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ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of the

ELEVENTH MEETING

of the

PROCEDURES SUB-COMMITTEE

of

COMMITTEE II

held in

CONVOCATION HALL

CHURCH HOUSE, WESTMINSTER

on

Thursday, 14th November, 1946

at 10.30 a.m.

CHAIRMAN: Dr. A. B. SPEEKERINK (Netherlands)

From the shorthand notes of
W.B. Gurney, Sons and Tunnell,
58, Victoria Street, Westminster,
S.W.1.)

THE CHAIRMAN: Gentlemen, I open the meeting. I think that on the last occasion we covered Article 18, but there still remains one amendment which, I think, Delegates might like to study for one moment. That is the amendment beginning "Prior international commitments shall not stand in the way of negotiations". No doubt, Delegates remember it. We reached provisional agreement on it, and I would like to know whether we can now have definite agreement.

Mr ALAMILLI (Cuba): The Cuban Delegation is satisfied with the drafting of this clause.

Mr SHACKLE (United Kingdom): The United Kingdom Delegation is in agreement.

Mr HAWKINS (U.S.A.): I accept it.

Mr MCKINNON (Canada): Could we have it read out again?

THE CHAIRMAN: It reads as follows: "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 their terms", or "the terms of such obligations" - just as you like. That is the draft as we had it last time. Is that agreeable to everybody?

Mr MCKINNON (Canada): I think this is the draft that we discussed at such great length at the last meeting. We indicated that we had a definite order of preference in respect of the several drafts which had been submitted, but that we were prepared to go ahead with negotiations on the basis of this draft.

THE CHAIRMAN: This is hereby adopted. Now we come to Article 29. Here I would like to ask the Rapporteur to tell us what still has to be dealt with.

Mr ADARKAR (India): Before we commence discussion of Article 29, I hope the Rapporteur will read paragraph 3 of Article 18 so as to make clear the standard by which the position is to be judged.

Mr HAWKINS (U.S.A.): Is it not in Article 56?

Mr ADARKAR (India): Article 18.

Mr HAWKINS (U.S.A.): Article 56 is the Article which one decides whether a country has made the standard. I think perhaps that would be a better place.

Mr ADARKAR (India): By inserting such a definition it would be made clear that it would be the action of the Regional Group that would decide or set the standard.

THE CHAIRMAN: Is not that for the memorandum?

THE RAPPORTEUR: I think it was agreed earlier that some provision might be included in Article 56. It would go there rather than in Article 18.

MR. ADARKAR (India): Article 56 will come into operation after the negotiations have been completed, while paragraph 3 of Article 18 may apply even with regard to the initial negotiations. There ought to be something in the draft to make it clear that paragraph 3 of Article 18 does not apply with regard to the initial negotiations.

THE RAPPORTEUR: That would be covered in the procedure memorandum.

THE CHAIRMAN: That is what I thought.

MR. ADARKAR (India): If the point is noted so as to avoid confusion, that paragraph 3 of Article 18 should not apply to the initial negotiations, I should be grateful.

MR. SHACKLE (United Kingdom): It is a purely formal point, but I should have thought that Article 18 (3) could hardly apply to these negotiations, considering that the Organisation cannot be consulted until the original group have come to an agreement. I should have thought that it would be inapplicable at this stage.

THE RAPPORTEUR: That is right; it says that the Article shall operate according to the provisions of Article 56.

MR. ADARKAR (India): We are bringing certain portions of the Charter into force in advance of the whole Charter.

THE CHAIRMAN: I think there is a misunderstanding; we have to take over certain of these principles from this paragraph into the memorandum on procedure for our initial negotiations, but Article 18 and other parts of the Charter can only formally come into operation after we have had a resolution in Geneva - after the initial negotiations.

THE RAPPORTEUR: May I suggest that this procedure memorandum might be accompanied by an outline of the draft agreement on tariffs and trade referred to in the Charter? That would indicate that the members of the Preparatory Committee

have declared that they have among themselves given effect to the provisions of Article 18.

MR. ALMILLI (Cuba): A similar recommendation was made yesterday in Committee V, that it would be very convenient to give, along with the draft on procedure under paragraph 3, a draft of those agreements in principle in regard to Article 56. That would be considered in January when we meet in New York, because I do not think there would be time to consider it here. If there was time, I would be willing to give all the time necessary to it.

MR. ADANKUN (India): The Committee has decided that the memorandum will be so worded, and Article 56 so drafted, as to make it clear that the provisions of the kind contemplated in paragraph 3 of Article 18 will not apply with respect to the initial tariff negotiations.

THE CHAIRMAN: Has Mr. Hawkins any comments to make on that?

MR. HAWKINS (United States): I think that what the Delegate of India suggests is all right; of course, the language should not be modified so as to prevent a member of the original negotiating group from refusing to negotiate or refusing to take substantial action as contemplated in paragraph 1 of Article 18. I think that is understood.

MR. ADANKUN (India): Yes.

MR. HAWKINS (United States): Then there is no disagreement.

THE CHAIRMAN: Then I think we have got to the point where we can refer to Article 29.

THE RAPPOTEUR: The Sub-Committee, in discussing Article 29, agreed provisionally on three basic amendments. The first was to broaden paragraph 1 so as to make it clear that concessions with regard to preferences could be withdrawn under circumstances similar to those which would justify the withdrawal of concessions regarding tariffs. That is effected in the draft before you by two amendments: the first is to eliminate the phrase in lines 2 and 3, "including the tariff concessions granted in pursuance of Article 18", and by changing the phrase "under this chapter"

to "under or in pursuance of this Chapter". It is then clear that tariffs, tariff preferences and margins relating to State trading would be covered.

The second amendment to paragraph 1 is the simple addition of a sentence at the end saying, "that such action may also be taken in analogous circumstances in respect of obligations or concessions regarding preferences".

The reason that is in is because in the partly part of the paragraph reference is merely made to domestic producers and to imports in increased quantities as reasons for emergency action in relation to preferences,

which may affect a third country and might lead necessarily to increased imports.

MR. SHACKLE (United Kingdom): If I might comment on this point - the underlined sentence at the beginning of paragraph 1 - "in analogous circumstances", etc. - is not perhaps altogether satisfactory. Perhaps some such words as these might be preferable: to be inserted in the sixth line after "domestic producers":

"Or in the case of the withdrawal or modification of a preference, the producers in a territory which receives or received such preference"

And then go on to "like or similar products."

MR. ALAMILLA (Cuba): May I ask Delegates, and also the Rapporteur, to use a little more of the available energy in speaking a little more loudly, because it is really very difficult for us in this corner to follow the discussion?

THE CHAIRMAN: What are the comments of the Rapporteur on this?

THE RAPPORTEUR: The phrase reads "or in the case of the withdrawal or modification of a preference". Should not it be, "or in the case of a product which has been made the subject of a concession with respect to a preference"? What you are describing are the conditions which exist before you withdraw or modify the preference, which justified the withdrawal or modification.

MR. SHACKLE (United Kingdom): I think that is right. I am not sure I understood your point.

THE RAPPORTEUR: The situation you are trying to describe here is one which exists before you withdraw or modify the preference. How it should read is, "in the case of a product which has been the subject of a preference", rather than "in the case of the withdrawal or modification of a preference."

MR. SHACKLE (United Kingdom): I think that is right.

THE CHAIRMAN: If that is agreed we will have this retyped so that Delegates will have the exact wording in front of them.

MR. SHACKLE (United Kingdom): To be quite meticulous one should say "has been or is the subject of a preference". If you merely say "has been" it merely assumed the preference has been completely eliminated. There is always the possibility it may have been only modified.

THE CHAIRMAN: I have only one question to ask with regard to paragraph 1. of Article 29. We say here that "the Member shall be free to withdraw the concession, or suspend the obligation." That also covers the binding of tariffs and everything, and leaves open what we discussed earlier, namely, the possibility of even higher duty.

MR. SHACKLE (United Kingdom): I should like to reserve the action of my Delegation towards that, although at the moment I do not want to object or suggest anything.

THE CHAIRMAN: If the present wording covers that possibility, then we have done what we decided in previous discussions. If later on you have some reservations we would have to redraft it, because as far as I can see it is now included.

MR. SHACKLE (United Kingdom): As regards that, as I said, I do not wish to suggest any modification of the wording. All I wish to do, while taking note of the points made, is to reserve the position of my Delegation in case they should wish to return to it later. I do not want to suggest any amendment or change in this text at this stage.

MR. MCKINNON (Canada): Does Mr. Shackleton by that that for the present at least he is accepting the Rapporteur's draft?

MR. SHACKLE (United Kingdom): Yes, subject to what I have said. Perhaps there is one misapprehension. Perhaps Mr. McKinnon was referring to the underlined sentence at the end.

MR. MCKINNON (Canada): Yes.

MR. SHACKLE (United Kingdom): No, I did not mean to cover that. The point I was speaking to just now was the case where you would put a tariff up to a level actually higher than it had been before the negotiations.

THE CHAIRMAN: I understand that. With the addition proposed by Mr. Shackleton we can now delete the underlined sentence which the Rapporteur put in his draft, because it will now be covered in brackets in the middle of the paragraph. If that is agreed, we will leave that till it has been retyped and turn to paragraph 2 of Article 29.

MR. SHACKLE (United Kingdom): May I make a further remark? We have here the words "a product which has been the subject of a preference." I was wondering whether we ought not to say "has been or is", because if you say "has been" it implies the preference is defunct and eliminated.

THE CHAIRMAN: May we discuss that when we see it before us? We will now turn to paragraph 2 of Article 29.

THE RAPPORTEUR: The committee agreed that paragraph 2 should be amended to provide more flexibility with regard to the clause relating to consultation. It seemed to be agreed that prior or simultaneous notice should in all cases be given, but that with respect to consultation there should be some leeway in critical cases for the action to be taken first and the consulta-

tion should follow upon it immediately. It is believed that the draft as it originally stood permitted short notice. In other words, under the original language of the draft it reads:

"Before any Member shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the Organization as far in advance as may be practicable."

It seems to me that would permit of short notice; it could almost be simultaneous. Therefore, I did not think that any change was needed in that. With regard to the consultation aspect, a new proviso has been added, as follows:

"Provided that in critical and exceptional circumstances such action may be taken provisionally without prior consultation."

Then some changes are necessary in the following sections to assure that consultation will take place in all cases.

"If agreement among the interested Members with respect to the action is not reached the Member which proposes to take or continue the action shall, nevertheless, be free to do so. If action is taken or continued the other affected Member shall be free."

In the next clause there is a slip in the wording. It says "within 60 days after such action is taken."

I think that should properly read,

"within 60 days after the consultations have been completed to suspend on 60 days' written notice."

The change in the last two or three lines there was intended to carry out the idea that any countervailing action taken because of the original action by the offending member should not be disproportionate. That thought is put in here by saying:

"The Member may suspend the application to the trade of the Member taking such action of such substantially equivalent obligations or concessions under this Charter, the suspension of which the Organization does not recommend against."

THE CHAIRMAN: I have one remark here. Again it is a question of 60 days' written notice to the Organization. In previous meetings did not we decide that it would be 60 days after the notice had been received by the Organization?

SEÑOR ALMILLER (Cuba): The report of the Rapporteur, I think, gives the impression that there has been general agreement that we would permit, in certain circumstances, specific action before notification or before consultation. I want to remind the Committee that I am strongly opposed to this suggestion. I am not now talking in the interests of any special party, but in the general interests of the Organization, and I consider it extremely dangerous that unilateral action should be taken by one nation because the result may be even worse than the damage you are trying to cure. I would mention one instance that occurs to me: For example, one country believes that it is flooded with goods from other countries. It takes immediate action, puts on tariffs, takes off preferences, and so on. What happens? The commerce and trade of the other nations is disrupted in such a way that several businesses in those countries may have to go into bankruptcy. Then, the fact that counter-action is taken by these other nations against the first one, may cause other firms to go into bankruptcy in those countries. Therefore everybody's trade may be disrupted. That is why we think there should not be permission to take unilateral action, but that notice should always be given, that there should be consultation for at least 15, 20 days, or some short period, so that the people of the other countries would know what was going to happen and so could take steps to prepare themselves for it. I am thinking principally of the ruin that may result to such countries when unilateral action is taken by another country, and I place this before the Committee so that they may consider how serious the situation could be.

THE CHAIRMAN: I agree with the Cuban Delegate that we should see this written down before coming to definite conclusions. There was no decision at the last meeting, but I think most of the delegates present thought it desirable that we should have a possibility, but only in rare circumstances. I would say that in a

case such as that cited by the Cuban delegate, one would have to choose between bankruptcy of the foreign exporters or the bankruptcy, perhaps, of one's own trade and domestic producers. In that case I think it is the whole point of the Charter that each country has a paramount duty to protect the interests of its own citizens. I feel that the words "critical and exceptional circumstances such action may be taken provisionally without prior consultation" already throw such a heavy obligation on each country that I am not so convinced that this is very dangerous.

SEÑOR ALMILLILLA (Cuba): May I answer the Chair? I agree with the Chairman that every nation should protect its own citizens; the only thing I am asking is that notice should be given to the others that protective action is going to be taken. It should not be so sudden as to cause the disruption of the other country. If one does not see this danger 20 days ahead, then it is because one is blind, but every government should be in a position to foresee the circumstances of international trade in order that any measures like this can be taken care of. I agree that such measures may have to be taken; I only ask that notice should be given to other countries and a little time to consider what the problem may be.

MR. MCKINNON (Canada): The view of the Canadian delegation has always been that expressed by the Cuban delegate this morning. We have thought it somewhat invidious that a member who saw fit to complain need give no notice whatever, but could take action overnight. No matter how we gloss it over in words, that is the effect of this amendment. He can take action overnight. At the same time, if he wishes, he initiates consultations. On the other hand, retaliatory action has to provide for a lapse of at least 60 days. Our view all along has been - although we have not pressed it as an amendment - that 30 days notice would not be too harsh a requirement when there is a 60 days lapse or

leeway or notice applying in the case of the other party. On the other hand, although we felt quite strongly that that notice should be given, we took a great deal of cognizance of the argument in the full Committee, for it was stressed that those were emergency provisions, that there must be room for emergency action. For that reason we did not press our amendment, but I am very glad it has been raised again this morning by the delegate of Cuba, because he has expressed completely our feelings in the matter.

Mr SHACKLE (United Kingdom): I would like to make a few remarks on the subject. First of all, the United Kingdom Delegation regrets that it should be necessary to have a clause of this wide character. At the same time, we recognise that it is probably necessary to have something like this. It seems to me that, given that fact, it is difficult to insist that there must always be prior notice. One of the points is that this will work differently according to the geographical situation of different countries. If you have a country which is comparatively remote from the countries which are possible sources of supply, there is a long time lag for dealing with these sudden importations. On the other hand, in the case of a country which is very close - for instance, England is close to the Continent - you may get floods coming suddenly, and in those conditions it may be extremely difficult to give prior notice. It is a question of distance and time. There is one thought which has occurred to me, and which is not expressed in this revised draft, and that is that there might be an obligation on a country which acts without giving notice to agree to immediate consultation on request. If countries ask for consultation, that country should be under an obligation to enter into consultation immediately. It might be worthwhile to insert a clause to this effect in the draft.

Mr MCKINNON (Canada): Might I ask Mr Shackle to repeat the amendment that he suggested in general terms?

Mr SHACKLE (United Kingdom): I had not thought it out in exact terms, but the idea would be that, upon the request of any country, the member taking the action would agree to enter into immediate consultation.

Mr MCKINNON (Canada): Although it is not so stated in the draft, I thought that was implied, and that even though action was taken notification would be given and presumably consultation started. However, I am bound to admit that, looking at it again, the draft does not provide for that.

THE CHAIRMAN: It only says "agreement among the parties". It presumes consultation, but we could make that stronger and delete the words "provided that" and insert instead "only in critical or exceptional cases" to make it more strong.

Mr MCKINNON (Canada): Would this meet the point, following your idea of dropping the words "provided that", and let the sentence start: "In critical or exceptional circumstances, such action may be taken provisionally without prior consultation, provided, however, that consultation shall immediately be entered into"?

Mr ALAMILLA (Cuba): Could it not be stated that merchandise should never be affected by these sudden actions?

THE CHAIRMAN: Perhaps I might refer to the last proposal and give an example. In the days before the war we found that several times many ships were on the way to Holland with textiles from Japan at very low prices, and at that moment we could not allow them to be stored in Holland. We could not allow them all at once into the country. I do not say that it is very serious to have one or two ships in, but this is an emergency provision, and I think it is a little difficult. I do not press the point. I am open to any solution which might be suggested and which receives common agreement. I think the words "immediate consultation" would provide a solution to this problem.

Mr SHACKLE (United Kingdom): I think the subject of goods en route has been discussed by the Technical Sub-Committee; at least, it falls within their terms of reference. I had the impression that in a good many countries it is not legally possible to exempt goods en route, but there is a provision by which contracts which are affected are automatically varied; that is to say, if an additional duty is suddenly put on, then the contract price can be varied so as to enable the importer to pass on the increased duty to his customer. I think in a good many countries, including my own country, it is felt that that is as much as can be done to deal with goods en route, but I think that is a matter which the

Technical Sub-Committee has been discussing.

Mr LECUVER (France) (Interpretation): As Mr. Shackle has said, this question of merchandise en route has been examined by the Technical Sub-Committee, and it was decided not to maintain the original text. This means that the increase of the customs duty would not apply to merchandise en route. This was carried by a strong majority, with the opposition of the Canadian Delegation, I think.

Mr ALAMILLA (Cuba): I think this is a point of such consequence to everybody that this is one of those cases where consultation should be taken by every Government in order to study this point and have a more definite idea in January. Therefore, I suggest that this point should be left open here, and we should state that some Delegations have one idea and other Delegations have other ideas, and leave it for consultation in January. The majority might decide to have a text contrary to our present point of view, and it would be better if we could make such a reservation. Either procedure would be satisfactory to me.

THE CHAIRMAN: I should be quite agreeable to that, but I would then propose that we should add to this clause: "Provided that consultation is effected immediately following upon the taking of such action".

Mr ALAMILLA (Cuba): Could I ask the Chair if I could be permitted to draft my reservation so that I can introduce it at the meeting? I do not have it now.

THE CHAIRMAN: Agreed.

Mr McKINNON (Canada): My suggested amendment merely makes consultation mandatory. It does not provide the point which the Delegate from Cuba has been suggesting, and which we strongly favour. It would help us in our further consideration of this matter, even now or later, if we could have a little explanation particularly from the United States Delegate as to the extent of time allowed to country B in the

event of country A taking the first action, either with or without consultation. As I understand it, the draft Article in the United States Draft Charter is based upon a standard Article used by some countries in the past in trade agreements, particularly, I think, the United States.

I have never been clear just what happens if country A takes summary action against country B. Has country B the right, under the draft Article, to give immediately 60 days notice, or does country B have to wait for the expiry of 60 days and then give 60 days notice - in other words, is it 60 or 120 days that must elapse before country B can take remedial action?

MR. HAWKINS (United States): I cannot recall the exact terms of this provision as we have included it in bilateral agreements. It is substantially the same as the latest version that we have included in bilateral agreements. I might add, just by way of comment, that we have been including clauses similar to this in agreements for a long time, and our experience under them has not been bad. They have almost never been invoked, but they have been there in case the emergency should arise, which gives some assurance to the people concerned.

In answer to Mr. McKinnon's question, I think his main point was concerned with the 60 days delay. The purpose of the first 60 days is just to ensure that the thing does not run on indefinitely with the other party not knowing when the axe is going to fall.

MR. MCKINNON (Canada): But it can take action within one day?

MR. HAWKINS (United States): Yes, any time within 60 days.

MR. MCKINNON (Canada): It means, then, that there must be a minimum of 60 days before it can do anything.

MR. HAWKINS (United States): Yes, after that sixty days has elapsed the member is free.

MR. MCKINNON (Canada): Mr. Hawkins has now informed us that there must be a minimum of 60 days before action can be taken by the second party. We have already removed the phrase "such action be taken" and substituted for it the phrase "consultation has been completed". Are we not in danger of making a rather open-ended amendment here? The date of an action being taken is precise and determinable; it is not so easy to determine the date on which negotiations are concluded, because either part, either with the best faith in the world or deliberately, could prolong the proceedings by continuing

the consultations.

MR. SHACKLE (United Kingdom): Perhaps we should do well to go back to the original text and say, "after such action is taken", because then, it seems to me, pressure is put upon the country which has taken the action to be businesslike about the consultations.

THE CHAIRMAN: The Rapporteur has one point to make.

THE RAPPORTEUR: Mr. McKinnon raised some question about the second 60 days. The reason for a period of that length is to afford the Organisation an opportunity to recommend against the action that has been taken, but that phrase has now been changed to refer to the "date on which written notice of such suspension is received by the Organisation", so that probably we could now reduce that period somewhat.

MR. ADARKAR (India): I suppose the procedure will be something like this. When an action is taken under this clause, the country affected will have to anticipate what type of obligations or concessions under this Charter the suspension of which the Organisation will not recommend against, and will have to give 60 days' written notice in respect of such obligations or concessions. Then during the course of consultations the Organisation may either approve the withdrawal of the specific obligations and concessions covered by the notice, or may ask for the deletion of certain obligations or concessions. Then after the expiry of the period of 60 days only such obligations or concessions as the Organisation does not recommend against will be withdrawn. There has to be some element of provision in the notice.

MR. HAWKINS (United States): In the light of what the Delegate of India has said, I would suggest that it would not be desirable to shorten that 60 days' period, for the reason that the Organisation has now got to look at the equivalence of what is proposed, which is not an easy problem to tackle. I should therefore be quite agreeable to making it the "date of receipt", but not to shortening the 60 days. We must allow plenty of time.

MR. SHACKLE (United Kingdom): May I try to say how I understand this sentence would work, in order to be corrected if I am wrong? I refer particularly

to the last three lines, which begin "such substantially equivalent obligations or concessions under the Charter the suspension of which the Organisation does not recommend against." In the first place, am I right in thinking that the words "substantially equivalent" would be at first for the country itself to determine, but that it might be that afterwards the Organisation might be asked to consider whether in fact the action taken was equivalent or exceeded what was the equivalent? As regards the recommendations made by the Organisation, supposing that by the end of the 60 days the Organisation had made no recommendation, then I take it that the matter would lie entirely in the discretion of the country which wished to take action? Am I right in those two assumptions, first that the determination of the substantial equivalent is in the first place the business of the country itself, and second, if after 60 days the Organisation has not made any recommendation, discretion lies with the country?

MR. LECUYER (France) (interpretation): It seems to me that this is a very delicate and complex procedure, and we should think it over carefully. There are two time limits here, the first of 60 days which is allowed to the members so that they may take countervailing action; the second of 60 days also, which is allowed to the Organization so that it may make recommendations. It seems to me that those two time limits should not concur exactly, because if they do the decision of the Organization may be taken at the very moment when the member is already deprived of his right to take action. Therefore, I think the time limit should be such as to allow the recommendation of the Organization to be reconciled with the action of the member.

THE CHAIRMAN: I do not understand that quite clearly, because the first 60 days is "within 60 days." The day after the other member has taken action you can say to the Organization "I propose to do" this, that and the other; then the Organization needs 60 days to approve it or to recommend against it, or to try to reconcile the parties. Therefore, I do not think there is any difficulty here. There will never be an overlapping. If the other member wants his counter measures to take effect very shortly he can just take them within a few days, giving notice to the Organization.

MR. MCKINNON (Canada): It is obvious now, I think, that this will have to go back to the Rapporteur for redrafting, since at least some of the points we have been raising become, in the final analysis, drafting matters. I suggest it might be more clear if the first word "within" before the phrase "sixty days" was changed to read "not later than." It would then read:

"if such action is taken the other affected Members shall be free,
not later than sixty days after such action is taken."

I think there is ambiguity about the word "within".

MR. ADARKAR (India): I am not sure I understood this part quite correctly. It seems to me that as it stands it makes it necessary that suspension should take effect within 60 days after the action is taken - not that the notice is given.

THE CHAIRMAN: No.

MR. ADARKAR (India): ". . . the other affected Member shall be free, not later than sixty days after such action is taken, to suspend on sixty days' notice."

THE CHAIRMAN: It is after that 60 days.

THE RAPPORTEUR: I think the rephrasing of that makes it a little clearer:

"upon the expiration of sixty days from the date on which written notice of such suspension was received by the Organization."

MR. ADARKAR (India): Otherwise the word "on" might not quite convey that meaning. It is "upon the expiration of sixty days."

THE CHAIRMAN: Are there any other remarks about the further proposed changes?

The words "substantially equivalent" cover what we have discussed and decided before, I think.

MR. MCKINNON (Canada): There may be one point on that phrase which may not be a point of substance. In the original United States draft Charter the Organization had discretion in an advisory capacity in respect of any obligation or concession under the Chapter. It seems to me now -- and it may be a mere accident of words -- that the discretion of the Organization with respect to recommending against suspension is limited to those which are substantially equivalent only. In other words, if the action of the offending member - if I may use that phrase - is . . . such that the Organization might have felt inclined to permit a quite drastic reprisal. That freedom is now removed from the Organization, as I read this phrase, because it can deal only with substantially equivalent obligations.

THE CHAIRMAN: That is indeed the case, because under point 3 of paragraph 1 of this paper you find "countervailing action permitted under the Article should not be disproportionate to the offence." I think that is the point Mr. Shackle raised at our last meeting, and we thought it would be better to make that change.

MR. MCKINNON (Canada): But Mr. Shackle's amendment, as originally drafted, did not create any ambiguity. It read:

"If agreement among interested Members with respect to such action or proposed action is not reached Members adversely affected may, unless the Organization recommends otherwise, suspend the application to the trade of the Member taking such action of concessions of as near as may be equivalent value granted under this Chapter."

There is a slightly different connotation there. It could be very serious. It is taking away the discretion, that is my point.

MR. HAWKINS (U.S.A.): The difference between Mr. Shackle's draft and Mr. Leddy's draft is, I think, merely that Mr. Shackle has drafted his in such a way that the way is left open for the Organization to take coercive action, whereas in Mr. Leddy's draft the action is confined to compensatory action.

MR. SHACKLE (United Kingdom): I think there are two elements to consider here: firstly, the extent of the action - what we call the equivalent value; secondly, the form of the action. In any case the question of equivalent value would be referred to the Organization. Whether you should also leave the Organization the power to recommend what the form should be, I am not sure whether that is necessary or not. We might say simply, "the value or the equivalent", since there would be recourse to the Organization in any case.

MR. MCKINNON (Canada): That might be sufficient.

THE CHAIRMAN: I think we have to decide upon that point - whether we want the Organization to do more than a substantial equivalent or not, if there should be any need to do that. I am inclined to leave the Organization as much leeway as possible. The Organization, after all, according to the Charter is the governing body. For instance, if they decided on a sanction which was merely taking away a concession, even that would be agreeable to me and I think we should leave the Organization power to do that, but we have to be quite clear what we want.

MR. HAWKINS (U.S.A.): I think the question really comes down to this: do we want to authorise the Organization to sanction contravening action which goes beyond the point of compensation by the country which evoked the escape clause? I think there is this to be said for leaving that discretion with the Organization as long as there is a possibility that if this escape clause might be misused, the action taken against it by other members could be actually coercive, there will be more restraint on the use of the escape clause. If that is what we want - and it seems to me desirable -

then we would leave the Organization full discretion to authorise whatever it decides in the light of the circumstances as they appear at the time.

MR. SHACKLE (United Kingdom): In view of what Mr. Hawkins has just said, I am prepared to withdraw my amendment.

MR. ADAKAR (India): The amendment suggested by Mr. Shackle has a certain amount of logic in it and would serve some purpose, but it would make a position which is a little unfair. It is true that escape clauses should not be used too freely but, at the same time, it is legitimate to use escape clauses and in such cases where the use is legitimate and is fully justified, it would be unfortunate if the countries affected were not empowered to take whatever action they agree upon. There is a certain element of unfairness about that. Therefore I think the amendment should be allowed to stand with a necessary modification to ensure that a decision as to whether the decisions in question are or are not equivalent in effect to the action which has given rise to the problem should be left in the power of the Organization. For example, we might substitute for the words "such substantially.....against" the following words:

"obligations or concessions under this Charter the suspension of which the Organization does not recommend against and which are regarded by the Organization as substantially equivalent in effect to the original action."

THE CHAIRMAN: Before that is translated, I am in favour of the first part of the remarks of the Indian delegate, but I would like to see two things. First, to put in that as a rule it should be a substantial equivalent to leave the Organization the right to go further if they found that it had been a real abuse of the escape clause. I think that second possibility

is killed by the way in which the Indian delegate has framed his amendment.

MR. ADAKAR (India): Perhaps.

MR. HAWKINS (U.S.A.): After listening to the discussion, I favour the original American draft on this point on the ground that it puts the maximum restraint upon the use of the exception. In other words, the way is left open for the Organization to authorise punitive action in flagrant cases.

THE CHAIRMAN: The original draft in the Charter do you mean?

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

THE CHAIRMAN: The delegate of Chile.

MR. VIDELLA (Chile): The more we discuss this matter, the more I am in agreement with the Cuban delegate. If you will allow me, Mr. Chairman, I will call your attention to the necessity for taking into account, when we are drafting the Article under discussion, the provision of letter (c) of No. 2 of Article 19, which reads: "Any Member imposing restrictions on the importation of any product pursuant to this subparagraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value." I notice that in the Rapporteur's letter (b) of W.54 this paragraph is deleted, though the Secretary said it was not deleted but left out only because it does not constitute an escape clause. If we keep this paragraph here, I think we must consider it when we are drafting Article 29 in order to have the same procedure, and in that case I should propose to delete the words added by the Rapporteur in Article 29 - "provided that in critical and exceptional circumstances such action may be taken provisionally without prior consultation."

THE CHAIRMAN: I think the paper to which the Chilean Delegate referred deals with the Escape Clauses, which still have to be studied. I feel that we ought to bring an end to this discussion. We have spent the whole morning on Article 29, so I would like to ask the Rapporteur to draft this to the best of his ability, with the first amendment in it, with which I think several Delegates were in agreement. However, we have Canada, Chile and Cuba against it. I would like to hear whether France is against or for the amendment to the effect that in exceptional cases there should be no prior notice. I would also like to hear whether the United Kingdom, India and the United States are in favour of such a clause. Then I shall be able to see to what extent we shall have to go on with this point. I am interested in this, but not so vitally.

I am here just as the Chairman, and not for the Netherlands.

Mr MCKINNON (Canada): On a point of order, before we go into the substance of the discussion. Should we not be clear as to what the Delegate from Chile has in mind? If I interpret him correctly, he is attempting to argue for parallel provisions in Article 19 (e) and 29.

Mr VIDELA (Chile): Yes.

Mr MCKINNON (Canada): His motion is to strike out the provision for summary action in Article 29, because inferentially there is provision for notice in Article 19?

Mr VIDELA (Chile): Yes.

Mr MCKINNON (Canada): But as I read Article 19, there is no provision for prior notice. The action is taken summarily and then the member taking it merely gives public notice as to what he has done. It is not prior notification. I think we should clear up that point first before we discuss the question further.

Mr VIDELA (Chile): If I could give an illustration, I think I can clear up ---

THE CHAIRMAN: Excuse me. As far as I know, Article 19 has not been adopted up to now. Is it wise to go on? - because we might discuss a matter which is not here.

Mr VIDELA (Chile): It has not been adopted?

THE CHAIRMAN: No.

Mr VIDELA (Chile): If I refer to this Article here, you say it is not adopted?

THE CHAIRMAN: That is right.

Mr VIDELA (Chile): When I wish to refer to the Article, I am told that it is not adopted. I do not like this procedure, because I attach great importance on this business of import restrictions of agricultural products. As an illustration, I might refer to tomatoes. I do not agree with the Canadian Delegate on interpretation because it says here : "Any member imposing restrictions on the importation of any product", etc., "shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period..."

Mr MCKINNON: (Canada): After he has imposed the restrictions.

Mr VIDELA (Chile): No, before. You must write to the exporting countries. If it is afterwards, I attach even more importance to the proposal of the Cuban Delegate, because we are going to export agricultural products from 30 days distance from England, for instance. We are going to send apples, and when they arrive here we will be told, "No, we cannot accept these apples because we have imposed a restriction, as we are permitted to do under the Charter." I think it is a most unfair proposition. I think the illustration I have given clears up the matter very well. If the Canadian Delegate gives the correct interpretation, we ought to have the same proposal of the Cuban Delegate in Article 19.

Mr MCKINNON (Canada): I merely wish to say that my interpretation of Article 19. 2. e. permits the action to be taken, and then notice is to be given as to the quantity. I think we could ask Mr. Hawkins or any other Delegate whether my interpretation of Article 19. 2. e. is right, or that of the Chilean Delegate.

THE CHAIRMAN: Article 19 is still under discussion in the Committee on Quantitative Restrictions, and that is one of the difficulties that you find here; you deal with certain clauses without knowing what other Committees have done. On the other hand, we are expected to end our work at the end of this week or early next week, so we shall have to go on in one way or another. It is now 20 minutes to 1. I have an engagement which I missed last time because I stayed here too long. I must be there at 1 o'clock. Therefore, I propose that we resume our discussions this afternoon, preferably I think at 2.30 or 2.45. Is that convenient to the Canadian Delegate?

Mr MCKINNON (Canada): I have an engagement in the City, but I will try to be here at a quarter to 3.

Mr VIDELA (Chile): I would only like to say that I support the reservations made by the Cuban Delegation in Article 29, and if the interpretation of the Canadian Delegate is correct I wish to make an amendment in Article 19.

THE CHAIRMAN: That is quite understood. Now if there is time before we meet this afternoon I would like this Article to be redrafted as a result of our discussions, and then we will try to reach a conclusion on that matter, because we must cover Article 30 this afternoon. We must go on until we have covered it. I warn you all beforehand. The Meeting is now adjourned.

(The Meeting rose at 12.43 p.m.
For Verbatim Report of afternoon session,
see E/PC/T/C.II/PRO/PV/11, Part 2.)

E/PC/T/C.11/PRO/OV/11
(PART II)

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

VERBATIM REPORT

of the

ELEVENTH MEETING

of the

PROCEDURES SUB-COMMITTEE

of

COMMITTEE II

held in

CONVOCATION HALL

CHURCH HOUSE, WESTMINSTER

on

Thursday, 14th November, 1946

From the shorthand notes of
W.B. Gurney, Sons and Funnell,
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S.W.1.

PART 2

THE CHAIRMAN: Gentlemen, the meeting is open.

I think, as Mr Leddy is not yet in, we perhaps might discuss or at any rate read through now the first paragraph of Article 20, of which you received the final revised draft at the end of this morning's meeting. It reads as follows: "If, as a result of unforeseen developments and of the effect of the obligations incurred under this Chapter, including the tariff concessions granted pursuant to Article 18, any product is being imported into the territory of any Member in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like or similar products," and then there are some words in brackets, "(or in the case of a product which has been made the subject of a concession with respect to the preference, to producers in a territory which receives or received such preference), 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."

MR SHACKLE (UK): Mr Chairman, I am sorry to return to this, but with regard to that little part in brackets, that is a point I did mention this morning, and where we say "or in the case of a product which has been made the subject of a concession," I would rather like to say "which is or has been," the reason being that if you simply say "has been" that applies only to the case of a completely eliminated preference, whereas there may be some which remain though modified. I would rather like, therefore, to say, "which is or has been." It is a tiny point, but it is perhaps worth taking up.

THE CHAIRMAN: I do not think that this addition makes much sense, because we speak of a concession; we do not speak of a reduction or an elimination.

MR SHACKLE (UK): Does not that cover both: a concession may be either a reduction or an elimination.

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THE CHAIRMAN: But how can it be? It has been made the subject of a concession always.

MR SHACKLE (UK): Yes; but the concession was one that might result either in elimination or in modification, so that you have the two cases still left.

THE CHAIRMAN: Yes; I think it still covers it.

MR HAWKINS (USA): The phrase "the subject of a concession with respect to the preference" was intended to cover whatever was done; that was the purpose of the thing.

MR SHACKLE (UK): The word "concession" does not now appear in the early part of the text, because it refers to "the effect of the obligations incurred," and then the words "including the tariff concessions" have gone out, have they not?

MR MCKINNON (Canada): Yes, that is out.

THE CHAIRMAN: I think we must read this Article in conjunction with the former Article.

MR SHACKLE (UK): It is purely drafting; I do not think that there is any difference of substance.

THE CHAIRMAN: Do you agree that we leave it like this; we can always return to it.

MR SHACKLE (UK): Just leave "which has been"?

THE CHAIRMAN: Yes.

MR SHACKLE (UK): I am not quite sure how it reads now.

THE CHAIRMAN: In brackets, "(or in the case of a product which has been made the subject of a concession with respect to the preference" and so on.

MR SHACKLE (UK): I see.

THE CHAIRMAN: I think it must cover it.

MR MCKINNON (Canada): And not put in "is or"?

MR SHACKLE (UK): No; but I think if you add the words, "a concession with respect to" - I had not got this - it does cover both and the point then does not arise.

THE CHAIRMAN: Can we, then, adopt this new draft? (Adopted.)

Then we turn to our Rapporteur again for the latest news.

THE RAPPORTEUR: The latest news is that there is being re-drafted the new draft which has just been approved! Another draft of Article 29 is being typed out now and will be along in about ten minutes.

THE CHAIRMAN: I think, gentlemen, we first turn to Article 30, "Consultation, Nullification or Impairment".

THE RAPPORTEUR: Two suggestions were made with regard to Article 30 in the earlier discussions. One was that the Article should be broadened to permit an importing country to take action to re-adjust competitive conditions between two supplying countries upon the recommendation of the Organisation. Among other things, that sort of a clause would permit action of the kind described by the delegate of Cuba in connection with sub-standard labour conditions, where the exploitation of labour took place. The second suggestion was that the Article should be broadened to permit action, to permit a release from the obligations under Chapter IV, in the event of failure to carry out obligations in the other chapters of the Charter. The new draft, I think, would do that. The first sentence has now been made a separate paragraph. There is no other change. It provides merely for consultation regarding all matters relating to Chapter IV.

MR ALAMILLA (Cuba): There is a typographical error here. I think "Chapter I" should be "Chapter III".

THE RAPPORTEUR: Yes, that is so. Now, coming to paragraph 2, in the original draft provision was made that any measure adopted by any member, whether or not it conflicted with the terms of chapter IV, could be the occasion of a complaint by any member. Under this draft the adoption of a measure by a member could be the subject of a complaint, or the development of a situation could be the subject of a complaint, if it had the effect of nullifying or impairing an object of the charter, and not merely an object of chapter IV. In other words, for example, in chapter III, under that employment chapter there is a provision that members may need to safeguard their economies against deflationary pressures arising from abroad. If such a situation

should arise under the revised draft of Article 30 the member could raise the question with the Organisation as to whether in the circumstances he should be free to take some remedial action. It is no longer on a basis of simply one member complaining that another member has taken action. The Organisation may make recommendations to one or two or three members - to any of the members concerned - and make such recommendations as may be provided. Correspondingly, if a member does take remedial action, other affected members would then be free to withdraw from the Organisation in accordance with the usual notice procedure. The notice procedure here, of course, should be changed to correspond with the decisions reached regarding Article 29. In other words, the draft as it now stands, I think, will cover the situation envisaged by the Cuban delegate as well as the situation envisaged in the draft Article 29A submitted by the delegate from Australia.

THE CHAIRMAN: Before we start the discussion, I would like to give the programme I suggest we follow. As paragraph 1 is now a separate paragraph -- that is, the first part of the former Article 30 -- we should limit our discussions to the new paragraph 1. Then we will discuss paragraph 2. After that, we will have to consider the additional escape Clause proposed by Mr. Coombs. Then perhaps the question may arise whether paragraph 2, as it is worded now, referring to the whole Charter, has its proper place under Section G. I am not quite sure about that. Perhaps we could leave that to the Drafting Committee in New York, and simply settle now the question of the paragraph as it is.

I open the discussion on paragraph 1. I would ask the Rapporteur a question here. Yesterday we had our meeting with the Technical Sub-Committee, and then it was proposed and adopted -- I have not the exact wording with me, but this is the effect of it -- that we should get an addition to the first sentence of Article 32 in which it was stated that none of these further general exceptions could be used in a way which would be indirect protection. That was a very important

thing which the members of the Technical Sub-Committee wanted also to be written into Article 32, in the first line. I ask the Rapporteur if that is sufficient, or should we have a reference to that in Article 30 as well.

THE RAPPORTEUR: I think that the paragraph as now drafted would be adequate. The addition to Article 32 was that the general exceptions in Chapter IV should not be used in a way to afford indirect protection or as a means of arbitrary discrimination. Paragraph 1 of Article 30 provides for consultation regarding all matters affecting the operation of this Chapter, and the enumeration of certain types of controls, customs formalities, quantitative and exchange regulations, sanitary laws, and so forth, is not intended to exclude any other question affecting the operation of the Chapter. Unless it is felt that some specific mention need be made of the question of indirect protection, I think it is covered here. If there were a case of sanitary regulations or other customs formalities being used for the purposes of indirect protection, paragraph 1 would provide an opportunity for remedial action.

THE CHAIRMAN: I think we can leave that point, and if need be the Drafting Committee in New York can always see whether it is in the proper place. We do not need to trouble ourselves with that here. I would ask whether members agree to paragraph 1. If there are no remarks, the Article is adopted.

MR. ALAMILLA (Cuba): I was going to suggest that instead of following the procedure you have suggested, Mr. Chairman, of taking the escape clauses now, we should try to approve paragraph 2, which, in my opinion, would not be so difficult to approve in its present wording.

THE CHAIRMAN: That was my idea. The discussion is now open on paragraph 2.

MR. ALAMILLA (Cuba): I would like to congratulate the Rapporteur on the work he has done on paragraph 2. I believe that paragraph 2 as now worded offers a possibility to every country which is a member of the Organisation and which may suffer from the application in any form of the Charter -- that is, the misuse of any of the measures provided in the Charter -- to ask for consultation to be followed, so that everybody will know all about it, and then to leave it to the Organisation to find out about the measures that have been taken and how they should be remedied. I do not believe anybody should be against that. It is a matter of open consultation and of giving every member a chance to say his word, and to see whether a remedy should or should not be applied. I believe that the point which I regarded as having been missing before has now been covered - that is, that such a case may arise not between two members, but between two members and a third, or between various members and several third members. As the paragraph is now drafted, all would come together and try to understand one another, and if they could not come to an understanding, the Organisation would deal with the whole matter and come to a decision, and if the decision was not acceptable, the member would have the right to go out of the Organisation. It is a right which is free and equal to everybody. There is a right, which I think should give complete satisfaction, for any member to complain, to be heard, and to have a decision from the Organisation.

MR. MCKINNON (Canada): If I understood the Rapporteur correctly when he introduced the second paragraph, he indicated that because of the change in the wording and the very much enlarged coverage given in the new draft, it probably would not be necessary to consider at all the addition as Article 29 (a) of the amendment suggested by the Australian Delegation arising out of the discussions in Committee I.

THE RAPPORTEUR: That is correct.

MR. MCKINNON (Canada): In other words, that the re-wording of what is now paragraph 2 of Article 30 would cover all that the present draft covers, plus the substance of the Australian proposal. It seems to me that the Australian proposal, since it arises out of the activities of the Committee on Employment, has certain safeguards that are not included if we simply embalm it in substance in Article 30. The Australian draft, as Mr. Coombs brought it in, provided that the Organisation, on receiving the complaint, would consult the Economic and Social Council, as well as the appropriate international agencies, concerning whether the economy of the member is being seriously affected by a decline in effective demand, and whether, having regard to the member's obligations to which it is a party, the member has adequate remedial action open to it. Only after the Organisation had consulted the Economic and Social Council, under Mr. Coombs' draft, had it the authority to indicate to the complaining member what action he might be free to take.

I can see merit, in what was undoubtedly in the Rapporteur's mind, in getting rid of yet another escape clause by including it in the existing paragraph 30, but if the inclusion means that we abandon any of the safeguards that were provided in the Australian draft of Article 29 (a), then I doubt the wisdom of doing it. In fact, as I read the Rapporteur's explanation of the new Article 30, in which the word "Charter" is substituted for the word "Chapter", it is arguable whether or not the reworded Article is not so broad that we might need even to add Article 29. I think a good argument could be made on that point. I would like to ask particularly for the views of other members of the Committee on the question of the abandonment of the safeguard provisions that were in the suggested Article 29 (a) relative to reference to the Economic and Social Council.

MR. SHACKLE (United Kingdom): As far as the Economic and Social Council and other interested international agencies are concerned, could we not bring them in on page 2, 5 lines down, after the words "after investigation" by adding some such words as: "and if necessary consultation with the Economic and Social Council and other appropriate international agencies".

MR. MCKINNON (Canada): I think that would meet my point.

THE CHAIRMAN: I have asked Dr. Coombs to come here but I understand from the Australian representative who is present that this would be acceptable to Australia in the new wording of Mr. Leddy's, so that perhaps we might cover the whole of Article 29a with this new draft. There is only one thing in my mind, and that is the remark Mr. McKinnon made about the whole of Article 29. I wonder whether, as this is a general clause, we should not add "notwithstanding the provisions in previous Articles", or something like that, otherwise the one tends to wipe out the other.

THE RAPPORTEUR: There is an essential difference between Articles 29 and 30. Article 29 permits a country to act without the approval of the Organization; under Article 30 that cannot be done.

MR. MCKINNON (Canada): That is not certain yet. We are not through with Article 29.

THE RAPPORTEUR: I do not think anyone has suggested a change in that particular feature of Article 29.

MR. MCKINNON (Canada): No, in that is given an opportunity of action without notice.

THE RAPPORTEUR: No, I meant under Article 29 a country may, even though having consulted prior to the action and given proper notice, nevertheless proceed with the action. Under Article 30 a member may take only such action as the Organization specifies.

M. LECUYER (France) (Interpretation): It is rather difficult for me to follow the discussion in English, but as an interpretation may waste time and prevent other delegates from replying immediately to observations, comments or declarations, would you allow the interpreter to sit next to me and interpret immediately to me?

SEÑOR ALAMILLA (Cuba): May we hear again the exact words suggested by the United Kingdom delegate?

THE CHAIRMAN: May I explain to Dr. Coombs, who has just arrived, that we are discussing the new draft put forward by Mr. Leddy to paragraph 2 of Article 30. The idea is that with this draft we should take care of the Cuban amendment, and also of the proposal of the Australian delegation with regard to emergency action, as this is so broad that it should cover that case also. I understood from the Australian delegation before you arrived, Dr. Coombs, that they are in agreement with it, but as you are here, I would also like to have your views before we proceed further.

DR. COOMBS (Australia): As we agree to it, we agree to it!

M. LECUYER (France) (Interpretation): I have no objection in principle to the amendment of the Australian delegation being covered in the text of Article 30, but I must again put forward the dilemma which I raised this morning. I am afraid that if the Organization has 60 days in which to open its investigation and to consult the Economic and Social Council, then the timelimit of 60 days which is allowed to a member to take counter measures may have lapsed before the Organization has taken the adequate measures. Therefore I think the time limit should be modified in some way.

MR. SHACKLE (United Kingdom): As I read the re-drafted paragraph, the 60 day period or periods only begins to run as from the date on which action is taken by a member in pursuance of a finding already taken by the Organization, and the time taken by the Organization to make its finding is not limited at all, I think.

The 60 days only begin to run after a member has taken action on a recommendation made by the Organization. Am I not right in thinking that? It occurred to me that possibly we might make some change, say, "not later than 60 days" instead of "within 60 days", if that makes the matter clearer.

THE CHAIRMAN: You would also have to change the last sentence.

MR. SHACKLE (United Kingdom): Yes.

DR. COOMBS (Australia): I would like to refer to one point before we pass from Article 29a. You will recall that when we put this forward, we emphasised the point that we were anxious to establish very clear association between the obligations accepted by countries under the part of the Charter dealing with employment and effective demand and the obligations accepted under the commercial policy. I am not sure whether the Committee is aware, but in the Chapter dealing with employment there is a provision which reads as follows:

"The Organization shall have regard in the exercise of its functions as defined in the other Articles of this Chapter, to the need of members to take action within the provisions of the International Trade Organization, to safeguard their economies against deflationary pressure in the event of a serious or abrupt decline in the effective demand of other countries."

We were anxious that that statement, that the Organization should have regard to that need, should be balanced by a corresponding power in the appropriate later Articles of the Charter which would enable the Organization to take those factors into account in the exercise of relevant powers. I am satisfied, tentatively at any rate, on examination of Article 30, that it gives the Organization the necessary authority to suspend specified

obligations or concessions under the Charter, and in deciding whether so to do to take into account the matters referred to in that Article which I read to you from the Employment section. We are therefore quite happy to accept the redraft which has been put forward.

THE CHAIRMAN: Before you arrived, Dr. Coombs, Mr. Shackle proposed that we should put in a reference to the Economic and Social Council and the appropriate specialist international agencies.

MR. MCKINNON: (Canada): May we have Mr. Shackle's draft?

MR. SHACKLE (United Kingdom): I will read it out slowly. I suggest that this should be added on page 2, 5th line, after the underlined words, and after "investigation":

"and have necessary consultation with the Economic and Social Council and any other appropriate international agencies."

I thought of it on the spur of the moment and do not attach any special importance to the way it is worded.

THE CHAIRMAN: I think the word "specialist" should appear before "agencies". Is that agreeable?

MR. SHACKLE (United Kingdom): Before we leave that, I have one small question. It is almost a drafting point, but perhaps has a little substance in it. It comes in the sixth line from the end on page 2 where the word "the application to the other member of" have been put into brackets, indicating that they are marked down for deletion. I am not sure whether, if we delete them, we get quite the right effect, because it will then read: "the Organization may authorise a member or members to suspend such specified obligations" and so on. That would seem to suggest complete suspension. In other words, those particular obligations no longer apply between any members at all. What we are aiming at here is that you may have certain cases in which some members may assume certain obligations in regard

to particular other members. That is rather in the nature of a general suspension. Therefore I am wondering whether we do not need to keep something like those words in brackets, possibly amended a little, so as to read "the application to certain or all other members of such specified obligations".

Do I make my point clear?

DR. COOMBS (Australia): You do not think it is covered by the word "specified"?

MR. SHACKLE (United Kingdom): Specification to my mind would have meant the particular obligations which are suspended. If you say nothing to the contrary, it would soon to mean a general suspension as between all members. If there is to be a partial suspension so that the provisions are suspended as between particular members but not all members, I feel that some words like the words in brackets may need to remain.

THE RAPPORTEUR: I think it is already covered, but that would certainly make it clear. Perhaps "the application to any other member or members"?

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MR ALAMILLA (Cuba): I think also when I proposed my former amendment it covered the possibility that these specific obligations or concessions could be taken out in whole or in part. I think that it would be a good thing to keep this in - such obligations or concessions in whole or in part. I think that would be adequate.

THE RAPPORTEUR: I think the amendment suggested by Mr Shackle is somewhat clearer than that.

MR ALAMILLA (Cuba): If my point is covered, I have complete confidence in you. I just put it before the meeting.

THE CHAIRMAN: Again, I think we may all join the Cuban delegate in his congratulations to the Rapporteur on the way he has covered all these very difficult points.

DR COOMBS (Australia): Very skilful.

THE RAPPORTEUR: I do not like to be congratulated for broadening the escape clauses! on

THE CHAIRMAN: Then we have adopted Article 30, and we now come back to Article 29, of which the new draft has just come in and which will now be distributed. I think the first paragraph has already been adopted; so that it comes down now to the second paragraph of Article 29, which perhaps we might now read. (The Interpreter read new draft Article 29) When we were discussing this matter this morning there was a difference of opinion, because the delegates of Cuba, Chile, and, to a certain extent, of Canada, were against these escape clauses in this form.

MR MCKINNON (Canada): Against it in the form in which it was this morning.

THE CHAIRMAN: Then the delegates of Cuba and Chile are the only two delegates who are against it. They said that prior notice should always be given, while other delegates, as far as I found out this morning, thought that a clause like this should not be necessary. We have now to see whether, in this new draft form this clause represents what we discussed this morning. Then I will ask the Cuban and Chilean delegates, if they still dissent, to say what they want to say and we will take note of their remarks. May I just ask whether this clause as drafted now is agreeable to the sub-Committee? 4.1.

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MR MCKINNON (Canada): I think it meets the point that I raised this morning, that the draft that was then before us was restrictive on the Organization in that it was taking away some of its discretion. I think the new draft restores the discretion in two steps, so to speak, but I am still rather of the opinion that the original Article or sentence in the American draft Charter is still the best. However, the delegate from India seemed to think that some such wording as this might make more clear, first, that the Organization had full powers, but, secondly, might modify the action, to put it in somewhat equivalent terms, to the alleged injury. I have always interpreted the American draft as meaning that the Organization had complete discretion, but probably would in most cases make an adjustment more equivalent to the injury that had been done. My only objection to the present wording is that it involves by a rather clumsy construction the achievement of exactly what I think the original draft covered.

THE CHAIRMAN: I think that Mr Hawkins takes the same view?

MR HAWKINS (USA): Yes; this would be acceptable, but the original draft would be preferable. However, we would take either.

MR ADARKAR (India): Mr Chairman, I think the present draft conveys the meaning that we had in mind this morning much more adequately than this morning's draft. The reason why the provision in the original American Charter is not acceptable is this, that if the procedure as outlined in this article is followed, the affected member will have to say that he took the type of action that he anticipated was likely to be approved by the Organization; and in making that case it is desirable that they should have some guidance and they should bear in mind that if the counter-action in respect of which the country is going to give notice is not proportionate to the injury it has suffered, then it may not receive the approval of the Organization. There is a possibility that if the original provision is allowed to stand the affected member may give notice and in that notice it may seek to cover action which is much more drastic than is necessary to meet the requirements of the case.

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Surely that action will be subject to the approval of the Organization, but the notice will be a public notice. It will be notice to the Organization, but surely it will be also notice to the countries concerned, and it will receive wide publicity. A public notice of that sort, unless and until it takes this principle into account, may have an adverse effect on the relations between the various members of the Organization and to a greater extent than is necessary. And so, from that point of view, Sir, it is desirable that the affected member should know what type of action is likely to receive the approval of the Organization; but in special circumstances it may be justifiable for the Organization to mete out specially vigilant treatment. That is adequately covered by the new sentence which the Rapporteur has introduced into the draft, namely, the last sentence; so that the draft as it stands would be quite acceptable, Sir.

MR SHACKLE (UK): This new text is I think acceptable to me. There is one point which has just struck me about it on a hasty reading, and that is that we talk at the bottom of page 2 about sixty days after such action is taken and at an earlier stage we talk about action being taken or continued. What about the case of continuing action, and where does your deadline come in there?

THE RAPPORTEUR: That was the reason for the original proposition, that it should be sixty days after the completion of the consultation, but it was pointed out that there would be no firm date for that, and that if you go back to the date of the taking of the action the pressure is on the country which takes the action to consult, since the other country will, ~~know~~ if it sees the deadline running out, tend to be forced into action to protect its position. So that the country taking the action will then be inclined to consult more quickly than it might otherwise be.

MR SHACKLE (UK): Thank you. I am sorry to have raised an unnecessary point.

THE CHAIRMAN: Then I think I say that now the delegates of the United States, Canada, India, the United Kingdom and of France feel able to accept this new draft, and it is also acceptable to me, as Chairman; so that I

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now give the delegates of Cuba and Chile an opportunity to present their points of view.

MR VIDELA (Chile): I gave you my viewpoint this morning, Mr Chairman.

MR ALMILLI (Cuba): Mr Chairman, I would like to translate, more or less literally, some notes I have written down here, and afterwards I will hand them to the Secretary so that he can make a better translation. I merely want you to have the principle of the idea that I have in mind.

The Cuban Delegation establishes a double reserve in relation to the draft of Article 29: in the first case, the Cuban delegation maintains that a clear and rigid procedure should be laid down for the nation or nations which might suffer as a consequence of the emergency action taken by any other Members in accordance with Article 29, so that they would be able to bring the matter to the notice of the Organization with a view to the avoidance of the measures that may be taken or the prevention of their continuance, and in every case to permit those members to take the necessary counter-measures or reprisals in accordance with the principles of the measures that have been taken, without just cause or in such a form that a large measure of damage and injury which might otherwise be inflicted is avoided.

These requests have been made by the Cuban delegation in line with the proposed charter of the United States, which in every case demands previous notice and previous consultation to take these emergency measures.

Now that the possibility is contemplated of permitting that in exceptional and critical cases the emergency measures could be taken without previous consultation, be it with previous knowledge or not, this measure of protection at which the Cuban delegation was aiming is more indispensable and more necessary. In the second place, the delegation of Cuba maintains that the possibility of permitting unilateral emergency action, even if it is in cases of critical and exceptional circumstances, is dangerous, and that in every case previous knowledge as soon as possible and previous consultation, even if it may be for a short period, should precede the emergency measure, and these measures should not at any time be applied to merchandise.

On these points the delegation of Cuba makes a corresponding request that they may be discussed again in the next preparatory meeting that is going to be held before the negotiations,

MR VIDELI (Chile): Mr Chairman, I fully agree with the declaration of the Cuban delegation, especially as referring to countries exporting agricultural products, and I am prepared to make the same declaration when a discussion of Article 19.2.e. arises in the special committee.

THE CHAIRMAN: Thank you. I think, gentlemen, that we have covered Article 29 as far as we can go, and so we should now include it in our report to the main Committee II. Before we finally leave this, I understand Dr Coombs would like to say something about the first paragraph.

DR COOMBS (Australia): I do not want to re-open this question but I think it desirable that I should mention one doubt that we have about the first paragraph of Article 29, so that the delegates could perhaps give the matter some thought. It relates to the question of an industry adversely affected by a reduction in preference. The proposal here is quite satisfactory as far as we are concerned, on the assumption that the type of action which would be most desirable to assist an industry or the people in an industry likely to suffer serious injury as a result of unforeseen circumstances was in fact a restoration temporarily of the preferential margin, or part of it.

This is a matter to which we have given a good deal of thought, because it is perhaps one of the problems we may ourselves have to face, but it has seemed to us that the type of action which we will want to take in that case perhaps would not be a restoration of the preference; because the commodities we would be concerned with are agricultural products, and a certain area of land has been devoted to these industries and the elimination or reduction of the preference may involve a change in the character of the production, and what may be required in these emergency circumstances, therefore, may be some scheme which links on the one hand a diversion of the land to other purposes, with some temporary assistance to enable producers to carry through the necessary changes. We have some doubts as to whether in a case like that it would be desirable to restore any part of the preference which we had once agreed to abandon, and furthermore we feel that whatever action is taken to assist the producer should in some way be made conditional upon the producer carrying out the changes in the nature of his production which are necessary to meet the changed circumstances; and we have a feeling that that may best perhaps be accomplished by a combination of re-direction on the production side perhaps with some form of subsidy. It may be an export subsidy or it may be a general subsidy, but we fully recognise that in a case like this the circumstances would be exceptional and that the action proposed ought to be agreed to by all the parties concerned, and we wanted to put forward for your consideration that perhaps in addition to what is proposed here about the possibility of the country which originally granted the preference restoring it in part temporarily to meet these circumstances we might provide something of this sort: That if as a result of unforeseen circumstances and of the effect of a reduction of preference brought about under Article 18 the export of a product is so reduced as to cause or threaten serious injuries to producers of that product, a country which previously received the preference may request the Organisation to arrange and participate in discussions with the country granting the preference and the country substantially affected by the reduction of the preference (that is, those who benefit from it) with a view to reaching an agreement on measures to be taken within the country concerned so far as these may conflict with obligations under the Charter designed to mitigate or prevent injury to

producers. The Organisation may, in accordance with any agreement so reached, suspend the obligations of the member either in whole or in part undertaken under Article 25 (I think it is) of this Chapter. Now, the points to which I would like to draw your attention are that what is proposed here is that in circumstances of this kind there should be consultation between the three parties concerned - the country which has lost the preference, the country which previously granted the preference, and the country which has presumably asked for the preference to be reduced, because they would benefit from that; and that if in those circumstances the three parties agree that the best way to handle the problem of the possible injury to the producers concerned is one which involves a temporary abrogation or a temporary suspension of the obligations relating to subsidies, the Organisation would be authorised to approve that.

MR HAWKINS (USA): Mr Chairman, I think in principle that is all right. The idea of consultation among the parties concerned to deal with a hardship case like that under the auspices of the Organisation is entirely compatible with everything we are trying to create the Organisation to do. I would suggest one point which may be a little technical. There might be more than three parties, because your substitute product might come from a country other than that which asked for the removal of the preference.

DR COOMBS (Australia): Yes. You could put it in the plural so as to cover that. The words I read out were only a rough draft, but if the general idea seems acceptable I suggest we hand it over to the Rapporteur, and he can do what he can with it then.

THE RAPPORTEUR: Would that be a substitute for what is in paragraph 1 regarding preference?

DR COOMBS (Australia): No, I should not think it would be a substitute, because it applies only to certain agricultural products. It seems to me, speaking offhand, that the action you have proposed in 29(1), the part underlined, is generally the most appropriate form of action, but it probably would not be appropriate in some of the industries which we know are likely to be affected by this modification of preference.

MR HAWKINS (USA): This would be an additional paragraph?

DR COOMBS (Australia): Yes, it would not affect 29(1) as it stands at all.

THE CHAIRMAN: If it is agreeable to the Rapporteur and the Committee, I think we might ask the Rapporteur to look into the draft which Mr. Coombs has put forward, and then see at another meeting whether it should be included in Article 30. With regard to Article 29, there is one point to be dealt with, since all the other points have been discussed.

MR. VIDELA (Chile): Is this limited only to preferences? Why does it not apply to the general scope of Article 29?

THE CHAIRMAN: I think we might ask the Rapporteur to look into that. Before leaving Article 29, I want to make one correction in the short statement made by the Cuban Delegate. He spoke about something being looked into again in New York. I think he meant in Geneva. The Drafting Committee will not be able to reach decisions on that question, but will only be able to state clearly the different viewpoints. They will not have the job of reconciling two differing points of view on a matter of principle. They will only be able to deal with matters of drafting.

MR. ALAMILLA (Cuba): I thought we were going to have a meeting in New York in January. In any case, when we negotiate we will have to have this thing in mind.

MR. COOMBS (Australia): I presume that the Drafting Committee in New York would prepare, on the basis of the Cuban note, an alternative draft to that which is at present embodied.

THE CHAIRMAN: I think we have now covered Articles 29 and 30. I want to put a last question -- whether the broad formula in the last part of Article 30 should not have its proper place under Section G. I suggest that that should be left to the Drafting Committee, when they have the whole thing before them, to study in New York.

MR. ALAMILLA (Cuba): I would only ask that the alternative draft in our proposal should be brought before them.

THE CHAIRMAN: We will return to Article 29 only when we get the draft of the Rapporteur concerning Mr. Coombs' proposal. We still have before us Article 33. I would like to have Mr. Coombs' guidance on Articles 56, 55, and also 50 with regard to the whole mechanism of settlement of disputes and the whole question of escape clauses. I do not think there will be time to deal with that in detail, and therefore, I would like to have Mr. Coombs' ruling on that matter. When we discussed these escape clauses, especially with regard to Article 8, we always found that ultimately Article 55 (2) would be a very important Article, because in that it is stated that the Organisation could, by a vote of two-thirds, and so on, determine criteria and set up procedures, for waiving, in exceptional circumstances, obligations of Members, etc. It is a general escape clause, and it refers only to Chapter IV of the Charter. We may perhaps need it for other Chapters of the Charter. Perhaps it would be a question for Committee V; and we had the idea of discussing it with Committee V, but now, I suppose, we shall have to leave it.

MR. COOMBS (Australia): It has been suggested that there should be an examination of the escape clauses collectively. I take that to mean that each Committee can quite clearly deal with the escape clauses which relate to its own subject matter, but if it comes up against one proposed escape clause which it believes it impossible to make a judgment about, unless it knows what other escape clauses exist in other parts of the Charter, then it would be wise to defer the consideration of those particular ones until we look at the escape clauses all together.

For instance, where it might be argued against a proposed escape clause that the situation is adequately covered by the escape clause in Article 55 (2), that one might be left. On the other hand, if it is agreed that an escape clause in relation to tariffs or

preferences is clearly necessary in the light of the subject matter, then it seems to me it is quite correct to go ahead with that. We have had the Secretariat take out a summary -- if so voluminous a document can be called a summary -- of the various escape clauses in the Charter, and it seems to me that that ought to be considered by a meeting at which certainly the people associated with quantitative restrictions are present also.

THE CHAIRMAN: Would it not be better that at the end of this week when, as we hope, the Sub-Committees will have finished their work, there should be a meeting, in the first instance, with the Rapporteurs. They know the whole of the subject matter, and they could go into it much quicker than we could do if we could have all the Committees together. Perhaps Mr. Coombs could arrange that meeting with the Rapporteurs, and then afterwards give us his opinion as to whether we should again resume discussion on certain points, or not.

MR. VIDELA (Chile): I should like to refer to some omissions under Section C of document W.54, which I should like to have taken into account.

THE CHAIRMAN: What I have just proposed is that we should not discuss this matter in the Sub-Committee any more, but should try to finish our work on Article 33. We would then wait for news from Mr. Coombs as to whether we should go into certain of these escape clauses again, after the whole position has been discussed with the Rapporteurs of other Committees.

MR. VIDELA (Chile): I only wanted to give the Rapporteur some omissions I had found in document W.54 in connection with the escape clauses.

MR. COOMBS (Australia): In connection with that matter, the Joint Committee on Industrial Development is now approaching finality in its work, I think, and it is considering at the present time its messages to

Committee II relating to modifications in the commercial policy proposals which, in the view of that Committee, should be made in order to provide for certain matters arising out of industrial development. I think that might cover the point mentioned by Mr. Videla.

MR. VIDELA (Chile): Another point to which I wish to refer is that in connection with Article 19, (e), I submitted an amendment.

THE CHAIRMAN: That is not a matter for this Sub-Committee. It is a matter for the whole of Committee II.

MR. VIDELA (Chile): In the clause permitting restrictions on agricultural products, I want to point out there is an omission here of reference to a specific proposal of the Chilean Delegation.

DR. COOMBS (Australia): That has been dealt with by the Quantitative Restrictions Sub-Committee.

MR. VIDELA (Chile): But -

DR. COOMBS (Australia): I see.

MR. VIDELA (Chile): This point was made on the escape clause.

THE CHAIRMAN: But we have no responsibility at all for this paper.

The Secretary of Main Committee 2 has, but not us. Shall we deal with Article 33 and try to finish our discussion this afternoon so that we shall have Saturday to discuss the memorandum on the procedure of tariff negotiations which our Rapporteur is preparing and which will not be ready before Saturday morning? It is 4.30. Would members like some tea before we start on Article 33, or shall we go on?

MR. MCKINNON (Canada): I suggest we go on.

MR. ALAMILLA (Cuba): I would like to raise one point of clarification.

Dr. Coombs has said that we are to receive some message from the Joint Committee. Does that mean on Saturday we shall deal with those matters which have been postponed?

THE CHAIRMAN: I think we shall have to leave that until next week.

We have to finish first the memorandum on the procedure of Tariff Negotiations.

MR. ALAMILLA (Cuba): What are we to receive news about?

THE CHAIRMAN: Dr. Coombs will know.

MR. ALAMILLA (Cuba): Are we to receive some directions from the Joint Committee?

DR. COOMBS: Unfortunately the Joint Committee is still in the process of deciding, but I should think that you will receive something from them almost immediately and will be able to deal with it certainly before Saturday.

MR. ALAMILLA (Cuba): We have made some reservation on that specific point and we would like at least a part of the session to deal with it, because I believe it has a very important bearing on

the matter with which we are dealing here, in several ways.

THE CHAIRMAN: I am quite prepared to discuss that, but only after the memorandum.

MR. ALAMILLA (Cuba): I only want to make sure that we shall have a chance to record our view.

THE CHAIRMAN: We have before us now Article 33, and in our previous discussion we agreed that there shall be a new paragraph 3 added to this, reading as follows:

"The Members realize that there may, in exceptional circumstances, be justification for new preferential arrangements requiring an exception to the provision of Chapter 4, and this exception shall be subject to approval by the Organization pursuant to paragraph 2 of Article 55."

I think members have all received that. I would like to start first with paragraph 1, so perhaps you will have it before you. I would like to ask, on this paragraph, what is meant by "under the jurisdiction of any Member"? Does it mean they have a technical sovereignty?

MR. HAWKINS (U.S.A.): I should think it would include any territory under the authority, whether technical sovereignty or not.

THE CHAIRMAN: It is covered by Article 78 (4) is it not?

MR. PARANAGUA (Brazil): I do not think paragraph 1 is quite clear in conjunction with paragraph 4 of Article 78 which says that all territories under a member country must be members of the Organization, and here it says they shall be considered as separate Member countries where there are two or more customs territories under the jurisdiction of any Member for the purposes of the Charter. We had another amendment from the United Kingdom delegate about the withdrawal of territories. What would happen in the case of Southern Rhodesia. If the

products of Southern Rhodesia are brought here, would they be entitled to tariff reductions because the United Kingdom is a member of the Organization? I would like that made clear.

MR. ALAMILLA (Cuba): I would point out that paragraph 4 of Article 78 has been redrafted, so if we are going to discuss it, we should have the alteration so that we know what we are talking about.

THE CHAIRMAN: Can the Secretary produce a redraft?

THE SECRETARY: I can, but it will take some time.

MR. HAWKINS (U.S.A.): Does the delegate of Cuba know what they did to it?

MR. PARANAGUA (Brazil): It was with regard to the withdrawal of certain territory.

MR. ALAMILLA (Cuba): It was a motion of the United Kingdom delegation, so they should have a redraft.

MR. SHACKLE (United Kingdom): I am afraid I cannot enlighten you with regard to what has happened in Committee 5, but the point as I understand it is that within the British Colonial Empire there are certain territories which have autonomy in customs matters, and I think the point is that if a territory has autonomy in customs matters, it should, so to speak, have the right to say whether it should be brought into this or whether it should not. That, I believe, is the point under Article 78. I do not think it affects this present paragraph of Article 33, which, if I understand aright, simply says that if in fact a territory has a separate customs system that shall count as a separate member, at any rate for the purpose of the Charter. I do not think there is any confusion between the two.

MR. PARANAGUA (Brazil): That means in the case of a withdrawal the territory would be treated as a non-member?

MR. SHACKLE (United Kingdom): I cannot express an opinion on matters discussed in Committee 5, but, on the fact of it, that might perhaps be so.

THE CHAIRMAN: But there is no need for us to concern ourselves with that. We are not discussing here the question of withdrawal but what is there. It is stated here that if there are two or more customs territories under the jurisdiction of any Member each customs territory shall be considered a separate territory. Is "under the jurisdiction" clear enough?

MR. SHACKLE (United Kingdom): As to that point, I would suggest that we want the widest possible word here. If we have anything more limitative than "jurisdiction", we shall not get the effect we want. What we really want to say is that if any particular member has, so to speak, the authority over a number of different customs territories to tell them what they shall do in customs matters, then by virtue of the fact that they are separate customs systems and territories, they shall be considered as separate members. So that you want the widest possible word and I should have thought that "jurisdiction" is as wide a word as one could find.

THE CHAIRMAN: I am inclined to agree. I raised this point only because I was not quite clear. With that clarification, can we then agree to paragraph 1.? Adopted.

Paragraph 2. Does Paragraph 2 (a) give rise to any comments?

MR. PARANAGUA (Brazil): Does that mean that the frontier traffic is an exception?

MR. HAWKINS (U.S.A.): Yes, that is an exception.

MR. ADARKAR (India): May I explain how we understand it? It says here: "2. The provisions of Chapter IV shall not be construed to prevent (a) advantages accorded by any Member country to adjacent countries in order to facilitate frontier traffic". That means, surely, that the granting of such advantages will be permitted but such advantages will not be treated as an exemption from the provisions of the rest of the Chapter to this extent, that even such advantages could be brought within

the scope of negotiations if necessary. That was the understanding with regard to paragraph 2(a). With regard to paragraph 3, we understand it to mean that even now preferences could be made the subject of negotiations at a later stage if necessary.

MR. HAWKINS (U.S.A.): Paragraph 2(a) really relates to a technical matter. It is intended to take care only of the Canal Zone and such situations where a frontier runs through the middle of a city. If you applied the Most Favoured Nation clause strictly, you could not give any benefits to the two halves of the city, and it is usually defined in commercial treaties as not being wider than ks. 15. That is the type of clause in view here. The type the Indian delegate is referring to is under the new paragraph.

MR. ADARKAR (India): But as it is applicable to that also, it might be given the wider meaning. The open portion would be common to all three sections. Or should it be in a separate paragraph?

MR. HAWKINS (U.S.A.): It is a much broader exception. This is to permit any kind of action whatsoever within narrow frontier zone.

THE CHAIRMAN: Can we agree to paragraph 2(a)? Adopted.

Paragraph 2(b). Here I have one question to raise with regard to the last part of the sub-paragraph. The Netherlands Government has had an exchange of letters with the American Government with regard to the question I have already raised in the main committee, and perhaps I may read part of that letter to the Committee? We thought the wording was not quite clear. This is the relevant part:

"It is understood, moreover, that modifications in the Netherlands customs tariff, on the basis of the Customs Agreement of September 5, 1944 between the Governments

"of the Netherlands, Belgium and Luxembourg, would not be considered new measures, since a result of this Customs Agreement will be a reduction of the general level of tariff rates for the 3 countries taken as a whole. Our two Governments shall afford each other an adequate opportunity for consultation regarding proposed measures falling within the scope of this paragraph."

We thought the draft was not quite clear, but if the Rapporteur will say that it means just the same, I am quite agreeable to accepting it.

MR. HAWKINS (U.S.A.): To dispose of that, I think it is clearly in harmony with this.

THE CHAIRMAN: Shall we, then, adopt Article 2(b)? Adopted.

Paragraph 3. We discussed this in a previous meeting, but I will read this new paragraph 3, as follows:-

"The Members recognize that there may, in exceptional circumstances, be justification for new preferential arrangements requiring an exception to the provisions of Chapter 4. Any such exception shall be subject to approval by the Organization pursuant to Paragraph 2 of Article 55."

Can we formally approve of its inclusion here?

I follows.

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MR LECUYER (France) (Interpretation): Mr Chairman, I have no objection to the adoption of this clause, but I would like to know that it meets exactly the points of view which were expressed in the General Committee, which I think amounted to this, that certain preferential treatment should be established in order to achieve a customs union. Several delegations raised that point. It seems that customs unions are permissible under Article 33, but it is implied in the text of the Charter that the formation of new customs unions would be opposed and would be objectionable. Perhaps the new proposal which we are now discussing might be used in order to form such customs unions, but that is not clear, and I would like to have it discussed as to whether this new proposal covers the case presented by various delegations or not. In other words, under the revised draft, would it be possible to have new preferential arrangements which are a step towards the formation of new customs unions or not?

MR HAWKINS (USA): Mr Chairman, the general intent is not to discourage but to encourage customs' unions, that is complete customs unions. The second question raised is as to whether under this new language the question might be brought up of proceeding in the direction of a new customs union by gradual stages. I think the answer is in the affirmative. That kind of proposal could be brought up under this language and the Organization would consider it. I should think it might very well be that if there were definitely scheduled steps leading towards the formation of customs unions the Organization would probably be strongly inclined to favour it.

THE CHAIRMAN: You will notice the wording of subparagraph 2 (b), and I think that that is an answer to the question of Mr Lecuyer. You can go on with the customs unions. The only point is that you cannot effect a customs union just overnight; it is a question of years, and you start by having a common tariff system; you have to reconcile the differences of the two tariff systems and get one common system. Then the next step must be that you shall have no duties between the two members of the customs

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union. The third step is more or less to reconcile the different economic policies of the countries, and that is a question which, as we know from our experience in those discussions, entails a great deal of very hard work, and it is something that you can only achieve very gradually. Now I think that here we come to the point raised by Mr Lecuyer, which is that we are covered, in the first instance, by the wording of the new paragraphs 3 and 4, or is it covered already by 2 (b)?

MR HAWKINS (USA): Mr Chairman, I think that the creation of any new customs union is covered by paragraph 2 (b) as it is - that is automatic. Once a customs union is crea... full customs union, it is immediately exempt from all the most-favoured-nation obligations. But now the further question that was raised was: What about a preferential arrangement leading up by definite steps towards a customs union? That would not automatically be agreed to, but it could be brought up under this new provision; and, as I said, just expressing a personal opinion, if that were intended as a definite series of steps towards a customs union, I should think the Organization might very well favour it. But, of course, it is for the Organization to decide.

THE CHAIRMAN: Perhaps I might ask one other question, because it is very important for us. As such, we have not a complete customs union between the Netherlands and Belgium at the moment, but there is a definite agreement and it is now being worked out step by step. Is that now covered by the revised draft of paragraph 2 (a) of Article 8, which you remember is dealing with any existing preferences, or is it to be considered as a customs union? I think there is some doubt about it at the moment.

MR VIDELA (Chile): Do not mention my clause!

MR HAWKINS (USA): There may be technically some doubt, but I think that there is probably no dispute here as to the intent. You, Mr Chairman, have taken the decision to establish a customs union and you virtually have it.

THE CHAIRMAN: Yes.

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MR HAWKINS (USA): I should not think there would be anything here that would prevent your keeping a few remnants of your previous system while you are bringing your customs union into effect. Maybe it is possible that there should be some provision to cover it, but I do not think there would be any dispute on the desirability of covering it.

THE CHAIRMAN: Do we have to provide for it here or not? That is the only point I want to raise.

MR HAWKINS (USA): I am thinking of it from a technical point of view, and that the provisions of Article 8 (3) might bridge the gap.

THE CHAIRMAN: Yes.

MR HAWKINS (USA): You are not going to increase this; you are going to take away the ones that are there; so that I do not think anybody could invoke this Charter against the remnants of your previous system.

MR LECUYER (France) (Interpretation): Mr Chairman, I think that the indications that have been given by Mr Hawkins are very precise and to the point. I believe that in the case of the customs union between Belgium, the Netherlands and Luxembourg it is quite possible to refer to paragraph 2 (b) of this Article, and although this customs union perhaps is not quite complete it really exists *de facto*, and there are only some details which are necessary in order to achieve this customs union. As I say, it really exists. The second question which I raised might perhaps be mentioned in paragraph 3 of Article 33. This means that some preferential arrangements may be considered as steps leading towards the creation of a customs union; maybe it is sufficient only to mention that in the minutes of the proceedings, but I really do not think that it would be sufficient because, after some time, all these discussions will be forgotten. I therefore would prefer to see a clause inserted in Article 33 paragraph 3 to the effect that it is possible to set up a customs union by stages under the supervision, of course, of the Organization.

THE CHAIRMAN: I think our Rapporteur has another brainwave!

THE RAPPORTEUR: I am inclined to suggest that 2 (b) might be somewhat

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amended to read, "the formation of a union for customs purposes," which would cover the transitional period necessary to the formation of a genuine customs union, but would not merely cover the granting of preferences without any real plan for a customs union.

MR LECUYER (France): No objection.

THE CHAIRMAN: Therefore we will say "the formation of a union for customs purposes."

MR SHACKLE (UK): Mr Chairman, there is a certain merit in leaving a question of this kind to be dealt with under the new paragraph 3, because it strikes me that the Organization might very well want to look at the facts of a particular case before expressing an opinion; and if one simply says that it might be extended over an indefinite period of time and be a very slow process, whereas if you allow the Organization to consider the matter under the new paragraph 3 it will be open to it to attach time conditions and so on which might conceivably be desirable.

THE RAPPORTEUR: One point I think is that the question of what is meant by a customs union or the formation of a customs union would be subject to challenge in the Organization, and an interpretation or ruling could be obtained under Article 76; so that if there were some rule about whether the advantages being exchanged between two countries were in pursuance of a genuine customs union, you would have the opportunity to obtain a ruling from the Organization.

THE CHAIRMAN: I think paragraph 3 would cover your point.

MR SHACKLE (UK): Yes. That is what I was saying; it strikes me it would, but I was rather doubtful about covering it by over general forms of words, because that might land the Organization in an attempt to assess the intention of the parties, which is always a very difficult thing to establish, and they might say: "We mean to make this a customs union some day" but that day might be indefinitely deferred. I have a little feeling that there is some merit in leaving the matter to be dealt with under new paragraph 3 because the Organization could then attach reasonable conditions about the time within which the process should be completed, and so on.

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THE CHAIRMAN: Both are agreeable to me. I ask for the Rapporteur's guidance here.

THE RAPPORTEUR: Well, your point is that the addition of the suggested phrase to paragraph 2 (b) would seem to permit something less than a customs union without sufficient safeguards.

MR SHACKLE (UK): I think that it would allow a sort of halfway house situation to go on almost indefinitely, whereas under paragraph 3 you might attach conditions which would prevent that indefinite prolongation. We will say, in effect, that the process must be completed within a reasonable time.

MR LECUER (France) (Interpretation): Mr Chairman, I think that the objection which has just been made by the United Kingdom delegate is of a rather formal character. Whatever be the wording we adopt, and whether we insert this phrase in paragraph 3 of Article 33 or in paragraph 2 (b), it will always be necessary for the Organization to supervise the formation of customs unions, to receive information, and to say that the Organization admits such and such a customs union or does not admit another customs union.

Therefore from a practical point of view the point is covered. As far as the text is concerned we might insert it in 2(b) or in 3. In 3 it is really not the adequate place because we provide for "exceptional circumstances", therefore it would be necessary to modify paragraph 3 and to say "in the case of the creation of a customs union or in exceptional circumstances the members recognise", and so on.

THE CHAIRMAN: I still feel that simply with regard to all the safeguards we have in the charter we should bear in mind the new wording of Article 30, and I think it would be best to cover it in the way proposed by the Rapporteur for the formation of a union for customs purposes. I think that would be more logical than to put it in the charter under 3, and especially also paragraph 3 of the charter itself as it reads now is that they shall consult the Organisation and make available information, and so on. I think that would be an adequate safeguard.

MR SHACKLE (U.K.): I do not wish to press my point.

THE CHAIRMAN: Then, gentlemen, can we adopt 2(b) again as changed by the Rapporteur? (Adopted.)

Then we have the new paragraph 3. I think it had better be paragraph 4 here; or should we change the old paragraph 3 accordingly also to cover the new paragraph 3?

MR HAWKINS (USA): No, I think it is a separate subject.

THE CHAIRMAN: So that we keep the old 3 and we agree to adopt that? (Adopted.)

Then we get the new paragraph 4, being the addition mentioned in this paper under 3 here, and which will read 4 now. Is the draft now accepted?

MR SHACKLE (U.K.): We are speaking now, Sir, to the paragraph numbered 4 in the print, are we not?

THE CHAIRMAN: Yes.

MR SHACKLE (U.K.): There is a point I mentioned on this in the main Committee relating to the last words, which read, "so that all tariffs and other restrictive regulations of commerce as between territories of members of the union are substantially eliminated and the same tariffs and other regulations of commerce are applied by each of the members of the union to the trade or territories not included in the union". I suggested in Committee II that

that qualifying word "substantially" which at present applies only to the as it were barrier between the two component parts of the customs union should also perhaps qualify the words which follow, "the same tariffs and other regulations": in other words, that just as it would be sufficient if there were a substantial elimination of the internal barrier, so it would also be sufficient if there were substantial uniformity of the external tariff. The reason I raise it is that there are, I believe, quite a number of cases of territories where you have slight differences in just parts of the tariff; that is to say, you may have revenue duties, for example, which are different while protective duties are the same. I think there are a number of cases where one has that sort of situation. It therefore seems to me that if one introduced the qualification "substantially" in the latter part of the sentence it may be that the kind of point raised by Australia about Papua might be covered in that way. I think there is some logic, if one compares the first sentence of this paragraph with the last part. It would seem to follow, after looking at it, that if the separate territory is one which has a separate tariff for a substantial part of its trade, then the customs union need not be absolutely completely uniform but it should have substantial uniformity.

THE CHAIRMAN: You refer now to 2(b) again?

MR SHACKLE: No; to the last words of paragraph 4.

THE CHAIRMAN: I think we are just discussing now the new paragraph 4.

MR SHACKLE: I beg your pardon; I thought it was the old paragraph 4.

MR HAWKINS (USA): Could not we dispose of the point now that it has been raised?

THE CHAIRMAN: Yes.

MR HAWKINS: I think it is logical that that amendment should be made.

MR SHACKLE: It would involve, I think, the addition of the word "substantially" before the words "the same tariff".

THE CHAIRMAN: Gentlemen, I would first like to take the new paragraph 4. Is that agreed? (Adopted.)

Now we have 5, which is the former 4, where we have an addition proposed by Mr Shackle. Is that also agreed? (Adopted.)

Then there is one question still to ask here: whether we have now

covered all those difficult points of India and Kashmir and Southern Rhodesia and certain islands and so on.

MR SMACKLE (U.K.): As nearly as one can without knowing all the particular circumstances, I should have thought.

MR ADARKAR (India): It is rather difficult for me to visualise how this will work in the case of India and the various Indian states which do claim separate customs tariffs - Kashmir, for instance. These cases are, of course, becoming fewer and fewer in number. The Government of India do enter into reciprocal arrangements with these various areas and by a slow process the separate tariffs are being eliminated. I cannot see at this stage whether any specific amendment in this Article is required to cover such cases. That is a point which, as far as we are concerned, I am afraid must be left for later consideration.

THE CHAIRMAN: Have the Australian delegation any observations to make on this?

MR MORTON (Australia): We propose the addition of a new paragraph (c).

(Text handed in.)

THE CHAIRMAN: We will have to have it typed but perhaps I may read it out now so that it can be discussed. It is as follows:-

"That a new proviso be added to paragraph 2 of Article 33, the proviso to read -

(c) the maintenance of special tariff and other arrangements between the principal customs territory of a member country and its subsidiary customs territories where it is established to the satisfaction of the Organisation that special arrangements result on the whole in lower barriers to international trade than would be the case if the subsidiary customs territories were incorporated into the principal customs territory of the member country to form a customs union between the member country and its constituent territories."

I think we shall have to read that very carefully.

MR. MORTON (Australia) Are you familiar with the situation of Australian Papua from previous documents? If not, I will explain it. Australia has contiguous island territories, Papua and New Guinea, which are purely agricultural in their nature. They have no secondary industries of any type. Mining is one of their main standbys, and there are a few tropical products from there. The white population is very small -- some few thousands in number -- and they have a separate tariff of their own, as distinct from the Australian tariff, of which the rates are very much lower than the Australian tariff. Their tariff is a slight revenue producing instrument which brings in enough revenue to maintain the civil administration of the place.

If we were to incorporate New Guinea into a customs union with Australia, it means that those few white inhabitants of New Guinea would be compelled to pay a fairly high duty on quite a number of products which they now enjoy the free entry of. They are very small revenue producing tariffs.

The fact that the entry is free into the islands rather than that it should be made subject to high duties will, as you will perceive, tend to encourage and promote a flow of international trade, whereas if we made them subject to a high tariff, as would be the case if we formed a union with them, they would be less inclined to purchase overseas. They would purchase solely within the Commonwealth. But having the benefit, as they have, of a lower tariff at present, they naturally tend to import more foreign products than they would if they were a member of the Union.

MR. HAWKINS (USA): I understand there is free trade between Australia and these territories.

MR. MORTON (Australia): We accept their produce free of tariff, but they have a separate import tariff of their own which is a lower tariff than the tariff applicable to imports into Australia.

MR. MCKINNON (Canada): But which has a preferential element? Do your products entering their country get a lower rate than products from another source?

MR. MORTON (Australia): The majority of goods are free from Australian tariffs.

THE CHAIRMAN: It is a kind of customs union.

MR. MORTON (Australia): It is an arrangement. If we were to make a customs union, we would subject them to our high tariff.

THE CHAIRMAN: For certain products you have free entrance into these territories, whereas other countries have to pay duties.

MR. MORTON (Australia): No. They have just a slight revenue-producing tariff. They are not big importers. There are only a few thousand white population there.

MR. COOMBS (Australia): There are certain classes of commodities which have duties on them -- footwear, for instance. They are protected in Australia. We imposed a similar duty in the territories. That will affect not only the white population, but the native population in some areas.

MR. HAWKINS (USA): I think it would be the sort of arrangement which would be covered by Article 8, the effect of which would be to permit the continuance of the arrangement, subject to negotiation, if anybody wanted to negotiate about it, which I imagine very likely they would not do.

MR. MORTON (Australia): If it were to anybody's interest to ask to have it reviewed, they would be welcome to do so, but we want to maintain this position rather than to have to insist on a form of customs union.

MR. HAWKINS (USA): I think from that point of view it is taken care of, because nothing in this Charter as drawn would compel you to abolish whatever preferential features there are in that relationship.

THE CHAIRMAN: The only point is whether we should add a new sub-paragraph (c), or are you adequately covered by the new sub-paragraph (c) of Article 8?

MR. MORTON (Australia): We are doubtful as to whether we are covered anywhere else in the Charter.

THE RAPPORTEUR: Are those islands part of Australian territory?

MR. MORTON (Australia): They are under Australian administration.

In one case, part of it is by mandate -- the late German New Guinea -- and Papua is part of the Australian territory, but it has its own tariff.

THE RAPPORTEUR: I think it would be covered, subject to any negotiations anybody might want to ask for.

THE CHAIRMAN: In that case, I would prefer not to have a new sub-paragraph, but to leave it under Article 8, (2a).

MR. COOMBS (Australia): We are not concerned with having any amendment, so long as it is covered.

MR. HAWKINS (USA): There is nothing here that would wipe that out.

THE CHAIRMAN: The only point left relates to South Africa and Rhodesia. As the Delegate of South Africa is not here, perhaps Mr. Shackle could explain this?

MR. SHACKLE (UK): I am afraid not. I think there was a customs union, but now there is not an exact customs union. I ought not to attempt to deal with the matter, because I am not sufficiently informed on it.

THE CHAIRMAN: I ask the Rapporteur to get into touch with the South African Delegation simply to see whether there is a special difficulty left. Then we need not trouble ourselves further with that now.

We are now in the pleasant position of having covered everything, except the memorandum on procedure of tariff negotiations. I would suggest that we give the Rapporteur time until Saturday morning to

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give us that memorandum, that we discuss that on Saturday morning, and if need be, even Saturday afternoon.

MR. ALAMILLA (Cuba): We still have to deal with matters of industrialisation.

THE CHAIRMAN: That is the point taken care of by Mr. Coombs.

MR. ALAMILLA (Cuba): I thought, Mr. Chairman, you said we had covered all the points.

THE CHAIRMAN: There are some more points, because we will also have the chance of seeing all the Articles in their new drafts, together with the Rapporteur's report, which we will in any case have to discuss next week. I think that would be a good opportunity to discuss also the other point about industrial development.

Therefore, I ask Delegates to prepare themselves in any case for a meeting on Saturday morning, but not to make any fixed engagements for Saturday afternoon, so that we can try to cover that point.

I would also ask the Secretary to see whether he can already arrange for a meeting at the beginning of next week to deal with the Rapporteur's report and the question Mr. Alamilla raised.

MR. ALAMILLA (Cuba): There are the Indian, Chilean and Cuban proposals.

THE CHAIRMAN: The meeting is now adjourned.

(The meeting rose at 5.25 p.m.).