THIRD COMMITTEE: COMMERCIAL POLICY

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

REPORT OF WORKING PARTY 2 (ARTICLE 17)

Working Party 2, consisting of the delegates of Australia, France, Mexico, Peru and the United States, having consulted with a number of the other Members of the Sub-Committee, reports as follows:

I. REVISED TEXT OF ARTICLE 17 - REDUCTION OF TARIFFS AND ELIMINATION OF PREFERENCES

"1. Each Member shall, upon the request of the Organization or any other Member or Members, and subject to procedural arrangements established by the Organization, enter into and carry out with such other Member or Members as the Organization may specify negotiations directed to the substantial reduction of the general levels of tariffs and other charges on imports and exports and to the elimination of the preferences referred to in paragraph 2 of Article 16 on a reciprocal and mutually advantageous basis. These negotiations shall proceed in accordance with the following rules:"

"2. The negotiations provided for in paragraph 1 shall proceed in accordance with the following rules:

(a) Such negotiations shall be conducted on a selective, product-by-product, basis which will afford an adequate opportunity to take into account the needs of individual countries and individual industries. Members shall be free not to grant concessions on particular products and, in the granting of a concession, they may either reduce the duty, bind it at its present level, or undertake not to raise it above a specified higher level.

(b) No Member shall be required to grant unilateral concessions, or to grant concessions to other Members without receiving adequate concessions in return. Account shall be taken of the value to any Member of obtaining in its own
right and by direct obligation the indirect concessions which it would otherwise enjoy only by virtue of Article 16.

(c) In the negotiations relating to any specific product

(i) when a reduction is negotiated only in the most-favoured-nation rate, such reduction shall operate automatically to reduce or eliminate the margin of preference applicable to that product;

(ii) when a reduction is negotiated only in the preferential rate, the most-favoured-nation rate shall automatically be reduced to the extent of such reduction;

(iii) when it is agreed that reductions will be negotiated in both the most-favoured-nation rate and the preferential rate, the reduction in each shall be that agreed by the parties to the negotiations;

(iv) no margin of preference shall be increased.

(d) The binding against increase of low *tariff* duties or of *duty-free* treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high *tariff* duties or the elimination of tariff preferences.

Account shall be taken of any concession which either Member is already extending to the other Member by virtue of previous negotiations regarding tariffs and preferences pursuant to this Article.

(e) Prior international obligations shall not be permitted to stand in the way of negotiations with respect to preferences, it being understood that agreements which result from such negotiations and which conflict with such obligations shall not require the modification or termination of such obligations except (i) with the consent of the parties to such obligations, or, in the absence of such consent, (ii) by modification or termination of such obligations in accordance with their terms.*

The results of such negotiations shall be incorporated in the General Agreement on Tariffs and Trade, signed at .......... on .......... 1948 by agreement with the parties to that Agreement, and thereupon the parties to such negotiations shall become contracting parties to the General Agreement on Tariffs and Trade if they are not so already.

* The Working Party has been informed that the United Kingdom delegation wishes to reserve its position on sub-paragraph 2 (e).
3. The negotiations leading to the General Agreement on Tariffs and Trade, concluded at Geneva on 30 October 1947, shall be deemed to be negotiations pursuant to this Article. The concessions agreed upon as a result of all other negotiations completed by a Member pursuant to this Article shall be incorporated in the General Agreement on terms to be agreed with the parties thereto. If any Member enters into any agreement relating to tariffs or preferences which is not concluded pursuant to this Article, the negotiations leading to such agreement shall nevertheless conform to the requirements of paragraph 2 (c) of this Article.*

2. If any Member considers that any other Member has failed to fulfill its obligations under paragraph 1 of this Article, such Member may refer the matter to the Organization, which, after investigation, shall make appropriate recommendations to the Members concerned. If the Organization finds that a Member has failed without sufficient justification, having regard to its economic position and the provisions of the Charter as a whole, having regard to all relevant circumstances, including the developmental and other needs and the fiscal structures of the Member countries concerned, and to the provisions of the Charter as a whole, to carry out negotiations within a reasonable period of time in accordance with the provisions of paragraphs 1 and 2 of this Article, the Organization may determine that any Member or Members shall, notwithstanding the provisions of Article 16, be entitled to withhold from the trade of the other Member any of the tariff benefits which may have been negotiated pursuant to paragraph 1 of this Article, and embodied in Part I of the General Agreement on Tariffs and Trade. If such benefits are in fact withheld, so as to result in the application to the trade of the other Member of tariffs higher than would otherwise have been applicable, such other Member shall then be free, within sixty days after such action is taken, to withdraw becomes effective, to give written notice of withdrawal from the Organization. The withdrawal shall take effect upon the expiration of sixty days from the day on which such notice is received by the Organization.

II. INTERPRETATIVE NOTE TO SUB-PARAGRAPH 2 (d) TO BE INCLUDED IN CHARTER

"In the event of the devaluation of a Member's currency, or of a rise in
a rise in prices, the effects of such devaluation or rise in prices would be a matter for consideration during negotiations in order to determine, first, the change in the protective incidence of the specific duties, if any, of the Member concerned and, secondly, whether the binding of such specific duties represents in fact a concession equivalent in value to the substantial reduction of high duties or the elimination of tariff preferences."

III. EXPLANATORY PARAGRAPHS TO BE INCLUDED IN THE SUB-COMMITTEE'S REPORT TO COMMITTEE III

"Consideration was given to the criteria which should be taken into account by the Organization in determining whether a Member had failed to fulfil its obligations under Article 17. The conclusion was reached that it would be impracticable and unwise to attempt to set out in the Charter itself detailed descriptions of all the specific criteria necessary to cover all possible future situations. Accordingly, it was agreed that the Organization should be instructed, broadly, to have regard to 'all relevant circumstances'.

"The specific language recommended by the Sub-Committee is 'all relevant circumstances, including the developmental and other needs and the fiscal structures of the Member countries concerned and the provisions of the Charter as a whole.' It was not felt necessary to refer specifically to the balance of reciprocal concessions offered by the countries concerned, and the probable effect or value of these concessions, since it was obvious that these elements would comprise the very foundation of any case before the Organization, which would inevitably take them into account. With regard to the suggestion that language should be included recognizing the need of countries to maintain reasonable tariff protection, it was felt that (a) in general it is implicit in Article 17 that reasonable tariff protection is consistent with the principles of the Charter, and (b) the needs of under-developed countries in this respect are recognized in paragraph 1 of Article 13 and would be given further specific recognition by the inclusion of the reference to 'developmental needs' in Article 17. This means that the Organization, in assessing the total value of the concessions which a Member may be willing to grant to another Member, shall take into account the needs resulting from the different general conditions prevailing in different Member countries with respect to their ability to maintain or develop their industries.

/"It was understood
"It was understood that the term 'developmental and other needs' would cover, inter alia, a Member's need for reconstruction."

IV. RELATION OF GENERAL AGREEMENT ON TARIFFS AND TRADE TO THE CHARTER

As regards any difficulties which might arise from a possible conflict between the provisions of the Charter and the general provisions of the General Agreement on Tariffs and Trade, the Working Party is of the opinion that the best method of eliminating such difficulties would be for the Governments signing the Final Act adopted at the conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment to hold a meeting before the signing of the Final Act of the Havana Conference in order to agree with respect to the supersession of the general provisions of the General Agreement by the corresponding provisions of the Charter. Members of the Conference would then be in a position to know the provisions of the final text of the General Agreement on Tariffs and Trade, referred to in paragraph 3 of the revised text of Article 17, prior to signing the Final Act in Havana. The desirability of amending the unanimity requirement with respect to agreement on the terms of accession to the General Agreement might also be considered at such a meeting.

V. JOINT WORKING PARTY OF SUB-COMMITTEE A AND THE SUB-COMMITTEE ON ARTICLE 81

The Working Party, not having discussed paragraph 3 of Article 17, recommends that a Joint Working Party of Sub-Committee A of Committee III and of the Sub-Committee of Committee VI on Article 81 be established with the following membership and terms of reference:

Membership

Sub-Committee A of Committee III should be represented by the members of the Working Party 2 (Article 17), i.e., Australia, France, Mexico, Peru and the United States. The Chairman of the Sub-Committee on Article 81 should be requested to name five members.

Terms of Reference

To consider, in the light of previous discussions in Sub-Committee A of Committee III and in the Sub-Committee of Committee VI on Article 81, what organizational machinery would be required to implement the provisions of Article 17.