

GENERAL AGREEMENT ON TARIFFS AND TRADE

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REPORT OF REVIEW WORKING PARTY IV ON ORGANIZATIONAL AND FUNCTIONAL QUESTIONS

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INTRODUCTION

1. The Working Party was established to consider specific proposals relating to the administration of the Agreement, legal questions, and the scope of the General Agreement. The Working Party was also instructed to consider the continuing administration of the Agreement.
2. It has drawn up a draft Agreement on the Organization for Trade Co-operation for the consideration of the CONTRACTING PARTIES which, apart from the specific reservations noted in the footnotes, is acceptable to the Working Party.
3. The Working Party has considered proposals by delegations relating to the scope of the Agreement and amendments proposed to certain articles of the Agreement.
4. The Working Party recommends for the approval of the CONTRACTING PARTIES a resolution on Investment for Economic Development.
5. The Working Party has reviewed the existing intersessional procedures and recommends certain changes therein.

I - DRAFT AGREEMENT ON THE ORGANIZATION FOR TRADE CO-OPERATION

6. General

(a) It was agreed that the organizational agreement should contain only the basic provisions relating to the structure and functions of the Organization. Many questions of detail to give effect to the intent of the articles of the Agreement would clearly have to be contained in the rules of procedure to be drawn up by the Assembly and the subsidiary bodies of the Organization. For example, it would be left to the Assembly in its rules of procedure to provide rules governing elections to the Executive Committee so that the criteria for its composition (contained in Article 6) can be fulfilled, rules regarding the election of officers, etc. Again the rules of procedure of the Executive Committee would set out the rights reserved to non-members of that Committee with respect to notification of and attendance at meetings, circulation of documents, and so forth (it should be noted that the rules of procedure of the Executive Committee and other subsidiary bodies will be subject to approval by the Assembly).

(b) It was agreed that the continuing validity of decisions taken by the CONTRACTING PARTIES prior to the entry into force of the organizational agreement would be adequately covered by the amended Article XXV of the General Agreement and Articles 3 and 12 of the organizational agreement.

(c) It was proposed that there be included in the Agreement an article on the settlement of disputes and difficulties, in which members would recognize that the purposes and objectives referred to in Article 1 would be furthered by the prompt and amicable discussion and adjustment of disputes and difficulties in international trade, and that any such disputes or difficulties which are not otherwise resolved might be submitted to the Organization for study and, where appropriate, recommendations. The Working Party, while generally agreeing with the substance of the proposal, felt that the majority of the matters which could appropriately be submitted to the Organization under this Article would be matters which the parties thereto could submit to the Organization under other provisions and which the Organization could appropriately examine and make the subject of recommendations. In most instances such action either would come under the amended Article XXII of the General Agreement, referring to the "operation" of that Agreement, or Article XXIII referring to the "operation" and "objectives" of the Agreement, or would involve matters of such general interest that they would clearly come within the general functions of the Organization. Since the matter was considered to be substantially covered, the Working Party considered it was unnecessary to include the proposed Article.

7. Article 1 - Establishment

(a) Article 1 establishes the Organization to further the achievement of the purposes and objectives set forth in the General Agreement, and Article 3 provides that the Organization shall administer the General Agreement. The Working Party agreed that this required consequential amendments to paragraphs 1 and 2 of Article XXV of the General Agreement. It also agreed to recommend the deletion

from Article XXV of other provisions (paragraphs 3, 4 and 5(a)) and the deletion of the second, third, fourth and fifth sentences of paragraph 2 of Article XXIII the substance of which is incorporated in the organizational agreement. Detailed recommendations in this regard are set out in Annex 4.

(b) The Working Party considered that the amended Articles XXIII, XXV and XXXIII, and the amendment substituting references to the Organization throughout the General Agreement for the existing references to the CONTRACTING PARTIES should not enter into force before the entry into force of the organizational agreement, and felt it would be desirable that these be included in a separate Protocol. Accordingly, it proposes the insertion, in the appropriate protocol, of language to cover this (see Annex 4). It follows from the language proposed for the replacement of references to the CONTRACTING PARTIES by references to the Organization that the texts of all amendments should continue to use the expression "the CONTRACTING PARTIES".

(c) It was not considered necessary to maintain, in the amended Article XXV, the existing reference to "facilitating the operation and furthering the objectives" of the General Agreement since Articles 1 and 3 of the organizational agreement referred to this, in the one case directly and in the other by reference.

(d) The phrase "as provided for in the General Agreement and herein" was inserted because some representatives felt that without such a phrase the article might be construed as referring only to the second paragraph rather than to the whole of the Preamble.

8. Article 2 - Membership

(a) It will be noted that this Article specifies that the members of the Organization shall be the contracting parties to the General Agreement. Parallel amendments are proposed to Articles XXV and XXXIII of the General Agreement so as to specify that all contracting parties, as soon as possible, and any country which accedes to the General Agreement, should become members of the Organization (see Annexes 3 and 4). It was agreed that the conditions under which governments which are not parties to the General Agreement might participate in certain activities of the Organization, when authorized pursuant to the last sentence of the Article, should be carefully defined in the decision taken by the Organization so as to indicate the duration and extent of such participation.

(b) The Working Party considered that the provisions of the second sentence of Article 2 would cover the case of a customs territory becoming a contracting party under Article XXVI:4(c). This interpretation was supported by the Legal and Drafting Committee.

9. Article 3 - Functions

(a) The Working Party felt that sponsorship of any negotiations by the Organization under this article would not of itself imply endorsement by the Organization of any agreement resulting from such negotiations. If the Organization should sponsor a negotiation under this article the fact that a country is a member would not imply that it would participate in such negotiation, itself sponsor such negotiation, or endorse the results thereof. The Article would not permit the Organization to amend or interpret any agreement sponsored by it, or otherwise to determine rights or obligations under such agreement. Finally the Working Party felt that the Organization might receive and discuss reports from the parties to other agreements, including reports from the parties to agreements which the Organization had sponsored under the provisions of sub-paragraph (b), and consider them in relationship to the General Agreement.

(b) The Working Party considered that it was clear that the "recommendations" referred to in sub-paragraph (c) would not be binding on members.

(c) The Working Party considered that sub-paragraph (d) of this Article would cover the proposals of the Scandinavian delegations (L/273, L/275 and L/276) and of the German delegation (L/261/Add.1, page 16) for the insertion of paragraphs or articles authorizing the undertaking of studies, collection of statistics, etc. It was also considered that sub-paragraph (c) of this Article, and Article 12, would permit the Organization to undertake the study of definitions of value, procedures for determining value, standardization of rules and procedures relating to dumping, subsidization and anti-dumping and countervailing duties, and the making of recommendations to members thereon. The Working Party suggests that the CONTRACTING PARTIES specifically endorse this interpretation and agree that the Organization should, in accordance with these provisions, consider studying such questions when appropriate.

(d) The German representative explained the proposal of his delegation (L/261/Add.1, page 17), the intention of which was to create certain obligations in the field of foreign trade statistics, in order that adequately detailed statistics of foreign trade (imports and exports) as well as of customs revenue and related matters, be established and published. This would be in the interest of contracting parties, particularly with relation to tariff negotiations and the collective reduction of tariff levels, and also in the interest of the international commercial world. The German delegation, after hearing the views of other delegates, agreed that it was not possible at this stage to insert the proposed Article, either into the General Agreement or into the organizational agreement. It was clear that many contracting parties would not be able to assume such obligations at present and it was pointed out by the representatives of the under-developed countries that many of them do not have the necessary technical knowledge or other facilities for the establishment of up-to-date statistical services. Furthermore, it appeared to be a matter of too great detail to be adequately covered by a general provision, and one that might better be worked out by the Organization, if it so desired, as circumstances seemed propitious. In the course of the discussion of this question, the German delegation proposed that countries having well-developed foreign trade statistics might place their experience at the disposal of other countries within the framework of the technical assistance or other programmes

of the United Nations or, if this were not practicable, as a form of technical assistance through the General Agreement. The Working Party sympathized with the reasons that had prompted the German proposal and agreed on the importance of adequate statistics (from the special point of view of customs statistics) for the administration of the General Agreement and for all concerned with international trade. It considered that the precise means of implementing this objective might better be studied by the Organization when it considered it appropriate.

(e) It was agreed that the final paragraph of this article does not limit in any way the right of the Organization to consider possible amendments to the General Agreement and to decide to submit such amendments to governments for acceptance in accordance with the provisions of Article XXX of that Agreement. It was also agreed that an obligation arising from the operation or interpretation of a specific provision of the General Agreement or the Organizational Agreement, including an interpretation that a particular obligation thereunder had become applicable, would not be the imposition of a "new obligation" within the meaning of this paragraph.

10. Article 5 - The Assembly

It was agreed that, although it was not desirable to specify the meeting place of the Assembly and the Executive Committee in the agreement, both bodies should meet at the headquarters of the Organization unless there were strong reasons to meet elsewhere.

11. Article 6 - The Executive Committee

(a) The Working Party agreed that it was essential to the effectiveness of the Executive Committee that it should be restricted in size and representative in character. Some members felt that, in the event that membership of the Organization increased substantially or included countries with economic systems different from those of the present contracting parties, it might be necessary to provide for a larger Executive Committee. It was, however, considered that this eventuality could more appropriately be met by an amendment to the Organizational Agreement.

(b) The expression "elected periodically by the Assembly" should not be intended to preclude the election by the Assembly of a member of the Executive Committee when a vacancy occurs. The Working Party felt that the rules of procedure should cover the possibility of such an election without having to wait until the following periodical elections.

(c) It was agreed that the reference in Article 6, sub-paragraph (a)(iii) to "different types of economies" should be interpreted as also covering small and medium economies.

(d) In the assignment of functions and powers to the Executive Committee, it was agreed that the Assembly might initially be guided by those assigned by the CONTRACTING PARTIES to the Intersessional Committee.

(e) Sub-paragraph (c) gives members the right to participate in meetings of the Executive Committee when they consider that matters of concern to them are under discussion. Article 8(b), it should be noted, modifies the rule that each member of the Executive Committee shall have one vote by the proviso that the rules of procedure may limit the exercise of this voting right in cases of disputes.

12. Article 9 - Budget

It was felt that the Assembly should take such measures as it considered appropriate to ensure that the contributions were paid by members before the vote of a member in arrears in the payments of its contribution was actually withdrawn.

13. Article 10 - Status

The Working Party considered that the Assembly, in appointing the Director-General, should give consideration to the circumstances in which he should act as the legal representative of the Organization. Mention of this function of the Director-General should be made in the terms of his appointment.

14. Article 11 - Relations with the United Nations

(a) Although the language of Article 11 is only permissive, it is the view of the Working Party that, subject to a satisfactory agreement being negotiated, it would be desirable for the new organization to be brought into a specialized agency relationship with the United Nations.¹ The establishment of this relationship by such a formal agreement, under Article 63 of the Charter, would serve to safeguard the autonomy and independence of the Organization within the co-ordinated pattern of the United Nations and the specialized agencies already in existence.

(b) The Working Party took into account a suggestion by the Secretary-General of the United Nations that the CONTRACTING PARTIES should consider carefully a very close integration of the proposed Organization with the central organs of the United Nations. Whilst agreeing on the desirability of co-ordination and the avoidance of overlapping, the Working Party felt, having regard to the nature of the General Agreement and the functions which the Organization would have to carry out with respect to it, that the Articles proposed in the organizational agreement represent a more appropriate basis for working out a suitable relationship with the United Nations.

¹ South Africa reserves its position on this sentence.

15. Article 15 - Continued application of Provisions of this Part
(Part III of the Organizational Agreement)

It was agreed that this provision was solely designed to ensure that members of the Organization should not, acting as contracting parties to the General Agreement, amend that Agreement so as to introduce different procedures, such as a simple majority for the granting of waivers, for the broad general situations covered by Articles 13 and 14. The provision was not meant to preclude the incorporation, by amendment of an article of that Agreement, of new provisions permitting the Organization to relieve contracting parties from particular obligations under specified circumstances from which they could previously have been relieved only under the general waiver article of the General Agreement.

16. Articles 17 and 18 - Entry into force and relation to amendments
to the General Agreement

The Working Party calls the attention of the CONTRACTING PARTIES to the Joint Report on the Establishment of an Organization by the Rapporteurs (W.9/93), which formed the basis for some of the articles relating to the establishment of the Organization, entry into force, etc.

II. SCOPE OF THE AGREEMENT

17. The Working Party was generally agreed on the danger of including so much within the General Agreement as to jeopardize its effectiveness and dissipate the activities of the Organization charged with its administration. There was broad agreement in the Working Party that the CONTRACTING PARTIES and the proposed Organization should continue as hitherto to deal with specific problems related to the objectives of the Agreement as they arose.

S P E C I F I C P R O P O S A L S

Commodities

18. The Working Party submitted an interim report on commodity questions (L/297) which, for convenience of reference, is reproduced below.

"The Working Party has considered the proposal made by several delegations for inserting in the General Agreement provisions along the lines of Chapter VI of the Havana Charter. Whilst there was not any general support for this proposal, a substantial majority of the Working Party were in favour of the CONTRACTING PARTIES making appropriate arrangements for the study of commodity problems under the aegis of the General Agreement and of the establishment for this purpose at the present Session of a Working Party. This Working Party would consider proposals for principles to be included in a separate instrument, to govern international action designed to overcome problems arising in the field of international trade in primary commodities, taking into account organizational questions involved in the administration and application of such principles, and report thereon to the CONTRACTING PARTIES."

19. In view of the action taken by the CONTRACTING PARTIES on this recommendation of the Working Party, it was agreed not to pursue the discussion.

20. The Working Party felt that, in view of the steps being taken to develop new principles relating to the conclusion of commodity agreements, Article XX:I(h) required amendment. Accordingly, the Working Party recommends the deletion of the existing sub-paragraph of the Article and the insertion of the text contained in Annex 3 to this Report. The Working Party considered that Article XX:I(h) does not itself establish principles for the conclusion of commodity agreements, but stipulates conditions under which measures taken pursuant to commodity agreements may be excepted from the provisions of the General Agreement.

21. The delegation of Ceylon felt that the amended sub-paragraph did not provide for positive action on the part of the CONTRACTING PARTIES in regard to commodity agreements and the principles governing their negotiation and conclusion and reserved its position.

22. In order that the exception provided for in the present Article XX:I(h) might continue to apply to commodity agreements concluded or which may be concluded, in accordance with the principles approved by the Economic and Social Council in its Resolution of 28 March 1947, the Working Party recommends that an Interpretative Note be added to the amended Article (see Annex 3).

Restrictive Business Practices

23. The Working Party considered proposals by the delegations of Denmark, Norway and Sweden (L/283) and of Germany (L/261/Add.1, page 43) to include in the Agreement provisions along the lines of Chapter V of the Havana Charter, and a proposal by the Scandinavian delegations for a resolution on this subject (W.9/84). There were differences of view as to the appropriateness of the CONTRACTING PARTIES (or the new Organization which would assume the functions of the CONTRACTING PARTIES) undertaking the administration of an agreement covering restrictive business practices. As, however, action on this matter is still under consideration by the Economic and Social Council, the Working Party considers that it would be premature to carry the discussion further at the present time. The Working Party recommends that the CONTRACTING PARTIES postpone further consideration of this matter pending receipt at the next regular session of a report by the Executive Secretary on discussions in this field by the Economic and Social Council.

Purposes, Objectives and General Obligations

24. The Norwegian delegation withdrew its proposals for a new first Article relating to purposes and objectives and a new second Article relating to general obligations (L/276) on the understanding that the Agreement of Organizational Provisions and the General Agreement would contain provisions based on the same principles as the Norwegian proposals. The Chilean delegation agreed that the principles of its proposals to incorporate some of the language of Articles 3, 4 and 6 of the Havana Charter were covered by the New Zealand proposal for an Article relating to full employment, and that they would not therefore press their proposal separately. They also agreed that the substance of their proposals with reference to Article 8 of the Havana Charter could more appropriately be dealt with within the framework of the consideration of Article XVIII.

25. The Working Party recommends the deletion of Article XXIX¹ and its interpretative note and references to it and the Havana Charter throughout the Agreement. The Working Party further recommends that the existing preamble to the General Agreement be deleted and replaced by a new first Article.² Questions were raised in the Working Party as to whether the transfer

¹ Cuba reserves its position on the deletion of Article XXIX.

² For the text of the amendment see Annex 3.

of the language of the preamble to an article would involve any increase in the obligations, or any diminution of the rights of contracting parties under the Agreement. The Working Party agreed that the transfer did not involve any such increase in obligations or diminution of rights.

26. The French and German delegations thought that the position with respect to the new first Article was clear and that the language in the preceding paragraph was unnecessary.

Full Employment

27. The Working Party considered the proposal in W.9/79 of 8 December 1954 by the New Zealand delegation for the inclusion in the General Agreement of an Article on Full Employment. The elements of this proposed Article were:

First, a recognition that the achievement of high and stable standards of employment were necessary to ensure an increasing flow of international trade and that the production, trade and balance of payments of individual countries could be materially affected by a decline in the level of employment in other countries.

Second, an undertaking that members should take action not inconsistent with the provisions of the Agreement designed to achieve and maintain full and productive employment through measures appropriate to their domestic institutions (paragraph (i)).

Third, that the Organization should have regard in the exercise of its functions under the various Articles of the Agreement to the need of members to take action to safeguard their economies against inflationary or deflationary pressure from abroad (paragraph (ii)).

Fourth, that the Organization should in urgent cases initiate consultations with the view to considering appropriate measures designed to prevent the international spread of a decline in employment, production or demand (paragraph (iii)).

28. After discussion it was the opinion of the Working Party that, in view of the present provisions of the Agreement and of changes contained in amendments agreed upon during the Review Session, it was not necessary to include this new Article and that in fact its inclusion might cause some confusion in the application of other Articles of the Agreement. It was considered that the matters contained in the opening clauses of the New Zealand proposal were substantially covered by the present preamble of the Agreement and that, since it had been agreed that this preamble would be transformed into an Article of the Agreement, the point sought to be covered by these clauses of the proposed amendment had been largely met. It was felt that the interest of every member country to seek to maintain the highest possible level of productive employment and growing demand in its own territory was so obvious that an international commitment on this point would add little if anything to this already compelling incentive.

29. It was thought that the kind of action contemplated in paragraphs (ii) and (iii) of the New Zealand proposal was already provided for in existing or proposed new Articles of the Agreement. It was clear, for example, that Article XXIII contemplates that any country which considers that a situation had arisen which impeded the attainment of any objective of the Agreement, including, of course, all those enumerated in the new Article I, may refer the matter to the CONTRACTING PARTIES, which then would be obliged promptly to investigate the matter and to make appropriate recommendations. It was also clear that in such a case the contracting parties would be free to enter into consultations with other interested international bodies which might be in the position to make a contribution to the solution to the problem presented.

30. It was also clear in the view of the Working Party that it would be open to any contracting party, in any consideration by the CONTRACTING PARTIES of its obligations under specific Articles of the Agreement, to raise the kind of question dealt with in (ii) of the New Zealand proposal. For example, if a country's reserves of foreign exchange were under pressure because of deflationary influences from abroad this would certainly be a relevant consideration to be taken into account as affecting the contracting party's reserves or need for reserves under Article XII:2(a). In such a case, moreover, if the contracting party concerned felt that this pressure was resulting from the situation in some individual country it could raise the question under Article XXIII with a view either to consultations directly with such other contracting parties as it might consider to be particularly concerned, or to reference to the CONTRACTING PARTIES, in order to obtain recommendations from them or, if need be, release from specific obligations. Moreover, should Article XII:5 remain in the Agreement it would also provide for action by the contracting parties to consider and deal with situations of general disequilibrium restricting international trade.

31. Furthermore paragraph 1 of Article ~~XXI~~ would enable a contracting party to raise with another contracting party any matter affecting the operation of the Agreement, while paragraph 2 of that Article would permit such matter to be considered by the CONTRACTING PARTIES.

32. The Working Party, therefore, felt that the transfer of the preambulatory provisions of the General Agreement to a new Article, plus the existing provisions of Article XXIII and Article XII of the Agreement and the new Article XXII, rendered the incorporation of the proposed Article unnecessary.

International Investment for Economic Development

33. The Working Party recommends that the CONTRACTING PARTIES adopt a resolution on international investment for economic development, as proposed by the Chilean delegation (the text of a proposed resolution is contained in Annex 2).

Double Taxation

34. The proposal by the German delegation (L/261/Add.1, page 52) supported by the delegation of Chile (L/272) to insert an article dealing with double taxation received the support of one other member of the Working Party. In view of the lack of support, the Working Party decided not to proceed further with this proposal.

Transport Insurance

35. A proposal by the delegations of Germany (L/261) and the Scandinavian countries was withdrawn after the CONTRACTING PARTIES had discussed a note by the Executive Secretary (L/303) on discrimination in transport insurance, and on the understanding that the CONTRACTING PARTIES would maintain this item on the agenda for discussion at the Tenth Session.

Freedom of Establishment

36. The Working Party decided not to proceed further with the proposal by the delegation of Germany (L/261/Add.1, page 53) to insert an article providing for freedom of establishment, since it had received no support.

Tied Loans

37. In view of the lack of support for its proposal that a provision be inserted in the General Agreement relating to tied loans, the delegation of Brazil proposed that the CONTRACTING PARTIES adopt a resolution (W.9/97) recommending that international credit agencies abstain whenever possible from attaching conditions to long-term loans for economic development. While there was general agreement with the premise that loans should be used in the most economic way possible, the Working Party considered that the CONTRACTING PARTIES could not make suggestions as to the credit policies of international lending agencies, and the Working Party did not support the adoption of a resolution on this subject by the CONTRACTING PARTIES.

Monopolistic Practices in Transport and Shipping

38. The Brazilian delegation proposed that the Organization should follow the activities of all international bodies concerned with the field of shipping, freight, etc., and submit reports and observations to the Assembly. There was little support for this proposal, most members feeling that the field of shipping was highly technical and beyond the competence of a body which was to be primarily concerned with questions of trade and commercial policy.

Relations with Non-contracting parties

39. The Working Party considered the question of the extension by contracting parties to non-contracting parties of the benefits of the Agreement by means of bilateral agreements. It was pointed out in the discussion that non-contracting parties frequently received all the benefits of the Agreement without having to undertake its corresponding obligations, and that this

situation could discourage rather than induce other countries to join. Most members of the Working Party felt, however, that the attitude a contracting party wished to adopt in this respect to a non-contracting party was a matter for each contracting party to decide.

40. The Working Party considered a proposal by the South African delegation (W.9/92) for the inclusion in the Agreement of a new Article on relations with non-contracting parties. The discussion of this proposal showed that the majority of members were not in favour of the inclusion of such a new article in the Agreement. It was pointed out in discussion that the procedures relating to consultations and complaints set out in Articles XXII (as amended) and XXIII were drafted in very general and wide terms and in particular were not limited to cases where actions which were the subject of representations or complaints constitutes a breach of obligations under the Agreement. Accordingly, it was felt that, without prejudice to the decision the CONTRACTING PARTIES might arrive at on any particular case referred to them (and clearly in considering any particular case the CONTRACTING PARTIES would naturally have regard to the principles and provisions of the various articles of the Agreements - including for example Article XIV and paragraph 5 of Article XXIV), a contracting party would not be out of order if it asked the CONTRACTING PARTIES, under the procedures of Article XXIII, to investigate a case where another contracting party, in concluding an agreement with a non-contracting party, had received benefits which necessarily involved the non-contracting party in discriminating in its favour and against the contracting party submitting the matter for investigation.

41. The delegations of Brazil, Burma and Cuba, having opposed the insertion of an article on relations with non-contracting parties in the Agreement, considered the language of the preceding paragraph unacceptable and opposed its inclusion. In their view the position under Article XXIII was clear.

Consultations concerning a decline in the off-take of primary commodities

42. The Working Party considered the proposal by the delegation of Pakistan for the inclusion in the General Agreement of provisions for consultations regarding any decline in the off-take of primary commodities (W.9/134). The Working Party recommends that the proposal be met by amendments to Articles XVIII and XXII¹.

¹ For the text of amendments to these Articles see Annex 3.

III - CONTINUING ADMINISTRATION OF THE AGREEMENT

43. The Working Party reviewed the existing arrangements for the Continuing Administration of the Agreement. In connexion with this review, it considered proposals by the Canadian and Danish delegations (W.9/179 and 171) for strengthening the present arrangements.

44. The Working Party based its review on the consideration that the general objective should be to ensure that the administration of the General Agreement should be full, effective and continuous. There was no question but that the CONTRACTING PARTIES must retain and exercise final authority on all policy matters. It was, however, recognized that, given that the CONTRACTING PARTIES do not normally meet in full session more frequently than once a year, it is essential to continue to provide for intersessional action by a smaller body acting on their behalf. In the first place, a number of specific provisions of the General Agreement (e.g. some of the consultation provisions under Article XIII) might require joint action to be taken at any time, and some machinery was essential to ensure that such action could be taken intersessionally. In the second place, even in cases where no explicit provision was made in the General Agreement for action which would have to be taken intersessionally, there was a need, which had become increasingly apparent, to continue to develop the procedures of the General Agreement so as to provide a more effective forum for cooperation and consultation on matters within the scope of the Agreement. In the third place, it was recognized that the proved value of the regular (or special) sessions are enhanced, their duration lessened, and the representation at them maintained at a high level, if as much preliminary work as possible can be done beforehand so that the CONTRACTING PARTIES at the regular sessions may to a greater extent concentrate on major questions and on general issues of policy.

45. With respect to the Ad Hoc Committee on Agenda and Intersessional Business¹, the Working Party felt that the paramount consideration was that it should be an effective Committee. This implied, firstly that contracting parties nominated for membership should agree to provide adequate representation and in fact that it should be a condition of acceptance of membership that those contracting parties would undertake to send as representatives persons appropriately qualified. Secondly, the Committee should be prepared to convene at short notice. The Working Party noted particularly the difficulties of distant countries in making qualified representatives available within the time specified. On the other hand, acceptance of membership in the Committee implied acceptance of the responsibilities involved in such membership. The Working Party therefore considered that this point should be brought to the attention of the contracting parties concerned so that before accepting nomination to the Intersessional Committee, they could consider whether

¹References in this Report to the Ad Hoc Committee on Agenda and Intersessional Business relate to the Committee established by the CONTRACTING PARTIES at their Sixth Session, and reappointed at the end of each session, the detailed procedures and recommendations concerning the appointment and functions of which are set forth in the report of the Sixth Session (Basic Instruments and Selected Documents, Volume II, pp. 205 et seq.)

it would in fact be possible for them to make the necessary arrangements to ensure adequate representation. One possibility would be for countries so placed to appoint representatives of suitable calibre and with knowledge of, and authority to speak on, commercial policy questions within the field of the General Agreement to Geneva or one or other of the nearby European capitals, so that they could be available at short notice for meeting in Geneva.

46. There was agreement in principle with the terms of reference of the Intersessional Committee as proposed by the Canadian delegation. It was felt, however, that the existing intersessional procedures (as contained in Basic Instruments and Selected Documents, Second Supplement, pages 8 et seq.) provided for the exercise of most of the functions proposed and it was agreed, therefore, merely to amend the existing procedures where necessary in order to include them, and to recommend that the CONTRACTING PARTIES adopt the procedures as there consolidated, in accordance with the amendments set out in Annex 5.

47. The Working Party felt that in view of the paragraph in the existing procedures which refers to "other matters arising before the next ordinary session which require urgent action, and for which no special arrangements have been made", it was not necessary to refer specifically, as the Canadian proposals did, to matters arising under Articles II:6(a), XIX and XXV:5(a).

48. The Working Party agreed on the need to avoid a proliferation of intersessional bodies, and considered that it would be useful to bring under the Committee matters presently within the purview of an intersessional working party. Consequently, it recommends that the Intersessional Committee take over the functions now assigned to the Intersessional Working Party on Article XVIII, and be directed to take over any matters arising from the Review Session which might require intersessional consideration; the latter could be added to the list of "matters expressly referred to the Committee by the CONTRACTING PARTIES" (viz. *ibid.*, page 9).

49. Other changes that the Working Party suggests to the existing procedures are as follows:

(a) the adoption of the substance of the proposal by the Canadian delegation relating to "Consultations or action under Articles XII - XIV" and the inclusion of Article XV. The Working Party considered that under this heading provision should also be made for the Intersessional Committee to perform such functions as may be agreed to by the CONTRACTING PARTIES with a view to improved collaboration with the International Monetary Fund, pursuant to paragraph 1 of Article XV. A suitable provision covering this point should be inserted in the intersessional procedures in the light of the decision of the CONTRACTING PARTIES on this matter;

(b) the insertion of a period of not less than ten days for the convocation of the Committee;

- (c) the inclusion of the paragraph suggested by the Canadian delegation concerning the provision of information by the secretariat.

50. The Working Party noted that the existing procedures entitle contracting parties who are not members of the Intersessional Committee to be represented by observers at all meetings, and provide, furthermore, that the Committee shall co-opt as full members any contracting parties claiming an interest in the matter and wishing to be represented.

51. The Working Party agreed to recommend that the name of the Committee be abbreviated to the "Intersessional Committee".

52¹. The Working Party considered the suggestion by the Danish delegation for the appointment of qualified panels to assist in carrying out consultations under Articles XII to XIV and in the consideration of complaints under Article XXIII, as well as other commercial policy matters which are the subject of regular reports for examination by the CONTRACTING PARTIES. In the course of the discussion, the Danish representative explained that the proposal had been put forward in the interests of the CONTRACTING PARTIES as a whole and not as the point of view of one contracting party. It appeared to the Danish delegation that the interests of all contracting parties would be advanced if the procedures of the CONTRACTING PARTIES were improved. The Working Party appreciated the objectives of the Danish proposals. The majority felt, however, that it was difficult to define procedures of this kind in precise terms at this stage, and without more experience of their application in particular cases. Accordingly they suggested that the CONTRACTING PARTIES should consider applying the technique proposed by the Danish delegation, which was in some respects similar to that which had been hitherto applied successfully in a number of cases arising under Article XXIII, to matters of the kind described in the Danish proposal, arising at the regular sessions. Furthermore, the Intersessional Committee in making recommendations to the CONTRACTING PARTIES for the handling of matters on their agenda should bear in mind the possibility of recommending the use of this technique for dealing with particular items. It also appeared to the Working Party that the CONTRACTING PARTIES might authorize the Intersessional Committee to take account of these techniques in determining the composition and working methods of subsidiary bodies which the Committee is authorized by its terms of reference to establish to deal with urgent matters arising intersessionally².

¹Chile and Cuba reserve their positions on this paragraph.

²New Zealand and Pakistan reserve their positions on this sentence.

IV. PROPOSALS RELATING TO VARIOUS ARTICLES AND LEGAL QUESTIONS

Definitive Application

53. The Working Party, bearing in mind that the General Agreement had been applied provisionally for seven years, and that the purpose of the review was to provide that the Agreement should contribute more effectively to early progress towards the attainment of the objectives, agreed that it was desirable that the Agreement when amended should enter into force definitively at as early a date as possible. A number of delegations indicated, however, in the course of the discussion, that such definitive application would not be possible for them at an early date if it involved immediately bringing into conformity with the General Agreement all domestic legislation which might be inconsistent with Part II. In this connection the Working Party considered a proposal submitted by the delegations of the Scandinavian countries for an amendment to Article XXVI providing for a transitional period of fixed duration by the end of which all such legislation should be brought into conformity with the General Agreement. This proposal, however, was not acceptable to some delegations on the ground that it created an inequitable situation because in their countries the ratification of an international treaty had the automatic effect of modifying domestic legislation. Some other delegations had difficulty with accepting an obligation to amend domestic legislation by the end of a predetermined period to bring it into conformity with the Agreement. The Working Party, therefore, recommends, in order to meet these various points of view, that no amendment should be made to Article XXVI on this account, but that it should be open to contracting parties to accept the definitive application of the Agreement under the provisions of Article XXVI subject to a reservation in respect of existing legislation similar to that covering such legislation in the Protocol of Provisional Application and other Protocols. Such a reservation would have to be accepted by all the contracting parties. Accordingly the Working Party proposed that the contracting parties should, at this Session, agree unanimously that acceptance subject to such a reservation will be valid. A text of the proposed reservation and conditions attaching to its acceptance are contained in Annex 4 to this report.

54. As regards the notification of legislation covered by the reservation, the Working Party considered that it would not be practicable to specify any particular time-limit within which such notification must be made. They considered, however, that normally a contracting party making such a reservation would concurrently notify the CONTRACTING PARTIES of the principal legislative measures in question or, if such concurrent notification were not practicable, would do so shortly thereafter.

55. It was the understanding of the Working Party that the annual review provided for in paragraph 3 of the agreement or declaration relating to the reservation would afford an opportunity for consultations regarding any special difficulties of any contracting party arising out of the operation of the legislation of another contracting party covered by the reservation. The words "appropriate recommendations" in paragraph 4 were intended to mean that

the CONTRACTING PARTIES could make whatever recommendations were indicated in the circumstances existing at the time, taking into account any continuing inequities which would result from the maintenance of the situation. It was also clear that the acceptance of the reservation would not deprive any contracting party of resort to Article XXIII in accordance with paragraph 1(b) or (c) thereof.

56. The formula suggested by the Working Party does not set any fixed time-limit for the duration of the reservation, but the general intent of the declaration and the detailed procedures proposed are directed towards securing as early as possible complete conformity between the legislation of contracting parties and their obligations of the General Agreement, since it is recognized that the continued existence of the reservation would result in an inequitable position as between those contracting parties whose domestic legislation was initially in, or has been brought into, conformity with the Agreement, and other contracting parties whose obligations were less strict by reason of the continued maintenance of such legislation.

57. The question was raised in the Working Party whether the claim of a contracting party that any particular legislation was covered by the reservation would be subject to challenge. The Working Party considered that the reservation would provide to a contracting party a defence against the charge that it was acting inconsistently with the General Agreement only to the extent to which the legislation in question was in fact covered by the terms of the reservation. It was open to any contracting party to submit this matter to the judgment of the CONTRACTING PARTIES under the appropriate procedures of the Agreement or in the course of the review provided for in the declaration or decision relating to the reservation.

58. The Working Party has recommended the use in the reservation of the same phraseology as is employed in the Protocol of Provisional Application and other Protocols, viz. "to the fullest extent not inconsistent with existing legislation". Some members of the Working Party would have preferred to specify that such legislation in order to be within the reservation must be "mandatory". As other members of the Working Party felt that this would create difficulties for them because of the inappropriateness of such a term in relation to their domestic legislative process the Working Party did not adopt this suggestion. It was felt that the use of this term was in fact unnecessary since it is plain from the wording of the Protocol of Provisional Application that the exception can only be applicable to legislation which is, by its terms or expressed intent of a mandatory character, that is, it imposes on the executive authority requirements which cannot be modified by executive action, (viz. Basic Instruments and Selected Documents Vol. II, Para 62). The representatives of Cuba and Chile reserved their positions on this interpretation of the Protocol of Provisional Application.

Article XVIII¹

59. The changes to this Article have been referred to in paragraph 42 above.

Article XX

60. The changes to Article XX:I(h) have been referred to in paragraphs 20-22 above.

Article XII¹

61. The changes to this Article have been referred to in paragraph 45 above.

Article XXIII¹

62. The Working Party discussed proposals by the Governments of Denmark, Norway and Sweden to add an interpretative note to paragraph 2 of Article XXIII. The representative of the Scandinavian countries, when introducing the proposals, stressed that action by the CONTRACTING PARTIES under Article XXIII should be directed towards the maintenance of a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in the original situation; it was, therefore, desirable that resort should be had to retaliatory action only when all other possibilities had been explored.

63. The proposal was withdrawn in the light of the agreement by the Working Party that, subject to the qualifications explained in the following paragraph the principle set out in the proposed interpretative note conformed with both the intention of the Article and the practice the CONTRACTING PARTIES had hitherto followed in applying its provisions. The Working Party considered that the requirement in paragraph 2 of the Article that the circumstances must be "serious enough" limits the possibility of authorizing a contracting party or parties to take appropriate retaliatory action to cases where endeavours to solve the problem through the withdrawal of the measures causing the damage, the substitution of other concessions, or some other appropriate action have not proved to be possible, and where there is considered to be a substantial justification for retaliatory action, as in cases in which such authorization appears to be the only means either of preventing serious economic consequences to the country for which a benefit has been nullified or impaired, or the only means of restoring the original situation.

64. Furthermore, the Working Party felt that any implication (such as had existed in the Scandinavian proposal) that the provision of appropriate compensation, on the one hand, and the removal of a measure inconsistent with the Agreement, on the other hand, are fully equivalent and satisfactory alternatives would not accord with the intent and spirit of the Article. In their view, the first objectives if the CONTRACTING PARTIES decided, in the event of a complaint under Article XXIII, that certain measures were inconsistent with provisions of the Agreement, should be to secure the withdrawal of the measures. In such a case, the alternative of providing compensation for damage suffered should be resorted to only if the immediate withdrawal of the measures was impracticable and only as a temporary measure pending the withdrawal of the measures which were inconsistent with the Agreement.

¹For the text of amendments to these Articles see Annexes.3 and 4.

65. It was agreed to delete from the second sentence to the end of paragraph 2, since these provisions were included in the Organizational Agreement as Article 15.

Article XXV¹

66. The amendments proposed to paragraphs 1-5(a) of Article XXV have already been referred to under paragraphs 7 and 8 above.

67. Paragraphs 5(b), (c) and (d) are being considered by Working Party II.

Article XXVI¹

68. It was agreed to insert two new paragraphs in place of paragraphs 1 and 2 to amend paragraph 4(c) and to insert a new paragraph 6 of this Article, to delete the interpretative note and to revise the percentage shares of total external trade contained in Annex H, based on the average for five years, 1949-53. The Working Party considered it clear that the figures contained in Annex H would be used solely for the purpose of Article XXVI.

Article XXIX¹

69. The recommendation by the Working Party for the deletion of this Article has been referred to in paragraph 25 above.

Article XXX¹

70. It was agreed to amend paragraph 1 of this Article and to add a new paragraphs to cover the case of withdrawals. A second new paragraph providing for a procedure for entry into force of rectifications and modifications was also agreed.

Article XXXI¹

71. It was agreed to delete the date contained in this Article.

Article XXXIII¹

72. The amendments proposed to this Article to provide for an acceding government to become a member have already been referred to in paragraph 8 above. It was also agreed to clarify the phrase relating to the voting requirement.

¹For the text of amendments to these Articles see Annexes 3 and 4.

Article XXV¹

73. A title was agreed for this Article and amendments to paragraphs 1 and 2, those to paragraph 1 consequential upon the amendments to Article XXV.

Annex I - Final Note¹

74. It was agreed to delete this Note.

¹For the text of amendments to these Articles see Annex 3.

ANNEX 1

DRAFT AGREEMENT ON THE ORGANIZATION
FOR TRADE COOPERATION

PART I - GENERAL

Article 1 - Establishment

The Organization for Trade Cooperation (hereinafter referred to as the Organization) is hereby established to further, as provided for in the General Agreement and herein, the achievement of the purposes and objectives set forth in the General Agreement on Tariffs and Trade (herein referred to as the General Agreement).

Article 2 - Membership

The Members of the Organization shall be the contracting parties to the General Agreement. Governments which become or cease to be contracting parties to the General Agreement shall become or cease to be Members of the Organization. The Organization may, by a two-thirds majority of the votes cast, invite governments which are not or which cease to be contracting parties to the General Agreement to participate in such activities of the Organization and on such terms as it shall decide; Provided that in no case shall such participation involve the right to vote or to be counted in determining the fulfilment of the relevant voting requirements when the Organization is exercising any function relating directly to the General Agreement.

Article 3 - Functions

- (a) The Organization shall administer the General Agreement and generally facilitate the operation of that Agreement.
- (b) In addition, the Organization shall have the following functions:
 - (i) to facilitate intergovernmental consultations on questions relating to international trade;
 - (ii) to sponsor international trade negotiations;
 - (iii) to study questions of international trade and commercial policy and, where appropriate, make recommendations thereon;

- (iv) to collect, analyse and publish information and statistical data relating to international trade and commercial policy, due regard being paid to the activities in this field of other international bodies.
- (c) The Organization shall, in carrying out these functions, endeavour to give full effect to the provisions of Article 1 of this Agreement.
- (d) The Organization shall have no authority to amend the provisions of the General Agreement; no decision or other action of the Assembly or any subsidiary body of the Organization shall have the effect of imposing on a Member any new obligation which the Member has not specifically agreed to undertake.

PART II - STRUCTURE AND ADMINISTRATION OF THE ORGANIZATION

Article 4 - Structure in General

The Organization shall have an Assembly, an Executive Committee and a Secretariat.

Article 5 - The Assembly

- (a) The Assembly shall consist of all the Members of the Organization.
- (b) It shall be the responsibility of the Assembly to carry out the functions of the Organization.
- (c) The Assembly shall determine the seat of the Organization.
- (d) The Assembly shall meet in regular annual session and in such special sessions as may be convened in accordance with the rules of procedure.
- (e) The Assembly shall establish its own rules of procedure and shall approve the rules of procedure of the Executive Committee and of any other subsidiary body.

Article 6 - The Executive Committee

- (a) The Executive Committee shall consist of sixteen Members of the Organization elected periodically by the Assembly. Each election shall be for a single term and each Member shall be eligible for re-election. In such elections, the Assembly shall be guided by the following criteria:

- (i)¹ the Executive Committee shall include the Members of chief economic importance, in the determination of which particular regard shall be paid to their shares in international trade;
 - (ii) the Executive Committee shall be representative of the broad geographical areas to which the Members belong;
 - (iii) the Executive Committee shall be representative of different degrees of economic development, different types of economies and different economic interests.
- (b) The Executive Committee shall exercise the powers and perform the duties assigned to it by the Assembly by a majority of two-thirds of the votes cast. Decisions or recommendations of the Executive Committee shall be subject to a right of appeal to the Assembly by any Member in accordance with rules to be prescribed by the Assembly.
- (c) Any Member of the Organization which is not a member of the Executive Committee shall be entitled to participate, without the right to vote, in the discussion by the Executive Committee of any matter of concern to it.

Article 7 - The Secretariat

- (a) The Assembly shall appoint a Director-General as chief administrative officer of the Organization. The powers, duties, conditions of service and term of office of the Director-General shall conform to regulations approved by the Assembly.
- (b) The Director-General or his representative shall be entitled to participate, without the right to vote, in all meetings of the Assembly and subsidiary bodies of the Organization.
- (c) The Director-General shall appoint the members of the staff, and shall fix their duties and conditions of service in accordance with regulations approved by the Assembly.
- (d) The selection of the members of the staff shall as far as possible be made on a wide geographical basis and with due regard to the various types of economy represented by Member countries. The paramount consideration in the selection of candidates and in determining the conditions of service of the staff shall be the necessity of securing the highest standards of efficiency, competence, impartiality and integrity.

¹ Brazil reserves its position on this clause.

(e) The responsibilities of the Director-General and of the members of the staff shall be exclusively international in character. In the discharge of their duties, they shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their positions as international officials. The Members shall respect the international character of the responsibilities of these persons and shall not seek to influence them in the discharge of their duties.

Article 8 - Voting

(a) At meetings of the Assembly each Member of the Organization shall be entitled to have one vote and, except as otherwise provided for in the General Agreement or in this Agreement, decisions of the Assembly shall be taken by a majority of the votes cast.

(b) Each member of the Executive Committee and of other subsidiary bodies shall have one vote therein; Provided that the rules of procedure may require that parties to a dispute shall abstain from voting.

Article 9 - Budget and Contributions

(a) The Director-General shall present to the Assembly, through the Executive Committee, the annual budget estimates and financial statement of the Organization. The Assembly shall approve the accounts and the budget.

(b) The Assembly shall apportion the expenditures of the Organization among the Members, in accordance with a scale of contributions to be fixed by the Assembly, and each Member shall contribute promptly to the Organization its share of these expenditures.

(c) If a Member is in arrears in the payment of its contributions by an amount which equals or exceeds the amount of contributions due from it in respect of the preceding two completed financial years, the Member shall have no vote, and shall not be counted in the determining of the fulfilment of the relevant voting requirements, in the organs of the Organization. If the Assembly is satisfied that the failure to pay is due to circumstances beyond the control of the Member, it may, nevertheless, permit such a Member to vote, and then such Member shall be counted accordingly.

Article 10 - Status

(a) The Organization shall have legal personality.

(b)¹ The Organization shall enjoy in the territory of each of the Members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions.

¹Cuba reserves its position to the effect that the words "in accordance with its internal legislation" should be inserted.

(c)¹ The representatives of the Members, and the officials of the Organization shall similarly enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connexion with the Organization.

(d) The privileges and immunities to be accorded by a Member to the Organization, to its officials and to the representatives of its Members shall be similar to those accorded by that Member to specialized agencies of the United Nations, to their officials and to the representatives of their members, under the Convention on the Privileges and Immunities of the Specialized Agencies, or under similar arrangements.

Article 11 - Relations with other Organizations

(a) The Organization shall make arrangements with inter-governmental bodies and agencies which have related responsibilities to provide for effective cooperation and the avoidance of unnecessary duplication of activities.

(b) In pursuance of the provisions of the preceding paragraph, the Organization may, by an agreement approved by the Assembly, be brought into relationship with the United Nations, as one of the specialized agencies referred to in Article 57 of the Charter of the United Nations.

(c) The Organization may make suitable arrangements for consultation and cooperation with non-governmental organizations concerned with matters within the scope of the Organization.

PART III - SPECIAL PROVISIONS RELATING TO THE ADMINISTRATION OF THE GENERAL AGREEMENT

Article 12 - Administration in General

The Organization shall give effect to those provisions of the General Agreement which provide for action by the Organization, and shall carry out such other activities in relation to the General Agreement which involve joint action. This shall include the taking of decisions, the sponsorship of negotiations and consultations, the conduct of studies, the circulation of proposals and the receipt of reports, in any case in which such action is required or appropriate to carry out the purposes of the General Agreement.

Article 13 - Waivers in Exceptional Circumstances

In exceptional circumstances, not elsewhere provided for in this Agreement nor provided for in the General Agreement, the Assembly may waive an obligation imposed upon a contracting party by the General Agreement; Provided that any such decision shall be approved by a two-thirds majority of

¹Cuba reserves its position to the effect that the words "in accordance with its internal legislation" should be inserted.

the votes cast and that such majority shall comprise more than half of the Members. The Assembly may also by such a vote (i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations imposed by the General Agreement upon a contracting party thereto, and (ii) prescribe such criteria as may be necessary for the application of this Article.

Article 14 - Nullification and Impairment

(a) If a claim of nullification or impairment of a benefit accruing under the General Agreement is referred to the Organization, it shall promptly investigate the matter and shall make appropriate recommendations to the contracting parties to the General Agreement which it considers to be concerned, or give a ruling on the matter, as appropriate. The Organization may consult with contracting parties, with the Economic and Social Council of the United Nations, and with any appropriate intergovernmental organization in cases where it considers such consultation necessary.

(b) If the Organization considers that the circumstances are serious enough to justify such action, it may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under the General Agreement as it determines to be appropriate in the circumstances. If the application to any contracting party of any obligation or concession is in fact suspended, that contracting party shall then be free, not later than sixty days after such action is taken, to give written notice to the Secretary-General of the United Nations of its intention to withdraw from the General Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

Article 15 - Continued Application of Provisions of this Part

The Members shall not, acting as contracting parties to the General Agreement, amend the General Agreement so as to provide therein for procedures, other than consultation, negotiation or recommendation, applicable to the general situations to which Articles 13 and 14 relate.

PART IV - OTHER PROVISIONS

Article 16 - Amendments

Amendments to this Agreement shall become effective, in respect of those Members which accept them, upon acceptance by two-thirds of the Members of the Organization and thereafter in respect of each other Member upon acceptance by it.

Article 17 - Entry into Force

- (a) This Agreement shall be deposited, subject to the provisions of Article 22, with the Director-General of the Organization.
- (b) This Agreement shall be opened at Geneva on _____ for acceptance, by signature or otherwise, by contracting parties to the General Agreement and by any other government which has, in accordance with such rules of procedure as may be established by the Organization, notified the Director-General of its intention to accede.
- (c) Without prejudice to the principle laid down in Article 2, this Agreement shall enter into force, as among those governments which are then contracting parties to the General Agreement and which have accepted this Agreement, on the thirtieth day following the day on which it has been accepted by governments named in the Annex to this Agreement the territories of which account for 85 per centum of the total external trade of the territories of such governments, computed in accordance with the appropriate column of percentage set forth therein. This Agreement shall enter into force for each other government which is a contracting party to the General Agreement on the thirtieth day following the day on which it has been accepted thereby. It shall enter into force for each other government which has accepted it when such government accedes to the General Agreement.

Article 18 - Notification and Registration

- (a) The Director-General of the Organization shall promptly furnish a certified copy of this Agreement and a notification of its entry into force, and of each acceptance thereof, to each contracting party to the General Agreement.
- (b) This Agreement shall be registered in accordance with Article 102 of the Charter of the United Nations.

PART V - TRANSITORY PROVISIONS

Article 19 - Relation to Amendments to the General Agreement

If this Agreement enters into force before the entry into force of amendments to the General Agreement contained in the Protocol Amending the General Agreement dated _____, this Agreement shall, until the entry into force of such amendments, be applied as if all references in the General Agreement to "the CONTRACTING PARTIES" were references to the Organization.

Article 20 - Provisional Application

Without prejudice to the principle laid down in Article 2, if by _____ this Agreement shall not have entered into force pursuant to paragraph (c) of Article 17, those governments, being contracting parties to the General Agreement, which are prepared to do so may nevertheless decide to apply it; Provided that the territories of such governments account for the percentage of trade required for the entry into force of this Agreement under paragraph (c) of Article 17.

Article 21 - Temporary Exercise of Depository Functions

Pending the entry into force of this Agreement, the title "Director-General of the Organization" in paragraph (b) of Article 14, paragraphs (a) and (b) of Article 17 and paragraph (a) of Article 18, shall read "Executive Secretary to the CONTRACTING PARTIES to the General Agreement".

Done at Geneva, in a single copy, in the English and French languages, both texts authentic, this _____ day of _____, one thousand nine hundred and _____.

ANNEX

PERCENTAGE SHARES OF TOTAL EXTERNAL TRADE TO BE USED FOR THE
PURPOSE OF MAKING THE DETERMINATION REFERRED TO IN ARTICLE 17

(based on the average of 1949 - 1953)

If, prior to the accession of the Government of Japan to the General Agreement, the present Agreement has been accepted by contracting parties the external trade of which under column I accounts for the percentage of such trade specified in paragraph (c) of Article 17, column I shall be applicable for the purposes of that paragraph. If the present Agreement has not been so accepted prior to the accession of the Government of Japan, column II shall be applicable for the purposes of that paragraph.

	<u>Column I</u> (Contracting parties on 1 March 1955)	<u>Column II</u> (Contracting parties on 1 March 1955 and Japan)
Australia	3.1	3.0
Austria	0.9	0.8
Belgium-Luxemburg-the Netherlands	9.0	8.8
Brazil	2.5	2.4
Burma	0.3	0.3
Canada	6.7	6.5
Ceylon	0.5	0.5
Chile	0.6	0.6
Cuba	1.1	1.1
Czechoslovakia	1.4	1.4
Denmark	1.4	1.4
Dominican Republic	0.1	0.1
Finland	1.0	1.0
France	8.7	8.5
Germany, Federal Republic of	5.3	5.2

	<u>Column I</u> (Contracting parties on 1 March 1955)	<u>Column II</u> (Contracting parties on 1 March 1955 and Japan)
Greece	0.4	0.4
Haiti	0.1	0.1
India	2.4	2.4
Indonesia	1.3	1.3
Italy	2.9	2.8
New Zealand	1.0	1.0
Nicaragua	0.1	0.1
Norway	1.1	1.1
Pakistan	0.9	0.8
Peru	0.4	0.4
Rhodesia and Nyasaland	0.6	0.6
Sweden	2.5	2.4
Turkey	0.6	0.6
Union of South Africa	1.8	1.8
United Kingdom	20.3	19.8
United States of America	20.6	20.1
Uruguay	0.4	0.4
Japan	-	2.3
	<hr/> 100.0	<hr/> 100.0

Note: These percentages have been computed taking into account the trade of all territories in respect of which the General Agreement on Tariffs and Trade is applied.

ANNEX 2

Draft Resolution on
International Investment for Economic Development

HAVING REGARD

- (a) to the objectives of the General Agreement which include inter alia raising the standards of living, developing the full use of the resources of the world, and expanding the production and exchange of goods,
- (b) to the fact that the General Agreement recognizes by special provisions relating to governmental assistance for economic development, the contribution which the economic development of the less-developed territories of contracting parties could make to the attainment of these objectives,
- (c) to the fact revealed in the periodic review of quantitative restrictions maintained by many contracting parties that such restrictions are widely maintained in countries engaged in substantial programmes of economic development,

RECOGNIZING THAT

an increased flow of capital into countries in need of investment from abroad and, in particular, into underdeveloped countries would facilitate the objectives of the General Agreement by stimulating economic development of these countries whilst at the same time rendering it less necessary for them to resort to import restrictions,

THE CONTRACTING PARTIES

RECOMMEND that the contracting parties who are in a position to provide capital for international investment and the contracting parties who desire to obtain such capital use their best endeavours to create conditions calculated to stimulate the international flow of capital having regard in particular to the importance for this purpose of providing by appropriate methods for security for existing and future investment, the avoidance of double taxation, and facilities for the transfer of earnings upon foreign investments,

URGE that contracting parties upon the request of any contracting party enter into consultation or participate in negotiations directed to the conclusion of bilateral and multilateral agreements relating to these matters.

ANNEX 3

Amendments proposed to the General Agreement

Preamble

The preamble shall be deleted.

New Article

The following new article shall be inserted:

"Article I - Objectives

"1. The contracting parties recognize that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods, and promoting the progressive development of the economies of all the contracting parties.

"2. The contracting parties desire to contribute to these objectives through this Agreement¹ by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce."

1

The phrase "through this Agreement" is designed to replace the final phrase in the preamble "have through their representatives agreed as follows".

Article XVIII

The following sub-paragraph shall be inserted in Article XVIII (as contained in document W.9/154).

"5. (a) The CONTRACTING PARTIES recognize that the export earnings of contracting parties whose economies are of the type described in paragraph 4(a) and (b) above, and which depend on exports of a small number of primary commodities may be seriously reduced by a decline in the sale of such commodities. Accordingly, when a contracting party's exports of primary commodities are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII."

Article XX

The text of Article XX:I(h) shall read:

"(h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the CONTRACTING PARTIES and not disapproved by them or which is itself so submitted and not disapproved;"

Article XXII

The text of Article XXII shall read:

"1. Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as may be made by another contracting party with respect to any matter affecting the operation of this Agreement.

"2. The CONTRACTING PARTIES may, at the request of a contracting party, consult with any contracting party or parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1."

Article XXIII

See Annex 4.

Article XXV

See Annex 4.

Article XXVI

Article XXVI shall read:

"1. The date of this Agreement shall be 30 October 1947.

"2. This Agreement shall be open for acceptance by any contracting party which, on 1 March 1955, was a contracting party or was negotiating with a view to accession to this Agreement.

"3. Each government accepting this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations, who will inform all interested governments of the date of deposit of each instrument of acceptance and of the day on which this Agreement enters into force under paragraph 5 of this Article.

"4. (a) Each government accepting this Agreement does so in respect of its metropolitan territory and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Secretary-General of the United Nations at the time of its own acceptance.

"(b) Any government, which has so notified the Secretary-General under the exceptions in sub-paragraph (a) of this paragraph, may at any time give notice to the Secretary-General that its acceptance shall be effective in respect of any separate customs territory or territories so excepted and such notice shall take effect on the thirtieth day following the day on which it is received by the Secretary-General.

"(c) If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party, and shall also be deemed to be a Member of the Organization.

"5. This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with the Secretary-General of the United Nations on behalf of governments signatory to the Final Act the territories of which account for eighty-five per centum of the total external trade of the territories of the signatories to the Final Act adopted at the conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment. Such percentage shall be determined in accordance with the table set forth in Annex H. The instrument of acceptance of each other government signatory to the Final Act shall take effect on the thirtieth day following the day on which such instrument is deposited.

"6. This Agreement shall enter into force, as among the governments which have accepted it, on the thirtieth day following the day on which instruments of acceptance have been deposited with the Executive Secretary to the CONTRACTING PARTIES on behalf of governments named in Annex H, the territories of which account for 85 per centum of the total external trade of the territories of such governments, computed in accordance with the applicable column of percentages set forth therein. The instrument of acceptance of each other government shall take effect on the thirtieth day following the day on which such instrument has been deposited.

"7. The United Nations is authorized to effect registration of this Agreement as soon as it enters into force."

Article XXIX

This Article shall be deleted.¹

Article XXX

Article XXX shall read:

"1. (a) Except as provided for in paragraph 3 of this Article, amendments to the provisions of this Agreement shall be made in accordance with the provisions of this paragraph.

"(b) Amendments to the provisions of this Agreement shall be submitted to the contracting parties for acceptance in accordance with sub-paragraphs (c) and (d) below; Provided that such amendments have been approved by the CONTRACTING PARTIES by a majority of two-thirds of the votes cast.

"(c) Amendments to the provisions of Part I of this Agreement or of this Article shall become effective on the thirtieth day following the day on which they have been accepted by all the contracting parties.

"(d) Other amendments to this Agreement shall become effective in respect of those contracting parties which have accepted them on the thirtieth day following the day on which they have been accepted by two-thirds of the contracting parties, and thereafter for each other contracting party on the thirtieth day following the day on which they have been accepted by it.

¹ Cuba reserves its position.

"2. (a) The CONTRACTING PARTIES may decide that any amendment made effective under sub-paragraph (d) of paragraph 1 of this Article is of such a nature that any contracting party which has not accepted it within a period specified by the CONTRACTING PARTIES shall be free to withdraw from this Agreement or to remain a contracting party with the consent of the CONTRACTING PARTIES.

"(b) A withdrawal from this Agreement under sub-paragraph (a) of this paragraph shall take effect upon the expiration of the sixtieth day following the day on which written notice of withdrawal is received by the Executive Secretary to the CONTRACTING PARTIES. A contracting party which, in the circumstances described in sub-paragraph (a), fails to accept the amendment or to give notice of withdrawal, shall cease to be a contracting party upon the expiration of the period referred to in that sub-paragraph or on the sixtieth day following the day on which the CONTRACTING PARTIES shall have decided to withhold their consent to the contracting party remaining a contracting party, whichever date is the later.

"3. Any amendments to the schedules annexed to this Agreement which record rectifications of a purely formal character or modifications resulting from action taken under paragraph 6 of Article II, Article XVIII, Article XXIV, Article XXVII or Article XXVIII, shall become effective on the thirtieth day following this certification by the CONTRACTING PARTIES; Provided that prior to such certification, all contracting parties have been notified of the proposed amendments and no objection has been raised, within thirty days of such notification by any contracting party, on the ground that the proposed amendments are not within the terms of this paragraph."

Article XXXI

In the second and third lines and in the eighth line of Article XXXI, the words "on or after 1 January 1951" shall be deleted.

Article XXXIII

See Annex 4.

Article XXXV

Article XXXV shall read:

"Article XXXV - Non-Application of the Agreement
between particular contracting parties

"1. This Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if:

- "(a) the two contracting parties have not entered into tariff negotiations with each other, and
- "(b) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application.

"2. The CONTRACTING PARTIES may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations."

Annex H

The text of Annex H shall read:

"PERCENTAGE SHARES OF TOTAL EXTERNAL TRADE TO BE USED FOR THE PURPOSE OF
MAKING THE DETERMINATION REFERRED TO IN ARTICLE XXVI

(based on the average of 1949 - 1953)

"If, prior to the accession of the Government of Japan to the General Agreement, the present Agreement has been accepted by contracting parties the external trade of which under column I accounts for the percentage of such trade specified in paragraph 5 of Article XXVI, column I shall be applicable for the purposes of that paragraph. If the present Agreement has not been so accepted prior to the accession of the Government of Japan, column II shall be applicable for the purposes of that paragraph.

	<u>Column I</u> (Contracting parties on 1 March 1955)	<u>Column II</u> (Contracting parties on 1 March 1955 and Japan)
Australia	3.1	3.0
Austria	0.9	0.8
Belgium-Luxemburg-the Netherlands	9.0	8.8
Brazil	2.5	2.4
Burma	0.3	0.3
Canada	6.7	6.5
Ceylon	0.5	0.5
Chile	0.6	0.6
Cuba	1.7	1.1
Czechoslovakia	1.4	1.4
Denmark	1.4	1.4
Dominican Republic	0.1	0.1
Finland	1.0	1.0
France	8.7	8.5
Germany, Federal Republic of	5.3	5.2
Greece	0.4	0.4
Haiti	0.1	0.1
India	2.4	2.4
Indonesia	1.3	1.3
Italy	2.9	2.8
New Zealand	1.0	1.0
Nicaragua	0.1	0.1
Norway	1.1	1.1
Pakistan	0.9	0.8
Peru	0.4	0.4
Rhodesia and Nyasaland	0.6	0.6
Sweden	2.5	2.4
Turkey	0.6	0.6
Union of South Africa	1.8	1.8
United Kingdom	20.3	19.8
United States of America	20.6	20.1
Uruguay	0.4	0.4
Japan	-	2.3
	<u>100.0</u>	<u>100.0</u>

Note: These percentages have been computed taking into account the trade of all territories in respect of which the General Agreement on Tariffs and Trade is applied."

Annex I

The interpretative note ad Article XXVI shall be deleted.

The interpretative note ad Article XXIX shall be deleted.

The final note shall be deleted.

The following interpretative notes shall be inserted:

"Ad Article XX:I(h)

"The exception provided for in this sub-paragraph extends to any commodity agreement which conforms to the principles approved by the Economic and Social Council in its resolution No. 30 (IV) of 28 March 1947."

"Ad Article XXX

"The acceptance of amendments pursuant to this paragraph shall be in such form as may be determined by the CONTRACTING PARTIES."

ANNEX 4

PROPOSED AMENDMENTS AND PROVISIONS FOR INCLUSION
IN A SEPARATE PROTOCOL OF AMENDMENTS

The following amendments shall not become operative before the day upon which the Agreement establishing the Organization for Trade Cooperation has entered into force:

Article XXIII

The text of Article XXIII shall read:

"1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement, or (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or (c) the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it.

"2. If no satisfactory adjustment is effected between the contracting parties concerned within a reasonable time, or if the difficulty is of the type described in paragraph 1(c) of this Article, the matter may be referred to the CONTRACTING PARTIES."

Article XXV

Article XXV shall read:

"1. The Organization for Trade Cooperation, established by the Agreement bearing the date of 1955, shall give effect to those provisions of this Agreement which provide for action by the Organization and such other provisions as involve joint action, and may carry on any other activities with respect to the General Agreement which are provided for by the Agreement establishing the Organization.

"2. All contracting parties shall, as soon as possible become Members of the Organization.

"3. Those contracting parties which have accepted the Agreement on the Organization for Trade Cooperation may decide at any time after the entry into force of that Agreement that any contracting party which has not accepted it shall cease to be a contracting party."

(See also the Report of Working Party II)

Article XXXIII

Article XXXIII shall read:

"Article XXXIII - Accession

"A government not a contracting party to this Agreement may accede thereto on terms to be agreed between such government and the CONTRACTING PARTIES; Provided that such government has accepted the Agreement on the Organization for Trade Cooperation. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a majority comprising two-thirds of the contracting parties."

Insert the following interpretative note to Article XXXIII:

"Ad Article XXXIII

"A government, acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of other matters provided for in this Agreement, may accede to this Agreement on behalf of that territory on terms applicable thereto; Provided that the obligations of membership in the Organization are undertaken by such territory or on its behalf."

A provision will be included, the language of which has not yet been fully agreed upon by the Legal and Drafting Committee, changing the expression CONTRACTING PARTIES to the Organization in each case where the former occurs.

ANNEX 5

INTERSESSIONAL COMMITTEE

Changes proposed to the intersessional procedures
as consolidated in Basic Instruments and Selected Documents,
Second Supplement, pages 8 et seq.

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1. (c) Consultations or action under Articles XII-XV

Paragraphs 5 and 6 should be deleted and replaced by the following two paragraphs:

"5. When a matter arises under Articles XII-XV, and subject to rules established by the CONTRACTING PARTIES, the Committee shall initiate and engage in consultations under those Articles and report or make appropriate recommendations to the CONTRACTING PARTIES.

"6. Provision re collaboration with the International Monetary Fund to be inserted."

In paragraph 7, the reference to paragraph 6 should be deleted.

2. Insert as Sections (d) and (e) before the present Section (d), the following:

"(d) Applications under Article XVIII

"9. The Committee shall examine an application made by a contracting party under Article XVIII when the CONTRACTING PARTIES are not in session, which requires prompt attention, and make recommendations to the CONTRACTING PARTIES. Decision on the application may be taken by the CONTRACTING PARTIES, either at the next ordinary session or by postal or telegraphic ballot, or by a special session according to the recommendation of the Committee.

"(e) Applications under Article XXVIII

"10. The Committee shall examine applications submitted when the CONTRACTING PARTIES are not in session for authority, in special circumstances, to enter into negotiations for the modification or withdrawal of concessions included in Schedules to the Agreement and shall act on behalf of the CONTRACTING PARTIES in performing the functions prescribed

in any procedures and conditions established by them. The Committee shall also make any required determinations under the arrangements made by the Executive Secretary in document L/322 for the conduct of negotiations undertaken prior to 1 July 1955 under the provisions of Article XXVIII."

3. Present Section (d) would become Section "(f) - Other urgent inter-sessional business".

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General Procedures

1. Paragraph 10 should read as follows:

"10. The Committee meets in Geneva on the call of the Executive Secretary. Notice of the convening of meetings shall be given to contracting parties at least ten days in advance of the meeting. Contracting parties not members of the Committee or of an inter-sessional working party are entitled, in accordance with the practice of the CONTRACTING PARTIES, to be represented by observers at meetings of the Committee or of a working party."

2. In paragraph 11, the first line should refer to "... matters arising under (b) to (f) above ...".

3. Add the following new paragraph after the present paragraph 14:

"15. The Committee may instruct the secretariat as necessary to provide or obtain from contracting parties information required by the CONTRACTING PARTIES in the consideration of items on the agenda of their sessions or necessary for the carrying out of the functions of the Intersessional Committee."

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Delete Section II.

ANNEX 6

RESERVATION ON ACCEPTANCE PURSUANT TO ARTICLE XXVI

HAVING REGARD to the fact that the contracting parties have hitherto applied the General Agreement provisionally and have been required under such provisional application to apply Part II of the General Agreement only to the fullest extent not inconsistent with existing legislation;

RECOGNIZING the desirability that contracting parties should accept the Agreement definitively under the provisions of Article XXVI at as early a date as possible;

NOTING that it would not be practicable for certain contracting parties to bring their domestic legislation into conformity with Part II of the General Agreement immediately upon accepting it under the provisions of Article XXVI and accordingly that these contracting parties would not be in a position to so accept it unless a transitional period is provided for;

RECOGNIZING the desirability that contracting parties should use their best endeavours to bring such legislation into conformity with the provisions of the General Agreement as soon as practicable;

The contracting parties unanimously agree

(1) that an acceptance pursuant to Article XXVI shall be valid even if accompanied by a reservation to the effect that Part II of the General Agreement will be applied to the fullest extent not inconsistent with legislation which existed on 30 October 1947 or, in the case of a contracting party which since 30 June 1949 has acceded to the Agreement, the date of the Protocol providing for such accession;

(2) that any contracting party attaching such a reservation shall submit as soon as possible after its acceptance of the General Agreement pursuant to Article XXVI a list of the principal legislative provisions covered by such reservation;

(3) that the CONTRACTING PARTIES shall review annually progress made in bringing such legislation into conformity with the General Agreement;

(4) that three years from the entry into force of the General Agreement under Article XXVI the CONTRACTING PARTIES shall review the situation then prevailing with respect to such reservations with a view to assessing the progress achieved towards the full application of the General Agreement by all contracting parties and to make appropriate recommendations.

