GENERAL AGREEMENT ON
TARIFFS AND TRADE

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THE REVIEW OF THE AGREEMENT

Some advance Notes by the Secretariat

1. This paper contains comments on the provisions and operation of the Agreement as seen by the secretariat. It is by no means a thorough survey, but it may nevertheless be helpful to governments in their preparations for the review. In due course these notes will be revised and enlarged.

2. These comments contain many suggestions for amending the text of the Agreement. These suggestions are of three varieties -

a) amendments, suggested by experience of the operation of the Agreement, designed to improve the efficacy of the provisions;

b) amendments to lighten the text by eliminating provisions which were inserted to meet particular situations or which for other reasons appear to be superfluous, and

c) amendments to improve the drafting of the text.

3. Suggestions for the re-arrangement of the Annex containing the Interpretative Notes will be found after the comments on the Articles. It is suggested that provisions contained in the Agreement which deal with specific problems and are therefore of limited interest should be relegated to the Notes, and that the Annex should then be entitled "Regulations and Interpretative Notes".

4. The comments on the Agreement are followed by proposals for a protocol of organizational provisions.

ARTICLE I

General Most-Favoured-Nation Treatment

Para. 1

The provisions of this paragraph relate to exportation as well as to importation. This is explicit in the references to duties, payments, etc., but not in the reference to internal taxes. Thus the words "with respect to all matters referred to in paragraphs 2 and 4 of Article III" might be construed as relating only to taxes on imported goods. A case in point arose at

the Second Session in connection with non-discrimination in the exemption of exports from the levy of an excise tax. The Chairman of the CONTRACTING PARTIES ruled that the paragraph must be interpreted to require that:

> "Any advantage ... granted with respect to internal taxes by any contracting party to any product destined for any other country shall be accorded immediately and unconditionally to the like products destined for the territories of all contracting parties". (GATT/CP.2/SR.11)

The CONTRACTING PARTIES may wish to amend the paragraph to provide expressly that most-favoured-nation treatment extends to the application of internal taxes to exported goods.

The second paragraph of the Interpretative Note can be deleted since the Protocol to which it relates has entered into force.

Another problem which arises in connection with paragraph 1 is mentioned under Article II:1(b).

A sub-paragraph similar to (c) might be inserted to authorize the maintenance of preferences in force exclusively between Uruguay and Paraguay which is at present provided for in paragraph 1(d) of the Annecy Protocol.

Annex F, referred to in sub-paragraph (d), was inserted upon the request of Lebanon and Syria, which are no longer contracting parties, and can be deleted.

Para. 3

This paragraph was inserted at the request of Syria which is no longer a contracting party, and the Government of Turkey might be asked whether it need be retained.

When paragraph 3 was inserted by the Procotol modifying Part I and Article XXIX the consequential amendment of the title of Annex G was overlooked. If paragraph 3 is retained the title of the Annex should be corrected to refer to paragraph 4 of Article I.

A new note

The CONTRACTING PARTIES might wish to consider the insertion of an Interpretative Note to Article I to the effect that tariff descriptions (for example, descriptions based on distinctive regional or geographical names) should not be used as a means of discriminating between products of various countries.

ARTICLE II

Schedules of Concessions

Para. 1(b)

The second sentence provides for exemption of products described in the Schedules "from all other duties or charges of any kind imposed on in connection with importation in excess of those imposed on the date of the Agreement". Thus this provision uses the phraseology of Article I:1, but it does not go on to include, as does Article I:1, "charges ... imposed on the international transfer of payments for imports". Thus the wording of II:1(b) could be construed as meaning that the provision does not apply to charges on transfers. It is clear, however, that the value of tariff concessions would be substantially impaired if contracting parties were free to introduce additional charges on imports in the form of transfer charges. In order to avoid this difficulty, the text could be clarified by amending the second and third lines of Article I:1 to read "... or exportation, including charges of any kind imposed on the international transfer...".

The last part of the second sentence, after the word "Agreement", introduces unnecessary complications and uncertainty as to the binding of additional charges. The CONTRACTING PARTIES may be prepared to delete the last two lines.

Para. 1(c)

The comments on 1(b) are relevant also to the second sentence of 1(c).

Para. 2(a)

The wording is rather involved and the meaning might be more easily understood if the sub-paragraph were amended as follows:

> "(a) a charge equivalent to an internal tax, imposed consistently with the provisions of paragraph 2 of Article III, /in respect of/ on the like domestic product or in respect of an article from which the imported product has been wholly or partly manufactured or produced /in whole or in part/;".

The Interpretative Note can be deleted since the Protocol to which it relates has entered into force.

Para. 2(c)

The wording differs from that of Article VIII:1 which appears preferable. It would be desirable to use consistent phraseology; thus 2(c) might be altered as follows:

"(c) fees or other charges /commensurate with/ limited in amount to the approximate cost of services rendered".

Para. 4

If the CONTRACTING PARTIES wish to retain the Interpretative Note it should be enlarged so that reference to another document will not be necessary.

Para. 5

This paragraph deals with a specific problem of limited interest. If the CONTRACTING PARTIES wish to retain this paragraph it could be removed to the Regulations and Interpretative Notes.

Para. 6(a)

The words "provisionally recognized" do not correspond to the provisions of the Articles of Agreement of the International Monetary Fund relating to the establishment of par values. Therefore, the last line of the first sentence should be altered to read:

... "at the par value accepted or at the rate of exchange recognized by the Fund...".

At the beginning of the next sentence the words "Accordingly, in case this par value is reduced ..." appear to preclude the adjustment of duties after a second devaluation of a currency. The CONTRACTING PARTIES may wish to amend this phrase, so as to allow for such adjustments and to take account of the amendment proposed above, by altering the first three lines of the sentence to read:

"Accordingly, in case the par value accepted by the Fund or the rate of exchange recognized by the Fund is reduced consistently with the Fund's Articles of Agreement...".

In the last two lines of the proviso, the words "or elsewhere in this Agreement" appear to have little meaning since the Agreement does not provide for concessions other than those in the Schedules. As for the remainder of the paragraph, "due account ... such adjustments", experience has shown some difficulty of interpretation. When the CONTRACTING PARTIES were called upon to take a decision under this provision at the Eighth Session they were handicapped by having no clear guidance as to its significance. If the CONTRACTING PARTIES are to take certain such factors into account in reaching decisions, the criteria should be more clearly stated.

Para. 7

The "Schedules annexed to this Agreement" include those annexed to the Final Act of Geneva, to the Annecy Protocol of Terms of Accession and to the

Torquay Protocol, as modified by the provisions of protocols relating to their rectification or modification and by other action taken pursuant to specific provisions of the Agreement and to procedures established by the CONTRACTING PARTIES. If the CONTRACTING PARTIES decide to prepare a revision of the Agreement, in a form in which it can be presented to parliaments, it may be desirable to bring the Consolidated Schedules up to date and to reconsider the question of giving them a legal status and annexing them to the revised text of the Agreement.

ARTICLE III

National Treatment on Internal Taxation and Regulation

Para. 2

The words "directly or indirectly" in the third line appear to be unnecessary. The same words in the fourth line have given rise to some difficulty of interpretation, particularly when taxes are levied at various stages of production. It may not be quite clear from the wording of this provision whether imports may be taxed to an extent equivalent to the total of the taxes levied on the domestic product at the various stages of production or only to the extent of the tax on the final product. It seems desirable to clarify the text or to explain it by a note.

Para. 3

This paragraph appears to have significance only in respect of governments which may accede to the Agreement in future. As it deals with a specific problem of limited interest it might be removed to the Regulations and Interpretative Notes.

ARTICLE V

Freedom of Transit

Para. 6

The CONTRACTING PARTIES might consider whether the last phrase in this paragraph "or has relation to the contracting party's prescribed method of valuation for duty purposes" need be retained.

ARTICLE VI

Anti-dumping and Countervailing Duties

Para. 4

In view of the prevailing practice of exempting exported goods from certain internal taxes, it may be useful to reconsider this paragraph. It appears that the paragraph was intended to refer only to indirect taxes such as sales and turnover taxes. If so, the wording might be clarified and it might be compared with Article VII:3 in order to obtain consistent phraseology.

ARTICLE VII

Valuation for Customs Purposes

At their Eighth Session the CONTRACTING PARTIES decided to pursue their study of valuation for customs purposes and accordingly instructed the Inter-sessional Committee "to consider what aspects of valuation should be examined and to what end, and also consider appropriate methods by which such steps could be examined". Hence many questions of substance arising in connection with Article VII are likely to be examined by the Committee this year; the following are only a few of the questions which may be considered in connection with paragraph 2:

- The circumstances in which a government may use fixed values as a basis for valuation.

- The possibility that value will be based, arbitrarily, sometimes on wholesale and sometimes on retail prices.

- The desirability that a government which levies a customs duty and also another charge on the import of a product on the basis of value should use the same method of valuation for each. (It is not suggested that this should apply to an internal ad valorem tax which is also levied at the time of importation on imported goods.)

- The determination of value on the basis of internal prices in the exporting country.

- Whether the provision leaving the determination of "time and place" to the legislation of the importing country authorizes the use of two or more methods the choice of which is left to the customs officer concerned.

- Whether it is necessary to provide for situations in which "actual value" cannot be ascertained.

In addition, the following drafting points might be considered:

Para. 1

As indicated in the Interpretative Note it was expected that a majority of the contracting parties would give effect to the principles of paragraph 1 within a few years. Since the Agreement has been in force for six years, it should not be necessary to retain the words "at the earliest practicable date". The Interpretative Note could also be deleted.

Para. 4

The CONTRACTING PARTIES may wish to reconsider the provisions relating to the use of par values for the conversion of prices, since the present provisions do not appear to be in line with administrative practice in many countries.

ARTICLE VIII

Formalities connected with Importation and Exportation

Para. 1

The first sentence speaks of "fees and charges" thus apparently dealing with problems extending beyond the question of "formalities". It may be desirable to separate the two distinct problems which are covered by this and subsequent paragraphs, namely (i) the limitation of levies on imports and exports to customs duties, on the one hand, and to charges to cover the cost of services rendered, on the other, and (ii) the formalities connected with imports and exports in the form of documentary requirements, etc. The separation might be effected by establishing a new article.

On the other hand, it has been sometimes difficult to see clearly the relationship between the provisions of Article VIII and those of Article II regarding "other" duties and charges. It might be useful to clarify this point by indicating that the provisions of Article VIII relate to the customs tariff as a whole and not only to the duties bound under the GATT, and that they are therefore additional to, and consistent with, the specific commitments contained in paragraphs 1(b) and (c) and 2(c) of Article II.

Para. 2

The remark on the words "at the earliest practicable date" in Article VII:1 apply also to this paragraph.

The words "or by the CONTRACTING PARTIES" might be inserted in the second sentence so as to provide that they also may request a review of the operation of laws and regulations (as they have in fact done for documentary requirements and consular formalities).

Para. 4

This paragraph relates only to paragraphs 1 and 2. Therefore, it would be more logical for it to be placed before paragraph 3. The first line should then read: "The provisions of paragraphs 1 and 2 shall extend ... ".

Standard Practices

The CONTRACTING PARTIES may wish to consider whether some of the recommendations they made to contracting parties in 1952 on consular formalities and on documentary requirements for the importation of goods could be incorporated in this Article.

ARTICLE IX

Marks of Origin

Para. 3

It might be desirable to add a sentence to the effect that laws and regulations relating to marking should be implemented in such a manner as to reduce to a minimum the difficulties and inconveniences caused to the commerce and industry of exporting countries.

ARTICLE X

Publication and Administration of Trade Regulations

Para. 1

This paragraph requires contracting parties to publish all laws, regulations, etc., pertaining to rates of duty, restrictions and so forth, and also agreements between governments or governmental agencies affecting international trade policy. It has been clearly shown by experience that the administration of the Agreement would be more effective if copies of such laws, regulations, agreements, etc. were sent to the secretariat, where they would also be available to the contracting parties.

A new paragraph

During the years the Agreement has been in operation, the secretariat has relied on the trade statistics published by other intergovernmental organizations, particularly the United Nations and the International Monetary Fund, but it has been found that for many purposes these are not sufficiently detailed.

The administration of the Agreement would be facilitated if contracting parties would automatically send to the secretariat copies of their published statistics of external trade and of revenue from import and export duties and also statements of subsidy payments affecting international trade.

Standard Practices

The CONTRACTING PARTIES may wish to consider whether some of the recommendations they made to governments in 1950 on the administration of import and export restrictions and exchange controls could be incorporated in this Article or in the Annex of Regulations and Interpretative Notes.

ARTICLES XII AND XIV

General Comment

The operation of these Articles has perhaps been the least satisfactory feature of the work of the CONTRACTING PARTIES. The complexity of the provisions has regularly led to legalistic argument rather than fruitful discussion. Moreover, for a variety of reasons, discussions on balance-of-payment restrictions by the CONTRACTING PARTIES have been of very limited practical value. The prior consultations with the International Monetary Fund have usually resulted in findings by the Fund not only as to the justification for resort to the balance-of-payment provisions but also as to the appropriateness of the level of restriction applied. Similarly, the practice of discrimination has not been closely examined by the CONTRACTING PARTIES since governments in general have the right to the same freedom of action in respect of quantitative restrictions as they have with respect to exchange restrictions and, therefore, discrimination in quantitative restrictions has effectively been in the hands of the Fund. In the consultations which have been held under the GATT the discussions have tended to be restricted to a consideration of the balance-of-payment position and have not been directed to the administration of the restrictive system in relation to the terms of the General Agreement. This tendency has been accentuated by the practice of contracting parties of entrusting these discussions to financial experts rather than to trade experts. There has, therefore, been a tendency for the balance-of-payment working parties merely to duplicate discussions which have already taken place in greater detail and with superior technical resources in the Fund. This experience suggests a need for a careful re-examination of the division of labour between the CONTRACTING PARTIES and the International Monetary Fund. In this connection, it might be profitable to take account of the experience of the OEEC where the strictly financial questions are dealt with by the Managing Board of the EPU and trade questions by the Steering Board for Trade.

As the severity of the balance-of-payment position of contracting parties has now lessened, the CONTRACTING PARTIES will no doubt wish to give careful consideration to the provisions of Articles XII and XIV. The rules as drafted

favour the method of laying down criteria for the use of quantitative restrictions with freedom for contracting parties to act within the criteria. If this approach is retained it might be desirable to review the criteria in the light of present circumstances and more particularly to make provision for more effective administration of the rules. An alternative approach would be to have simpler and stricter rules regarding the use of quantitative restrictions but to provide for exceptions to be made in defined circumstances with the prior approval of the CONTRACTING PARTIES. This approach would also involve making more adequate administrative arrangements and, more particularly, providing a mechanism which could deal effectively and speedily with requests for exceptions to the rules.

ARTICLE XII

Restrictions to safeguard the Balance of Payments

Para. 3(a)

The wording of this paragraph indicates that it was intended to relate only to the first few years after the Second World War. Therefore it seems hardly appropriate to retain this paragraph for the future.

Para. 3(c) (ii) and (iii)

These sub-paragraphs apply generally to quantitative restrictions maintained under Article XII and therefore should be transferred to paragraph 2.

Para. 4(a)

The words "such measures" in the seventh line in the English text could be taken to refer to the word "measures" in the previous line. To avoid any such error of interpretation the words "such measures" should be replaced by "the proposed restrictions". (No such difficulty arises in the French text.)

Para. 4(b)

The words "such consultations" in the third line refer to consultations of the type described in 4(a), but if there is any uncertainty about their meaning the reference should be made more explicit.

The provision contained in the second half of the first sentence - to the effect that the CONTRACTING PARTIES are under an obligation to consult within thirty days with any government which intensifies its restrictions - has not been applied in practice. It would not be difficult to provide adequate machinery for the application of this provision, but if this is not done it would be preferable to delete it altogether on the ground that

provisions which are not implemented only bring discredit to the CONTRACTING PARTIES.

The last sentence, which provided for a review of restrictions in 1951, can be deleted. Alternatively, the CONTRACTING PARTIES may wish to provide for an annual review of the restrictions broad enough in scope to cover the reports on discrimination now required by Article XIV:1(g). When the present provision was drafted it was thought that by 1951 most of the postwar restrictions maintained under Article XII would have been removed. It is now nine years since the end of the war and a great many restrictions remain. An annual review covering all aspects of the restrictions would place no additional burden on governments since the questionnaire used for the annual reports under Article XIV:1(g) covers the restrictions themselves as well as their discriminatory application.

Para. 4(c)

No contracting party has had recourse to this paragraph, which would enable a government to obtain prior approval for restrictions which it proposes to maintain, intensify or institute. As it is doubtful whether it serves a useful purpose, it might be possible to simplify the text of Article XII by omitting this paragraph.

Para. 4(d) and (e)

As these sub-paragraphs deal with different subjects it might be preferable to place them in separate paragraphs.

ARTICLE XIV

Exceptions to the Rule of Non-discrimination

Para. 1(a)

This paragraph relates the special arrangements for discrimination to the "aftermath of the war". Paragraph 1(f) in any case makes it clear that contracting parties may have recourse to these provisions only during the "transitional period", and therefore it would be preferable to bring 1(f) to the beginning of the Article in place of 1(a).

Para. 1(c)

This provision was inserted to meet the special situation of certain countries at the time of the Havana Conference. These countries, however, have not made use of the facilities of this paragraph, and all the contracting parties concerned appear to be covered by 1(b). Therefore this paragraph could probably be deleted.

Para. 1(d)

In place of this paragraph, Annex J could be incorporated into Article XIV as an alternative to the provisions of 1(b).

Para. 1(g)

If Article XII is amended to provide for an annual review of restrictions, the first sentence of 1(g) may be discarded.

Para. 1(h)

The date can be deleted. And if the other paragraphs are altered as proposed above, there will be several consequential amendments.

Para. 3(b)

This related only to the period ending 31 December 1951 and should be deleted.

ARTICLE XV

Exchange Arrangements

Para. 9(b)

The interpretation of this paragraph gave rise to some difficulty in connection with the Belgian restrictions on dollar imports at the Sixth Session. It seems desirable that the distinction between restrictions on the quantity or value of imports to safeguard the balance of payments, envisaged in Article XII, and restrictions or controls on imports intended to make exchange controls or exchange restrictions effective, envisaged in this sub-paragraph, should be clarified.

ARTICLE XVI

Subsidies

In reviewing the subsidy provisions of the Agreement, the CONTRACTING PARTIES will have a choice of three courses:

i) Article XVI could be left as it stands;

ii) the Article could be enlarged to include more precise definitions and obligations and also to contain provisions, on the lines of the present paragraph, relating to other export incentive measures, and

iii) the Article could be left in its present form, but the CONTRACTING PARTIES could undertake to study the question and submit recommendations which might take the form of a draft subsidiary agreement.

If the present paragraph is to be used, the CONTRACTING PARTIES might consider certain drafting amendments which have been discussed in the past :

i) Two phrases might be inserted in the first sentence:

"... which operates directly or indirectly to maintain or increase exports of any product from, or to reduce or prevent an increase in imports of any product ..."

ii) In the second sentence the following changes might be made :

"In any case in which /it is determined/ a contracting party considers that serious prejudice to /the/its interests /of any other contracting party/ is caused or threatened ...".

ARTICLE XVII

Non-discriminatory Treatment on the Part of State Trading Enterprises

A new paragraph

The CONTRACTING PARTIES may wish to consider the addition of a paragraph to indicate the type of arrangements which could be negotiated in order to limit or reduce the protection afforded through the operation of a monopoly to domestic producers or users of the monopolized product. This paragraph could be drafted along the lines of the corresponding provisions of Articles III:6 and IV(d) regarding mixing regulations and screen quotas.

ARTICLE XVIII

Governmental Assistance to Economic Development and Reconstruction

When this Article was drafted it was considered necessary to provide for governmental assistance for postwar reconstruction as well as for the establishment and development of industries. The period of postwar reconstruction must

now be regarded as having been completed and it should therefore be possible to delete the references to "reconstruction".

Another feature which makes the text extremely heavy is the frequent reference to "branches of agriculture". This could be retained in the first paragraph in the following form: "to promote the establishment or development of particular industries (including branches of agriculture)", and it could then be deleted elsewhere in the Article.

In other Articles of the Agreement where reference is made to contracting parties likely to be affected by a proposed action, "substantially interested" is the phrase used. For the sake of consistency those words might be used also in this Article in place of "materially affected".

Para. 3

If paragraph 3 of Article I is deleted, the reference to it in this Article - "or for the purpose ... the provisions of paragraph 3 of Article I" - can also be deleted. The Interpretative Note to this paragraph can in any case be deleted.

Para. 3(a) and (b)

The provision that a contracting party wishing to adopt measures under this paragraph may "enter into direct negotiations with all the other contracting parties" is plainly unrealistic. The provisions of sub-paragraph (b) are less onerous in that they limit the negotiations to the contracting parties affected. Therefore, it seems doubtful if sub-paragraph (a) serves any useful purpose. If it is deleted the paragraph would run on without any division: "... such contracting party may apply to the CONTRACTING PARTIES".

The words "commence and proceed continuously with" could be advantageously replaced by "carry out".

Para. 7(a)(i)

This criterion relates to the immediate postwar period and if a government had wished to protect an industry established during the war it would have submitted an application before now. Therefore, this sub-paragraph can be deleted.

Para. 8(a)

If paragraph 3(a) is deleted the arrangement for consultations in paragraph 8(a) might also be reconsidered.

Paras. 11-14

These paragraphs are of no further interest to present contracting parties, except for the notification given by Uruguay. This is one of the provisions

relating to a specific problem which could be removed to the Regulations and Interpretative Notes where it would serve as a basis for making the same facilities available to future acceding governments.

ARTICLE XX

General Exceptions

It will be necessary to consider whether the exceptions provided for in Section II should be permitted beyond 1 July 1955. If they are retained they will require some redrafting. In reviewing these provisions the need to retain the Interpretative Note to Annex J should be considered.

ARTICLE XXII

Consultation

The selection of certain provisions of the Agreement for special reference seems unnecessary. The Article could simply speak of "with respect to all matters affecting the operation of this Agreement".

ARTICLE XXIV

Territorial Application - Frontier Traffic - Customs Unions and Free-Trade Areas

Para. 10

The voting requirement should read:

"by a majority comprising two-thirds of the contracting parties".

Para. 11

As this was a transitional period provision the CONTRACTING PARTIES might consult with the Governments of India and Pakistan on the need to retain this paragraph and its Interpretative Note.

ARTICLE XXV

Joint Action by the Contracting Parties

Paras. 1 and 2

These paragraphs might be replaced by a paragraph on the following lines:

> "The contracting parties recognize that the operation of this Agreement and the attainment of its objective require them to take joint action, and accordingly agree to establish the /... Organization/ the functions and powers of which are set forth in the Protocol of Organizational Provisions bearing the date of ... which is hereby made an integral part of this Agreement."

Paras. 3,4 and 5(a)

The content of these paragraphs should be included in the Protocol of Organizational Provisions.

Para. 5(b), (c) and (d)

Paragraph 5(b), relating to the failure of a contracting party to carry out tariff negotiations, was drafted prior to the decision to add Article XXXV. Now that Article XXXV is in the Agreement, paragraphs (b) and (c) have only limited significance. If they are to be retained they should be rewritten and added to Article XXXV.

ARTICLE XXVI

Acceptance, Entry into Force and Registration

Para. 1

This paragraph requires amendment. It might read:

> "1. The date of this Agreement shall be 30 October 1947; provided that, in respect of a government acceding to the Agreement under Article XXXIII, the date of the Agreement shall be deemed to be the date specified in the instrument providing for such accession.
>
> "2. This Agreement shall be opened to acceptance by any government which on /1 January 1955/ was applying the provisions of this Agreement under Article XXXIII or pursuant to the Protocol of Provisional Application."

Para. 5

If paragraph 1 is amended as suggested above, the first sentence of this paragraph should also be amended to read, after the word "governments" at the end of the fourth line, as follows:

> "which on [1 January 1955] were contracting parties as defined in Article XXXII the territories of which account for [...] per cent of the total external trade of the territories named in Annex H."

The words "signatory to the Final Act" in the last sentence should then be replaced by "which was a contracting party on [1 January 1955]".

Interpretative Note

The Note relating to areas under military occupation appears to be unnecessary.

Annex H

The calculation of the shares of trade was based on the average of a prewar and a postwar year because of the exceptional conditions prevailing in the years immediately after the war. The calculation might now be revised on the basis of, say, the three latest years. Further, the list might cover all present contracting parties.

It may be desirable also to amend the note to the Annex. The words "and which are not self-governing in matters dealt with in the GATT" might be brought into line with the actual situation by being altered to read:

> "and in respect of which the provisional application of the Agreement was effective on [1 January 1955]."

ARTICLE XXVII

Withholding or Withdrawal of Concessions

In all other provisions of the Agreement relating to the modification of concessions the procedure established requires the contracting parties taking action to inform the CONTRACTING PARTIES. It would facilitate the administration of the Agreement if the same procedure were provided for in this Article. Therefore, the last sentence might read:

> "A contracting party taking such action shall give notice to the CONTRACTING PARTIES and shall consult with any contracting party which claims a substantial interest in the product concerned."

ARTICLE XXVIII

Modification of Schedules

Para. 1

The CONTRACTING PARTIES will wish to consider whether the assured life of the Schedules should be extended beyond 30 June 1955.

ARTICLE XXIX

The Relation of this Agreement to the Havana Charter

This Article is inappropriate in its present form and could be deleted.

If the CONTRACTING PARTIES wish to lay down some general principles, not related to the terms of the Agreement, these could be moved to an Annex, and this Article could be replaced by a provision along the lines of the present paragraph 1 in which the principles referred to would be those set forth in the Annex rather than those of certain Chapters of the Charter. Alternatively the CONTRACTING PARTIES could provide in the Protocol of Organizational Provisions for the Organization to study this question and submit a set of principles for approval by the contracting parties.

ARTICLE XXX

Amendments

Para. 2

Provision is made for a contracting party to withdraw from the Agreement in certain circumstances, but it is not required to notify its intention. Presumably this Article should contain a provision similar to that of Article XXIII. The following might be added to paragraph 2:

> "A withdrawal from the Agreement under this Article shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Secretary-General of the United Nations."

The CONTRACTING PARTIES may wish to consider whether a paragraph might be added to this Article to avoid the preparation, signature and delayed entry into force of protocols of rectification. Such non-substantive changes,

modifications pursuant to other Articles of the Agreement and agreed modifications could be made effective in accordance with procedures adopted by the CONTRACTING PARTIES without recourse to the formal process of incorporation in a protocol requiring an acceptance by each contracting party.

At the Sixth Session the Working Party on Schedules noted that several protocols of rectification had not come into force owing to the impossibility of obtaining the signatures of all the contracting parties. In its report the Working Party said:

> "Clearly it was never the intention of Article XXX to place difficulties in the way of making rectifications of an entirely non-substantive character, nor to prevent agreed modifications of the concessions contained in the schedules to the General Agreement." (B.I.S.D. Vol.II p.146)

At the present time the following protocols require several signatures before they can enter into force:

> The Second Protocol of Rectifications and Modifications, dated 8 November 1952.
>
> The Third Protocol of Rectifications and Modifications, dated 24 October 1953.

ARTICLE XXXI

Withdrawal

The words "on or after 1 January 1951" may be deleted from each of the two sentences.

ARTICLE XXXIII

Accession

The voting requirement should read:

"by a majority comprising two-thirds of the contracting parties."

ARTICLE XXXV

This Article should be given a title.

Para. 1

The reference to Article XXIX is no longer necessary as it was inserted on the assumption that the Havana Charter would enter into force. If Article XXV:5(b) is deleted the reference to it can be omitted; on the other hand, if paragraph 5(b) is added to this Article the reference can be amended accordingly.

Para. 2

The phrase: "at any time before the Havana Charter enters into force" may be deleted.

ANNEX I

Interpretative Notes

As suggested in the introduction to this paper, provisions in the form of regulations relating to specific problems of limited interest could be removed to an annex containing all such regulations and also the Interpretative Notes at present in Annex I.

Each of the Notes might be re-examined to determine whether it need be retained among the regulations and interpretative notes or whether it would suffice for it to be placed on record among the rulings of the CONTRACTING PARTIES.

The Final Note, in which the applicability of GATT to trade with areas under military occupation was reserved for further study, would appear to be no longer required.

Draft

PROTOCOL OF ORGANIZATIONAL PROVISIONS

1. Pursuant to Article XXV of the General Agreement on Tariffs and Trade (hereinafter referred to as the Agreement) the contracting parties to the Agreement hereby establish the /--/ Organization (hereinafter referred to as the Organization) to achieve the purposes and objectives set forth in this Protocol.[1]

[1] If an organization is established, the word "Organization" would replace "CONTRACTING PARTIES" throughout the text of the Agreement.

Membership

2. The membership of the Organization shall consist of the contracting parties to the Agreement.

Functions

3. The functions of the Organization are:

a) to give effect to those provisions of the Agreement which require joint action by the contracting parties;

b) to encourage and facilitate consultation among members on all questions relating to the provisions of the Agreement;

c) to study questions of international trade and commercial policy and to make recommendations thereon to the contracting parties;

d) to prepare or sponsor agreements between governments with respect to any matter within the scope of the Agreement and to recommend such agreements for acceptance; and

e) generally to facilitate the operation of the Agreement and to discharge such other functions as the members may from time to time agree to assign to it.

Structure

4. The Organization shall consist of a Conference [and such other organs as the Conference may decide to establish]. There shall also be an Executive Secretary and a Staff.

The Conference

5. The Conference shall consist of the members of the Organization.

6. It shall be the responsibility of the Conference to carry out the functions of the Organization as defined in paragraph 3 and, for this purpose, the Conference may establish such subsidiary bodies as it considers necessary.

7. The Conference shall meet in regular annual session and shall annually elect its Chairman and other officers. It shall also meet in such special sessions as may be convened in accordance with the rules of procedure.

8. The Conference shall establish its own rules of procedure, which shall include rules for the discharge of its functions during intervals between sessions, and also the rules of procedure of subsidiary bodies established by it.

9. At meetings of the Conference each member of the Organization shall be entitled to have one vote and, except as otherwise provided for in the Agreement, decisions of the Conference shall be taken by a majority of the votes cast.

10. The Conference shall approve the accounts and the budget of the Organization. It shall apportion the expenditures of the Organization among the members in accordance with a scale of contributions to be fixed by the Conference and shall take necessary measures to ensure that the contributions are paid promptly by all members.

11. The Conference shall appoint an Executive Secretary as chief administrative officer of the Organization. The powers, duties, conditions of service and terms of office of the Executive Secretary shall conform to regulations approved by the Conference.

12. In exceptional circumstances, not elsewhere provided for in the Agreement, the Conference, may waive an obligation imposed upon a contracting party by the Agreement; provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the members.

Secretariat

13. The Executive Secretary shall appoint such members of the Staff as may be required and shall fix their duties and conditions of service in accordance with regulations approved by the Conference.

Other Organizational Provisions

14. /The Organization shall be brought into relationship with the United Nations as soon as practicable as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations. This relationship shall be effected by agreement approved by the Conference./

15. The Organization shall make arrangements with other intergovernmental organizations which have related responsibilities to provide for effective co-operation and the avoidance of unnecessary duplication of activities.

16. The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of the Agreement.

17. The Organization shall have legal personality and shall enjoy such legal capacity as may be necessary for the exercise of its functions.

18. The Organization shall enjoy in the territory of each of the members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

19. The representatives of the members and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the Organization.