

THIRD COMMITTEE: COMMERCIAL POLICY

SUB-COMMITTEE A (ARTICLES 16, 17, 18, 19)

NOTES OF SIXTEENTH MEETING

Held on Wednesday, 7 January 1948, 3.00 p.m.

Chairman: Dr. G. A. LAMSVELT (Netherlands)

ARTICLE 17 - REDUCTION OF TARIFFS AND ELIMINATION OF PREFERENCES

1. Failure to Negotiate; Role of Organization (Tariff Committee)
Items 39 and 43 (Peru) - Conclusion of discussion.

The delegate for Uruguay stated that in the view of his delegation the Tariff Committee should be invested with the power to make decisions in conflicts arising out of negotiations, but that specific provision should be made in the Charter for the possibility of appeals from Tariff Committee decisions. Cases arising out of Tariff Committee decisions might involve either a violation of legal principles or action harmful to the interests of a Member with no violation of legal principles. The International Court of Justice, mentioned by the French delegate, would be competent to judge cases in the former category, but not in the latter. He suggested for consideration that appeals might be made, first, to the Executive Board, which could then decide, according to the nature of the case, whether the appeal should be referred to the International Court of Justice or to an arbitration body which might be created to consider cases of harmful action without a violation of legal principles.

The delegate for Cuba did not agree with the argument previously made that the General Agreement countries would always be bound by common interests. He pointed out that in negotiations on a particular product parties and non-parties to the General Agreement might have a greater common interest than would parties to the General Agreement; for example, when a party and non-party both were important suppliers of the product concerned. Due to the multilateral character of negotiations contemplated under Article 17, all Members interested in obtaining concessions on a particular product would be pooling their bargaining power to the advantage of the individual new Member. The General Agreement was not completely satisfactory to all parties thereto, but this was no reason to withdraw from the Agreement since Article 17

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contemplated continuing negotiations with the possibility for each Member to improve its position. From the practical standpoint he did not think that parties and non-parties to the General Agreement would be in a position of inequality in negotiations, and therefore could not agree that the Charter should be amended so as to provide for the possibility of reversing Tariff Committee decisions on the grounds of such inequality.

The delegate for New Zealand noted that the delegate for Peru was in agreement with the objectives of paragraph 1 of Article 17, but that his main concern seemed to be that new Members might have to make an excessive contribution in order to adhere to the General Agreement. He considered that this possibility would be precluded by the provision for "mutually advantageous" negotiations on a "selective" basis. The objections to paragraph 2 were largely academic, in his view, in that there should be no grounds for complaint if all Members fulfilled their obligations under paragraph 1. His delegation favoured the retention of paragraph 2 substantially in its present form. The Tariff Committee in any event would soon become widely representative as new Members adhered to the General Agreement.

The Chairman summarized the discussion of the Peruvian proposals as follows:

There was no substantial support for the proposal that the Executive Board rather than the Tariff Committee should have the power to make determinations under paragraph 2. No agreement was reached, however, as to whether decisions of the Tariff Committee should be final. A number of Members of the Sub-Committee proposed that the possibility of appeal from Tariff Committee decisions should be specifically provided in the Charter. Other Members felt that there should be no possibility of overturning Tariff Committee decisions; otherwise it would not be an effective instrument for enforcing the obligations set forth in paragraph 1. Several Members of the Sub-Committee regarded the possibility of recourse under Articles 89 and 90 as adequate. Their interpretation was that a Member could lodge a complaint under Articles 89 and 90 with respect to action arising out of a Tariff Committee decision. The Conference, if it concurred, could suspend the application to the Member acting pursuant to the Tariff Committee decision of such obligations or concessions under or pursuant to the Charter as it deemed appropriate. Other Members regarded this possibility of recourse as inadequate. Two Members referred to the proposal to establish an Economic Development Committee, now being considered by a Sub-Committee of Committee VI.

The delegate for the United Kingdom, supported by the delegates for Colombia, Cuba, Peru and Turkey, proposed that the question of the powers of
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the Tariff Committee and the possibility of appeal from its decisions be referred to a working group.

The Chairman pointed out that the terms of reference of the Working Party established at the ninth meeting, 27 December, included the redrafting of the whole of Article 17. It was agreed that the problem of the powers and functions of the Tariff Committee and the possibility of appeal from its decisions should be referred to the Working Group which should begin its work as soon as possible.
