

GENERAL AGREEMENT ON TARIFFS AND TRADE
CONTRACTING PARTIES
SECOND SESSION

Report of Working Party No. 3 on Modifications
to the General Agreement

1. In accordance with its terms of reference, the Working Party considered the specific proposals which had been submitted during the discussion in plenary session. It also exchanged views on various suggestions submitted by several of its members.
2. After a full discussion during which representatives of the Contracting Parties explained the administrative, constitutional and other difficulties which would result for some if the present text of Part II of the General Agreement were to stand, and for others if the corresponding Articles of the Havana Charter were substituted immediately, the Working Party reached the conclusion that a solution should be sought which facilitated early ratification of the Charter and final acceptance of the Agreement, and which encouraged Governments represented at the Havana Conference to accede to the Agreement within the shortest possible time.
3. With regard to the immediate replacement of Articles in Part II, the Working Party noted that since Part II of the General Agreement would be suspended in the Havana Charter when the latter enters into force, any amendments to those articles at this stage would be operative only during the relatively short period between now and the Charter's entry into force. That being the case, the Working Party considered that the same procedure should be followed as at the first session, i.e., to limit amendments to cases where the retention of the present provisions of Part II would create serious difficulties for Contracting Parties.
4. The Working Party accordingly recommends the replacement of the following Articles by the corresponding provisions of the Havana Charter :
 - (a) Article III (to be replaced by the provisions of Article 18 of the Charter)
 - (b) Article VI (to be replaced by the provisions of Article 34 of the Charter)
 - (c) Article XVIII (to be replaced by the provisions of Articles 13 and 14 of the Charter)
5. The Working Party agreed to recommend the insertion as paragraph 3 of Article I of provisions corresponding to those of Paragraph 3 of Article 16 of the Charter, and the deletion of the opening phrase in paragraph 9 of Article XV.
6. In addition, the Working Party proposes a re-wording of Article XXIX in order to eliminate certain purely temporary provisions and to clarify certain points the

interpretation of which may give rise to difficulties. As Article XXIX is contained in Part III of the General Agreement, this text as amended will remain operative after the entry into force of the Havana Charter.

7. Finally, the Working Party proposes a purely formal amendment to the text of the interpretative note ad Article II, paragraph 4, and various other drafting amendments consequent on modifications which it recommends for adoption.

8. The text of the various amendments suggested is reproduced in Annex I.

9. For practical reasons, the Working Party has not recommended further amendments to the text of the Agreement. As explained in the following paragraphs of this report, various proposals for amendments have been withdrawn on the understanding that statements designed to clarify the intent of the relevant provisions would be inserted in the report of the Working Party. Moreover, if difficulties in application were to arise before the entry into force of the Charter, the Contracting Parties would still have the possibility under the terms of Article XXV to settle such cases in the light of the provisions of paragraph 1 of Article XXIX.

10. The Contracting Parties will find below a brief statement of the considerations behind the attitude adopted by the Working Party with regard to the various proposals submitted.

a) Replacements

11. Article III : The Working Party recognised that if the present text were maintained, there was a risk of difficulties for certain Governments, such as the Chinese and the Norwegian, which expressed reservations when the text of Article 18 of the Geneva Draft (reproduced in substance in Article III of the Agreement) was adopted by the Preparatory Committee. It also noted that administrative difficulties might arise in the case of countries which would have to change their fiscal regulations twice - on acceptance of the Agreement, and again on ratification of the Charter. Finally, it recognised that the wording adopted at Havana was clearer and more precise than the text as it now stood.

12. Article VIII : In view of the decision taken by the Working Party to limit so far as practicable the number of amendments, the Norwegian representative did not press his proposal to replace this article.

13. Article XVIII : The provisions relating to governmental assistance to economic development or reconstruction were discussed at length at Havana; if paragraphs 1 - 5 of Article XVIII were replaced by the provisions of Article 13 of the Havana Charter there would be a greater incentive to under-developed countries which participated in the work of the Havana Conference to accede to the General Agreement. The substitution in question would also make it easier for some Contracting Parties to obtain the approval of their Parliaments when they come to submit the General Agreement to their legislatures. Paragraphs 6 and 7 of Art. XVIII have also been redrafted in order to incorporate the substance of Article 14

of the Havana Charter. The representative of Brazil did not feel that the text recommended for Paragraph 11 of Article XVIII was a faithful rendering of Paragraph 1(a) of Article 14 of the Charter; he proposed either to insert the words "or such other date as the CONTRACTING PARTIES may in special circumstances decide" after "September 1, 1947" and after "October 10, 1947" or, alternatively, to add at the end of Paragraph 11 the following provision contained in sub-paragraph 1(a) of Art. 14 of the Charter: "except that if in special circumstances the CONTRACTING PARTIES agree to dates other than those specified in this paragraph, such other dates shall apply".

14. Article XXIX : The Working Party proceeded on the basis of the text given in document GATT/CP.2/12 of which there had been a preliminary examination at the first session. The text recommended by the Working Party incorporates various suggestions put forward in the course of the discussion.

15. Paragraph 1 : The new text reproduces the substance of Paragraph 1 of Article XXIX, with certain drafting changes. The Working Party thought it preferable not to limit the scope of this provision to Chapters I - VI of the Havana Charter, as suggested by the representative of the Union of South Africa, on the understanding that that representative would be free to raise the matter again in the plenary meeting.

16. Paragraph 2 : The changes introduced in the new draft are the following : the proviso has been deleted as no longer necessary; the words "and superseded by the corresponding provisions of the Charter" have been deleted in order to make it clear that when the Charter comes into force and so long as it remains in force, the General Agreement would be limited to the provisions of Part I and Part III, including the annexes in so far as they relate to those two parts. Lastly, the Working Party decided that it was preferable to keep Art. I as amended in the agreement, in view of certain technical difficulties.

The Working Party considered whether it was necessary to provide in the text of paragraph 2 for such minor adjustments (e.g. in cross references) as may be necessary when Paragraph 2 is suspended; it came to the conclusion that there was no need to insert any specific provision to that effect as such adjustments could be introduced by the Contracting Parties at the time of the entry into force of the Charter.

17. The Working Party felt that it was not necessary to retain sub-paragraph 2 (b) in view of the fact that Part II would be suspended so that the functions of the CONTRACTING PARTIES in connection with that part of the agreement would automatically be transferred to the I.T.O.

18. Paragraph 3 : The Working Party felt that it would be clearer to deal with the two cases contemplated in Paragraph 4 of Article XXIX in separate paragraphs. The date of January 1, 1949 has been changed and the meeting of the Contracting Parties would have to take place before December 31, 1949 if the Havana Charter has not entered into force by

September 30, 1949, which is the date mentioned in subparagraph 2 (b) of Article 103 of the Charter.

19. Paragraph 4 : The Working Party thought it desirable to provide for the automatic re-entry into force of the provisions of Part II, if the Havana Charter should cease to be in force; except for Article XXIII, the provisions of these articles would adopt the same form as the articles of the Charter at the time when it ceases to be in force; it is contemplated that the final text of the General Agreement would be agreed upon at a meeting of the Contracting Parties.

20. Paragraph 5 : reproduces in substance the provisions of Paragraph 3 of the present article XXIX; however it has been found necessary to specify that until a special agreement is arrived at with a contracting party not yet party to the Havana Charter, that party would continue to be bound by the provisions of Part II.

21. Paragraph 6 : This new provision has been inserted in order to state clearly that the provisions of the Havana Charter would prevail over the provisions of the General Agreement. As it would not have been legally possible to bind the Contracting Parties who would not be members of the I.T.O. by the provisions of the Havana Charter, the Working Party was of opinion that the provision should be worded accordingly.

b) Additions

22. Article 15 of the Charter. For the reasons set forth in paragraphs 2 and 3 of this report, the Working Party felt that it could not usefully recommend at this stage the insertion of the provisions of Article 15 of the Charter in the General Agreement, proposed by the Syrian and French representatives. It was subsequently agreed to insert a new paragraph in Article I in order to meet the views of the Syrian representative (see paragraph 17 below).

23. Articles 26, 27 and 28 of the Charter. While agreeing in principle that insertion of this Article would be desirable, the majority of the Working Party felt that in view of practical difficulties, they could not usefully recommend such inclusion at the present stage. It was of course understood that, in the light of Paragraph I of Article XXIX, the Contracting Parties undertake to apply the principles of the Havana Charter relating to export subsidies to the full extent of their executive authority. The Brazilian representative agreed not to press at this stage the inclusion of Articles 26, 27 and 28 of the Charter, while reserving its right to revert to this matter, should it become clear that the Havana Charter will not come into force at the time envisaged.

c) Other Changes

24. Article I : The Working Party agreed to recommend the insertion of a new paragraph in article I in order to provide for the special position of certain countries of the near East.

It was the view of the Working Party that under the proposed new paragraph of Article I the Contracting Parties, in taking action pursuant to Article XXV with respect to preferences among countries formerly a part of the Ottoman Empire, would be required to make a decision in accordance with the principles and requirements of Article 15 of the Havana Charter.

25. Article V : The Working Party considered the suggestion by the Pakistan representative with regard to the insertion of the interpretative note ad Article 33, Paragraph 1, of the Havana Charter and came to the conclusion that such insertion was not necessary, since the text of Article 33, Paragraph 1 of the Charter tallied with that of Article V, paragraph 1, of the General Agreement, and the Contracting Parties who all signed the Final Act of the Conference of Havana could not interpret these provisions in any way other than that laid down in the note ad Article 33 of the Charter. The representative of Pakistan appreciated the justice of this conclusion and agreed to withdraw his proposal on the understanding that the Working Party would record this statement in its report.

26. Article VI : While agreeing that there is no substantive difference between Article VI of the General Agreement and Article 34 of the Charter, the Working Party recommend the replacement of that Article as the text adopted at Havana contains a useful indication of the principle governing the operation of that Article and constitute a clearer formulation of the rules laid down in that Article. The Working Party, endorsing the views expressed by Sub-committee C of the Third Committee of the Havana Conference, agreed that measures other than compensatory anti-dumping and countervailing duties may not be applied to counteract dumping or subsidization except in so far as such other measures are permitted under other provisions of the General Agreement.

27. Article XII : In view of the decision taken by the Working Party to limit as far as practicable the number of changes in the General Agreement, the representative of Syria did not press his proposal to replace that article.

28. Article XV : Taking account of the recommendation of Sub-Committee F of the Third Committee of the Havana Conference, the Working Party agreed to recommend the deletion of the phrase : "Subject to paragraph 4 of this article" in paragraph 9 of Article XV, which had been proposed by the representative of France, in order to ensure uniformity with the text of Article 24 of the Charter.

29. Article XVI : The representative of Brazil had proposed that in Article XVI the drafting changes adopted when Article 25 of the Havana Charter was drawn up should be inserted. The Working Party agreed that the differences between Article XVI of the General Agreement and Article 25 of the Havana Charter are not of a substantive nature, and that accordingly:

a) the phrase "increased exports" in line 3 of Article XVI of the General Agreement was intended to include the

concept of maintaining exports at a level higher than would otherwise exist in the absence of the subsidy, as made clear in line 3 of Article 25 of the Havana Charter; and

b) the intent of the last sentence of Article XVI of the General Agreement is that consultation shall proceed upon the request of a contracting party when it considers that prejudice is caused or threatened and would not require a prior inter-national determination.

30. Article XIX : It was also the understanding of the Working Party that the phrase "being imported in such increased quantities" in paragraph 1 (a) of Article XIX was intended to cover cases where imports may have increased relatively, as made clear in paragraph 1 (a) of Article 40 of the Havana Charter.

31. Annex I : The Working Party recommends the replacement of the words "provisions of Article 31 of the draft Charter referred to in Article XXIX of this Agreement", in the interpretative note ad Article 2, Paragraph 4, contained in Annex I, by the words "provisions of Article 31 of the Havana Charter". This drafting change suggested by the representative of the Netherlands does not involve any change in the scope of the provision, has been found necessary as the draft Charter would no longer be mentioned in Article XXIX of the General Agreement if the Contracting Parties accept the wording of that Article as proposed by the Working Party.

32. The adoption of the amendments recommended by the Working Party would involve certain drafting changes in the text of Articles I, II, XII, XIII and XXVI. These changes are self-explanatory. The Working Party also recommends that the interpretative notes adopted at Havana in connection with the articles, the text of which would be introduced in the General Agreement, should be inserted in Annex I to the Agreement.

33. The Working Party set up a Legal Working Group to consider the means of giving effect to the amendments recommended; the report of the Legal Working Group is under consideration and the Working Party will submit its recommendations in a further report to the Contracting Parties.

A.

1. Amend the phrase "paragraphs 1 and 2 of Article III" in Article I to read: "paragraphs 2 and 4 of Article III." Insert the following paragraph as a new paragraph 3 in Article I, the present paragraph 3 becoming paragraph 4:

"3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5 of Article XXV which shall be applied in this respect in the light of paragraph 1 of Article XXIX".

2. Amend the phrase "paragraphs 1 and 2 of Article III" in the interpretative note to paragraph 1 of Article I to read "paragraphs 2 and 4 of Article III".

B.

1. Amend the phrase "paragraph 1 of Article III" in paragraph 2 (a) of Article II to read "paragraph 2 of Article III."

2. Replace the text of the interpretative note to paragraph 4 of Article II by the following text:

"Except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, the provisions of this paragraph will be applied in the light of the provisions of Article 3 of the Havana Charter."

C.

Replace the text of Article III by the following text (Article 18 of the Charter):-

Article III.

National Treatment on Internal Taxation and Regulations

1. "The contracting parties recognise that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. "The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like

domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

3. "With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2 but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreements in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. "No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportion which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

6. "The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947 or March 24, 1948 at the option of that contracting party; PROVIDED that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be subject to negotiation.

7. "No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. "(a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

"(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. "The contracting parties recognise that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of the contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. "The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films."

Interpretative Note ad Article III

Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article III.

Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments and authorities within the territory of a contracting party is subject to the provisions of paragraph 6 of Article XXIV. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article III are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article III, the term "reasonable measures" would permit a contracting party to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties.

Paragraph 2

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only

in cases where competition was involved between, on the one hand, the taxed product and on the other hand, a directly competitive or substitutable product which was not similarly taxed.

Paragraph 5

Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.

D.

Replace the text of Article VI by the following text (Article 34 of the Charter):-

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another -

- (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- (b) in the absence of such domestic price, is less than either
 - (i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or
 - (ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect

of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of any other contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry. The CONTRACTING PARTIES may waive the requirements of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

- (a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and
- (b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

Interpretative Note ad Article VI

Paragraph 1

Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

Paragraphs 2 and 3

Note 1

As in many other cases in customs administration, a contracting party may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.

Note 2

Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

E.

Delete the phrase "and to any internal regulation or requirement under paragraphs 3 and 4 of Article III" in paragraph 5 of Article XIII.

F.

Delete the introductory phrase to paragraph 9 of Article XV which reads as follows:-

"Subject to the provisions of paragraph 4 of this Article".

G.

Replace the text of Article XVIII by the following text (Article 13 of the Charter) : -

Article XVIIIGOVERNMENTAL ASSISTANCE TO ECONOMIC DEVELOPMENT
AND RECONSTRUCTION

1. "The contracting parties recognise that special governmental assistance may be required to promote the establishment, development or reconstruction of particular industries or branches of agriculture, and that in appropriate circumstances the grant of such assistance in the form of protective measures is justified. At the same time they recognise that an unwise use of such measures would impose undue burdens on their own economies and unwarranted restrictions on international trade, and might increase unnecessarily the difficulties of adjustment for the economies of other countries.
2. "The CONTRACTING PARTIES and the contracting parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

A.

3. If a contracting party, in the interest of its economic development or reconstruction, or for the purpose of increasing a most-favoured-nation rate of duty in connection with the establishment of a new preferential agreement in accordance with the provisions of paragraph 3 of Article I, considers it desirable to adopt any non-discriminatory measure which would conflict with an obligation which the contracting party has assumed under Part II of this Agreement, but which would not conflict with other provisions of this Agreement, such contracting party

"(a) shall enter into direct negotiations with all the other contracting parties. The appropriate schedules to this Agreement shall be amended in accordance with any agreement resulting from such negotiations; or;

(b) shall initially or may, in the event of failure to reach agreement under sub-paragraph (a), apply to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall determine the contracting party or parties materially affected by the proposed measure and shall sponsor negotiations between such contracting party or parties and the applicant contracting party with a view to obtaining expeditious and substantial agreement. The CONTRACTING PARTIES shall establish and communicate to the contracting parties concerned a time schedule for such negotiations following as far as practicable any time schedule which may have been proposed by the applicant contracting party. The

contracting parties shall commence and proceed continuously with such negotiations in accordance with the time schedule established by the CONTRACTING PARTIES. At the request of a contracting party, the CONTRACTING PARTIES may, where they concur in principle with the proposed measure, assist in the negotiations. Upon substantial agreement being reached, the applicant contracting party may be released by the CONTRACTING PARTIES from the obligation referred to in this paragraph, subject to such limitations as may have been agreed upon in the negotiations between the contracting parties concerned.

4. "(a) If as a result of action initiated under paragraph 3 there should be an increase in imports of any product concerned, including products which can be directly substituted therefor, which if continued would be so great as to jeopardise the establishment, development or reconstruction of the industry, or branch of agriculture concerned, and if no preventive measures consistent with the provisions of this Agreement can be found which seem likely to prove effective, the applicant contracting party may, after informing, and when practicable consulting with, the CONTRACTING PARTIES, adopt such other measures as the situation may require, provided that such measures do not restrict imports more than necessary to offset the increase in imports referred to in this sub-paragraph; except in unusual circumstances, such measures shall not reduce imports below the level obtaining in the most recent representative period preceding the date on which the contracting party initiated action under paragraph 3.

"(b) The CONTRACTING PARTIES shall determine, as soon as possible, whether any such measures should be continued, discontinued or modified. It shall in any case be terminated as soon as the CONTRACTING PARTIES determine that the negotiations are completed or discontinued.

"(c) It is recognised that the relationship between contracting parties referred to in paragraph 3 involves reciprocal advantages, and therefore any contracting party whose trade is materially affected by the action may suspend the application to the trade of the applicant contracting party of substantially equivalent obligations or concessions under this Agreement provided that the contracting party concerned has consulted the CONTRACTING PARTIES before taking such action and the CONTRACTING PARTIES do not disapprove.

B.

5. "In the case of any non-discriminatory measure affecting imports which would apply to any product in respect of which the contracting party has assumed an obligation under Article II of this Agreement and which conflicts with any other provision of this Agreement, the provisions of subparagraph (b) of paragraph 3 shall apply; PROVIDED that before granting a release the CONTRACTING PARTIES shall afford adequate opportunity for all contracting parties which they determine to be materially affected to express

their views. The provisions of paragraph 4 shall also be applicable in this case.

C.

6. "If a contracting party in the interest of its economic development or reconstruction considers it desirable to adopt any non-discriminatory measure affecting imports which would conflict with the provisions of this Agreement other than Article II, but which would not apply to any product in respect of which the contracting party has assumed an obligation under Article II, such contracting party shall notify the CONTRACTING PARTIES and shall transmit to the CONTRACTING PARTIES a written statement of the considerations in support of the adoption, for a specified period, of the proposed measure.

7. "(a) On application by such contracting party to CONTRACTING PARTIES shall concur in the proposed measure and grant the necessary release for a specified period if, having particular regard to the applicant contracting party's need for economic development or reconstruction, it is established that the measure

- (i) is designed to protect a particular industry established between January 1, 1939 and March 24, 1948, which was protected during that period of its development by abnormal conditions arising out of the war; or
- (ii) is designed to promote the establishment or development of a particular industry for the processing of an indigenous primary commodity, when the external sales of such commodity have been materially reduced as a result of new or increased restrictions imposed abroad; or
- (iii) is necessary, in view of the possibilities and resources of the applicant contracting party to promote the establishment or development of a particular industry for the processing of indigenous primary commodity, or for the processing of a by-product of such industry, which would otherwise be wasted, in order to achieve a fuller and more economic use of the applicant contracting party's natural resources and manpower and, in the long run, to raise the standard of living within the territory of the applicant contracting party, and is unlikely to have a harmful effect, in the long run, on international trade; or
- (iv) is unlikely to be more restrictive of international trade than any other practicable and reasonable measure permitted under this Agreement, which could be imposed without undue difficulty, and is the one most suitable for the purpose having regard to the economies of the industry or branch of agriculture concerned and to the applicant contracting party's need for economic development or reconstruction.

"The foregoing provisions of this sub-paragraph are subject to the following conditions:

- (1) any proposal by the applicant contracting party to apply any such measure, with or without modification, after the end of the initial period, shall not be subject to the provisions of this paragraph; and
- (2) the CONTRACTING PARTIES shall not concur in any measure under the provisions of (i), (ii) or (iii) above which is likely to cause serious prejudice to exports of a primary commodity on which the economy of the territory of another contracting party is largely dependent.

"(b) The applicant contracting party shall apply any measure permitted under sub-paragraph (a) in such a way as to avoid unnecessary damage to the commercial or economic interests of any other contracting party.

8. "If the proposed measure does not fall within the provisions of paragraph 7, the contracting party

- (a) may enter into direct consultations with the contracting party or contracting parties which, in its judgment, would be materially affected by the measure. At the same time, the contracting party shall inform the CONTRACTING PARTIES of such consultations in order to afford them an opportunity to determine whether all materially affected contracting parties are included within the consultations. Upon complete or substantial agreement being reached, the contracting party interested in taking the measures shall apply to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly examine the application to ascertain whether the interests of all the materially affected contracting parties have been duly taken into account. If the CONTRACTING PARTIES reach this conclusion, with or without further consultations between the contracting parties concerned, they shall release the applicant contracting party from its obligations under the relevant provisions of this Agreement, subject to such limitations as the CONTRACTING PARTIES may impose, or
- (b) may initially, or in the event of failure to reach complete or substantial agreement under sub-paragraph (a), apply to the CONTRACTING PARTIES. The CONTRACTING PARTIES shall promptly transmit the statement submitted under paragraph 6 to the contracting party or contracting parties which are determined by the CONTRACTING PARTIES to be materially affected by the proposed measure. Such contracting party or contracting parties shall, within the time limits prescribed by the CONTRACTING PARTIES, inform them whether, in the light of the anticipated effects on the economy of the territory of such contracting party or parties, there is any objection to the proposed measure. The CONTRACTING PARTIES shall,

- (i) if there is no objection to the proposed measure on the part of the affected contracting party or contracting parties, immediately release the applicant contracting party from its obligations under the relevant provision of this Agreement; or
- (ii) if there is objection, promptly examine the proposed measure, having regard to the provisions of this Agreement, to the considerations presented by the applicant contracting party and its need for economic development or reconstruction, to the views of the contracting party or contracting parties determined to be materially affected, and to the effect which the proposed measure, with or without modification, is likely to have, immediately and in the long run, on international trade, and, in the long run, on the standard of living within the territory of the applicant contracting party. If, as a result of such examination, the CONTRACTING PARTIES concur in the proposed measure, with or without modification, they shall release the applicant contracting party from its obligations under the relevant provisions of this Agreement, subject to such limitations as they may impose.

9. "If, in anticipation of the concurrence of the CONTRACTING PARTIES in the adoption of a measure referred to in paragraph 6, there should be an increase or threatened increase in the imports of any product concerned, including products which can be directly substituted therefor, so substantial as to jeopardize the establishment, development or reconstruction of the industry or branch of agriculture concerned, and if no preventive measures consistent with this Agreement can be found which seem likely to prove effective, the applicant contracting party may, after informing, and when practicable consulting with, the CONTRACTING PARTIES, adopt such other measures as the situation may require, pending a decision by the CONTRACTING PARTIES on the contracting party's application; PROVIDED that such measures do not reduce imports below the level obtaining in the most recent representative period preceding the date on which notification was given under paragraph 6.

10. "The CONTRACTING PARTIES shall, at the earliest opportunity but ordinarily within fifteen days after receipt of an application under the provisions of paragraph 7 or sub-paragraphs (a) or (b) of paragraph 8, advise the applicant contracting party of the date by which it will be notified whether or not it is released from the relevant obligation. This shall be the earliest practicable date and not later than ninety days after receipt of such application: PROVIDED that, if unforeseen difficulties arise before the date set, the period may be extended after consultation with the applicant contracting party. If the

applicant contracting party is not so notified by the date set, it may, after informing the CONTRACTING PARTIES, institute the proposed measure.

11. "Any contracting party may maintain any non-discriminatory protective measure affecting imports in force on September 1, 1947 which has been imposed for the establishment, development or reconstruction of a particular industry or branch of agriculture and which is not otherwise permitted by this Agreement; PROVIDED that notification has been given to the other contracting parties no later than October 10, 1947 of such measure and of each product on which it is to be maintained and of its nature and purpose.

12. Any contracting party maintaining any such measure shall within sixty days of becoming a contracting party submit to the CONTRACTING PARTIES a statement of the considerations in support of the maintenance of the measure and the period for which it wishes to maintain it. The CONTRACTING PARTIES shall as soon as possible, but in any case within twelve months from the day of such contracting party becoming a contracting party, examine and give a decision concerning the measure as if it had been submitted to the CONTRACTING PARTIES for their concurrence under the provisions of the preceding paragraphs of this Article.

13. The provisions of paragraphs 11 and 12 of this Article shall not apply to any measure in conflict with obligations under Article II of this Agreement.

14. In cases where the CONTRACTING PARTIES decide that a measure should be modified or withdrawn by a specified date, they shall have regard to the possible need of a contracting party for a period of time in which to make such modification or withdrawal."

Interpretative Note ad Article XVIII
Paragraphs 7 (a) (ii) and (iii)

The word "processing", as used in these sub-paragraphs, means the transformation of a primary commodity or of a by-product of such transformation into semi-finished or finished goods but does not refer to highly developed industrial processes.

H.

Delete sub-paragraph (as of paragraph 5 of Article XXVI)

I.

Replace the text of Article XXIX by the following text:

Article XXIX

The Relation of this Agreement to the Havana Charter

1. "The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of the Havana Charter pending their acceptance of it in accordance with their constitutional procedures.

2. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force.

3. If by September 30, 1949, the Havana Charter has not entered into force, the contracting parties shall meet before December 31, 1949 to agree whether this Agreement shall be amended, supplemented or maintained.

4. If at any time the Havana Charter should cease to be in force, the contracting parties shall meet as soon as practicable thereafter to agree whether this Agreement shall be supplemented, amended or maintained. Pending such Agreement, Part II of this Agreement shall again enter into force provided that the provisions of Part II other than Article XXIII shall be replaced, mutatis mutandis, in the form in which they then appeared in the Havana Charter.

5. If any contracting party has not accepted the Havana Charter by the date upon which it enters into force, the contracting parties shall confer to agree whether, and if so in what way, this Agreement insofar as it affects relations between such contracting party and other contracting parties, shall be supplemented or amended. Pending such agreement the provisions of Part II of this Agreement shall, notwithstanding the provisions of paragraph 2 of this Article, continue to apply as between such contracting party and other contracting parties.

6. Contracting parties which are Members of the International Trade Organization shall not invoke the provisions of this Agreement so as to prevent the operation of any provision of the Havana Charter. The application of the principle underlying this paragraph to any contracting party which is not a Member of the International Trade Organization shall be the subject of an agreement pursuant to paragraph 5 of this Article."

ANNEX II

DRAFT OF PROTOCOL CONTAINING AMENDMENTS TO
PART II

The Governments of _____ acting
in their capacity of contracting parties to the General
Agreement on Tariffs and Trade (hereinafter referred to
as the Agreement),

desiring to effect an amendment to the Agreement,
pursuant to the provisions of Article XXX thereof,

HEREBY AGREE AS FOLLOWS:-

1. The texts of Articles III, VI, XIII, XV, XVIII and XXVI
of the Agreement shall read as follows:-

2. This Protocol done in a single English and a single
French original both texts authentic shall, following its
signature at the close of the Second Session of the
Contracting Parties, be deposited with the Secretary-General
of the United Nations. The deposit of the Protocol will,
as from the date of deposit, constitute the deposit of the
instruments of acceptance of the amendment set out in
paragraph 1 of this Protocol by any government whose
representative has signed without qualification. The
instruments of acceptance of other governments will be
deposited with the Secretary-General of the United Nations.

3. The amendment set out in paragraph 1 of this Protocol
shall enter into force upon acceptance of it by two thirds
of the governments which are at that time contracting parties.

4. The Secretary-General of the United Nations will inform
all interested governments of each acceptance of the amend-
ment set out in this Protocol and of the date upon which
such amendment enters into force. The Secretary-General is
authorized to effect registration of this Protocol at the
appropriate time.

IN WITNESS WHEREOF the respective representatives duly
authorized to that effect, have signed the present Protocol.
DONE at Geneva this _____ day of August one thousand nine
hundred and forty eight.

