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SIXTH COMMITTEE: ORGANIZATION

SUB-COMMITTEE ON ARTICLE 81 (THE TARIFF COMMITTEE)

SUMMARY RECORD OF THE FIRST MEETING

Held on, 23 December 1947 at 4.00 p.m.

Chairman: Mr. MACHADO (Cuba)

The CHAIRMAN asked whether the Sub-Committee might not confine its work to paragraphs 1 and 2 of Article 81 as it seemed that paragraphs 3, 4 and 5 had been adopted on first reading by the Sixth Committee.

Mr. DAO (China) thought that the Sub-Committee might have to consider paragraph 5 as it might be necessary to insert in that paragraph provisions regarding appeal from the decisions of the Tariff Committee and the attendance of a non-member of the Tariff Committee at a meeting of the Committee which was to discuss a matter of interest to that non-member.

The CHAIRMAN asked Mr. Dao to present a written proposal to the Sub-Committee.

After some discussion it was agreed that the Sub-Committee would, in addition to paragraphs 1 and 2 of Article 81, consider the text of paragraph 4.
Discussion of Paragraph 1

Consideration of the meaning of the phrase "on behalf of" led to a discussion of the question of the autonomy of the Tariff Committee within the Organization.

Mr. AMADOR (Mexico) explained that the purpose of the amendment of the delegation of Mexico to Article 74 was to make the Tariff Committee subordinate to the Conference.

Mr. COUILLARD (Canada) said that the fears of small countries that by confining membership in the Tariff Committee to states which had concluded negotiations under Article 17 they would be prevented from participating in the Organization were groundless.

Mr. KOJEVE (France) pointed out that the use of the phrase "on behalf of" lacked sense and he suggested that those words should be suppressed.

Mr. AMADOR (Mexico) agreed with Mr. Kojève's suggestion and went on to propose that the phrase "subject to the provisions of Article 81" in Article 74 should also be deleted. By these two deletions it would become

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very clear that the Tariff Committee was subordinate to the Conference.

Mr. STINEBOWER (United States) emphasized that the Organization was not to be a goodwill mission occupied in merely passing resolutions but it was to be an organization tied to action. The question before the Sub-Committee was not one of two international organizations -- The Trade Organization and the Tariff Committee -- but was one of two steps in a process towards obtaining the benefits of the Charter. One step in this process was acceptance of the Charter; the other was the negotiations under Article 17, the conclusion of which gave automatic membership in the Tariff Committee. In connection with the second step it was correct that the necessary determinations should be made only by Members which had carried out the negotiations themselves. At the appropriate time when membership of the Tariff Committee coincided with membership of the Organization, his delegation would consider merging the two bodies.

It must be remembered that the Conference acted in two capacities, firstly, a policy-making capacity under Article 74, and secondly, a judicial capacity under Article 89 and 90. Should actions arising out of decisions of the Tariff Committee nullify benefits under the Charter received by any Member, that Member might complain of the injury done to it under Article 89 and 90. This being the case, his delegation could not accept any weakening of the autonomy of the Tariff Committee as set out in Article 81.

Mr. BENDA (Czechoslovakia) thought that Articles 89 and 90 did not entirely allow for appeal from decisions of the Tariff Committee. He thought that right of appeal must be allowed in the Charter but it must be restricted to cases of denial of benefits and the Conference should decide these cases by a simple majority of the Members present and voting.

Mr. ROUCHDY (Egypt) thought that there should be a right of appeal from the decisions of the Tariff Committee. He also thought that the proposal of the delegation of China regarding the interim nature of the Tariff Committee was sound.

Mr. PARANAGUA (Brazil) said that there was nothing unusual in certain functions being given exclusively to one institution. He thought that the present text of paragraph 1 should be maintained but that the amendment of the delegation of Italy should be incorporated in Article 90 or 91 by stating there that the decisions of the Tariff Committee should be subject to appeal to the International Court of Justice.

The Sub-Committee agreed, conditionally upon the drafting of Article 17 by the Third Committee, to delete the words "on behalf of the Organization". It was also agreed that the Chairman should inform the Chairman of the Third Committee of the work being done by the Sub-Committee and consult with him. The Sub-Committee then went on to agree that the Tariff Committee should

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have the power of initiating the negotiations provided for under Article 17 and to make recommendations pursuant to that Article.

The amendment of the delegation of Peru to delete the words "and determinations" was then discussed.

Mr. ALAYZA (Peru) said that his delegation considered that the Tariff Committee should not be autonomous and should not have the power to take the drastic action envisaged in paragraph 2 of Article 17. The Tariff Committee's powers should be limited to promoting negotiations under Article 17 and also, in well defined cases, to investigating and reporting to the Executive Board. On the basis of such reports the Board could assess damage done and decide upon remedial action to be taken. The whole procedure of investigation by the Committee and decision by the Board should also be open to review.

Mr. PARANAGUA (Brazil) considered that the Tariff Committee must have greater powers than those envisaged by the delegation of Peru. The Committee must be able to enforce its findings by sanctions.

Mr. ALAYZA (Peru) indicated that he would be prepared to withdraw his amendment if it were agreed that the decisions of the Tariff Committee were not to be final.

The Sub-Committee agreed that the amendment of the delegation of Peru should be stood over pending the decision of the Third Committee upon the text of Article 17. The Sub-Committee then considered the proposal of the delegation of China to make the Tariff Committee an "Interim Tariff Committee" as proposed at the First Session of the Preparatory Committee.

Mr. AMADOR (Mexico) pointed out that if the Tariff Committee were to disappear, an extra burden would be placed upon the Conference.

Mr. DAO (China), replying to Mr. Amador, said that the Conference could assign functions to the Executive Board and that the rules of procedure of the Conference in any case might enable it to carry on its work although it was not in session.

It was agreed that the proposal of the delegation of China, so far as it related to paragraph 1, should be stood over until the text of paragraph 2 was discussed.
