the whole be higher or more stringent". In other words, what is sought there, I should say, is a rough average of the level. I do not think it would yield to mathematical treatment. It is not precise treatment of the kind which we mentioned.

There were two or three comments to the effect that it takes time to complete a customs union and that some period of grace ought to be allowed for working it out. I think that is a reasonable position. It obviously is a complicated matter, and as long as the definite decision has been made to have the customs union, as long as the working out of the details is actually in process, it seems to me that there should be no rigid application of the most-favoured-nations clause in that case. There is a related question, which was raised by the Delegate of India, which is: should not there be a general exception of the most-favoured-nation clause which would permit preferences leading up to a customs union? I commented on that the other day, the comment being that I had doubts whether many regional preferential arrangements which had in view an ultimate customs union would ever get out of the transitional stage. I think the question becomes a little different when there is a definite decision to establish the customs

union. That would not be covered by our present draft, and I think it is a proper subject for consideration by the Committee.

THE CHAIRMAN: I think this is a matter which we might also refer to the Drafting Committee dealing with tariffs and procedure. The provisions are substantially machinery provisions, although they do involve, in certain cases, problems of principle which have arisen already elsewhere in discussion on tariffs and other matters. The main problems which will face the drafting committee on this matter arise from two factors.

Firstly, the complexity of the relationships which do exist between different territories and communities, particularly in a political sense. There are relationships between countries which go right through the whole possible range from complete Colonial dependence to practical independence, but with common recognition of a single sovereign, or some such arrangement. There are, indeed, others where there is an association which has no formal point of focus even to the extent of a common sovereign.

It is fairly clear that the nature of the tariff relationships between countries or neighbours related to one another in this very great variety of political relationships will not be easy to deal with in a few simple clauses.

I took it to be the feeling of the meeting that while in general in that relation the principles underlying these provisions seemed reasonable, their impact on associated countries or territories in differing political relationships would require to be fairly carefully examined to see that their results were in accordance with the intentions of the drafters.

That really is associated with the other point that, short of a customs union, there are a great variety of relationships from a purely customs point of view which may exist between two territories, and that too rigid a phrasing of these provisions may make difficult existing arrangements which are beneficial in their trade effects.

There remain a number of purely mechanical problems which I think the Delegate for the United States has dealt with adequately, and which, I think, should not present great difficulty to the Drafting Committee.

If it is your opinion that that sets out the nature of the problems, I would suggest that we refer the matter to the same Committee which is dealing with tariffs, since these matters are

very closely related to tariff forms and administration. Is that acceptable to the Committee?

(Agreed.)

That concludes our programme for this stage of the work of the Committee, with the exception of the problems associated with the protection of the balance of payments, which we have agreed to defer.

We had arranged for a meeting of this Committee tomorrow morning. I gather that it would not be possible to proceed with the questions relating to the balance of payments at such a meeting, and therefore, I think we might substitute a meeting of one of the Drafting Committees tomorrow morning, so that we do not lose the time thus saved. It seems to me that the Committee on Procedures and Tariffs has already taken over a fairly heavy burden, and that, while it proposes to meet tonight, it would also be desirable for them to continue tomorrow.

MR. McKINNON (Canada): That is a very heavy Committee. I have one suggestion to make. We continually refer to it as the Committee on Procedures and Tariffs. I think we might drop the reference to Procedure, since it has its hands pretty full with tariffs.

THE CHAIRMAN: The place of the meeting will be announced in the Journal in the morning. I presume it will meet in accordance with the suggested time for the starting of Committee No. 2, at 10.30 a.m.

If there are no other matters which Delegates wish to raise, I suggest that the meeting be adjourned until you are informed that we are ready to meet again.

MR. BRENNAN (Union of South Africa): Do I understand rightly that there is an 8 o'clock meeting this evening of the Sub-Committee, and that additionally there is a meeting of the Joint Committee of Committees Nos. 1 and 2 at 8 o'clock?

THE CHAIRMAN: It is a Drafting Committee of the Joint Committee. The meetings tonight are both meetings of Sub-Committees, a Sub-Committee of this Committee dealing with tariffs, and a Drafting Committee of the joint body dealing with industrial development.

You will be informed when the Committee will reassemble to discuss matters arising out of the protection of the balance of payments.

The meeting adjourned at 4.37 p.m.