UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

PREPARATORY COMMITTEE

of the

INTERNATIONAL CONFERENCE ON TRADE AND EMPLOYMENT

Verbatim Report

of

An Informal Meeting

of

COMMITTEE II

held at

Church House, Westminster, S.W.1

on

Thursday, 21st November, 1946

at

3 p.m.

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

(From the shorthand notes of
W. B. GURNEY SONS AND FUNNELL
58 Victoria St.,
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THE CHAIRMAN: Dr. Coombs asked to be excused because he is presiding at another meeting on quantitative restrictions. He has asked you to come here this afternoon to give us an opportunity to explain the work of the Sub-Committee on Procedure and Tariffs. This is to be an informal meeting simply to make you acquainted with what we have prepared and drafted in the Sub-Committee, which will come up tomorrow in Committee II for comments and, let us hope, approval. We are prepared to answer questions that may be put after our short explanation, but the real discussion of this paper will take place tomorrow in the meeting of Committee II. I do not know at what time it will start, probably 10-30 a.m.

I would say first that the task of the Sub-Committee was to prepare a memorandum on procedure for tariff negotiations and at the same time certain Articles of the Draft Charter were referred to the Sub-Committee for study and report. We found at the begining of our meetings that it was better first to try to reach agreement on the Articles of the Draft Charter, as they have a definite bearing on the memorandum on procedure on tariff negotiations. This morning you received the draft report of our Rapporteur, which was not in a definite state as we had not approved it. We did that yesterday afternoon. You will also find another paper, E/PC/T/C.II/57, corrected (1). There you find certain changes which we agreed should be put into the report of the Rapporteur. There was no time to give you a clean draft, but I do not doubt that that will be available tomorrow. You have therefore before you the Rapporteur's report together with this paper No. 57 and, separately, as an addendum to that, the Draft Articles we have adopted in the Sub-Committee. They are in rather a strange order because we start at 29 and 30 and then go to Article 8. If you will take Article 8 first, which is the most favoured nation clause, you will see that we have made certain changes which you will find explained in the Rapporteur's report. The most important one is in paragraph 2 where, in sub-paragraphs a, b and c we made certain changes in the American Draft. In our draft we distinguish the preferences in force exclusively between territories comprising on 31st July 1939 the Commonwealth of Nations and so on, and then preferences in force exclusively between the United States of America and the Republic of Cuba, and c, which is an addition, relates to preferences in force on 31st July 1946 exclusively between neighbouring countries.

Then we come to Article 18, which is a very important Article having a definite bearing on the memorandum on procedure for tariff negotiations. We have again changed the American Draft, sometimes quite considerably. In the American Draft the Article starts with the obligation to enter into "reciprocal and mutually advantageous negotiations with such Member or Members directed towards the substantial reduction of tariffs and other charges on exports and imports". An addition by this Sub-Committee is, "and the elimination of tariff preferences". That is further elaborated in the memorandum of procedure on tariff negotiations. In sub-paragraph a we also made a change, saying that "prior international commitments shall not be permitted to stand in the way of negotiations with respect to pariff 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 the termination of such obligations in accordance with their terms."

The idea there is that every member entering into negotiations in Geneva will do so of his own accord, and will accept certain obligations, it being left to him as to how to effect those obligations. If he is tied by other obligations to other countries, as for instance if he has a preference system, it is up to him to reach agreement with the other people concerned. But he is expected to fulfil the obligations he has accepted in the Geneva negotiations.

At the end of sub-paragraph b it is laid down that "all negotiated reductions in most favoured nation import tariffs shall operate automatically to reduce or eliminate margins of preference." We had a long discussion in our sub-committee on this paragraph and in the end we reached the conclusion that we ought to keep the word "automatically". There was only one member who thought we ought to differentiate between most favoured nation negotiations and those on preferential rates. If more clarification is required, perhaps it could be given at our meeting tomorrow.

We then added a third sub-paragraph c on the binding or consolidation of low tariffs or tariff free treatment, stating that in principle such binding or consolidation shall be recognised as a concession equivalent in value to the substantial reduction of high tariffs or the elimination of tariff preferences. This was agreed in the Sub-Committee to take care of the special position of countries which in the past had not made use of tariffs for other purposes than

revenue. It is also worked out in the memorandum that, in the course of reciprocal and mutually advantageous negotiations, certain countries will have to let go certain possibilities of using quantitative restrictions for protectionist purposes. We did not think it necessary to include that here as the whole question of quantitative restrictions is dealt with in other Articles, and we thought that here the "reciprocal and mutually advantageous negotiations was sufficient if one kept in mind that the Charter would not be adopted until after the negotiations. There is therefore a safeguard for certain countries which may have to forego some of their possibilities.

I do not think there are any changes in paragraph 2, but paragraph 3 has been changed and perhaps the Rapporteur will explain them.

THE RAPPORTEUR (Mr. Leddy): The main changes in paragraph 3 are these. Paragraph 3 would authorise a member to withold from another member tariff reductions which the first member had granted in pursuance of the negotiations if the second member failed to carry out his obligations under Article 18. The change made is simply to permit a member to withhold any tariff benefits, including thebinding of duties as well as duty reductions. The reason for this change is primarily to ensure that low-tariff countries which may merely have bound duties instead of reducing many of them will not be in an unfavourable bargaining position in dealing with countries which refuse to fulfil their obligations.

The second important amendment is the one which enjoins upon the Organisation, in determining whether a member has unjustifiably failed to carry out its obligations to negotiate, whould have regard to the position of the member under the Charter as a whole, and that means under the provisions of the industrial development chapter as well as other chapters.

THE CHAIRMAN: The point we added here about "having regard to the provisions of the Charter as a whole means that quantitative restrictions, commodity agreements and employments provisions will all have to be taken into consideration by the Organisation in determining whether a member has failed to fulfil its obligations.

We now come to Articles 29 and 30. Article 29 gave rise to a considerable amount of discussion. It gave members certain rights, as a result of unforeseen developments, to withdraw concessions. In particular we had a discussion on account of the addition of the last sentence of paragraph 2,

"in critical and exceptional circumstances such action may be taken provisionally without prior consultation." Delegates will remember that this was a point raised by several countries in the meetings of Committee II, when it was said that prior notification would not always be possible. We have studied that very carefully and found that there was a substantial amount of agreement, only one or two delegates suggesting that there should always be prior consultation. The majority thought we should allow for this possibility, but only in critical or exceptional circumstances. The main thing was to see that there should be no abuse of this in future, and therefore in the second part of the paragraph we have put in that such consultation shall take place immediately upon taking the action.

Further on it is laid down that if concessions are withdrawn they should be substantially equivalent in comparison with the obligation the other member has withdrawn.

Futhermore, to guarantee that there will be no abuse, we have included the last sentence, "that in serious cases the Organisation may authorise the affected member to suspend concessions or obligations in addition to those which may be substantially equaivalent to the action originally taken."

With regard to Article 30, again we have put in "under the terms of the Charter", so as to give this Article a much wider scope. One of the things which the Drafting Committee will have to consider may be as to whether this Article should stay here or be put in a different place in the Charter, but we did not trouble with that here. It is a very important Article so perhaps I may read it to you:

> "If any member should consider that any other member has adopted any measure, whether or not it conflicts with the terms of the Charter, or that any situation has arisen which has the effect of nullifying or impairing any object of this Charter, the members concerned shall give sympathetic consideration to such written representations or proposals as may be made with a view to effecting a satisfactory adjustment of the matter. If no such adjustment can be effected the matter shall be referred to the Organisation which shall, after investigation and if necessary after consultation with the Economic and Social Council of the United Nations or any other appropriate international specialised agencies, make appropriate recommendations to the members concerned. The Organisation, if it considers the case serious enough to justify such action, may authorise the member or members to suspend the application to any other member or members of such specific obligations or concessions under this Charter as may be appropriate in the circumstances. If such obligations or concessions

> are in fact suspended, any affected member shall then be free not later than 60 days after such action is taken to withdraw from the Organisation upon the expiration of 60 days from the date on which written notice by the Organisation of such withdrawal is received."

Here we have extended the scope of this Article, and it was necessary to bring in the reference to the Economic and Social Council and other appropriate specialised agencies. We thought that these provisions were adequate to cover the special position of undeveloped countries and the other problems on which we received a message from the Joint Committee of Committees I and II.

There is still Article 33 regarding the territorial application of Chapter 4, customs unions and frontier traffic. There also we have made certain changes and additions. We have changed sub-paragraph 2(b), where we speak of the formation of a union for customs purposes. The reason is that the formation of such a union takes time, and often considerable time, because not only have the tariff systems to be adjusted but certain parts of economic and trade policy as well. Before a customs union is complete therefore even years may elapse, and we thought fit to coverthat by the words "the formation of a union for customs purposes." We have also put in a new paragraph 4,

> "The members recognise that there may in exceptional circumstances be justification for new preferential arrangements requiring an exception to the provisions of Chapter 4. Any such exceptions shall be subject to approval by the Organisation in relation to paragraph 2 of Article 55"

which, if you remember, provides that the Organisation may take certain decisions with regard to the application of Chapter 4 by a two-thirds majority. In this paragraph we have tried to cover the wish of certain countries to have the possibility of regional preference systems, or perhaps even open conventions if they are really conventions serving a useful purpose, and every time the Organisation will be the judge as to whether such new arrangements are in conformity with the Charter. Here, you will notice, and I believe other sub-committees have done the same thing, we always put the Organisation in at the centre of things. We feel that there may be certain flexible clauses provided there is an organised body to judge it and avoid unilateral action.

In paragraph 5 we have again eliminated references to tariffs and other regulations, again because a customs union is a complex business and it may be that in certain cases it is not for the time being possible to have a real customs union.

I think that is the explanation of the changes we have made in these Articles; now we may perhaps proceed to the memorandum on procedure. Before we do that, are there any questions to be answered?

MR. DU PARC (Belgium)(Interpretation): Concerning Article 8, which deals with the most favoured nation treatment: towards the end of paragraph 1 I see, in the English text, the words "any advantage, favour or privilege granted granted by any member country to any product originating in or destined for any other country..." I do not know how the word "originating" will be translated in the French text. I suppose the word used will be "originaire", but it is in our Customs tradition to make a distinction between "products coming from" and "products originating in". This distinction seems to us to be a very useful one, and I should like to give an example. It was in the framework of our Organisation that certain preferences may be granted to certain member countries which may not always be extended to other members. In consequence it is interesting and important for us to make a distinction between "coming from" and "originating in". The words "product coming from" are applied to any product which arrives from the country under consideration, but such products may well have originated in another country, and the country of origin may not be a member. In such conditions it might be very difficult, or even impossible, for our customs administrations to make a proper distinction between the preference granted to member countries and non-member countries. I believe that this remark has already been made previously by the French Delegation, during one of our earliest meetings, and that being so the Belgian Delegation did not insist on the point. We regret, however, for reasons which are perfectly clear to us that no account has been taken of this distinction, which to us seems to be a very important one.

THE CHAIRMAN: We discussed Article 8 paragraph 1 at length and we had before us also the clause referring to the League of Nations, and we came to the conclusion that the American Draft was the best to adopt. I will not say that we have taken much trouble with the words "originating from", because we

thought that would be taken care of by the Technical Sub-Committee, and that if any changes were required that Sub-Committee would deal with them. The problem has been discussed many times in the Technical Sub-Committee -

MR. DU PARC (Belgium)(Interpretation): This problem has not been discussed by the technical Sub-Committee.

THE CHAIRMAN: I do not think it will help us much if we try to solve these technical problems at the last moment, but we can discuss that tomorrow and if need be the Drafting Committee or the Organisation later on can make the necessary change. After all, this is a draft, and I must say we have not discussed the point at much length. Perhaps Mr. Hawkins would like to make a few remarks upon it?

MR. HAWKINS (United States): We did not go into it at any length, if at all; I do not remember that we discussed the exact point in the Sub-Committee. The question raised is of course pertinent because the effect of the most favoured nation clause as drafted would be to require the granting of minimum rates to the product according to its origin, and it would not be denied the benefit of the minimum rates if it had been trans-shipped.

In other words, what you need to do under this Article as drafted to obtain the benefit of the minimum rates is to prove the origin and those rates would apply even though they entered the importing country by way of a third country.

THE CHAIRMAN: I may say, if there are any remarks to be made upon that, that perhaps we can reserve those for tomorrow. This meeting, as I have already said, has been called merely in order to give you an explanation of what we have done, and further and fuller discussion will be reserved for to-morrow.

MR DU PARC (Belgium) (Interpretation): It is exactly in order to have an explanation that I ask this question.

THE CHAIRMAN: Are there any other questions to be asked?

MR CHOW (China): Mr Chairman, do I understand you correctly, that we are not going to discuss the draft to-day?

THE CHAIRMAN: Yes.

MR CHOW (China): You see, we are not represented on this Committee, and this draft came to us rather late and we need a little more time for further study.

THE CHAIRMAN: I think we did our utmost to make the draft ready last night to give you the whole of Thursday to study it, and therefore we have no official meeting before Friday morning. The only reason why we have this meeting to-day is to give you some verbal explanations so as to assist you in your study. I think that the Chairman of Committee II expects you to be able to comment upon it tomorrow morning. If there are no further questions to be asked, perhaps we might turn to our Memorandum on Procedure of Tariff Negotiations, Paper No.58. You will see that we have a short Introduction, and after that we start with the proposed negotiations among the Members of the Preparatory Committee. Here we explain that the negotiations must "proceed in accordance with the relevant provisions of the Charter as already provisionally formulated by the Preparatory Committee." One of the difficulties we will meet in Geneva (and that is the reason why we put forward this memorandum now) is that you will not have the Charter ready before we negotiate. The idea

is that we start first with the negotiations after further discussion of the draft Charter in the light of the further study of the draft by Governments, and then we are hopeful that the Charter will be adopted by the countries participating in the Geneva Conference at a later stage, after the negotiations have reached certain results. Therefore, we have now got out this memorandum for the guidance of governments containing guiding principles for those negotiations, which, as I said before, we have based on the relevant Articles of the Charter, especially Articles 8 and 18. You will see that under the heading of "General Objectives" we repeat that, "An ultimate objective of theDraft Charter," and so on, is to bring about "the substantial reduction of tariffs and the elimination of tariff preferences." We then go on, in the next paragraph, to give you an idea of the general nature of the negotiations, and you will find here elaborated in more detail what I said before, that the negotiations are to be on a "reciprocal" and "mutually advantageous" basis; and, furthermore, that they will be conducted "on a selective, product-by-product basis which will afford an adequate opportunity for taking into account the circumstances surrounding each product on which a concession may be considered." Again you see here that we can have a reduction of tariffs or preferences and you can also have a binding of a tariff against an increase. We conclude that paragraph by saying that there would be "ample flexibility under the selective procedure for taking into account the needs of individual countries and individual industries." With regard to the general rules, we refer to paragraph 1 of Article 18 which I mentioned before when we discussed the various Articles. After that we come to a difficult matter, once we start on these negotiations, and that is the date on which each country would base its tariffs and so on and on which it is prepared to grant concessions. We found that the situation of every country is different from that of every other, and it would be very difficult simply to mention 1939 or the 1st July 1946. Therefore we decided to give every country the right to name its base date itself,

but then that date should be so that it would hold good for the negotiations on all products with all other countryes members of the Preparatory Committee and they should not vary from country to country or from product to product. We quite see that there will be certain difficulties there for various countries, but we thought, after very full discussion, that in regard to these negotiations, as with everything else, it is a question of give and take, and to find a formula that is, on the whole acceptable, we thought that we would leave this rule there as it is stated in the paper. Mentioning the base date also brought up the problem that there should be no important changes before we meet in Geneva. The feeling of the sub-Committee was that it is very important that when we meet in Geneva there should be a feeling of confidence in each other and that there should be no measures in the meantime which could be looked upon as improving their bargaining position. That is only a suggestion. So that although we say that it is important that members do not do this or do not do that, it is emphasized that no country is bound and it is open to every government to do what it thinks fit with regard to its national economy. But we feel that as there may still be certain changes in tariffs on which every country has a right to act, as every country can take any measure needed for its economy, it should be kept in mind that there are these coming tariff negotiations, and as we have said, or as we try to say here, it "would tend to prejudice the success of the negotiations in achieving progress toward the objectives set forth in Article 18, and they should not seek to improve their bargaining position," and so on.

Then we come to the actual negotiations themselves. We had there the American suggestion before us, that we should deal with these negotiations following the principal supplier rule. The idea there is that with this huge number of countries taking part in the negotiations and with the many commodities to be covered, we should try to find a short cut whenever we can, and we have tried to formulate that against that principal supplier rule. Perhaps there will be certain questions to

be asked there ; but I think as members will have read that part of the document I do not need to explain it further to them here.

You will then find in the next paragraph a "form of tariff schedules" which should embody the results of these negotiations. It is contemplated that these negotiations would be multilateral. After that you will find a reference to preferential rates of duty. There are certain preferential rates that we have given there, together with methods by which we could incorporate these remaining preferential rates in certain schedules. We then elaborate further on the method of conducting negotiations, and you will see what we envisage as the first stage, which is that every member should try to transmit to other countries, that is, every country taking part in the Geneva negotiations, before the 31st December, 1946, a preliminary list of concessions which it proposes to request of such other member. In that list we should indicate the existing rate of duty on which we base our request, because it may be that certain countries will have no full knowledge of the tariffs of other countries owing to the disturbances of the war; and an indication of the requested rate of duty. It is very important that we should try to do our utmost to have these lists received by other countries as soon as possible and also note that we have to send it to the one country concerned and at the same time submit enough copies to the Secretariat of the United Nations, which will then see that they are sent to the other countries as well and then also itself try to study these different lists and make a compilation of them in the best possible way to facilitate the further proceedings at Geneva. Then when we come together in Geneva every country is expected to lay on the table its list of proposed concessions which should be drawn up as faithfully as possible, and there should not be much left over in the left or the right pocket! Then we follow the principal supplier rule, and we will try to get some shape into these negotiations as soon as possible. For that purpose we feel that we should have a kind of tariff steering committee which would be instituted as soon as possible after we meet in Geneva. That is a committee which the Heads of Delegations should appoint. We

can discuss how many members should be appointed to that committee when we get to Geneva, but the idea of that committee is to put forward guiding rules in connection with these negotiations. Such a steering committee should from time to time review the whole field and see what progress has been made and where we can improve on the system, and so on and so on. You find the tariff steering committee mentioned at the end of this paragraph. The result of the negotiations will then be embodied in a number of tariff schedules which you find mentioned on page 12. Then we come to an important point, whether, when these negotiations have reached a certain stage, we should then leave the thing open until we have had the world conference. The Committee came to the conclusion that, in the first place, you will not be able to keep these things secret; there will be too many people involved for that; so that it is no use to try to cover up the things you have done and it is much better for trade to bring it into effect as soon as possible. However, we are then faced with the difficulty that there are only a relatively small number of countries and perhaps we might get into difficulties with the most-favoured-nation clause, in connection with which you will remember Article 31 of the Charter will have to be studied and elaborated further at the Geneva Conference. Therefore, we came to the conclusion that it would be the best procedure to extend the benefits of these negotiations provisionally to all countries and that after the World Conference when the Organization is set up and member countries have accepted the obligation to negotiate in a certain time, they should fulfil that obligation. If they do not, the other Articles of the Charter will apply and the benefits will be withheld from them. But we cannot say more than that about it now. After all, it is in Geneva where it will have to be worked out more carefully. In regard to the way to work that out, we have tried to cover that in a tentative draft outline of a general agreement on tariffs and trade which you will find as an addendum to this report and which I advise you to study carefully. As you see, the agreement, for the time being, should be legally independent of the Charter, because the Charter can only be adopted after the World Conference - let us say when it formally comes into being; so that we must embody in the agreement certain Articles of the

Charter which we may agree in Geneva. Now in order to carry this out we need a provisional body, and therefore we propose on page 14 the creation of a provisional agency "pending the establishment of the International Trade Organization." The last part of the document is concerned with further procedure after the Organization has been set up, and the main part there is that you will have an interim tariff committee on which those members who have fulfilled their obligations to negotiate will serve, and that tariff committee will judge whether other members of the Organization who have not yet negotiated have done that in the proper way and that the concessions which they grant are in conformity with what other countries have done.

Now, Gentlemen, I think I have covered our document as best I can. In about ten minutes' time the Heads of Delegations will meet here, so that I hope you will forgive me if I bring my explanations to an end. Thank you, Gentlemen.

MR DU PARC (Belgium) (Interpretation): Mr Chairman, there is one more question I would like to ask. This question has probably been covered by your draft on procedures, but this is the question. When we have reached agreement on preferential tariffs concerning members of the Organization, what will be the situation concerning the agreement already in existence and of other agreements which are still in existence and still in force after the undertakings which we may make after our original discussions? If, for instance, we have an agreement that a country does not adhere to or with a country which does not adhere to the Organization or which does not take part in the negotiations, and if we have with that country a treaty which granted the most-favoured-nation treatment, what would be our position concerning that country? I do not know if you have understood the sense of my question. I am sure that this problem has been studied and I am sure there is an answer to it somewhere in this draft, but I did not have time to read it all through, and I would therefore like to know what the position is.

THE CHAIRMAN: If I understood your question aright, the answer is this, that these benefits would be extended to all countries.

MR DE PARC (Belgium) (Interpretation): You mean to say the preferential

tariffs would be extended to all and every country in the world or to all countries with which we may have any agreement, including a most-favoured-nation clause?

THE CHAIRMAN: Yes, that would be the idea. Until after the Organization has been set up - and let me say here we find that most of the countries of the world will take part in the Organization - we will have to find a solution to the difficulty of the most-favoured-nation clause, but that can only be worked out in Geneva, as Article 31 has been left open pending the meeting in Geneva; so that we could say nothing more in this memorandum here.

If there are no more questions to be asked, I declare this session closed. The meeting is adjourned.

(The meeting rose at 4.20 p.m.)