

GENERAL AGREEMENT ON TARIFFS AND TRADE

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CONTRACTING PARTIES

Ninth Session

Review Working Party II on Tariffs,
Schedules and Customs Administration

DRAFT REPORT TO THE CONTRACTING PARTIES

1. Working Party II was instructed to examine the proposals for amending the Articles of the Agreement which relate to customs tariffs, to the annexed schedules and to questions of customs administration. In this report the Working Party gives its reasons for recommending the amendments set out in Annex I. These affect Articles I, II, VII, VIII, IX, XVIII, XXV, XXVII and XXVIII and also Annexes E, F and I. In addition the Working Party recommends the insertion of a new article on tariff negotiations. This report also places on record the Working Party's reasons for rejecting some of the proposed amendments.

2. The CONTRACTING PARTIES also referred to Working Party II Item 5 on the Ninth Session Agenda - The Status of Schedules after 30 June 1955 - to be considered in connexion with its review of proposals affecting Article XXVIII. The Working Party recommends that a declaration be opened for signature whereby the firm validity of the Schedules of signatories will be extended for two and a half years (paragraph 38). The Working Party has prepared the draft in Annex II. Two other recommendations are put forward in paragraphs 39, 40 and 41. These deal with the immediate application of the renegotiation procedures of the revised Article XXVIII and Article XVIII A and with the republication of the consolidated schedules.

Article I - General Most-Favoured-Nation Treatment

3. The Working Party recommends the inclusion in the most-favoured-nation clause (paragraph 1) of a reference to internal taxes applied to exported goods. This is proposed because 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. It was necessary at the Second Session for the Chairman to give a ruling on an instance of discrimination in the exemption of exports from the levy of an excise tax. The amendment will remove any uncertainty on this point.

4. Referring to the provisions for most-favoured-nation treatment, the representative of Germany informed the Working Party that German customs law requires that special treatment for gifts to heads of foreign states, equipment

for diplomatic and consular offices and goods for the use of representatives of foreign governments may be granted only on a basis of reciprocity, thus not permitting observance of most-favoured-nation obligations for such imports. Many other countries follow the same practice. The Working Party took note of this situation and saw no reason why established practice in these cases should be disturbed.

5. Provision for the maintenance of preferences between Uruguay and Paraguay is contained in the Ancey Protocol of Terms of Accession. This should now be provided for under paragraph 2(d), and the Working Party proposes that all preferences under that sub-paragraph should be covered in one Annex. Accordingly Annex E has been rearranged. Annex F can be deleted since Lebanon and Syria are no longer contracting parties.

6. Several delegations submitted proposals relating to the adjustment of preferential tariff margins and the establishment of new preferences. The Working Party wishes to place on record its conclusions on these matters:

(a) The New Zealand delegation suggested that a contracting party should be allowed to make slight changes in preferential margins in customs duties, which might result from readjustments of import duties and taxes, without seeking the approval of the CONTRACTING PARTIES in each instance. Some delegations opposed the insertion of an interpretative note which would authorize an increase in a preferential margin, however slight, without interested parties having an opportunity of scrutiny. Therefore, and since the proposal as an amendment of Article I would require unanimity, the Working Party considered that the New Zealand objective could best be sought by an application for a suitable waiver under Article XXV:5(a) of obligations of paragraph 4. The representative of New Zealand withdrew his proposal and stated that the question of applying for a waiver would be considered.

(b) The Australian delegation proposed an amendment to Article XXIV to allow a contracting party to make an adjustment in a margin of preference permitted under Article I provided it was the result of negotiation with the contracting parties concerned and was approved by the CONTRACTING PARTIES. The Working Party considered that such an amendment of Article XXIV would not be in accordance with the principles of that Article unless the increased preferences were part of a plan for bringing about a customs union or a free-trade area. The delegate for Australia acknowledged that the sort of adjustments his Government had in mind were not intended to lead to that result, and he enquired whether Article XXV could be amended to provide that if a contracting party submitted the results of a negotiation with other contracting parties for an adjustment in a margin of preference with a request for a waiver of obligations, the CONTRACTING PARTIES would consider the request under the provisions of paragraph 5(a) of that Article. The Working Party considered that such an addition to Article XXV was unnecessary since the

CONTRACTING PARTIES are authorized under paragraph 5(a) to waive obligations under the Agreement in exceptional circumstances and since a proposal such as that envisaged could properly be submitted to the CONTRACTING PARTIES for consideration under that paragraph. It appeared that the Government of Australia was concerned with the possibility that a contracting party invited to enter into negotiations for an adjustment in a margin of preference, for which it would offer compensation with a view to submitting an agreement to the CONTRACTING PARTIES with a request for a waiver of obligations under Article XXV:5(a), might base a refusal to negotiate on the ground that it was debarred from participating in such negotiations by the provisions of Article I. The Working Party therefore noted that there was nothing in Article I which would prevent contracting parties from participating in such negotiations with a view to a waiver being sought under Article XXV. The Australian delegation reserved its position on the Working Party's conclusions in respect of its proposed amendment.

(c) The delegation of Chile proposed the incorporation in the Agreement of the new provisions of Article 15 of the Havana Charter which provided for new preferential arrangements in the interest of economic development and reconstruction. This was opposed by several delegations. The delegate of Chile then suggested instead of an amendment of, or an interpretative note to, Article XXV whereby the CONTRACTING PARTIES would undertake to examine, in the light of the provisions of Article 15 of the Charter, any request for a waiver for the establishment of new preferential arrangements for economic development. The Working Party considered it unnecessary to inscribe special provisions for dealing with particular problems under Article XXV:5(a), because a request for such a waiver can be dealt with under that paragraph as it stands. In their opinion each request for a waiver should be treated on its merits, and conditions or criteria should not be prescribed. Accordingly, the Working Party cannot recommend the adoption of the amendment proposed by Chile, but records that there is nothing in the other articles of the Agreement which would prevent a contracting party from submitting a request under Article XXV:5(a) for authority to enter into new preferential arrangements as part of a programme for economic development.

The representative of Cuba did not subscribe to the views presented in the foregoing paragraphs on the New Zealand, Australian and Chilean proposals. He stated that his Government could not accept the opinion of the Executive Secretary that the CONTRACTING PARTIES, by a two-thirds majority, can grant a waiver under Article XXV:5(a) involving, in effect, an amendment of an article which under Article XXX cannot be amended except by unanimity. He recalled that the position of his Government had been reserved on the waivers granted at the Seventh and Eighth Sessions which the Executive Secretary had cited in support of his opinion.

Article II - Schedules of Concessions

7. The wording of sub-paragraphs 1(b) and (c) of the existing text is the same as that used in the most-favoured-nation clause in Article I, but it does not go on to include, as does Article I, "charges ... imposed on the international transfer of payments for imports". Thus sub-paragraphs (b) and (c) could be construed as meaning that the provision does not apply to charges on transfers. But clearly the value of tariff concessions would be impaired if contracting parties were free to introduce additional levies on imports in the form of transfer charges. It is considered that the language of this sentence is all-inclusive for it speaks of "... all other duties or charges of any kind imposed on or in connexion with importation ...", and paragraph 2, which sets out the special charges which do not fall under paragraph 1, does not refer to charges on transfers. The insertion of the words "including charges of any kind imposed on the international transfer of payments for imports" will remove any possibility of misunderstanding. It is the understanding of the Working Party that "charges of any kind" do not include ordinary commercial charges for effecting the international transfer of payments for imports.

The representatives of Chile and Indonesia, however, opposed this amendment on the ground that it might cause confusion to suggest that the CONTRACTING PARTIES can limit the rights of a contracting party to employ exchange measures consistently with the Articles of Agreement of the International Monetary Fund; further, some countries cannot readily and/or effectively protect their balance of payments only through the use of quantitative restrictions and must use measures such as exchange taxes.

8. In paragraph 6(a) it is proposed to use the words "... at the par value accepted or at the rate of exchange recognized by the Fund". The Working Party understands that these words correspond more closely to the Fund's practices under its Articles of Agreement and cover cases not provided for in the present text. The second change, to speak of "the" par value instead of "this" par value, is required in order to permit an adjustment of duties after a second devaluation of a currency.

Article III - National Treatment on Internal Taxation and Regulation

9. The delegate for Sweden proposed an interpretative note to paragraph 1, on the lines of the statement adopted at the Havana Conference (Reports of Committees, page 64, paragraph 54), as follows:

"Under the provisions of Article III regulations and taxes would be permitted which, while perhaps having the effect of assisting the production of a particular domestic product (say, butter) are directed as much against the domestic production of another product (say, domestic oleomargarine) of which there is a substantial domestic production as they are against imports (say, imported oleomargarine)."

After discussion the representative of Sweden expressed his willingness to withdraw his proposal but desired that the Working Party's report should record his statement that the system of levying internal fees on home-produced and imported raw materials for oleomargarine manufacture, as well as on imports of oleomargarine, in order to help in the stabilization of the marketing of butter - which was mentioned in the report of Sub-Committee A of Committee III at Havana and found by that Sub-Committee to be consistent with the terms of the Charter Article 18 (Article III of GATT) - was still in force. The Working Party took note of the Swedish statement.

10. The delegate for Germany proposed the insertion of the following interpretative note to paragraph 2:

"The words 'internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products', 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)."

The Working Party considered the significance of the phrase "internal taxes or other internal charges" in relation to taxes which are levied at various stages of production, and in particular whether the rule of national treatment would allow a government to tax imported products at a rate calculated to be the equivalent of the taxes levied at the various stages of production of the like domestic product or only at the rate of the tax levied at the last stage. Several representatives supported the former interpretation, while the representative of the United States, on the other hand, thought the reference to internal taxes covered only a tax levied on the final product competitive with the imported article. Against the latter view it was argued that that interpretation would establish a discrimination against countries which chose to levy taxes at various stages and in favour of those which levy a single turnover tax on finished products. Some other representatives were of the opinion that the equivalent of the taxes on the final product and on its components and ingredients would be permitted, but not taxes on power consumed in manufacture, etc. In view of these differences of opinion, the Working Party does not recommend the insertion of an interpretative note, it being understood that the principle of equality of treatment would be upheld in the event of a tax on imported products being challenged under the consultation or complaint procedure of the Agreement.

11. The delegate for Sweden proposed an interpretative note to paragraph 6, on the lines of the statement adopted at the Havana Conference (Reports of Committees, page 65, paragraph 58), as follows:

"The exception permitting the continuance of existing mixing regulations has been drafted so as to bring out more clearly that a contracting party would be free to alter the details of an existing regulation provided that such alterations did not result in changing the overall effect of the regulation to the detriment of imports."

He explained that his Government wished to have it placed on record that the contracting parties concur in the interpretation of the proviso which was given by the governments assembled at Havana. The Working Party considered that it was not necessary to insert a note in the Agreement as paragraph 6 is to be interpreted in this sense, with the understanding that such changes would be of a minor character and would not apply to a concession provided for in a Schedule to the General Agreement.

Article VII - Valuation for Customs Purposes

12. The deletion of the words "at the earliest practicable date" in paragraph 1 and of the interpretative note to that paragraph is recommended on the assumption that a general provision will be made allowing time for governments to bring their legislation into conformity with the rules. In connexion with this recommendation the representative of Brazil reserved his position on the whole of Article VII.

The new interpretative note to paragraph 1, concerning the words "or other charges", is intended to make it clearly understood that the wording does not require internal taxes (or their equivalents) which are charged on imported goods to be assessed on the same basis as that established for the purpose of charging customs duties. While some countries assess internal taxes on imported goods on the customs value or the customs value inclusive of duty, certain countries establish the value on which such internal taxes are charged on a different basis, being the same basis as is adopted for the charge of such internal taxes on domestically produced goods. Moreover, Article VII cannot be held to impose any commitment in relation to internal taxes, over and above those contained in Articles I and III.

13. The amendments to paragraph 2(b) and to the interpretative notes to paragraph 2 are proposed as improvements in drafting.

14. The Working Party considered a proposal to insert the words "customs duties or" in paragraph 3 so that the paragraph would read:

"The value for customs purposes of any imported product should not include the amount of customs duties or any internal tax, applicable within the country of origin or export, from which the imported product has been exempted or has been or will be relieved by means of refund."

A majority of the members of the Working Party were in favour of the proposal but, in view of the difficulties it would involve for several countries, did not wish to press the matter at the present time. In the circumstances, the adoption of this amendment is not recommended. The Working Party believes, however, that it touches upon an important question which it might be desirable to bring under review again at a later date.

The Working Party considered another proposal that the words "any internal tax" in the same paragraph be replaced by the following phrase:

"... any indirect tax actually borne by the finished product or actually borne by the material going into the manufacture of such product ...".

The Working Party wishes to record the statement submitted by the Technical Group on Customs Administration explaining its reasons for not recommending the adoption of this proposal:

"The intention behind this proposal is to exclude from the provisions of Article VII those taxes of a kind which are considered by some countries to constitute unfair subventions to exports, and a number of members of the Technical Group supported the proposal for this reason. It was, however, generally agreed that the words "internal tax" read in conjunction with the words "from which the imported product has been exempted or has been or will be relieved by means of refund" mean only (i) internal taxes of the kind which are levied directly on the goods exported (or directly on the materials going into the manufacture of such goods), as distinct from (ii) other taxes (income tax, etc.). It follows that the obligation contained in paragraph 3, is limited to internal taxes of the kind mentioned in (i) above; so far as concerns taxes of the kind falling within (ii) above, there is no obligation upon contracting parties and, equally, there is nothing to prevent them from giving imported goods the benefit of more liberal provisions. However, the Technical Group considered it was not prudent to modify the text of the Article, particularly in view of the opinion of several members that it was inappropriate to seek to deal with problems of subsidization in Article VII."

15. The amendments to paragraph 4(a) and (b), to use the words "par value as established" and "rate of exchange as recognized" by the Fund, are intended to cover certain exchange situations which are likely to arise in practice and which are not provided for in the present text. For example, in the case of Canada there is an established par value accepted by the Fund, but which is no longer the effective rate, and where the Fund recognizes the fluctuating rate for its own accounting purposes. This type of exchange situation will be covered by the amended text.

16. The Working Party considered a proposal relating to paragraph 5 to replace the words "the bases ... should be stable" by the words "the system ... should not constitute an obstacle to the rapid clearance of imported merchandise, should protect honest importers from unfair competition in the field concerned, should as far as possible be based on trade documents ...". Members of the Working Party expressed sympathy with the ideas underlying this proposal, but did not find it practicable to recommend the amendment. It was desired particularly to retain the requirement that valuation systems shall be stable.

Article VIII - Formalities connected with Importation and Exportation

17. Paragraphs 1 and 2 have been redrafted in order (i) to separate the provisions relating to fees and charges from those relating to formalities, (ii) to make it clear that the expression "fees and charges" does not pertain to import and export duties or to taxes which fall within the purview of Article III, and (iii) to render the provisions of sub-paragraph (a) obligatory by changing the word "should" to "shall" and by deleting the qualification that contracting parties need take action in accordance with the principles and objectives of that sub-paragraph only "at the earliest practicable date". These amendments are recommended on the assumption that the Agreement will contain a general provision allowing time for governments to bring their legislation into conformity with the rules and on condition that the amendment proposed to the interpretative note is adopted. However, if Article XV:9(a), as it emerges from the Review, does not allow a contracting party to maintain multiple currency exchange fees for balance-of-payments reasons with the approval of the International Monetary Fund, it will be necessary to consider inserting a specific proviso in the Article to cover this point.

Three delegations (Brazil, Chile and Cuba) have reserved their position as regards the omission of the provision that the obligation of paragraph 1(a) should come into force only at the earliest practicable date.

Article IX - Marks of Origin

18. A new paragraph is proposed for insertion in Article IX whereby the contracting parties will recognize that measures relating to marks of origin should not cause difficulties and inconveniences for other governments.

Article XVIII - Governmental Assistance to Economic Development and Reconstruction, Section A

19. The draft of Article XVIII submitted by the secretariat provided the basis for the Working Party's consideration of Section A. This Section permits a contracting party, which comes within the definition in paragraph 4 of the revised Article recommended by Working Party I, to enter into negotiations for the modification of a concession, in order to promote the

establishment of an industry, with the country with which it was initially negotiated and with other substantially interested countries. If agreement is not reached within sixty days the matter may be referred to the CONTRACTING PARTIES. If the CONTRACTING PARTIES find that the contracting party which initiated the negotiation has made every effort to reach an agreement and has offered an adequate compensatory adjustment, they can allow the contracting party to modify or withdraw the concession.¹

20. The representative of India proposes an addition to Section A to provide that the CONTRACTING PARTIES may allow the applicant contracting party to modify or withdraw concessions in cases where it is unable, for good reasons, to provide adequate compensation; the provision would correspond to that of Article XXVIII:4(d) including the right of other contracting parties to modify or withdraw substantially equivalent concessions initially negotiated with that contracting party.

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

21. The delegation of Germany proposed to amend paragraph 3(a) as follows:

"... 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;..."

These amendments are considered unnecessary. (i) There are many places in the Agreement where the words "at present or in future" could be inserted, but if inserted in some places and not in others confusion would result. (ii) While the CONTRACTING PARTIES would no doubt wish to examine the terms of any particular treaty in the event of a dispute, the Working Party understands that traffic in zones designated in treaties between adjacent countries, designed solely to facilitate clearance at the frontier, would normally be covered by the phrase "frontier traffic".

Article XXV - Joint Action by the Contracting Parties

22. The Working Party recommends the deletion of paragraphs 5(b), (c) and (d). During the six years that the provisions of sub-paragraphs (b) and (c) have been applicable no contracting party has had recourse to them and, with one exception, no member of the Working Party supported their retention. The representative of Cuba opposed their deletion on the ground that they constitute

¹ Some delegations wish to enlarge the scope of Section A in order that it shall be applicable to the expansion of an existing industry as well as to the establishment of a new industry, but the Working Party recognizes that Section A must be consistent in this respect with other Sections of Article XVIII. The representative of Greece has reserved his position.

a right which contracting parties have under the Agreement and this right should not be withdrawn. As a consequential amendment the words "without prejudice to the provisions of paragraph 5(b) of Article XXV" should be deleted from Article XXXV.

Article XXVII - Withholding or Withdrawal of Concessions

23. A contracting party withholding or withdrawing a concession which was initially negotiated with a government which has not become or has ceased to be a contracting party is required to notify all other contracting parties. The Working Party considers that such notifications should be addressed to the CONTRACTING PARTIES and that the information should be passed on to contracting parties by the secretariat.

Article XXVIII - Modification of Schedules

24. The Working Party has examined the proposals submitted by delegations for the amendment of the provisions relating to the modification of schedules. Three principal suggestions were considered:

- (i) that the firm validity of the schedules should be extended indefinitely; that the CONTRACTING PARTIES should be authorized, in exceptional circumstances, to grant to a contracting party authority to renegotiate particular concessions; and that the right of unilateral action should be removed by the deletion of paragraph 2;
- (ii) that the firm validity of the schedules be extended from time to time by decision of the CONTRACTING PARTIES; that provision be made for the CONTRACTING PARTIES to authorize renegotiation in cases of special urgency or other exceptional circumstances; and that paragraph 2 be replaced by a provision for arbitration by the CONTRACTING PARTIES in the event of no agreement being reached in negotiations;
- (iii) that the Article should provide for the extension of the firm validity of the schedules by three-year periods, but with greater flexibility in the right to renegotiate and in the procedures for negotiation, both during the periods of firm validity and at the end of each period.

The majority of the Working Party favoured the third proposal.

25. The first paragraph of Article XXVIII provides for the automatic renewal of the firm validity of the schedules for successive periods of three years (unless the CONTRACTING PARTIES shall agree upon some other period), and provision is made in Regulation 6 for contracting parties which wish to modify or withdraw some of their concessions to negotiate in accordance with the prescribed procedures during the last six months of a period.

26. The United Kingdom delegation, supported by a few other delegations, reserved their position on paragraph 1 of Article XXVIII and on Regulations 1 and 6.

27. In negotiations under paragraph 1 the contracting party wishing to modify or withdraw concessions is required to negotiate with contracting parties which have a principal supplying interest, in addition to the contracting parties with which they were initially negotiated. In determining the contracting parties with a "principal supplying interest" the CONTRACTING PARTIES would be guided by the principles set out in Regulations 2 to 5. On this point there was a division of opinion in the Working Party. The delegations which favoured this amendment considered that the changing channels of trade should be taken into account and that, therefore, a contracting party which had become a principal supplier since the initial negotiations should be given the right to participate; further, they felt that a country whose trade had been hampered by discriminatory quantitative restrictions, and which, in the opinion of the CONTRACTING PARTIES would have had a principal supplying interest if it had not been for the existence of the restrictions, should be enabled to participate in the renegotiation of items subject to such restrictions. The delegations which opposed the amendment were of the opinion that the right to participate in negotiations should be limited to the contracting parties which had initially negotiated the items and which had paid for the concessions by concessions in their own schedules; they maintained that contracting parties with a principal supplying interest, other than the initial negotiators, having made no payment for the concessions, should enjoy only the right of being consulted, as provided in the present text. The Working Party agreed on the text in the Annex. The representatives of Austria, Canada and the Dominican Republic reserved their positions.

28. Paragraph 2 of the revised text is the same as the last sentence of the present paragraph 1. The representative of Greece has reserved his position on this paragraph. Paragraph 3, except for consequential amendments, is the same as paragraph 2 of the present text. The representative of Greece has also entered a reservation on the words "substantially equivalent concessions" in paragraph 3(b).

29. Paragraph 4 is a new provision intended to bring into the Agreement a provision for renegotiations under authority obtained from the CONTRACTING PARTIES in special circumstances, on the lines of the sympathetic consideration procedures adopted at the Eighth Session, but providing in certain circumstances for modification or withdrawal even if the negotiations are not successful. The representative of Greece proposes to delete the last phrase of the second sentence "unless ... compensation".

New Article - Tariff Negotiations

30. The Working Party has examined the proposals for tariff reduction submitted by its Chairman, which were the result of discussions on the proposals submitted by the Benelux, German and Scandinavian delegations¹, and has decided to recommend the insertion of a new article in the General Agreement, dealing with tariff negotiations sponsored by the CONTRACTING PARTIES.

31. The delegations of certain low-tariff countries were anxious to provide in the Agreement for certain principles to govern the tariff policy of the contracting parties in order to arrive at a better balance between the positions of the various contracting parties in this respect. While there was considerable sympathy with the particular problem confronting these countries, it was considered inappropriate to expect contracting parties to accept any general form of commitment which would prejudice their freedom of action with respect to unbound tariffs. It was recognized, however, that in pursuit of its policies affecting international economic relations, including its tariff policy, each contracting party would have regard to the objectives of the Agreement and try to avoid unnecessary damage to the interests of other contracting parties.

32. The article would impose no new obligations on contracting parties. Each contracting party would retain the right to decide whether or not to engage in negotiations or to participate in a tariff conference.

33. Several delegations proposed to include in the new article certain rules for negotiations such as those in Article 17 of the Havana Charter, but others thought it was not necessary to burden the article with a set of rules since it is not its purpose either to prescribe or to exclude any of the rules that have been followed in the past; the article imposes no obligations, and therefore should contain nothing that is mandatory. Further, since the article clearly envisages the possibility of tariff negotiations in which some contracting parties might not be able to participate, it would be unwise to prejudge the form which these negotiations should take by prescribing procedures and rules. The procedures for any particular tariff negotiations will have to be determined at the time the holding of the negotiations is under consideration and contracting parties will then have ample opportunity to advocate the procedures under which they would be prepared to negotiate. A contracting party that is not satisfied with the procedures adopted, would be free not to participate in the negotiations.

34. The representatives of Brazil invited the Working Party to discuss in this connexion the proposals which had been put forward by his delegation in documents W.9/39 and Add.1. His delegation wished to establish certain rules

¹ References: The Chairman's proposals - W.9/161; Benelux countries - L/271; Germany - L/261/Add.1; and Scandinavian countries - L/273, 5 & 6.

for the conduct of tariff negotiations and, in particular, for the measurement of concessions. The Working Party considered that governments participating in negotiations should retain complete freedom to adopt any method they might feel most appropriate for estimating the value of duty reductions and bindings. The representative of Brazil pointed out that the recommendation proposed for adoption by the CONTRACTING PARTIES (W.9/39/Add.1) merely asked for recognition that the measurement of concessions in monetary terms might not be equitable when the economic effects of customs duties are unequal because of differences in the economic structures of the countries concerned; therefore, whenever statistical data are available, governments participating in negotiations for tariff concessions or in renegotiations of bound duties should be free to use, if they should so desire, the formula proposed by the Brazilian delegation in determining the equivalence of compensatory concessions. The Working Party noted that there was nothing in the Agreement, or in the rules for tariff negotiations which had been used in the past, to prevent governments from adopting any formula they might choose, and therefore considered that there was no need for the CONTRACTING PARTIES to make any recommendation in this matter.

35. The majority of the Working Party considers that amendments to this new article should become effective upon acceptance by two-thirds of the contracting parties pursuant to Article XXX:1, and that the most appropriate place for the article, given the existing structure of the Agreement, is in Part III, possibly following Article XXVIII. Some delegations preferred to have the new article inserted in Part I of the Agreement.

36. Some members of the Working Party proposed that it should be recognized that when quantitative restrictions imposed for balance-of-payments purposes are removed an increase of customs duties or of other charges on imports, having the effect of impairing the benefits which might reasonably be expected from removal of the restrictions, could be referred to the CONTRACTING PARTIES by a contracting party having a substantial interest in the export of the products affected. They admitted that the CONTRACTING PARTIES when considering any such reference, should take account of all relevant considerations including the fiscal, developmental, strategic and other needs of the contracting party concerned, and also the relative progress of both parties in the reduction of tariffs and other obstacles to trade. This proposal was supported by some other members, but the majority of the Working Party opposed it mainly on the ground that it might result in an extension of the control of the CONTRACTING PARTIES over unbound rates of duty. The majority decision, however, is without prejudice to the operation of Articles XXII and XXIII with respect to such cases as could appropriately be brought under those Articles.

37. In addition to consideration, as part of the Review, of proposed amendments relating to tariff negotiation procedures, the CONTRACTING PARTIES assigned to the Working Party a closely related item on the Agenda of the Ninth Session - Item 4, "Plans for Tariff Reductions". While it was agreed that progress in further tariff reduction would depend upon the major trading nations being in position to participate in the necessary negotiations, the Working Party felt it was desirable to consider what immediate steps could be initiated during

the present session to prepare for a tariff conference to be held as soon as progress in tariff reduction seemed possible. Since the draft decision prepared by the Working Party for this purpose relates to Item 4 of the Ninth Session Agenda rather than to the Review of the Agreement, it is submitted in a separate document - G/89.

Extension of the Period of Firm Validity of the Schedules after 30 June 1955

38. The Working Party recommends that the contracting parties be invited to extend the firm validity of their schedules until 31 December 1957, and notes that arrangements have been made for contracting parties which find it necessary to modify or withdraw some of their concessions prior to accepting this extension to enter into negotiations pursuant to paragraph 1 of Article XXVIII. It is understood, however, that certain contracting parties which wish to re-negotiate some concessions consider that it will not be possible to complete their negotiations by the end of June, and to meet this eventuality the Working Party proposes that such contracting parties should be permitted to continue their negotiations after 30 June provided that they are completed not later than 30 September 1955. A draft declaration on the continued application of Schedules is in Annex II.

Immediate Application of Renegotiation Procedures

39. To provide for renegotiations in exceptional circumstances, under authority granted by the CONTRACTING PARTIES during the period until the revised Article XXVIII enters into force, the Working Party recommends that paragraph 4 of Article XXVIII should become operative forthwith. If this recommendation is approved the Executive Secretary might be instructed to submit an appropriate draft decision for approval by the CONTRACTING PARTIES before the close of the Session.

40. The representative of India has proposed that the provisions of Article XVIII A should also be brought into operation without delay. If this recommendation is approved a draft decision for the approval of the CONTRACTING PARTIES could be prepared by the Executive Secretary.

The Consolidated Schedules

41. The German delegation proposed (L/261/Add.1) the preparation of consolidated schedules with full legal status to replace the schedules negotiated at Geneva, Annecy and Torquay, the numerous protocols of rectifications and modifications, etc. In presenting this proposal the representative of Germany acknowledged that some governments would have difficulty in giving legal status to a consolidation of these various schedules and protocols. He therefore suggested that the Working Party should recommend to the CONTRACTING PARTIES that the consolidated schedules should be kept up to date by annual corrigenda, such as that issued by the secretariat on 22 September 1954 in MGT/21/54, and that the consolidated schedules should be republished at such times as the CONTRACTING PARTIES might consider appropriate. The Working Party recommends to the CONTRACTING PARTIES accordingly.

A N N E X I

PROPOSED AMENDMENTS

Amendments to Articles I, II, VII, VIII, IX, XVIII,
XXV, XXVII and XXVIII, and to Annexes E, F and I

- A. The phrase "... and with respect to the application of internal taxes to exported goods ..." shall be inserted after the words "Article III" in paragraph 1 of Article I.
- B. The last words of paragraph 2(d) of Article I shall read:
"... in Annex E."
- C. The text of the second sentence of paragraphs 1(b) and (c) of Article II shall read:
"Such products shall also be exempt from all other duties or charges of any kind imposed on or in connexion with importation, including charges of any kind imposed on the international transfer of payments for imports, in excess of those imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing country on that date."
- D. The text of paragraph 6(a) of Article II shall read:
"The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or at the rate of exchange recognized by the Fund at the date of this Agreement. Accordingly, in case the par value accepted or the rate of exchange recognized by the Fund is reduced consistently with the Articles of Agreement of the Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; Provided that the CONTRACTING PARTIES (i.e., the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments."

E. The words "at the earliest practicable date" in paragraph 1 of Article VII shall be deleted.

F. The text of the first sentence of paragraph 2(b) of Article VII shall read:

" "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions."

G. The text of paragraphs 4(a) and (b) of Article VII shall read:

"4(a) Except as otherwise provided for in this paragraph, where it is necessary for the purposes of paragraph 2 of this Article for a contracting party to convert into its own currency a price expressed in the currency of another country, the conversion rate of exchange to be used shall be based, for each currency involved, on the par value as established pursuant to the Articles of Agreement of the International Monetary Fund or on the rate of exchange recognized by the Fund, or on the par value established in accordance with a special exchange agreement entered into pursuant to Article XV of this Agreement.

"(b) Where no such established par value and no such recognized rate of exchange exist, the conversion rate shall reflect effectively the current value of such currency in commercial transactions."

H. The text of paragraphs 1 and 2 of Article VIII shall read:

"1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connexion 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. The contracting parties recognize the need for reducing the number and diversity of such fees and charges.

"(b) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

"2. Any contracting party shall, upon request by the CONTRACTING PARTIES or by another contracting party, review the operation of its laws and regulations in the light of the provisions of this Article."

- I. The following new paragraph shall be inserted immediately after paragraph 1 of Article IX:

"2. 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, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications."

and paragraphs 2, 3, 4 and 5 of Article IX shall be renumbered paragraphs 3, 4, 5 and 6.

- J. The text of section A of Article XVIII shall read:

"A

"6. If a contracting party coming within the definition set out in sub-paragraph (a) of paragraph 4 of this Article considers it desirable, in order to promote the establishment of a particular industry with a view to raising the general standard of living of its population, to modify or cease to apply a tariff concession included in a Schedule to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiation with any other contracting party with which such concession was initially negotiated, and with any other contracting parties which the CONTRACTING PARTIES determine to have a substantial interest in such concession. If agreement is reached between the contracting parties concerned, the appropriate Schedules to this Agreement shall be amended to give effect to such agreement, including any compensatory concessions involved. If agreement with regard to compensatory concessions is not reached within a period of sixty days, the contracting party which proposes to modify or cease to apply the concession may refer the matter to the CONTRACTING PARTIES. Upon such reference the CONTRACTING PARTIES shall promptly examine the matter and, if they find that the contracting party which proposes to modify or cease to apply the concession has made every effort to reach an agreement and that the compensatory adjustment offered is adequate, that contracting party shall be free to modify the rate at the same time as it introduces the compensatory adjustment. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw a concession is adequate but do find that the contracting party has made every reasonable effort to offer adequate compensation, that contracting party shall be free to proceed with such modification or withdrawal. If such action is taken, any other contracting party which was determined by the CONTRACTING PARTIES to have a substantial interest in the concession shall be free, not later than six months

after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such modification or withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the contracting party which has taken the action."/>

K. Sub-paragraphs (b), (c) and (d) of paragraph 5 of Article XXV shall be deleted.

L. The text of the second sentence of Article XXVII shall read:

"A contracting party taking such action shall notify the CONTRACTING PARTIES and, upon request, consult with contracting parties which have a substantial interest in the product concerned."

M. The text of Article XXVIII shall read:

"ARTICLE XXVIII

"Modification of Schedules

"1. On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period that may be agreed upon by two-thirds of the contracting parties for this purpose) any contracting party may, by negotiation and agreement with the contracting party or parties with which such concession was initially negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest (which, together with the applicant contracting party, are hereinafter referred to as the contracting parties primarily concerned), and subject to consultation with such other contracting parties as the CONTRACTING PARTIES determine to have a substantial interest in such concession, modify or cease to apply a concession included in a Schedule annexed to this Agreement.

"2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the present Agreement.

"3. (a) If agreement between the contracting parties primarily concerned cannot be reached, the contracting party which proposes to modify or cease to apply the concession shall, nevertheless, be free to do so and if such action is taken the contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 of this Article to have a principal supplying interest and the contracting parties determined under paragraph 1 of this Article to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the contracting party taking such action.

"(b) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with a contracting party taking action under such agreement.

"4. The CONTRACTING PARTIES may, at any time, in special circumstances, authorize a contracting party to enter into negotiations for modification or withdrawal of a concession included in a schedule to this Agreement subject to the following procedures and conditions:-

"(a) Such negotiations shall be conducted in accordance with the provisions of paragraphs 1 and 2 of this Article.

"(b) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3(b) of this Article shall apply.

"(c) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the contracting party which proposed to modify or cease to apply such treatment may refer the matter to the CONTRACTING PARTIES.

"(d) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation. If such action is taken, the contracting party or parties with which the concession was initially negotiated, contracting parties determined under paragraph 4(a) to have a principal supplying interest and contracting parties determined under paragraph 4(a) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

"5. The CONTRACTING PARTIES may temporarily suspend the provisions of paragraph 4 of this Article at the time of multilateral tariff negotiations sponsored by them and substitute such procedures for negotiations as they may determine."

N. The following new Article shall be inserted immediately after Article XXVIII/:

"ARTICLE XXIX

"Tariff Negotiations

"1. The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of the Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time.

"2. (a) Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. 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 reduction of high duties.

"(b) The contracting parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties which conduct a substantial proportion of their external trade with one another.

"3. Negotiations shall be conducted on a basis which affords adequate opportunity to take into account:

"(i) the needs of individual contracting parties and individual industries;

"(ii) the needs of less developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and

"(iii) all other relevant circumstances, including the fiscal, developmental, strategic and other needs of the contracting parties concerned."

O. The text of Annex E shall read:

"Annex E

"Lists of Territories covered by Preferential Arrangements between Neighbouring Countries referred to in paragraph 2(d) of Article I

"(i) Chile, on the one hand, and

1. Argentina
2. Bolivia
3. Peru, on the other

"(ii) Uruguay and Paraguay."

P. Annex F shall be deleted.

Q. The following changes shall be made in Annex I:

- (i) The second paragraph of the interpretative note to paragraph 1 of Article I shall be deleted.
- (ii) The interpretative note to paragraph 2(a) of Article II shall be deleted.
- (iii) The interpretative note to paragraph 1 of Article VII shall be deleted.

- (iv) The following interpretative note to paragraph 1 of Article VII shall be inserted:

"Paragraph 1

"The expression "or other charges" is not to be regarded as including internal taxes or equivalent charges imposed on or in connexion with imported products."

- (v) The words "read in conjunction with" in the second paragraph to the interpretative note to paragraph 2 of Article VII shall be deleted.

- (vi) The text of the third paragraph of the interpretative note to paragraph 2 of Article VII shall read:

"The standard of "fully competitive conditions" permits contracting parties to exclude from consideration prices involving special discounts limited to exclusive agents."

- (vii) The text of the fourth paragraph of the interpretative note to paragraph 2 of Article VII shall read:

"The wording of sub-paragraphs (a) and (b) permits contracting parties to determine the value for customs purposes uniformly ...".

- viii) The text of the interpretative note to Article VIII shall read:

"While Article VIII does not cover the use of multiple rates of exchange as such, paragraphs 1 and 4 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a contracting party is using multiple currency exchange fees for balance-of-payments reasons with the approval of the International Monetary Fund, the provisions of Article XV:9(a) fully safeguard its position."

- (ix) The following paragraph shall be inserted immediately after the interpretative note relating to Article VIII:

"It would be consistent with paragraph 1 that on the importation of products from the territory of any contracting party into the territory of any other contracting party the production of certificates of origin should only be required to the extent that is strictly indispensable."

- (x) The following shall be inserted immediately after the interpretative notes relating to Article XXVI:

"Ad ARTICLE XXVIII

"1. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the CONTRACTING PARTIES to reserve the right, for the duration of the subsequent period, to modify or withdraw concessions contained in the appropriate Schedule in accordance with the procedures of paragraphs 1 to 3, and if a contracting party so elects other contracting parties shall have the right, during the same period, to modify or withdraw concessions initially negotiated with that contracting party in accordance with the procedures of paragraphs 1 to 3.

"2. The object of providing for the participation in the negotiations of contracting parties with a principal supplying interest in addition to the contracting party with which the concession was originally negotiated is to ensure that a contracting party with a larger share in the trade affected by the concession than a contracting party with which the concession was originally negotiated shall have an effective opportunity to protect the contractual right which it enjoys under the Agreement. On the other hand, it is not intended that the scope of the negotiations should be such as to make negotiations and agreement under Article XXVIII unduly difficult nor to create complications in the application of the Article in the future to concessions which result from Article XXVIII negotiations. Accordingly, the CONTRACTING PARTIES should only determine that a contracting party has a principal supplying interest if that contracting party has had over a reasonable period of time prior to the negotiation a larger share in the market of the applicant contracting party than a contracting party with which the concession was originally negotiated or would, in the judgment of the CONTRACTING PARTIES, have had such a share in the absence of discriminatory quantitative restrictions maintained by the applicant contracting party. It would therefore not be appropriate for the CONTRACTING PARTIES to determine that more than one contracting party, and in those exceptional cases where there is near equality more than two, contracting parties had a principal supplying interest.

"3. Notwithstanding the definition of a principal supplying interest in Regulation 2, the CONTRACTING PARTIES may exceptionally determine that a contracting party has a principal supplying interest if the concession in question affects trade which constitutes a major part of that contracting party's total exports.

"4. It is not intended that provision for participation in the negotiations of any contracting party with a principal supplying interest, and for consultation with other contracting parties having a substantial interest in the concession which it has sought to modify or withdraw, should have the effect that the contracting party seeking such modification or withdrawal should have to pay compensation or suffer retaliation greater than the withdrawal or modification sought, judged in the light of the conditions of trade at the time of the proposed withdrawal or modification, making allowance for any discriminatory quantitative restrictions maintained by the applicant contracting party.

"5. The expression "substantial interest" is not capable of a precise definition and accordingly may present difficulties for the CONTRACTING PARTIES in the application of paragraph 1. It is, however, intended to be construed to cover only those contracting parties which have, or in the absence of discriminatory quantitative restrictions affecting their exports could reasonably be expected to have, a significant share in the market of the contracting party seeking to modify or withdraw the concession.

"6. At any time not earlier than six months, or later than three months prior to 1 January 1958, or to the termination date of any subsequent bound period, any contracting party wishing to modify or withdraw any concession embodied in its schedule, may notify the CONTRACTING PARTIES to this effect. The CONTRACTING PARTIES shall then determine the contracting party or contracting parties with which the negotiations and consultations referred to in paragraph 1 of Article XXVIII shall take place. The contracting party or contracting parties so determined shall participate in such negotiations or consultations with the applicant contracting party with the aim of reaching agreement before the end of the bound period. Any further binding of schedules thereafter shall relate to the concessions as modified by such negotiations including any withdrawals pursuant to paragraph 3(b) of Article XXVIII, or, in the absence of agreement, by the modifications or withdrawals made pursuant to paragraph 3(a) of Article XXVIII. If, however, the CONTRACTING PARTIES are arranging for multilateral tariff negotiations to take place within the period of six months before the termination of any bound period, they shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.

"7. Any request for authorization to enter into negotiations under paragraph 4 of Article XXVIII shall be accompanied by all relevant statistical and other data. A decision on such request shall be made within thirty days of its submission.

"8. It is recognized that to permit certain contracting parties depending in large measure on a relatively small number of primary commodities and relying on the tariff as an important aid for furthering diversification of their economies or as an important source of revenue, normally to negotiate for the modification or withdrawal of concessions only under paragraph 1 of Article XXVIII, might cause them at such a time to make modifications or withdrawals which in the long run would prove unnecessary. To avoid such a situation the CONTRACTING PARTIES shall authorize such contracting parties, under paragraph 4 of Article XXVIII to enter into negotiations unless they consider this would result in, or contribute substantially towards, such an increase in tariff levels as to threaten the stability of the schedules to the General Agreement or lead to undue disturbance of international trade.

"9. In determining under paragraph 4(d) whether an applicant contracting party has unreasonably failed to offer adequate compensation, it is understood that the CONTRACTING PARTIES will take due account of the special position of contracting parties which have bound a high proportion of their tariffs at very low rates of duty and to this extent have less scope than other contracting parties to make compensatory adjustments.

"10. The determination referred to in paragraph 4(d) of Article XXVIII shall be made by the CONTRACTING PARTIES within thirty days of the submission of the matter to them, unless the contracting party proposing to modify or withdraw the concessions agrees to a longer period.

"11. It is expected that negotiations authorized under paragraph 4 for modification or withdrawal of a single item or a very small group of items, could normally be brought to a conclusion in sixty days. It is recognized, however, that sixty days will be inadequate for cases involving negotiations for the modification or withdrawal of a larger number of items and in such cases, therefore, it would be appropriate for the CONTRACTING PARTIES to prescribe a longer period.

"12. The provision that on the first day of a period a contracting party "may modify or cease to apply a concession" means that on that date its legal obligation under Article II is altered; it does not mean that the changes in its customs tariff must be made effective on that date. If a tariff change resulting from negotiations undertaken pursuant to Article XXVIII is delayed, the entry into force of any compensatory concessions may be similarly delayed. In all cases the right to modify or cease to apply a concession is conditional upon the compensation being made effective at the same time. The CONTRACTING PARTIES are to be informed immediately of all changes in national tariffs resulting from recourse to the procedures of this Article. 7

"13. The CONTRACTING PARTIES and the individual contracting parties concerned should arrange to conduct the negotiations and consultations with the greatest possible secrecy in order to avoid premature disclosure of details of prospective tariff changes."

- (xi) The following shall be inserted immediately after the interpretative notes relating to Article XXVIII:

"Ad ARTICLE XXIX

Paragraph 3

"It is understood that the reference to fiscal needs would include the revenue aspect of duties and particularly duties imposed primarily for revenue purposes or duties related to such duties."

