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ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

EIGHTH MEETING

of

PROCEDURES SUB-COMMITTEE

of

COMMITTEE II

held at

Church House, Westminster, S.W.1.

on

Friday, 8th November, 1946

at

3 p.m.

Chairman: Dr.A.B.SPOEKENBRINK (Netherlands)

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

THE CHAIRMAN: The meeting is open. I would like to refer to our last meeting. Last time we ended with a request to the Rapporteur to submit a draft for the first sentence of Article 18 for our approval, and to state further the question of state trading in that Article. Before I ask the Rapporteur to explain what he has done there is the question of our next meeting. I understand that eight o'clock tonight is available, tomorrow morning, or both, whichever you prefer.

MR. SHACKLE (United Kingdom): I suggest tomorrow morning.

THE CHAIRMAN: Tomorrow morning at 10.30. Is that agreed?

MR. McKINNON (Canada): Do you think we can possibly get through in Committee II if we do not hold night meetings? My impression is that we are holding up the work of the whole Preparatory Committee, and that the longer we go on the more likely we are to hold it up. I notice that the technical sub-committee is meeting tonight; they have met this morning, and they are meeting this afternoon. I am just wondering whether, now that we have set a target date - to which, as far as I am concerned, we are going to adhere - we can hope to conclude by the 20th to the 23rd if we do not do more in the way of night meetings.

MR. SHACKLE (United Kingdom): What subjects remain on our agenda?

THE CHAIRMAN: We still have to clear Article 18; then we have to deal with Articles 29 and 30; and after that we still have to deal with Article 33. Later on I think there will also be combined meetings with Committee V. Also, we are still awaiting certain decisions from Committees I and II.

MR. McKINNON (Canada): Do not you think we will also have thrown back to us from the technical committee that part of their terms of reference called "General provisions", which to my mind have nothing to do with the technical committee but should be in here? They are entirely policy matters. I cannot see how we can possibly complete our work.

THE CHAIRMAN: I am inclined to agree with you there. I am prepared to meet tonight as well as next week. Now that we have finished with the work of the main committee as far as possible, I am quite prepared to meet tonight. We would have met this morning, as I asked, had that been possible. There is another point - we must consider our Rapporteur, who must have some time to prepare something for us. However, he says he can strain himself to meet the wishes of the Committee.

MR. MACKINNON (Canada): I have no doubt about that. I have not much sympathy with the Rapporteur, I know his capacity.

THE CHAIRMAN: Mr. Hawkins is also a very busy man in another Committee.

MR. HAWKINS (United States): I can come at any time when the Committee meets when there is no other meeting.

THE CHAIRMAN: But what is the priority for meetings? I suggest that we should get through our work, as much as possible, because Mr. Hawkins will be tied up with other meetings again. I am afraid we shall have to meet at 8 o'clock tonight as well.

Now I would ask the Rapporteur to explain what he has done with the first sentence of paragraph 1 of Article 18.

MR. HAWKINS (United States): At the last meeting three amendments were suggested to the parenthetical phrase in the first paragraph of Article 18. The Delegate of India suggested that the words "of production" should be deleted since, if they were left in, it would imply that fiscal tariffs were not to be considered. The Delegate of the United Kingdom suggested that the phrase should be repeated in a suitable form after the phrase "margins of tariff preferences" and it was generally agreed that if the references were to be kep t there some appropriate cross-reference should be made to Article 27, which deals with the question of margins of preference. On looking it over I suggest to the Committee that the matter can be very easily handled

simply by deleting the reference entirely from the first paragraph, since Article 27 provides for a commitment whereby members maintaining State monopolies on individual products agree to enter into negotiations in the manner provided for in respect of tariffs under Article 18. So itis already taken care of, and cross-reference in Article 18 is unnecessary. A minor amendment in Article 27 would seem to be desirable to make it clear that both tariffs and preferences - tariffs and preferential margins, really - are dealt with in Article 27. The redraft of point 4 of the paper which you have before you simply omits entirely the parenthetical reference and incorporates a minor change which was agreed on earlier at the last meeting, so that the language covers both tariffs and imports and exports, and other charges on imports and exports. I suppose that it is not intended to cover such things as internal taxes, but simply charges placed on imports alone. That is all I have to report.

THE CHAIRMAN: Then before we approve this I think we have to refer to a number of arguments that have been put forward in Committee I and II. The question of industrialisation wa still to be covered. I understand that that question is still under discussion in Committee I and II, and I think the Rapporteur feels also that it would perhaps be better if we did not consider that question at this moment, but simply waited the results of Committee I and II. We could then see whether we should have to draft anything to put in here.

MR. ALAMILLA (Cuba): The Cuban Delegation agrees that those points on which the three amendments have been proposed, one by the Cuban Delegation, one by the Chilean Delegation, and one by the Indian elegation, should be delayed until we know more about what the Industrialisation Committee is doing. At the same time I just want to make a reservation. Our Delegation at least, and I understand others too, would like to have the right to bring back this problem to the consideration of the Committee at any moment

they may deem convenient, even if no agreement or progress has been made in the Industrialisation Committee. We do not want to do it unless we see that the Joint Committee is not getting anywhere, and in that case we want to have a discussion here.

THE CHAIRMAN: Of course I have only said it was postponed for discussion later; it is not taken off the agenda.

MR. MCKINNON (Canada): I presume, then, that if the Joint Committee does reach some reasonable and acceptable chapter or article in respect of under-developed countries, you would not raise again the point in connection with Article 18?

MR. COOMBS (Australia): If I could speak on that, perhaps I could assist, since we are responsible for drafting the Rapporteur's draft on the Joint Committee. I think it was generally agreed at the meeting of the Drafting Committee of the Joint Committeethat it would not be desirable to write into the chapter on industrial development, if there were to be such a chapter, matters which were in fact relevant to the other parts of the Charter. The sort of structure that we envisaged was that the chapter relating to industrial development would establish the right to use protective measures for industrial development subject to the provisions of the Charter, or something to that effect, relying if necessary on the modification of the relevant parts of the Charter which deal with tariffs, subsides and so on to ensure the necessary freedom to use those things for industrial protection. It will therefore be necessary, if that general approach is adhered to in the Industrial Development Committee, for Article 18 to be examined, at any rate to see whether it is consistent with that decision.

THE CHAIRMAN: A few other remarks were made on the question of "substantial reduction" of tariffs. One related to the question of low tariffs versus high tariffs, and I think still another point was raised, to the effect that there was even a possibility of raising tariffs. I just mention

these points because they have a bearing on the further clauses we have to fit in. I do feel that the question of low versus high tariffs is one for the tariff negotiations, and should not come in here. The question of substantial reduction should still be gone into, and also the possibility of an increase in tariffs. We should also keep that in mind before we finish with Article 18. I still feel that when we say here "Enter into reciprocal and mutually advantageous negotiations with any such member or members devoted to the substantial reduction of tariffs" and so on it is flexible enough to cover most of those points. There should therefore be no need to put in any more here. Before we definitely approve this part of the article 18, I think I must mention these points to prevent confusion later on.

MR. COOMBS (Australia): If I may make a suggestion - when Mr. Hawkins dealt with that point in his reply he did make it clear that in the opinion of his Delegation at any rate a level of tariffs operating in the countries concerned in the negotiations was a relevant factor in deciding whether the reductions which the country was prepared to make as part of its bargain were substantial in the sense meant here. I am not quite sure, but I think there was some suggestion that the level of development reached by the country would also be a relevant factor. It does seem to me that in view of the very great interest in these two points on the part of a number of delegations in the full Committee, it might be wise to consider adding after "substantial reductions" something which would say "having regard to the level of tariffs in the countries concerned", adding perhaps the stage of economic development reached. That would not be proper drafting, but the point is whether it might not be wise, in view of the interest shown, to make some reference to these things, not in any absolute sense, but indicating that the interpretation of the word "substantial" would be in the light of such factors as would be relevant.

MR. HAWKINS (United States): I think there are really two questions there.

Entirely apart from the stage of development of the country, I think it should be made clear tht in the negotiations, if a country has a low rate on a particular product in which another country is interested, that rate should be given just as much weight as if it had been high and had been reduced to that figure. That is one point which would apply irrespective of the stage of development. It might apply to British tariffs, to American tariffs, or any other. Then there is the question as to whether special provision is needed relating to the stage of development of a country. That seems to me to be another and broader question.

THE CHAIRMAN: There is also the point we left open, as far as I understand it, awaiting the results of Committee I and II. The main point here is whether there would be any confusion about the words "substantial reductions" because it would be a general obligation for every country to give a substantial reduction of their tariffs specifically, or does it mean tariffs generally? I think that is the main confusion arising out of the present drafting of the clause.

MR HAWKINS: With a view to trying to clarify the issue and to see if I interpret rightly what is in the mind of the Indian delegate and others, I wonder whether this question that is bothering them does not arise in connection with paragraph 3 and its relation to paragraph 1. Paragraph 3, if I may just read what it says, lays down that "If any Member considers that any other Member has failed, within a reasonable period of time, to fulfil its obligations under paragraph 1 of this Article....." Now, to refer back to paragraph 1, it says the obligation shall be to encourage the "substantial reduction of tariffs". Let us imagine a country - there are many of them - whose general level of tariffs is very low. Then the question would arise, if it bound those rates, whether it has complied with the provisions of Article 18. Is that a correct interpretation of the position of your delegation?

MR ADARKAR (India): With a slight difference. It might be necessary for a country even to keep certain items absolutely free. It might be difficult for the country to bind even the existing rates in order to provide for any protection that may be needed for industries still to be developed.

MR HAWKINS (USA): Mr Chairman, I think there are two questions there and they should be discussed separately. There is first of all (this, I think, is fairly clear) the question whether a mere binding - assuming that a country has a low level of tariffs and in general what it does is to bind rates - is to be regarded as compliance with paragraph 1 of Article 18, which says "the substantial reduction of tariffs" is desired. My own view is that the paragraph from that point of view needs some clarification. It is a technical point, but I can understand that anyone on a low level of tariffs might be concerned about it. The remedy for it would be the insertion of appropriate language to the effect that the granting of a low rate (I am not trying to draft the language now but it might be roughly this) shall be regarded as the equivalent to a substantial reduction under a high rate. That would clarify that particular point.

THE CHAIRMAN: Would that be a matter to be put under a., b., or c.?

DR COOMBS (Australia): Would it be appropriate under paragraph 3, as Mr Hawkins has suggested, where it reads, "The Organisation, if it finds that a Member

has, without sufficient justification, failed to negotiate with such complaining Member as required by paragraph 1 of this Article"? We might put in there something which relates the obligation to the existing level of tariffs. That would possibly meet it. I agree with Mr Hawkins that the point about the state of industrial development really ties up with this other question, which should be left until we get something from the joint body. Would it meet the point if we said this, "If the Organisation finds, having regard to the existing level of tariffs, that a member has, without sufficient justification...."? I am not sure which would be the best place for the phrase to come in, but it does seem to me that something like that should be put into that sentence.

MR HAWKINS: The point is important, and for that reason it might be set off apart from the rest of it. It could be done by a new sub-paragraph, for which I have a tentative formula here. It would be c. under paragraph 1, and it would read in this way: "The binding of low rates of duty or of duty-free treatment shall be given equal weight with the reduction of higher rates of duty". Then, in order to tie that to paragraph 1, you would say, "in accordance with the requirements of paragraph 1", or words to that effect, so as to show that you are defining "substantial" as it relates to low rates for the purposes of paragraph 1.

THE CHAIRMAN: I think we could continue on the basis that this addition should be made to paragraph 1, as proposed by Mr Hawkins. In that case, I think we should be able to accept the new draft of the first sentence of paragraph 1. There is only one point that I would ask before we do that officially, and that is this: there is the difficulty of the question of the negotiation of quotas. You remember some countries have at thismoment a combination of tariffs and quotas. We have a special Sub-Committee to deal with that, composed of representatives of the U.K., U.S.A., Australia, Canada and New Zealand, I think. I wonder whether we could give our approval to this paragraph without hearing anything from the other Sub-Committee, or whether we should wait to hear from them.

MR IGONET (France)(Interpretation): Mr Chairman, before the war we had also a combination of quota and tariffs. Now this is suspended. We have suspended

quota and customs duties, and I should like to point out that before the war we were in the same position as those countries mentioned - New Zealand and so on.

DR COOMBS (Australia): They are not quota tariffs; they are preferences which take the form of quotas rather than of tariffs. I do not think the Committee mentioned just now has met up to now. As a matter of fact, this has relevance to an earlier clause that you dealt with.

THE CHAIRMAN: There is also the same thing here, I think.

DR COOMBS (Australia): It comes back in 8, I think, where the present rate is limited to import tariffs in the form of import duties; but I think the question could for the time being be ignored, provided that when the Sub-Committee has met and discussed the thing any relevant clause is re-examined in the light of whatever conclusion is reached.

THE CHAIRMAN: I only mentioned this point because we speak of the binding of low rates and we also perhaps ought to speak of the abolition of quantitative restrictions at the same time; or perhaps that does not fit in there. I want to hear what the Committee feel about that, otherwise I have to keep it on the agenda.

MR ALAMILLA (Cuba): We have the same thing here in regard to state trading, and we have decided that in Article 27, if it is necessary, proper reference should be made to the fact that they would be subject to the reductions envisaged in this Article 18. This Article only deals with reduction of tariffs and elimination of preferences. I think if the other Committee reach the conclusion that quotas should be subject to a process like this, they might make a cross-reference with this paragraph here.

THE CHAIRMAN: In that case I could, as it were, throw it on the plate of the other Committee. My point here is that I want to get rid of it; that is all.

MR HAWKINS: I agree with what the Cuban delegate has said. I do not think you can even touch it here intelligently until you know what the Quota Sub-Committee is going to say on this subject. I just do not see how we can deal with it.

THE CHAIRMAN: Then is it agreed that we simply pass that on to the Committee

on balance of payment restrictions and so on? Then I will repeat my first question: Can we now agree the first sentence of paragraph 1?

MR HAWKINS (USA): I do not want to delay this, but the Rapporteur, I take it, is going to draft something on this; or do we deal with it later?

THE CHAIRMAN: Deal with it later, I imagine. Then is that adopted?

MR McKINNON (Canada): You are really adopting the report of the Rapporteur in so far as concerns the revised wording of the first sentence of paragraph 1?

THE CHAIRMAN: Yes. Then we come to the second part of paragraph 1, and at present it says, "These negotiations shall proceed in accordance with the following rules". Before we discuss that further, I would remark that it is the idea of the Rapporteur that we say more detailed questions with regard to the coming negotiations should be dealt with in a separate memorandum. I think that is one of the terms of reference of this Sub-Committee - to draw that up - so that only the very important points of principle should be covered in this paragraph; and before we can really finish with the whole of Article 18 we must have that memorandum before us. I would suggest that we take now only the real points of principle in paragraph 1. The first sentence begins, "Prior international commitments shall not be permitted to stand in the way of action in respect of tariff preferences", and so on. There the Cuban delegation at the last meeting submitted a proposal which I think is in the hands of everybody here.

Mr ALAMILLA (Cuba): "Prior international commitments shall not be permitted to stand in the way of action with respect to tarrif preferences, it being understood that this provision shall not require the termination or modification of existing international obligations except by agreement between the contracting parties or in accordance with the terms of such obligations". This was the amendment which we first proposed to introduce into Article 8, but after studying the way the Charter was drafted we thought it better to put it in Article 18 and not in Article 8. The object is not that we would not negotiate, but they are going to be negotiatedThe object is only that the obligations can be terminated at any moment. Once the obligations are out of the way they can be dealt with without any difficulty. If they are in they can still be negotiated.

Mr SHACKLE (UK): I should like to say that the U.K. delegation support the principle of this Amendment. I think I can say that its wording appears satisfactory also. It is a point which I mentioned in the discussion in the Main Committee II, namely that we felt that the word "action" should in effect mean action agreed upon in the course of the re-negotiations. As a matter of fact that really rather/produces some wording in the proposals of last December, which spoke of "action agreed upon".

Mr ALAMILLA (Cuba): I should like to have Mr Hawkins' comments on this.

Mr HAWKINS (USA): I do not think that the Amendment changes our intention as we expressed it in paragraph (a). I think it carried out what we had in mind, and therefore it is acceptable to us.

Mr McKINNON (Canada): If, as Mr Hawkins says, it does no more than carry on the intention of the words in the draft, then I fail to see any advantage in the revised wording. After all, subsection (a) as it appears here, if I am not mistaken, is word for word with the Section as it appeared in the proposals approved by the United States and the United Kingdom. I may be wrong; I speak from memory.

Mr SHACKLE (UK): If I might intervene at that point, the proposals say

"action agreed upon".

Mr ALAMILLA (Cuba): This is a point which we have very great interest in getting clear. I believe that we are not adding any new thing, and we are only making very clear how that Article should be interpreted. We feel very strongly about this and would like to have these words put in in order that everybody would know exactly what they meant.

Mr. IGONET (France)(Interpretation): I do not quite understand this Amendment which has been put in by the Cuban delegate. At least, the beginning does not seem to me to be consistent with the end. There seems to be a contradiction between the third and fourth sentences, and the first. I do not understand the word "exist". When will they exist ? At what time will they exist ? What is meant by this word ?

THE CHAIRMAN: As it reads now, it should exist at the time of the negotiations.

Mr SHACKLE (UK): Might I say a word about this. As I understand the position it will be something like this. Let us take, for example, the case of the Ottowa Agreements between the Dominions and the United Kingdom and other parts of the Commonwealth. The position is that they lay down contractually a whole series of preferences. Some of those may - some undoubtedly will - be modified in the course of the forthcoming negotiations. Others on the other hand may not be so modified. The intention of this Clause, as amended in the way which is suggested by the Cuban delegation, would be, if I understand it rightly, that insofar as in the course of these negotiations it was agreed to modify particular preferences, the fact that in the Ottowa Agreements those preferences were bound at particular levels should not stand in the way of their being changed now. On the other hand, insofar as there might be preferences which are not modified in these negotiations, the undertaking would still exist. In other words, you have not struck out the whole of the Ottowa Agreements at one stroke of the pen, but where particular preferences contained in them are modified as the result of these negotiations, the Ottowa Agreements shall not stand in the way of those modifications being made. That is my understanding of the intention

of this Amendment, and if that is so, then I support it.

Mr HAWKINS (USA): Could I add just one thing. It also serves this purpose, that the mere existence of a control obligation is a reason for reducing.

THE CHAIRMAN: Do I understand that if, for instance, the United States should agree to change certain preferences and that would affect you, the United States cannot do that without consulting you.

Mr ALAMILLA (Cuna): The thing is quite clear. We have to negotiate and we do negotiate. In the course of those negotiations the tariff may be reduced and we agree to that. The treaty we have says that we have these preferences, but that treay may be terminated. The United States may say, "All right, we call off the treaty". As soon as the treaty is off there is no more obligation and we can proceed, and we do not have to be bound by anything at all. They can therefore be terminated or they can be negotiated, as they are going to be.

Mr ADARKAR (India): Mr Chairman, the effect of the Cuban Delegation's amendment, as far as I see it, means broadly to make it necessary for the country giving the preference to a country which does not enjoy the preference, to obtain the consent of the country which enjoys the preference. Take a practical instance. If there are preferences between India and the United Kingdom, and India receives a request for a reduction in preference in a particular item from the United States, it is necessary, in the terms of this Amendment, for India to consult the United Kingdom before granting that reduction. The result is that in respect of every proposal there will have to be negotiations not merely between the country which gives the preference and the country which at present does not enjoy the preference, but also negotiations between the country which gives the preference and the country which at present enjoys the preference. As part of the bargain, the country which at present enjoys the preference, and therefore stands to lose to an extent in the reduction of the margin, may stipulate certain other terms because it affects the terms of the existing bargain between that country and the

other country. For example, in this particular instance of India and the United Kingdom. India may agree to the United States to reduce the margin, provided the United Kingdom agrees. Before giving permission the United Kingdom may suggest some modification in their agreement. So far as the Indian delegation is concerned, I think this particular Amendment makes the position very clear and the Indian delegation would like to support it.

MR. McKINNON (Canada): It was argued earlier in this discussion, five minutes ago, that there was no real difference in substance between A. as it appears in the Charter and A. as it appears in the Cuban resolution. I think there is a very great deal of difference, both in form and substance. Under the draft Charter those various political entities - if I may call them that - with a preferential area or regime are completely free to enter those negotiations.

MR. ALAMILLA (Cuba): No.

THE CHAIRMAN: Just let the Delegate for Canada finish.

MR. McKINNON (Canada): They are free to enter the negotiations, because it says that any contracts "shall not be permitted to stand in the way of action." Under the draft amendment it is definitely understood, surely, that unless they get agreement with everyone else concerned in that particular preference they cannot proceed, unless they denounce the existing preferential arrangement. Now, I think there is a very great difference. I may be making an inference that is not intended, but I cannot help going back to the assertion early in the argument that there was no substantial difference between them. I think there is a very great point of difference, in that one appears to contemplate the necessity of formal denunciation unless the agreement is with the other party is reached, whereas the draft amendment does not contemplate that. It gives elbow room to all parties to do their negotiating and see what results from it. It may be that what results will require an amendment of the existing preferential arrangement, though it may not. For the purpose of the negotiations everyone is completely free to do as he likes until he sees what the result is. It is obvious he will consult the others and talk with them about it.

THE CHAIRMAN: You have a combined body.

MR. McKINNON (Canada): You have the possibility of one body of six or seven, who might in respect of the whole of the action refuse to agree

with even the negotiating party of the first part under the necessity, as I see it, of formally denouncing his agreement with that particular member - which he may not want to do, and which may not be necessary.

DR. COOMBS (Australia): I do not follow Mr. McKinnon's point quite clearly, but I do not think the Cuban Delegate's proposal does require that.

MR. McKINNON (Canada): Well, it says, "except by agreement. . . or in accordance with the terms of such obligations." Now surely one of the terms of the obligation would be, if you are narrowing the margin you must, unless you can get the agreement of the other party, denounce the agreement.

DR. COOMBS (Australia): But it does not affect the negotiations. It says:

> "Prior international commitments shall not be permitted to stand in the way of action with respect to tariff preferences it being understood that this provision shall not require the termination or modification of existing international obligations",

which, as I see it, do not arise until after the negotiations are complete.

MR. McKINNON (Canada): I should think they might arise very early in the negotiations.

DR. COOMBS (Australia): You may enter into discussions about whether you will in certain respects modify all existing international obligations. It seems to me there is nothing in this which prevents you entering into such negotiations and coming, presumably, to tentative conclusions. But when you have reached such a conclusion, as I read it, the Cuban Delegate's redraft would require you to carry through that modification or termination either with the agreement of the other party or in accordance with the provisions of the agreement concerned for its termination.

THE CHAIRMAN: If, for instance, Canada accepts the elimination or reduction of tariff preference, that will stand anyway, and then she has to clear the position with the other party. The commitment will stand.

DR. COOMBS (Australia): It stands, but if Canada agrees to do it and desires to do it as part of the bargain, ~~if~~ this means she does it in one of two ways. Suppose the United Kingdom was the other party. She does it ~~either~~ either with the agreement of the United Kingdom, or, if the United Kingdom is not prepared to agree, the procedure required under the original U.K.-Canada agreement for the termination of that agreement is gone through.

MR. McKINNON (Canada): That is the difference. I think it is a difference. I quite agree with your explanation.

DR. COOMBS (Australia): Is it possible for a country to interpret A. in the way in which Mr. McKinnon's idea would suggest? I mean, can you as a matter of international law enter into an agreement which says that you will not carry out an agreement entered into previously?

MR. HAWKINS (United States): I would like to get the Cuban Delegate's view on it. I thought Mr. McKinnon's description would be in line with the Cuban amendment.

MR. ALAMILLA (Cuba): No. What we want is only this. The effect of this international agreement of the I.T.O. cannot end our international agreements. We say in here that we are going to negotiate them, and we will negotiate them, but they are not going to be terminated except if we agree to that; or, if they are terminated by the parties themselves, it is only by agreement. That is our position, which is so basic for us that we would not be able to enter into this Organization unless this thing is absolutely cleared up for us.

MR. McKINNON (Canada): Would it not be clear in this way, that all parties to this committee accept A. as it stands in the American draft, and then we are free, without the necessity of formal denunciation, to proceed to negotiate it.

MR. ALAMILLA (Cuba): But we are going to negotiate it. We are obliged to negotiate, and we will negotiate, but the thing will not be terminated automatically. I do not think any country can enter into this I.T.O. agreement by which automatically their contractual obligations with third parties would be terminated without their consent. The only thing we are doing is just making very clear that that thing does not happen. That is our only object here.

MR. HAWKINS (United States): Without suggesting amendment of the Cuban text, I would like to see if this does not meet the point:

"It being understood that this provision shall not of itself effect the [illegible]ation or modification of existing . . obligations."

That is the sense of it. That is, in effect, what you are trying to say - "shall not of itself effect the termination or modification of international obligations." As I understood the Cuban Delegate's explanation he wants to be sure that by agreeing to provision A. in this he does not thereby wipe out existing contractual engagements.

MR. ALAMILLA (Cuba): Which we will negotiate.

MR. HAWKINS (United States): I think the easiest way s is to say exactly that - "this provision shall not of itself effect the termination or modification of existing international obligations."

MR. SHACKLE (United Kingdom): I venture to suggest an even simpler amendment might have the same result, if after the words "in the way of action" you add "agreed upon in negotiations." The United Kingdom would very definitely associate itself with the interpreation which Dr. Coombs has given to this matter. I think that is also the Cuban view. It seems to us that it would make for a much more orderly and satisfactory negotiation if in fact that is the rule; If one had as one's starting point the fact that all previous commitments were cancelled before beginning to negotiate you would have a number of separate arrangements made, which might not balance out amongst themselves at all

in the last resort, and you might be faced with, so to speak, fresh negotiations in order to re-establish the balance as between the parties who were parties to a pre-existing preference. If, on the other hand, it is all dealt with in the way of triangular negotiations as you go along you will end up with a balanced and satisfactory result, which I think you would not get if you followed the other method of independent negotiations in attempting to balance out the different results afterwards.

DR. COOMBS (Australia): Could I suggest another version? Suppose you say:

> "prior international commitments shall not be permitted to stand in the way of negotiations in respect to tariff preferences, it being understood that this provision shall not be required to terminate or modify existing international obligations except by agreement between the contracting parties or in accordance with the terms of such obligations."

Or perhaps you might say,

> ". . it being understood that where the result of these negotiations would require the termination or modification of existing international obligations this termination or modification, as the case may be, will be carried out by agreement between the contracting parties or in accordance with the terms of such obligations."

It does seem to me there are two points. The Canadian Delegate wants to make it quite clear that irrespective of any commitments that you have got in the past you can go ahead and negotiate, and those negotiations will mean something - they will mean you do intend to carry them through even if they modify existing undertakings. The Cuban Delegate wants to make it quite clear, on the other hand, that when you get to the stage of carrying through the things you agree to do in the negotiations, you do that with due regard to established procedure.

THE CHAIRMAN: By accepting any negotiated reduction you have the obligation to effect it.

MR. ALAMILLA (Cuba): Of course. That was part of the negotiations.

MR. McKINNON (Canada): That might mean that any, let us say, reduction in the marginal preference that you may negotiate with a third party could not come into effect until after the terms of notice of denunciation in respect of your other agreement had expired.

DR. COOMBS (Australia): If you cannot get the agreement with the other contracting party.

MR. SHACKLE (United Kingdom): Unless, of course, it was modified by agreement, because any pre-existing agreement can be modified by agreement between the original parties.

MR. McKINNON (Canada): But if one did not get agreement obviously this could not take effect until the denunciation under whatever term is provided under the other instrument has expired.

MR. HAWKINS (United States): It seems to me the Cuban Delegate's purpose must be this very simple one. I want to be sure I understand him. He is merely trying to make sure that when you sign this Charter you do not thereby cancel all your contracts. His amendment is intended to make that clear. It does make it clear to me. It seems to me acceptable. As I understand it, that is all he is trying to do.

MR. ALAMILLA (Cuba): Yes.

THE CHAIRMAN: The other point is, it should not be an escape clause.

MR. ALAMILLA (Cuba): It is not an escape clause.

THE CHAIRMAN: As it stands it could be read in a different way. It cannot be that.

MR. ALAMILLA (Cuba): It is not that. We have said here that we are going to negotiate, and we will negotiate, but this negotiation will not automatically cancel contracts. It will be negotiated. Of course if the negotiations do not come to anything, the contract will be cancelled by itself, because the other party would do that. Therefore it is a fallacy to think it would be an escape clause, when all those contracts have in themselves a clause by which they can be disposed of.

THE CHAIRMAN: You could have further clauses. Once you have accepted it you can try to work it out; you find it impossible, so you say, "I have not foreseen this, I cannot do it."

MR. MCKINNON (Canada): I should have thought that the wording in the Draft Article as it stood, bald though it may be, gave complete freedom if all the parties to these preferential agreements who are represented here accept "A" as it stands in the Draft Charter. Then denunciation does not enter into it.

MR. SHACKLE (United Kingdom): But in fact the parties will not all be represented here in some of those cases. I think one may take that as certain.

MR. COOMBS (Australia): Where the two parties to a preferential arrangement are present, neither can prevent the other from giving away a preference which affects a third party, and that I take to be the position. It would be unacceptable to Australia, for instance, that either they or any other country with which Australia has an existing preferential arrangement should be free to trade that preference without Australia being a party to the revised bargain.

MR. SHACKLE: (United Kingdom): I should like to support that view.

MR. MCKINNON: What is the wording we are considering now, Mr. Chairman?

MR. ALAMILLA (Cuba): It is:

"Prior international commitments shall not be permitted to stand in the way of action with respect to tariff preferences, it being understood that this provision shall not of itself effect the determination or modification of existing internatinnal obligations except by agreement between the contracting parties or in accordance with the terms of such obligations."

MR. HAWKINS (United States): That, I am afraid, does not fit structurally. That exception does not quite tack on there; there is something wrong about it. I would suggest a period after "international obligations". That would be complete in itself, the point being, as I understand it, that no country when it signs the Charter shall thereby terminate bilateral obligations. The purpose of this amendment is to state that it does not.

MR. MCKINNON (Canada): That is right.

MR. ALAMILLA (Cuba): The only thing is that this clause is so important to us; it has been cabled to Cuba and approved word by word, so I should like to have it accepted as much as possible, or I shall have to start to cable it again.

MR. MCKINNON (Canada): Others of us may be in precisely the same position.

THE CHAIRMAN: I am prepared to sit it o t, if that is the case.

MR. IGONET (France): (interpretation): I do not think the French translation of this original text would be very clear. It would be ambiguous, and if the amendment is adopted I should prefer to have the various suggestions brought in.

MR. MCKINNON (Canada): You have already suggested that we have got to let this suggestion stand for other reasons. Is not that correct?

THE CHAIRMAN: Yes, we have to refer to it again later on.

MR. MCKINNON (Canada): Can we allow "A" to stand, then, with the headpiece, so to speak, and proceed to "B"?

THE CHAIRMAN: I am agreeable to that, if we want further study of the matter.

MR. ALAMILLA (Cuba): I would not like to let "A" stand as it is.

MR. MCKINNON (Canada): I do not mean accept it as it stands, but simply to let it stand and proceed to "B".

MR. ALAMILLA (Cuba): Why do we do this? Why not ask the Rapporteur to try to put his idea clearly and bring it forward at the next meeting?

MR. MCKINNON (Canada): Yes, that is the same thing.

THE CHAIRMAN: Just to get clear what we are asking the Rapporteur to do - we understand that the point of view has been put forward that if we enter into these commitments to negotiate reductions in tariffs and preferences we are fully prepared to accept tariff reductions in those negotiations, and carry them through, but only if we can do it by agreement in cases where we have to terminate present arrangements?

MR. ALAMILLA (Cuba): That is correct.

THE CHAIRMAN: I think the main points that we want to put into that clause are those. Does everybody agree to those principles? If not the Rapporteur will not know what to do.

MR. MCKINNON (Canada): I do not say that I do not agree, or that I refuse to agree with it; I would prefer the wording in the Draft Charter, but if it is going to stand, for an attempt at rewording by the Rapporteur, I should be glad to leave it in that position until we meet again.

THE CHAIRMAN: Thank-you. Then, I think, we have to come to paragraph "B", on which a few questions were raised which, should be clarified. For instance, the method of operation of the principle - will it prevent a reduction of preferential rates? I think that was one of the questions raised.

MR. HAWKINS (United States): The basic provision here is contained in the first two lines of "B": "All negotiated reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of preference". The rest of it is explanation as to what is meant by that. I will attempt to explain what the last part means, and I think I could best do it by illustration. Take for illustration these figures: on the date on which the negotiations are based, whatever that may be - in our Draft it was 1939, but that is now left for agreement among the parties-

MR. MCKINNON (Canada): Is Mr. Hawkins now saying that he proposed to strike out the date July 31st 1939 from subsection "B"?

MR. HAWKINS (United States): I was going to do that later on, and make still another amendment, but that is necessarily involved; you will have to substitue for July 1939 the date to be agreed upon.

MR. MCKINNON (Canada): Therefore it is a necessary assumption, if we are to follow intelligently what you are going to say.

MR. HAWKINS (United States): My point now was not to argue whether it should be July 1939 or not, but merely that there must be a base date to which the negotiations must relate. The hypthetical rates I will take as a basis are, say, 40 per cent for the most-favoured-nation rate, the generally applicable rate, and a preferential rate of 30 per cent. To take the simplest application of that principle, if negotiations take place on the most-favoured-nation rate and it is agreed that it shall be reduced to 30 per cent, that wipes out the preference. The maximum preference there can be in that situation is zero. Now you take the more difficult case in which there is a double set of negotiations going on. The most-favoured-nation rates are reduced to 30, but meanwhile the parties to the preferential arrangement have had negotiations and have reduced the preferential rate to 25. My interpretation of this provision is that .

the maximum preference in that case also is zero, because, relating the reduction in the most-favoured-nation clause to the situation existing at the time of the negotiations, the reductin of the most-favoured-nation rate wiped out the preference as at that time, hence it would not be permissible under this provision to reduce the preferential rate and widen the margin. But if the preferential rate is reduced by negotiation or otherwise, the most-favoured-nation rate would also have to go to 25. The reasoning behind that is this. A country that has negotiated on the most-favoured-nation rate, in this or any other situation, is very likely to have one or both of two motives: it may be interested in the height of that rate and its protective effect, but it is certain also to be interested in the margin of preference. Therefore when it asks for a reduction from 40 to 30 in those circumstances, it is deliberately looking at the margin of preference and trying to wipe it out. It is defeated in that if there are simultaneous or subsequent negotiations which result in a reduction of the preferential rate, because a margin of preference is again restored. The only way therefore in which a reduction of the most-favoured-nation rate can automatically operate to reduce the margin of preference is in the way I have indicated. Any subsequent negotiations or any other adjustments in those rates would be to create a situation such as would exist if the mostfavoured-nation rate had been reduced and the preferebtial rate had remained unchanged. I do not know whether that is clear or not; perhaps it might be discussed.

THE CHAIRMAN: It is important enough to be discussed.

MR. MCKINNON (Canada): May I say this, then, Mr. Chairman? Assuming that at the spring negotiations some favoured nation asks that the rate of 40 per cent, which Mr. Hawkins cites, be reduced to 30, and that that is done. The preferential rate would then remain at 25 and the new most-favoured-nation rate at 30?

MR. HAWKINS (United States): Say that again, please?

MR. MCKINNON (Canada): I was taking the illustration you gave, a preferential rate of 30 and a most favoured nation rate of 40. Someone amongst the most favoured nations asks for a reduction to 30 percent and that is agreed. The preferential rate remains at 30. Is it possible then for the country which is granting the concessions to say to the other preferential areas and the most favoured nations that it wishes to reduce both by a further 5 per cent?

MR. HAWKINS (United States): So that both are 25?

MR. MCKINNON (Canada): Yes, that would make both 25.

MR. HAWKINS (United States): Yes.

MR. MCKINNON (Canada): Although it is a second narrowing of the margin of preference?

MR. HAWKINS (United States): That is right - so long as the preference is not restored.

MR. COOMBS (Australia): It seems to me that in a case where a country was interested in the margin of preference the nature of their request would be for a narrowing of the margin of preference. At least, that is what would be involved in the request. As I understand your interpretation, it means that it is never possible to reduce the preferential rates until the most-favoured-nation rate reaches the preferential level? That is, if the British preferential rate was 30 and the most favoured nation rate 40, you could not bring the British preferential rate down unless you bring the most favoured nation rate down to the same point.

MR HAWKINS (USA): By the same amount, otherwise you widen the margin.

DR COOMBS (Australia): It would be acceptable under your interpretation if they were both reduced by the same percentage. If you reduced them both by 25 per cent, so that they came down to 22½, would that be acceptable?

MR HAWKINS (USA): On the assumption that there is no negotiation on the m.f.n. rate.

MR McKINNON (Canada): Dr Coombs' case is a purely unilateral reduction and, as I understand it, Mr Chairman, what Dr Coombs suggests could not take place on a negotiation.

DR COOMBS (Australia): That is what I am trying to get at. If you get a request from both the m.f.n. country and the other country on a particular item, you cannot reduce the British preferential rate unless you reduce the m.f.n. rate - not by the same proportion but completely down to the preferential rate. That is if there is any negotiation. If you want to reduce the preferential rate, then you have to wipe out the margin.

MR HAWKINS (USA): Or, to use an illustration, taking the 40 and 30, suppose instead of reducing the 40 down to 30 the negotiations had reduced it down to 31, all that is required is that, whatever is done to the preferential rate, any simultaneous or subsequent negotiations shall not give you a preference of more than one.

DR COOMBS (Australia): That amounts to the same thing: that it is impossible under your interpretation toreduce the preferential rate unless you bring the m.f.n. rate down to the same as the preferential rate.

MR HAWKINS: (USA) That is right.

THE CHAIRMAN: The only thing you could do is, I think, to say, "I will not trade with you", or "I am prepared unilaterally to reduce my preferential rate", and I then reduce automatically my m.f.n. rate".

MR SHACKLE (U.K.): Might I ask a question to make sure I have this clear? I think it would be convenient to take the last case of which Mr Hawkins spoke, in which the m.f.n. rate is reduced from 40 not to 30, which is the preferential rate, but to 31. If that happens, as I understand it,

there is nothing to prevent the preferential rate being reduced to a figure lower than 30, provided that the m.f.n. rate always follows it down at one dart, so to speak, so that if the 25 comes down to 20 the m.f.n. rate automatically becomes 21.

MR HAWKINS (USA): That is the point.

MR ADARKAR (India): We are still not clear about the procedure that would be followed in the matter of these negotiations, therefore whatever remarks we make are purely exploratory. The Indian delegation, studying this part of Article 18, had some difficulty about this sub-paragraph b., because the effect of the first sentence is to, so to speak, kill two birds with one stone. The idea is that whenever there is any reduction in m.f.n. tariff it should have two effects: one, to reduce the amount of protection given to the domestic industry; and, two, to reduce the margin of preference that may have been given. Now, Sir, we think that a more satisfactory procedure would be to tackle these two problems separately: that is to say, where the intention is to reduce the amount of protection given to the domestic industry, or to encourage the consumption of the particular article by reducing the duty, where there is no domestic industry at all, it is best to ask for a reduction in the m.f.n. tariff without any commitment whatsoever with regard to the margin - except that the margin will not be increased. That is to say - to take Mr Hawkins' example - if the object is to secure a reduction in the m.f.n. rate of 40 per cent and the country asking for the reduction secures the reduction from 40 to, say, 35, then it should not affect by itself the commitment in regard to the preferential margin. The preferential margin that exists is 10 per cent. When the m.f.n. rate is reduced from 40 to 35 it should be open to that country, in the sense of separate negotiation, to reduce the preferential rate from 30 to 25 so as to restore the preferential margin to 10 per cent. The only obligation on the part of that country is not to increase the preferential margin. So if the intention is to reduce the preferential margin another negotiation should be undertaken which should ask for a reduction in the margin only. The existing margin is10 per cent. The country wanting the reduction should ask for a reduction in the margin from

10 per cent to, say, 5 per cent. Now, supposing, for example, in the second set of negotiations the margin is reduced to 5 per cent, then it should be open to the country concerned to decide whether it should give effect to that changed margin by a reduction in the m.f.n. rate or an increase in the preferential rate, or partly by reduction in the m.f.n. rate and partly by increase. The choice between these three matters will depend on the circumstances of the country concerned. It may be that although the particular m.f.n. rate has not at present been described as a protective duty, it may be having at present a protective effect. There may be certain domestic industries which want that particular rate to be maintained at the existing level. In that case the country may agree to a reduction in the preferential margin from 10 to 5 per cent, but it may give effect to it by raising the preferential rate from 30 to 35. It may be that some revenue consideration is involved: that where, for example, the bulk of the imports at present come from non-preferred sources, a reduction in the m.f.n. rate would naturally affect the revenue very seriously. The country may not be entitled to afford that reduction in the revenue but may agree to a reduction in the preferential margin. In that case it may agree to increase the preferential rate from 30 per cent to 35 per cent. I may tell you, Sir, that, when we negotiated the Ottawa Agreement, in most cases the preferences were given in the form of definite margins - 10 per cent, 8 per cent, 7½ per cent - in that way - and it was left to the country concerned to decide whether the margin was to be given by raising the existing rate of duty against the foreign country or by lowering the existing rate of duty in favour of the British Empire country, or partly by raising and partly by lowering. If we are to enter this double commitment simultaneously in a simultaneous process of negotiation, then our willingness to grant a reduction in the preferential margin will also be influenced by our desire to safeguard the domestic industry. I think these two are absolutely different considerations and they should be dealt with by different sets of negotiations; otherwise we shall be tempted to refuse to grant any reduction in the preferential margin just because we

want the m.fn. rate to remain at a particular level.

THE CHAIRMAN: There is still one thing to be discussed, if I have followed the whole sense of this argument, and that is this. What do the countries want that are going to do away with quantitative restrictions and bind their tariffs and other things - what do they want? Do they want to be as much as possible on the same level of competition as other countries now having a protective margin? If you follow your system, I think the other countries will say, "Well, that lowers the attractiveness of these coming reductions to a very great extent." I think that is the whole sense of the proposal of Mr Hawkins, is it not? That has to be considered from the other side, I think.

MR ADARKAR (India): I did not follow your particular objection, Sir.

THE CHAIRMAN: I mean this. You can say, if I lower the m.f.n. rate from 40 to 35, that you can get over the insurmountable barrier of m.f.n. rates of duty; but I still might still find my competitor from another part of the world still 10 per cent better off than I am, so it does not help me in the end. I think that is the point.

MR ADARKAR (India): In the negotiations they should make a double demand and leave it to the country as to which of these two are acceptable to it. Where, for example, a country is faced with a double rate, an m.f.n. rate of 40 per cent and a preferential rate of 30 per cent, then it should ask for a dual concession: one part of the concession would be to reduce the m.f.n. rate from 40 per cent to 35 per cent; the other part of the concession would be to reduce the margin from 10 per cent to 5 per cent; and it should state to which of these concessions it attaches the greater importance; and the nation which is faced with the demand should be free to decide which of the two concessions it is prepared to give. These two are entirely different considerations. The effect of one concession is to put two suppliers on an equal footing or on a less discriminatory footing than at present; the effect of the other concession is to reduce the protection at present enjoyed by the domestic industry:

that is to say, to equalise the terms on which the domestic producer and all foreign buyers enter the market.

THE CHAIRMAN: That will as a rule mean the lowering of the m.f.n. rate, if you still have the old margin of preference.

DR COOMBS (Australia): One important consideration which I think does tend to support to some extent the Indian point of view is that the reduction of the margin is a matter which concerns not the country granting the reduction but the country which enjoyed the preference. I think the reduction of the level of duty, whether it is preferential or m.f.n., is a matter which concerns and is a concession granted by the country which is doing this particular piece of negotiation.

It does seem to me that it is quite important to separate these questions of the negotiations about the margin of preferences from those about the margin of the tariff. It does seem to me to be necessary. There are three suggestions. There is one suggested by the United States delegate which binds the two together completely, and at the other extreme there is the Indian proposal which would enable a country which was agreeing to a reduction in a preference, to give that by an increase in the preferential rate of duty. An intermediate position would be one which required a reduction of the margin of preference to be granted by a reduction in the most favoured nation treatment, but still regarded the negotiations about the margin as distinct from the negotiations about the rate of duty itself. The middle one would enable a reduction in both rates to come about provided that the reduction did result in a narrowing of the margin to the extent agreed upon in the negotiation.

Mr HAWKINS (USA): This is a matter of some importance to the United States as we have had, and still have, rather strong views on the subject. Therefore I am going to state them plainly and say why we want to get rid of preferential arrangements as fast as possible. We would not like to see negotiations take place on margins and for this reason. If you do that you may get an elimination or narrowing preference at a high rate. Our whole aim is to get equal treatment at a low rate. That, in essence, is why we have put the provisions this way.

Mr IGONET (France)(Interpretation): You leave the way open to increases. In other words, equalisation at a higher rate. That is what we want to avoid. I will not say that that could happen, but it would not be the general rule.

Mr McKINNON (Canada): There may be cases where that would be the only way in which negotiation could be done at all. But as I gather from Mr Hawkins remarks he would hope that was not the general approach to it. As between the two methods suggested, the one by Mr Coombs as the extremist, and Mr Hawkins' suggestion of an alternative route, I am not

at all satisfied that we will not find ourselves later on in a most confused state in carrying these things out, with possible recriminations all the way round the board. If we attempt to conduct negotiations simultaneously on the M.F.N. rate and on the preferential rate, I am not sure that it should not be in two steps. Mr Hawkins interprets the word "technical" to apply only to the first negotiation. After that if a country unilaterally decided to reduce both rates, then the second negotiation does not necessarily entail a narrowing of the margin. Have I stated your aspect correctly.

Mr HAWKINS (USA): I think so.

Mr McKINNON (Canada): Though it might take more time, the best way would be in the best interests of the negotiations to think only of the M.F.N. rate, the reduction of which must - if we accept the Charter - automatically narrow the margin of preference. As a second stage, any one of us in a preferntial area may desire to go further with both rates, but we are not obliged then to narrow the margin of preference.

Mr HAWKINS (USA): Not obliged to narrow, and not obliged to increase it.

Mr McKINNON (Canada): But not to narrow it. I am just afraid that if we attempted to carry on the two simultaneously, then with the best will in the world we are going to find ourselves in some very difficult situations owing to misunderstanding.

THE CHAIRMAN: There is only one point there. If you do that you can ask nothing for it in return. In the set-up of Mr Hawkins it would be a matter of give and take. If you negotiate with the M.F.N. rate and later on you decide to give the preferential rate at the same level, and so you lower it, as I understand it you would still be obliged to lower the M.F.N. rate to a certain extent without getting anything for it in return.

Mr McKINNON (Candda): But here is the vital point. If, as the result of negotiation, we reduce the M.F.N. rate, we do narrow the margin of preference. It is then possible for anybody in a preferential area to say, "We should like to bring them both down from that level another

step, say another 5 per cent". On that second operation we do not have to narrow the margin of preference again.

Dr. COOMBS (Australia): But in the meantime you get a request for a reduction in the M.F.N. rate and countries in preferential areas are very likely to have requests for reductions in the rate about which they are expected to negotiate. This is not a hypothetical problem; it is on our doorstep already.

THE CHAIRMAN: You are giving away something and getting nothing for it. If you like to do that, well it is all right.

Mr SHACKLE (UK): I think the explanation Mr Hawkins has given is on the assumption that the first step in the negotiating process in every case is to negotiate about the M.F.N. rate. But it is only after that that there could be any question of a possible reduction of the preferential rate, and then subject to conditions he has explained. It does seem to me that that leaves out of account one theoretically possible case, that in which there is a tripartite or three-cornered negotiation which affects at the same time both the M.F.N. rate and the preferential rate. I wonder if Mr Hawkins would like to explain his ideas as to whether that could arise, and if so how the situation would work out.

Mr HAWKINS (USA): I think that could take place. You could have simultaneous negotiations on the M.F.N. rate and the preferential rate. The time when the preferential rate comes down is not important so long as the margin resulting, if any, from the reduction of the M.F.N. rate based on the starting point, is not increased.

Mr SHACKLE (UK): That raises this further question. If in fact you have not got a reduction of the M.F.N. rate agreed as the first step, then you have not got that measure to apply to the rate which the preferential margin must not exceed. The two things are being dealt with simultaneously so you have no measure or yardstick first.

Mr HAWKINS (USA): Your yardstick is what you started with. Suppose when you start your rate is 40 and 30. You reduce the M.F.N. rate to 30, and simultaneously/the negotiations which result in the preferential rate occur

being reduced to 20. The effect is that since the preference rate would have been wiped out with the reduction in the M.F.N. rate based on your starting point, the M.F.N. rate would have to come down to 20.

Dr COOMBS (Australia): Suppose you get a request on the preferential rate by itself. You have 40 and 30, and you have a request from the people with the 30 rate for reduction to 25.

Mr HAWKINS (USA): The M.F.N. rate then goes to 35, because you would have increased the preference above the starting point.

Mr McKINNON (Canada): And yet this is not a negotiated item.

Dr COOMBS (Australia): Suppose there is a stage when you get a request from a preferential supplier to reduce the rate from 30 to 25. You agree, and you correspondingly reduce the M.F.N. rate to 35 in order not to widen the margin. You then get a request from the M.F.N. people to reduce the 35 to 30, and you agree. You have then got a position where the rates are 25 preferential and 30 M.F.N. Now that is possible if the two requests come separately, the first from preferential and the second from M.F.N. But if by chance you get those requests at the same stage of negotiations, the final result must be 35 and 25.

Mr HAWKINS (USA): You said the M.F.N. rate went from 40 to 35, did you not ?

Dr COOMBS (Australia): Yes.

Mr HAWKINS (USA): It would have to be 25, 30. Going back to your starting point, the reduction of M.F.N. by 5 leaves a margin of preference of 5 which has to be maintained.

Mr McKINNON (Canada): Take Mr Coombs' illustration where you get them simultaneously. As I understand it you have got first to deal with the M.F.N. request even although they come simultaneously.

Mr HAWKINS (USA): I do not think you would necessarily have to do that. Actually if there are two parties, each working on these two rates, each would know what the other was doing. I should not think it would be necessary to consider one before the other.

Mr SHACKLE (UK): Except that if you do not you do not have your yardstick.

Mr HAWKINS (USA): But you get your yardstick the moment the M.F.N. rate is dealt with. The moment you reduce the M.F.N. rate you have fixed the preferential margin which has to be applied whatever else happens.

Mr McKINNON (Canada): When you talk of 30 and 40 as your basis in this illustration, you really mean the margin at the date of negotiation. I think you are agreeing with that as an example.

Dr. COOMBS (Australia): I do not think he does.

Mr McKINNON (Canada): I understood him to mean 30 to 40.

Mr HAWKINS (USA): You mean a change in the rate ?

Mr McKINNON (Canada): No. I took you to mean that prior to the start of the negotiation your two rates were preferential 30 and M.F.N. 40. My point was this. Starting at those rates, with the margin of 10 per cent, if you get two requests simultaneously it seems to me you have got to first deal with your M.F.N. request in order that you carry out your obligations and narrow the margin. From there on you can do as you like. You do not need to narrow any more margins.

Dr COOMBS (Australia): I would like to know whether, if you get requests on your preferential rate and the M.F.N. rate at the same time, it is possible to finish up with a margin between the M.F.N. and the preferential rate. Provided that the margin is less than the one you started with - you start with 30 and 40 - is it possible, when you have simultaneous negotiations, to finish with two rates, say 30 and 25 ?

Mr HAWKINS (USA): Yes. You are now taking a situation where you have two rates, one 25 and one 30, after negotiations.

Dr COOMBS (Australia): You agree previously that if the requests came round the other way and separate, that you could finish with a rate of 30 and 25, and if you first got a request on your preferential rate to bring 30 down to 25, in order to keep the preference margin no greater you would then automatically adjust the M.F.N. rate to 35. You get a request on the M.F.N. rate for 30 and you bring that down leaving the preferential rate the same at 25, and you have got a rate 30 and 25. Now that means that you had two requests coming in the order of preferential and M.F.N. The result is that of a reduction in both rates

and a reduction in the margin, but a preference still exists. On the other hand you say that if you get those requests simultaneously in the same set of negotiations, the result must be to wipe out the preference.

Mr HAWKINS (USA): Still applying the rule as laid down. If your negotiations got down to 30 and 25, applying the rule the actual rate applied to the M.F.N. could not exceed 25, because the reduction from 40 to 30 is your starting point.

THE CHAIRMAN: I think the main point is this. If you have both requests at the same time you are not at liberty to choose whether you start with the preference or with the M.F.N. rate. You have to start with the M.F.N. rate and then wipe out the preference. I think that is what Mr Hawkins states here.

Mr McKINNON (Canada): No. He did not think it mattered which one you started with a moment ago.

Dr COOMBS (Australia): I quite agree with your interpretation of the clause as it stands, but it does seem to me that it creates somewhat of an anomoly if you can get two different results merely according to whether you happen to get the two requests simultaneously or in a particular order.

Mr HAWKINS (USA): I should not think that in practice there would be any difficulty. The two countries negotiate with the third and they would be very likely to know what the others are doing.

Dr COOMBS (Australia): That is the point I was trying to lead to. It does not seem to me that that is the way in which such negotiations should take place, if they are simultaneous. The thing I must confess I am not entirely clear about is this. What is the reason why you would wish to exclude that type of result from a simultaneous negotiation ? Why do you wish to exclude a result which reduces both rates and reduces the margin, but left a smaller margin than existed before ?

Mr HAWKINS (USA): To get rid of the preference, of course.

THE CHAIRMAN: To get equal treatment at the low rate in the end.

Mr SHACKLE (UK): I am not in any way going to move an amendment, but I am going to suggest a sentence which might conceivably come after the

existing sentence, and I am going to ask Mr Hawkins whether it is admissible or not. It would consist of adding these words:

"This shall be without prejudice to possible simultaneous tripartite negotiations affecting both the M.F.N. rate and the preferential rate, and resulting in such modifications of the M.F.N. rate or preferential rate respectively as may be agreed between the three parties".

I am not suggesting that as an amendment, but merely asking if Mr. Hawkins regards that as a legitimate point.

MR. HAWKINS (United States): That is an easy one to answer. Anything that might be agreed upon I should think would be permissible. It is a waver on the part of one of the technicalities of a rule.

MR. McKINNON (Canada): You might easily have four parties within the preferential agreement.

MR. HAWKINS (United States): What I should like to suggest is that you leave in only the principle here, and develop this in a procedural memorandum. It seems to me it is in line with what we have done. We are looking into procedure, not a constitution. I would say, leave the first part of the sentence, and then develop the rest of this in some detail in a procedural document. We are going to have a procedural memorandum.

MR. McKINNON (Canada): You stop at the word "preference."

MR. HAWKINS (United States): Yes.

MR. McKINNON (Canada): I think that would be highly desirable for getting on in the sub-committee and dealing with it in a procedural memorandum.

THE CHAIRMAN: What we are trying to do here is, trying to frame some paragraph of a Charter which will only come into force after the negotiations. What we need is a memorandum for the negotiations which have to be gone into before we all agree on the Charter. That is one of the technical difficulties here.

MR. MODARKAR (India): The only difficulty I feel about letting it stand as it is is that it would involve - if it is to operate in the manner described by Mr. Hawkins - a reduction in the most favoured nation rate every time there is a reduction in the preferential rate, whether or not the extent of the reduction in the most favoured nation rate has been negotiated or not. Take Mr. Hawkins's example, that the most favoured nation rate is reduced from 40 to 30 and the preferential rate is, by separate negotiation, reduced from 30 to 20, the final position would be a preferential rate of 20 and

a most favoured nation rate of 20, even though 20 was not negotiated: what was negotiated with the most favoured nation party was 30. Wherever the most favoured nation rate has any protective effect whatever this sort of automatic reduction will be a very serious matter. As I see it, the position is such that where the most favoured nation rate is the principal source of revenue for the country, where the bulk of the import is from a non-preferential source, under the most favoured nation rate there is also an automatic reduction which would have serious consequences. The result will be that wherever there is that sort of possibility the threatened country concerned will merely have to refuse to consider any request for a reduction in the preference rate but rely entirely on the most favoured nation rate because to agree to consider to negotiate the preferential rate would have the further consequence of reducing the most favoured nation rate to a greater extent than it was negotiated. Therefore, if this principle is to operate in the manner suggested by Mr. Hawkins it would have rather serious implications.

MR. HAWKINS (United States): Of course, the motive is to prevent new preferences.

MR. ADARKAR (India): That can be provided for, without this principle, by laying down that the existing preferential margin should on no account be increased, and no new preferences should be granted. Of course, that is a different matter and may be one for discussion later. Existing preferential measures should on no account be increased, and no new preferences granted. That would prevent the possibility you have in mind without entailing us in this procedure. I would favour the restoration of the wording which appears in the proposal in respect of this particular provision. In the proposal there were three clauses, A, B and C. B corresponded with the existing B, but there was a C, namely, that no new preferences should be given and existing preferences

should on no account be increased. If anything is retained it should be the old C, and not the existing B.

MR. IGONET (France) (interpretation): As far as I have understood what the Delegate for India has said I should like to support him. In the French Colonies they enjoy preferential tariffs as compared with the metropolis. Between the Colonies the customs tariffs may vary. In the Colonies those customs tariffs have a fiscal value; they are fixed by administrative or local authorities, and sometimes, in order to balance the local budget, it is necessary to increase the customs tariff. It must be possible in some cases to increase those customs tariffs without increasing the margins of preference; it must be possible to increase simultaneously the xx tariffs in connection with the metropolis and tariffs in connection with foreign countries.

THE CHAIRMAN: We are talking about an increase of the tariff now.

MR. IGONET (France): Those are fiscal tariffs which have for their purpose the balancing of the local budget.

MR. HAWKINS (United States): As I understand the comments of the Delegate of France, he wants to be free to increase rates without increasing margins. In other words, to increase both the preferential and the most favoured nation rates. There is nothing here to prevent that provided the rate is not bound by negotiations.

MR. IGONET (France)(Interpretation): I wish to support the statement of the Delegate of India, if I understood him correctly.

THE CHAIRMAN: I understand that it is not a question of negotiations, so I do not see why it comes in here. If you want to increase certain fiscal rates which are not bound in any way by any negotiations, you are free to do so, provided that you do not increase the preference. It has nothing to do with the problem we are discussing here.

MR. MCKINNON (Canada): If they are not bound, you can increase them whether they are fiscal or anything else. If they are not bound, a signatory to the Convention can do anything he likes with them.

THE CHAIRMAN: So I think that this has nothing to do with the subject we are discussing, which is, requests made to reduce tariffs and preferences.

MR. MCKINNON (Canada): In order to make progress, I would like to support Mr. Hawkins' suggestion that we delete everything in subsection "B" after the word "preference" in the second or third line. It would then read:

> "All negotiated reductions in most favoured nation import tariffs shall operate automatically to reduce or eliminate margins of preference."

THE CHAIRMAN: Leaving out also the dates?

MR. MCKINNON (Canada): Leaving out everything after that for discussion in the proceduralmemorandum, where we have to go into these things in much greater detail.

MR. HAWKINS (United States): That is the point. We are not abandoning our discussion, but we will try to work it out in detail in a procedural memorandum, to see how these situations applying the principle would be handled.

THE CHAIRMAN: I think that is the best way, because as I said before what we are doing here at the moment is simply to put some principles in the Charter which will be debated after the first set of negotiations. So I do not see any point in trying to elaborate them at this point.

MR. COOMBS (Australia): I wonder whether, if the sentence finishes at "preference", the word "automatically" might not be embarrassing?

MR. MCKINNON (Canada): I quite agree. I would like to delete the word "automatically".

MR. COOMBS (Australia): It would then read:

> "All negotiated reductions shall operate to reduce or eliminate margins of preference."

"Automatically" does not really add anything to it and suggests the sort of thing which, presumably, would be embodied in the procedural document.

MR. VIDELA (Chile): But the meaning is changed absolutely in regard to countries which are not enjoying the preference.

THE CHAIRMAN: I cannot see that, because "automatically" is closely connected with the second part of the sentence. If you will leave it at that, and state here only the principle, working it out in the memorandum, after you have had the memorandum and the first set of negotiations you will know how you want this clause to appear permanently in the Charter.

MR. VIDELA (Chile): But we do not delete the word "automatically" until we know what is in the prodedural memorandum.

THE CHAIRMAN: Then we should refer to the memorandum in the Charter.

MR. VIDELA (Chile): If you take away the word "automatically" the countries which are not enjoying a preference will never be the first to make negotiations until they are satisfied that the preference will be reduced accordingly.

THE CHAIRMAN: I wonder whether it would be wise here ---

MR. VIDELA (Chile): This word "automatically" is very important.

THE CHAIRMAN: Yes, but we could refer here to an annexe, being the memorandum on prodedure, which could later on be redrafted after the first set of negotiations. Then we could simply leave out anything else in this.

MR. SHACKLE (United Kingdom): Would it be well to let the sentence stand reserved until the memorandum on procedure has been thoroughly discussed? It is difficult to say where the discussion may lead us, and until we see that it is difficult to see how this sentence should be worded.

MR. MCKINNON (Canada): I think that is a good idea.

MR. ADARKAR (India): There is a point I would like to have recorded so that we do not lose sight of it next time we refer to this particular paragraph. In case the sentence is allowed to stand as it is,"all negotiated reductions in most favoured nation import tariffs shall operate to reduce or eliminate margins of preference", this particular provision should not exclude negotiations on the basis of preferential margins unless it is agreeable to the parties concerned. That is to say, it was Mr. Hawkins' idea that negotiations should not take place at all on the basis of the margins, but should take place exclusively on the basis of the most favoured nation rate. That is an idea which is not acceptable at the moment to the Indian Delegation. They

would like it to be recorded that in their view negotiations on the basis of preferential margins as distinct from those on the basis of the most favoured nation rate should also be permitted.

MR. VIDELA (Chile) Or vice-versa?

MR. ADARKAR (India): A second point is that reductions in preferential rates should not be required to involve, or should not necessarily involve, a reduction in the most favoured nation rate below the negotiated level unless such a reduction is required to establish a negotiated margin of preference. I repeat: the reductions in the preferential rate need not necessarily involve a reduction in the most favoured nation rate below a negotiated level unless such a reduction is required to establish a negotiated margin of preference. That is the consequence and corollary of "A". That is what I want to ensure, that negotiations should be on the basis of margins of preference where it suits us, and secondly, where we have negotiated both a most favoured nation rate and a preferential rate the final position should not require us to reduce the most favoured nation rate below the level required to establish a negotiated margin of preference.

MR. HAWKINS (United States): I should like to consider those ideas further, but off hand I should say that there is more than mechanics involved in that suggestion. There is a point of principle.

MR. ADARKAR (India): It is subject to the twoever-riding considerations that existing margins should not be increased either. When I say negotiated margins of preference, it is subject to the obligation on the part of members to see that existing margins are reduced and no new preferences given. It is within the meaning of that. Of course the provision about new preferences is covered by another clause.

MR. HAWKINS (United States): In other words, your last stipulation is that there can be no increase in margins, but there can be bound margins?

MR. ADARKAR (India): There can be bound margins and reduced margins.

MR. HAWKINS (United States): It is the bound margins which bother me a little.

MR. VIDELa (Chile): In paragraph 1 are mentioned two very practical words, "reciprocally"and "mutually". Why do we not say again in paragraph "B" "reciprocal and mutually"? Or some similar wording?

THE CHAIRMAN: I cannot see that it will help us here.

MR. COOMBS (Australia): One possible situation seems to me not an unlikely one, and I would like to know the views of the Delegate of the United States upon it. Suppose you get a country with preferential and most favoured nation rates, and it receives a request for a reudction on one item of the most favoured natinn rate, aimed partly at a reduction of the rate and partly at a modificatinn of the margin, as Mr. Hawkins said. That item may be one which the country, for reasons associated with its plans for future development, may be unwilling to bind because it contemplates entering into manufacture in that field itself. Would these provisions as they at pressnt stand prevent, in that case, negotiations relating to the margin? Suppose you have got, sticking to our standard formula, a most favoured natión rate of 40 and a preferential rate of 30, and the country is asked to reduce the former say to 30, wiping out the margin. The interest of the country is partly in the reductin of the rate and partly in getting on to equal competitive terms. Suppose the country replies, "That is an item which we propose to manufacture ourselves", we therefore are not prepared either to reduce the rate or to bind it, because we may find it necessary to increase the rate to 50. We are however prepared to put you on the same terms as the others by the elimination of the preference, that is by reducing the most favoured natinn rate at the moment to 30 without binding, or alternatively to eliminate the preference by an increase." Would that be possible under these provisions as they stand?

MR. HAWKINS (United States): Taking the case you cited, a reduced but unbound rate is rather unusual, in fact I do not think I ever heard of one. But assuming it in the case cited, you would have wiped out the preference but you would be free to move the rate wherever you liked. It could go up, but it would be the same rate for all.

MR. MCKINNON (Canada): Both would go up?

DR COOMBS (Australia): It is not an unlikely situation. Whether you would be able to solve it by that method, I do not know; but that seems to me to be a not unlikely situation for a country to encounter - to be prepared to modify preference and not necessarily to bind itself as to the rate of duty.

MR HAWKINS (USA): I think that would be in effect a way of negotiating to eliminate the margin.

DR COOMBS (Australia): Yes.

MR HAWKINS (USA): You get into complications here when you try to work out the procedure.

THE CHAIRMAN: I think we must try to make some headway here. We are all agreed that in order to see this thing clearly we shall have to have the memorandum on the procedure of negotiations. For the time being I think we have only this question: do we leave this sentence or wipe out "automatically"? There the remark was made that we should like to see the memorandum first before we decide to wipe out the word "automatically", so I think the best thing is to end our discussions for the time being, leaving the first sentence as such and provisionally agreeing to wipe out everything from "so that".

MR McKINNON (Canada): Are we not also leaving the first sentence provisionally?

MR ALAMILLA (Cuba): Yes, the whole thing is better left provisional.

THE CHAIRMAN: To see the whole thing in writing?

MR HAWKINS (USA): This is subject to the procedural arrangement being worked out.

THE CHAIRMAN: Yes. Then if we do that we still have to go into the third question, where we are supposed to have a new sub-paragraph c. included, that the binding of the lower rates should be the same in principle as the reduction of a high rate. Perhaps this can also be dealt with in the memorandum.

MR HAWKINS (U.S.A.): Mr Chairman, that point is of a rather fundamental and constitutional importance, I might say. Whether it is put the way

it has been phrased so far or not I should rather think that the countries which are most concerned with the question would probably want to see that written into the charter. It is for them to say, but I should have thought that would be so.

THE CHAIRMAN: I agree that it is a fundamental point. The proposal, if I may remind the Committee, was that the new sub-paragraph c. should read to the effect that the binding of a low rate should have in principle the same importance as the reduction of a high rate. That was one of the points made during the discussion in the main Committee II.

MR IGONET (France)(Interpretation): This means that the fact that a country already has low tariffs should be taken into consideration during the negotiations for a general reduction of tariffs?

THE CHAIRMAN: Yes.

MR VIDELA (Chile): I think it was the Belgian delegate who raised this in the Committee.

THE CHAIRMAN: Yes, and we made another point from our delegation.

MR McKINNON: In your reading of the wording just now, Mr Chairman, I think you omitted the reference in the earlier text given us by Mr Hawkins to "duty free treatment".

THE CHAIRMAN: Yes.

MR McKINNON (Canada): The first wording was to the effect that the binding of low rates or of duty-free treatment should be given equal importance with reductions of high rates.

MR VIDELA (Chile): Taking into account the preference as well? When we are starting fresh negotiations, if we have low tariffs at the time that should be taken into consideration along with the preferences that are existing. Supposing I am a country with excessive preferences and another country has low tariffs, what I mean is that the consideration of preferences should also take place and be binding here.

THE CHAIRMAN: If I have followed what you are saying, you mean this: that the binding of a low rate or of a duty-free entry into a country should be considered as the same type of concession as the reduction of a high rate or the narrowing of a margin of preference?

THE CHAIRMAN: Yes, because the countries which are outside the preferences consider the preferences as the highest obstacle.

If the meeting is agreeable, we might ask our Rapporteur to draft this clause, and we could see that at our next meeting. The only point is whether we agree to its inclusion as sub-paragraph c. Is that the feeling of the Committee? (Agreed.) Then we formally request him to do that.

The other point now is the memorandum presented by the Polish Observer with regard to the question of countries which have not at this moment stabilised their currency. They will have a certain time in which to do that, but when they do it it may mean a readjustment of certain specific duties to the new value of currency in their country. That was the special point made by the Polish Observer, who does not appear to be with us at the moment. I would like Mr Hawkins' advice again as to what we should do with this matter.

MR VIDELA (Chile): This morning in the Technical Sub-Committee we had a similar difficulty, and we asked the representative of the International Monetary Fund to come in and advise us on it. We put certain questions to him about countries which have not yet stabilised their exchange. I think, therefore, that it would be useful to bring the IMF representative into this discussion and in a very short time he could explain to us what is the position of the countries concerned.

MR HAWKINS (USA): I think it is more a question of the effect of a changed or depreciated currency upon the level of protection afforded by specific rates of duty. I think that is the point here.

THE CHAIRMAN: I have a short note about it here from the Secretary. Perhaps I may read it. It says this: "Certain European countries, previously occupied by the enemy, at present have currencies that are inconvertible and are likely to remain so for a certain period after the beginning of the exchange transactions of the International Monetary Fund (See Article 20(4) of the IMF Agreement). This transitional period may go beyond the date of the proposed tariff agreements and perhaps beyond the date of the entry into force of the agreement. Their tariffs would remain,

for some time, suspended or not expressed in a convertible currency. But after having stabilised their currency these countries will have to revise their tariffs upwards in accordance with the new par values of their currencies. There should be a provision for inclusion (a) a signatory of the proposed agreement who avails himself of the exception contained in Article XX, Section 4(a), of the IMF, to introduce or change his tariff after the entry into force of the new agreement; (b) if necessary, an undertaking concerning his future tariff negotiations corresponding to those proposed in Article 18 of the suggested United States Charter."

MR IGONET (France): Mr Chairman, I should like to point out that France will be faced with the same difficulties. Our customs tariffs before the war also were specific and since1936 our currency has been devaluated, and therefore the specific protection is not the same in value. We have tried to evaluate the percentage and it is on the basis of the ad valorem value that we are going to enter into discussions on the customs tariffs.

THE CHAIRMAN: I think that is what we might call the starting point of negotiations. In this agreement, as far as I can see, there is nothing to say what the tariff will be when we start. The point is that when we come to Geneva in April next year we will be expected to say, "These are my tariffs and these are my proposals and these are my requests". But in the case of these other countries which have not yet stabilised their currency and may not by that time have done so, what are they to say? They will come along and say, "I cannot enter into these negotiations because I have no tariff at all as a basis for such negotiations". I think that is the main point. He may say, "Later on I can enter into negotiations, when I know what my tariff is," but, as far as I know, there is no obligation at all on him for the time being. Is that the position?

MR HAWKINS (USA): I think that if a country negotiating next year did not have a tariff, or had one which was suspended, it would create a difficult position. There might be several ways of handling a case like that, one of which might be that perhaps these countries should base their requests upon their existing tariff law, even though it might be in suspense; and the response to such requests would have to be met in the light of the adjustments other countries might be able to make in relation to them.

That is the only proper way out of our serious difficulties. I think we have again got very difficult procedure. It does not help us much until we consider the procedure on memorandum. I think we are right in doing so, because it does not belong in a basic document.

Mr SHACKLE (UK): Might I make a point there. Of course I do not know what the Polish observer at that time had in mind, but there is possibly a difficulty which would exist even beyond the initial negotiation. He may be suggesting that supposing he did agree to fix a specific rate at a particular figure, then should there be some change in the value of his currency, that might have disturbing effects. It is conceivable that he may see a difficulty in those circumstances in fixing a rate at all.

THE CHAIRMAN: Then he could not enter into negotiations, because he would have nothing to offer. You want to know what you are trading.

Mr HAWKINS (USA): In circumstances like that there is nothing in the draft charter which would compel negotiations in paragraph 3. You will notice that the phrase in that paragraph deals with countries who, without sufficient justification refuse to enter negotiations. If the country has not a tariff they are certain justified in postponing negotiations.

THE CHAIRMAN: I think the only point which I think is still worrying him is this. We have the Charter and we have at the same time an obligation to enter into that low tariff club, and he cannot enter into that club.

Mr VIDELA (Chile): We are all members of the International Monetary Fund, and therefore we have to accept the obligations of stability of our currency. Other countries may differ greatly on many things here.

THE CHAIRMAN: He does not foresee the possibility of stabilising his currency for perhaps two years. He fears that in that position we will say to him, "All right, you cannot enter as a member of the Charter". I think that is the main sense of his argument.

Mr HAWKINS (USA): I do not think that would preclude his joining the organisation.

Dr COOMBS (Australia): "Within a reasonable time" is the phrase.

Mr HAWKINS (USA): He would thereby subscribe to the general obligation to

bring down tariffs. If somebody invoked Article 3 and said: "The Polish Government refuses to negotiate", and presents a case, he then comes within the phrase"without sufficient justification".

THE CHAIRMAN: There seems to be no difficulty at this stage except the difficulty that we cannot enter into negotiations for the time being. I think we will now adjourn and resume our meeting with the discussion of paragraph 2. The meeting is adjourned.

(The meeting rose at 5.50 p.m.)

(For verbatim report of evening session, see Part 2 of E/PC/T/C.II/PRO/PV/8).

The meeting resumed at 8 p.m.:

THE CHAIRMAN: The meeting is open. Before we come to paragraph 2 of Article 18 there are a few points in the memorandum of the secretariat into which we ought to go so as to see how we will dispose of them. One is on page 12 of the memorandum. You see the remark of the Australian Delegate:

> "Countries should not negotiate about reductions of tariffs on a commodity the principal supply of which is outside the negotiating group."

I think that is a point which we ought to cover first, to see whether we could deal with it on the memorandum on procedure, which seems to be our general escape clause at the moment.

MR. HAWKINS (United States): I hesitate to say it, but I think it is a matter which comes in the procedural memorandum. It certainly is not the sort of thing that would go into the Charter. I think I would agree that generally speaking, and without making it a rigid rule, negotiations might be confined to products of which the countries concerned are the chief suppliers. In that way there is some inducement, some motive, for other countries to carry out their obligations under paragraph 1 of the Article and enter into negotiations in order that the products in which they are primarily interested may receive consideration. I would like to rather stress the point that I do not think you can lay down an absolutely rigid rule on this point. For example, there are quite a number of products of which ex-enemy countries were the chief suppliers in the past; but other countries now are and are likely to be the chief suppliers of those products. I think it would be better, if you are going to phrase any general rule, to say "products of which the countries concerned are actually or potentially the chief suppliers." However, I should hate to see that rule absolutely rigid. I think you might find exceptions to it, so that if it were adopted in the memorandum of procedure I think it should be rather loosely worded.

THE CHAIRMAN: Any comments on that? I think we can all agree with Mr. Hawkins that in order not to make these coming negotiations too difficult and complicated one should as a rule try to confine one's demands to the principal supplier, but we should try to make it more flexible. We will entrust that to our faithful rapporteur.

Then we have another point which could perhaps be explained - I think there are a few Australian delegates in the background. That point is:

> "If internal measures taken by a Government to ameliorate the hardship - not foreseen during the negotiations - resulting from concessions afforded to other countries, such Government should be entitled to seek postponement of introduction of concessions made."

Is it an escape clause or something of that kind?

MR. COOMBS (Australia): I think that should be considered in later

THE CHAIRMAN: I am rather doubtful whether we canstart writing in escape clauses in that way. What does Mr. Hawkins think?

MR. HAWKINS (United States): I think the point was that they were intended to go in Article 29.

MR. COOMBS (Australia): That is right.

THE CHAIRMAN: We will deal with it then when we discuss Article 29. I have still a last set of remarks, on page 16 of the memorandum, where the Delegate of Chile put forward some reasons for exceptions. They are:

> "Chile wishes to stipulate exception in the case of 'circumstances in which a refusal to reduce tariffs would be considered justified', viz.:
>
> (a) when a concession affects or might affect a national industry in its initial stage of development.".

We will deal with that when we come to the question of employment.

> "(b) When a concession affects or might affect a national industry which is vital to production and employment in a particular region and cannot easily be replaced by another industry;
>
> (c) when home industries are sufficient to supply internal consumption;
>
> (d) when home industries use for the most part domestic raw materials."

Those points all come up with regard to the question that Members should be prepared to enter into reciprocal and mutually advantageous negotiations, and so on.

MR. HAWKINS (United States): On the first point, -

THE CHAIRMAN: The question of employment will be referred to at a later stage.

MR. HAWKINS (United States): With regard to (b), "national industry which is vital to production and which cannot easily be replaced," I think this is a case where the country concerned would simply have to say that it was unable to take action on that particular product. It might cost them something to do so, because they might lose concessions for their exports, but they would not be precluded from saying it and would not be compelled by anything in the Charter to reduce or bind that rate.

On (c), "where home industry is sufficient to supply the demand", a somewhat similar consideration applies except that I should think the country concerned would want to ask itself whether those industries are supplying home consumption at a reasonable price, or whether a little healthy competition might not be useful, but in general the same point applies. If in the case of that product there were reasons which made it difficult to take action, that would be taken into consideration.

THE CHAIRMAN: But is it not true that if we put in all these exceptions, if we always play for safety, what is the use of these negotiations? We are supposed to offer something. There is nothing we offer if we are always on the safe side. If a country tried to use all these escape clauses, if I may so call them, the other members will say, "Look here, you are not playing ball."

MR. BURR (Chile)(Interpretation): I wonder whether, when the denial is justified, we could not use the same terms as in Article 29.

THE CHAIRMAN: If that is so, perhaps we could refer to it when we come to Article 29.

MR. HAWKINS (United States): I do not think that fits in Article 29, does it? All these are exceptions, in the case of circumstances in which a refusal to reduce tariffs would be considered justified. Article 29 covers a case where a concession has been made and duty reduced and then, because of something not foreseen at the time of the negotiations, there has been a sudden flood of imports, and there might be a temporary cancellation of the concession, under the machinery prescribed there. I think we should be extremely unwise to take this in as exceptions when they are really taken care of in the negotiating process.

MR. SHACKLE (United Kingdom): I would like to support that. If we once start specifying particular cases almost every country will have some specific case which it will justifiably be able to claim should be included. One could mention a country which during the war lost a considerable part of its foreign investments and for that reason made an excuse for not making tariff reductions. There is no end to it once you start.

THE CHAIRMAN: I am inclined to agree there because, as I have stated before, in my opinion negotiating means that you really have something to offer. It means also sacrifices must be made, otherwise the whole spirit of the Charter will be wiped out. As for my country, we accept these things for the common well-being, so I would very much advise against including all these special circumstances. Of course members are entirely free to give their arguments against it.

MR. LEDUYER (France) (Interpretation): We must not lose sight of the fact that all this will lead to negotiations first on the bilateral and then on the multilateral plan, according to the procedure which will be fixed later. We should not lose sight of the fact that in the course of those negotiations each country will state its difficulties, why it cannot lower tariffs

absolutely or relatively, and each naturally will give its reasons. Each will say why it cannot be generous regarding concessions, so I think all these exceptions will have been envisaged in the negotiations. Each country will present its own situation and I do not think it is of any use to mention these exceptions here.

MR. BURR (Chile): I do not insist.

THE CHAIRMAN: Having dealt with those arguments the only other points that ha to be dealt with are when we discuss paragraph 3. We now have to deal with paragraph 2, "Each member participating in negotiations pursuant to paragraph 1 of this Article shall keep the organisation informed of the progress thereof and shall transmit to the Organisation a copy of the agreement or agreements incorporating the results of such negotiations." I do no think that will raise any difficulties.

Adopted.

THE CHAIRMAN: Then we get paragraph 3. This has been called the penal clause. Here there are a few arguments stated, but this is a very important article and I prefer to ask Mr. Hawkins' to explain it to us.

MR. HAWKINS (United States): I think I can best explain it by reading the Article and commenting on the main points.

"If any member considers that any other member has failed, within a reasonable period of time"

- note that reasonable time is allowed -

"to fulfil its obligations under paragraph 1 of this Article"

- that is, has failed to respond to requests to negotiate and take effectiv action in the negotiations -

"such member"

- that is, the complaining member -

"may refer the matter to the Organisation, which shall investigate the matter and make appropriate recommendations to the members concerned."

The word "recommendation in that case may be a recommendation to the

to the member which has refused to negotiate or failed to accomplish anything in the negotiations, in order to learn what the difficulty is.

> "The Organisation, if it finds that a member has, without sufficient justification, failed to negotiate with such complaining member,"

- "without justification" should be underlined, because there will be cases in which it will be impossible at once to negotiate, such as those mentioned this afternoon, as when a country is just revising its tariff policy, or whose currency may have depreciated.

> "... if it finds that a member has, without justification, failed to negotiate with such complaining member as required by paragraph 1 of this Article, may determine that the complaining member, or in exceptional cases the members of the Organisation generally, shall, notwithstanding the provisions of Article 8, be entitled to withhold from the trade of the other Member any of the tariff reductions which the complaining member, or the members of the Organisation generally, as the case may be, may have negotiated in pursuance of paragraph 1 of this Article, and if such reductions are in fact withheld, such other member shall then be free, within 60 days after such action is taken, to withdraw from the Organisation on 60 days notice to the Organisation."

Going back now to the long sentence, I call your attention first to the words "without justification", and that the Organisation "may determine that the complaining Member, or in exceptional cases the Members of the Organisation generally, shall, notwithstanding the provisions of Article 8, be entitled to withhold from the trade of the other Member any of the tariff reductions which the complaining Member, or the Members of the Organisation generally, as the case may be, may have negotiated". Now, the whole effect of that is that if negotiations have not been entered into by a country and it has no justification for it, the benefits of the tariff reductions which have been made by the complaining member or members - and this is of some importance - can be withheld from the member who has failed to co-operate or to carry out his obligations under the first paragraph of the Article.

MR McKINNON (Canada): I suppose that "any" there would mean "any or all"?

THE CHAIRMAN: The matter is now open for discussion.

MR ADARKAR (India): Mr Chairman, there are one or two points of clarification concerning this paragraph. It is not quite clear, Sir, whether the penalties which are contemplated in this paragraph will be applicable at all to the countries which will take part in the initial negotiations or whether the arrangements agreed amongst this initial group of countries will be more or less taken as the standard with reference to which the concessions made by the new members will be judged. This point is rather important because it is not quite clear whether the negotiations referred to in paragraph 1 refer only to the negotiations which are to take place next Spring or to the whole series of negotiations. That is one point, Sir. In any case, the attitude of the Indian delegation towards the principle underlying this paragraph is broadly this: that the question of penalties is a very delicate one and the undertaking to impose penalties on other countries can properly be considered only after we have some experience with the kind of multilateral negotiations that are contemplated. It is the first time that we are experimenting in this process of multilateral tariff negotiations, and we should see how these work - how many countries

feel genuine difficulties in making tariff reductions - and it is only after seeing that that each country will be able to decide what will be the practical implications of applying this kind of sanctions to the countries concerned. We feel, Sir, that in the case of other international organisations like the International Monetary Fund a country can either keep out or get out of the organisation without incurring any penalties whatever; and it is therefore a difficult matter for a country which in the case of this organisation finds that by being outside the organisation it is incurring very severe penalties, in that its trade will be subject to dislocation in several countries. Generally speaking, we believe that equality of treatment and a reduction of tariffs should be treated as two distinct principles. It is possible for a country to agree to complete equality of treatment, while it may have genuine difficulties in making substantial reductions in tariffs. If it agrees to equality of treatment it will also make a contribution to the promotion of international trade which is worth something, and we should not deny ourselves the benefit of that contribution merely because the country has certain difficulties in offering reductions of tariffs. We do not know at this stage what is going to be the network of our commercial relations in the next few years. It is quite true that the countries which are represented at the preparatory meeting are countries which have been responsible and which have accounted for the major part of our foreign trade, but with the change in the economic structure of the country and with an increase in industrial production it is quite possible that the whole position of our export trade will undergo very material change; and if that happens our trade relations with countries which are at present not included in the preparatory group will change. Our trade with those countries will certainly increase. It is therefore a matter of very great consequence with us that we should not accept any undertaking which may have the result of disrupting our trade relations with countries with which we hope to develop trade. Therefore at this stage countries in the position of India are not able to see the future clearly, and they would therefore prefer that, on the analogy of Article 31, which has been deferred for later consideration, this particular provision should

also be deferred. They feel that such a procedure would also be conducive to the better conduct of the tariff negotiations. Each country with the proposed negotiations before it should be in a position to consider the demands for tariff concessions on their own merit and should not also have to take into account this further consideration that if it fails to make concessions it may be subjected to certain reprisals. So we feel, Sir, that the whole process should rest on a mutually advantageous basis. It should be an association of willing members and it should be : mutual interest and not coercion that should be the sanction behind the whole thing; and we think, therefore, that from this point of view it will create the proper setting for these negotiations if we do not hold this threat over the heads of the negotiating parties; and from that point of view I feel we should defer consideration of this particular provision until we have some experience of this most difficult and model experiment in multilateral tariff negotiations.

THE CHAIRMAN: I think the answer to the first query of the Indian delegate as to whether it should refer to the coming negotiations or to the future negotiations should be that normally speaking it should be to the future negotiations, because the Charter will not be there when we have our first negotiations in Geneva. However, we will have to treat the future negotiations and the first negotiations in the same way, so it certainly has a bearing, in my opinion, on the first negotiations. But you are not officially a member up to now because you are not a member until you have accepted the Charter as such.

With regard to the second point, I must say I find it a little difficult, because you are not in a position to get definite conclusions with regard to members who do not fulfill their obligations, because they would get out before that and they would be non-members, and we would then be in the same position. I am quite in agreement with the idea underlying it, that if we all do something and give certain concessions and accept certain obligations in being a member of that club - if I may use that expression - it should not be allowed for another to come into the club and say, "I am here and there is nothing more to be said about it".

Mr PARANAGUA (Brazil): I have some doubts about this tariff negotiation, and I would be glad if I could ask Mr Hawkins about this. The tariff negotiation ----

THE CHAIRMAN: On a point of order, we discussed the principle of the negotiations this afternoon. It is simply a question of the penalty clause.

Mr PARANAGUA (Brazil): The method of negotiation until now, as I have seen it, is to present a list of products to countries interested, and there are 17 countries. That means 256 lists one country presenting to the others. To examine this list is a very difficult question, and if they are not examined in time a penalty can be given against the country. Every country is obliged to study the list, to consult the organisations concerned, and commercial associations, and all that will take enormous

time. I cannot understand how we can finish that in time, and if it is not finished in time it is unreasonable for a country to have a penalty against it. It is more like an imposition than a negotiation. It means we are obliged to agree. We have always this menace facing us, "If you do not agree, you fail". There is another Article here saying that a country, in the case of emergency, can suspend the concession. Why so condescendingly in the case of an emergency and so drastic against a member in saying that they failed in their negotiations. We might receive unreasonable requests, and we do not want to be accused of failing. There is another aspect, too. Sometimes the negotiations can go very slowly, because one country is a non-member, and we are not going to lose our trade with a neighbour who is not a member and incur a penalty. I would like to have some explanation about these cases.

Mr HAWKINS (United States): Mr Chairman, if you can tolerate me for ten minutes I should like to outline the whole procedure as we see it and try to pick up these questions in the course of the outline. I should like to give you our conception of the procedure and how it would work, and also how this third paragraph fits into it. Our idea is that next Spring the countries who are members of this Preparatory Committee - 17 or 18, or however you count them - would negotiate schedules for the reduction of tariffs. In answer to one of the delegate's questions which referred to the nature of these schedules, there would be 17 schedules and not 256 schedules. Each of the 17 countries would offer a schedule of tariff reductions applicable to the imports of interest to the other 16. In a sense that does amount to that many bilateral agreements, but it can be a great deal more simple than having 256 bilateral negotiations, and for this reason. The United States, for example, finds on looking over the schedule of, we will say, the United Kingdom, that there are some reductions which are not adequate, and we are not very happy about them.

If it were a bilateral negotiation, we would do what we once did - spend about two years negotiating. We will have before us, however, the sixteen other schedules simultaneously. We will look at all we are granting, and we will consider the benefits we are getting from all the other fifteen countries. They may more than compensate as a whole for any deficiencies there may be in a particular country's schedule as it affects our products, so that we do not need to be so particular. We do not need to haggle, as is often done in bilateral negotiations.

MR. PARANAGUA (Brazil): Does that mean that the products would all be the same? They are not different? For example, the list presented to the Brazilian Government would not be the same as the list presented to the other Governments?

MR. HAWKINS (USA): Take the American schedule as it comes out of the negotiations. The schedule that would come out would apply to the products of interest to sixteen countries. It will run in the order of our tariff schedule, and the commitment on each rate will not be to the country mainly interested, but to every one of the others. It is one single schedule -- an obligation to the other sixteen countries. It will be rather a long and elaborate schedule. We intend to make it so.

As to paragraph 3, the countries that are members of this Preparatory Committee represent, I think, a good cross-section of the countries of the world. You have all geographic regions represented. You have large countries, you have small countries. You have countries with different systems of trading, and you have countries in different stages of development. What such a group of countries will do in the way of tariff reductions creates a fair standard to judge what other countries ought to do.

If you will refer to Article 56, it provides that when these seventeen countries, which, I repreat, are pretty representative of all sorts of conditions, have concluded their negotiations and have elaborated these seventeen tariff schedules, those schedules would represent a text by which to judge what other countries should be expected to do. Those seventeen countries would be constituted as an interim tariff committee for the purpose of judging how far other countries not parties to the original negotiations should go. You would expect, given the very representative character of that group, that they would be reasonable and tolerant, and ready to take into account almost any condition which any other country might be in in making a judgment as to whether such other country had got far enough with its negotiations.

As each other country completes its negotiations and comes up to the standard set by the original seventeen countries, it would be added to the interim tariff committee, and the provision goes on to say that when two-thirds of the countries are members of the committee, the whole conference takes it over.

Within that framework I should like to try to answer some of the questions. The first questions were raised by the Delegate of India. It was whether the penalty provisions would be applicable under complaint of some country other than the original negotiating group against members of that group. I think they would. If some outside country that was not a party to the original negotiations should want to negotiate with a country a member of the original group, in order to get more favourable treatment of his product which had not been covered by

the initial negotiations, it could complain and the procedure of Article 3 could be invoked against that country if it were unreasonably refusing to negotiate. I think, however, in practice it would turn out that the original negotiating group would probably have gone as far as other countries would be expected to go, and that the provisions of paragraph 3 are more likely in practice to be applicable to countries which did not participate in these thorough-going initial negotiations.

The next point of the Indian Delegate was that these provisions in paragraph 3 should be set aside until some future time; I think he had in mind a time some time after the initial negotiations next spring had been completed. My only comment on that is this, that there would be somewhat less inducement for countries to enter into those negotiations if it were possible by not entering into them and by invoking most-favoured -nation clauses of a bilateral agreement to get very substantial benefits without conferring any. The Delegate of India spoke of penalties and of coercion. I do not think that is really a proper description of what is contemplated. I think it would be fair to say that countries which do not conform to the provisions of the first paragraph of Article 18 fail to get benefits. It is not as though penalty duties were applied, or that extra increased duties were put on. The provision is merely that they would not get the benefit of reductions in duties which other countries had made and which they extend to countries which have also reduced the duties.

I do not know whether I have answered all the questions or not, or whether my explanation is satisfactory, but if not I should be glad to try to clarify those points.

THE CHAIRMAN: Before we proceed further I would like to say a few words about how I see things after the explanation of Mr. Hawkins. Firstly, in Geneva we will have 17 or 18 countries coming together to negotiate. How we will deal then will be covered by our memorandum of procedure. We only have before us the principle of what will be expected of us in the first place, under Article 18. We can leave that for the time being with what Mr. Hawkins has said about how he envisages negotiations taking place, which will be covered as far as is suitable in the memorandum.

The second step comes when we have had the negotiations which have resulted in something - tariff reductions and so on, which for the time being will or will not come into force. If they come into force for the time being before the world conference, we would then have the question whether it should apply to all countries for a certain specified period until those countries have had a chance to enter into - to use the phrase again - the low tariff club. That would be after the world conference. When the world conference is a success we go on with the Charter, and we go on with the whole procedure of further tariff reductions and tariff negotiations. We would then have 17 or 18 countries who have studied this for a long time making an agreement in April. They could say fairly soon, "Yes, we will definitely accept the obligations of the Charter." There will then be the 18 countries mentioned in Article 56 being the Interim Tariff Committee. If I am not right in that, perhaps Mr. Hawkins would correct me later on.

This committee will then judge of the new members who have accepted the world Charter at the world conference. At the world conference, with 36 countries, we cannot have a complete set of tariff negotiations. Again if I am wrong I would like Mr. Hawkins to correct me. You more or less accept the obligation to enter into tariff negotiations in the same spirit as the former countries. They are provisionally new members and have an

obligation to enter into tariff negotiations; and already the existing members would have an obligation to enter into new negotiations if it was found in March that not enough had been done in certain cases. Once the new members have accepted the obligation to negotiate we would find that the Interim Tariff Committee would have to judge, within a reasonable time, whether they had failed to fulfil their obligations without sufficient justification. I think there cannot be much objection to that. I would like Mr. Hawkins to say if I have understood him accurately in relating the procedure which I have just sketched out. We also have to take it that we will have succeeded in solving the difficulty with regard to the relationship of non-members, which was left out of Article 31, in which he said we could not deal with it now before we knew more about the negotiations in Geneva, and perhaps the world conference.

MR. SHACKLE (United Kingdom): Might I suggest that there is perhaps a certain difference between the position of non-members under Article 31 and the position under paragraph 3 of this Article of provisional members, who may not have negotiated satisfactory tariff reductions. It seems to me that in the case of the provisional members who have not negotiated satisfactory tariff reductions there is a difference, in that by the fact of becoming provisional members they have already agreed to go through this procedure; and if the procedure into which they have agreed to go involves these penalties as part of the procedure, then they have accepted those consequences in advance. In that way they differentiate themselves from the pure non-members under Article 31.

THE CHAIRMAN: I entirely agree with that. I only made the remark because in my opinion in settling the question with regard to the non-members there may not be sufficient incentive to come into the club, because there would be hardly enough. Mr. Hawkins, perhaps you would say if I stated it correctly.

MR. HAWKINS (United States): I believe you did. I cannot think of any point in it which caused me any doubt.

THE CHAIRMAN: We now have to look into this with regard to procedure.

MR. ADARKAR (India): With regard to the question of giving something without receiving anything, is not it a difficulty which arises whenever any country operates the most-favoured-nation tariff? The principle has been the main principle of Indian tariffs, apart from Imperial Preference - which was in 1922. Therefore, if India has made any changes in tariffs the benefit of that has gone to all the countries in the world with which she was trading, without receiving any great reward.

THE CHAIRMAN: There again I think we have to refer to what we discussed this afternoon. We added two clauses of principle to Article 18: one was on the question of industrial development and employment, for Committees I and II combined; the other was the question of the low tariffs being the same as a reduction of a high tariff, or the decrease of preference. I think that would cover your point. That will be taken into consideration once it is seen whether a member has without sufficient justification -- you understand that -- failed to fulfil its obligations.

MR. ADARKAR (India): The difficulty with us is that we do not know what types of cases will arise in which penalties will have to be involved. We do not know yet how the principle of, for example, remaining tariffs concessions would apply to economic development, as Mr. Coombs said this afternoon. We have not sufficient information on that as yet, and that is our main difficulty.

THE CHAIRMAN: There again you do not accept the Charter before the negotiations. You accept the Charter after the negotiations, and even after the world conference. Therefore, I do not think this difficulty can arise.

MR. ADARKAR (India): Maybe not as far as the original members of the Preparatory Committee are concerned, but it will arise in regard to other members; and in so far as penalties are applied to those members it will affect the trade relations between the original members and the other members.

MR. McKINNON (Canada): What do the various speakers mean by the word "penalty"? There is no penalty mentioned in this article. No penalty is suggested in the Article, directly or indirectly. I am unable to follow the discussion to date.

THE CHAIRMAN: Withholding the tariff reductions.

MR. McKINNON (Canada): Quite, but that is no penalty. That is merely the withholding of a favour that was to be granted to those who joined the "club." There is nothing suggestive of a penalty about it. For that reason I just have not been able to follow the discussion.

MR. ADARKAR (India): There are two ways of describing the same thing. When five or six countries withhold the benefit of tariff reductions from one country, and when a number of its competitors are eligible for it, that is a situation in which the trade of the country from which the concessions are withheld is bound to suffer, and any suffering of that sort is a penalty.

MR. McKINNON (Canada): Surely it is no penalty to withhold the privileges of the "club" to anyone who has failed to become a member? There is no penalty involved in that.

MR. HAWKINS (United States): I would like to point out one thing that may have been overlooked. It may be the Delegate for India is overlooking it. This is not a mandatory withholding of benefits. This does not require the benefits to be withheld. The member who is complaining about another member could be authorised to withhold benefits.

MR. McKINNON (Canada): By the Organization.

MR. HAWKINS (United States): By the Organization. Allowance is made for the possibility that all might be authorised, but they would not be required: they would only be authorised to withhold. Now, there is one sort of circumstance there which makes it desirable that all members be authorised in particular cases to withhold benefits. Let us support the complaining member is one of those rare countries with a low level of tariffs.

Let us suppose the concessions are mainly binding. It has not got much to withhold. In those circumstances there are bound to be a number of other countries affected by the failure of the member complained of to reduce its tariffs, and the Organisation, in those circumstances, may broaden the authorisation to all members, so that they can withhold the tariff cuts they made, they having made many more, possibly, than the complaining member whose tariff is low and has been in large measure bound.

THE CHAIRMAN: We have now heard the further explanation of Mr. Hawkins, and I think the position must now be fairly clear. Can we agree to this clause as it is?

MR. ADARKAR (India): I think the Delegation of India would like some time to consider the full implications of this. I think the clause includes an important point of principle. It would be better from the point of view of the Delegateion of India at any rate if consideration of this clause were deferred.

THE CHAIRMAN: Ther terms of reference of this Committee are just to prepare and discuss the different Articles to see whether or not alterations in the Draft are necessary, not committing the members here. They should be free, if it comes up again in Committee II, to make any reservations they still wish to make. Our point is whether we can still improve on the draft or not. If we cannot agree on it, we have to state that, but as I take it that you want more time to refelct on it, perhaps if we adopt this Article as it is you would have full freedom to refer to it again in the main Committee.

MR. ADARKAR (India): Would it be recorded in the review that we would have preferred the whole provision to have been taken up for consideration after the negotiations have taken place in Spring?

MR. SHACKLE (United Kingdom): May I suggest that we should probably have

to take a decision about this not later than the time at which the Spring negotiations are held, and when they are concluded this will become a question to which we shall actually have to have an answer. I feel that we cannot defer a decision until after that time.

THE CHAIRMAN: I think that was the idea of the Delegate of India, not to go further until after Geneva, if we can agree. Maybe he could agree provisionally at the main Committee's meeting, but I wanted to give him time to considerthis question.

MR. PARANAGUA (Brazil): At the time of these tariff negotiations the Charter will come into force, will it not, among the 17 members? That means that we shall be bound by the whole Charter. That implies to a certain extent the revision of the Charter.

MR. HAWKINS (United States): Under the present plan the meeting next Spring will be the second meeting of the Preparatory Committee which is formulating a Draft Charter for submission to a world conference. At the same time the members of the Preparatory Commission are implementing among themselves one of the obligations of the Charter, namely the provisions of paragraph 1 of Article 18. I do not suppose that the Charter will take formal effect among the members of the Preparatory Committee, although you would expect that, they having formulated and agreed to it, they would support it and adhere to it in the full Conference. As to the tariff part, the tariff schedules, there is a question as to whether they might not decide to put it into effect sooner. They do not have to, but they might decide to. If they did there would be certain things in Chapter 4 which they would probably want to incorporate by rapporte - certain things which are related to the tariff schedules. To give one illustration, the provisions regarding quantitative restrictions. If that is not done the tarif schedules would become meaningless. National treatment regarding internal taxes would be another, safeguarding the concessions granted, otherwise a discriminatory

internal tax might nullify tariff concessions. There are certain things of that sort which, if the schedule were put into effect at once by the 17 countries, could be put into effect by reports to the Charter. The formal adherence of the members would presumably not take place until the world Conference later on.

MR. PARANAGUA (Brazil): I understood that by this note on page 37. There is a footnote to Article 56, according to which I have the impression that more or less all the principles embodied in this Charter would be put into force among the countries signing the tariff agreement.

MR. LECUYER (France): If we can agree in January or February regarding certain tariff reductions, it may be interesting to have the Charter enter into force as soon as possible, as in that case a minimum of conventions would have to be agreed to. It may be that some provisions might enter into force at the same time as the tariff reductions. Then, if I remember correctly the terms of the first American memorandum, it was envisaged that at least we shouldthink of this if the tariff negotiations were satisfactory. But then it would be useless to consider the third paragraph of Article 18 at this stage. That does not necessarily imply that this text is an intangible one - it is only a mere possibility. It might come into force if the text was agreed to and if the negotiations were satisfactory.

THE CHAIRMAN: I think that was always the underlying idea. Nothing will come into force if we do not succeed with our negotiations and so on in Geneva. Therefore the idea is that we should try to clear this text as much as possible so as to prevent further work in Geneva, when we shall have enough to do. We cannot have these meetings again.

Then, subject to the reservation of the delegate of India, do we agree to the principle here? I have one further point to raise, and it is this difficulty: that we do not only withhold tariff concessions in this charter. There are any other obligations we take upon us. I think I must raise this because the positions of certain countries are so difficult, as Mr Hawkins pointed out, with regard to countries with low tariffs. The point is whether we add here, after "withhold from the trade of the other Member any of the tariff reductions which the complaining Member, or the Members of the Organisation generally, as the case may be, may have negotiated", some words such as "or other obligations which may have been granted in the charter such as the elimination of quantitative restrictions pursuant to Article 18 of the charter", and then go on with "and if such reductions are in fact withheld", and so on; and perhaps at the beginning of the sentence we should say "in special cases". But the question I would like to ask Mr Hawkins is whether we put it in here or simply restrict ourselves to the tariff reductions. Did I make my meaning clear?

MR HAWKINS (USA): Mr Chairman, if I get the sense of that it is this: that under the draft as it is the benefits/would be withheld are only the tariff benefits; but you, in effect, are saying that a country or countries might be authorised to withhold any of the benefits granted under Chapter IV of the charter?

THE CHAIRMAN: Yes. That, in my opinion, is more logical than it is now.

MR HAWKINS (USA): The effect of that, I think, is to make it pretty severe, but again whether it does so depends on what these other obligations are. If there is a general undertaking not to use quantitative restrictions subject to certain exceptions, then the thing a country would be relieved of would be that obligation, which would mean that they do not merely withhold benefits but they would be entitled to put on real penalties in the form of quantitative restrictions. I see fully the logic of the point, but I wonder first whether it is not unnecessarily severe. I think that the case which you must have

in mind is the case of a complaining country which has a low level of tariffs. That is something to consider. My point was that in that sort of case the Organisation could authorise other members to withhold tariff benefits. Now you will ask, I am sure, what is their interest in doing it. The answer to that is that inevitably other countries than the low tariff countries would have an interest in the reductions of tariffs by the member complained of. I am quite sure that that is not conclusive - what I have just said - but there are some considerations there which I think do bear on the point.

MR SHACKLE (U.K.): It strikes me there is possibly a further point here in that while the withholding of particular tariff reductions is, so to speak, a measure which can be completely and fully defined (you know exactly how far it goes and whatit involves) when you get away from tariffs and are dealing with other matters such as quantitative restrictions and so on, and subsidies, it is not at all easy to see exactly what would be involved by reverting to the previous regime. Would it involve putting back your quantitative restrictions and then giving to the particular country concerned a quota of the same size as it had before, or what? It is difficult to see what would be involved in reverting to the previous regime in matters other than tariffs.

THE CHAIRMAN: I will certainly not insist on this. I only wanted to point out here that perhaps it is a good thing for a low tariff country, which will not have many things to do. It will simply ask the brothers in the "club" with high tariffs to impose the penalties. It comes down to that. That is the only point I want to make.

MR HAWKINS (USA): I think this would help to meet your point: to substitute "benefits" for "reductions", and say "be entitled to withhold from the trade of the other Member any of the tariff benefits", and so on. That would release a low tariff country from its bindings.

MR McKINNON (Canada): It struck me that your suggestion, Mr Chairman, does add to the severity of the paragraph, and that it was not entirely logical, either, in that it destroys the consonance between the so-called offence and what some of those present have been calling the punishment. After all,

what the country complained of has failed to do is one thing - to negotiate the tariff reductions - and therefore, having failed to do that one thing, the others withhold from them the benefit of the tariff reductions that they make. I think it might be going pretty far afield to impose upon them what might then become penalties but which are not penalties, to my mind, in any shape or form here. If the paragraph were to be made more severe, I should submit that the proper way to do it would be to make it mandatory upon the other members to withhold the benefit, because under the Article as it stands, if we had 18 members in the club and one completely failed to carry out his obligations, it is only optional upon them to withhold the benefits, and you might have nine or ten deciding not to withhold them and the remainder of the group withholding them. Therefore I think that if it is not severe enough as it is it is in that aspect; but I would not think it fair to impose upon them other punishments, if you want to call it that, beyond a mere withholding of the tariff benefits.

THE CHAIRMAN: I only raised the point because I am from a country which would not be able to do much in this way. I still think perhaps it would be wiser to take over the suggestion of Mr Hawkins and speak of tariff benefits and not of tariff reductions.

MR PARANAGUA (Brazil): A very important point arises here. It is very important to have tariff reductions but if we have restrictions that will nullify the reductions. I would call attention to the note here at the bottom of page 37: "It is contemplated that the Agreement would contain schedules of tariff concessions and wouldincorporate certain of the provisions of Chapter IV of the Charter (e.g., the provisions relating to most favoured nation treatment, to national treatment on internal taxes and regulations, to quantitative restrictions, etc.)" That is your point?

THE CHAIRMAN: Yes.

MR PARANAGUA (Brazil): If we are to have the reduction of tariffs nullified because of these restrictions the agreement will be absolutely useless.

THE CHAIRMAN: A member should also undertake not to apply those restrictions.

MR PARANAGUA (Brazil): That is the reason why I asked if to a certain extent the charter would be in force amongst the countries having the agreement, and I think we must have that, because that means the real enforcement of the tariff concessions.

Mr McKINNON (Canada): I do not want to be misunderstood. I have no objection whatever to making it much more severe. We think it errs on the other side, but if it is to be made more severe, then I think there is a different way of doing it. I could not help noticing that those of those present seemed to feel that it was already too severe.

Mr HAWKINS (United States): I just wanted to refer to what the Canadian delegate has just said. I think he is right that if you bring the tariff schedules into force, the ones which would be negotiated next Spring, there are certain provisions which must be brought into force immediately, or your tariff schedules do not mean anything.

THE CHAIRMAN: On the other hand, I think that as we have not yet reached the results of the Committee on the balance of payment restrictions and quantitative restrictions, it would be perhaps sufficient now to mention the point to the other Committee for them to take it into consideration when they study the whole thing and here confine ourselves to tariff benefits.

Mr PARANAGUA (Brazil): There is a reference here to Article 56. It says: "in accordance with the provisions of Article 56". Could we not add to that, "and the note appended", because then we would know in what spirit those tariff agreements must be within the Schedule.

THE CHAIRMAN: Article 56 already has a note appended, so I think there is no need to mention the note specifically.

Mr PARANAGUA (Brazil): I am not sure that the note is incorporated there. It is not an Article or a paragraph, but a note.

Mr McKINNON (Canada): I do not think we should take cognisance of the note at all as long as this is a draft Charter. After all, the note is merely an expression of what might happen if those who negotiate see fit to bring into effect the tariff provisions in advance of the adoption of the Charter, which may never come about. I read that note as purely an explanatory one relative to the Article under which it is headed. It is much more part of the procedure memorandum.

THE CHAIRMAN: I think it would be best to leave it to the other Committee

to consider this point. We have to deal with the other part of the Charter, and it has not been covered.

Mr HAWKINS (United States): You mean this last point ?

THE CHAIRMAN: Yes. Again there: "and if such benefits are in fact withheld". Can we agree to this paragraph ? (Agreed).

Mr LECUYER (France) spoke in French, which was not translated.

THE CHAIRMAN: There is no need to translate that. It is simply with reference to how the tariff negotiations procedure will be carried out. We discussed that this afternoon and we decided that the Rapporteur should draft a memorandum in which all this information should be incorporated, and it would come before this Committee before being formally adopted. We have covered, for the time being, Article 18. We will come back to that again when we get the drafts of sub-paragraphs (a) and (c) of paragraph 1. We have still to cover Article 29 and Article 30 of Section G. Article 29 is "Emergency Action on Imports of Particular Products". This was also discussed by the main Committee 2, and also applies to quantitative restrictions and subsidies. The remark was also made that at the end of paragraph 1 there appears the words, "to modify the concession to the extent" and so on, and that should include a higher duty. It was also said that prior notice would not always be practicable and that we should change the wording as follows: "As early as practicable" or words to that effect. Then there was a reference made to Article 54 and Article 55. Mr Hawkins, have you anything to say before we discuss this Article further ?

Mr HAWKINS (United States): I do not think I have anything to say that I have not already said. Just in brief, its purpose is to avoid such complete rigidity in the commitments that any sudden unforeseen emergency could not be taken care of. It is not intended as a permanent let-out. The presumption would be that action taken would be only for such time as the difficulty lasts, and that the situation prior to the taking of action would in due course be restored. Any escape clause, of course,

involves the danger of abuse. That has been made to limit or prevent the mis-use of the clause by giving other members a right of taking action if they do not think that the clause has been used justifiably.

THE CHAIRMAN: I propose that we first discuss paragraph 1, which speaks at the end of ..."the Member shall be free to withdraw the concession, or suspend the obligation, in respect of such product, in whole or in part, or to modify the concession to the extent and for such time as may be necessary to prevent such injury." I take it that by suspension of the obligation, you also mean quantitative restrictions?

MR. HAWKINS (USA): Yes.

MR. SHACKLE (UK): There is a point I should like to make, and it arises out of a suggestion I made in the full Committee. There I suggested that the scope of the Article should be confined to tariffs. I can see the arguments against attempting to confine it in that way. If you did confine it in that way, one might find greater reluctance to accept some of the other Articles in the Charter. On the other hand, I would like to suggest two points. First, if it is from the reduction of tariff that the sudden influx of imports has resulted, any action taken should be confined to a reversion, either complete or partial, to the pre-existing tariff. You should not deal with a situation which has arisen from a reduction of tariff by the application of a new quantitative restriction, and <u>vice versa</u>, that if the influx of imports has resulted from the removal of a quantitative restriction, the remedy should be a total or partial re-application of the quantitative restriction as it existed before, and not the application of a tariff which did not exist before.

I would like to make this further suggestion, that in no case should the action taken go further than a withdrawal of the original concession. It may be that was the intention. It seems to me it would not be right, where you have given a tariff reduction and it is found that there is an influx of imports, that you should then apply a completely new quantitative restriction in order to meet the effects of that.

MR. HAWKINS (USA): I should like to ask Mr. Shackle how you would handle a case in which the concession was the binding of a duty if you could only restore what you had done? The only thing you could do in that case would be to say you are free of the obligation, but not do anything.

MR. SHACKLE (UK): Yes. On the other hand, surely in that case it is not the result of a concession, because your binding has not affected the de facto situation at all. Your rate of tariff would be the same as before the concession, and therefore, if there is any influx of imports, it is not due to any concession you have made.

THE CHAIRMAN: The big point there is that you bind the tariff. On the other hand, you do away with quantitative restrictions. It may be that just because you implement the obligations of this Charter, you will have changed your whole system, and by doing away with quantitative restrictions you have a new law where you will deal with the whole thing in the way of tariffs. Then you are in a difficulty.

MR. SHACKLE (UK): In the case where you have done two things, you have reduced a tariff or bound a tariff, and at the same time abolished a quantitative restriction, you clearly would have a case under this for restoring the quantitative restriction.

THE CHAIRMAN: Or if that would not be practicable to resort to a higher tariff instead of the former quantitative restriction.

MR. SHACKLE (UK): One hesitates to admit that under this a country could resort to action more severe, or impose barriers higher in whatever form, than it had imposed before it entered this negotiation.

MR. McKINNON (Canada): What I say is somewhat of a point of order, but you frequently refer from the Chair to instructions given to us by the larger Committee, or to excerpts from various statements of the Secretariat. My recollection of the discussion of this Article in the full Committee was that it was very explicitly stated, I thought by Mr. Shackle himself, that if the concession related to a tariff rate, under this Article it might be possible not merely to restore it to the

old rate, but to a rate as much higher as the member Government wishes to put it. My memory was that it was Mr. Shackle who said that.

MR. SHACKLE (UK): I cannot say that I remember having suggested that. My memory may be at fault.

MR. McKINNON (Canada): I made a note at the time of four points that were raised. I thought it was clearly stated, by Mr. Shackle, that if the concession is a reduction in the duty rate, the aggrieved member may raise the rate to the old level or higher.

MR. SHACKLE (UK): I am afraid I do not remember that.

MR. McKINNON (Canada): And in respect of margin, if the margin has been narrowed and as a consequence of the narrowing of that margin these things develop unforeseen, and as a consequence of the narrowing of the margin, the margin may be restored.

MR. SHACKLE (UK): That is a point I put.

MR. McKINNON (Canada): But on the tariff rate there is a definite reference to the fact that it might be put at an even higher rate than the old one.

MR. SHACKLE (UK): I suggest that somebody else must have made that point.

MR. MCKINNON (Canada): It may have been Mr. Hawkins.

MR. HAWKINS (USA): I think that is true. I am merely saying what this language provides. What should be provided is for the Committee to decide, but as drawn it would permit that.

MR. McKINNON (Canada): The question in the larger Committee was whether or not this language would permit the imposition of the old rate or the restoration of the old rate.

MR. HAWKINS (USA): I would like to comment in general on this. The whole purpose of this Article is to deal with emergencies. If you have an emergency situation you ought to be able to use any means you can to meet it. There are sanctions here, and the severer the measures you take, and the longer you keep them on, the more likely you are to

suffer from it on your exports. That is the effect of it, but I do not think a provision of this kind should be too severely limited.

MR. PARANAGUA (Brazil): I want to put a question to Mr. Hawkins. The restriction can be quantitative, but it can also be about the time of the importation. For example, I know the case of a European country where the importation of cereals is allowed only after a certain date, because they are in a position where the importation of cereals at any time of the year would produce serious injury to the domestic producers of cereals. Until the domestic production of cereals is finished -- that is to say, until the marketing of the cereals -- the importation of cereals is prohibited, and after that the importation of any quantity is allowed. I can tell the Committee that the country is Switzerland. They have a small production of cereals, and they want to have this guarantee for the domestic production of cereals. If they allowed foreign cereals to arrive in the country, they would destroy the production of the country, if there were not this limitation on the time. I would like Mr. Hawkins to say whether this case is covered, because it is a question of a permanent injury to domestic production. That happens every year.

MR. HAWKINS (USA): I do not think that particular case comes under this article. The case of that kind is a permanent regulation which presumably would be dealt with in the negotiations. If the country concerned agreed to abolish the practice you speak of, it might get relief under this Section in case of something very unforeseen resulting from its having done so, and could take temporary action. That is what is contemplated here. This is temporary in the sense of an emergency not foreseen at the time the concession is made -- something unexpected which requires temporary action to meet it, and then a restoration of the status quo ante.

MR. PARANAGUA (Brazil): That would mean that the restriction on time would be allowed.

MR. HAWKINS (USA): Let me illustrate it. A country reduces a duty or accepts some other obligation in the expectation that while it is going to permit larger importations, that is part of the bargain, but owing to some unforeseen circumstance, instead of getting say 20, 30 or 40 per cent. more imports, as expected, in some year, it suddenly gets 200 per cent. Some circumstance or factor has entered into the picture temporarily and the result is wholly unforeseen. It may then take action to restrict those imports until that situation is passed. That is the purpose of the article.

THE CHAIRMAN: We still have to agree or not agree to the present text of paragraph 1. I understand that these things, higher duty and so on, are even possible under this paragraph as it is now phrased. Do you think that something should be added to it, or can we approve it as it is?

MR. SHACKLE (UK): Reading the wording of the paragraph as it stands, members are free to withdraw the concession or suspend the obligation in whole or in part, or to modify the concession. I do not see anything in those words which imply that you could not merely go back on the concession you had made, but actually apply treatment more severe. I understand that if it is a binding which you have withdrawn, from the moment you have withdrawn your binding you resume your liberty of action, but it does not seem to me that those words contemplate that you could actually go further than withdrawing the concession, or the obligation which you had entered into. It comes to me a little as a surprise to discover that the paragraph is intended to have this wide connotation. I see the point of the arguments which have been adduced in favour of it, but I feel that we will want to consider the position a little further before we commit ourselves to going to that length.

MR. HAWKINS (USA): I think it is only fair to say, so that there is no misunderstanding of hat it means, that it provides for wide action, modifying the concession to the extent and for such time as may be necessary.

MR. ADARKAR (India): Since it is an emergency situation, it has got to be action of that nature. You must allow freedom to raise the duty, if necessary.

MR. SHACKLE (UK): The logical weakness of that seems to be to make the whole assumption on which the Article is based to be this, that it is something you have done in the course of negotiations which leads to an influx of imports. It is true you might have had an influx of imports even if you had made no concession and had not negotiated at all. We are not concerned with that here. We are only concerned with something you have done in the course of these negotiations that may be held to lead to the influx of imports. If there is a reasonable justification for going back upon what you have done, it must be on that basis.

MR. McKINNON (Canada): On Mr. Shackle's point, supposing there was a free rate, and I then find that because of the binding of that free rate, these things are happening, I am entitled under these words, surely, to withdraw the concession. What would that mean? I just take it out of the bound list. The goods would still come in free; unless I am permitted to do more than that, there is no use withdrawing the concession. That is why I read into it that a member may do more than restore the old rate of duty, because after all, free is a rate of duty.

MR. SHACKLE (UK): I understand the point. I think my Delegation would wish to consider it a little further. It has certainly taken me rather by surprise. I see the force of the arguments that have been used.

THE CHAIRMAN: Do we consider the language sufficiently clear, that is the point. It took Mr. Shackle by surprise so it may have taken other people by surprise.

MR. SHACKLE (United Kingdom): I would like to add that I am prepared provisionally to agree the wording of this while reserving the position of my Delegation till until I have had an opportunity to consult them. There is one point I would like to see taken into consideration, which is a question ~~I~~/mentioned in Committee I - and which I think has been mentioned again here, - namely, that as the result of a reduction or elimination of tariff preference we may have similar effects to those we are contemplating here, and I feel the scope of this paragraph should be widened so as to take account of that - although I would not wish to suggest anything in the nature of a draft at this moment.

MR. ADARKAR (India): That was just the point I wished to raise. In the full committee the Indian Delegate did support the point raised by the United Kingdom Delegate, that the tariff concession should include concessions given in respect of preference.

MR. HAWKINS (United States): I think that in fairness it should be pointed out that while this language would seem to cover the case it may not quite do so because of the reference to domestic producers. To meet the point raised by Mr. Shackle and the Indian Delegate I think we should look at this wording. Otherwise in every other respect I think it does cover the case.

MR. ADARKAR (India): May I explain the point a little further? If the procedure we discussed this afternoon is adopted - namely, instead of negotiating on the basis of margins we negotiate on the basis of the most-favoured-nation duty, and an effective reduction in margin by that method - then a reduction in the most-favoured nation duty and the following reduction in preferential margin would affect the domestic producers. Therefore, it would be necessary to ask for that particular obligation to be waived.

MR. SHACKLE (United Kingdom): At the same time you may have the converse case, as a result of preference margin being modified you may have an influx of imports, in which case you would wish to have power to deal with that situation. That is the converse.

MR. ADARKAR (India): Yes.

THE CHAIRMAN: Has the Rapporteur anything to propose to make it quite clear?

THE RAPPORTEUR: I think probably the Article will need some recasting to take care of the preference point. I think in the introductory lines the language about the domestic producers will have to be changed in some way to cover the case of preferences.

MR. McKINNON (Canada): Would you also cover the case of the duty higher than originally? Is it contemplated that we can introduce that refinement of drafting?

THE RAPPORTEUR: That is already covered, is not it?

MR. McKINNON (Canada): As I read it it is covered, but I understood Mr. Shackle to think it was not.

MR. SHACKLE (United Kingdom): I am prepared to admit I may have been quite wrong over that.

MR. PARANAGUA (Brazil): That means in the case of the withdrawal of concessions the country will cover its customs autonomy.

MR. ALAMILLA (Cuba): The Cuban Delegation had a paper in E/PC/T/C.II/19, dated 28 October, 1946, containing a very long amendment to Article 29. I think that is a very easy point to cover, and the point we are raising there is very clear. Instead of discussing the whole amendment I think it would be better to only explain the object of it, and give the Rapporteur the chance of curing what we believe is missing from this Article.

It is very clear what will happen to the member who is suffering and decides by himself to take action, but no care is taken of the member against whom that action is taken and who may be suffering unjustly from that action. Our amendment tends to give to the member from whom

concessions are withheld because he was supposed to be the aggressor the right to bring the matter before the Organization in order to get a solution of the problem. It is only to give the other party, who may be in turn affected by the measure, the right to appeal to the Organization.

I do not want to go into the whole thing now. May be the wording is not exactly right. However, I believe a member who is supposed to have created the situation and against whom the emergency action is taken should have the chance of bringing the matter to the Organization immediately in order that no prejudice is caused due to the emergency action without the Organization having at least had the opportunity of looking into it.

THE CHAIRMAN: Is not it covered in paragraph 2?

MR. ALAMILLA (Cuba): We do not believe it is. It is a matter of working and drafting. We just submit our proposition to the Rapporteur so that he can reconsider it, discuss it, and explain if there is any point which is not specifically covered in this article.

THE CHAIRMAN: We will ask the Rapporteur to look into that paper, and if he has any remarks no doubt he will make them at the next meeting. We will now adjourn until 10.30 a.m. tomorrow.

The meeting rose at 10.40 p.m.