

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

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CONTRACTING PARTIES
Ninth Session

REPORT OF REVIEW WORKING PARTY IV
ON ORGANIZATIONAL AND FUNCTIONAL QUESTIONS

(as approved by the CONTRACTING PARTIES on
28 February, 5 and 7 March 1955)

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 Cooperation 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.

Note: The annexes to the original report are not reproduced in this revised copy. The Resolution on Investment for Economic Development and the reservation on acceptances under Article XXVI will be found in G/91, the texts of the amendments and Organizational Agreement in the Final Act, and Instruments adopted at the Ninth Session, 10 March 1955.

I. DRAFT AGREEMENT ON THE ORGANIZATION FOR TRADE COOPERATION

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 I 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.

(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. 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 XXV¹ 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. 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.

¹ The Cuban delegation reserved its position regarding the amendments to Article XXV.

(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 (b) (iii) would not be binding on members.

(c) The Working Party considered that sub-paragraph (b)(iv) 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 (b)(iii) 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. 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 coordinated pattern¹ of the United Nations and the specialized agencies already in existence.

¹ Cuba, Czechoslovakia and South Africa reserved their positions on this paragraph.

(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.

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 F O S A L S

Commodities

18.¹ 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 a new text. 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.

¹ The delegation of Brazil recorded its abstention to paragraph 18, the delegation of Czechoslovakia its reservation to paragraphs 18 and 20. The United States recorded its reservation in the earlier discussions of the report reproduced in paragraph 18.

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.

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. Questions were raised in the Working Party as to whether the transfer

¹ Cuba reserved its position.

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 XXII 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.

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 constitute 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 Agreement - 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, Chile, Cuba, Greece, Indonesia, Peru, Turkey, and Uruguay opposed the insertion of an article on relations with non-contracting parties in the Agreement and considered the language of the preceding paragraph unacceptable and opposed its inclusion. Czechoslovakia reserved its position on the last sentence of the paragraph.

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 XXI.

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

¹ References 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.*)

whether it would in fact be possible for them to make the necessary arrangement 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, and in accordance with the amendments proposed.

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;
- (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 provisions of information by the secretariat;
- (d) the inclusion of a paragraph concerning review by the CONTRACTING PARTIES of decisions or determinations of the Intersessional Committee.

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".

52.¹ 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. It was agreed that the Executive Secretary should be invited to consider the problem and, if possible, put forward concrete proposals for consideration at the Tenth Session.

¹ Chile and Cuba reserved their positions on this paragraph.

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 connexion 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.

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 under 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, page 62). The representatives of Cuba and Chile reserved their positions on this interpretation of the Protocol of Provisional Application.

Article XVIII

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 XXII

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

Article XXIII

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.

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 14.

Article XXV

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 XXVI

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 5 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 XXIX

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

Article XXX

70. It was agreed to amend paragraph 1 of this Article and to add a new paragraph 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 XXXI

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

Article XXXIII

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.

Article XXXV

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 Note

74. It was agreed to delete this Note.