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GENERAL AGREEMENT ON TARIFFS AND TRADE  
Contracting Parties  
Second Session

REPORT OF WORKING PARTY 5 ON ARTICLE XVIII  
As amended by the  
CONTRACTING PARTIES

1. Working Party No. 5, which held eight meetings, was under the Chairmanship of Mr. R.J. SHACKLE (United Kingdom). With the exception of the first meeting the Vice-Chairman, Mr. C.L. HEWITT (Australia) presided.
2. The Working Party consisted of representatives of Australia, Brazil, Cuba, France, Netherlands, Norway, United Kingdom and United States. The representatives of Syria and Chile attended meetings of the Working Party at which matters of interest to their countries were discussed.

Terms of reference

3. The terms of reference were "to consider the lists of products affected by non-discriminatory measures notified under paragraph 6 [II]\* of Article XVIII in document GATT/CP.2/4/Add 2, and to submit recommendations to the Contracting Parties." The Working Party had before it the aforementioned document GATT/CP.2/4/Add.2<sup>xxx</sup> which reproduced the lists of non-discriminatory measures contained in the original documents as follows:

Chile	E/PC/T/250/Add.1 E/PC/T/256/Add.1
Cuba	E/PC/T/249
India	E/PC/T/242
Lebanon- Syria	E/PC/T/251 E/PC/T/256/Add.3
Norway	E/PC/T/246 E/PC/T/256/Add.1

Further, it was agreed after consultation between the Chairman of the Working Party and the Chairman of the CONTRACTING PARTIES that the Working Party should make recommendations concerning the Note presented by the United Kingdom delegation circulated as document GATT/CP.2/WP.5/3 of August 23 1948 and the letter of August 23 from the Chairman of the Netherlands delegation to the Chairman of the CONTRACTING PARTIES (GATT/CP.2/WP.5/4)

\* The paragraph numbers placed in square brackets in this report refer to the revised paragraph numbers of Article XVIII contained in GATT/CP.2/34

xxx Also GATT/CP.2/4/Add.2/Corr.1

4. The Working Party had before it a schedule of dates (Annex A) showing for the contracting parties concerned the dates of signature and application of the Protocol of Provisional Application and the dates on which the statements of considerations in support of the non-discriminatory measures were required to be made. It was agreed that the date on which, according to the terms of paragraph 6/127 of Article XVIII, detailed statements were required, was sixty days after the date of provisional application, as distinct from sixty days after the date of signature of the Protocol.

#### Special situations of the United Kingdom and Netherlands

5. With respect to the Note by the United Kingdom delegation, the Working Party considered the circumstances involved in the notification by the United Kingdom of measures in force on September 1, 1947 in the large number of territories, for which the United Kingdom has international responsibility. The Working Party agreed to recommend that the CONTRACTING PARTIES should recognise the measures in force on September 1, 1947, notified in the note submitted and listed in Annex B, as falling within the provisions of paragraph 6/117 of Article XVIII, although they were not notified until August 23, 1948. Accordingly the Working Party recommends that the CONTRACTING PARTIES grant a waiver under Article XXV in respect of the date of notification of the measures and adopt Decision I set out in Annex C.

6. With respect to the letter of August 23, 1948 from the Chairman of the Netherlands delegation, the Working Party noted that the laws and regulations in the Netherlands Indies were valid on September 1, 1947, but that their operation had been suspended on that date. (However, regulations controlling imports of these goods were being administered on that date for financial reasons.) The Delegate for the Netherlands stated however that the administration of these laws had re-commenced from January 1, 1948 and that the measures were directly applied from that date for purposes of reconstruction and development. It was therefore agreed to recommend that the CONTRACTING PARTIES should recognise the measures listed in Annex B as notified pursuant to paragraph 6/117 of Article XVIII and that the CONTRACTING PARTIES grant a waiver under Article XXV in respect of the dates of operation and notification of the measures and adopt Decision II set out in Annex C.

#### Other Questions

7. Because statements of the considerations in support of non-discriminatory measures proposed to be maintained had only recently been received from several contracting parties it was decided to recommend that the CONTRACTING PARTIES should examine all the measures at the third session. The CONTRACTING PARTIES are required by the provisions of paragraph 6/127 of Article XVIII to give decisions within twelve months of a government's becoming a contracting party, that is in respect of measures notified by the Governments of Cuba and the Netherlands (in respect of the Netherlands Indies) by January 16, 1949 and April 10 1949 respectively.

As this would be before the completion of the third session of the CONTRACTING PARTIES, the Working Party decided to recommend the adoption by the CONTRACTING PARTIES of Decision III set out in Annex C which would enable these decisions to be given at the third session. The adoption of that Decision would imply that the Governments of Cuba and the Netherlands are permitted to maintain measures notified by them until the CONTRACTING PARTIES have taken a decision regarding such measures.

8. The Working Party then considered the following questions:
- (a) eligibility of measures notified for consideration under paragraph 6 /II/ of Article XVIII;
  - (b) nature of the information, which it would be helpful for the governments concerned to include in the statements in support of the maintenance of the measures;
  - (c) procedure for examining and deciding on measures notified.

Eligibility of measures

9. With regard to the eligibility of measures notified under paragraph 6 /II/ of Article XVIII the Working Party agreed to draw the attention of the CONTRACTING PARTIES to the terms of that paragraph, which permitted the notification of only those measures which had been imposed for the establishment, development or reconstruction of a particular industry or branch of agriculture and which were not otherwise permitted by the Agreement. In particular the Working Party agreed to draw the attention of the CONTRACTING PARTIES to the difference between the provisions of Article XII - Restrictions to Safeguard the Balance of Payments - and Article XVIII - Adjustments in Connection with Economic Development (Government assistance to Economic Development and Reconstruction). Although measures imposed under the provisions of Article XVI might in fact provide protection to local industries, this did not ipso facto bring such measures within the scope of Article XVIII.

Measures notified by the Government of Cuba

10. With regard to the measures notified by the Government of Cuba the Working Party had before it the statement by that Government of the considerations in support of the maintenance of the measures (GATT/CP.2/WP.5/2 reproducing att/1/20). The Working Party took note of the withdrawal of the measure concerning quebracho and of the considerations advanced in respect of the measures concerning sisal (henequen) and trimmings, galloons and ribbons.

11. With respect to the measures concerning trimmings, galloons and ribbons, the Working Party considered the difference in nomenclature between the letter of notification of the measures under paragraph 6 /II/ of Article XVIII dated 10 October, 1947 (E/PC/T/249 and GATT/CP.2/WP.5/2) and the schedules of tariff concessions (GATT/Volume 3, page 64) The letter referred to items 142A and 142B of the Cuban tariff, which correspond with tariff items 142A, 142B, 142E and 142F shown in the schedules. The Cuban tariff has not as yet been amended to accord with the new sub-divisions, which were used in the schedules.

12. The Cuban representative stated that his Government would seek to re-negotiate some of the items included in the schedules of tariff concessions. It had not yet been able to reach agreement upon the withdrawal of these items, which included items 127A and 142E and F (as listed in the schedules). The Working Party noted that the provisions of paragraph 6 ¶11 of Article XVIII did not apply to quantitative restrictions on the imports of these items, as tariff concessions had been negotiated with respect to them. The delegate of Cuba then stated that in relation to items 127A and B and 142A and B (as they appear in Decree 2155 of 1944 of the Cuban Government, which covers rayon as well as other synthetic ribbons), his delegation considered them all to be off the schedules and consequently reserved the rights of his Government to proceed with these items as not negotiated in 1947 at Geneva. The delegate of the United States stated that his Government considered that certain of these items were negotiated at Geneva and therefore properly remain in Schedule IX.

13. The Working Party also noted that the measures notified concerning trimmings, galloons and ribbons were discriminatory in their operation and consequently for this reason the provisions of paragraph 6 ¶11 of Article XVIII, which relate solely to non-discriminatory measures, were not applicable.

Measures in operation in Norway.

14. The representative of Norway described the operation of measures to restrict imports in force in Norway at the present time. The Working Party noted that:

- (a) The measures notified under paragraph 6 ¶11 of Article XVIII were provided for in decrees instituted for the protection of domestic industries and branches of agriculture and were non-discriminatory in their application.
- (b) Since the end of the war financial regulations had been in force for the control of imports and exports in order to protect the balance of payments and these superseded the operation of the measures referred to in the preceding paragraph. Generally the financial regulations were not administered in a non-discriminatory manner.
- (c) The decrees under which the notified measures had been in force, whilst still legally in existence, were not in fact being administered.

15. It was the opinion of the Working Party that the regulations maintained in Norway at the present time for the purpose of protecting the balance of payments applied to the products in respect of which measures had been notified at the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment and appeared to conform to the provisions of Article XII of the Agreement. Therefore, it was not necessary for the CONTRACTING PARTIES to determine the question of their maintenance under the provisions of paragraph 6 ¶12 of Article XVIII. The

Working Party noted also that if and when, as a consequence of changes in the Norwegian balance of payments situation, these regulations ceased to be permissible under Article XII, it would be open to the Norwegian Government to apply to the CONTRACTING PARTIES under paragraph 7 or 8 of Article XVIII for permission to use similar measures for the purpose of promoting economic development or reconstruction. The Norwegian Government would be free to submit such an application in advance of the change in the balance of payments situation which made Article XII inapplicable.

Measures notified by the Governments of Syria and Lebanon.

16. The Working Party considered the measures notified by the Governments of Syria and Lebanon as contained in the revised list presented by the two Governments (GATT/CP.2/WP.5/5/Add.1) and also the explanatory note thereto (GATT/CP.2/WP.5/5). The Working Party took note of the withdrawal of items 839 and 845 on which tariff concessions had been negotiated.

17. With regard to the "products under monopoly control" and the "products of existing industries" described in sections (1) and (2) of the explanatory note, there was discussion in the Working Party as to whether these measures properly fell within the terms of paragraph 6/117 of Article XVIII relating to the establishment, development or reconstruction of a particular industry or branch of agriculture. In view of the complexity of the questions it was agreed that the eligibility of these measures should be considered at the third session of the CONTRACTING PARTIES, when the detailed statement of considerations in support of the maintenance of the measures described in the explanatory note will be available.

Measure notified by the Government of India

18. In view of the statement of considerations in support of its non-discriminatory measure submitted by the Government of India (GATT/CP.2/WP.5/6), the Working Party considered that the measure should be examined under the provisions of paragraph 6/127 of Article XVIII.

Measures notified by the Government of Chile

19. The Delegate of Chile advised the Working Party that, in his opinion, the measures which had been notified by his Government should be considered under the provisions of paragraph 6/117 of Article XVIII. The Working Party recommended that further consideration should be given to this question at the Third Session of the CONTRACTING PARTIES.

Guidance as to information in support of maintenance of measures

20. With regard to the nature of the information, which it would be helpful for applicant contracting parties to provide as considerations in support of the maintenance of measures, the Working Party decided to make recommendations as set out in Annex D. In view of these recommendations the Working

Party agreed that the Governments of Cuba, Netherlands, United Kingdom, India, Lebanon and Syria should be invited to submit by November 15, 1948 such material supplementary to their statements of considerations in support of their measures as might seem appropriate to them.

Procedure for examining and deciding on measures notified.

21. The Working Party considered that, in order that the CONTRACTING PARTIES at their third session should be able (in accordance with the recommendations in paragraph 7 above) to examine and give a decision concerning the measures listed in Annex B, it was necessary

- (a) to establish a procedure for the action necessary between the second and third sessions in respect of these measures,
- (b) to consider in detail the procedure for examination at the third session.

22. In this connection the Working Party noted that, although the CONTRACTING PARTIES are required under paragraph 6 /127 of Article XVIII to give decisions on existing measures as though the applications had been submitted under paragraphs 7 or 8 the precise procedures of the latter paragraphs need modification in relation to existing measures.

23. The Working Party noted that the procedure for dealing with the existing measures of new adherents would be the subject of special agreement between them and the CONTRACTING PARTIES in each case. However, it was probable that in basic essentials the procedure now established would form a model for the future in dealing with any measures other than those referred to in Annex B to which the provisions of paragraph 6 /117 of Article XVIII would apply.

24. The Working Party accordingly recommended the procedures described in Annex E.

25. The Working Party considered it desirable that decisions taken at the third session on all the measures listed in Annex B should include those notified by the Government of Chile if, by the date of the next session, Chile had become a contracting party. For this purpose it would be necessary for the CONTRACTING PARTIES, and also in the interests of Chile, if statements in support of these measures were submitted, in accordance with the timetable suggested in Annex E, by November 15, 1948. Although it was recognized that the Government of Chile could not be bound by the provisions of paragraph 6 /127 of Article XVIII unless and until it became a contracting party, it was thought that the Chilean Delegation might be able to agree to an informal arrangement with the CONTRACTING PARTIES to supply the required information by November 15 on the understanding that it would be considered at the next session only if Chile had become a contracting party by that date.

26. The Chilean Delegate, who was invited to give his views, was unable to agree to this suggestion but undertook to communicate it to his Government.

27. After further consideration the Working Party recommends that the Chilean Delegation be asked by the CONTRACTING PARTIES to agree informally that on the date on which the Chilean Government signs the Protocol of Provisional Application, it will simultaneously forward detailed statements in support of the maintenance of the measures. Requests by the other contracting parties for additional information should be made through the Chairman within one month of receipt by them of the Chilean statement. Objections to any of the Chilean measures may be lodged by the contracting parties which consider themselves materially affected at any time up to the date on which the CONTRACTING PARTIES examine and give a decision concerning these measures. Since paragraph 6 ~~127~~ of Article XVIII provides that such decisions shall be given as soon as possible it is further recommended that the CONTRACTING PARTIES at their third session give decisions on the measures notified by Chile.

28. The timetable described in the preceding paragraph is recommended in the case of Chile instead of that set forth in Annex E. The other procedures in Annex E would be applied so that, for example, the Government of Chile would receive copies of statements in support of the measures of other contracting parties and would have the opportunity to lodge objections by February 28, 1949.

#### Statement of Delegate of Cuba

29. At the special request of the Cuban Representative the following note has been included in the Report:

"After examining the procedures recommended by the Working Party contained in Annexes D and E, to be followed by the CONTRACTING PARTIES in dealing with existing measures under paragraph 6 ~~127~~ of Article XVIII, the Cuban Delegation considers that a like detailed procedure should be adopted by the CONTRACTING PARTIES in relation to existing measures under Articles XII and XVI of the General Agreement."

The Working Party considered that, since the substance of the statement lay outside its terms of reference, it was not possible to comment on it.

#### Procedure for examining and deciding on new measures submitted under Article XVIII

30. It was agreed after consultation between the Chairman of the Working Party and the Chairman of the CONTRACTING PARTIES that the Working Party should make recommendations concerning the procedure to be applied to new measures submitted under Article XVIII (as contained in GATT/CP.2/34) between the Second and Third Sessions of the CONTRACTING PARTIES.

31. The Working Party agreed that it was necessary to provide for the practical application of the provisions of Article XVIII relating to new protective measures, since the terms of the Article prescribed obligations which could not be carried out, especially between regular sessions, without suitable machinery.

32. It was recognized that it was premature at this stage to attempt to lay down a permanent procedure, since this would have to be evolved in the light of experience. It was however agreed to recommend, experimentally and without prejudice to future practice, certain procedures to be used between the Second and Third Sessions of the CONTRACTING PARTIES.

33. It was considered unnecessary to provide other machinery in the interim before the version of Article XVIII contained in the draft protocol (GATT/CP.2/34) came into effect, beyond recommending that any contracting party which wished to apply a new protective measure during that period should inform the Chairman, who would notify particulars to the other contracting parties and, at his discretion, call a meeting of the CONTRACTING PARTIES if it was urgently needed.

34. The main practical difficulties arise from the fact that Article XVIII as contained in the draft protocol (GATT/CP.2/34) is derived from Articles 13 and 14 of the Havana Charter and that these Articles designed for the use of the ITO they presuppose a body, in more or less permanent session, capable of taking substantive decisions.

35. The Working Party considered the possibility of establishing a standing committee to administer provisions of Article XVIII but rejected this proposal principally on the grounds that the number of applications between the second and third sessions was unpredictable. The Working Party considers that substantive decisions under this Article must be taken by the CONTRACTING PARTIES in session and, where it is not possible to defer a decision until the Third Session, it will be necessary for the Chairman to call a special session. The Working Party wished to draw attention to the fact that under the provisions of paragraph 10 a decision must be given within ninety days of the receipt of an application under paragraphs 7 or 8.

36. Finally, the Working Party recognized that in practice these procedures, which are necessarily complicated, may not be invoked between the Second and Third Sessions, but nevertheless considered it desirable to provide for the various contingencies envisaged in Article XVIII.



ANNEX A

DATES RELEVANT TO THE MAINTENANCE OF NON-DISCRIMINATORY MEASURES UNDER PARAGRAPH 6 /11 and 12/ OF ARTICLE XVIII AS PRESENTED TO THE WORKING PARTY

	Date of Signature of the Protocol of Provisional Application	Date of Application of the Protocol of Provisional Application	Date on which Statement of Considerations in Support of maintenance and of period of maintenance required to be made.
Cuba	Dec.17 1947	Jan.16 1948	March 16 1948
Netherlands in respect of all overseas territories	March 11 1948	April 10 1948 <sup>⌘</sup>	June 9 1948
India	June 8 1948	June 8 1948	Sept. 6 1948
Norway	June 10 1948	July 10 1948	Sept. 8 1948
United Kingdom in respect of all overseas territories other than Newfoundland and Jamaica	June 28 1948	July 28 1948 <sup>⌘</sup>	Sept.26 1948
Lebanon	June 29 1948	July 29 1948	Sept.27 1948
Syria	June 30 1948	July 30 1948	Sept.28 1948

⌘ Although formally the GATT was provisionally applied on behalf of these overseas territories on April 10 in the case of the Netherlands and July 28 in the case of the United Kingdom, in fact action was taken to apply the agreement provisionally on March 1 and June 28 respectively.

ANNEX B

LIST OF PRODUCTS COVERED BY MEASURES NOTIFIED UNDER PARAGRAPH  
6 /117 OF ARTICLE XVIII AND REQUIRING  
DECISIONS AT THE THIRD SESSION

Cuba

Sisal (henequen) fibres. Decree No.1693 of 23 June 1949

Netherlands

In respect of Netherlands Indies.

1935 No. 86 - cement - latest bylaw 1940 No. 469

1935 No.341 - iron frying pans - latest bylaw 1940 No.259

1936 No.542 - beer - latest bylaw 1940 No. 475

1934 No.678 - coloured woven textiles (sarongs) - latest  
bylaw 1940 No. 229

1936 No. 65 - some categories of cotton textiles which can  
be woven on sarong looms - latest bylaw 1940  
No.431

India

Grinding wheels and segments

United Kingdom

In respect of Northern Rhodesia and Mauritius

Tea (Mauritius)

"Filled" soap i.e. soap containing not less than 45%  
and not more than 62% of fatty acid (Northern Rhodesia)

Lebanon-Syria

<u>Tariff Item No.</u>	<u>Description of Products</u>
55 to 62 ) (except 62b) )	Edible fruit
68 to 74	Cereals
75 to 82	Milling products: malt, starch and fecula
122	Sugar
132	Chocolate and articles made of chocolate.
133 to 136	Preparations with basis of flour or fecula

<u>Tariff Item No.</u>	<u>Description of Products</u>
137 to 144	Preparations of vegetables or fruits
152 to 161 (except 154b, 155, ) 157a-2 and 3, 157b-2)	Beverages, alcoholic liquids and vinegars
171 and 172	Tobacco
178	Salt
192 (except 192b and c)	Cement
319 (except 319d, c-1 & 3-2)	Perfumary articles
320 (except 320d)	Soap
325 (except 325b)	Candles and tapers
329	Glues of animal origin
340	Matches
351 to 357 (except 353)	Tanned Leather
358 to 365 (except 362 and 363))	Manufactures of leather
Ex. 379	Rubber soles
393	Plywood
Ex 398a	Doors and windows
401 to 405	Articles made of wood
417 to 418	Cardboard
428	Envelopes
430	Boxes, cases for jewellery, spectacles, etc. of cardboard or paper
443 to 446	Natural silk thread
449 to 461	Fabrics of natural silk, pure or mixed
470 to 492 (except 477 and 486a))	Fabrics of artificial silk, of artificial silk waste, and of textile fibres, pure or mixed

<u>Tariff Item No.</u>	<u>Description of Products</u>
507	Woollen fabrics
518	Cotton
522 to 525 (except 522b-4) )	Cotton thread
527 to 540	Cotton fabrics, pure or mixed
566	Cabling, cordage and twine of hemp
580 to 583 (except 580-a and b and 581-a) )	Hosiery
600 to 606 (except 604b)	Footwear
639	Manufactures of cement and concrete
663 to 681	Glass and glassware
Ex 755	Metal bedsteads
768 and 769	Copper articles
Ex 841a	Machinery for manufacturing foot- wear
Ex 855b	Machines for the manufacture of beer
Ex 855c	Machinery and apparatus for the manufacture of matches
860	Electric batteries
975 and 976	Games and toys for children

N.B. The exceptions in brackets are items forming the subject of tariff negotiations concluded in 1947.

#### Chile

(A) Products in respect of which quotas have been applied to assist the development of the domestic production of similar merchandise:

Calcium carbide;  
Cans of aluminium, saucepans and water bottles;  
Tailor's chalk;  
Butter;  
Stockings of cotton, natural silk, rayon or nylon,  
and socks of cotton, silk and wool;  
Bovine cattle for slaughtering;  
Sacks for agricultural uses.

(B) Products in respect of which import licences are withheld, to assist the development of the domestic production of similar merchandise:

Silver alloyed with other metals;  
Milling-cutters, boring tools, screw-taps, and screw dies of all types and specifications;  
Calcium carbide;  
Toilet articles;  
Paper clips;  
Cork in sheets of a thickness not exceeding 4 mm., and ordinary stoppers of cork;  
Endless belts, of linen, for cigar machines;  
Window glass, flat, common, of a thickness not exceeding 6 mm. and a breadth not exceeding 1.55 metres;  
Retort carbon;  
Galalith, in sheets and bars;  
Wicks for candles;  
Wools up to 54 s.;  
Potassium Carbonate;  
Potassium metabisulphite;  
Dry batteries, except those for telephone and bells and small tubular batteries;  
Glass bricks or blocks for building;  
Umbrellas except automatic or spring umbrellas and en-tout-cas;  
Fancy paper, glossy and for binding;  
Threads, fibres and yarns of flax in all sizes up to No. 30;  
Tissues of horse hair;  
Silica bricks, and foundry vessels of clay;  
Footballs and basket balls;  
Smoothing irons, coal-heated.

(E) Wines, tobacco, cigars and cigarettes of foreign origin subject to a higher excise duty than like articles of domestic origin, with the aim, inter alia, of protecting the development of the corresponding domestic industries.

ANNEX C

DECISIONS

I

The CONTRACTING PARTIES,

exercising their power of waiver under paragraph 5 (a) of Article XXV of the General Agreement on Tariffs and Trade,

HAVING considered the circumstances relating to the notification by October 10 1947 of measures under paragraph 6 of Article XVIII in force on September 1, 1947, in overseas territories for which the United Kingdom has international responsibility

DECIDE that, with the exception of the date by which notification of existing measures is required, the provisions of paragraph 6 of Article XVIII shall apply to measures to restrict the import of tea into Mauritius and of "filled soap" into Northern Rhodesia in force on September 1, 1947, notified by the Government of the United Kingdom on August 23, 1948.

II

The CONTRACTING PARTIES

exercising the power of waiver under paragraph 5 (a) of Article XXV of the General Agreement on Tariffs and Trade,

HAVING noted the circumstances prevailing in the Netherlands Indies on September 1, 1947

DECIDE that the provisions of paragraph 6 of Article XVIII with the exception of the dates of September 1, 1947 and October 10, 1947 shall apply to the following measures of the type referred to in that paragraph notified in respect of the Netherlands Indies, on August 23, 1948:

1935 No. 86 - cement - latest bylaw 1940 No. 469  
1935 No. 341 - iron frying pans - latest bylaw 1940  
No. 259  
1936 No. 542 - beer - latest bylaw 1940 No. 475  
1934 No. 678 - coloured woven textiles (sarongs) -  
latest bylaw 1940 No. 229

1936 No. 65 - some categories of cotton textiles which  
can be woven on sarong looms - latest  
bylaw 1940 No. 431

III

The CONTRACTING PARTIES

exercising their power of waiver under paragraph 5(a) of Article XXV of the General Agreement on Tariffs and Trade,

HAVING noted that decisions under the provisions of paragraph 6 of Article XVIII of the Agreement concerning measures notified by the Governments of Cuba and the Netherlands (the latter in respect of the Netherlands Indies) shall be given by January 16, 1949, and April 10, 1949 respectively and

HAVING noted that the next session of the CONTRACTING PARTIES is not scheduled to be held until April 1949 and that it is not possible to make the required decisions at the current session

DECIDE that the decisions in respect of the above mentioned measures shall be given at the Third Session of the CONTRACTING PARTIES.

ANNEX D

NATURE OF INFORMATION WHICH IT WILL BE HELPFUL  
FOR APPLICANT CONTRACTING PARTIES TO SUPPLY AS  
CONSIDERATIONS IN SUPPORT OF THE MAINTENANCE OF  
MEASURES IN ACCORDANCE WITH PARAGRAPH 6 12 OF  
ARTICLE XVIII

(1) In setting out items on which it was thought that information would be helpful, it was recognized that many countries have not the administrative techniques necessary to provide information under every heading. It was considered however that it would be useful to applicant contracting parties to have some guidance as to the material the submission of which to the CONTRACTING PARTIES would expedite decisions on applications. The types of information listed in paragraphs 2 and 3 below are therefore given as illustrations without suggesting either that the lists are exhaustive or that all the information listed would be appropriate in all cases. It would be for the applicant contracting parties themselves to determine what information they will submit.

(2) It is suggested that the information set out below would be of assistance. In this list the information suggested relates, except where otherwise stated, to the goods described under item (b) or to the industry or branch of agriculture producing those goods. Furthermore references to "industry" should be read, unless otherwise stated, as referring also to "branch of agriculture" and references to "economic development" as referring also to "reconstruction"

- (a) Precise description of the measure including the range and type of goods to which it relates and the method of operation.
- (b) Precise description of the range and type of goods produced by the industry in respect of whose development the measure has been maintained.
- (c) Statistics of quantities and values over a period of years showing -
  - (1) production (in the case of a branch of agriculture also area planted)
  - (2) imports
  - (3) exports
- (d) Number and location of enterprises or firms.
- (e) Numbers employed
- (f) Total working population of the country by principal occupations.
- (g) Average level of wages paid to employees.



- (h) Capital investment.
  - (i) Net profits or losses.
  - (j) Cost of imported product ex duty at place of entry into country, costs of transport and distribution of imported product from place of entry to principal market or markets and selling price of domestic product at principal market or markets.
  - (k) History of tariff and other protection enjoyed including existing duty, if any, period for which protective measures have been in force and the effect which they have had on the establishment or development of the industry.
  - (l) Reasons for the selection of the measure proposed to be maintained in preference to other measures permitted by the GATT such as tariff protection or subsidy payments.
  - (m) Data concerning the future development of the industry - including for example expected levels of production and costs - and the possibility of its becoming independent of the measure proposed to be maintained. (This information would have a particular bearing on the period for which the applicant contracting party has requested the maintenance of the measure).
- (3) If an applicant contracting party elects to apply under paragraph 2.7 (i) or (ii) of Article XVIII, the following additional data would be helpful:
- (i) (a) the date of establishment of the industry,  
(b) the type of protection during the period January 1st, 1939, to March 24th, 1948, resulting from abnormal conditions arising out of the war.
  - (ii) (a) the indigenous primary commodity which is being processed,  
(b) statistics of exports of the primary commodity,  
(c) details of the new or increased restrictions imposed abroad.

ANNEX E

PROCEDURE FOR DEALING WITH EXISTING MEASURES LISTED IN  
ANNEX B

(a) Procedure between the second and third Sessions

(1) The Contracting Parties, whose measures are referred to in Annex B, should submit supplementary statements of consideration in support of their measures to the Chairman of the CONTRACTING PARTIES not later than November 15, 1948. These statements should contain as much as practicable of the types of information suggested in paragraph 2 of Annex D. In addition, when the contracting party concerned wishes the measure to be considered in accordance with paragraphs 7 (i) and (ii) of Article XVIII, the information suggested in paragraph 3 of Annex D should be also provided. In the case of applications under paragraphs 7 (i) or (ii) information on the lines suggested in both paragraphs 2 and 3 of Annex E is required so that, if the application is not successful under paragraphs 7 (i) or (ii), the CONTRACTING PARTIES may at the third session make a decision under other relevant provisions of Article XVIII. In each case the contracting party concerned should indicate whether it wishes its case to be considered under paragraph 7 of Article XVIII and the period for which it wishes to maintain the measure.

(2) The Chairman of the CONTRACTING PARTIES should forward the statements referred to in (1) above to all the contracting parties and, as soon as possible, thereafter, should send them such relevant statistical and other information of the type referred to in paragraph 7 below as can be collected. Any contracting party which wishes to have further information should request this not later than December 31, 1948, through the Chairman of the CONTRACTING PARTIES, who would then assemble the requests and forward a consolidated request to the applicant, thereby avoiding a duplication of enquiries from the contracting parties.

(3) If any of the contracting parties has any objection to any of the measures, the Chairman should be so informed not later than February 28, 1949. At the same time, the contracting party making the objection should give evidence to show that it is materially affected by the measure.

(4) The Chairman should transmit the statements received under (3) above to the other contracting parties so that consideration may be given to them before the beginning of the third session.

(b) Procedure for examination at the third Session.

(5) The first task of the CONTRACTING PARTIES will, therefore, be to examine any measure submitted for consideration under the provisions of paragraph 7 and decide whether or not it is permitted under those provisions. If the CONTRACTING PARTIES decide that the case under paragraph 7 is justified, they will agree to the maintenance of the measure for a specified period.

(6) If the CONTRACTING PARTIES decide that the case under paragraph 7 is not justified, they will consider the measure under paragraph 8 (b), together with those measures for which no case had been submitted under paragraph 7.

(7) In the case of all measures under (6) above, the CONTRACTING PARTIES will first decide whether any objection has been received from a contracting party whose interests are materially affected. In this connection it may be noted that Committee II of the United Nations Conference on Trade and Employment decided that in interpreting the words "materially affected" in paragraph 8 of Article 13 of the Havana Charter, which corresponds with paragraph 8 of Article XVIII: "it would be proper for the Organization to have regard, for instance, to the interests of Members which supplied a large proportion of the imports of the applicant Member in the product concerned, those Members which were substantially interested in exporting the product to world markets, and those Members whose economies were materially dependent on exports of the product." (ICITO/W.1. page 29). For the purpose of determining which contracting parties are materially affected, therefore, the CONTRACTING PARTIES would need to consider statistics relating to the world trade in the goods in question, for example:

- (a) imports into the territory of the applicant from each of the other contracting parties
- (b) world exports
- (c) exports from each contracting party to all countries
- (d) the percentage of the total exports of all goods of each contracting party represented by exports of the goods in question.

(8) If no objection has been received by February 28, 1949 from a contracting party whose interests are materially affected, the CONTRACTING PARTIES will approve the maintenance of the measure for the period specified in the application.

(9) If there is objection from any materially affected contracting party the CONTRACTING PARTIES will examine the measure in accordance with paragraph 8 (b) (ii) of Article XVIII in the light of the reasons advanced both for and against the measure before and during the third session and in particular of the following considerations:

- (a) the applicant's need for economic development and reconstruction
- (b) the effect which the measure is likely to have, immediately and in the long run, on international trade
- (c) the effect that the measure is likely to have in the long run on the standard of living within the territory of the applicant.

(10) If as the result of the examination described in the preceding paragraph above, the CONTRACTING PARTIES decide that the measure is justified, they will permit its maintenance subject to such limitations as they may impose.

(11) If the CONTRACTING PARTIES decide that the measure is not justified, they will ask the applicant contracting party to modify or withdraw the measure. In doing so, however, they will, in accordance with paragraph 6 ~~14~~ of Article XVIII, "have regard to the possible need of a contracting party for a period of time in which to make such modification or withdrawal."

ANNEX F

PROCEDURE FOR EXAMINING AND DECIDING ON NEW MEASURES  
SUBMITTED UNDER ARTICLE XVIII

Note - The following procedure is suggested in relation to each of the appropriate paragraphs of Article XVIII (as set out in GATT/CP.2/34) and should be read on conjunction with them.

A.  
Para 3 (a) Direct negotiations with all the contracting parties may take place at any time convenient for all parties. In practice, however, it will probably be convenient in most cases to hold the negotiations at the Third Session when general tariff negotiations are due to take place. In cases where the contracting party concerned wishes such negotiations to take place at the Third Session it should give notice of its intention, through the Chairman, by 31 January 1949. In the case of items materially affecting the trade of the United States it is pointed out that because of legislative requirements, unless such notice were given by 31 October 1948, there could be no assurance that the United States could negotiate on such items at the Third Session.

Para 3 (b) The Contracting Party concerned will notify the Chairman. In turn the Chairman will notify the other contracting parties, and at the same time

- (i) indicate which, in his view, are the materially affected contracting parties with whom negotiations should take place;
- (ii) suggest a time schedule. (NB. In cases where negotiations are contemplated in the course of the Third Session, a precise time schedule will be unnecessary).

If no objection is raised by any of the contracting parties to the Chairman's suggestion under (i) or (ii) above, the negotiations will proceed between the applicant contracting party and the contracting parties which the Chairman has nominated in accordance with the time schedule proposed by the Chairman.

If any objection is raised, the matter will be referred for decision by the CONTRACTING PARTIES at their Third Session. In cases of special urgency, however, and at the discretion of the Chairman a special session of the CONTRACTING PARTIES may be called.

In either case a decision to release an applicant contracting party from its obligations must be taken by the CONTRACTING PARTY in session.

- Para 4 (a) The applicant contracting party will notify the Chairman, who will in turn notify the other contracting parties.
- Para 4 (b) Decision will be by the CONTRACTING PARTIES in session. The Chairman will call a special session at the earliest possible date.
- Para 4 (c) Consultation under this paragraph will take place when the CONTRACTING PARTIES are in session.
- B.  
Para 5 as under paragraphs 3 (b) and 4.
- C.  
Para 6 Notification and written statement in support of the adoption of the measure for a specified period will be sent to the Chairman and through him to the other contracting parties.
- Para 7 Application <sup>1/</sup> will be made to the Chairman simultaneously with the notification under paragraph 6. The decision will be given by the CONTRACTING PARTIES in session.
- Para 8 (a) The contracting party concerned will enter into direct negotiation with the other contracting parties it considers to be materially affected, and at the same time inform the Chairman. The Chairman will inform all the other contracting parties, and take note of any comments they may have about the choice of the materially affected parties.

When substantial agreement has been reached, as the result of negotiation, the contracting party directly concerned will apply <sup>1/</sup> to the Chairman who will inform the other contracting parties of the application and the conditions on which it is proposed that release from obligations shall be given. If no objection has been received to the choice of the materially affected contracting parties or to the proposed conditions, the Chairman will invite the concurrence of the contracting parties to release the applicant contracting party from its obligations.

If any objection has been received, however, the matter will be decided by the CONTRACTING PARTIES in session.

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<sup>1/</sup> For the timetable see under paragraph 10.

Para 8 (b) It is assumed for practical purposes that any application between the Second and Third Sessions will be an initial application and not one made after the procedure of 8 (a) has proved unsuccessful. Therefore application<sup>1/</sup> to the CONTRACTING PARTIES under 8 (b) will be simultaneous with the notification referred to in para 6. Where an application under 8 (b) is intended, however, the applicant should make this known at the time the statement is submitted.

In communicating the statement to the contracting parties, the Chairman will suggest which of them, in his view, are materially affected and invite comment.

At the same time he will invite those contracting parties which he considers materially affected to inform him by a specified date whether or not there is any objection to the proposed measure.

If no objection is received by the Chairman, in respect of his choice of materially affected contracting parties, the procedures of (i) and (ii) below will be followed. If there is objection to the choice however, the matter must be discussed by the CONTRACTING PARTIES in session.

i) If none of the materially affected contracting parties has notified any objection to the measure by the date prescribed by the Chairman, the CONTRACTING PARTIES, in session, will release the applicant contracting party from its obligations.

ii) If any objection to the measure is received by the Chairman, the CONTRACTING PARTIES will take a decision under para 8 (b) (ii) in session

Para 9 . The applicant contracting party, may, in the circumstances described in the paragraph, take emergency action after informing the Chairman who will in turn notify all the other contracting parties. In informing the Chairman the applicant contracting party should furnish detailed information showing that the provisions of paragraph 9 apply to the measures adopted including

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<sup>1/</sup> For the timetable see under paragraph 10

in particular the representative period, which is being used as a basis for determining the level of imports.

Para 10

The Chairman, within 15 days of receipt of an application under paras 7 or 8 will inform the applicant contracting party of the date by which a decision may be expected. In the circumstances it will usually be impractical for the Chairman to specify a period shorter than the full 90 days referred to in the paragraph.

Having regard to the provision that, except in particular circumstances, decisions shall be given within 90 days of receipt of the application, the Chairman will determine whether decisions by the CONTRACTING PARTIES in session require a special session