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UNITED NATIONS
ECONOMIC AND SOCIAL COUNCIL
PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

TENTH MEETING

of the

PROCEDURES SUB-COMMITTEE OF

COMMITTEE II

held in

Room 243,

Church House, Westminster,

on

Tuesday, 12th November, 1946

at 10.30 a.m.

CHAIRMAN: DR. A. B. SPEEKENBRINK (Netherlands)

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

THE CHAIRMAN: The meeting is open. We have before us a report from our Rapporteur respecting Articles 18, 29 and 30, which should cover the previous work of this committee with regard to these Articles. I suggest we start with Article 18, because I think the other two Articles, 29 and 30, have to be read in conjunction with Article 18. I do not know whether everybody has had time to read the report through carefully, but perhaps we could ask the Rapporteur to explain it to us and to draw our attention to special passages of his report to see whether we can agree with the new draft.

THE RAPPORTEUR: Article 18 is reproduced in its entirety. I think the easiest way to deal with it will be to simply take it paragraph by paragraph. The first sentence of the first paragraph has already been approved by the committee and is merely reproduced here to give context. The first point following that is in sub-paragraph (a). The text of the U.S. draft of the Charter originally provided that

"Prior international commitments shall not be permitted to stand in the way of action with respect to tariff preferences."

The Cuban Delegate proposed an amendment to this section, to the effect that this provision would not be understood to require that existing international obligations be changed except by agreement between the parties, or terminated in accordance with the terms of the obligations. It was felt by the Canadian Delegate that this provision might tend to hamper the negotiations. I believe the French Delegate expressed the opinion that it seemed to be contradictory of the basic undertaking. I think the amendment proposed by the Cuban Delegate was in general supported by the United Kingdom Delegate, the Australian Delegate and also the United States Delegate. The United States Delegate explained that the intent of sub-paragraph (a), apart from its wording, was that existing international obligations should not be cited as a bar to negotiations, so that all countries adhering to this would agree to negotiate; and it was not intended to require that countries violate existing international obligations.

In the light of that discussion the Chairman summarised the meeting by saying that he felt there should be an undertaking that countries would negotiate, that they would carry those negotiations, if satisfactory, into effect; but finally, that the results of the negotiations, in so far as they would require the modification or termination of existing obligations, would necessarily have to require the consent of the parties to those obligations, or termination in accordance with their terms. In other words, there was not to be any violation of those obligations. In the light of that it is proposed that the matter can be handled by simply changing the word "action" to "negotiations", so the rule would read:

"Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences."

An undertaking to negotiate does not seem to imply any violation of existing international obligations. No country would be violating an obligation by an undertaking to negotiate, and it is suggested to the committee that that might be a satisfactory resolution of the problem. Before taking up the rest of this report, Mr. Chairman, I think it would be better to have some discussion on that proposal.

MR. HAWKINS (United States): It seems to me the amendment put in by the Cuban Delegate expressed the intent. I think the reformulation also expressed it, but the proposal of the Cuban Delegate spells it out a little more, and I would be perfectly ready to accept the Cuban Delegate's formulation, which I would like to read. He put this in at the last meeting:

"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 except by agreement between the contracting parties or in accordance with the terms of such obligations."

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I would suggest that we adopt that language as stating clearly what

the intention is, thus disposing of the problem which it seems to me

we may be complicating unnecessarily.

MR SHACKLE (U.K.): I should like to support what Mr Hawkins has just said. Either of these texts is agreeable to me. It seems to me that the Cuban amendment in its original drafting exactly expresses the understanding we have had of this matter ever since last autumn, when the proposals were published, and when we said that we were in substantial agreement with them. The Cuban amendment exactly expresses what we understood to be the effect of the passage as it stood in the proposal, and I should therefore be perfectly agreeable to accept the Cuban amendment. I could also accept the other one, but I think the Cuban one has the advantage of spreading the point out in full detail.

THE CHAIRMAN: Personally, I would have no objection whatever to this, but I understood at the last meeting Mr McKinnon asked for some time to reflect on this. Has this further study resulted in something?

MR BOWER (Canada): We have not had definite Government direction on the point. Mr McKinnon is convinced that we never could persuade our Government to accept the Cuban amendment. He is satisfied that the Rapporteur's wording would meet us much better than the Cuban amendment, because, for one thing, we would read something quite different into it, and we do not want it spelt out the way Mr Hawkins and Mr Shackle spell it out, because that is contrary to our hopes for this paragraph 1.a. We want to reserve freedom of action in the actual negotiations; we do not want to be hampered by anything. As Mr McKinnon puts it, we want elbow room to negotiate our rates with other countries without referring to third parties. When the negotiations are finished, we would then go to the third party and say, "This is what we are proposing to do"; and they will have done the same thing and we will be able to compare with them where they have given way and we have given way and accept or not accept the undertakings which we have made with these third parties. We agree with the French delegate that it is a contradiction in terms to say that "prior international commitments shall not be permitted to stand in the

way of action with respect to tariff preferences". We would substitute the word "negotiations" there, and we think it is a contradiction in terms as it is at present, saying, as it does, that you must observe these prior international commitments before you can negotiate.

MR SHACKLE (U.K.): I should like to ask the Canadian delegate two questions. Does he not think that a text which is capable of being read in different ways is rather objectionable and even possibly dangerous? That is my first question. My second question is whether the form of negotiation which he envisages will really not lead in the end to very much the same result, because if we assume that a number of pairs of countries have negotiated independently different arrangements affecting preferences, surely at the end they will all need to come together, as indeed he said, and compare what they have done? Now, can we conceive that all that body of agreements will come into force if they did not agree among themselves - the different interested parties - in what they had respectively done? Does it not therefore mean you would have to have a last stage of negotiation in which there would be, so to speak, a balancing out process which in effect would come to the same thing as the procedure which would have to be followed in the Cuban amendment? I do not know if I make that second point clear, but it seems to me in the last resort you would be bound to have a certain reconciliation of the different independent negotiation which would ultimately bring it to the same result, by a longer way round. Those are my two questions.

THE CHAIRMAN: I think the Canadian delegate should answer that now.

MR BOWER (Canada): I regret I am in a position to deal with this only second-hand. Mr McKinnon and Mr Deutsch have between them spent a great deal of time on it, and I have not been present at all those discussions; however, I think I know their feeling fairly well. I agree with Mr Shackle it would be unfortunate if our version of what l.a. meant and the idea of other people

were to differ. We would make our understanding quite clear, however. It is that prior international commitments (other than those expressed in the words we prefer) should not be allowed to stand in the way of any new arrangements we might make with third parties. In answer to the second question, I quite agree also that the result would be the same, but it would be a great deal more difficult for us to reach it. Let me give you an illustration. Mr McKinnon is here now. Perhaps Mr Shackle would like to put his questions again, and then Mr McKinnon could answer them.

MR SHACKLE (U.K.): Certainly. The starting point was the text which we now have in the Rapporteur's Report on I.A. On that I had said that I thought I could accept either but that I preferred the Cuban text as spelling out in full detail what has been our understanding of the intention of this provision ever since the proposals of last December, in which we said we were in agreement. I understood the representative of Canada then to say that if this wording as it stands in the Rapporteur's report were adopted it would be read by the Canadian Government in a different way from the understanding which we should have of the intention of the provision. I then asked two questions. The first was whether the representative of Canada did not feel that it was objectionable and possibly dangerous to have a provision which could be read in two entirely different ways. The second question was whether the negotiating procedure which he had outlined, which consisted of a series of independent negotiations between pairs of countries which would only be brought together at the very last stage would not really lead to the same result as the different procedure which we envisage but would reach it by a more roundabout route, in that after you had had a complete series of negotiations you would in the final stage have to re-open them all in order to effect any necessary reconciliations between them. I asked whether in those circumstances the representative of Canada really thought that there was

advantage in the method which he proposed. That, I think, was a paraphrase of my two questions.

MR McKINNON (Canada): Mr Chairman, in reply to Mr Shackle on those points would be first that we would prefer the draft shown on page 1 (I presume this is the document we are discussing); and that anyway prior international commitments must not be permitted to stand in the way of negotiations with respect to tariff preferences. We substitute the word "negotiations" for the word "actions" in the American draft. We would very much prefer that to the one shown on page 4 of the same document. I have little doubt, in reply to Mr Shackle's other question, that in the final analysis the net result may be very much the same. It is the matter of method that is chiefly concerned. We would have been very glad to take the draft as it stood in the United States document, namely, that "prior commitments shall not be permitted to stand in the way of action with respect to tariff preferences". That would have not contemplated for one moment that there could have been consultations with all other parties interested in a particular preferential situation. We welcome the change suggested, namely, the substitution of the word "negotiations" for the word action, as giving elbow room for the purpose of negotiating. That again will entail at some stage discussions with the others interested in the particular preference or preferences involved.

But it does permit freedom to go ahead to negotiate to see what the result arrived at looks like and then to consult with the others who are concerned. Does that answer your question ?

Mr SHACKLE (United Kingdom): I think all I have to add is that I still feel that it is objectionable to have an ambiguous text, and I have the feeling, as I said before, that we should arrive at the same result by a more round about route. I am also not quite clear as to the implication of the suggestion made by the Canadian delegate as to whether they would read this passage as having the effect of abrogating the prior agreements. If so it is clear that could only be done if all the parties to that agreement agreed.

Mr McKINNON (Canada): You used the words, "this text".

Mr SHACKLE (United Kingdom): The Rapporteur's text, yes.

Mr McKINNON (Canada): Your question was whether or not we would read that as abrogating the existing commitments in the form of trade agreements within the Commonwealth ?

Mr SHACKLE (United Kingdom): Yes.

Mr McKINNON (Canada): Then the answer is, No.

Mr ALMILLA (Cuba): Mr Chairman, I believe that we all have the same idea, and I believe that this idea is clearly stated in our Amendment. This is what we say in our Amendment: "Prior international commitments shall not be permitted to stand in the way of action with respect to tariff preferences". Either one of the words may mean the same thing. Everybody who has a preference would place it on the table in order to discuss it. The implication is that we are going to discuss this tariff which everybody wants to terminate, but they have to have a compensation for that. Now suppose everything is placed on the table, then there is the problem of a third party who would not give their acceptance to it. In that case are we supposed just to disregard our international obligations and pass them over ? That cannot be the case, and I think that the delegate of Canada has accepted that position. If that is so, then what is the logical thing

that will come about. That negotiations would take place with the third party to see if he would agree. That is covered by the words, "require the termination or modification of existing international obligations except by agreement between the contracting parties". That is to say, we go to the third party and we try to get their agreement. They do not agree. Then what can we do? We can terminate that agreement, which is in accordance with the terms of such obligation. The case is so clear that it cannot be understood in any other way, and that is what we are saying in very clear and specific terms in this Amendment, which in my opinion is the only way in which this thing can be worked out. The other way is to put a Clause here which can be interpreted in the way the United Kingdom delegate has put forward, which is not what we want, because we want every country to know exactly what we mean in the Charter and not to put a clause there which somebody will interpret one way and somebody will interpret in another way. I therefore move to have this drafting of ours accepted as the only thing that can show the actual situation, and the only way of expressing it in a clear way.

Mr McKINNON (Canada): Do you want a rejoinder from me?

THE CHAIRMAN: Yes, because the Delegate from Cuba has made a proposal that we adopt his draft. I have an alternative proposal which I am prepared to make now, because I think we can express the idea in some other language, and I am prepared to put it on the table.

Mr McKINNON (Canada): I can only repeat what I have already said. We have three drafts, the original draft as it appeared in the United States, which was the one first discussed, then we have the Amendment proposed by the delegate of Cuba, and then the Rapporteur's shorter draft, substituting the word "negotiations" for the word "action". We were quite prepared to proceed at once on the basis of the first draft. We like least the Cuban Amendment,

the second one, and we are quite prepared to go ahead on the basis of the Rapporteur's draft, namely, to proceed to negotiate, which is after all what we all came here for. We do not consider our hands are tied in one way or the other. On the other hand I have answered Mr Shackle categorically that we do not read it as abrogating existing commitments.

Mr SHACKLE (United Kingdom): It seems to me that as Mr McKinnon has said that he does not regard this as in any way abrogating existing commitments, there is no special point/in this, because it seems of difference to be universally agreed that our hands are to be free to negotiate and not to bring action which is agreed upon in the course of the negotiations, and finally that the obligations are not abrogated. Those are the three propositions as I understand the matter, and if that is so I really fail to see where the difference lies between us.

THE CHAIRMAN: I think perhaps we could express the same thing in this way, with a small addition to the text now proposed by the Rapporteur. It would simply say this: "It being left for the parties concerned to determine the application of this rule to existing international obligations".

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MR MCKINNON (Canada): Would you repeat those words, please?

THE CHAIRMAN: "it being left for the countries concerned to determine the application of this rule to existing international obligations." I think then that we are expressing the idea that it is the parties who are under certain obligations to discuss among themselves how they will fulfil the new obligations. That is what the Cuban delegate wants.

MR MCKINNON (Canada): It means the same thing as far as I can see, that in fact it seems to me that is all connoted by the word "negotiations."

THE CHAIRMAN: Yes, but it is the second phase of it. First, you have your negotiations; you are not prepared to stand in the way; and then it is left to the parties concerned to apply the rule to their existing obligations.

MR MCKINNON (Canada): Which is the case, anyway.

THE CHAIRMAN: Yes; but they will do it because there is some doubt and some delegates like to have something to go on in this respect. I think it would cover it.

MR SHACKLE (UK): May I say a word at that point, Sir? I have a feeling that the suggested added words rather seem to emphasize some ambiguity in the meaning of this sentence. I would very much prefer that it should not either be or seem to be ambiguous, if possible.

DR COOMBS (Australia): Mr Chairman, I think there is a real difficulty of a purely grammatical sort there. The words which I think you used were, "application of this rule." The rule that is referred to presumably is the rule just stated, that is, that prior international commitments shall not be permitted to stand in the way of the negotiations. That seems just logical, but it does a bit obscure what you mean. You say that the rule is that international commitments shall not be permitted to stand in the way of negotiations, and then you go on to say that the application of this rule to all international obligations will be left to the parties concerned. But it would appear to be a modification of the rule that you have just stated.

MR ALAMILLA (Cuba): Mr Chairman, I think that if we come to the interpretation

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of this clause, it only means this: If I am a country I cannot say, "I cannot negotiate because I have a treaty." That is the first point; then I cannot say: "I am very glad and I would like to negotiate, but I cannot conclude my negotiations because I have a treaty." That is the only thing that we are saying there: that we cannot put the existence of a treaty as a condition not to negotiate and not to terminate the negotiations; I believe that this idea is clearly shown in the words we have put down there. We will negotiate; we will come to terms. If an existing treaty is in the way of those negotiations and we have already agreed to something that cannot come into existence because there is a treaty, we have to come to terms with the third party or we have to terminate the treaty in order to comply with what we have negotiated. If this is absolutely clear, and Canada cannot ask that the third party obligations be abrogated by just one side, then why do not we say it clearly and avoid very great misunderstanding that can come about when the negotiations are held?

THE CHAIRMAN: I think that our Rapporteur has a brainwave!

THE RAPPORTEUR (Mr Luddy): Shall I let it go?

THE CHAIRMAN: Yes, please.

THE RAPPORTEUR: It runs something like this: "Prior international commitments shall not be permitted to stand in the way of negotiations with respect to tariff preferences, it being understood that action resulting from such negotiations shall not require a modification or termination of existing international obligations except by agreement between the parties concerned or in accordance with their terms." That would seem to leave freedom to negotiate and would make it clear that the resulting action would require either consent or termination.

THE CHAIRMAN: At first sight, I would say that this states it very clearly, so that that would perhaps be the solution of all our difficulties.

MR McKINNON (Canada): Would the Rapporteur kindly read it again so that we can be sure of the wording? "It being understood that action resulting from such negotiations" - that is introducing the word "action" again---

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THE RAPPORTEUR: Yes.

MR McKINNON (Canada): "shall not require modification or termination of the existing international obligations" - is that right?

THE RAPPORTEUR: Yes.

MR McKINNON (Canada): "except by agreement between the contracting parties or in accordance with the terms of such obligations." Mr Chairman, we take the view that that is all implied in the substitution of the word "negotiations" for the word "action" in the original draft as it was before us; but we are quite prepared to go on the basis of the Rapporteur's amended wording.

MR SHACKLE (UK): I would like to say, Mr Chairman, that, subject to looking at the draft in detail - and it is always rather risky to pronounce on drafting matters at such a point - this does seem to me to be a satisfactory text.

MR ALAMILLA (Cuba): If it is difficult for the United Kingdom delegate, who speaks English, it is much more difficult for us. However, we believe that this suggested wording covers the situation very adequately at this moment, and we only want to have an opportunity to look at it closely, but we are hoping that we will be able to accept it as it is.

THE CHAIRMAN: Then it only remains for me to congratulate the Rapporteur once more on the way in which he has got us out of our difficulties.

MR McKINNON (Canada): Purely from a grammatical point of view, there might arise an ambiguity by reason of the use of the words "modification or termination." The meaning is - and it was the way in which I first interpreted it - "shall not require the modification of existing obligations except by agreement with the contracting parties or termination in accordance with the terms of such obligations." Is not that the meaning?

THE RAPPORTEUR: The meaning is as you say.

MR McKINNON (Canada): There might be ambiguity if we linked so closely together the modification and termination, and then say that we can^{do}/either by agreement.

MR SHACKLE (UK): Might I suggest that we could get over that ambiguity by

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inserting the words "failing that" after the word "or" in the last line, so that it would then read, "except by agreement between the parties or, failing that, in accordance with the terms of such obligations". I think that that would make it quite clear.

MR/McKINNON (Canada): Yes; but that would entail the deletion of the word "termination" in the first place, will it not?

MR SHACKLE (UK): Would it, necessarily, because it is conceivable, though unlikely, that there might occasionally be an agreed termination.

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- MR. MCKINNON (Canada): I think Mr. Shackle's amendment gives an entirely different meaning in that it would require agreement to terminate.
- MR. SHACKLE (United Kingdom): I venture to think not, because "in accordance with the terms of such obligations" if the prior treaty or agreement has in it a denunciation clause this surely implies that ^{on} that denunciation clause unilateral denunciation would be used.
- MR. MCKINNON (Canada): I still think that is a more definite ambiguity than the first one, and I cannot see why we cannot drop the word "termination" in the first instance. It would then read:
- "it being understood that action resulting from such negotiations shall not require the modification of existing international obligations except by agreement of the contracting parties or termination thereof in accordance with the terms of such international obligations."
- THE CHAIRMAN: I think that as put now by Mr. McKinnon it gives the stages very clearly. The whole procedure may take some time, but I cannot see how you can do it otherwise, unless you are prepared to terminate all the obligations now - and I think nobody is prepared to do that.
- MR. SHACKLE (United Kingdom): Speaking again entirely offhand, I think the change proposed by Mr. McKinnon is probably acceptable. It seems to me when we say in this sentence "such negotiations shall not require modification", a fortiori they cannot require termination. That being so, I think probably Mr. McKinnon's text is acceptable. I say that again provisionally.
- THE CHAIRMAN: We will take it that we all agree provisionally.
- MR. ALAMILLA (Cuba): I would suggest this. Could the Secretariat make copies of this last version so that we can take it home and study it with care.
- THE CHAIRMAN: You will have that in your report in any case.
- MR. ALAMILLA (Cuba): Yes, but I think it might be better to be able to take it away and just figure it out.

MR. ADARKAR (India): I think after the word "termination" has been deleted it would be of advantage to retain the latest amendment suggested by Mr. Shackle, namely, "failing that," because that gives priority to agreement with the parties concerned, that they should try to reach an agreement. If they fail they should resort to unilateral denunciation of the treaties to which they are party. The words "failing that" seem to me to be important. It would then read:

"it being understood that action resulting from such negotiations shall not require modification of existing international obligations except by agreement of the contracting parties, or, failing that, in accordance with the terms of such obligations."

MR. MCKINNON (Canada): Yes, that is all right.

THE CHAIRMAN: We will have that clause typed out so that we can look at it later on. I will ask our Rapporteur to continue with the other modification.

THE RAPPORTEUR: Sub-paragraph (b) as amended has already been cleared by the sub-committee provisionally, subject to a look at what is put in the procedural memo on this subject explaining it. It will then be gone over again, so I do not think there is any need for discussion on that now. Sub-paragraph (c) is suggested as a possible formulation of the agreement reached in the sub-committee, that there should be some rule indicating that the binding of low tariffs would be given equal right with reduction of high tariffs in the negotiations. The rule is:

"The binding or consolidation of low tariffs or tariff free treatment shall be recognised as a concession equivalent in value to the substantial reduction of high tariffs or elimination of tariff preferences."

MR. ADARKAR (India): With regard to sub-paragraph (b), the Indian Delegation made a reservation when the subject was last discussed. It was explained that it is difficult for the Indian Delegate to accept that all reductions in most-favoured-nation import tariffs shall operate automatically to reduce or eliminate margins of preference. The point was that the object

of reduction of tariffs should be kept distinct from the other object, of elimination or reducing margins of preference.

THE CHAIRMAN: The idea was that we should first have the memorandum and refer to this again.

MR. ADARKAR (India): The principle which is expressed here would convey a meaning which is not acceptable to the Indian Delegation.

THE CHAIRMAN: The point is, nobody accepts this before we have the memorandum from the Rapporteur.

MR. ADARKAR (India): As long as that is understood.

MR. McKINNON (Canada): I think the modification we have already made in (a) rather supports the suggestion of the Indian Delegate, that the word "automatically" might well be deleted from (b). Since the revised wording of (a) now spells it out step by step, as it were, it would appear to be much more appropriate that (b) should merely read:

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

MR. ALAMILLA (Cuba): I would feel very much inclined to accept the suggestion of the Canadian Delegate, but I believe we should first have in front of us the things to be added to this paragraph, or the reference that will be made to an additional memorandum, whatever it is. I think we should leave all discussion on the drafting of sub-paragraph (b) -- even if it is only a mention that an existing outside document is going to enter into sub-paragraph (b) -- until we have the other document before us, when we can study it.

MR. McKINNON (Canada): I think the remarks of the Cuban Delegate apply equally to (a) and (b). If we are tentatively adopting the wording of (b), as we seem agreed to do, I should think we might proceed to adopt tentatively (b) with the word "automatically" deleted.

THE CHAIRMAN: That is my idea.

MR. ALAMILLA (Cuba): I have no objection.

MR. HAWKINS (United States): I thought the whole of (b) was left in abeyance until we considered the procedural memorandum. The word "automatically" is

closely tied up with procedural questions, and I would not like to see it omitted until we have considered the procedural memorandum.

THE CHAIRMAN: I think we can note the point of the deletion of the word "automatically" and leave it until we have the memorandum. Perhaps the Rapporteur has something to say on it.

THE RAPPORTEUR: I would simply like to say that if the word "automatically" is deleted from this provision I would appreciate receiving any suggestion as to how the principle might be described in the procedural memo. I really do not see the way clear to saying anything about it in the procedural memo if the word "automatically" is deleted because there is no basis for estimating how it would be applied - at least, I do not see one.

THE CHAIRMAN: I really think that further discussion at this moment is more or less useless, because before we can have further explanation of what we will have here we must see more clearly how we will negotiate with respect to tariff preferences. These are the negotiations we are concerned with in sub-paragraph (b). Before we have the memorandum I do not see much point in discussing it. I really think we should leave it over till we discuss the memorandum.

Perhaps, now that we have the draft before us of the proposal with regard to Article 18.1.a., we may read it out, and then everybody will see exactly whether it is what we have understood it to be. It reads like this:-

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

MR McKINNON (Canada): This is purely a drafting point, and a small one at that; but I think I ought to mention it. The draft now says "...shall not require the modification of existing international obligations, except by agreement between the contracting parties, or, failing that, by termination". Can you modify by terminating?

MR SHACKLE (U.K.): Certainly, because termination is the most drastic form of modification possible, is it not?

MR McKINNON (Canada): It is so drastic a form of modification that I think it is straining the words a bit. I am not quarrelling with the substance of it; it is just whether or not one modifies a document by terminating it.

MR SHACKLE (U.K.): I do not think there is really any difficulty, is there? Supposing certain negotiations required some modification before the result of it could be brought into effect and supposing the original contracting parties could not agree with that modification, then complete termination might well be the only remedy. I think that is right, is it not?

THE CHAIRMAN: I think we ought to leave something for the Drafting Committee to do. I think we know now what we mean, and I think when the legal experts come together on that they can phrase it in the way they think will cover the arguments made.

We turn now to sub-paragraph c. Are there any remarks on that? The only point I can see here myself is that it is a very general clause and it just depends on the Articles to which the tariffs apply. I could understand that you could have it apply to the same Articles in regard to exchange of goods between different countries, but you can have consolidation of low tariffs or of tariff-free treatment of unimportant commodities and you can have a substantial reduction on important commodities.

MR HAWKINS: Mr Chairman, this sentence cannot pretend to be more than a

statement of the principle. If you attempt to spell it out you will then have to say what you mean by a low rate, and we would have a very long draft. 20 per cent might be a low rate in some circumstances and a very high rate in other circumstances. That is something the negotiator would simply have to look at. It seems to me that as a statement of principle this is right.

THE CHAIRMAN: Perhaps we could insert the words "in principle".

MR HAWKINS (USA): Yes, that would be all right.

MR VIDELA (Chile): I have a doubt here. I would like to know why the position of the countries which are not receiving any preference is not considered here. It says here, "the binding or consolidation of low tariffs or of tariff-free treatment shall be recognised", and so on. I should like to put on the same level the countries which do not enjoy preference.

THE CHAIRMAN: The second part of it, you will notice, says "in value to the substantial reduction of high tariffs or the elimination of tariff preferences". I think your point is met there, as far as I can see it.

MR VIDELA (Chile): Yes, it is considered in the second part of it, but in the first place it is dealing only with new tariffs.

THE CHAIRMAN: We have no new preferences at the moment; we have only those in force; and that is the position we are in when we start our negotiations; so we can only compare certain things that are there, and I cannot see how we can put that in.

MR VIDELA (Chile): You say there "shall be recognised as a concession equivalent". I would like to have some reference to the countries which do not receive any preference.

THE RAPPOREUR: What you would like is that the binding of most favoured nation treatment or the granting of complete most favoured nation treatment should be considered - is that it?

MR VIDELA (Chile): I mean the preferences, because we are considering only the low tariffs and tariff-free treatment.

THE RAPPOREUR: You want to say "the binding of preference-free treatment"?

MR VIDELA (Chile): Yes.

THE RAPPOREUR: The reason for not including it here is that this is a rule designed to deal with selective negotiations. The question of preference-free

treatment is dealt with in a general rule under the most favoured nation clause which all countries agree to apply as a multilateral formula and not to be dealt with on a selective basis except with regard to existing preferences which are to be negotiated down, so that therefore it is difficult to see how the multilateral adherence to the most favoured nation clause can be used in this selective way apart from the weight given to that in the commitment to negotiate for the elimination of preferences.

MR. SHACKLE (U.K.): One thing I would say there is that the grant of most favoured nation treatment is not in itself inconsistent with having absolutely prohibited high tariffs; and I think that if what you are saying were to be carried into effect it would make trade impossible.

THE CHAIRMAN: I think the Rapporteur has expressed what is meant here in a very clear way, and I think it is clearly understood that only in very exceptional circumstances could you have now preferential treatment. That is covered by that other clause under Article 8.

MR. VIDEIRA (Chile): I think it was the delegate of Belgium who referred to this originally, and I was thinking only of the reason why the countries which have no preference at all and are not enjoying preference are not included as well as the low tariff countries.

THE RAPporteur: I think the proposal would mean that you would add to paragraph (c) something like this: "The binding or consolidation of low tariffs or of tariff free treatment or of preferential free treatment shall be recognised as a concession". I think the objection to it is that that implies that the granting of preference free treatment is to be dealt with selectively on a product by product basis on these negotiations. In other words, a country would have the right to grant preference free treatment or not to grant preference free treatment, but that does not square with the other provisions already agreed upon, that every country will grant complete preference free treatment except in respect of certain preferences which are to be negotiated. I think if you put an Amendment like that in here it would undermine the whole principle of the most favoured nation clause, which we have already agreed upon.

THE CHAIRMAN: The Chilean delegate made mention of the Belgium delegate's remarks. I think it will be time enough to say something on that when we come to the Main Committee II. The Netherlands are in the same position as Belgium, and I think we should insist that it is quite sufficient to have the clause as it is here. There is only one point left, and that is the main point, that we forsake the right to have quantitative restrictions. I think that again should be a point which should be left until the sub-committee on Quantitative restrictions have completed their work to such an advanced stage that we can judge what can be done with quantitative restrictions. We are in this very grave difficulty, that we cannot definitely approve any of these Articles before we see the other parts of Chapter IV in a definite shape.

Mr ADARKAR (India): There is one point in connection with these negotiations for elimination of preferences on which it might be desirable to obtain the view of the United States delegation at this stage, unless you desire otherwise. The point raised by the

Australian delegate, namely, whether in the course of these negotiations it would be permissible for one part of the British Commonwealth which is at present giving preference to another part, to give preference to a third part of the Commonwealth which is not enjoying it. To take an instance. Supposing Australia is giving the preference to the United Kingdom on a particular product but is not giving preference on that product to, say, India. Would it be permissible for Australia to extend either the same or a reduced margin of preference to India in the course of these negotiations. Assuming that the preference in question is not completely wipe out in the course of these negotiations, and also if it remains in existence then only such measure of preference shall be granted to India between Australia and any other country.

Mr HAWKINS (United States): This question, I believe, came up in the full Committee, and the answer which I gave to it, as I recall, was this. Article 8, as drafted, would prevent any new preferences in addition to or above those existing on a specified date yet to be agreed upon. Such preferences being, in other words, frozen as from that date. On the basis of that formulation no new preferences would be permissible. In other words, the answer to the question of the delegate of India is that in the circumstances he cited, the preferences given to one part of a Commonwealth could not be extended to another part which was not already enjoying it.

Mr ADARKAR (India): The Indian delegation has some difficulty in accepting that position and would like the question to be left open for the consideration at a later stage. We are unable to see how it will affect our trade at this stage, so we should certainly like that question to be left open for consideration. We think that there should be no objection in principle to the extension of the scope of a preference to another part of the Commonwealth, so long as the existence of that preference is recognised.

Mr LECUYER (France) (Interpretation): Mr Chairman, the question arises in a similar way as to the relationships between France and the rest of the French Union. I must say that we have not envisaged the possibility of extending preferences existing between France and French Western Africa to France and Indo-China, but if the proposal suggested by the Indian delegate were to be accepted by the Conference, we should like to be able to have the benefit of this suggestion as well.

THE CHAIRMAN: I think that clearly shows that we are on very dangerous ground here. I understood that when we discussed article 8 we added a clause with regard to new preferences in exceptional circumstances. Now as far as I can see, in the few remaining months left before we meet together in Geneva, I cannot see that countries would start to extend ^{the} preferential system. I think that would be contrary to the whole idea of these common negotiations. If the negotiations in Geneva resulted in agreement, we expect to put certain Chapters of this Charter into effect, and then Clause 55(2) would also be in force if we decide to have that system working in the way it is envisaged in the Charter. I think we cannot do more than that, otherwise I do not know where we will end.

MR HAWKINS (USA): I would like to say that we agree entirely with what you just said, that the effect of the proposal to create new preferences which would only be added for purposes of negotiation since they would not be permanent, would be either to reinforce the position of some countries which would then try to get something for them, which is not a very desirable preliminary situation for the negotiations of the kind we have in view.

THE CHAIRMAN: And may I add here that I always had the idea that the only thing that could be done before the Geneva meeting is what might happen in the case of a country like France, for instance, which has abolished tariffs for the time being and has many specific duties - that you might draft out new tariff systems which would simply translate into ad valorem duties the former specific duties. That is practically the only way we could do it, unless you have the case of a customs union where again you have to bring a customs union into effect. I think that was the only case mentioned, and as far as I know I think one could go ahead with the new tariffs. Otherwise we would have a kind of truce until we made any change. Perhaps it is as well that the Rapporteur should take care of these points and put them in a memorandum to prevent any misunderstanding.

MR ADARKAR (India): Mr Chairman, in proposing this particular amendment the intention is not to have an opportunity of creating new preferences in advance of our Geneva meeting. It is not intended to seek new tactical or bargaining advantages by extending the scope of existing preferences. It is a matter of one's own point of view, I think; but preferences which already exist should be permitted to be extended, and certain extensions need not be regarded as new preferences. The reason why I say that it is not a new preference is this, that when you create a new preference you create a handicap for a particular foreign country which does not at present exist, and when you extend the scope of existing preferences you do not create fresh preferences. There is no change in the duty which is levied on the product imported by the foreign country. The duty applicable to an importing country is the same, and does not require any modification outside the negotiations. That duty remains the same, only the preferential

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duty is made applicable to a part of the Commonwealth which at present is not affected in that way.

THE CHAIRMAN: Let me take a clear example - it is quite theoretical, but it may give you an idea of what I have in mind. If sugar from British India should enjoy a preference in accordance with existing preferences over other Dominions - take South Africa, for instance, and this is entirely theoretical - then the Netherlands Indies sugar industry, the Cuban sugar industry, and other sugar industries would feel the effects. That is extending the possibilities for the Indian sugar industry to sell at the preferences in other markets.

MR ADARKAR (India): But they are already feeling the effects of the preference.

THE CHAIRMAN: Yes, but now they will feel them even more. Now I agree with Mr Hawkins, that we would then have to bargain again and then India would say, "Look here, as this is a concession from the Indian side, if I would agree to abolish the preferences, what then?" It is strengthening their position as far as bargaining is concerned, but I cannot see that that arises.

MR ADARKAR (India): But that is not the position, Sir.

THE CHAIRMAN: No, I know, but that is the effect of it.

MR ADARKAR (India): We do not propose to hold up the work of this sub-committee on this, but I should think that we ought to be free to raise this issue later on, either in the full Committee, or otherwise.

THE CHAIRMAN: Yes, that is right. Gentlemen, can we then agree to adopt subparagraph (c), with the addition of the words, in the beginning or the middle of the sentence, "in principle," or something like that.

MR ALAMILLA (Cuba): What are the words you are adding?

THE CHAIRMAN: "in principle."

MR MCKINNON (Canada): After the word "shall"?

THE CHAIRMAN: Yes - "shall in principle be recognized as a concession equivalent," and so on. Is that adopted? (Agreed). Now, Gentlemen, we have for the time being covered paragraph 1 of Article 18; we have still paragraphs 2 and 3, so that it is now the turn once more of the Rapporteur.

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THE RAPPORTEUR: Paragraph 2 has already been approved by the Committee and there is no change. Now the amendments to paragraph 3 are designed to take into account the addition to paragraph 1 of the new subparagraph (c). The first amendment is in the sixth or seventh line. The original draft read: "The Organization, if it finds that a Member has, without sufficient justification" and so on. It now reads: "If a member has failed to negotiate with such complaining member in accordance with the requirements of paragraph 1 of this Article," and so on, to make it perfectly clear that a low tariff country is not to be required substantially to reduce its tariffs in return for a tariff reduction by other countries, on the one hand, and, on the other hand, that a low tariff country may make a complaint against a high tariff country if it fails to negotiate. The second amendment relates to the change in the phrase "tariff reductions" to "tariff benefits," so that a tariff benefit or tariff binding could be withheld as well as a tariff reduction. An additional amendment is necessary to make it perfectly clear. "If such benefits are in fact withheld so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, to withdraw from the Organization." That would mean that if a low tariff country were successful in getting the agreement of the Organization to its complaint against another Member, that is, that it was justified, it would be permitted to raise its tariffs above the level which existed prior to the negotiations, because it had merely granted bindings in those negotiations and would have no other compulsory device to apply. But the effect of it is simply to avoid putting a low tariff country in an unfavourable bargaining position with a high tariff country.

THE CHAIRMAN: I have only one remark to make here and that is to say that perhaps it is convenient to have sixty days' notice in this Organization, because I can imagine that a letter from one country might take a month to get here, and it might not be read until after the negotiations had taken place.

THE RAPPORTEUR: That is the only reason for making it within sixty days, so that

it is not indefinite.

THE CHAIRMAN: No. I was only thinking that it might take a long time before it was received.

MR. LAMILLA (Cuba): Mr Chairman, we had the same problem when dealing with several Articles, and after we had exhaustively dealt with paragraph 2 of Article 79 in Committee V we decided in every case where we had the same thing just to make reference to this paragraph 2 of Article 79, which now reads "sixty days after receipt of the notification by the Secretary-General." Therefore, I think that we might make a reference here to say, "in accordance with the second paragraph of Article 79."

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MR. ALAMILLA (Cuba): I want to make it clear that the provision of Article 79 (2) is six months and not 60 days.

THE CHAIRMAN: We need 60 days here, but we ought to include when it has been done by the Secretariat; it makes it a more definite case.

MR. ALAMILLA (Cuba): Of course, I can see the difference.

THE CHAIRMAN: I think that is a useful alteration. Are there any remarks on the other proposed changes by the Rapporteur, or is the meeting agreed that he has again put into this new draft, in an admirable way, our observations of previous meetings?

MR. ADARKAR (India): I have no remarks on that particular amendment.

The last time we discussed this subject Mr. Hawkins gave an explanation which I think would considerably breach the difference between the points of view, though it would not wipe it out completely. The explanation was that in judging the adequacy or otherwise of the concessions offered by members the results already achieved by the members of the Interim Committee at the spring negotiations would be taken as the standard. It was explained by Mr. Hawkins that the countries represented a cross-section of international trade, and that what emerges between the negotiations will set the standard. As a matter of clarification, I do not think the wording of this section would give rise to that without some explanation; otherwise one of the members of the initial negotiating group would also be subjected to some penalties. I may not be understanding this section properly, but that is what I would like specifically recognised.

MR. HAWKINS (United States): I wonder if the Indian Delegate has considered Article 56 (2), which is referred to in Article 18. It may not completely meet his thoughts, but I think it helps. Paragraph 2 reads:

"Any other Member of the Organization shall be entitled to be a member of the Committee" -
that is the Interim Committee -

"when, in the judgment of the Committee, that Member shall have completed negotiations pursuant to paragraph 1 of Article 18 comparable in scope or effect to those completed by the original members of the Committee."

MR. ADARKAR (India): It is only by inference. Why not make the point clear?

MR. HAWKINS (United States): I think it could be.

MR. ADARKAR (India): That would be a proper atmosphere for the initial negotiations to take place in.

MR. HAWKINS (United States): There is no objection on our part to spelling that out more clearly.

THE CHAIRMAN: Is the Indian Delegate agreeable to accept this Article on the understanding that we will clarify the position in Article 56?

MR. ADARKAR (India): Yes.

THE CHAIRMAN: Then I may say that this is adopted. That means that once more we have cleared Article 18, but we will have to refer to it again when the sub-committee on quantitative restrictions has finished its work.

MR. ALAMILLA (Cuba): And the Joint Committee.

THE CHAIRMAN: Yes. We are in a very unsatisfactory position at the moment in view of the fact that there are so many other meetings going on in regard to other committees, in which members of this committee have to take part. Perhaps it might be possible for Delegates to arrange for other members of their Delegations to take part in other committee meetings. Owing to the meetings of other committees we shall not be able to meet until Thursday, when we will still have Articles 29, 30 and 33. If it goes on like this I cannot guarantee that we will finish our work before even the end of next week. I think the Secretariat will have to go into this problem, because I cannot guarantee any strict procedure under the present arrangement.

MR. HAWKINS (United States): This committee ought to meet every day for at least half a day.

MR. McKINNON (Canada): If we do not meet at least half a day every day Delegates will have to go home with the work unfinished by the target date.

THE CHAIRMAN: I am agreeable to giving the Rapporteur time tomorrow to prepare the procedural memorandum, but I would like to meet for the whole of Thursday in order to get on with it. I suggest that Mr. Shackle and Mr. Hawkins discuss the committee procedure with the Secretariat to arrange for other meetings this week.

MR. MCKINNON (Canada): Would it be possible to meet all day Thursday, starting at 10 o'clock in the morning?

THE CHAIRMAN: I am quite agreeable.

MR. SHACKLE (United Kingdom): A difficulty there is that Delegations have meetings in the morning. Our Delegation meets at 9.30 and it is difficult to get through the business in less than an hour. That is a rather necessary part of the machinery in Delegations, for the purpose of keeping in touch and so on.

THE CHAIRMAN: We will proceed quickly on Thursday. Meanwhile, the Rapporteur will try to prepare the memorandum on tariff negotiations procedure, and will also contact the members of the sub-committee for any remarks they might have with regard to the other papers which he has already submitted.

MR. MCKINNON (Canada): Will the order of business on Thursday be Articles 29 and 30 or the procedural memorandum?

THE CHAIRMAN: I would say 29 and 30, if possible, and the procedure, because it will have to be typed and distributed. If that is agreeable, gentlemen, we will meet at 10.30 on Thursday morning, and carry on in the afternoon until seven o'clock or something like that.

MR HAWKINS (USA): We are going to be running out of time and evening meetings will be necessary. The only problem is that advance notice has to be given. I think this is a pretty full week for most people, but we might bear in mind that we shall need to have evening meetings next week.

MR McKINNON (Canada): What about Saturday afternoon?

THE CHAIRMAN: We can meet at any time convenient to delegates, but I would only say this: we must have a real programme before us, and not sit for an hour or two and then adjourn and have to refresh our minds on it all over again at the next meeting.

MR HAWKINS (USA): Could we have a whole day on Saturday?

THE CHAIRMAN: Yes, I think that would be all right. I understand that I am invited to the meeting of the Technical Sub-Committee tomorrow morning?

MR VIDELA (Chile): Yes, you have been invited to attend as Chairman of this Sub-Committee, for the discussion of Article 32. The meeting is at 10.30.

THE CHAIRMAN: Then I shall bring Mr Leddy along with me.

Then this meeting is adjourned, until Thursday morning, at 10.30.

The meeting rose at 1.05 p.m.