The Most-Favoured-Nation Clause

It has been suggested that the comparative merits of the most-favoured-nation clause as conceived (a) in Article 8:1 of the United States suggested Charter and (b) that proposed by the Economic Committee of the League of Nations be tabulated.

Article 8:1 (first sentence) of the United States Suggested Charter

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation,
2. or imposed on the international transfer of payments for imports or exports,
3. and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation or exportation,
4. and with respect to all matters relating to internal taxation or regulation referred to in Article 9,
5. any advantage, favour, privilege or immunity granted by any member country to any product originating in or destined for any other country
6. shall be accorded immediately and unconditionally to the like product originating in or destined for all other member countries.
Most-Favoured-Nation Clause as proposed by the Economic Committee of the League of Nations ("Commercial Policy in the Post-War World", League of Nations, Geneva 1945, p. 100)

1. The High Contracting Parties agree to grant each other unconditional and unrestricted most-favoured-nation treatment in all matters concerning Customs duties and subsidiary duties of every kind and in the method of levying duties, and further, in all matters concerning the rules, formalities, and charges imposed in connection with the clearing of goods through the Customs.

4. Accordingly, natural or manufactured products having their origin in either of the contracting countries shall in no case be subject, in regard to the matters referred to above, to any duties, taxes or charges other or higher, or to any rules and formalities other or more burdensome than those to which the like products having their origin in any third country are or may hereafter be subject.

6. Similarly, natural or manufactured products, exported from the territories of either Contracting Party and consigned to the territories of the other Party shall in no case be subject, in regard to the above-mentioned matters, to any duties, taxes or charges other or higher, or to any rules and formalities other or more burdensome, than those to which the like products when consigned to the territories of other country are or may hereafter be subject.

9. All the advantages, favours, privileges and immunities which have been or may hereafter be granted by either contracting Party, in regard to the above-mentioned matters, to natural or manufactured products,

10. originating in any other country or consigned to the territories of any other country shall be accorded
11. immediately and without compensation to the like products originating from the other Contracting Party or to products consigned to the territories of that Party.

12. Nevertheless, the advantages now accorded or which may hereafter be accorded

to other adjacent countries in order to facilitate frontier traffic, and advantages resulting from a Customs union already concluded or hereafter to be concluded by either Contracting Party shall be excepted from the operation of this article.

Comparison of the two versions

United States draft (1, 3) uses the expression "duties and charges".

League of Nations draft (2, 4, 7) uses the expression "duties and subsidiary duties of every kind".

United States draft (1) uses the expression "imposed on or in connection with ...".

League of Nations draft (3, 4, 6, 8) uses the expression "in connection" or "be subject .. to"

League of Nations Draft (5, 8, 9, 13) uses the expression ".. are or may hereafter be .."

United States draft omits "hereafter", as implicit.

United States draft (6) uses the expression "products".

League of Nations draft (4, 6, 9) "... natural or manufactured products".

United States draft (3) covers "methods of levying duties and charges".

League of Nations draft (2) uses the expression "methods of levying customs duties".

United States draft (6) uses the phrase "... destined for ..."

League of Nations draft (6, 8, 10, 11) uses the term "... consigned to ..."

(United States wording may require qualification)
League of Nations draft (4, 7) the wording used "taxes or charges other or higher" is considered confusing. If duty or tax is "other" it is either higher or not objectionable.

League of Nations draft does not contain the provision of the United States Charter (2) "... or imposed on the international transfer of payments for imports or exports" which should be included if the League of Nations draft be adopted.

League of Nations draft does not contain the provision of the United States Charter (4) in respect of "matters relating to inner taxation or regulation", (Article 9 of the United States Charter).

The United States draft takes into account the multilateral character of future conventions. The League of Nations draft would have to be adapted for this purpose.

Apart from this and from the provisions relating to international transfers of payments and inner taxation, there are, generally speaking, no substantial differences in these two versions.
Most-Favoured-Nation Clause as Applied to Multilateral Conventions

The Economic Committee of the League of Nations reported in 1929 on the question of collective conventions for the reduction of tariffs (as advocated by the World Economic Conference of 1927), and came to the conclusion that those States which remained outside such conventions and pursued highly restrictive policies could not be permitted to share in all the benefits mutually accorded to one another by the parties. The Economic Committee proposed that the position of the parties should be safeguarded but only in the case of tariff agreements

"of a general character and aiming at the improvement of economic relations between peoples, and not in the case of conventions concluded by certain countries to attain particular ends, the benefits of which those countries would, by such a procedure, be refusing to other States when the latter might, by invoking most-favoured-nation treatment, derive legitimate advantages."

Nor, in its opinion, should there be any penalization of States not parties to a collective tariff agreement which practised a liberal tariff regime. With this attitude the International Chamber of Commerce was in agreement.

Based on recommendations of the Economic Committee, the clause, as inserted in the Switzerland-Belgo-Luxembourg Treaty of 26 August 1929, reads substantially as follows:

"...The most-favoured-nation clause cannot be claimed by the High Contracting Parties to obtain new rights or privileges that may in the future be granted by one of them in collective conventions to which the other High Contracting..."
Party is not a party, if the said conventions are concluded under the auspices of the League of Nations or registered by it and open to the accession of all States. However, such rights or privileges can be claimed by the High Contracting Party interested (i.e., the other Party), if the said rights or privileges are laid down also in conventions other than the collective conventions satisfying the above conditions, or, further, if the High Contracting Party claiming to enjoy them is prepared to grant reciprocity of treatment.

Among the users of this exception to the most-favoured-nation clause were the Netherlands, Belgo-Luxembourg, Switzerland, Germany and France. With slight variations in form, examples of the text are found in the following treaties: France-Switzerland, Hungary-Roumania, Hungary-Czechoslovakia and Czechoslovakia-Estonia.
Article 8, paragraph 1, last sentence (Government Contracts, etc.)

(Note by Secretariat before the Delegate for the United States made a statement concerning this item in Committee II and before the receipt of an amendment suggested by the Delegate for the United Kingdom.)

Redraft:

"the principle underlying this paragraph shall apply to purchases from other Member countries of goods for the use of Central Governments, and shall extend to the awarding by such Central Governments to nationals of other Member countries of Contracts for public works, in respect of which each Member shall accord fair and equitable treatment to the commerce of the other Members".

The need for including the words entered between is questioned since this rule seems implied in the wording of the first part of Article 8.

However, it seems necessary to include among the exceptions to be dealt with under paragraph 2 the following:

"2. The provisions of paragraph 1 of this Article shall not be construed to involve:

(n) any obligation with reference to purchases for the military establishment".

Further, there may have to be inserted under Section P (State Trading) a provision to the effect that imports of State Trading Enterprises for the use of Central Governments are subject to the general commercial provision of Article 8:2. On the other hand, no reference to Section P seems required in 8:2.

It may not be necessary to indicate that the preferences permitted under paragraph 2 would be allowed to affect also the awarding contracts. It should be observed, however, that in certain countries no duty is levied on imports for the account of the Central Government. It may prove necessary to add a sentence to paragraph 3 in order to render it quite clear that these countries are not placed in a worse position than others.
Note:

(a) The reference made to "nationals of other Members" is intended to make it clear that absolute preferences can be extended to domestic nationals. The words "foreign" and "abroad" have been avoided because of their special meaning within Imperial systems.

(b) The expression "for the use of" (Central Governments) was adopted instead of "not for re-sale" for reasons indicated by Mr. Hawkins.
Re-draft of Article 8(2).

"The provisions of paragraph 1 of this Article shall not be construed to require the elimination of preferences in respect of the duties and charges on importation referred to in paragraph 1, accorded within each of the groups of territories listed in Schedules A to M, provided that these preferences are limited -

(a) In the case of the items enumerated in Schedules N to Z, in respect of each of the territories there mentioned, to the margins of preferences there provided for;

(b) In the case of all other items, to the margins of preference provided for in the legislation in force in the territories concerned on the date of signature of this agreement".

Note 1. One of the Schedules A to M would list the countries of the British Commonwealth as suggested in C/II/11.

Note 2. The United States of America suggests that the preference to be subject to reduction by negotiation should be those in force on July 1, 1939. Other countries have suggested the date of signing of the agreement as being more appropriate.

Note 3. Some countries expressed a wish to reserve for further consideration provision for future development of preferential tariff areas.
Article 18

The comments made during the debate in relation to this Article have been summarized. In the light of the later statements made it may be possible to reach agreement on some of the divergent views expressed. The appointment of a Rapporteur would permit the drafting of amendments to the United States Charter on those points which agreement has been reached. Alternative drafts could be produced where agreement is not reached.

On the following matters there was general agreement:

(1) The need to reserve from Article 8 and 18 some provisions for the use of tariffs to promote industrial development of underdeveloped countries.

(2) The method provided in Article 18(1)(b) for the reduction of margins of preferences should be amplified to provide for reductions in preferential rates for duty. This would not require the complete elimination of preferential margins but reductions in m.f.n. rates of duty corresponding to a reduction in preferential rates.

(3) Article 18(1) needs qualification to include the principal supplier rule although the United States considered that this need not be written into the Article.

(4) Arising from the elimination of preferences provided for in Article 18, the escape clause, Article 29, requires extension to cover preference margins.

(5) Article 18(3) in association with Article 56 should state circumstances in which obligations to reduce tariffs would be modified e.g. to meet the needs of developing countries and those with existing low tariffs.

The following points were not substantially agreed:

(1) Extension of Article 8 and 18 to cover the provision of preferences already granted in one British Commonwealth country to
another British Commonwealth country, to a third member of the
British Commonwealth.

(2) Article 18 should be restricted to immediate negotiation
for the reduction of fiscal tariffs and reductions of protective
tariffs should follow in accordance with a programme to be devised
later by the ITO.