THIRD COMMITTEE: COMMERCIAL POLICY

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

NOTES OF FOURTEENTH MEETING

Held on Monday, 5 January 1948, 3:00 p.m.

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

Agenda Item 1 - Failure to negotiate; role of Organization (Tariff Committee)

Items 39 and 43 (Peru) - Continuation of discussion.

The delegate of Colombia found Article 17 to be inadequately drafted from the legal point of view. It's principal weakness was that it provided for no direct appeal from the decisions of the Tariff Committee. He did not regard as legally correct the United States delegate's interpretation that action arising out of a Tariff Committee determination could be made the basis for an appeal to the Organization. From a legal standpoint, he believed Articles 89 and 90 would apply only in cases where no previous decision had been taken by an organ of the Organization.

The Peruvian amendment would not, in his view, solve the main problem of whether the Charter should provide for appeal from Tariff Committee decisions and, if so, what form such appeal should take.

The delegate of France pointed out that under paragraph 2 the Tariff Committee's function would be to examine concessions made both by parties and non-parties to the General Agreement from an overall point of view and to evaluate the balance of these concessions. In this view only Members directly concerned with negotiations and having already negotiated pursuant to Article 17 should have the right to intervene in this way, with no direct appeal.

He recognized that Article 17 might be deficient with respect to cases in which a particular Member opposed the adherence of another Member to the General Agreement on special grounds, for example, political. It might be desirable in such cases to provide for an appeal to an unbiased body, preferably review by the International Court of Justice under paragraph 2 of Article 91.
Regarding the criteria established in paragraph 2 for Tariff Committee decisions, some difficulty might arise from the rather vague phrase, "having regard to...the provisions of the Charter as a whole". This might imply that the Tariff Committee had the power to interpret the whole Charter and that such interpretation would not be subject to recourse or appeal. He suggested deleting these words and substituting more precise language along the following lines: "having regard to its economic position and to its needs of economic development".

The delegate for the United Kingdom pointed out that rather than non-parties to the General Agreement being at a disadvantage vis-à-vis parties to the General Agreement by reason of paragraph 2 of Article 17, the reverse might be true. Parties to the General Agreement could not withdraw concessions negotiated in Geneva without Tariff Committee approval and under paragraph 2 the onus of proof as to whether a new Member had fulfilled its obligations under Article 17 would lie with parties to the General Agreement. In his view the Tariff Committee must remain the final judge of the balance of concessions, although possibly after consultation with the Executive Board prior to making an adverse decision.

The delegate of Cuba considered it essential to distinguish between negotiations, whether in the bilateral or multilateral stage, in which the balance of concessions must be judged only by the parties thereto or from an overall standpoint by the Tariff Committee, and disputes, which might arise out of action based on Tariff Committee decisions and which should be judged by a third and impartial party.

Either more precise criteria by which the Organization would make determinations could be included in paragraph 2 of Article 17, or, the right of appeal could be established. He considered the latter more practicable. In principle he was in agreement with the United States delegate's interpretation that appeals to the Organization under Article 89 and 90 could be based on action arising out of Tariff Committee determinations. However, Article 90 should be modified to cover the case of a Member seeking to become a party to the General Agreement and unable to do so because the Tariff Committee considered that it had not made adequate concessions or because Tariff Committee countries refused to negotiate. Further, if the Havana Conference were to decide to establish an Economic Development Committee, the Tariff Committee should be empowered to make determinations only after full consultation with the former Committee.