

# GENERAL AGREEMENT ON TARIFFS AND TRADE

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## REVIEW OF THE GENERAL AGREEMENT

### Proposals by the Government of the Federal Republic of Germany

#### Addendum

It was indicated in L/261 that the detailed proposals submitted by the Government of the Federal Republic of Germany would be circulated separately. They are attached hereto.

The symbol of this document does not appear on the attached pages because, in order to avoid delay, the stencils furnished by the German delegation have been used.

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WORLD TRADE ORGANIZATION

WTO GATT CMA 24/1994

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Article I  
General Most-Favoured-Nation Treatment

Interpretative Notes ad Article I

Paragraph 1

It is suggested that the following new (first) sub-paragraph be inserted:

"The advantages, favours, privileges or immunities referred to in paragraph 1 of Article I shall not be regarded as falling within Article I if granted by a contracting party on a reciprocal basis by virtue of agreements, laws or regulations to nationals of another country in connection with the importation or exportation of goods irrespective of their origin, exclusively on account of the non-commercial purpose of such goods."

Motivation:

This interpretative note is to make clear the principle that the most-favoured-nation clause of the General Agreement does not apply to favours in respect of customs duties and other charges which are granted for purposes outside the ordinary course of trade. The note is, in particular, to prevent countries which are not parties to multilateral agreements providing for customs favours, from deriving from such agreements non-commercial benefits under the unconditional most-favoured-nation clause without granting reciprocity.

Examples of non-commercial favours within the meaning of the above interpretative note are:

- a) Customs favours in respect of certain travel equipment and provisions for the journey imported by tourists, as provided for in the relevant decisions of the OEEC Council, in the Convention concerning Customs Facilities for Touring signed in New York on 4 June 1954, and in Articles 2 and 3 of the Draft International Customs Convention on Touring put into effect on 1 January 1950 under the Agreement providing for the Provisional Application of the Draft, concluded at Geneva on 16 June 1949;
- b) Customs favours for motor vehicle circulation papers of all types and touring propaganda material as provided for under Article 4 of the above-mentioned Geneva Customs Convention;
- c) Customs favours in respect of goods imported from foreign customs territories and intended for the use or consumption by foreign heads of State during a temporary stay in the country visited;
- d) Customs favours in respect of objects of an educational, scientific or cultural character, intended for public collections or non-profit institutions as media of instruction, demonstration or research.

Paragraph 1

It is suggested that the following new (second) sub-paragraph be inserted:

"The term "charges of any kind" shall not be regarded as including such internal taxes or their equivalents as are imposed on imports.

Most-favoured-nation treatment shall extend to such taxes or their equivalents by virtue of the term "with respect to all matters referred to in paragraphs 2 and 4 of Article III."

Motivation:

The wording of Article I leaves room for doubt as to whether the term "charges of any kind" covers such internal taxes or their equivalents as are levied on imports. The proposed interpretative note thus appears to be necessary to clarify the legal position.

Paragraph 1

The present first sub-paragraph would become the third sub-paragraph.

Paragraph 1

It is suggested that the following new (fourth) sub-paragraph be inserted:

"Products which are classified or included under different items or sub-items of any one customs tariff shall not be regarded as "like products" within the meaning of paragraph 1."

Motivation:

There exists as yet no definition of the term "like product". The Preparatory Committee of the United Nations for the Havana Charter has recommended that ITO study the problem of defining that term. Since that organization which was provided for in the Havana Charter, has not yet been established, the revision of GATT appears to provide a timely opportunity to define the term "like product", in order to reduce the number of disputes.

The suggested clarification agrees with the conclusions reached by the Working Party of the Fourth Session of the CONTRACTING PARTIES in connection with the question of Australian subsidies for ammonium sulphate (cf. Analytical Index of the General Agreement, Article I, paragraph 6).

Article II  
Schedules of Concessions

Paragraph 6

It is suggested that the following (new) sub-paragraph be inserted:

"6. (b) The provisions of sub-paragraph (a) above shall apply mutatis mutandis in case the par value is increased consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum."

The present sub-paragraph (b) would become sub-paragraph (c).

Ad paragraph 7 is suggested that the Schedules annexed to the Agreement which form an integral part of the Agreement, be annexed to the revised Agreement in a codified form. The present Geneva, Annecy and Torquay Schedules, and all Protocols of Rectifications and Modifications would thus cease to apply.

Motivation

When, in the course of the Eighth Session of the contracting parties, an examination was made of the Czechoslovak Government's measures adjusting the rates of their specific duties to the increased par value of the Czechoslovak currency, the absence of an appropriate provision in the General Agreement was regretted (cf. GATT documents L/100 and G/62). It therefore seems desirable to amend this deficiency.

Motivation:

When revising the General Agreement, it would appear expedient also to revise the Schedules annexed to the Agreement with a view to replacing the present Geneva, Annecy and Torquay Schedules and the numerous Protocols of Rectifications and Modifications by one single Schedule which would cover in a codified form all concessions actually in operation on the day on which the revision of GATT is brought to a conclusion, thus providing for a more lucid arrangement of that instrument and facilitating its handling.

Interpretative Notes ad Article II (new proposal)

Paragraph 6 (a) (new)

It is suggested that the following new paragraph be inserted:

"6(a) Factors within the meaning of the last sentence of sub-paragraph 6(a) shall, for example, include the extent to which domestic and import prices have in fact risen as a result of a devaluation of currency."

Motivation:

In view of the fact that this problem caused difficulties at the Eighth Session of the Contracting Parties in connection with the examination of the adjustments of specific duties made by the Greek Government as a result of the devaluation of its currency (cf. GATT document G/62 of 23 October 1953, paragraph 6, sub-paragraph 2), it would appear desirable to clarify this point along the lines suggested in the proposal.

Article III

National Treatment on Internal Taxation and Regulations

Interpretative Note ad Article III.

Paragraph 2

It is suggested that the following new (second) paragraph be inserted:

"The words "internal taxes or other internal charges ..... applied directly or indirectly" as employed in the first sentence of paragraph 2 shall be construed to denote the overall charge, including the charges borne by like domestic products through being subjected to internal taxes or other internal charges at various stages of their production (charges borne by the raw materials, semi-finished products, auxiliary materials etc. incorporated in, and by the power consumed for the production of, the finished products)."

Motivation:

As an interpretation along these lines would correspond to the tax legislation of various contracting parties, it appears desirable to clarify the provision as suggested so as to eliminate any doubts as to the proper interpretation.

## Article VI

### Anti-Dumping and Countervailing Duties

#### Paragraph 4

It is suggested that this paragraph be supplemented as follows:

"..... except if the refund exceeds the charges borne by the like product when destined for consumption in the country of origin or exportation. In the latter case the excess amount shall be deemed to be a subsidy within the meaning of paragraph 3 above."

#### Motivation:

Paragraph 4 of Article VI provides that the exemption from, or the refund of, duties and taxes upon exportation shall not give cause for levying anti-dumping or countervailing duties. Such a requirement would appear to be unjustified in cases where the refund of duties and taxes exceeds the amount of such duties and taxes borne by the like products when destined for sale in the home country. In such a case, the excess amount would have to be considered a subsidy, and the imposition of a countervailing duty equivalent to that amount would be justified.

## Article VII

### Valuation for Customs Purposes

#### Paragraph 2

It is suggested that sub-paragraph 2(a) be amended to read as follows:

"The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise. Each contracting party shall undertake to apply only one method of valuation and thereafter shall refrain from choosing between two or more methods depending on which method results in a higher value for customs purposes.

"The value for customs purposes shall not be based on the domestic price in the country of exportation, on the value of merchandise of national origin or on arbitrary or fictitious values."

#### Motivation:

Paragraph 2 of Article VII is interpreted by various contracting parties to mean that Article VII allows the valuation for customs purposes to be effected by the application of any one of a varying number of alternative methods depending on which method results in the highest value for customs purposes. The possibility of choosing between alternative methods should be excluded since it introduces an element of uncertainty into the calculations of both importers and exporters. Contracting parties should be urged to undertake to apply one method only.

Furthermore, the method which bases the value for customs purposes on the domestic prices in the country of exportation, should not be allowed because the exporter, when making the export price, must adapt his price to the price level prevailing in the country of importation and, in doing so, make allowance for the charge to be borne by the merchandise in the form of import taxes and duties, of differing margins of trade, and of transportation costs. To establish the value for customs purposes on the basis of the domestic price in the country of exportation would be an even more effective protective device than the application of anti-dumping and countervailing duties. The result of valuation

on that basis would in many cases be that the price of merchandise bearing import taxes and duties would be higher than the price of comparable merchandise of national origin, so that the foreign merchandise would not be competitive.

Paragraph 2

It is suggested that the second sentence of sub-paragraph 2(b) be amended to read as follows:

"To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either

(i) comparable quantities, quantity rebates usual in trade being allowed,

or

(ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold at the first phase of distribution usual in the particular line of business in the trade between the countries of exportation and importation."

Motivation:

The importance of the quantity element in valuation is not brought out clearly enough in the present version of paragraph 2(b) of this Article. The following question should be clarified: Is sub-paragraph (ii) to be interpreted to mean

(a) that, in the latter case, the value should always be established on the basis of the price prevailing at the first phase of distribution usual in the particular line of business,

or

(b) that the basis should be the prices charged for the largest quantities that have actually been sold at any phase of distribution.

If the contracting parties concur, the second sentence of paragraph 2(b) should be amended along the lines suggested in the proposal.

Interpretative Notes ad Article VII

Paragraph 1

It is suggested that the following sub-paragraph be added:

"The term "other charges" shall not be regarded as including such internal taxes or their equivalents as are imposed on or in connection with importation."

Motivation:

The wording of Article VII leaves room for doubt as to whether the provisions of that Article cover internal taxes or their equivalents to the extent that such taxes or equivalents of taxes are imposed on or in connection with importation. The proposed interpretative note thus appears to be necessary in order to make clear that this is not the case.

Paragraph 2

It is suggested that the following sub-paragraph be added:

"Where the merchandise to be valued is not imported as the result of a purchase and where the purchase price is not known or cannot be ascertained, the sum of production costs plus selling costs plus a normal profit may be regarded as constituting the "actual value" of the imported merchandise."

Motivation:

In respect of merchandise which is not imported under an outright purchase there should be a possibility of establishing the value for customs purposes on the basis of the cost price plus the exporter's normal profit. Such valuation would, in particular, apply to patented or trade-marked merchandise which, for example, is imported only on a hire basis or against payment of a royalty for the use of the rights pertaining to the patented or trade-marked article.

Paragraph 3 (new)

It is suggested that the following new paragraph be added:

"The term "internal tax" within the meaning of paragraph 3 shall only apply to such taxes as are directly borne by the merchandise itself, to the exclusion of taxes applicable to the producer or trader personally and of contributions to the social insurance system."

Motivation:

Direct taxes and social insurance contributions do not refer to the imported merchandise. They are to be included in the value for customs purposes, even though they may be refunded in the country of exportation.

## Article VIII

### Formalities connected with Importation and Exportation

#### Paragraph 1.

It is suggested that the first sentence be amended to read as follows:

"1. The contracting parties recognize that fees and similar charges imposed by governmental authorities on or in connection with importation or exportation, shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes; any such fees and similar charges shall be levied at a flat rate only and not as a percentage of the value of the goods involved, except in cases where the percentage rate does not exceed one per centum of the value of the consignment."

#### Motivation:

The present version of the first sentence constitutes no more than a recommendation and has no mandatory character. In the interest of facilitating international trade, however, the rule on the levying of fees should be made mandatory and the assessment of fees as a percentage of the value of the merchandise involved should be prohibited, because such percentage fees cannot be regarded as being limited to the approximate cost of services rendered.

The insertion of the word "similar" between "and" and "charges" is suggested with a view to precision.

#### Paragraph 3

The present paragraph 3 should be re-numbered 4.

#### Sub-Paragraph 3(a) (new)

It is suggested that the following new sub-paragraph be inserted:

"3(a) On the importation of products from the territory of any contracting party into the territory of any other contracting party, the production of

#### Motivation:

In view of the fact that tariff treatment and degree of liberalization vary from one contracting party to another, it will not be possible to introduce a rule generally forbidding countries to require the production of certificates of origin.

certificates of origin should only be required to the extent that is strictly indispensable. Where, on importation, the treatment of any product depends on the fulfilment of particular conditions as to its constitution, purity, quality, sanitary condition, district of production, or other similar matters, the frontier control formalities resulting therefrom should wherever possible be simplified by certificates issued by the appropriate authorities of the country of exportation."

As already envisaged in the Report of the Working Party (No 5) at the Eighth Session of the CPs, however, certificates of origin should only be required in cases where they are strictly indispensable (cf. GATT Document G/61, dated 22 October 1953, Part II(a)). The proposed version would also cover goods in transit.

The regulations governing the requirement to produce documents certifying to the results of examinations, to purity or the like apply, in the various territories of the contracting parties, to different goods (e.g. animals, plants, beer, wine, olive oil). In order to provide an adequate safeguard to importing countries without adding to the handicaps faced by international trade, it would appear desirable to insert a suitable provision.

#### Sub-paragraph 3(b) (new)

It is suggested that the following new sub-paragraph be inserted:

"3(b) The contracting parties shall agree on the form of the certificates referred to in sub-paragraph 3(a) above. They shall, in particular, take steps with a view to standardizing the models of certificates of origin, compiling a common list of goods for which proof of origin should not be required, determining and making known the authorities competent to issue certificates of the type

#### Motivation:

The measures here envisaged have already been proposed by a number of contracting parties during the discussions of Working Party (No 5) at the Eighth Session of the CPs (cf. GATT Document G/61 of 22 October 1953, Part I, para 4). In the opinion of the Government of the Federal Republic of Germany, those measures would lead to a simplification of international trade formalities and thus constitute a step forward on the way to achieving the objectives of GATT.

Although some of these items have in fact been settled on an international level in Article 11 of the International Convention relating to the Simplification of Customs Formalities, of 3 November 1923, the inclusion of an appropriate provision in the General Agreement would nevertheless appear

referred to under sub-paragraph 3(a) above, circulating sample signatures of the persons authorized to sign such certificates, and establishing common rules for the verification of such certificate."

desirable in view of the fact that not all contracting parties to the GATT are parties to the 1923 Convention.

Paragraph 4 (present version)

The present paragraph 4 would be re-numbered 5a.

Paragraph 5a (new)

It is suggested that, in this new paragraph (formerly paragraph 4), sub-paragraph (a) be deleted.

Sub-paragraphs (b) to (h) would become sub-paragraphs (a) to (g).

Paragraph 5b (new)

It is suggested that the following new paragraph be added:

"5b The contracting parties recognize that consular invoices and consular visas for commercial invoices, certificates of origin, manifests, etc. constitute an unjustified impediment to international trade. Each contracting party shall therefore take steps to abolish consular invoices and consular visas for commercial invoices, certificates of origin, manifests, etc., completing such abolition not later than 31 December 1956. By that date, consular fees shall likewise have been progressively abolished.

Motivation:

These principles were agreed by the contracting parties at their Seventh Session by way of a recommendation (cf. GATT Document G/28). In line with those of the GATT objectives which aim at a substantial reduction of trade barriers it would appear desirable to incorporate in the GATT, in the form of an obligation, the most important of the principles contained in that recommendation.

\*The production of consular invoices and  
consular visas for commercial invoices  
shall cease to be required for consign-  
ments of goods of an invoice value not  
exceeding US \$ 100 (or the equivalent in  
other currencies)."

The insertion of paragraph 5b (new version)  
obviates the necessity of retaining sub-  
paragraph 4(a) (present version).

Article IX  
Marks of Origin

Paragraph 1 (new)

It is suggested that the following new paragraph be inserted:

"1. The contracting parties recognize that, in adopting and implementing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum."

Motivation:

The laws and regulations of numerous countries requiring the marking of imported products are among the factors which tend to prevent the achievement of those of the GATT objectives which aim at eliminating to the greatest possible extent all barriers to international trade. It would, therefore, appear desirable to insert at the beginning of Article IX a general clause corresponding to the provisions of Article 37, paragraph 1, of the Havana Charter.

Paragraphs 1 to 3 (present version)

The present paragraphs 1 to 3 would be re-numbered 2 to 4.

Paragraph 5 (new)

It is suggested that the following new paragraph be inserted:

"5. The contracting parties shall take steps to eliminate unnecessary marking requirements. They shall, in particular, study the possibility of establishing and adopting common schedules of those categories of products in respect of which marking requirements operate to restrict trade to an extent disproportionate to any purpose to be served, and which shall not in any case be required to be marked to indicate their origin."

Motivation:

It would furthermore appear expedient to insert a clause corresponding to Article 37, paragraph 5, of the Havana Charter with a view to facilitating the ultimate achievement of that objective by adopting common schedules of products which should not be subject to marking requirements.

Paragraph 6 (new)

It is suggested that the following new paragraph be added:

"6. The contracting parties shall come to an understanding on the steps to be taken to standardize the provisions governing the form, wording and placing of marks of origin."

Motivation:

It appears desirable to standardize the provisions relating to form, wording, and placing of marks of origin since those provisions vary to such a degree from one country to another that exporting industries are forced to make up their products differently for each country of destination, thus having to incur considerable additional costs.

Paragraphs 4 and 5 (present version)

The present paragraphs 4 and 5 would be re-numbered paragraphs 7 and 8.

Paragraph 9 (new)

It is suggested that the following new paragraph be added:

"9. The contracting parties recognize that commercial samples within the meaning of Articles II and III of the Convention to Facilitate the Importation of Commercial Samples and Advertising Material of 7 November 1952 shall be exempt from any marking requirement on their importation from the territory of any contracting party into the territory of any other contracting party."

Motivation:

The problem of exempting commercial samples of negligible value from marking requirements was dealt with by the League of Nations as far back as 1931 when the Economic Committee of the League pronounced an opinion along the lines of the present proposal (cf. League of Nations Official Journal 1931, 10-12, Archives, page 2027 et seq.). At their Seventh Session, the Contracting Parties to GATT likewise examined the question of exempting commercial samples from marking requirements in connection with the elaboration of the Samples Convention, and they decided to recommend that the CONTRACTING PARTIES examine at a later session the possibility of carrying out a general study of the problem of marks of origin for imported goods. It would appear that the discussions on the revision of the General Agreement afford a good opportunity to examine this question and to incorporate an appropriate provision in the Agreement. Since both commercial samples

of negligible value and all such samples as are imported for temporary duty-free admission are not intended for sale, it is suggested that exemption from marking requirements be provided for all commercial samples covered by Articles II and III of the Samples Convention.

Article X a

Foreign Trade Statistics

It is suggested that the following new Article be inserted:

"Article X a

- "1. The contracting parties shall publish regularly and as promptly as possible within the provisions of their internal legislations statistics in the following fields:
  - a) their external trade in goods (imports and exports);
  - b) the governmental revenue from import and export duties.
- "2. So far as possible the statistics referred to in paragraph 1 should be compiled on the basis of the tariff nomenclature. If this does not prove possible a comparative key between the statistical nomenclature and the tariff nomenclature should be published.
- "3. The contracting parties shall support endeavours designed to facilitate the comparability on an international basis of the statistics referred to in paragraph 1, and insofar as such an international basis has been secured, to publish their statistics on that basis."

Motivation:

At present GATT lacks any provision corresponding to Article 39 of the Havana Charter. Although the principles of the Havana Charter, i.e. in this case the principle of publishing all data concerning external trade, have to be observed by the contracting parties in accordance with Article XXIX of GATT, it would be desirable to insert this provision in GATT itself, and, as far as it relates to the publication of foreign trade statistics, to do so in a manner binding on all contracting parties.

Moreover, it would be desirable, in order to simplify the use of the statistics, to recommend that, as far as possible, the statistics referred to be compiled on the basis of the tariff nomenclature.

Paragraph 3 of the suggested amendment is meant as a recommendation to the contracting parties to support the endeavours of the UNO aiming at comparability of foreign trade statistics as well as indirectly those of the Brussels Customs' Cooperation Council aiming at the comparability of tariff nomenclatures, on which the foreign trade statistics are to be based as far as possible.

Article XI

General Elimination of Quantitative Restrictions

Interpretative Notes ad Article XI

It is suggested that      Motivation:

the following new para-  
graph be inserted:

"Paragraph 1

Currency restrictions  
shall also be regarded  
as restrictions within  
the meaning of this  
paragraph and of Ar-  
ticles XIII, XIII, and  
XIV."

Restrictions on imports and exports may be made effective both by prohibitions or quantitative restrictions on imports and exports and by governmental control of the means of payments available for imports or accruing from exports. It may be the aim of such restrictions to protect domestic branches of production or to take account of the balance of payments and the reserves of foreign currency. It is often not possible clearly to recognize the underlying motives for foreign trade restrictions in the commercial practice of countries. Often there is no clear distinction between the so-called commercial restrictions and those instituted for reasons of the balance of payments, or both overlap. Since in the provisions of GATT, too, restrictions of a commercial nature and restrictions instituted for reasons of the balance of payments are to a certain extent put down side by side and since, as has been recognized, the restrictions and discriminations possible for reasons of the balance of payments are frequently misused for protectionist purposes, it appears expedient to consider both kinds of restrictions jointly and to state in the basic Article XI that also restrictions through the regulation of payments are covered by this Article.

Standard Practices  
for Import and Export Restrictions  
and Exchange Controls

It is suggested that the Standard Practices (cf. GATT G/28 and 7/28 Corr. 1 of 1 and 6 November 1952) be supplemented as follows:

"10. Insofar as global quotas for imports are autonomously fixed every six months or for any other period, changes of values, specifications or terms of global quotas should, if possible, be effected rarely and only at major intervals in order not to impair the continuity of trade.

"11. It is recommended that governments which intend to institute special control measures in connection with the importation of commodities (e.g. controls of exchange, quantity or quality) confine this control to such measures as will not render trade unduly difficult or expensive.

In principle, such control measures should only be carried through in

Motivation:

It was repeatedly observed that through changes of specifications occurring every 6 months producers were prevented from effecting imports each time they had adjusted their products to the altered conditions, and, when production had finally started, the trade was destroyed by the elimination of global quotas.

Motivation:

For exchange control reasons the Union Bank of Burma has ordered that all imports of commodities irrespective of their provenance have to be accompanied by survey-reports. These reports are to state:

- a) The actual quantity by stating the number of parcels or pieces, number and quantity per piece, total weight and total dimensions;
- b) The quality, that is to say the definition and description of the commodities usual in trade, type description and chemical and/or physical analysis.

Such reports which should also indicate that the commodities concerned have actually been shipped have to be provided by internationally recognized enterprises not trading

the form of payment or customs controls in the country which has instituted such measures."

themselves. The reason for this far-reaching requirement may be traced back to the fact that certain Burmese importers have carried through illegal exchange manipulations which resulted in an accumulation in their favour of currency balances abroad due to the importation of lower quality goods contrary to the statements in the exchange applications.

The firms affected by this order are not in a position to conform to these measures which are unusual in international trade. The chemical and/or physical analysis would - as regards certain products - amount to a disclosure of production secrets; moreover, the control would cause high cost.

Therefore the contracting parties should agree to refrain from any such measures that make trade unduly difficult.

## Article XII

### Restrictions to Safeguard the Balance of Payments

#### Paragraph 1

It is suggested that this paragraph be amended to read as follows:

- "1.(a) The contracting parties recognize that the maintenance or restoration of an equilibrium of their balances of payments on a sound and lasting basis is in the mutual interest and that a disequilibrium in the balance of payments of one contracting party will have harmful effects on the situation of all the other contracting parties and might lead to a contraction of international trade affecting all contracting parties.
- (b) The contracting parties shall consider, when applying measures for the maintenance or restoration of the equilibrium of their balances of payments, the effects of possible restrictions on the balances of trade and payments of other countries as well as the adverse effects which might result therefrom for their own balances of payments. Therefore, the contracting parties shall aim at maintaining or restoring the equilibrium of their balances of payments in

#### Motivation:

The principle is agreed to that restrictions on imports and exports are permitted in order to maintain an equilibrium of the balance of payments.

However, Article XII contains several other motives of economic policy for the justification of foreign trade restrictions due to the situation of the balance of payments. They concern problems which have resulted from the consequences of the last war (e.g. full employment, new branches of production, which had been dealt with in the Havana Charter and so played an important rôle at the time of the conclusion of GATT). It appears necessary to consider the transitional period after the war as having come to an end, to bring the aspect of the farthest possible development of international trade to the fore and accordingly, to eliminate aspects of employment policy and industrial protectionism from this Article so that its application is confined to the requirements of the balance of payments. In this connection it is considered expedient to express the principle contained also in the Havana Charter that the elimination of balance of payments difficulties is to be aimed

the first place by such measures as will not entail restrictions of the international exchange of goods...

(c) In case a contracting party is of the opinion that, in order to safeguard its external financial position and its balance of payments, and while paying due regard to the principles contained in the above sub-paragraphs (a) and (b), such party is nevertheless not able to refrain from applying quantitative restrictions, it may, notwithstanding the provisions of paragraph 1 of Article XI, restrict the quantity or value of merchandise permitted to be imported, subject to the following provisions of this Article."

at if possible through such measures as do not amount to a restriction but to an expansive development of world trade.

#### Paragraph 2

It is suggested that in sub-paragraphs (a)(i) and (a)(ii) the word "usable" be inserted before the words "monetary reserves".

#### Motivation:

Here the case is considered that not all means of payment constituting foreign exchange reserves are generally convertible, so that some types of foreign exchange cannot be indiscriminately taken into account in judging the external position.

#### Paragraph 3

It is suggested that sub-paragraph (a) be amended to read as follows:

"3.(a) The contracting parties recognize that the period of economic adjustment to overcome the consequences of the war has essentially to be regarded as having ended and that the development of

#### Motivation:

This sub-paragraph in the present version of GATT contains the recognition of the necessity to introduce restrictions for reasons of "economic adjustment resulting from the war". Not it appears expedient through the new version to declare the transitional period to have

production and trade having occurred in the meantime has created a new situation in all countries. Accordingly, the CONTRACTING PARTIES shall be guided by the point of view of the necessity of expanding international trade whenever they have to make decisions pursuant to this Article or to Article XIV. They shall endeavour to bring about solutions which avoid as far as possible the institution of restrictions and provide instead for a further mutual facilitation of the exchange of commodities between the countries concerned. Insofar as any contracting parties institute or maintain restrictions within the meaning of subparagraph 2(a) of this Article, they shall, in effecting such restrictions, maintain the prior composition of imports to the greatest possible extent. In this connection they shall observe, in particular, the following principles:

- (i) Not to apply these restrictions in such a manner as to create or maintain branches of production which would not be capable of existing upon the abolition of restrictions after an appropriate transitional period;
- (ii) To administer the restrictions in so flexible a manner that a minimum of foreign competition in the products involved is maintained on the market concerned;
- (iii) To administer the import restrictions in such a way as not to exclude entirely established suppliers of such products from the market concerned."

ended and to give more weight to the point of view of an expansion of international trade. The aspects listed under (i), (ii) and (iii) correspond to the principles worked out by the CONTRACTING PARTIES in the past years in connection with the administration of import and export restrictions, which are to prevent an abuse of the quantitative restrictions for protectionist purposes.

Paragraph 3

It is suggested that sub-paragraph (b) of this paragraph be deleted.

Motivation:

The possibilities of deviating from the general principle of elimination of quantitative restrictions contained in sub-paragraph (b) of paragraph 3 are far-reaching and based largely on motives of economic policy, whereas Article XII should only deal with restrictions imposed for reasons of the balance of payments. Moreover, these possibilities of deviating from the general principle of freedom of trade are covered in other Articles, notably Article XVIII. Therefore, it appears expedient to cancel this sub-paragraph.

Paragraph 3

It is suggested that sub-paragraph (c)(i) be deleted.

Motivation:

Sub-paragraph (c)(i) emphasizes in a general way the necessity of keeping the balance of payments in order and of developing the economic resources. In view of the new formulation proposed for paragraph 1 of this Article, sub-paragraph (c)(i) would seem to be no longer necessary.

Paragraph 4

It is suggested that the last sentence of sub-paragraph (b) be amended to read as follows:

"The CONTRACTING PARTIES shall for the first time in 1955 and after that annually

every two years review all restrictions which at the time of review are still applied under this Article. The CONTRACTING PARTIES shall on such occasions invite each contracting party to state the conditions

Motivation:

Sub-paragraph (b) of paragraph 4 contains a procedure according to which the CONTRACTING PARTIES may take action against each contracting party applying import restrictions by the compulsion to enter into consultations. The amendment proposed aims at bringing about under GATT a similar multilateral administration of import restrictions as is being applied by the OEEC.

under which it will be in a position wholly or partly to eliminate the restrictions maintained by it. In case this procedure reveals any possibility of negotiations among several contracting parties with the object of eliminating restrictions, the CONTRACTING PARTIES shall invite the contracting parties concerned to enter into such negotiations; the contracting parties concerned undertake to participate in such negotiations."

Article XIV

Exceptions to the Rule of Non-Discrimination

It is suggested that this Article Motivation:

be amended to read as follows:

"1(a) Insofar as a contracting party applies restrictions under Article XII it shall, in doing so, deviate from the rule of non-discrimination of Article XIII only in cases in which this is required for important reasons of its external financial position and its balance of payments.

(b) Under sub-paragraph (a) a contracting party may deviate from the provisions of Article XIII only to such an extent that the deviations have the same effect as the payments and transfer restrictions in connection with current international transactions, which it is entitled to apply on the same date under Article XIV of the Articles of Agreement of the International Monetary Fund or under the exemption of the International Monetary Fund according to Article VIII Section 2a of its Articles of Agreement or under a corresponding provision of a special agreement on

The present version of Article XIV complies with the need existing at the time of the original conclusion of GATT to provide for transitional regulations to overcome the difficulties of the post-war period. In view of the consolidation of the economic situation of most countries, which has taken place in the meantime and having regard to recent endeavours to eliminate foreign trade restrictions as far as possible and to pave the way for the convertibility of currencies, a new simplified version of Article XIV appears expedient. Here one will have to start from the fact that on the grounds of an actually existing emergency in the balance of payments, transitional discriminations in foreign trade cannot yet be foregone completely. The functions of the IMF to make decisions regarding the situations of balances of payments will have to be retained. The proposed version of Article XIV seeks to take these aspects into consideration. The Organization of GATT should keep these problems under constant observation and should endeavour to redress existing grievances and to bring about - if possible on a multilateral level - agreements on the elimination or avoidance of discriminations.

payments concluded in accordance with paragraph 6 of Article XV or under a decision made on the basis of such an agreement.

- "2(a) Each contracting party shall endeavour in connection with its measures applied to take into account the interests of the other contracting parties in its market. Accordingly, a contracting party insofar as it applies restrictions in a discriminatory manner under paragraph 1 of this Article shall not do so in such a way as to grant special protection to certain national branches of production and thus to restrict foreign competition more than necessary.
- (b) The application of discriminations under paragraph 1 shall be temporary only and shall cease as soon as the external financial position and the balance of payments permit.
- "3(a) The contracting parties shall report to the CONTRACTING PARTIES on 1 April of each year /on 1 April of every other year/ which discriminations on the grounds of paragraphs 1 and 2 of this Article they are still maintaining and under what conditions and up to what date they would be in a position partly or wholly to eliminate these discriminations.
- (b) The CONTRACTING PARTIES shall try to bring about in joint discussions with the contracting parties concerned the elimination of discriminations. Each contracting party which considers itself affected by discriminations applied by another contracting party may apply to the CONTRACTING PARTIES for consultations to be initiated on this subject.

"4. The provisions of Article XIII shall not preclude restrictions in accordance with the provisions of Article XII which are applied against imports from other countries, but not as among themselves, by a group of territories having a common quota in the IMF, on condition that such restrictions are in all other respects consistent with the provisions of Article XIII."

Article XVIa (new)

Abolition of Artificial Aid to Exporters

"In the endeavour to achieve a general restoration and maintenance of conditions of normal competition over and above the provisions of Article XVI the contracting parties recognize that also other artificial export promotion measures, such as fiscal or para-fiscal favours, distort normal competition and should therefore either not be introduced or, where they exist, abolished as soon as possible. Therefore the contracting parties shall, in addition to the notifications provided for in Article XVI, notify the CONTRACTING PARTIES in writing of any other measures distorting competition taken by them, and shall enter into consultations aiming at the abolition, by joint action, of any artificial aid to exporters."

Motivation:

The abolition of artificial aid to exporters has not yet been regulated by the present provisions of GATT. Therefore it seems desirable for the implementation of the endeavours of GATT aiming at a world-wide economic integration to abolish artificial aid to exporters which distorts the conditions of competition. The new Article XVIa is to express the explicit desire of the contracting parties to effect such an abolition by joint action.

The written notification is intended to ensure that the contracting parties are informed of the application of artificial export promotion measures. At the same time this information is to provide the basis for consultations aiming at a joint abolition of such measures.

Article XX  
General Exceptions

It is suggested that Part II Motivation:

of this Article be deleted.

The exceptions provided for in Part II refer solely to measures designed to overcome the difficulties resulting from the war economy and the consequences of the war. These difficulties may be considered as having been overcome.

The provisions containing these exceptions were meant to be removed not later than 1 January 1951; at the Eighth GATT Session they were once again prorogated to 30 June 1955. It appears now expedient to abolish them.

Article XXIV

Territorial Application - Frontier Traffic - Customs

Unions and Free-Trade Areas

Paragraph 3

It is suggested that sub-paragraph (a) of this paragraph be amended to read as follows:

"(a) any advantages accorded at present or in future by any contracting party to adjacent countries in order to facilitate frontier traffic or traffic in specific frontier zones specially designated by treaty;"

Motivation:

This new version is more precise inasmuch as it makes absolutely clear that the General Agreement will apply neither to treaties concluded with neighbouring countries with a view to facilitating both clearance at the frontiers and frontier traffic by road, rail, ship and air, nor to treaties relating to frontier traffic.

Article XXV

Joint Action by the Contracting Parties

Paragraph 5

It is suggested that, in sub-paragraph (b), the first part of the first sentence be amended to read as follows:

"If any contracting party has failed without sufficient justification to carry out with another contracting party tariff negotiations of the kind described in Article ....<sup>+</sup>), the CONTRACTING PARTIES may, ....."

It is suggested that sub-paragraph (d) be deleted.

Motivation:

By including, as proposed, a new article in the General Agreement corresponding to Article 17 of the Havana Charter (cf. the proposal to that effect), the reference to paragraph 1 of Article 17 of the Havana Charter becomes superfluous.

Motivation:

This provision may be regarded as obsolete.

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+ ) cf. proposal on the inclusion of a new Article relating to the reduction of customs tariffs.

Article XXVII

Withholding or Withdrawal of Concessions

It is suggested that the second sentence be amended to read as follows:

"The contracting party taking such action shall give notice to all other contracting parties and, upon request, enter into negotiations on compensatory adjustments with those contracting parties which have a substantial interest in the product concerned; the provisions of Article XXVIII shall apply mutatis mutandis."

Motivation:

The tariff concessions granted in bilateral negotiations have become multilateral in character by virtue of their inclusion in the GATT Schedules of Concessions. Under the rules governing the various international tariff negotiations (tariff negotiations of Geneva, Annecy and Torquay), acceding governments, which included the Federal Republic of Germany at the last round of negotiations at Torquay, had to take account of tariff concessions granted in previous rounds of tariff negotiations when the value of their own concessions was assessed (cf. Tariff Negotiation Procedures adopted for Torquay Tariff Conference, Part II, para 4 -- Basic Instruments and Selected Documents, Volume I p.105). It would therefore appear justified to afford to such contracting parties not only the right to have consultation but moreover the right to initiate negotiations in cases where concessions are withheld or withdrawn.

Article XXVIII

Modification of Schedules

Paragraph 1

It is suggested that the first part of paragraph 1 be amended to read as follows:

"On or after January 1, 1958, any contracting party may, by negotiation and agreement with any other contracting party with which such treatment was initially negotiated and with such other contracting parties as the CONTRACTING PARTIES determine to have a substantial interest in such treatment, modify or cease to apply, the treatment ..."

Motivation:

1. In the interest of maintaining the stability of customs duties in world trade and in view of the fact that the CONTRACTING PARTIES, by their declaration of 24 October 1953, provided for the continued application of the Schedules of Concessions until 30 June 1955, it is suggested that the continued application of the Schedules be further extended until 31 December 1957.
2. Under the present version, a contracting party modifying or withdrawing a concession need negotiate only with that contracting party with which the concession was initially agreed in negotiations conducted under the Tariff Negotiations Procedure (negotiation with the main supplier of the product involved), while all other contracting parties need only be consulted insofar as they have a substantial interest in supplying the product in question.

As, however, the supply situation may have changed to such an extent since the time when the tariff concession was initially negotiated that a contracting party which hitherto had merely a substantial interest, or even no interest at all, in the product concerned, may have become the main supplier, mere consultation of such a contracting party would appear insufficient, particularly since that contracting party, if not satisfied with the compensatory concession offered, would be entitled, under subparagraph 2(b), unilaterally to withdraw a similar concession. It is therefore suggested that contracting parties having a substantial interest be given the same status as the contracting party with which such concession was initially negotiated, in other words, the contracting party having a substantial interest would not merely be consulted but would become a party to negotiations on a compensatory adjustment.

Article XXXV

Paragraph 1

It is suggested that the first paragraph be amended to read as follows:

"Without prejudice to the provisions of paragraph 5(b) of Article XXV, Article II of this Agreement shall not apply as between any contracting party and any other contracting party if:

Motivation:

In the cases envisaged in sub-paragraphs (a) and (b) of paragraph 1, e.g. where two contracting parties have not entered into tariff negotiations with each other, it would appear sufficient to provide that Article II shall not apply as between those two contracting parties. Non-application of the Agreement as a whole in the relations between the two contracting parties - as provided at present - seems to be too drastic a consequence to be justifiable in the case of countries which, after all, are parties to the same agreement.

Paragraph 2

It is suggested that this paragraph be deleted.

Motivation:

This paragraph has become obsolete.

Proposals

for New Provisions Designed to Develop the Agreement

1. Binding Information

on Customs Matters

Each contracting party shall designate authorities whose function it shall be to give, upon request, binding information on customs tariff rates and on the classification in customs tariffs of specified goods, as well as on the rates of other taxes, duties and charges levied on or in connection with the importation of goods.

Motivation:

Although the Customs legislation of a number of contracting parties provides for the furnishing of official information on customs matters and although the furnishing of such information has also been provided for in an international treaty (cf. Article 5 of the International Convention relating to the Simplification of Customs Formalities, of 1923), there is in many cases no obligation to furnish information of a binding character. From the traders' point of view, however, such binding information is of particular importance in connection with the problem of assessing the returns likely to accrue from international transactions, a problem that frequently turns on the amount of the customs charges borne by a product on its importation. That charge must be known to a businessman calculating costs before closing a deal. In simple cases, traders may obtain such information by making enquiries with official or semi-official agencies; information thus obtained is, however, not binding, and is insufficient in the case of products which, when there are various possibilities of interpreting the provisions of the customs tariff, might be classified under more than one tariff heading or sub-heading, or the classification of which might require previous chemical analysis.

In such cases there should be a possibility of affording some legal safeguard to traders by giving them such binding information on Customs matters, thus protecting them against losses or other unpleasant surprises. It is in the interest of exporters and importers of all contracting parties to be given the opportunity of making arrangements well in advance. The proposed Article would enable exporters of one contracting party to obtain binding information on customs matters from the Customs authorities of any other contracting party. Such binding information should remain valid until there is a change in rates, criteria or other provisions determining the amount of duty.

In the Federal Republic of Germany, the appropriate authorities are under a legal obligation to give binding information on customs matters (Section 63 of the (German) Customs Law of 21 March 1939, and Sections 80 to 88 of the General Customs Rules - Allgemeine Zollordnung - which rules constitute the implementing regulations under the (German) Customs Law), which has led to a decrease in the volume of litigation in respect of customs matters and thus to a more stable development of trade.

It would appear expedient to extend the obligation to furnish binding information to questions relating to the nature and amount of other taxes, duties and charges levied on, or in connection with, the importation or exportation of goods.

Proposals

for New Provisions Designed to Develop the Agreement

2. Re-Importation and Re-Exportation

(a) Subject to re-exportation or re-importation and provided that no considerable depreciation takes place during temporary use, and subject to the application of the necessary controls, the contracting parties shall exempt the following from any import or export duties, taxes and charges:

(i) Used standard commercial containers including railway-owned containers and Colico folding containers, protective coverings and other packing materials, furthermore warp-beams, wooden and paper-board rolls, which are exported from the territory of one contracting party into the territory of another contracting party in connection with the exportation of merchandise, or which are shown to have served this purpose and are returned from the territory of such other contracting party;

(ii) Furniture vans and furniture lifts used to convey goods,

Motivation:

The purpose of this Article is to ensure exemption from customs duties, taxes and other charges for goods imported or exported under a temporary duty-free admission procedure (importation and re-exportation, or exportation and re-importation, of goods without their being transformed in such a way as to require reclassification under a different tariff item or sub-item). The Article, as proposed, takes account of the principal provisions of the temporary duty-free admission procedures applied by the various contracting parties. The catalogue-type enumeration has been found to suit the needs of actual practice. It would ensure uniformity of application by the customs officers of the various contracting parties.

The express mention of railway-owned containers and Colico folding containers, which have recently come into use in railroad transportation, appears desirable since such containers are not generally regarded as standard commercial containers.

Articles imported for repairs have been omitted because it is difficult to distinguish between repairs and processing.

- including the accessories normally used in connection therewith, even though such vans and lifts may carry new loads on their return journey, and irrespective of where such new loads may have been picked up, except in cases where they have in the meantime been used for the conveyance of goods between points located within the territory of such other contracting party, provided that re-exportation is effected within 6 months;
- (iii) Tools, instruments, appliances and mechanical equipment exported by an enterprise of one contracting party into the territory of another contracting party in order to enable members of its staff to carry out assembly, experimental or other similar work in that territory, irrespective of whether the said articles are imported as an unaccompanied consignment or are brought in by staff members;
- (iv) Machines, parts thereof and accessories imported for trial;
- (v) Merchandise, excluding foodstuffs and stimulants, imported for use at exhibitions or sample-fairs;
- (vi) Merchandise, excluding foodstuffs and stimulants, not destined for exhibitions or sample-fairs and imported for marketing from stock;
- (vii) Merchandise re-imported after having been gratuitously repaired under a guaranty arrangement.

(b) The contracting parties undertake to exempt from any hall-marking requirements samples of articles made of precious metals which, by virtue of Article III of the Convention to Facilitate the Importation of Commercial Samples and Advertising

Material of 7 November 1952, are imported under temporary duty-free admission subject to re-exportation, from the territory of one contracting party into the territory of another contracting party.

Motivation:

Originally, the only purpose of the hall-marking regulations as existing in some countries was to inform purchasers about the nature and fineness of articles made of precious metal and to protect producers against unfair competition. Where, however, samples of articles made of precious metal are imported temporarily and not for sale, and have to be re-exported, there is no necessity for such information or protection. Any provision subjecting such samples to hall-marking requirements can serve nothing but protectionist purposes and is not only inconsistent with the intentions underlying the hall-marking provisions but also inconsistent with the objectives of the General Agreement.

In addition, the fact that the provisions applied by the various contracting parties differ widely constitutes a particularly serious handicap to the importation and exportation of samples of articles made of precious metal, since special samples have to be prepared for each country of destination, which causes high costs and considerable technical difficulties. As a result of the application to the samples of all the hall-marks required in each country, the samples frequently become unusable.

Complete exemption of such samples from hall-marking requirements would therefore contribute to expanding international trade.

Proposals

for New Provisions Designed to Develop the Agreement

3. Definition of Origin

The contracting parties recognize that the adoption of uniform rules for determining the origin of goods within the meaning of this Agreement would contribute towards facilitating international trade. The origin of goods should therefore be determined by application of the following rules:

- (i) The nationality of goods resulting exclusively from materials and labour of a single country shall be that of the country where the goods were harvested, extracted from the soil, manufactured or otherwise brought into being.
- (ii) The nationality of goods resulting from materials and labour of two or more countries shall be that of the country in which such goods have last undergone a substantial transformation.
- (iii) A substantial transformation shall - inter alia - be considered to have occurred when the processing results in a new individuality being conferred on the goods.

Motivation:

As stated in the report of Working Party No 5 at the CONTRACTING PARTIES' Eighth Session, the definitions of the origin of goods, as used by the various countries, differ considerably, a fact which, in certain cases, results in a complication of international trade (cf. GATT Document G/61 of 22 October 1953). In order to remedy this situation at least to a certain extent it would appear desirable to include in the General Agreement, by way of a recommendation, the Working Party's draft uniform rules for determining the origin of goods.

Explanatory Note:

Each contracting party, on the basis of the above definition, may establish a list of processes which are regarded as conferring on the goods a new individuality, or as otherwise substantially transforming them.

Proposals

for New Provisions Designed to Develop the Agreement

4. Transport Insurance

Motivation:

Without prejudice to the provisions of Articles XII and XIV the contracting parties undertake not to apply or permit measures which impede or prevent the conclusion of any maritime transport insurance contracts for commodity movements.

In order to transfer the liberal principles of GATT also to the field of maritime transport insurance it would be desirable if the contracting parties by accepting this proposal would acknowledge the principle of non-discrimination in the field of transport insurance.

Proposals  
for New Provisions Designed to Develop the Agreement

**5. Restrictive Business Practices (Cartels)**

1. The contracting parties recognize that business practices which restrain competition, limit access to markets or foster monopolistic control of the market and which are applied by one or more private or public enterprises controlling the market or by any combination, agreement or any other arrangement between any such enterprises may have harmful effects on the trade between, or production in, their territories and thus may interfere with the achievement of the objectives of this Agreement as laid down in the Preamble.

2. Each contracting party shall take appropriate measures within the framework of its national legislation and shall co-operate with other contracting parties and the CONTRACTING PARTIES in order to prevent restrictive business practices of the type indicated in paragraph 1 in all cases in which these practices have harmful effects within the meaning of paragraph 1.

Motivation:

The problems caused by international cartels in the functioning of international and interstate trade relations as well as the related problems of imperfect and distorted competition are commanding increasing attention in international discussions in the OEEC, in the Council of Europe and in the United Nations.

There are more or less two ways of how to solve this problem:

1. The absolute prohibition of restrictive agreements;
2. the elimination of harmful restrictive practices.

An absolute prohibition of international agreements for the regulation of competition may neither be feasible nor desirable because certain forms of supra-national co-operation among enterprises may exercise valuable functions as a moderating factor in the removal of governmental trade barriers.

The second course has been taken, pursuant to Chapter V of the Havana Charter, by a committee on restrictive business practices set up in accordance with a resolution passed on 13 September 1951 by the Economic and Social Council of the United Nations, the committee having made concrete proposals for the control of international cartels (Report of the Ad Hoc Committee on Restrictive Business Practices to the Economic and Social Council - E 2380 -). By decision of the Economic and Social Council of the United Nations of July 1953 (E 2508 Resolution supp. No. 1 - 487 - XVI) the Secretary General of GATT was invited to make recommendations regarding the application of the proposed agreement.

3. The following business practices may have harmful effects within the meaning of paragraphs 1 and 2:

- a) Fixing prices, terms or conditions to be observed in dealing with others in the purchase, sale, or lease of any product;
- b) excluding enterprises from, or allocating or dividing, any territorial market or field of business activity, or allocating customers, or fixing sales quotas or purchase quotas;
- c) discriminating against particular enterprises;
- d) limiting production or fixing production quotas;
- e) preventing the development or application of technology or invention whether patented or unpatented by agreements or by coercion or by the non-application of technology with the result of monopolizing any sector of industry or trade;
- f) extending the use of rights under patents, trade marks or copy rights granted by any contracting party to matters which, according to its laws and regulations, are not within the scope of such grants, or to products or conditions of production,

The Articles proposed herewith for supplementing GATT take up the proposals of the UN committee on restrictive business practices and provide for their insertion in GATT with such alterations as are required by the structure of GATT.

The proposals are based on the consideration that the obligations assumed by the contracting parties under GATT for the promotion of their relations in the field of trade and industry, e.g. by eliminating quantitative restrictions and discriminations, may be rendered ineffective and circumvented by restrictive practices of economic circles in cases in which such practices are not considered necessary as moderating instruments. Therefore, the new Articles bind the contracting parties to take measures within the framework of their national legislations against restrictive practices if they come to the conclusion that such practices have harmful effects on the trade between their territories (Paragraph 2).

A uniform conception as to when harmful restrictive practices exist will be achieved only if the contracting parties agree on certain definitions for restrictive practices and on certain criteria for the harmfulness of practices.

For the concept of the restrictive practice there was available a definition in Chapter V Article 46 of the Havana Charter, which subsequently was for the most part included in Article 1 paragraphs 1 and 3 of the proposal of the UN committee on restrictive business practices and forms also the basis of the present proposal (paragraphs 1 and 3). This proposal deals i.a. with such arrangements as, owing to the restrictions of competition they contain, may possibly be contrary to the efforts of GATT to promote relations between the contracting parties in the field of trade and

- use or sale which are likewise not the subjects of such grants;
- g) any similar practices which the CONTRACTING PARTIES may declare to be harmful business practices within the meaning of paragraph 1.
4. Any contracting party that considers that in any particular instance a business practice exists - whether engaged in by private or public commercial enterprises - which has or is about to have the effects indicated in paragraph 1, may
- a) enter into direct consultations with the contracting party or parties on whose territory or territories the business practice is in its opinion applied, with a view to agreement being reached between the contracting parties concerned, on whether a harmful business practice within the meaning of paragraph 1 exists, and if so, which measures are to be taken within the framework of national legislation, in order to eliminate the business practice in question in accordance with paragraph 2. At the same time such contracting party shall inform the CONTRACTING PARTIES on its consultations so that

industry as laid down in the Preamble. In accordance with the proposal of the UN committee there is also the possibility provided for in paragraph 3 sub-paragraph g) that the contracting parties may recognize business practices as harmful which are not contained in sub-paragraphs a) to f). Moreover, paragraph 1 contains the possibility that restrictive practices which are applied by an individual enterprise in a monopolistic position may be regarded as harmful. Undoubtedly, the problem of how to deal with monopolies and oligopolies will have to be treated with great care because of its complexity. In view of the fact, however, that any decisions on harmful practices of such entities and on the measures to be taken on the basis of the provisions submitted, are left to the contracting parties, it appears expedient to take up the problem in this loose form and to gain additional experience.

For the definition of the term harmfulness reference is made to the objectives in the Preamble of GATT. Thus the contracting parties are to be given a guiding principle for ascertaining whether or not a restrictive business practice has harmful effects. The contracting parties merely recognize that such harmful effects may occur, that is to say that it depends on each individual case whether such effects actually exist.

In respect to any action within the framework of an international agreement against harmful business practices there is the problem of who is to determine the harmful effects. For this problem there are various possible solutions. While in the proposals of the UN committee on restrictive business practices, as well as earlier in the Havana Charter and in the Draft European Convention for the Control of International Cartels, investigations on

these may satisfy themselves that all contracting parties affected by the business practice in question have been invited to participate in these consultations. If agreement is reached such contracting party shall inform the CONTRACTING PARTIES of the result of the consultation; or

- b) apply directly to the CONTRACTING PARTIES. Such contracting party<sup>may</sup> also apply to them if no agreement has been reached in accordance with sub-paragraph a). It shall furnish information concerning the type of the business practice in question and its allegedly harmful effects on the trade between contracting parties in accordance with paragraph 1.

The CONTRACTING PARTIES shall on the basis of this information and without delay request the contracting party or parties on whose territory or territories the practice is allegedly applied and the party or parties whose trade is allegedly affected by this practice to comment on the case stating whether the business practice in question is considered by it or by them to be harmful within the meaning of paragraph 1, and which

whether restrictive practices have harmful effects are in principle vested in an international body, the proposed supplementary Article (paragraph 4 sub-paragraph a)) leaves it in principle to the contracting parties to arrive at such findings by way of consultation. No doubt this procedure has the disadvantage of admitting different views on the harmfulness of restrictive arrangements and therefore constituting only an imperfect means of control and if necessary of amendment or removal of the restrictive arrangements. This procedure has nevertheless been suggested in this context for the reason that it is in keeping with the structure of GATT and offers the possibility of gaining experience in controlling international cartels.

However, in order to remedy at least in part the said disadvantages in cases in which despite the consultation provided for, considerable differences of opinion persist among the contracting parties on the harmfulness of restrictive agreements, paragraph 4 sub-paragraph b) makes it possible for contracting parties to inform the CONTRACTING PARTIES of their differing view, and for the latter jointly to consult on the case concerned and, if they reach agreement on the harmfulness, to make recommendations for the elimination of the business practice in question.

In paragraph 5 the restrictive business practices in the field of services are - on the model of the proposal of the UN committee - treated separately in that the procedure for ascertaining their harmful effects in accordance with paragraph 4 can only be instituted and an obligation for the removal of harmful practices in accordance with paragraph 2 exists only if they are being applied by one or more public or

measures are intended to be adopted under paragraph 2. On receiving such comments the CONTRACTING PARTIES may upon the request of any contracting party investigate on their part whether a harmful business practice within the meaning of paragraph 1 exists and, if so, may recommend the elimination of such business practice in accordance with paragraph 2.

5. The contracting parties recognize that certain services, such as transportation, telecommunications, insurance and the commercial services of banks, are substantial elements of international trade and that any restrictive business practices by enterprises engaged in these activities in international trade may have harmful effects similar to those indicated in paragraphs 1 and 3.

If such practices are agreed upon or carried out by one or more private or public enterprises by means of agreements or similar measures, and if these enterprises individually or collectively possess an effective control of economic transactions in one or more services in two or more countries, paragraphs 2 and 4 shall apply.

private enterprises which exert an effective control over the respective business transactions between a number of countries. The necessity of this additional prerequisite results from the particular nature of the services mentioned.

Intergovernmental agreements on basic materials as treated in Chapter VI of the Havana Charter are not covered by the provisions proposed. The UN committee on restrictive business practices studied the question whether the draft agreement submitted by it should also be applicable to governmental and intergovernmental measures, but reached the conclusion that the procedure of investigation submitted by it had better not be extended to such measures. The international body suggested by it was merely to be given the power to direct the attention of the governments to the effects of these measures and possibly to make comments thereon. Since for the time being no international authority is provided for in the GATT which might exercise such a function, the insertion into GATT of an appropriate provision has been dispensed with although it is realized that the question of handling intergovernmental restrictive agreements may be of importance for the contracting parties. This question might be taken up again in case the Executive Secretary's proposal for the establishment of an Organization is accepted.

Proposals

for New Provisions Designed to Develop the Agreement

6. Reduction of Customs Tariffs

Motivation:

1. The contracting parties recognize that it is necessary for the realization of the objectives of this Agreement to reduce customs tariffs to the lowest possible level. The reduction of customs tariffs should if possible be effected by collective action. In special cases (cf. Part B, paragraphs 5 and 8) and insofar as collective measures for the reduction of tariffs are not feasible, such reduction may be achieved by means of the reciprocal negotiation of tariff concessions.

A. Collective Reduction of Tariffs

2. The contracting parties shall endeavour to reach an understanding on a procedure for the collective automatic reduction of tariffs.
3. Tariff concessions granted within the framework of a collective reduction of tariffs may be included in the General Agreement or may form part of a separate agreement.
4. Acceding governments may benefit by any collective reduction of tariffs only after having completed tariff negotiations as provided for in paragraphs 5 et seq.

B. Reciprocal Negotiation of Tariff Concessions

5. Any acceding government shall undertake, upon the request of one or more contracting parties, to enter into and carry out

In accordance with the principle of including in GATT those provisions of the Havana Charter which are in line with the objectives of the General Agreement on Tariffs and Trade, it is desirable in a suitable form to take up the general principles for the lowering of tariffs contained in Article 17 of the Havana Charter. Since the possibilities of the method of negotiation adopted in Geneva, Annecy and Torquay of reciprocally negotiating tariff concessions would seem to be more or less exhausted, it appears expedient to provide for the method of collective automatic lowering of tariffs as the primary method. Nevertheless, certain tariff negotiations will have to be conducted also in future in the form of the reciprocal negotiation of tariff concessions (negotiations with acceding countries as well as bilateral negotiations to be conducted upon the request of a contracting party). Insofar as these regulations contain predominantly technical provisions they might usefully be included in the Interpretative Notes.

tariff negotiations aiming at the objective stated in paragraph 1, with each contracting party so requesting.

6. In order to ensure the success of the tariff negotiations in accordance with paragraph 5, the negotiating parties should refrain from increases in tariffs and other protective measures inconsistent with the principles of this Agreement and designed to improve their bargaining position in preparation for the negotiations.
7. If in an exceptional case an acceding government considers a general revision of its tariffs prior to the negotiations to be unavoidable, it should, in making any such revision, have regard to the principles stated in paragraph 6. In the event of a change in the form of tariff or a general revision of rates of duties to take account of either a rise in prices or a devaluation of the currency, the effects of such change or such revision should be a matter for consultation between the acceding government and the other negotiating parties, in order to determine, first, the change, if any, in the incidence of the duties of the country concerned, and secondly, whether the change affords a reasonable basis for a reciprocal and mutually advantageous conclusion of the negotiations.
8. Upon the request of one or more other contracting parties each government that is already a contracting party shall enter into tariff negotiations with the party or parties so requesting and shall conclude these negotiations in accordance with the objective stated in paragraph 1.

9. For the tariff negotiations provided for in paragraphs 5 and 8 the rules laid down in the Interpretative Notes ad this Article shall be complied with. In conducting such negotiations the rules of procedure for negotiations laid down by the CONTRACTING PARTIES shall be observed. The tariff concessions granted in application of this Article pursuant to negotiations successfully concluded, shall be included in the General Agreement on such conditions as may be stipulated by the CONTRACTING PARTIES.

Interpretative Notes ad paragraphs 5 and 8

The tariff negotiations provided for in Part B of this Article shall be conducted in accordance with the following rules:

- a) The negotiations shall be conducted on a product-by-product basis, which will afford adequate opportunity to take into account the needs of individual countries and individual industries. Negotiating parties shall be free not to grant tariff concessions on particular products; they may, however, grant concessions by reducing the duty or binding it at its then existing level or may undertake not to raise it above a specified higher level.
- b) No negotiating party shall be required to grant unilateral concessions, or to grant concessions to other negotiating parties without receiving adequate concessions in return. Account shall be taken of the value to any negotiating party of obtaining in its own right and by direct obligation the indirect concessions already embodied in the Schedules to the General Agreement.

- c) In negotiations relating to any specific product with respect to which a preference exists, the following shall apply:
  - (i) When a reduction is negotiated only in the most-favoured-nation rate, such reduction shall operate automatically to reduce or eliminate the margin of preference applicable to that product;
  - (ii) when a reduction is negotiated only in the preferential rate, the most-favoured-nation rate shall automatically be reduced to the extent of such reduction;
  - (iii) when it is agreed that reductions will be negotiated in both the most-favoured-nation rate and the preferential rate, the reduction in each shall be that agreed by the parties to the negotiations; and
  - (iv) no margin of preference shall be increased.
- d) The binding against increase of low duties or of duty-free treatment shall in principle be recognized as a concession equivalent in value to the substantial reduction of high duties or the elimination of tariff preferences.
- e) Prior international obligations shall not be invoked by negotiating parties to evade their above-mentioned undertaking to enter into negotiations with respect to preferences, it being understood that agreements which result from such negotiations and which conflict with such obligations shall not require the modification or termination of such obligations except (i) with the consent of the parties to such obligations or, in the absence of such consent, (ii) by modification or termination of such obligations in accordance with their terms.

Proposals

for New Provisions Designed to Develop the Agreement

7. Double Taxation

1. Without prejudice to the provisions of paragraph 2 of this Article, the contracting parties shall endeavour, by concluding special conventions, to establish rules for the elimination of double taxation and for the granting of legal protection and mutual administrative assistance in matters relating to tax assessment and tax enforcement.
2. Taxes in respect of income derived by enterprises operating ships or aircraft, whether owned or chartered, shall not be imposed except in the country in which such enterprise is managed and controlled. This provision shall not apply
  - a) to turnover taxes and other taxes on transactions and traffic,
  - b) in cases where a different arrangement has been made by two countries in a convention for the avoidance of double taxation.

Motivation:

The conclusion of double taxation conventions between the contracting parties to the General Agreement would appear to be in the interest of all contracting parties, since such conventions tend to promote mutual trade and to increase exports.

Proposals

for New Provisions Designed to Develop the Agreement

8. Freedom of Establishment

The contracting parties will make arrangements among each other concerning freedom of establishment, in order mutually to exempt to a large degree from restrictions of any kind the economic activities in their territories of nationals and companies of the other contracting parties.

Motivation:

It would be desirable in the interest of the development and further intensification of trade relations to extend the liberal principles of GATT also to the freedom of establishment and by accepting this proposal to prevent the application of measures discriminatory in law or in fact.

