

CONTRACTING PARTIES

THIRD SESSION

REPORT I OF  
WORKING PARTY I ON ACCESSION

1. Introduction

The Working Party first discussed whether it should proceed on the basis of the drafts presented by the Secretariat, namely GATT/CP.3/W.1 and GATT/CP.3/W.1/Add.1, which consisted of a draft decision by the Contracting Parties and a draft protocol embodying the terms of accession in the form of a collateral contract to the General Agreement on Tariffs and Trade. An alternative form suggested by the representative of the United States was a decision of the Contracting Parties and a protocol embodying the terms of accession including consequential modifications to the text of the General Agreement.

The Working Party also examined the statement by the United Kingdom delegation on the necessary steps for accession to the General Agreement as set out in GATT/CP.3/WP.1/4.

As the United States proposal raised doubts in the minds of some members of the Working Party on legal issues arising out of the relationship between Article XXX, concerning amendments to the Agreement, and Article XXXIII, relating to accession and, in particular as to the validity of the procedure of modifying the text of the General Agreement by means of terms of accession agreed by a two-thirds majority under Article XXXIII, it was decided, without prejudice to these legal issues, to proceed on the basis of the Secretariat drafts.

At the same time the Working Party expressed its indebtedness to the representative of the United States who, in the course of the presentation of his proposals, made a number of important suggestions which have been incorporated in the text submitted.

2. Explanatory Notes on the Draft Decision and Protocol Annexed to this Report.

(a) Draft Decision relating to Accession

The Working Party has modified the draft submitted by the Secretariat in GATT/CP.3/W.1/Add.1 so that it is more clearly framed as a Decision of the CONTRACTING PARTIES with specific reference both to Article XXXIII, under which the Decision is made, and the majority required by that Article. It has been drafted in the form of a single Decision covering all eleven acceding governments, without prejudice, however, to the possibility of having more than one Decision if that were considered desirable in the light of the results of the tariff negotiations. That part of the Secretariat draft resolution regarding the early signature of the Protocol of Accession has been amended to be a recommendation and also to contain alternative proposals regarding the date by which the Protocol should be signed. The reasons for this are given in a note to the draft Decision. Provision has also been made for the authenticity of the texts of the Decision and Protocol to be certified by the Chairman of the CONTRACTING PARTIES.

(b) Draft Protocol of Accession

Title

The Working Party has recommended that the Protocol be known as the "Annecy Protocol of Accession to the General Agreement on Tariffs and Trade".

General

The Protocol has been drafted with the object of placing an acceding government in substantially the same position as a present contracting party. Upon the entry into force of the Protocol for an acceding

government that government will be required to apply the General Agreement provisionally on terms similar to those on which the present contracting parties are applying the Agreement under the Protocol of Provisional Application. The acceding government will become a contracting party and will therefore enjoy the benefits of the General Agreement. In the draft Protocol submitted by the Secretariat, this result would have been subject to a qualification, viz., that under paragraph 2 of the draft the benefit of concessions in the Schedule of a present contracting party to the General Agreement need not be extended to an acceding government until the contracting party concerned had signed the Protocol.

It was, however, the opinion of the Working Party that the circumstances in which a present contracting party would wish not to extend to an acceding government the benefits of the Geneva concessions had been discussed at the first Session when the amendment to Article XXXIII of the Agreement was approved, and that it had then been decided that such cases should be governed by the provisions of Article XXXV and paragraph 5 (b) of Article XXV.

Provision is also made for the acceding government to enjoy (paragraph 3 of the Protocol) and to grant (paragraph 2 (a)) the concessions negotiated at Annecy which are annexed to the Protocol. Upon the entry into force of the General Agreement under Article XXVI an acceding government will be entitled to accede definitively to the Agreement in much the same way as a present contracting party can accept it definitively under that Article.

Paragraphs 1, 2, 3, 4 and 11 - Entry into Force

In accordance with the objectives described above, the Working Party considered first the alternative methods of bringing the Protocol into force, which were set out in paragraph 9 of GATT/CP.3/W.1. It was recognized that after the Decision had been taken it was in principle

desirable that an acceding government should receive, upon its signature of the Annecy Protocol and the lapse of the period provided for therein, the benefits under the General Agreement on Tariffs and Trade as a contracting party. On the other hand, it was recognized that it would be desirable, if only for reasons of presentation, that there should be signature by a minimum number of contracting parties before the Protocol initially entered into force.

Accordingly, alternative provisions regarding numbers of signatures have been inserted in paragraph 11 of the Protocol and the Working Party proposes that present contracting parties should be asked which of them will be in a position at the conclusion of the current negotiations to sign the Protocol without a qualification that signature is affixed ad referendum, and thus bring the Annecy concessions into effect sixty days thereafter. If any appreciable number is prepared to do so, it is suggested that this number be included in paragraph 11, or alternatively, without specifying a number of signatures, that the Protocol be opened for signature at Annecy at the close of the present Conference so that upon signature there by such appreciable numbers of present contracting parties and by one acceding government, the Protocol will, sixty days subsequent thereto, initially enter into force. If no appreciable number of present contracting parties is in a position to give an unqualified signature at the end of the Conference then the Protocol should not be opened for signature at Annecy but should be opened for signature at the Headquarters of the United Nations and enter into force upon signature by a minimum number of present contracting parties and one acceding government. The minimum number of present contracting parties could be determined on the basis of the replies given to the question regarding the probable authority to sign definitely at Annecy and, if the Protocol is open for signature only at the Headquarters of the United Nations, an agreed minimum number should then be provided for in paragraph 11.

Paragraph 11 goes on to provide for the Protocol to enter into force for any acceding government, which has not signed thirty days before its initial entry into force, on the thirtieth day following signature by that government.

It is provided in paragraph 2 (b) of the Protocol that any acceding government, upon the entry into force of the Protocol with respect to it, shall become a contracting party. Consequently, all the benefits contained in the General Agreement will be immediately extended to that government. At the same time, the acceding government becomes obligated to apply the Agreement provisionally in a manner similar to that in which the present contracting parties apply it under the Protocol of Provisional Application, with an analogous exception relating to legislation existing at the date of the Protocol of Accession. It was considered that although there were arguments for applying the same limitation to the exception for existing legislation, namely, that existing at the date of the Protocol of Provisional Application, this might in fact be a considerable obstacle to accession, since it might require an acceding government to amend legislation enacted prior to the formal conclusion of the negotiations, which had not been the case for the present contracting parties at Geneva. The acceding government is also under an obligation to apply the concessions negotiated at Annecy subject, however, to the provisions contained in paragraph 4 for withholding or withdrawing concessions initially negotiated with a present contracting party or acceding government which has not signed the Protocol. This withholding provision follows the lines of Article XXVII of the General Agreement except that provision is made for notification of the withholding or withdrawal within thirty days. As regards the concessions negotiated by a present contracting party, these enter into force on the entry into force of the Protocol or on the thirtieth day following the signature of the Protocol by the contracting party concerned, whichever is the later,

and thereupon the Schedule containing such concessions by the contracting party concerned is to be regarded as a Schedule to the General Agreement relating to that contracting party (see paragraph 3 of the Protocol). The contracting party is also given rights of withholding and withdrawal under paragraph 4 of the Protocol. It was recognized that even though a contracting party had supported the decision for the accession of new governments, this would not prejudice the subsequent use, in particular cases, of the provisions of paragraph 5 (b) of Article XXV or of Article XXXV. Moreover, the reference to Article XXXV in the second Proviso to paragraph 4 in no way affects the position of a present contracting party which has not accepted that Article.

In connection with paragraph 3, the representative of Cuba proposed an amendment to the last sentence of the paragraph, the effect of which would have been to make the Schedules contained in Annex B an integral part of Part I of the General Agreement, as provided in Article II, paragraph 7 for the Geneva Schedules. He explained that, in his opinion, under the provisions of Article XXVIII there could be no modification of any kind, even by way of reduction, of any rates included in the Schedules to the Agreement before January 1, 1951, except by amendment under Article XXX requiring the unanimous consent of all contracting parties.

The other members of the Working Party, however, considered that paragraph 3 of the Draft Protocol did not constitute such an amendment of the existing Schedules to the General Agreement and that, in any case, the Agreement could not be construed to prevent a reduction in duties below the levels fixed in the Schedules to the Agreement. In particular, the wording of Article II made it clear beyond doubt that the rates of duty contained in the Schedules were only maximum, and not also minimum, rates of duty.

It was also pointed out that the circumstances adduced by the representative of Cuba in support of his argument might provide the basis for a claim under Article XXIII on the ground that a concession or benefit had been nullified or impaired.

In order to enable the Chairman to take the sense of the meeting, certain questions were drafted and put to the Working Party. The first question was as follows:

Question A - Does a reduction in a rate of duty set forth in Part I of any Schedule to the General Agreement constitute an amendment of Part I of the General Agreement?

The representative of Cuba voted "Yes" to this question. Upon statements being made by other delegates that the question could not be answered "Yes" or "No", after some discussion two other texts were prepared and put to the Working Party, as follows:

Question B - Does the inclusion of a rate of duty in Part I of any schedule to the General Agreement legally prevent the reduction of that rate otherwise than by an amendment under Article XXX?

The representative of Cuba voted "Yes" to this question, with the qualification that unanimous assent could in practice be inferred from the absence of objection and need not be embodied in a formal instrument; the representatives of Australia, Belgium, France, the United Kingdom and the United States voted "No"; the representative of Pakistan abstained on the grounds that the question was not clear.

Question C - Does a reduction in the level of a duty on a product of a contracting party set forth in Part I of a Schedule to the General Agreement, or in the margin of preference thereon, negotiated in favour of a country not a contracting party to the General Agreement call, in order that it may be made effective in favour of that country, for an amendment of Part I of the General Agreement?

The representatives of Cuba and Pakistan voted "Yes" to this question and the representatives of Australia, Belgium, France, the United Kingdom and the United States voted "No". The representatives were in agreement with the French delegate's interpretation, i.e. that nothing in the Havana Charter or the General Agreement would prevent any country from negotiating tariff reductions with a country not a party to the General Agreement, provided the benefits resulting therefrom were extended to contracting parties to the General Agreement under the most-favoured-nation clause.

The representatives of Australia and the United Kingdom commented that in their opinion Question C did not arise in the present circumstances.

The representative of Cuba submitted to the members of the Working Party a detailed statement of his views and reserved the right to raise the matter again in the Contracting Parties.

Dates in the General Agreement applicable to acceding governments.

Paragraph 5 of the Protocol contains suggestions for dates applicable to acceding governments for the purposes of the General Agreement. In three cases, dates contained in the Havana Charter have been considered more appropriate than the dates in the General Agreement. In other cases new dates have been suggested with the object of placing acceding governments in a comparable position to that in which the present contracting parties were at Geneva, e.g., in Article II, paragraphs 1(b) and (c) and 6(a), and Article XVIII, paragraph 11.

Form of Agreement to be applied.

For the purposes of the application of the General Agreement by an acceding government in accordance with the Protocol, the form of the General Agreement is stated in paragraph 6 of the Protocol to be that contained in the text attached to the Final Act dated October 30, 1947, as subsequently rectified, amended or otherwise modified on the date of



signature of the Annex Protocol by that acceding government. To prevent the accession of new governments from delaying the entry into effect of amendments to the General Agreement, it is also proposed that the acceding government, at the time of its signature, should also accept any amendment or other modification which has been drawn up and formalized but which has not at that date become effective. Such acceptance would be considered together with any other like acceptances, in determining when such a modification would enter into force.

#### Withdrawal of Provisional Application

Paragraph 7 of the Protocol provides for withdrawal of provisional application by an acceding government. It is in substance identical with the provision contained in paragraph 5 of the Protocol of Provisional Application.

#### Definitive Accession

Paragraph 8(a) of the Protocol provides for accession to the Agreement when it enters into force pursuant to Article XXVI or thereafter. By the deposit of an instrument of accession the acceding governments may accede, upon the terms of the Protocol, to the Agreement in the form in which it enters into force pursuant to Article XXVI. This may or may not be identical with that provisionally applied by acceding governments under paragraph 1 of the Protocol.

The procedure for such definitive accession is similar to the procedure for acceptance contained in Article XXVI which, by the wording of paragraph 1 of that Article, applies only to present contracting parties. It envisages that the deposit of an instrument of accession may take place either prior to or following the entry into force of the Agreement, but that such accession would not take effect until the definitive entry into force of the Agreement.

As in Article XXIII of the General Agreement, provision has been made in paragraph 3(b) of the Protocol to allow the then contracting parties which have accepted or acceded definitively, after the Agreement has entered into force, to decide that an acceding government which has not deposited an instrument of accession shall cease to be a contracting party.

#### Territorial Application

The Working Party had some difficulty in deciding upon a formula for territorial application. It was considered unreasonable to ask acceding governments to accept a formula for territorial application during provisional application more rigid than that contained in the Protocol of Provisional Application. This would have been the effect if Article XXVI of the Agreement had been applied both to provisional application and to definitive accession. The Working Party considered that the discussion of territorial application in Havana had resulted in the more satisfactory formula embodied in Article 104 of the Havana Charter which approximates closely to that in the Protocol of Provisional Application. They have therefore recommended that an adaptation of Article 104 should be inserted in the Protocol to govern both provisional application and accession. The Working Party considered that if this solution is approved by the Contracting Parties there would be a strong case for an amendment of Article XXVI of the General Agreement on these lines. As was pointed out in the discussion, the present form of Article XXVI might frustrate the entry into force of the Agreement. It might in practice enable a territory, which is a separate customs territory not possessing full autonomy in the conduct of its external commercial relations, to delay indefinitely by withholding its consent, an acceptance by the country which has international responsibility for it.

A provision has been included analogous to the second proviso into Article XXVI, paragraph 4, regarding dependent customs territories which become autonomous in their external commercial relations.

#### Signature

The Committee was of the opinion that a decision whether to retain or delete the first sentence of paragraph 10(a), providing for signature at Annecy, could not appropriately be taken until it had been ascertained how many countries would, in fact, be prepared to affix a signature at Annecy which would not be subject to subsequent confirmation. This matter is discussed on pages 3 and 4 of this Report.

The Working Party also considered the period during which the Protocol should remain open for signature. Some acceding governments had indicated that they might not be in a position to sign the Protocol until the middle of next year. In view of the decision not to change for the Annecy concessions the date of 1 January 1951 in Article XXVIII, it was considered that the insertion of June 30, 1950, as a date until which the Protocol would remain open for signature, might be undesirable as a matter of presentation. As an alternative, the Working Party considered that the date of closing of the Protocol for signature could be left for determination at a later meeting of the Contracting Parties.

If the first alternative is followed, it would not be necessary to insert a date in the recommendation accompanying the Decision. If the second alternative is followed, it would be practicable to insert in the recommendation the date of April 15, 1950. It would still be possible then for the Contracting Parties, under the terms of the Protocol, to determine a date later than April 15, 1950, until which the Protocol would remain open for signature.

Members of the Working Party stressed the necessity of early notification by the Secretary-General of the United Nations to Governments of signatures to the Protocol and of any notifications given to the Secretary-General pursuant to the Protocol. It was thought that this information should be forwarded by the Secretary-General as soon as possible after the action had been taken.

#### Annexes A and B to the Protocol

It is proposed that the concessions negotiated at Annecy should be scheduled in the same manner as was done at Geneva in 1947 and that these schedules should be contained in Annexes A and B to the Protocol. Annex A would contain concessions made by the acceding governments and Annex B concessions made by the present contracting parties.

#### Preferences

In connection with the existing annexes to the General Agreement referred to in Article I and relating to existing preferential arrangements, it was noted that the Havana Charter included in Annexes H and I lists of territories covered by preferential arrangements in which certain acceding governments were included.

The Working Party did not know whether these governments wished to have these annexes also apply as exceptions to the General Agreement, but considered that provision should be made for their inclusion in the Protocol in the event of request for that being made by those governments.

If these governments seek to select dates earlier than 10 April 1947, for the establishment of maximum margins of preferences referred to in paragraph 3 of Article I, it may also be necessary to consider making appropriate provision in the Annecy Protocol.

DRAFT DECISION RELATING TO ACCESSION TO THE  
GENERAL AGREEMENT ON TARIFFS AND TRADE

WHEREAS Article XXIII of the General Agreement on Tariffs and Trade (hereinafter referred to as "the General Agreement") enables a government not party to the General Agreement to accede to it upon terms to be agreed between such government and the CONTRACTING PARTIES to the General Agreement, and

Having regard to the results of the negotiations directed towards the accession of the Governments of \_\_\_\_\_ (hereinafter referred to as "the acceding governments") to the General Agreement.

THE CONTRACTING PARTIES, BY A DECISION OF A TWO-THIRDS MAJORITY IN ACCORDANCE WITH ARTICLE XXIII, TAKEN AT ANNECY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 1949, DECIDE THAT:

(The above mentioned) governments may accede to the General Agreement on the terms set forth in the Annecy Protocol of Accession to the General Agreement on Tariffs and Trade, which is annexed to this Decision.

THE CONTRACTING PARTIES RECOMMEND THAT:

Each of the present contracting parties and acceding governments should sign the Protocol above-mentioned at the earliest practicable date. [and in any case not later than April 15, 1950.]\*

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\* If it is agreed to adopt the first alternative in the (perultimate) sentence of sub-paragraph 10 (a) of the Draft Protocol, i.e. June 30 1950, as one date until which the Protocol shall remain open for signature at the Headquarters of the United Nations, it would not be necessary to specify a date here. If, however, the second alternative is adopted, i.e. a date subsequently to be determined by the Contracting Parties, it would seem desirable to specify here an earlier date which could be confirmed or extended by the Contracting Parties.



ANNEX TO DECISION  
DRAFT ANNECY PROTOCOL OF ACCESSION TO THE  
GENERAL AGREEMENT ON TARIFFS AND TRADE

The Governments of ..... which are the present contracting parties to the General Agreement on Tariffs and Trade (hereinafter called "the present contracting parties" and "the General Agreement" respectively), and the Governments of ..... (hereinafter called "the acceding governments"),

HAVING carried out negotiations directed towards the accession of the acceding governments to the General Agreement in accordance with the provisions of Article XXXIII thereof,

HAVING agreed upon the terms on which the acceding governments may so accede, which terms have been approved by a Decision taken by the CONTRACTING PARTIES at their Third Session, held at Annecy, and are embodied in this Protocol,

HEREBY AGREE AS FOLLOWS:

1. (a) Subject to the provisions of this Protocol, each of the acceding governments shall, upon the entry into force of this Protocol with respect to it apply provisionally:
  - (i) Parts I and III of the General Agreement, and
  - (ii) Part II of the General Agreement to the fullest extent not inconsistent with its legislation existing on the date of this Protocol.
- (b) The obligations incorporated in paragraph 1 of Article I of the General Agreement by reference to Article III thereof and those incorporated in paragraph 2 (b) of Article II by reference to Article VI shall be considered as falling within Part II of the General Agreement for the purpose of this paragraph.

2. (a) For the purposes of the General Agreement, the Schedules contained in Annex A to this Protocol shall be regarded as Schedules to the General Agreement relating to acceding governments.
- (b) Upon the entry into force of this Protocol with respect to each acceding government, that government shall become a contracting party as defined in Article XXXII of the General Agreement.
3. For each present contracting party which signs this Protocol, the concessions provided for in the Schedule appropriate to that contracting party contained in Annex B to this Protocol shall enter into force on the entry into force of this Protocol or on the thirtieth day following the date of signature of this Protocol by that contracting party, whichever is the later, and upon the entry into force of those concessions that Schedule shall be regarded as a Schedule to the General Agreement relating to that contracting party.
4. Any government which signs this Protocol shall be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule contained in Annex A or B to this Protocol, in respect of which such government determines that it was initially negotiated with a present contracting party or an acceding government which has not signed this Protocol; Provided that the government withholding or withdrawing in whole or in part any such concession shall give notice to all other present contracting parties and acceding governments within thirty days after the date of such withholding or withdrawal and, upon request, shall consult with the contracting parties which have a substantial interest in the product concerned; and Provided further that, without prejudice to the provisions of Article XXXV, of the General Agreement, any concession so withheld or withdrawn



shall be applied from the thirtieth day following the date upon which the present contracting party or acceding government with which it was initially negotiated signs this Protocol.

5. (a) In each case in which Article II of the General Agreement refers to the date of that Agreement, the applicable date in respect of the Schedules annexed to this Protocol shall be the date of this Protocol.
  - (b) In each case in which paragraph 6 of Article V, of sub-paragraph 4(d) of Article VII and sub-paragraph 3(c) of Article X of the General Agreement refers to the date of that Agreement, the applicable date in respect of each acceding government shall be March 24, 1948.
  - (c) In the case of the references in paragraph 11 of Article XVIII of the General Agreement to September 1, 1947 and October 10, 1947, the applicable dates in respect of each acceding government shall be May 14, 1949 and June 15, 1949, respectively.
6. The provisions of the General Agreement to be applied by an acceding government shall be those contained in the text annexed to the Final Act of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment as rectified, amended, or otherwise modified on the date of signature of this Protocol by such acceding government. Signature of this Protocol by an acceding government, to be effective, shall be accompanied by appropriate action accepting any such rectification, amendment, or other modification which has been drawn up and formalized but which has not become effective by the date of signature of this Protocol by that acceding government.
7. Any acceding government which has signed this Protocol shall be free to withdraw its provisional application of the General Agreement and such withdrawal shall take effect on the sixtieth

day following the day on which written notice of such withdrawal is received by the Secretary-General of the United Nations.

8. (a) Any acceding government which has signed this Protocol and has not given notice of withdrawal under paragraph 7, may, on or after the date on which the General Agreement enters into force pursuant to Article XXVI thereof, accede to that Agreement upon the terms of this Protocol by deposit of an instrument of accession with the Secretary-General of the United Nations. Such accession shall take effect on the date on which the General Agreement enters into force, or on the thirtieth day following the deposit of the instrument of accession, whichever shall be the later.
- (b) At any time after the entry into force of the General Agreement, those contracting parties which have accepted the General Agreement pursuant to paragraph 3 of Article XXVI of the General Agreement or deposited an instrument of accession may decide that any acceding government which has not deposited such instrument shall cease to be a contracting party.
9. (a) Each government signing this Protocol or depositing an instrument of accession under paragraph 8 (a) does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Secretary-General of the United Nations at the time of such signature or deposit.
- (b) Any government, which has so notified the Secretary-General, may at any time give notice to the Secretary-General that such signature or accession shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the date on which it is received by the Secretary-General.

- (c) If any of the customs territories, in respect of which an acceding government has made the General Agreement effective, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the General Agreement, such territory shall, upon sponsorship through a declaration by the responsible acceding government establishing the above-mentioned fact, be deemed to be a contracting party.
10. (a) This Protocol shall be open for signature by the present contracting parties and by the acceding governments at Annecy until \_\_\_\_\_. The original text of this Protocol shall thereafter be deposited with the Secretary-General of the United Nations and shall remain open for signature by the present contracting parties and by the acceding governments at the headquarters of the United Nations until June 30, 1950 a date subsequently to be determined by the CONTRACTING PARTIES. A signature of this Protocol ad referendum shall, be considered as having been affixed on the day on which notice of the confirmation of such signature is received by the Secretary-General of the United Nations.
- (b) The Secretary-General of the United Nations shall promptly furnish a certified copy of this Protocol, and a notification of each signature thereto, of each deposit of an instrument of accession under paragraph 8 (a), and of each notification or notice under paragraph 7, 9 (a), 9 (b) or 10 (a), to each Member of the United Nations and to each other government which participated in the United Nations Conference on Trade and Employment.
- (c) The Secretary-General is authorized to register this Protocol in accordance with Article 102 of the Charter of the United Nations upon its entry into force.

11. Subject to the provisions of paragraph 3, this Protocol shall first enter into force upon the sixtieth day following the date of this Protocol or upon the thirtieth day following the date upon which it shall have been signed by \_\_\_\_\_ present contracting parties and by any acceding government, whichever may be the later. For each acceding government which has not signed this Protocol thirty days before it enters into force, it shall enter into force upon the thirtieth day following signature of the Protocol by that government.

DONE at Annecy, in a single copy, in the English and French languages, both texts authentic except as otherwise specified with respect to Schedules annexed hereto, this .....day of....., one thousand nine hundred and forty-nine.