UNITED NATIONS | *NATIONS UNIES* | RESTRICTED

ECONOMIC AND SOCIAL COUNCIL | CONSEIL ECONOMIQUE ET SOCIAL | E/PC/T/W/344
23 September 1947
ORIGINAL: ENGLISH

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

TEXT OF FINAL NOTE

Proposed by Delegation of United States of America.

It is recognized that in the General Agreement on Tariffs and Trade the contracting parties have made no commitments in respect of trade of and with the areas under military occupation. The question of the applicability of the Agreement to such areas is reserved with a view to further study at an early date.

DEUXIEME SESSION DE LA COMMISSION PREPARATOIRE DE LA CONFERENCE DU COMMERCE ET DE L'EMPLOI DE L'ORGANISATION DES NATIONS UNIES

TEXTE DE NOTE FINALE

proposé par la Délégation des Etats-Unis d'Amérique.

Il est reconnu que, dans l'Accord général sur les tarifs douaniers et le commerce, les Parties Contractantes n'ont pris aucun engagement en ce qui concerne les échanges commerciaux dans les territoires placés sous l'occupation militaire ou avec ces territoires. La question de l'application éventuelle dudit Accord à ces territoires est réservée en vue d'un examen ultérieur à une date rapprochée.

23 septembre 1947

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UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

FIFTH MEETING

of

PROCEDURES SUB-COMMITTEE

of

COMMITTEE II

held at

Church House, Westminster, S.W.1.

on

Monday, 4th November, 1946

at

3. 0. p.m.

TEMPORARY CHAIRMAN: DR H. C. COOMBS (Australia)

(Verbatim Reports of the first four meetings of this Sub-Committee were not made)

SR's of 1st 4 meetings are at end of this Vol.

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

THE TEMPORARY CHAIRMAN (Dr Coombs) (Australia): Mr Speenkinbrink is absent, or will at any rate be absent for part of this afternoon, and therefore our first task is to select a substitute Chairman while he is absent.

MR HAWKINS (USA): Mr Chairman, is there any reason why you should not continue to serve?

THE TEMPORARY CHAIRMAN: I am in the hands of the Committee in this matter. (Several Delegates indicated their wish for Dr Coombs to take the Chair). Thank you.

(It was agreed that Dr Coombs act as Chairman during the absence of Mr Speekinbrink)

THE CHAIRMAN: I have been asked to make this announcement: In case delegates have not seen a notice which appeared in the Journal on Thursday, performances of the films "Henry V" and "Brief Encounter" are being given this afternoon and on Wednesday afternoon by the courtesy of the J.R.Rank Organization Limited for members of Delegations and their staffs. Tickets can be obtained from Miss Cunynghame-Robertson, Room 511.

Now, I think that we were still discussing Article 8, paragraph 2, when we finished our last meeting, and I think we had reached the stage where it had been agreed that we could work on the existing draft of paragraph 2 of Article 8 in the United States Charter, and that it could be accepted subject to the deletion of reference to the dates there and the insertion of a phrase something to the following effect: "Elimination of any preference in the ordinary import customs duty which does not exceed a preference in force in any Member country on a date to be agreed between participating countries" - or words to that effect. I think it was suggested that the precise wording should be left for formal approval of the Committee after our newly-appointed Rapporteur had had an opportunity to examine the draft.

MR ALAMILLA (Cuba): It was arranged that both Mr Hawkins and myself would try, in the absence of the Rapporteur, to reach agreement on the wording,

and I am now in a position to report to the Committee.

THE CHAIRMAN: Have you got something to report upon that?

MR HAWKINS (USA): Yes. I think the Cuban delegate was going to have it distributed, but it does not seem to have arrived.

MR ALAMILLA (Cuba): No; I thought you were going to distribute it.

MR HAWKINS (USA): I would suggest that the Cuban delegate read from the draft which he has which is very simple.

MR ALAMILLA (Cuba): Yes. I think you will be able to follow this draft.

THE CHAIRMAN: Read it sufficiently slowly for people to write it down, and then I think that might save circulation.

MR ALAMILLA (Cuba): It reads: "The provisions of paragraph 1 of this Article shall not be construed to require the elimination of any preference in the rate of ordinary import customs duty which does not exceed the preference in force on dates to be agreed upon by the countries concerned in reference to the preferences described in the following sub-paragraphs; but such preferences shall be subject to processes of elimination pursuant to the provisions of Article 18."

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THE CHAIRMAN: Has anybody any comment to make on that draft, as far as it goes?

MR SHACKLE (United Kingdom): It is the mention of "ordinary import customs duty". In paragraph 1 the reference is to "customs duties and charges of any kind imposed on or in connection with importation". I think the wording of this in paragraph 2 should be the same as the wording in paragraph 1. If this is not done, it will mean that certain charges on importation which are not called customs duties would not automatically eliminate that negotiation. I suggest that we make the wording of paragraph 2 the same as that in paragraph 1, so that instead of "ordinary import customs duty", it would read "customs and other charges on importation".

THE CHAIRMAN: Is that all right?

MR HAWKINS (U.S.A.) That is all right.

THE CHAIRMAN: Has anybody else any comment, or can we accept that?

MR McKINNON (Canada): I think that probably it is difficult for us sometimes to keep in mind that we are drafting here an international instrument of a constitutional nature, which does not come into force, will not come into force and cannot come into force until after the tariff negotiations referred to in Article 18 have been undertaken and completed.

One of the difficulties we have been faced with from the start (and this is in no way a criticism of the American draft, but I have to refer to it by way of explanation) in devising an appropriate paragraph here was that the American original draft had in the dates of July 1st, 1939 and July 1st, 1946 -- dates which in themselves might not appear appropriate at all in a document of the type we are trying to make in this Charter. For that reason, we have been attempting a draft, and not by way of criticism of the draft read by the Cuban Delegate at all, but possibly because it is even simpler and may get away from the lack of appropriateness to which I have referred in a document of that character, in the Charter; and I would like to read it; I need not read it slowly, because it is so short: "The provisions of paragraph one of this Article shall not be construed to require the elimination of any preferences in respect of import customs duties and charges" -- and

there I meet Mr Shackle's point -- "which do not exceed the preferences remaining after the negotiations contemplated in Article 18", and then going on in the manner set forth in subparagraphs a. and b.

May I just add this, that the very excellent draft suggested by the Cuban Delegate still has reference to dates -- an oblique reference: "on dates to be agreed upon by the countries concerned". By the time the Charter is a Charter and comes into force, the tariff negotiations will have been completed and there will be an ambiguity about a phrase like that; whereas under the draft wording I have just read, it simply says: "in respect of preferences remaining after the negotiations contemplated in Article 18". I would like to submit that, not by way of a new motion, but by way of a slight amendment to the one which has just been read by the Cuban Delegate.

MR HAWKINS (U.S.A.): As I understand it, the approach is somewhat similar to the one taken by Mr Shackle in his draft, his purpose being, as I understood it, to save from extermination by the most-favoured-nation clause any preference which might remain after the negotiations had taken place; it is the same idea. I think there is a good deal to be said for it. If we look at the time-table, the negotiations will take place next year; the Charter will not come into force until 1948. When the Charter came before the international meeting, it would purport to be the same: those preferences remaining after the negotiations. I think there is a good deal in the point that this is a Charter. It may be that perhaps at this point we have got more procedure into the basic instrument than we ought to have, and off-hand I would be inclined to think that that might meet our problem.

THE CHAIRMAN: It seems to me that there are two points: one is the problem of the date, which is really a problem of procedure; and then there is the question of saving the preferences which survive negotiations. It seems to me that if we could agree on a draft substantially along the lines suggested by Mr McKinnon, and at the same time record a decision or recommendation in our functions as a sub-committee on procedure that in the negotiations the dates to which preferences to be negotiated shall refer are to be a matter to be agreed on by the countries concerned, then we would have dealt with that

question and recorded our view on it as a matter of procedure, and at the same time we would have in the Charter what is appropriate for the Charter itself.

MR ADARKAR (India): I was going to say very much the same thing. I have nothing more to add to what Mr Hawkins has said. I would only say that the Indian Delegation would prefer the formula suggested by Mr McKinnon.

THE CHAIRMAN: I think that meets the Cuban and Chilean Delegates' points quite satisfactorily, does not it?

MR VIDELA (Chile) Yes.

MR ALAMILLA (Cuba) Yes.

THE CHAIRMAN: I think we can take it that Mr McKinnon's draft is agreed, and that we do record a recommendation that the question of the dates to which preferences shall refer shall be dates to be agreed upon by the interested parties, as part of the negotiations.

MR ALAMILLA (Cuba): Just before we come to paragraph a., I just want to record the fact that Cuba has presented one amendment to delete all this last part of paragraph 2, to which we have agreed in this paragraph, but we agree that because we have been considering the possibility of putting out amendment in Article 18 instead of Article 8, merely in order to go more in the way that the Charter is drafted, because we want to save our position: in case we do not get in Article 18 what our object was in presenting this amendment, which is connected with another one, we will bring this point in reference to Article 8.

THE CHAIRMAN: I think that is quite clear: all Delegates must reserve the right to return to a matter dealt with, if, in their opinion, the way subsequent matters are decided makes it necessary. So that I think that anything we agree to is a tentative agreement subject to the whole being satisfactory.

We pass now to the question of the exceptions of the classes of preferences that will, so to speak, be given an opportunityt to survive the negotiations, and here I think the main point at issue is whether this list should be extended to cover other existing preferences as well as those listed here. Have you any comments to make on this at this stage?

SENOR DON HUMBERTO VIDELA: (Chile): Mr. Chairman, I would just point out that I understood that what we have accepted from the Canadian draft is that part which is substituted for those which do not exist at present in force, but that the rest of the paragraph was drafted in order to leave open the possibility that as we come along in the discussion some other point may be raised as to what is left as it was in our original draft, which says: "In reference to the preferences described in the following sub-paragraph". Therefore, that does not make it obligatory for us to take exactly the point of how many we are going to put. We will come to paragraph (a), discuss that, and I think that is going to take a long time; then we will come to paragraph (b); and then whoever wishes to in the course of the discussion can dissent.

THE CHAIRMAN: Yes, I understand that point. It may, of course, be possible to attain some wording which would be more general and would cover not only (a) and (b), but any other which you would wish to.

SENOR DON HUMBERTO VIDELA (Chile): Yes, we have this already in our draft; it says: "In reference to the preferences described in the following sub-paragraph"—. That is what I wanted to have over our old draft here; so that we do not have to discuss at this moment how many there are going to be.

Mr McKINNON (Canada): We discuss now paragraph (a)? In reading my draft I said I was not going on to deal with (a) and (b) below; I was merely reading the substantive headings, so to speak, of the Article.

THE CHAIRMAN: I take it the Chilean delegate's point could be embodied in your draft.

Mr HARRY HAWKINS (USA): Mr Chairman, I was about to suggest that we do have point (c) to consider, and to remind you that the Chilean delegate had a point (c) to add, and I had an amendment on it; but in view of what has just been said, I think it would be better first to consider the wording of paragraph (a). I think it is only a question of wording to describe in more appropriate terms what we were trying to describe and did not quite succeed in doing. I think we might look at the wording of paragraph (a) and get a description to cover the same ground and yet fit the particular circumstances of the British Empire, for example, a little better than our draft.

THE CHAIRMAN: There is just one matter I should like to dispose of. I understood that one of the possibilities was that preferences to be the subject of negotiation might be extended to include all existing preferences, or, alternatively, all existing operating preferences, the difference there being that in the first case you might include some preferential arrangements for which legislative authority existed but which did not operate. The second one would be general also, but would include those for which legislative authority existed but which were also operating. Now, it seems to me it becomes necessary only to list particular preferences if those two alternatives are not acceptable. We could dispose of those two first, and then it would be quite clear that we would not be adding to the list if we in effect came to the same conclusion.

Mr HARRY HAWKINS (USA): Mr Chairman, there is a point of considerabl substance. I would not favour, for example, anything as broad as an exception to cover all existing preferences, even though they are actually in force. Certainly I would not favour including preferences not in existence but only provided for. I had a formula which I was proposing as an alternative for a specific exception of the Chilean delegate which would describe the sort of preferences which were to be provided for here and made subject

of negotiation, and I will offer that at what you think is the appropriate point; but in fairness to my Chilean colleague, I think he ought to have an opportunity to put his exception first. I believe he has an exception to be included in (c).

THE CHAIRMAN: Would your description cover (a) and (b)?

Mr HARRY HAWKINS (USA): No. It would cover long-standing preferences in force and materially affecting the economies of the countries concerned; and there is a little argument I would like to make on that point at the appropriate time.

THE CHAIRMAN: In that case perhaps we had better switch back and take (a) and (b), and then go onfurther. Could we suggest what we are going to do? I suggest we take (a).

Mr SHACKLE (UK): Mr Chairman, on paragraph (a) I have a point which is really only a point of drafting: that is that the variety of constitutional situations which arise in the Commonwealth cannot be covered by the form of words which is here written into the draft Charter. I think we should need some form of schedule. I have suggested a form of schedule in a paper already distributed, which is 2/10. I think that is the kind of method which we should have to adopt, and that would be simpler.

THE CHAIRMAN: Would you suggest substituting for (a) preferences in force exclusively between the territories listed in schedule — ?

Mr SHACKLE (UK): In one of the schedules.

THE CHAIRMAN: Then would you continue: "Each Member to which this provision applies shall provide a list of such territories in respect of which preferences were in force on the dateagreed. Lists incorporated and annexed to this Charter"?

Mr SHACKLE (UK): Yes.

Mr McKINNON (Canada): Mr Chairman, when we first got Mr Shackle's suggestion in paper 2/10 to which he referred, I thought there

was probably great merit in listing individually all the countries named by Mr Shackle in that draft included in the British Commonwealth. On the other hand, if we proceed from then on to list all the other known or ascertainable preferential regimes, it seems to me we are going to run into a very lengthy list, naming individual countries or areas within certain sovereignties; and it has bothered me from the start that as far as this small Committee is concerned, we are faced with the practical reality that we just do not know. For that reason we have been attempting a re-draft of the American Charter proposal (a), and, keeping in mind the point Mr Shackle has raised of a variety of constitutional situations, we had a very minor amendment of that draft, which would make it read as follows: "(a) Preferences in force exclusively between territories comprising until July 1st, 1939, a Commonwealth of Nations or in respect of which there existed on that date common sovereignty or relations of protection or suzerainty"; and then running on as before.

Would Mr Shackle consider that that wording would meet his point and obviate the necessity of listing separate things?

MR SHACKLE (U.K.): I should hope it might, but I am not able to give you an answer here and now. It would have to be gone into first.

MR LECUYER (France)(Interpretation): Mr Chairman, I wonder whether the text of the United Kingdom delegation is consistent with the new drafting of Article 8 which we have just adopted. We have just decided that we should not mention any date, and this text is based on a date. Moreover, it is stated there that not only countries should be listed but also items of goods, and it has been said that those items would be fixed by tariff discussions. I go further than the Canadian delegate. He feared that it might be difficult to include a list of countries, but I am very much afraid it will be difficult to add a list of items of goods to this Charter.

MR SHACKLE (U.K.): On that I would say that my intention in suggesting (b) of my redraft, reference to actual items, was that the tariff agreements which might be negotiated would be scheduled, as they were concluded, to the charter, so that you would not have a special enumeration of items. As regards the point about the description of the Commonwealth of Nations, I think the whole point is whether the simple use of the words "Commonwealth of Nations" can be regarded as satisfactorily covering the case. As I said just now, I should certainly hope that it might do so - it would save a great deal of complication - but I do not think one can say here and now whether it would be entirely satisfactory for that purpose. It might very well be so.

THE CHAIRMAN: We are having the Canadian alternative draft typed out, and while we are waiting for that could we leave item(a) and pass on to consider(b)? We can come back to(a) when the revised draft has been distributed.

MR ALAMILLA (Cuba): The Cuban delegation is quite satisfied with the drafting of paragraph (b).

THE CHAIRMAN: Does anyone wish to comment on (b)?

MR VIDELA (Chile): I would like to say that, in accordance with various agreements made between Chile and other countries - for instance, with Cuba in 1937 and with United States in 1938 - we have recognised preferences. Later on I will explain how these agreements came to be negotiated. Subject to the position I made clear the other day, I am quite agreeable to accept (b).

THE CHAIRMAN: Does anybody else wish to comment on (b)? If not, I suggest we take (b) as approved and pass on to a consideration of any additional sub-clauses which countries may wish to submit. I understand that the Chilean delegate has a suggestion to put forward for an additional sub-clause.

MR VIDELA (Chile): You have before you the proposal of the Chilean delegation to amend paragraph 2 of Article 8 by having a new item, (c), which would read as follows: "Preferences in force between neighbouring countries". As I explained the other day, we have a common ancestry with certain other countries, and common interests, and traditional preferences. Many of them originated in the period when my country was fighting for more ample preference, a doctrine known as the Doctrine Bello, which was extended to all the Latin American countries. In 1897 we had a convention with Japan, where Chile reserved preference to the Latin American nations and Japan to any independent state of Asia. With Italy we had an agreement in 1898 in which we gave preference to Central and South American countries. In 1899, in our agreement with Denmark, that country reserved preference to the Scandinavian countries and Chile to Central and South America. With Norway, in 1927, the Norwegians reserved preference to Iceland, and Chile reserved preference to the Latin American countries. With Egypt in 1930 preference was reserved by them to the Sudan and by Chile to her neighbouring countries. In our

convention with Sweden in 1930 they reserved preference to Denmark and Norway, and Chile to South America. With Belgium in 1936 preference was reserved by them to their neighbouring countries. With Ecuador in 1930 preference was reserved to the neighbouring countries. Then in 1937 Cuba reserved preference to the United States and Chile to her neighbouring countries. Then in 1938, with the United States, they reserved preference to Cuba, the Panama Canal Zone, the Philippine Islands, and Chile to the neighbouring countries. With Brazil in 1943 preference was reserved by both countries to their neighbours, in an exclusive form. In the convention with Canada in, I think, 1941 - I have not the date here - preference was reserved by them to the British Empire and by Chile to the Argentine, Bolivia and Peru. In the convention just signed with France, on the 10th September 1946, she reserves preference to her colonies, protectorates and territories, and Chile to her neighbouring countries.

We have now under consideration a draft agreement with the United States, more or less on the same terms as those to which I have already referred. I mentioned also the other day the General Convention at the Pan-American Conference at Montevideo in 1933. I would like also to inform you that in our convention with Peru in 1941 the preference is exclusive. I have a text here in Spanish, so what I read out now will be a translation of it.

"The compensation of concessions which Chile and Peru are giving by the present agreement with the object of encouraging and intensifying trade between both countries exclude concessions concerned with the general clause on most-favoured-nation treatment that one or other country may agree upon with other nations." As an example we might quote the agreement between France and Chile of the 10th September in which is incorporated the following clause: "The agreement formulated in the present convention," after referring to the most-favoured-nation clause, "shall have the following exceptions: (a) Advantages agreed on at present are those which Chile might agree afterwards with bordering nations; (b) the advantages that might arise from the Customs Union already established , or which may be established in the future, by one of the parties; (c) the advantages accorded, or which may be accorded, with the colonies, protectorates or mandated territories of the French Union; (d) the advantages agreed, or which may be agreed upon, by one or two signing parties to facilitate traffic with bordering nations within a zone which is not to exceed fifteen kilometers." on either side of the border." Here you can see, Mr Chairman, are included all permanent and temporary preferences. I do not think it is necessary to read the general convention of Montevideo, but if it is necessary I have a translation here which I could hand to you. Therefore, having read out this list to you, I think you will be able to see, Sir, that it is not a question of one or two conventions. We have sixteen conventions in force. I ask you to consider all the remarks I have made on these points and to accept the Chilean proposal.

MR HAWKINS (USA): I should like to say that I do not now oppose the amendment proposed by the Chilean delegate. There are, however, a number of considerations which I would like to put before the Committee, to see what the reaction is in connection with the proposed amendment. In the first place, it is necessary to consider the nature of the preferences provided for in paragraphs A and B. They have certain characteristics: they are of long-standing and they have affected in an important degree

the economies of the countries concerned. Now, in an ideal world it would be desirable, with one stroke of the pen, to abolish all preferences, but in a practical world that cannot be done where you have preferences of the kind described in paragraphs A and B, namely long-standing, well grouped, and affecting to a very material degree the economies of the countries concerned. Consequently, it has been accepted for purposes of negotiation, in the process of which those countries whose economies would be seriously disturbed if they were abolished unilaterally, can get compensation, or, in the long run perhaps more than compensation in the form of reduced tariffs and the giving up of frontier restrictions with other countries. Now, that being our aim at least, I begin to get a little nervous every time a suggestion is made for additions, because if we added all preferences that might be thought of you might get a very long list and perpetuate a good many preferences which would not have the effect provided for in paragraphs A and B. The alternative to the Chilean delegate's exceptions which I outlined in the full Committee would be something of this sort (this would be paragraph C): "Preferences of long standing in force and affecting in important degree the economies of the countries concerned, those preferences, however, to be specified." Now that calls for just one or two remarks on the nature of what we are doing, as I understand it. The report of the Preparatory Committee will be a general report with instructions to a drafting committee and an annexed draft which would merely be put in to assist the drafting committee. If an exception such as I have just proposed were put in now and referred to a drafting committee later on, and after it had then examined any preferences which would fit that general description, I think then you would have a better chance of getting exceptions similar to those included in paragraphs A and B. Now, as I said at the outset, I do not oppose the Chilean exceptionas phrased, but before it is adopted I would like the Committee to consider the points I have just put forward and see how it feels about them. If the Committee thinks the exception as phrased by the Chilean delegate is satisfactory, having taken account of the considerations I have mentioned, then it is acceptable to me.

THE CHAIRMAN: You have two alternatives in front of you: the first, submitted by the Chilean Delegate, reads as follows:

"c. Preferences in force between the neighbouring countries".

The alternative submitted by the United States Delegate reads as follows:

"c. Preferences of long standing in force and affecting in considerable degree the economics of the countries concerned".

The United States Delegate has drawn attention to the fact that if his alternative is adopted, it differs in a significant way from the Chilean Delegate's proposal, briefly, in that the ones which would be covered by the Chilean Delegate's proposal would be determined as a matter of fact, whereas in the United States proposal it would be a matter of judgment and it would therefore be necessary to have submissions made and examined by some appropriate authority, presumably. Are there any comments on these two alternatives?

MR VIDELA (Chile): I am glad to offer to the Sub-Committee all my help in order to arrive at a satisfactory conclusion. On the other hand, I would like to answer the United States Delegate. It is a question of opinion, but I would like to point out very strongly that in this matter I should like to see discussion on the same level. I think a sovereign State has its own right to consider whether it is important or not, and I do not see why we should make a reservation or a condition to the preferences asked by my Government if that condition does not apply to the other preferences. Therefore, if there is anything conditional, I shall leave it until the last moment when we have arrived at the approval of the list of preferences, when we may say what we like. That is one point.

Another point concerns the amendment suggested by the United States Delegate, in which he mentioned the phrase "long standing". I do not know whether that will cover the position of Chile, because the preferences accorded between Chile and Peru were signed on the 10th October, 1941. If we say "long standing", I do not think that will refer to the convention already in force with Peru. That is the reason why I prefer the wording of the Chilean suggestion -- because it is in force. I will back my argument with a very serious matter: as France on the 10th September last has negotiated and put

on the same level the preferences accorded to the territories and colonies under her Mandate, and the Chilean preferences have been accorded to the neighbouring countries, why are we not here accepting the fact? Why are we here putting conditions, or leaving it to another body to consider whether they are interested or important? I think we must agree that the Chilean Government has the right to negotiate preferences, and this has already been done, not only with France, but with other countries. For instance, I have just said that we are negotiating now with the United States a preference, and we had a convention in 1938. It is not a question of giving anything to Chile; it is a question of negotiating with Chile. I will repeat the words I used the other day: "We are willing to accept the preferences in a. and b., provided they accept our preferences" -- nothing less and nothing more.

MR McKINNON (Canada): If we were to take the amendment to the clause such as the Chilean Delegate suggests, as 3, would not it permit (I have forgotten the exact wording of it) any two bordering countries in the world, between now and the date of the negotiations, to institute a preferential regime between them, and in so doing, to do this in any way in which they care to achieve that end?

MR ALAMILLA (Cuba): I can see perfectly well the position taken by the Canadian Delegate, because I believe that if we put this clause just as the Chilean Delegate has proposed it, it will leave it open to make some other arrangements in the future. From the list of these conventions which the Chilean Delegate has named, I gather that the last of these preferential treatments between neighbouring countries was signed on October 10th, 1941, and that all the other treatments to which he has referred (those with the United States and with all the other countries) are only recognising the existence of these preferences that are in this contract or document signed on October 10th, 1941. If the proposal of the Chilean Delegation did not exist, I would like to accept the proposition of the United States, because I believe that ours is of long-standing and is absolutely fundamental for the existence of Cuba from the commercial point of view of the Republic.

But I would try to meet in the middle the difficulty in order to save the position of the Chilean delegate, if the Committee will accept it, just by saying: "preferential treatment between neighbouring countries signed before October 31st, 1941", which would at least put a stop to the future ones; and then I would also propose that they should be subject to the condition that they affect to an important degree the economy of the contracting countries, as I do not doubt that this one affects really the economy of Chile in a fundamental way. If not, they would not be discussing and fighting for them as they are in this Committee. I would like to read it just as I have it drafted here: "Preference treatment between neighbouring countries signed before October 31st, 1941, and which would affect in important degree the economy of the contracting countries".

SENOR DON HUMBERTO VIDELA (Chile): Mr Chairman, I do not want to go on with this discussion; I would like to finish it, because, after all, it is not the most important thing here; but I am agreeable and I very much thank my colleague the Cuban delegate for his suggestion; but I want to explain that when we drafted this proposal we put in the words "in force" because we assumed that we are here making a general principle applying to different countries. Therefore I could not put here the date of the last convention. That date would not apply to other countries. I suppose the letter (a) is applying to France, Poland and different countries as well as Great Britain, and this is the main reason why I only put in "in force"; but I am quite accepting the suggestion of the Cuban delegate in connection with the date of the last convention we have signed on that matter. The other point I wanted to discuss is the last paragraph suggested by the Cuban delegate. As I said before, I think we ought to be on the same level as the other preferences, and I should not agree to add those words "on condition", unless this condition would be put covering the three, four or five

preferences we have agreed here. I think that is quite clear. Mr Chairman, perhaps it will clear the matter if we change the wording and say: "Chile and neighbouring countries" instead of referring to general principle. Then we can put the last date of our convention. But it is for the Committee to make the alteration. I could not offer that alternative, because I think it is a question of principle we are here studying; but it is up to you, Sir, to decide whether this will apply only to Chile, and then make the alteration and say "Chile and neighbouring countries", the convention signed on the 31st October, 1941.

THE CHAIRMAN: Gentlemen, it seems to me that there are two alternatives. I understand from what Mr Hawkins said (I hope I am interpreting correctly) that he was prepared so far as the particular preferences to which the Chilean delegate is referring, to regard them as being subject to negotiation. At the same time he felt that it was perhaps undesirable to have an additional exception, (c), which opened the door very widely to possibly other preferences about which we are not aware at the moment but which may not in fact be of the same kind as the ones covered by (a) and (b) and the Chilean preferences. That I understood to be his main objection to a phraseology as broad as is suggested by the Chilean draft itself. At the same time, I do feel that as far as the preferences in which the Chilean delegate is particularly interested, there is a good deal in his contention that conditions which are going to be applied to them should be quite reasonably appliedto others covered by (a) and (b). I feel there is a good deal in that. It seems to me we might do one or two things: either accept Mr Hawkins' suggestion with the understanding that the Chilean preferences referred to by the Chilean delegate would be taken to conform to those requirements in the same way as the ones in (a) and (b) are taken to conform. That would, however, leave it possible for some examination to be made of future submissions which might be made on this by other

countries. Alternatively, if we do not think the danger of other producing countries/hitherto unheard-of preferences to be a very serious one, it seems to me we could without much difficulty accept the Chilean draft with perhaps the inclusion of a date after the words "inforce" — in force at some date. I do not myself like the suggestion that we take the date of the last Chilean convention, because there may be others which could properly be included; but I think it is necessary to avoid the danger to which Mr McKinnon has referred of new preferential arrangements being made. So that I think a suitable change would be to say: preferences in force in June 1936, or some date which is past but not very far past. What do you feel about it, Mr Hawkins? Do you feel that the dangers of other preferential arrangements being brought in under (c) is a sufficiently serious one to adhere to your clause, or would you think that —

Mr HARRY HAWKINS (USA): Mr Chairman, I would accept the Cuban delegation's solution, or, if the one I offered were taken, the Chilean delegate could easily protect his position by making his assent subject to the reservation that the Chilean preferences are included. Either one I think would take care of it. The Cuban delegation's proposal seems to me to be all right.

THE CHAIRMAN: Unless you have the same reservation, it is subject to the criticism which the Chilean delegation made that it appears to subject certain preferences to the standard whilst others are apparently exempt from the standard, although, as Mr Hawkins has pointed out, his standard is derived from the preferences existing under (a) and (b); but there is an apparent formal differentiation which I can understand is not necessarily very acceptable.

MR ADARKAR (India): Mr Chairman, when we are almost in sight of the solution of the problem raised by the Chilean delegate, may I briefly state the position of the Indian delegation in regard to preferences between neighbouring countries in order to see whether such preferences could be in some way recognised in the particular exception we are now considering, or whether a separate exception will have to be provided for the purpose. The formula suggested by Mr Hawkins, namely, preferences between neighbouring countries which are of long standing and affect to an important degree the economies of the countries concerned, would certainly take care of the sort of preferences which exist between India and Burma, but the Indian delegation feels that an important question of principle is involved. These preferences would certainly be saved by the adoption of this particular formula, but this is subject to the process of elimination which is contemplated in Article 18. It seems to me utterly unrealistic to assume that preferences which exist between countries like India and Burma could ever be eliminated. These preferences rest on certain permanent geographic and economic considerations. Burma, as I said on Saturday, was part of India until 1937, and the preferences exchanged between the two countries have their origin in long standing economic and historical considerations. These preferences may be subject to negotiation, but it should be recognised that they will form a more or less permanent feature of the import tariffs of the two countries. That is one difficulty. The other difficulty is that, although so far as the neighbouring countries are concerned India is at present giving preferences only to Burma and Ceylon and other countries within the Commonwealth, it is quite conceivable that in future India may have to give preferences to certain other neighbouring countries. There

are certain small countries on the frontiers of India, and these countries may like to industrialise themselves. It is quite possible for India to absorb the whole of the output of the industries located in those countries. Any preferences given by India to those countries will therefore be completely effective in the sense that they will accord very powerful protection to the industries located in those small territories. India is a natural market for those countries and India is also very sympathetic to their industrial aspirations. Such preferences should be allowed to come into existence in future and should be recognised as more or less permanent exceptions to the most favoured nation clause. There are two ways of looking at this problem. Supposing we amend this exception (c) to read, "Preferences accorded by a member country to neighbouring countries", it would take account of future preferences; it would also make such preferences subject to negotiation. On the other hand, a further amendment will also be necessary, namely, to describe the process contemplated in Article 18 as not one of eliminatb of preferences but reduction or elimination. These two amendments will have the effect of permitting preferences between neighbouring countries to come into existence in future, making such preferences subject to negotiation, and thirdly recognising the fact that such preferences need not be eventually eliminated altogether.

There is another way of tackling this problem, namely, to make an amendment in Article 33, "Territorial Application, Customs Unions and Frontier Traffic", by providing here in paragraph 2 of Article 33 that the provisions of Chapter IV shall not be construed to prevent the granting of preferences in respect of import duties or charges by any member country to neighbouring countries. An amendment of this kind would be quite acceptable to the Indian delegation because it would save the preferences of the sort which I mentioned. It would

permit new preferences of the same sort to come into existence. But it has one serious disadvantage, namely, that it will put those preferences beyond the scope of negotiation. It seems a pity that for a mere drafting convenience we should place these preferences outside the scope of negotiation. The point of the Indian delegation is that these preferences should be recognised, that it is unrealistic to propose their eventual elimination, because that ignores the fundamental geographical and economic factors on which they depend; but, while recognising them, they should also be subject to negotiation. When they affect the interests of other countries there should be consultation and bargaining, and, if elimination is possible, elimination. That is all I wish to do at this stage - to put forward those two alternatives.

THE CHAIRMAN: I would like to suggest to the delegate for India that we leave the question of new and permanent preferential arrangements. I feel it would confuse the issue here. It is a matter of considerable importance in principle, and I think it would be wiser to deal with it in that way rather than in an Article which is designed for a different purpose.

MR ADARKAR (India): Mr Chairman, do I understand that the point raised by the Indian delegation would be discussed later in connection with Article 8 or in connection with some other Article?

THE CHAIRMAN: I think myself that it needs to be discussed in connection with Article 8, or possibly (I am not quite sure about this) the question could be taken with Article 33, which deals at present only with Customs Unions.

MR ADARKAR (India): Article 33, paragraph 2, deals with points which are outside the scope of negotiations altogether. If of course it is the desire of the Committee that preferences of that sort should be outside the scope of negotiations

altogether it would suit the Indian delegation very well, but I think it would not take account of the wider considerations.

THE CHAIRMAN: I do not think it would be impossible to deal with it in a way that would make it subject to negotiation. I feel it would confuse the issue here at the moment when we have to deal with a particular problem.

MR ADARKAR (India): If it is desired by the Committee that it should not be discussed in connection with Article 8, or if that is the eventual decision of the Committee, then I suggest that the point raised by me should at least be mentioned in the report of the sub-committee in order to ensure that that will be considered by the Committee dealing with Article 33.

THE CHAIRMAN: I quite definitely think it is a matter for this sub-committee to deal with.

MR SHACKLE (UK): Mr Chairman, I have one suggestion to make in reference to what the Indian delegate has just said. It seems to me that as regards preferences between India and Burma th[illegible] would be taken into account, would they not, by the suggestion already made by the Canadian delegate, which I think we have more or less already adopted. That, it seems to me, then leaves us with the question of the possible need to have preferential arrangements with some of the small States bordering upon India, and I am wondering whether, when it is desirable to meet a case of that kind, it is wise to put in something which would open up such a very wide scope of exception. Already we have I think in Article 55 (2) a provision by which the Organization can waive certain obligations of members. Now, is it not possible when the time comes that a case could quite well be [illegible]e out for the desirability of having some of these local preferences such as the Indian delegate has mentioned under that Article? I should have thought it would be very much preferable if one could deal with it in that sort of way rather than put it in some very widely phrased exception which might lead us into unforeseeable consequences.

THE CHAIRMAN: Could we leave that question on one side and clear up this other point, because I think we may have it clear? Now I have a suggestion

to make. I understand that there are two things that are worrying the Chilean delegate: One is the possibility that the preferences at present in force between Chile and certain neighbouring countries might not be included in the list; and, secondly, the fact, or the possibility, that one of the drafts at any rate appears to subject the preferences of his country to an examination by standards which have not been applied to other countries. At the same time, Mr Hawkins felt it necessary that those standards should in fact be applied, although we may recognize that certain existing preferences conform to them, but that the standard should be stated in order that subsequent applications for exceptions under this clause could be examined in accordance with those standards. Now it seems to me that we can agree on phraseology which will meet both requirements if we amend the draft Article in this way. Taking the Canadian draft proposal there would be no change down to the second last line of the first paragraph; then from "and" it would read, "and which affect in a considerable degree the economies of the countries concerned, including those falling within the description set forth in paragraphs (a), (b) and (c) below." Then we have (a) as it stands and (b) as it stands; and (c) would read: "Preferences in force exclusively between Chile and neighbouring countries." Is it only between Chile and Peru?

MR VIDELA (Chile): Argentina, 1933 and Peru, 1941.

MR HAWKINS (USA): I am still in doubt about this. How would you deal with the other questions that are brought forward? I take it that there would be a process by which there would be an examination of the preferences actually granted and their economic facts, and that in the light of that examination the preferences would be admitted or not. I think I would prefer to have the first part; the change in the first paragraph takes care of one point, but I would like to see (c) read: "Preferences in force on the 1st July 1946 between neighbouring countries." Now I think the Chilean case could easily be taken care of from the Chilean delegate's point of view. He knows what the preferential

system there is - I do not know and I do not think others do; but if his acceptance of (c) could be conditioned on his knowledge of those preferences, and Chile could come within that category, it seems to me it protects his position fully.

MR VIDELA (Chile): I accept either your proposal, Sir, or the American proposal, because both cover our wishes.

THE CHAIRMAN: In that case, I think we will accept the United States alternative, which includes incorporation of the qualification in the main part of the paragraph and leaves (c) reading: "Preferences in force at the 30th June 1946 between neighbouring countries."

MR VIDELA (Chile): Could we have this typed?

MR McKINNON (Canada): Mr Chairman, before we take that, the insertion of a second conjunctive clause there may make very desirable some consequential amendments in the form of the third paragraph, and I am wondering - I am not attempting to redraft it - whether we could have something like this: "In respect of those preferences which fall within the description set forth in (a), (b) or (c) below the provisions of paragraph (1) of this Article shall not be construed," and so on, otherwise you are going to have two conjunctive clauses modifying the word "preferences" and adding greatly to the confusion of the sentence.

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THE CHAIRMAN: Let me read it. I think perhaps we had better have it typed. At present it would read as follows: "The provisions of paragraph 1 of this Article shall not be construed to require the elimination of any preferences in respect of import customs duties and charges which do not exceed the preferences remaining after the negotiations contemplated, which shall affect in considerable degree the economies of the countries concerned and which fall within the description set forth in a., b., and c. below". I think this requires pretty careful examination, and I would suggest that we defer it once more and have it typed.

While we are waiting, we could deal with this question which the Indian Delegate has raised. Briefly, I understand his point to be that apart from existing preferential arrangements which it is proposed should be eliminated by a process of negotiation, there should be provision for the establishment of new preferences which include, presumably, the continuation possibly of some of the existing preferences where they conform to certain standards -- to certain requirements. As he mentioned and emphasized, there is the geographical proximity and close economic dependence; they have, I think, been the two main factors. I think we can discuss the thing in general before we decide where is the appropriate place to deal with it. I think the United Kingdom argued that there was in one of the general escape clauses, Article 55, subparagraph 2, provision for the Organisation waiving certain obligations of Members, and this could be used to permit the establishment of preferential arrangements otherwise precluded. Would you like to add anything to what you have said so far?

MR ADARKAR (India): So far as the first point raised by the United Kingdom Delegate is concerned, namely that the preferences in force between India and Burma are covered by the opening portion of the revised draft of paragraph 2, I feel, Sir, that that would be so only on the assumption that such preferences may not be subject to eventual elimination, but that assumption, I believe, would be contrary to the principle underlying this particular paragraph. As regards the second point, namely, that the need for such preferences is felt, the countries concerned could approach the Organisation and ask for their

obligations to be waived in view of their particular circumstances, I feel that that procedure would not take account of the very strong views expressed on the point of view of principle by not merely India but other smaller countries, such as, for instance, Lebanon, which are not represented here. Since a point of principle is involved, it should be settled.

MR HAWKINS (U.S.A.): I should be very much opposed to the idea of putting in a new permanent regional exception. We start out with the idea of getting rid of preferences. Certain long-established important preferential systems are involved. Their effect under this scheme is put on the block with a view to having them eliminated. It seems to me wholly inconsistent to that objective to permit new preferences to an unlimited extent by every country in the world. I think that if we keep on watering down the most-favoured-nation clause, we might do better. I agree fully with the view expressed by the United Kingdom Delegate. It seems to me that it is just conceivable that there may be cases where conditions are peculiar, and where there would be justification for some sort of preferential arrangements. If so, the countries concerned could bring up the matter before the Organisation under paragraph 55.2. and have it examined, if there is a case, if there is something special and peculiar in the situation, which could be authorised.

MR ADARKAR (India): Mr Chairman, may I suggest an amendment to what I have proposed? I quite see the point raised by the United States Delegate and also by the United Kingdom Delegate, that if we describe these preferences as preferences between neighbouring countries, that might allow an undue scope for all sorts of preferences to come into existence between neighbouring countries. Would it be acceptable to the Committee if we say: "Preferences necessary to foster the economic development of small countries", or "countries with a small home market"?

I move this amendment, Sir, without any commitment on the part of the Indian delegation.

Mr HARRY HAWKINS (USA): Mr Chairman, my general objection is to any form of new preferences. I can see the point of view of the delegate of India when he makes the tentative suggestion for limiting it to small markets, but I should like to urge this point of view, that what we are trying to do is to make a big one for everyone, to make a world market and not to have it partitioned off as it has been in the past. It is our sincere view that the interests of all countries will be served if that is done. Now, as I said before, I think there may be special cases. If so, they should be examined as such, and the machinery is provided for examining them. If there is a real case there, I think you can assume that the Organisation will give its sanction to it. Each case ought to be examined on its merits.

Mr ADARKAR (India): Mr Chairman, can I have a word.

Mr McKINNON (Canada): Without attempting to pre-judge in the slightest degree the merits of the particular case which the delegate for India has in mind, I feel that we are bound to support very strongly the views expressed by Mr Hawkins. As far as my own country is concerned, one of the most difficult features we shall have in attempting to reach agreement on everything embodied in a Charter arises out of the disposition of the preferences; and at the time when we are consenting to put those preferences, to use Mr Hawkins' phrase, en bloc or in the pot with a view to having them reduced or eliminated, we should certainly find it very difficult to go back with an amendment to the same Charter providing for the establishment of new preferences on different bases in different parts of the world. I would like to repeat that that is not in any way attempting to assess the merits of the case presented so ably by the Indian delegate; but, just as a matter of substance and principle, we should find it very difficult indeed to agree to amendments to

the Charter which would allow the creation of new preferences.

THE CHAIRMAN: Just before going on I would like to remind delegates that in the general discussion on this section of the draft Charter in full Committee, as the Indian delegate has already pointed out, the desirability of the way being open in certain circumstances to the establishment of new regional preferential areas was made by the delegate for Lebanon. Furthermore, you will recall also that the delegate for the Netherlands drew attention to the possible problems associated with the changing political structure of the Dutch Empire; that negotiations were in progress between the Central Dutch Government and the representatives of the local inhabitants in Indonnesia which would possibly lead to a change in the natureof their political relationship, and that that may involve some change in their possible tariff relationship. Furthermore, there was a related fact that the customs union between the Netherlands and Belgium would presumably entail some future preferential treatment of the Netherlands East Indies by Belgium. These are points with which I personally am not very familiar, but I felt it was desirable that the attention of the Committee should be drawn to it.

Mr SHACKLE (UK): Mr Chairman, there have been mentioned to us a large number of possible exceptional cases which are so various and we do not know all the facts about them. This seems to suggest that the wise course is to leave them to be examined in future on some occasion when the merits and circumstances can be fully gone into, rather than to attempt now to cover them in some form of words which I think in the nature of the case would have to be very wide. That does seem to me to point to the desirabili t; of attempting to deal with them if not under Article 55 (2), at any rate, under some procedure which would ensure that all their facts and circumstances shall be carefully gone into before a

decision is reached, and in that way we may hope to avoid making large departures from the underlying principles of the whole scheme of this draft Charter.

Mr ADARKAR (India): Mr Chairman, it is quite true that the circumstances justifying new preferences may be many and varied; and in so far as that is so, they will require consideration at a later stage; but the fact has to be faced that one of those special circumstances has already been mentioned and stressed to the Committee and the Committee has been requested to take that into consideration, the special circumstance being that certain countries have a small home market and find that preferences with their neighbouring territories will assist their economic development. The only differemcebetween the point of view of the Indian delegation and that of the United States and the United Kingdom and the Canadian delegations is thatwhile the Indian delegation would like this special circumstances which has already been stressed for smaller countries to be taken into account now, these other delegations would like that to be considered later. If the Committee decides that this shall be considered later, in spite of the fact that it has been mentioned now, there is a danger, Sir, I feel of the smaller countries feeling that their point of view did not receive adequate consideration at the hands of the Committee.

THE CHAIRMAN: Well, Gentlemen, I would like to switch back to the previous subject matter, but just before I do, it might help if I mention this matter so that people may be turning it over in their minds. I think the essential difference between the United Kingdom-United States point of view and the Indian is not so much the fact that the types of cases would be varied and difficult to cover in a general rule, but rather that each one did require to be examined individual y, that whether it was justified or not would not be merely a matter of whether it came under a certain

classification, but whether on balance its effects would be advantageous or harmful, and that that is not the sort of thing which it is easy to cover in a clause of a Charter, but which could only be judged by individual examination. I am not quite sure whether I have interpreted the United States-United Kingdom point of view properly, but if that is a reasonable interpretation, it seems to me there are two ways inwhich it could be met, possibly with satisfaction to the Indian point of view - at least, one of them. I gather that the United Kingdom view is that there does exist in Article 55 (2) the possibility of exceptional cases being examined without any reference to the exceptional cases actually being made in the rules of the Charter, and that may well be correct. Of course, it does not meet the point made by the Indian delegate that it is no open recognition of the claim which certain of the smaller countries have made. An alternative might be, while reserving the same type of procedure, to make specific reference to this possibility, perhaps by the inclusion of a clause somewhat along these lines: "The Members recognise that there may in exceptional circumstances" — that is the phrase used in Article 55 (2) — "be justification for new preferential arrangements. The Organisation should, therefore, be empowered to approve their establishment where the Organisation is satisfied that they are in the interests of the inhabitants of the countries concerned and will not prove restrictive of international trade". That does not describe what they will be, but sets out a procedure whereby a country could apply for their establishment, and indicates certain possible criteria - very broad criteria - by which the Organisation could assist them. We might have that typed out.

THE CHAIRMAN: Shall we switch back to consideration of Article 8(2)? How do you feel about this?

MR HAWKINS (USA): I think the idea is all right but I am a little concerned about the way it is drafted. The Canadian proposal is that the provision in the Charter takes care of preferences remaining after negotiation, but if you read the words "which affects to a considerable degree the economies of the countries concerned" in that context I wonder if it fits.

MR McKINNON (Canada): It qualifies it.

MR HAWKINS: Yes, it qualifies it. In other words, it might be read as meaning that those who remain can only be ----

MR SHACKLE (U.K.): Might it not possibly be an advantage in the first place to omit the words "affecting the economies of the countries concerned" and then to change (c) again so as to specify the particular preferences of the Chilian delegate? In that way it seems to me we shall avoid the necessity for an examination as to whether particular preferences do affect to a considerable degree the economies of the countries concerned; and, in the second place, we should not appear to give any kind of sanction to the general proposition that there would be a power to set up new preferences between countries merely because they are contiguous. Even with a date attached it looks rather arbitrary and rather suggests that there is some kind of cloak of sanction thrown over the idea of exceptions to the most favoured nation clause merely because two countries happen to be contiguous. I should have thought that was a dangerous principle, to seem to sanction any particular one, and I am wondering whether by deleting the words "which affects to a considerable degree the economies of the countries concerned" and having a specific mention in (c) of the Chilean preferences we might not gain considerably.

MR HAWKINS (USA): I should be prepared to abandon that clause which I proposed, in the interests of getting on with this. My feeling on it is this. I do not believe that you find many preferences in force. There are a lot of them provided for but I do not believe you find many of them in force, and it may be, therefore, that we are magnifying the problem to some extent. I should be prepared tentatively, then, to strike out from the first paragraph the words "which affects to a considerable degree the economies of the countries concerned" and leave the rest of it as it is. The effect of it would be that (c) would cover any preference in force at the time mentioned between neighbouring countries and make it subject to negotiation. I say "tentatively", as that will give members here an opportunity to consult their staffs and people who might know what the effectual situation is as regards regional preferences which actually are in force.

THE CHAIRMAN. I presume that is satisfactory to the Chilean delegate, since it is his own phrasing.

MR VIDELA (Chile): I was only going to say that when the United States delegate made his proposal I felt that we should be on the same level as other people in regard to preferences, but after what he has just said I realise that that may not be the best thing, and I am very willing to agree to his proposal.

THE CHAIRMAN: Is there any further comment on this, or may I take it as agreed? ... Then I take it as agreed.

DR SPEEKENBRINK (Netherlands): Now that we have finished this point I would like to draw your attention to what I think is a special case. We had certain preferences granted in respect of the Belgian Congo. They are not very important, but for political reasons it is important that they should be dealt with.

THE CHAIRMAN: I think it would be a matter for the Committee to decide, but it does seem to me it would be an unusual type of case which might be covered by the general exception clause which we were discussing just at the time you came in, either under 55(2) or under a corresponding clause relating to preferential arrangements in exceptional circumstances.

DR SPEEKENBRINK (Netherlands): The Congo preference is one of very long standing.

THE CHAIRMAN: What is the view of the Committee on this question? Should we cover this case specifically by an additional category under Article 8(2) or would it be of the kind which we would expect to be dealt with under an exceptional circumstances clause?

MR HAWKINS (USA): There must be quite a few of these cases which require special treatment. I would suggest it should be dealt with under a general clause of the Charter. Meantime, it will almost automatically be dealt with in the preliminary negotiations which were mentioned.

MR ADARKAR (India): Mr Chairman, I am afraid that I am not in a position to state the point of view of the Indian delegation on the particular amendment which is suggested, but, relying on my own judgment, I think that it should meet the requirements of small countries very well indeed, namely, the amendment with a general clause to the effect that members recognize that there may be, in exceptional circumstances, justification for new preferences.

THE CHAIRMAN: Can you comment on this in advance of the document?

MR HAWKINS (USA): I would like to have a chance to study it before, but off-hand I am inclined to think that it is getting close to what is needed.

MR McKINNON (Canada): Is it the assumption that it would be dealt with under Article 55 (3) or would it be a new clause in the Charter?

THE CHAIRMAN: The suggestion was that that should be referred to somewhere in the Charter; precisely where I think is a matter we might leave to our Rapporteur.

MR SPEEKINBRINK (Netherlands): I accept that proposal.

MR MLAMILLA (Cuba): Mr Chairman, when we started this discussion I thought that the heading of the first ten lines of paragraph 2 was agreed upon as it was agreed the other day, and that we were now only dealing with sub-paragraphs (a), (b) and (c), whatever they were. Now I can see that we are working on the draft of the Canadian proposal which is different from the thing that we were working on the other day, and in my opinion might change some of the ideas we have in accordance with the previous drafting of the first part of paragraph 2. Therefore, if it is the feeling of the Committee that we are approving now at least this part of paragraph 2 as it is in this Canadian proposal, I have to reserve the right of the Cuban delegation to study these first ten lines which may affect our position in regard to certain exceptions, certain modifications and certain amendments that we have already proposed taking into consideration the American draft.

THE CHAIRMAN: I thought the intention of the first six or eight lines of

this was identical with your own draft.

MR ALAMILLA (Cuba): No, they are not at all. There is a great difference in them - or at least I think there are some differences - in drafting and maybe in intention.

THE CHAIRMAN: There are obvious differences in drafting, but I understood the Canadian proposal merely to be the simpler way of expressing the fact that the date to which the rates of duty would be subject to negotiations was a matter for agreement between the countries concerned, not to be any specific date.

MR ALAMILLA (Cuba): Yes; I thought that that was the only object, to change that part of the draft which dealt with the dates. For example, at the end of the paragraph in the American Charter it states that these exceptions are going to have a process of elimination, which in my opinion, it might be - and I have not a perfect understanding of the English language - have a very different meaning from these words here, where the phrase used reads, "not exceed the preferences remaining after the preferences contemplated in Article 18."

MR McKINNON (Canada): I am not sure that +I get the point of the Cuban delegate's remarks. It seems to me that when we met this afternoon we had before us the original draft Charter; we had the proposed substitution by the United Kingdom delegate; and after they had been both discussed for some little time I moved a second alternative which was discussed for an hour, and I think I understood at the time that it appealed to the Cuban delegate. It seemed to gain general acceptance, and I thought that he in particular thought that it was a simpler method of expressing the same problem. Now we have been discussing for a couple of days that there should be a complete elimination of these references to dates which might appear inappropriate in an instrument of this kind, an instrument that will only be signed and come into force after the tariff negotiations have all been concluded. I am not at all clear as to the point he is raising now.

MR ALAMILLA (Cuba): Well, the point is just this. We have been contemplating

before the process or processes of elimination, and to that we have agreed, because we think that the process of elimination may have several stages - it may be one thing in one case and another thing in another. Now here they make a special reference to negotiations contemplated in Article 18; but I would prefer to leave it as it is in the present American text, that in general they would be subject to the process of elimination contemplated in Article 18.

MR McKINNON (Canada): It seems to me that the Cuban delegate's remarks must hang entirely upon the word "elimination."

THE CHAIRMAN: It does seem to me that there is something in this point.

MR ALAMILLA (Cuba): The word "process."

MR McKINNON (Ca... "Elimination" in the Canadian draft was lifted from the American draft and from Mr Shackle's draft. There has been no change in the sense as regards the meaning or connotation of the word "elimination."

MR ALAMILLA (Cuba): It is the word "process" that I would like to have, not the word "elimination."

THE CHAIRMAN: I feel that the Cuban delegate has put his finger on a real drafting weakness here. As I see it, the negotiations contemplated in Article 18 meant to the Canadians when they drafted this the negotiations which would be complete in June next. That is one possible meaning. The other is that these negotiations referred to are a whole series of negotiations ending ultimately in the elimination of preferences. If you take the first alternative meaning, then this phrasing would appear to preserve the preferences which survived the first negotiationsfromfurther reductions; but I know that it was not the intention, although I think that is one possible meaning. On the other hand, if the negotiations contemplated in Article 18 here refer to the whole series of negotiations, then apparently the preferences are not protected until they have been completely eliminated.

It does seem to me that it is unsatisfactory. I am not quite sure what the answer is. I suggest we might leave it for our Rapporteur to work out in consultation with the Delegates concerned. I think it would be wise to leave that point, and perhaps if Mr McKinnon and the Delegate for Cuba would stay behind for a minute afterwards with the Rapporteur, they might sort it out.

MR McKINNON (Canada): Would it meet the point of the Cuban Delegate if it said: "after the processes of the negotiation contained in Article 18"? We thought of Article 18 as a possible series of negotiations.

MR ALAMILLA (Cuba): This is a very important point for Cuba, and I cannot take the responsibility of deciding it at this afternoon's meeting, as to what the wording should be. We have been working for months on this previous draft and we knew exactly what it meant and exactly how much we could go. This is a new draft and I must study it, and I must see all the Counsellors and I shall be willing to do it tomorrow, after consulting my Delegation tonight. But I cannot do it now.

THE CHAIRMAN: I think we could ~~me~~ leave it to be worked out in that way. I think the idea we want to express is: that the recognising of these are a series of processes, whatever preferences exist, and after each stage of negotiations will be protected after the next one .

MR McKINNON (Canada): Would it be possible, before we break up, to get the wording of c., if a wording has been agreed on?

THE CHAIRMAN: Yes: "preferences in force on the 30th June, 1946, between neighbouring countries". What is the wish of the Committee, that we adjourn at this stage?

MR McKINNON: I would propose that since you now have a draft of the paragraph relevant to the Indian Delegate's proposal, that we attempt to get rid of that tonight.

THE CHAIRMAN: Is that acceptable to the Committee?

MR HAWKINS (U.S.A.): Could we have the text read?

THE CHAIRMAN: Copies have been distributed, I think. They set out the two alternative conclusions there, with two different degrees of generality.

N2.

MR HAWKINS (U.S.A.) I think it would be acceptable if we had the first alternative.

THE CHAIRMAN: The United States Delegate suggests that this would be acceptable to him, and he would prefer the first alternative. I suggest, if that is all right, that we might delete the second "or warranted by the exceptional circumstances", and make that continue straight on, stopping at "international trade".

MR ALAMILLA (Cuba): Can we have somebody read it as it is going to be left?

(The Chairman read out the proposed text).

MR McKINNON (Canada): From the point of view of the Canadian Delegation, we could certainly say that some of the preferences which we are now arranging to eliminate or reduce could be justified for retention or enlargement on either or both of the two bases mentioned. I could go further and say that we could prove that there are certain preferences at present brought forward in negotiation which are: (a) in the interests of the inhabitants of the country, and (b) which, if continued, will not prove restrictive of international trade.

MR SPEEKENBRINK (Netherlands): I do not think it would entirely meet the case. I wonder if we could not do it in this way: / combine the last two sentences in this way: "in the interests of the inhabitants of the countries concerned, will not prove more restrictive to international trade than is warranted by exceptional circumstances".

MR McKINNON (Canada): Would not it be better to base it entirely and solely on exceptional circumstances, which cover all the other things and many more?

MR ADARKAR (India): The circumstances which justify these preferences are so widely existing that I doubt whether they could be regarded as exceptional; they are peculiar to many small countries. The amendment suggested by the Netherlands Delegate would, perhaps, I think, make it more approximate to the facts: "will not prove more restrictive to international trade than is warranted by exceptional circumstances".

THE CHAIRMAN: I would just point out to the Delegate for the Netherlands that "international trade" would, of course, include the trade between the two parties to the preferential arrangement, and that would be excluded from international trade. I should have thought that the requirements were not unreasonable.

Mr SHACKLE (UK): You could say "and would not on balance prove restrictive of international trade". I think that would make the point which you were suggesting.

THE CHAIRMAN: Do you understand the point, M. Lecuyer?

M. LECUYER (France) (Interpretation): Yes, Mr Chairman, I am under the impression that we have arrived at a deadlock here, and you have very correctly suggested that the same questions were discussed in the Plenary Commission; no solution was arrived at then; the various delegations merely set forth their various points of view. I quite understand the position of India and I also quite understand the disadvantage explained by Mr Hawkins of adopting a text which would openthe door to a series of exceptions. Everybody knows that everybody can always claim exceptional circumstances. Therefore I wonder whether in such a Committee on Procedure we can deal with a matter of substance as important as this one. Extremely important interests are involved. The Netherlands delegate has pointed out the position of Belgium and Holland in connection with the Congo and the Dutch Indies; and I do not think we can today decide that such a text will cover such important cases. I therefore think it would be wise only to state the difficulty and to leave the question open. Even if we adopted such a text the same difficulties would arisewithin the Plenary Commission, and I therefore suggest leaving the question open to set forth the various positions and to leave the solution of this question for a subsequent meeting. It seems to me, again I say, very difficult to arrive at a final solution of a question in which so important essential interests are involved.

THE CHAIRMAN: Thank you. Well, I think I should make it quite clear that this Subcommittee is not one dealing solely with procedural matters. It was a Drafting Committee set up by Committee II to seek in discussions in a smaller group a resolution of the issues

which had been placed before Committee II by the various delegations, and I take it to be an essential function of this Committee to seek such resolutions which are practicable. If they do not prove to be practicable, then the duty of the Committee is to report to that effect and submit alternative drafts for the consideration of Committee II or of the Plenary Committee, or, alternatively, of the next session of the Preparatory Committee itself next year. But in the mean time I think our first task is to seek, if we can, a draft which would resolve the difficulties involved in the various conflicting points of view. However, it does appear as if we may be approaching a stage where we will have to resort to the process of reporting a difference of opinion which is not capable of resolution unless the various delegates can see their way clear to accepting something of the kind which has been put forward. I gather that some of the difficulty with the drafting which has been suggested arises from the criteria which we suggested, and I can see difficulties in attempting to lay down criteria. It might be wise to leave the criteria to the Organisation to work out. Would it be possible for us to agree on a form such as this: I think possibly theappropriate place for dealing with this is Article 33, which deals with territorial application, customs unions, and so on. Clause 1 of that Article reads: "The provisions of Chapter IV shall apply to the customs territories of the Member countries. 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 for the purpose of interpreting the provisions of Chapter IV. 2. The provisions of Chapter IV shall not be construed to prevent (a)"— and (b) deals with the union for customs purposes. We might add there "(c) any preferential arrangement which may be approved by the Organisation in accordance with or pursuant to Article 55 (2)".

Mr McKINNON (Canada): Thatis any new preference?

THE CHAIRMAN: Yes, any new preference -- "or arrangement which may be approved by the Organisation pursuant to paragraph 2 of Article 55". Paragraph 2 of Article 55 reads: "The Conference may, by a vote of two thirds of its Members, determine criteria and set up procedures, for waiving, in exceptional circumstances, obligations of Members undertaken pursuant to Chapter IV of this Charter." That wouldleave to the Organisation not only the task of deciding and approving these arrangements, but also leave to them the task of determining the criteria which would warrant it.

Mr ADARKAR (India): Mr Chairman, the fresh amendment suggested by you, Sir, has certain disadvantages, if I may say so, from the point of view of the Indian delegation, because while in the first amendment suggested by you there is a fair recognition that in special circumstances -- we would prefer the word "special" instead of "exceptional" -- there may be justification for new preferential arrangements, that recognition will be lessened in the second amendment. The other disadvantage which we see is that by linking this new amendment to the provision of paragraph 2 of Article 55, we shall be automatically laying down the condition of the two-thirds majority vote. We would prefer that the type of majority which shall be required for a decision of this sort shall be left over for later consideration. The choice between "exceptional" and "special" is left to the Committee, of course. Whatever is the best may be adopted. And finally I would say that with the amendment suggested by Mr Shackle, the first amendment suggested by you would in my judgment — again without committing the Indian delegation -- meet the point of view of India and other countries in similar position very well. The amendment to which I refer is this, that it is in the interests of the inhabitants of the countries concerned and will not on balance be restrictive of international

Mr HARRY HAWKINS (USA): Mr Chairman, on the first point of the delegate of India, it seems to me that the solution proposed meets all viewpoints, first because it is neutral: it does not prejudice the case in any way. It does, however, provide means of considering the special case.

The second point was about the two-thirds vote. If you read paragraph 2 of Article 55 carefully you will see that "The Conference may, by a vote of two thirds of its members, determine criteria and set up procedures". That does not necessarily mean the action of a two-thirds vote.

DR SPEEKENBRINK (Netherlands): The only difficulty I am faced with is this point about the customs union which I mentioned to you earlier. It is the logical consequence of an agreement and a new tariff will, as far as I can see, be in force before we have our negotiations according to the charter, so that in effect we shall have preference there before we can even apply the appropriate Article. That is just one of the difficulties.

MR McKINNON (Canada): I do not like to use the word "deadlock" but I think probably the delegate for France is right, and I doubt whether we can get much further. If the proposal were linked definitely with 55(2) we would be inclined, difficult though it is, and running counter to the whole spirit of the charter, to accept it. We have to keep in mind that under this clause we would have to permit the creation of new preferences on the very basis on which we can justify the retention of the ones that we are being asked to give up. With the thought that we may not get any further with this, I would like to say that the Canadian delegation would like to be shown as dissenting in this case.

MR ADARKAR (India): Mr Chairman, so far as I can anticipate the reaction of the Indian delegation, I think there would be no objection from their point of view to linking the first amendment suggested by you with paragraph 2 of Article 55, because the first amendment has the distinct advantage that it recognises the principle.

THE CHAIRMAN: We might say this: "The members recognise that

there may in exceptional circumstances be justification for new preferential arrangements. The Organisation should therefore be empowered to approve their establishment in accordance with the procedure set out in Article 55(2)." Would that meet the Indian delegate's point - recognising that the procedure be established through Article 55?

MR ADARKAR (India): I should think so, but ---

THE CHAIRMAN: Agreement here is necessarily tentative. Then may I say that we tentatively agree on the draft which I mentioned, and ask the Rapporteur to look at it more carefully, particularly in relation to its appropriate place in the Charter? Is that agreed? (Agreed.)

It is suggested that we meet tomorrow morning. Would Mr Wyndham-White be good enough to acquaint us with the position?

EXECUTIVE SECRETARY: I think that is all right, provided it does not matter that it conflicts with a meeting of the Drafting Sub-Committee of the Joint Committee. The Technical Sub-Committee, I take it, is meeting tomorrow afternoon?

MR VIDELA (Chile): Yes, at 3 o'clock.

THE CHAIRMAN: I suggest that when we resume we might take up discussion on the point concerned in Article 19, the drafting point to be reconciled between the delegates of Cuba, Canada and the Rapporteur.

The meeting is adjourned.

The meeting rose at 6.55 p.m.