



**T H E W T O
A G R E E M E N T S
S E R I E S**

2

**GENERAL
AGREEMENT ON
TARIFFS AND
TRADE**

THE WTO AGREEMENTS SERIES

This series offers a set of handy reference booklets on selected WTO agreements, the legal foundation for the international trading system used by the bulk of the world's trading nations. Each volume in the series contains the text of one agreement, an explanation designed to help the user understand the text, and in some cases supplementary material.

The agreements were the outcome of the 1986–1994 Uruguay Round of world trade negotiations held under the auspices of what was then the GATT (the General Agreement on Tariffs and Trade). The full set is available in *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*. It includes about 60 agreements, annexes, decisions and understandings, but not the commitments individual countries made on tariffs and services. A full package of agreements that includes the over-20,000 pages of commitments is available from WTO Publications in a 34-volume set, and also a CD-ROM, *The Results of the Uruguay Round*.

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ABBREVIATIONS

AMS	Aggregate Measure of Support, the calculation of agricultural domestic support used for reduction commitments
BoP	Balance of payments
GATS	The General Agreement on Trade in Services
GATT	The General Agreement on Tariffs and Trade, established in 1947. The abbreviation is used for both the legal text and the institution
GATT 1947	The text of GATT as used until amended by the WTO Agreements which came into force in 1995
GATT 1994	The General Agreement on Tariffs and Trade, as revised in 1994, which is part of the WTO Agreements. GATT 1994 includes GATT 1947 together with amendments
MFN	Most-favoured nation, in the WTO, the principle of treating trading partners equally
PPA	Protocol of Provisional Application (“Grandfather clause”)
STE	State-trading enterprise
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WTO	The World Trade Organization, established as the successor to the GATT on 1 January 1995

PREFACE
THE GENERAL AGREEMENT ON TARIFFS AND TRADE
1994 & 1947

The **General Agreement on Tariffs and Trade (GATT)** was negotiated in 1947 and first entered into force in 1948. Over the years, it was modified and amended, but the first major overhaul was the result of the 1986–94 Uruguay Round of trade negotiations.

Once reforms had been agreed, the task of rewriting a single new text for the whole General Agreement proved too difficult. So, there are now two legally separate but linked documents: “GATT” as the original GATT as it stood at the beginning of the Uruguay Round, and “GATT” and incorporates the original agreement.

The Uruguay Round also changed GATT’s status. Before the round, it was the only multilateral trade agreement; and it only covered trade in goods. The Uruguay Round expanded the coverage of the multilateral rules to include services and intellectual property. GATT now stands alongside the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) as one of the agreements of the World Trade Organization (WTO) which was established on 1 January 1995.

From 1947 to 1994, GATT also served another role — it was a de facto international organization for negotiating and administering the multilateral trade rules. That role has now formally been taken over by the WTO.

The WTO Secretariat has prepared this book to assist public understanding of GATT. The first section is an explanatory introduction. The second section contains the legal text of the agreement and related documents. The book is not intended to provide legal interpretation of the agreement.

May 1998

THE BASIC STRUCTURE OF WTO AGREEMENTS

The conceptual framework

Broadly speaking, the WTO agreements for the two largest areas of trade — goods and services — share a common three-part outline, even though the detail is sometimes quite different.

In a nutshell					
The basic structure of the WTO agreements					
	Goods	Services	Intellectual property	Disputes	Trade policy reviews
<i>Basic principles</i>	GATT	GATS	TRIPS	Dispute settlement	TPRM
<i>Additional details</i>	Other goods agreements and annexes	Services annexes			
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)			

- ◆ They start with **broad principles**: the General Agreement on Tariffs and Trade (GATT) (for goods), and the General Agreement on Trade in Services (GATS). (The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also falls into this category although at present it has no additional parts.)
- ◆ Then come **additional agreements and annexes** dealing with the special requirements of specific sectors or issues. These deal with the following specific sectors or issues:

For goods (under GATT)

Agriculture
 Health regulations for farm and food products (SPS)
 Textiles and clothing
 Product standards (TBT)
 Investment measures
 Anti-dumping measures

Customs valuation methods
 Preshipment inspection
 Rules of origin
 Import licensing
 Subsidies and counter-measures
 Safeguards

For services

(the GATS annexes)

Movement of natural persons
 Air transport
 Financial services
 Shipping
 Telecommunications

- ◆ Finally, there are the detailed and lengthy **schedules (or lists) of commitments** made by individual countries allowing specific foreign products or service-providers access to their markets. For GATT, these take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the “most-favoured-nation” principle of non-discrimination.

Much of the Uruguay Round dealt with the first two parts: general principles and principles for specific

sectors. At the same time, market access negotiations were possible for industrial goods. Once the principles had been worked out, negotiations could proceed on the commitments for sectors such as agriculture and services. Negotiations after the Uruguay Round have focused largely on market access commitments: financial services, basic telecommunications, and maritime transportation (under GATS), and information technology equipment (under GATT).

The agreement in the third area of trade covered by the WTO — on intellectual property — is at the level of basic principles although some details on specific areas (for example on copyright, patents, trademarks, geographical indications) are handled in the agreement. Other details come from conventions and agreements outside the WTO.

The agreements on dispute settlement and trade policy reviews are also essentially at the level of basic principles.

Also important

One other set of agreements not included in the diagram above is also important: the two “**plurilatera**” agreements not signed by all members: civil aircraft, government procurement. (Originally there were four: the agreements on dairy products and bovine meat were terminated at the end of 1997.)

The legal framework

The conceptual structure is reflected in the way the legal texts are organized. A short **Marrakesh Agreement Establishing the World Trade Organization** sets up the legal and institutional foundations. Attached to it is a much lengthier set of four annexes.

- ◆ **Annex 1** contains most of the detailed rules, and is divided into three sections:
 - **1A**, containing the revised **General Agreement on Tariffs and Trade**, the other agreements governing trade in goods, and a protocol which ties in individual countries’ specific commitments on goods;
 - **1B**, the **General Agreement of Trade in Services**, texts on specific services sectors, and individual countries’ specific commitments and exemptions; and
 - **1C**, the **Agreement on Trade-Related Aspects of Intellectual Property Rights**.

Collectively, the agreements included in Annex 1 are referred to as the **Multilateral Trade Agreements**, since they comprise the substantive trade policy obligations which all the members of the WTO have accepted.

- ◆ **Annex 2** sets the rules and procedures for **dispute settlement**.
- ◆ **Annex 3** provides for regular **reviews** of developments and trends in national and international trade policy.
- ◆ **Annex 4** covers four (now two) “**plurilateral**” agreements which are within the WTO framework but which have limited membership.

Finally, the Marrakesh texts include a number of **decisions and declarations** on a wide variety of matters that were adopted at the same time as the WTO agreement itself.

INTRODUCTION

The General Agreement on Tariffs and Trade 1994 & 1947

The former GATT system, now replaced by the World Trade Organization and the agreements in the Uruguay Round package, was centred on the General Agreement on Tariffs and Trade itself. The General Agreement, as negotiated in 1947 among its 23 original participants, laid down central principles to constrain and guide national trade policies, and provided the basis on which governments were able to carry forward and extend their multilateral cooperation on trade.

The World Trade Organization has taken over from the General Agreement as the basis for institutional cooperation and dispute settlement on trade matters among its members. But the core principles of the GATT are still in place, and the Uruguay Round package cannot be understood except in relation to them.

Overview

the new multilateral trade agreements which extend GATT-like rules to services and intellectual property, are perhaps the most eye-catching elements of the results of the negotiations.

Nevertheless, of the total effort expended on the round, most was directed to the traditional GATT ends of strengthening and broadening the multilateral rules for trade in goods, and of reducing barriers to trade in goods. The majority of the agreements negotiated in the round concern one or other aspect of trade in goods.

The Uruguay Round agreements on goods fall essentially into four groups. First is the “GATT”, a modified version of the original General Agreement on Tariffs and Trade (now referred to as the “GATT 1947”), together with certain comparatively minor agreements which interpret or bring up to date particular GATT provisions, and a legal text (the Marrakesh Protocol) that brings under the multilateral GATT umbrella the individual tariff and non-tariff commitments made by WTO members in the Uruguay Round. This is the subject of this book.

A second group consists of two major agreements that aim to bring trade in agricultural products, and in textiles and clothing, within the normal trading rules from which they have in recent years largely escaped. A third group is made up of five agreements which go well beyond the original GATT rules in prescribing how particular aspects of policies affecting trade should be applied. And finally, a further group of six agreements deals with different aspects of the traditional GATT concern to regulate and ease the necessary formalities of customs and trade administration. These are handled in other books in this series.

GATT 1994 and GATT 1947

What was previously known simply as the GATT (or “the General Agreement”, to distinguish it from the institution of the same name), is described in the final Uruguay Round package as “GATT

clear that it is the original bargain, unaffected by the results of the Uruguay Round.

Although the WTO agreement came into effect on 1 January 1995, the GATT 1947 also continued to apply during 1995, to ensure that contractual trade relations remained in effect between the GATT contracting parties during a transitional twelve months in which many countries had not yet completed the process of becoming members of the WTO.

The “GATT 1994” is the basic set of trade rules, largely taken over from the GATT 1947, that in conjunction with the other agreements in Annex 1A to the WTO agreement now represents the goods-related obligations of WTO members.

The GATT 1947 is no longer in effect. However, it is still necessary to read it. Its successor, the GATT 1994, is defined only by a brief agreement¹ that, although entitled “General Agreement on Tariffs and Trade 1994”, is little more than a series of references to other texts.

Most of the provisions of the GATT 1947 are included by reference, along with many other legal instruments adopted by the GATT Contracting Parties and some new understandings and explanatory notes.

The following pages attempt to make the GATT 1994 comprehensible by considering both the elements that it shares with the GATT 1947, and also the ways in which the two agreements differ. For this purpose, they look, first, at the core principles carried over into GATT 1994 from the GATT 1947, and then at changes introduced by the agreement that defines the GATT 1994, as well as at the Uruguay Round understandings which interpret specific points in certain GATT Articles.

Core principles of the GATT

The central principles common to the GATT 1994 and its predecessor are well known. They are so important, however, that they must be recalled and briefly discussed. They are the **most-favoured-nation (MFN)** rule, the principle of **reduction and binding of national tariffs**, the rule of **national treatment**, and the **prohibition — subject to defined exceptions — of protective measures other than tariffs**.

Two major exceptions to these central rules that have also been carried over into the GATT 1994 — the provisions on regional trading arrangements and on restrictions to protect the balance-of-payments — will be considered separately, in conjunction with the Uruguay Round understandings that have slightly modified them.

Most-favoured nation

The MFN rule is basic to the whole edifice of the GATT. Stated in Article I of the GATT², it requires that if one GATT (now WTO) signatory grants to another country “more favourable treatment” (such as a reduction in the customs duty payable on imports of a particular product), it must immediately and unconditionally give the same treatment to imports from all signatories.

¹ GATT: BISD, Volume IV, incorporating amendments up to 1966. It is reproduced without change in Results, pages 485-558. The decision that it should cease to have effect at the end of 1995 was taken a year earlier, on 8 December 1994, at the Implementation Conference for the WTO. Formally, it was a decision of the Fiftieth Session of the GATT Contracting Parties, acting on a recommendation by the Preparatory Committee for the WTO (Decision of 8 December 1994, Transitional co-existence of the GATT 1947 and the WTO Agreement, document numbered both PC/12 and L/7583). For the text defining GATT 1994, see General Agreement on Tariffs and Trade 1994.

² The Articles discussed in the following pages have been carried over textually unchanged from the GATT 1947 to the GATT 1994. For this reason, neither the main text nor the footnotes distinguish between their legally distinct “1947” and “1994” versions.

In other words, all GATT/WTO members are entitled to receive the most favourable treatment given by any member — or to put it the other way round, they are entitled not to be discriminated against.

This MFN, or non-discrimination, obligation applies to customs duties and charges of any kind connected with importing and exporting, as well as to internal taxes and charges, and to all the rules by which such duties, taxes and charges are applied.

The major, and continuing, exceptions to the MFN rule are Article XXIV (discussed below), which allows members of customs unions and free trade areas to give more favourable treatment to imports from one another, and a 1979 decision³ which permits preferences for and among developing countries.

Tariff reductions and bindings

The second core principle is that the members undertake commitments in which they state the maximum level of import duty or other charge or restriction that they will apply to imports of specified types of goods.

These commitments, or “bindings” may result initially from bilateral negotiations, in which (for instance) the government concerned has agreed to another country’s request that it reduce the import duty on certain products. However, the commitments are then recorded in national schedules which, through the provisions of Article II, become part of each country’s obligations under the GATT and, because of the operation of the MFN rule, apply to imports from any member.

The provisions of Article II, combined with technical rules in Article XXVIII on modifying schedules, provided the basis under which most of the developed countries took part in successive rounds of GATT negotiations to reduce their tariffs, binding their results in progressively more constraining schedules.

Developing countries to a great extent stood aside from this process, and many had no schedule of bindings at all. Under the WTO all members are required to have schedules, and the proportion of products subject to bindings is generally much higher than before. The Article II and XXVIII rules will continue to guide negotiations under the WTO for the reduction of barriers to trade in goods.

National treatment

The rule of national treatment, in Article III of the GATT, is also of fundamental importance. It complements the MFN rule. Whereas Article I, by requiring MFN treatment, puts the products of all of a country’s trading partners on equal terms with one another, the national treatment principle puts those products on equal terms also with the products of the importing country itself.

It says that, once imports have passed the national frontier (and in so doing have paid whatever import duty is imposed) they must be treated no worse than domestic products. Internal taxes or other charges on the imports must be no higher than on domestic products, and laws and regulations affecting their sale, purchase, transportation, distribution or use must be no less favourable than for goods of national origin.

Tariffs preferred

The national treatment principle means that protection of the domestic supplier of a product should be given only through action at the frontier.

A further set of GATT rules has the shared aim of restricting even frontier protection, as far as possible, to the single instrument of import duties. Quantitative restrictions on imports, and on exports, are in general

³ Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries adopted by the Contracting Parties on 28 November 1979, GATT document I/4903, in BISD 26S, pages 203-205 .

banned, by Article XI, although a number of provisions in this and other articles⁴ state exceptions to this general rule. (Two such exceptions are affected by the Uruguay Round agreements on balance-of-payments measures and safeguards, discussed below.)

Alternative forms of protection (usually in the form of duties) that are permitted if domestic industries are threatened by imports that are subsidized or dumped (GATT 1947 Article VI) are also elaborately regulated by further Uruguay Round agreements. However, the basic aim of making import duties the sole form of trade restriction has been retained under the GATT 1994: indeed, it has been greatly reinforced in the very important sector of trade in agricultural products.

Transparency

A further principle carried over to GATT 1994 is that of transparency. Multilateral review and transparency is a major element in the WTO itself (i.e. in the Agreement Establishing the WTO). It is retained also in general requirements imposed by GATT Article X for trade policies and regulations affecting trade in goods, and in more specific requirements built into many other Uruguay Round agreements.

These key elements which shaped the functioning of the old GATT system, and which are still present under the GATT 1994, will not be discussed further here. Numerous studies of these principles, pitched at every level of detail and sophistication, have been published over the years since the GATT came into force, and have passed judgement on their economic and political effect. The purpose of recalling them here is only to underline that they will continue to operate, and presumably to have similar effects, under the WTO. The discussion which follows will turn instead to changes introduced into the GATT rules by the Uruguay Round agreements.

Definition of GATT 1994

The GATT 1994 is defined by a very short agreement which lists the provisions that it covers, and also offers a number of explanatory notes.⁵ Although it would undoubtedly have been preferable if a single, fully-revised GATT text had emerged from the Uruguay Round, this proved impracticable.

Even a simple rewriting of the GATT 1947 to make such changes as the replacement of references to “contracting parties” by “WTO members” raised surprisingly difficult questions. A fully satisfactory revision would have required wide-ranging changes to the substance of many GATT Articles, in order to reflect past decisions made by the GATT contracting parties as well as the agreements and understandings reached in the Uruguay Round. While some of these changes could probably have been made without difficulty, others might well have raised issues that would have demanded the reopening of painfully negotiated agreements. GATT 1994 is therefore defined as consisting of four elements (GATT 1994 para. 1 (a)–(d)):

- a) The most obvious element is the collection of provisions of the old General Agreement on Tariffs and Trade, as adopted on 30 October 1947, but “as rectified, amended or modified” by the various legal instruments which entered into force before the WTO.

An important exception is that the GATT provisions carried over explicitly exclude **the Protocol of**

⁴ e.g., GATT Article XI:2(a) (export restrictions applied to prevent or relieve critical shortages), XII and XVIII:B (restrictions imposed to protect the balance of payments), XVIII:C (development of infant industries), XIX (safeguards), XX (protection of health and safety) and XXI (national security). On the other hand, the possibilities apparently offered by Article XI:2(c) (restrictions on imports of agricultural products when domestic production is also proportionately restricted) have been rendered effectively inoperative by Article 4 of the Uruguay Round agreement on agriculture, described in section I:2, below.

⁵ General Agreement on Tariffs and Trade 1994.

Provisional Application (PPA) which in fact was the legal basis on which the GATT 1947 was generally applied. The PPA, sometimes known as the “**Grandfather Clause**”, permitted GATT members who in 1947 had mandatory national laws in force that were inconsistent with some important provisions in the General Agreement to continue to apply them in spite of the inconsistency.

- By 1994, few of these pre-GATT laws remained in force. However, one was still in effect: the Jones Act which reserves United States domestic shipping routes to vessels that are American-built, American-crewed, and fly the US flag. With the PPA no longer available, legal cover for the existing provisions of the Jones Act is instead provided by special provisions (para. 3 (a)–(e)) in the GATT 1994 agreement. This exemption is subject to review by the WTO Ministerial Conference.
- b) GATT 1994 is also defined as including the provisions of legal instruments setting out pre-WTO tariff agreements, the terms of accession agreements by which individual countries became signatories of the old GATT, decisions on waivers granted under Article XXV of the GATT 1947 and still in force (for a further discussion of waivers, see below), and other decisions taken by the GATT contracting parties.
 - c) and d) The third and fourth elements of the GATT 1994 are agreements reached in the Uruguay Round. These are, respectively, six understandings which interpret particular points in a number of the GATT articles, and the Marrakesh Protocol which incorporates the market access commitments of each WTO member. The understandings, and the Marrakesh Protocol, are reviewed in the immediately following paragraphs. Two of the understandings are taken first, out of numerical order, because they bear on particularly important exceptions to the core GATT principles. These are the understandings related to regional trading arrangements (Article XXIV) and to the balance-of-payments provisions of the GATT.

Regional trading arrangements

One of the most striking developments in trade relations in recent years has been the worldwide proliferation of regional agreements under which groups of countries have agreed to reduce trade barriers among themselves. By their very nature, such arrangements favour imports from members of the grouping, and discriminate against imports from other countries.

This departure from the MFN principle is permitted by Article XXIV of the GATT. Although the text of Article XXIV is the same under GATT 1994 as under GATT 1947, an Uruguay Round understanding⁶ has clarified several points in the article that have in the past given rise to difficulties.

The rules of Article XXIV are designed to ensure that countries which form regional agreements move to genuinely free trade among themselves, and provide adequate compensation for any damage done to the trade interests of other WTO members.

The rules distinguish between two technically different forms of arrangement, the customs union and the free trade area. Both involve the removal of trade barriers among their members. However, the member countries of customs unions all charge the same rates of import duty on imports from non-members (Article XXIV:8a(ii)), while members of free trade areas retain their own national tariffs.

Article XXIV requires that **customs unions** set their common import duties and other regulations affecting imports into the union at a level not higher or more restrictive on the whole than the overall level (“general incidence”) of those of the original members before the union was formed (Article XXIV:5(a)). Compensation must be provided for any increases (Article XXIV:6).

Free trade areas are unlikely by their nature to raise duties against outsiders, but they use rules of origin

⁶ GATT 1994: Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

to identify products that qualify for the duty-free treatment. These rules must not be allowed to become a trade obstacle in themselves (Article XXIV:5(b)).

To qualify as either a customs union or free trade area, members must remove duties and other restrictions affecting “substantially all” the trade among them (Article XXIV:8(a)(i) and 8(b)). Other rules require a detailed plan and schedule to show how the members will move to free trade, and that these be examined to confirm that Article XXIV’s requirements have been met.⁷

Understanding on regional trading agreements

The Uruguay Round understanding on Article XXIV⁸ clarifies, or at least touches on, most but not all of these points, and may in consequence make it easier to reach agreement on whether regional agreements meet the Article XXIV rules.

The preamble to the understanding largely re-states the accepted arguments for regional trading arrangements. However, it strengthens, by implication at least, the requirement that “substantially all” trade be included in the elimination of barriers between members, by “recognizing” that the arrangement’s contribution to the expansion of world trade will be increased if the removal of duties and other restrictions extends to all trade, and diminished “if any major sector of trade is excluded”.

‘General incidence’ of duties

A more binding clarification in the understanding concerns the Article XXIV:5 requirement that the “general incidence” of a customs union’s common duties and trade regulations be no higher than those existing before it was formed.

The text sets out a methodology for evaluating whether this general incidence is in fact higher or not. The evaluation is to be based on an overall assessment of weighted average tariff rates and of duties collected, and the assessment in turn is to be based on detailed import statistics. The comparison is to take account of the duties and charges actually applied (meaning that for this purpose it is not relevant that bindings in the tariff schedules of the members might have allowed higher tariffs to be charged). The calculations are to be carried out by the WTO Secretariat (*Understanding para. 2*).

On compensation for increases in bound levels of protection, the understanding provides further clarification of points that have given difficulty in the past.

Negotiations are to begin before past tariff concessions are modified or withdrawn. If formation of the customs union results in a member raising a bound duty, due account is to be taken of any reductions by other members that affect the same product. If such reductions do not provide compensation, the customs union will offer compensation through reduction of duties on other products. If the compensation is not accepted, the customs union can go ahead with the increases; affected WTO members then have the right themselves to respond by withdrawing substantially equivalent concessions.

The same set of provisions makes clear that even if formation of a customs union results in reductions in bound duties, to the advantage of non-members, this gives the members of the union no right to claim compensation from those non-members (paras. 4–6).

Reasonable time for forming a regional group

Whereas Article XXIV itself states only that any interim agreement meant to lead to formation of a customs union or free trade area shall include a plan or schedule for this to be achieved “within a reasonable length

⁷ Ibid., Article XXIV:7.

⁸ GATT 1994: Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994.

of time”, the understanding states that this period should exceed 10 years only in exceptional cases (GATT 1947 Article XXIV:5(c) and *Understanding* para. 3).

Procedures for examination in the WTO

The understanding also includes provisions on the examination of regional trade agreements. To some extent, these simply set out procedures which, although not specified in Article XXIV, had already become standard practice under the GATT. However, the procedures have been strengthened, notably by a decision that if an interim agreement does not contain the required plan and schedule, the WTO working party examining the agreement shall make appropriate recommendations to fill the gap, and the agreement shall not be brought into force unless the recommendations are accepted (*Understanding* paras. 7–11).⁹

A further point in the understanding makes it clear that the examination of a regional agreement under Article XXIV does not (as has sometimes been argued in the past) extinguish the separate right to invoke the GATT/WTO dispute settlement procedures on matters arising from the application of the article (*Understanding* para. 12).

Rules of origin, actions by lower-level governments

Nothing is said in the Article XXIV understanding about the question of rules of origin. Although a separate Uruguay Round agreement,¹⁰ (discussed in a separate book in this series), deals with origin rules, it applies only peripherally to origin rules used in preferential arrangements such as regional trading agreements.

The Article XXIV understanding also includes a provision which deals with a paragraph of the article that has nothing to do with regional agreements. Article XXIV:12 concerns the responsibility of WTO member governments to take “reasonable measures” to ensure that lower-level regional or local governments observe the GATT rules. The problem of such governments or authorities not acting in accordance with commitments made by the central government is primarily one that arises in federal states.

The understanding states clearly that WTO members are fully responsible for breaches of the GATT by subordinate levels of government, and may ultimately have to provide compensation if they cannot make the subordinate level meet GATT obligations (*Understanding* paras. 13–15).

Balance-of-Payments Provisions

As noted earlier, the GATT allows countries in balance-of-payments difficulty to introduce trade restrictions as one of the major exceptions to the basic principles of tariff bindings and “tariffs only”.

The GATT articles concerned — XII and XVIII:B — will probably not work very differently under GATT 1994 than under GATT 1947. Nevertheless, the understanding¹¹ reached in the Uruguay Round on these articles is quite significant, particularly as regards the kind of restrictions that countries may be authorized to introduce.

Article XII, the only balance-of-payments provisions available to **developed countries**, allows import restrictions to the extent necessary either to forestall an imminent threat of, or to stop, an imminent decline

⁹ The WTO General Council has established a Committee on Regional Trade Agreements to carry out the examination of such agreements, in replacement of the ad hoc working parties previously used for this purpose (Decision of 6 February 1966, WT/L/127).

¹⁰ Agreement on Rules of Origin.

¹¹ Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994.

in its reserves or to rebuild reserves that are very low.

Article XVIII:B, available only to **developing countries**, eases these conditions somewhat by not requiring a threat to be “imminent” and by specifying that reserves be “inadequate” rather than “very low”.

Both articles provide that in these circumstances the general level of imports may be controlled through restrictions on the quantity or value of imports (GATT 1947 Articles XII:2(a) and XVIII:B:9).

In recent years, developed countries have almost ceased to resort to Article XII, and the use of import surcharges or similar price-based measures has been recognized to be preferable to quantitative restrictions.¹²

Commitment to ‘price-based’ measures

The new balance-of-payments understanding gives a formal endorsement to the latter change that is almost equivalent to amendment of both articles: WTO members “confirm their commitment” to price-based measures such as import surcharges or import deposit requirements as having the least disruptive effect on trade.

These are to be accepted in spite of the fact that they may involve imposing duties at levels higher than the maxima bound by the member concerned in its goods schedule. Members shall “seek to avoid” imposing new quantitative restrictions (*Understanding paras. 1–3*).

Announced timetables, and avoiding protection for particular sectors

Other provisions affecting measures taken under the balance-of-payments articles are also strengthened. Members accept the obligation to announce publicly time schedules for phasing out restrictive import measures, or to provide justification where this is not possible (*Understanding paras. 1 and 11(d)*). They confirm that restrictions applied for balance-of-payments reasons may only be applied to control the general level of imports: while “essential imports” may be excluded from such restrictions, this term is defined (*Understanding para. 4*)¹³ in such a way as to prevent it from becoming a loophole for the protection of particular sectors.

Consultations in the WTO committee

The understanding also tightens up rules for the consultations, in the WTO Balance-of-Payments Committee, which countries invoking Articles XII or XVIII:B are required to undergo. Among the changes made is a requirement that such consultations must begin within four months of restrictions being imposed or increased (*Understanding para. 6*). The agreement retains a distinction, developed in GATT practice, between full and simplified consultations. However, simplified consultations are now available as the normal procedure only for least-developed countries. They may also be used, though not more than twice in succession, for developing countries which are pursuing liberalization efforts already approved by the Committee, or whose policies will be reviewed by the Trade Policy Review Body in the same year (*Understanding para. 8*).

Other Uruguay Round agreements on GATT Articles

Several other “understandings” reached in the Uruguay Round interpret various provisions of the GATT,

¹² These changes are recognized and endorsed in the Declaration on Trade Measures Taken for Balance-of-Payments Purposes, adopted by the Contracting Parties on 28 November 1979 (GATT: BISD 26S/205-209).

¹³ “Essential products” shall be understood to mean products which meet “basic consumption needs” or contribute to efforts to improve the balance-of-payments situation, “such as capital goods or inputs needed for production”.

without amounting to major agreements. These understandings, which concern Articles II:1(b) and XVII, XXV (waivers) and XXVIII, make the application of these articles different, under GATT 1994, from what it was under GATT 1947. The changes are in some cases largely technical, but are nevertheless significant.

Extra duties and charges

The **understanding on Article II:1(b)**¹⁴ is particularly technical in nature. As already described, Article II sets out the requirements and implications of the schedules in which each WTO member specifies the precise tariff commitments (“bindings”) that it has accepted. Paragraph 1(b) of the article establishes the basic requirement that “ordinary customs duties” shall not be higher than the levels specified in the schedules.

In practice, however, imports are sometimes required to bear other duties or charges, before being cleared through customs. These duties or charges were not in the past recorded in schedules, even though they were not imposed on domestic products. Even when such charges had been bound against increase, the fact that they were not listed meant that it was hard to know exactly what trade barriers imports would face.

The new agreement provides that duties and charges other than customs duties that were imposed at the border on imports and exports of each product as of 15 April 1994 should be included in each country’s schedule, and should be bound at that level. The effect will be both to increase the transparency of each country’s border protection and to reduce the likelihood of these duties and charges being increased in future.

State trading enterprises

The **understanding on Article XVII**¹⁵ concerns the definition of state-trading enterprises, and transparency of their activities.

The main aim of Article XVII is to ensure that government-owned enterprises, or enterprises that have special privileges granted by the government, are not permitted by this privileged situation to escape the GATT rules of non-discrimination (the MFN and national treatment rules).

The article does not cover purchases by governments for their own use: this is beyond its scope.

The point is that enterprises which, due to their relationship with the government, are able to influence imports or exports, should not distort trade by favouring particular suppliers, restricting quantities imported or exported, subsidizing exports, or fixing high prices. The understanding establishes, as a working definition (para. 1) for the purpose of the Article XVII, that “state trading enterprises” are governmental and non-governmental enterprises, including marketing boards, which through the exercise of exclusive or special rights or privileges granted to them can influence through their purchases or sales the level or direction of imports or exports. Such enterprises must be notified to the WTO.

Waivers

Waiver procedures under the GATT 1947 permitted decisions to allow individual contracting parties, in exceptional circumstances, to be relieved of particular obligations imposed on them by the General Agreement.

These procedures were set out in **Article XXV:5**, and stated little more than the voting requirements for the

¹⁴ GATT 1994: Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994.

¹⁵ GATT 1994: Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994.

approval of waivers. The possibility of waivers continues under the WTO, but the conditions are much more carefully defined.

For waivers from obligations assumed under the GATT 1994, the new rules are partly in the WTO agreement itself, and partly in a **waiver understanding**, also negotiated in the Uruguay Round, that forms part of the GATT 1994.¹⁶

The final decision to grant a waiver rests with the WTO General Council, and the voting requirements are in Article IX of the WTO Agreement (see booklet I in this series), along with important further provisions, including for the first time the requirement that any waiver have a fixed termination date.

The understanding requires that requests to grant or extend a waiver shall describe the measures that the member proposes to take, their policy objectives, and the reasons why these objectives cannot be pursued by measures consistent with GATT obligations.

A second permanent element in the understanding recognizes that even if a waiver is granted, other members may invoke the dispute settlement procedures if they believe that benefits due to them under the GATT are being nullified or impaired. This right applies not only if the member given the waiver fails to observe its conditions, but also if nullification or impairment is caused by a measure consistent with the waiver.

The third element in the understanding is also important, although of less lasting significance: it provides that any earlier GATT waiver still in effect at the time of entry into force of the WTO shall expire at the latest within two years, unless extended under the new rules. The effect is that by the beginning of 1997 all existing waivers will be governed by the new rules.

Changing a binding

Article XXVIII of the GATT governs the negotiations that are required when a member wishes to withdraw or modify a past concession. Under the rules, the right to compensation for loss of the benefits of a tariff binding for a particular product is largely reserved to countries that have a recognized status as the **initial negotiators** or **principal suppliers**.

The initial negotiator is the government which obtained the tariff binding as a result of bilateral negotiations. Principal suppliers are countries which in recent years have become larger exporters of that product, to the market concerned, than the initial negotiator.

Lesser rights are given to suppliers with a **substantial interest** in the market. The Uruguay Round **understanding on Article XXVIII**¹⁷ has modified these rules to recognize that, for some supplying countries, a small share in the market for the product concerned may in fact be of great economic importance. The change should benefit the smaller WTO members, and particularly developing countries.

The new rule establishes that the WTO member whose exports are proportionately most vulnerable to a change in a tariff binding will be recognized as having an **additional principal supplying interest**, and therefore the right to negotiate for compensation, if it does not already have the benefit of being the initial negotiator or principal supplier. This status will be established on the basis of evidence that the supplying member concerned has the highest ratio of exports affected by the concession (that is, exports of the product to the market of the member modifying or withdrawing the binding) to its total exports. Experience of the new rule will be reviewed after five years, and if it has not worked satisfactorily in giving greater negotiating rights to smaller suppliers, improvements may be made (*Understanding para. 1*).

¹⁶ GATT 1994: Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994.

¹⁷ GATT 1994: Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994.

The understanding also clarifies several technical points on Article XXVIII negotiations, such as how to establish negotiating rights when new products are affected by withdrawals of tariff bindings, or when an unlimited concession is replaced by a tariff quota.

The Marrakesh Protocol

The Marrakesh Protocol is the legal instrument by which each WTO member's commitments in the Uruguay Round to eliminate or reduce tariff rates and non-tariff measures applicable to trade in goods became an integral part of the GATT 1994.¹⁸

All of the thousands of pages of national schedules, representing the detailed results of the market access negotiations, including specific commitments under the agricultural agreements, were attached to the Protocol. Under the terms of the Protocol's first paragraph, each individual schedule then became a schedule to GATT 1994 on the date that the country concerned became a WTO member.

The schedules are divided into four parts:

Part I

Section I-A Agricultural products: Tariff concessions on an MFN basis

Section I-B Agricultural products: Tariff quotas

Section II Tariff concessions on an MFN basis on other products

Part II Preferential tariff — (if applicable)

Part III Concessions on non-tariff measures (generally on non-agricultural products)

Part IV Agricultural products: Commitments limiting subsidization

Section I Domestic support: Total AMS commitments

Section II Export subsidies: Budgetary outlay and quantity reduction commitments

Section III Commitments limiting the scope of export subsidies

In the past, GATT schedules consisted almost entirely of tariff bindings affecting imports on an MFN basis. These corresponded to the concessions listed in Part I, Section I-A (although, for many countries, the number of bindings affecting agricultural products was low) and Section II. Bindings of preferential tariffs (Part II) were rare.

The tariff concessions on non-agricultural products in Part I, Section II are impressive both in their total quantity and in the number of countries which have undertaken to make them. However, the real innovations in the commitments attached to the Marrakesh Protocol are those on agricultural products and policies in Part I, Section I and Part IV. (They are explained in the booklet on the Agriculture Agreement.)

The substance of the Protocol itself is mainly concerned with the rules by which the agreed concessions are to be applied, and with such questions as whether a particular concession may be withdrawn if the principal supplier fails to become a WTO member.

The most important of these provisions states the timetable for putting the agreed tariff reductions for non-agricultural products¹⁹ into force. Unless otherwise specified in a schedule, all such tariff reductions agreed to in the Uruguay Round are to be made in five equal annual instalments, the first on the entry into force of the WTO agreement, and the remainder on the first of January of each year.

Thus the first round of cuts was made on 1 January 1995, and the final reductions will be made not later than 1 January 1999. Countries whose schedules were attached to the Protocol, but which join the WTO

¹⁸ Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994

¹⁹ For details of the tariff reduction schedule for agricultural products, see the booklet on the Agriculture Agreement.

later than 1 January 1995, are required to catch up with this schedule by making immediately, on joining, whatever cuts are already in force.

TEXT:
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

1. The General Agreement on Tariffs and Trade 1994 (“GATT 1994”) shall consist of:
- (a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed 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 (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;
 - (b) the provisions of the legal instruments set forth below that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement:
 - (i) protocols and certifications relating to tariff concessions;
 - (ii) protocols of accession (excluding the provisions (a) concerning provisional application and withdrawal of provisional application and (b) providing that Part II of GATT 1947 shall be applied provisionally to the fullest extent not inconsistent with legislation existing on the date of the Protocol);
 - (iii) decisions on waivers granted under Article XXV of GATT 1947 and still in force on the date of entry into force of the WTO Agreement¹;
 - (iv) other decisions of the CONTRACTING PARTIES to GATT 1947;
 - (c) the Understandings set forth below:
 - (i) Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994;
 - (ii) Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994;
 - (iii) Understanding on Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994;
 - (iv) Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994;
 - (v) Understanding in Respect of Waivers of Obligations under the General Agreement on Tariffs and Trade 1994;
 - (vi) Understanding on the Interpretation of Article XXVIII of the General Agreement

¹ The waivers covered by this provision are listed in footnote 7 on pages 11 and 12 in Part II of document MTN/FA of 15 December 1993 and in MTN/FA/Corr.6 of 21 March 1994. The Ministerial Conference shall establish at its first session a revised list of waivers covered by this provision that adds any waivers granted under GATT 1947 after 15 December 1993 and before the date of entry into force of the WTO Agreement, and deletes the waivers which will have expired by that time.

on Tariffs and Trade 1994; and

- (d) the Marrakesh Protocol to GATT 1994.

2. Explanatory Notes

(a) The references to “contracting party” in the provisions of GATT 1994 shall be deemed to read “Member”. The references to “less-developed contracting party” and “developed contracting party” shall be deemed to read “developing country Member” and “developed country Member”. The references to “Executive Secretary” shall be deemed to read “Director-General of the WTO”.

(b) The references to the CONTRACTING PARTIES acting jointly in Articles XV:1, XV:2, XV:8, XXXVIII and the Notes Ad Article XII and XVIII; and in the provisions on special exchange agreements in Articles XV:2, XV:3, XV:6, XV:7 and XV:9 of GATT 1994 shall be deemed to be references to the WTO. The other functions that the provisions of GATT 1994 assign to the CONTRACTING PARTIES acting jointly shall be allocated by the Ministerial Conference.

- (c) (i) The text of GATT 1994 shall be authentic in English, French and Spanish.
- (ii) The text of GATT 1994 in the French language shall be subject to the rectifications of terms indicated in Annex A to document MTN.TNC/41.
- (iii) The authentic text of GATT 1994 in the Spanish language shall be the text in Volume IV of the Basic Instruments and Selected Documents series, subject to the rectifications of terms indicated in Annex B to document MTN.TNC/41.

3. (a) The provisions of Part II of GATT 1994 shall not apply to measures taken by a Member under specific mandatory legislation, enacted by that Member before it became a contracting party to GATT 1947, that prohibits the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone. This exemption applies to: (a) the continuation or prompt renewal of a non-conforming provision of such legislation; and (b) the amendment to a non-conforming provision of such legislation to the extent that the amendment does not decrease the conformity of the provision with Part II of GATT 1947. This exemption is limited to measures taken under legislation described above that is notified and specified prior to the date of entry into force of the WTO Agreement. If such legislation is subsequently modified to decrease its conformity with Part II of GATT 1994, it will no longer qualify for coverage under this paragraph.

(b) The Ministerial Conference shall review this exemption not later than five years after the date of entry into force of the WTO Agreement and thereafter every two years for as long as the exemption is in force for the purpose of examining whether the conditions which created the need for the exemption still prevail.

(c) A Member whose measures are covered by this exemption shall annually submit a detailed statistical notification consisting of a five-year moving average of actual and expected deliveries of relevant vessels as well as additional information on the use, sale, lease or repair of relevant vessels covered by this exemption.

(d) A Member that considers that this exemption operates in such a manner as to justify a reciprocal and proportionate limitation on the use, sale, lease or repair of vessels constructed in the territory of the Member invoking the exemption shall be free to introduce such a limitation subject to prior notification to the Ministerial Conference.

(e) This exemption is without prejudice to solutions concerning specific aspects of the legislation covered by this exemption negotiated in sectoral agreements or in other fora.

**UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(B)
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members hereby agree as follows:

1. In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of Article II, the nature and level of any “other duties or charges” levied on bound tariff items, as referred to in that provision, shall be recorded in the Schedules of concessions annexed to GATT 1994 against the tariff item to which they apply. It is understood that such recording does not change the legal character of “other duties or charges”.
2. The date as of which “other duties or charges” are bound, for the purposes of Article II, shall be 15 April 1994. “Other duties or charges” shall therefore be recorded in the Schedules at the levels applying on this date. At each subsequent renegotiation of a concession or negotiation of a new concession the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the appropriate Schedule. However, the date of the instrument by which a concession on any particular tariff item was first incorporated into GATT 1947 or GATT 1994 shall also continue to be recorded in column 6 of the Loose-Leaf Schedules.
3. “Other duties or charges” shall be recorded in respect of all tariff bindings.
4. Where a tariff item has previously been the subject of a concession, the level of “other duties or charges” recorded in the appropriate Schedule shall not be higher than the level obtaining at the time of the first incorporation of the concession in that Schedule. It will be open to any Member to challenge the existence of an “other duty or charge”, on the ground that no such “other duty or charge” existed at the time of the original binding of the item in question, as well as the consistency of the recorded level of any “other duty or charge” with the previously bound level, for a period of three years after the date of entry into force of the WTO Agreement or three years after the date of deposit with the Director-General of the WTO of the instrument incorporating the Schedule in question into GATT 1994, if that is a later date.
5. The recording of “other duties or charges” in the Schedules is without prejudice to their consistency with rights and obligations under GATT 1994 other than those affected by paragraph 4. All Members retain the right to challenge, at any time, the consistency of any “other duty or charge” with such obligations.
6. For the purposes of this Understanding, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply.
7. “Other duties or charges” omitted from a Schedule at the time of deposit of the instrument incorporating the Schedule in question into GATT 1994 with, until the date of entry into force of the WTO Agreement, the Director-General to the CONTRACTING PARTIES to GATT 1947 or, thereafter, with the Director-General of the WTO, shall not subsequently be added to it and any “other duty or charge” recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the date of deposit of the instrument.
8. The decision in paragraph 2 regarding the date applicable to each concession for the purposes of paragraph 1(b) of Article II of GATT 1994 supersedes the decision regarding the applicable date taken on 26 March 1980 (BISD 27S/24).

**UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members,

Noting that Article XVII provides for obligations on Members in respect of the activities of the state trading enterprises referred to in paragraph 1 of Article XVII, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in GATT 1994 for governmental measures affecting imports or exports by private traders;

Noting further that Members are subject to their GATT 1994 obligations in respect of those governmental measures affecting state trading enterprises;

Recognizing that this Understanding is without prejudice to the substantive disciplines prescribed in Article XVII;

Hereby agree as follows:

1. In order to ensure the transparency of the activities of state trading enterprises, Members shall notify such enterprises to the Council for Trade in Goods, for review by the working party to be set up under paragraph 5, in accordance with the following working definition:

“Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports.”

This notification requirement does not apply to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

2. Each Member shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the Council for Trade in Goods, taking account of the provisions of this Understanding. In carrying out such a review, each Member should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

3. Notifications shall be made in accordance with the questionnaire on state trading adopted on 24 May 1960 (BISD 9S/184–185), it being understood that Members shall notify the enterprises referred to in paragraph 1 whether or not imports or exports have in fact taken place.

4. Any Member which has reason to believe that another Member has not adequately met its notification obligation may raise the matter with the Member concerned. If the matter is not satisfactorily resolved it may make a counter-notification to the Council for Trade in Goods, for consideration by the working party set up under paragraph 5, simultaneously informing the Member concerned.

5. A working party shall be set up, on behalf of the Council for Trade in Goods, to review notifications and counter-notifications. In the light of this review and without prejudice to paragraph 4(c) of Article XVII, the Council for Trade in Goods may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the above-mentioned questionnaire on state trading and the

coverage of state trading enterprises notified under paragraph 1. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the Secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all Members indicating their wish to serve on it. It shall meet within a year of the date of entry into force of the WTO Agreement and thereafter at least once a year. It shall report annually to the Council for Trade in Goods.¹

¹ The activities of this working party shall be coordinated with those of the working group provided for in Section III of the Ministerial Decision on Notification Procedures adopted on 15 April 1994.

**UNDERSTANDING ON THE BALANCE-OF-PAYMENTS PROVISIONS
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members,

Recognizing the provisions of Articles XII and XVIII:B of GATT 1994 and of the Declaration on Trade Measures Taken for Balance-of-Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209, referred to in this Understanding as the "1979 Declaration") and in order to clarify such provisions¹;

Hereby agree as follows:

Application of Measures

1. Members confirm their commitment to announce publicly, as soon as possible, time-schedules for the removal of restrictive import measures taken for balance-of-payments purposes. It is understood that such time-schedules may be modified as appropriate to take into account changes in the balance-of-payments situation. Whenever a time-schedule is not publicly announced by a Member, that Member shall provide justification as to the reasons therefor.
2. Members confirm their commitment to give preference to those measures which have the least disruptive effect on trade. Such measures (referred to in this Understanding as "price-based measures") shall be understood to include import surcharges, import deposit requirements or other equivalent trade measures with an impact on the price of imported goods. It is understood that, notwithstanding the provisions of Article II, price-based measures taken for balance-of-payments purposes may be applied by a Member in excess of the duties inscribed in the Schedule of that Member. Furthermore, that Member shall indicate the amount by which the price-based measure exceeds the bound duty clearly and separately under the notification procedures of this Understanding.
3. Members shall seek to avoid the imposition of new quantitative restrictions for balance-of-payments purposes unless, because of a critical balance-of-payments situation, price-based measures cannot arrest a sharp deterioration in the external payments position. In those cases in which a Member applies quantitative restrictions, it shall provide justification as to the reasons why price-based measures are not an adequate instrument to deal with the balance-of-payments situation. A Member maintaining quantitative restrictions shall indicate in successive consultations the progress made in significantly reducing the incidence and restrictive effect of such measures. It is understood that not more than one type of restrictive import measure taken for balance-of-payments purposes may be applied on the same product.
4. Members confirm that restrictive import measures taken for balance-of-payments purposes may only be applied to control the general level of imports and may not exceed what is necessary to address the balance-of-payments situation. In order to minimize any incidental protective effects, a Member shall administer restrictions in a transparent manner. The authorities of the importing Member shall provide adequate justification as to the criteria used to determine which products are subject to restriction. As provided in paragraph 3 of Article XII and paragraph 10 of Article XVIII, Members may, in the case of

¹ Nothing in this Understanding is intended to modify the rights and obligations of Members under Articles XII or XVIII:B of GATT 1994. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of restrictive import measures taken for balance-of-payments purposes.

certain essential products, exclude or limit the application of surcharges applied across the board or other measures applied for balance-of-payments purposes. The term “essential products” shall be understood to mean products which meet basic consumption needs or which contribute to the Member’s effort to improve its balance-of-payments situation, such as capital goods or inputs needed for production. In the administration of quantitative restrictions, a Member shall use discretionary licensing only when unavoidable and shall phase it out progressively. Appropriate justification shall be provided as to the criteria used to determine allowable import quantities or values.

Procedures for Balance-of-Payments Consultations

5. The Committee on Balance-of-Payments Restrictions (referred to in this Understanding as the “Committee”) shall carry out consultations in order to review all restrictive import measures taken for balance-of-payments purposes. The membership of the Committee is open to all Members indicating their wish to serve on it. The Committee shall follow the procedures for consultations on balance-of-payments restrictions approved on 28 April 1970 (BISD 18S/48–53, referred to in this Understanding as “full consultation procedures”), subject to the provisions set out below.

6. A Member applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures shall enter into consultations with the Committee within four months of the adoption of such measures. The Member adopting such measures may request that a consultation be held under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII as appropriate. If no such request has been made, the Chairman of the Committee shall invite the Member to hold such a consultation. Factors that may be examined in the consultation would include, *inter alia*, the introduction of new types of restrictive measures for balance-of-payments purposes, or an increase in the level or product coverage of restrictions.

7. All restrictions applied for balance-of-payments purposes shall be subject to periodic review in the Committee under paragraph 4(b) of Article XII or under paragraph 12(b) of Article XVIII, subject to the possibility of altering the periodicity of consultations in agreement with the consulting Member or pursuant to any specific review procedure that may be recommended by the General Council.

8. Consultations may be held under the simplified procedures approved on 19 December 1972 (BISD 20S/47–49, referred to in this Understanding as “simplified consultation procedures”) in the case of least-developed country Members or in the case of developing country Members which are pursuing liberalization efforts in conformity with the schedule presented to the Committee in previous consultations. Simplified consultation procedures may also be used when the Trade Policy Review of a developing country Member is scheduled for the same calendar year as the date fixed for the consultations. In such cases the decision as to whether full consultation procedures should be used will be made on the basis of the factors enumerated in paragraph 8 of the 1979 Declaration. Except in the case of least-developed country Members, no more than two successive consultations may be held under simplified consultation procedures.

Notification and Documentation

9. A Member shall notify to the General Council the introduction of or any changes in the application of restrictive import measures taken for balance-of-payments purposes, as well as any modifications in time-schedules for the removal of such measures as announced under paragraph 1. Significant changes shall be notified to the General Council prior to or not later than 30 days after their announcement. On a yearly basis, each Member shall make available to the Secretariat a consolidated notification, including all changes in laws, regulations, policy statements or public notices, for examination by Members. Notifications shall include full information, as far as possible, at the tariff-line level, on the type of measures applied, the criteria used for their administration, product coverage and trade flows affected.

10. At the request of any Member, notifications may be reviewed by the Committee. Such reviews

would be limited to the clarification of specific issues raised by a notification or examination of whether a consultation under paragraph 4(a) of Article XII or paragraph 12(a) of Article XVIII is required. Members which have reasons to believe that a restrictive import measure applied by another Member was taken for balance-of-payments purposes may bring the matter to the attention of the Committee. The Chairman of the Committee shall request information on the measure and make it available to all Members. Without prejudice to the right of any member of the Committee to seek appropriate clarifications in the course of consultations, questions may be submitted in advance for consideration by the consulting Member.

11. The consulting Member shall prepare a Basic Document for the consultations which, in addition to any other information considered to be relevant, should include: (a) an overview of the balance-of-payments situation and prospects, including a consideration of the internal and external factors having a bearing on the balance-of-payments situation and the domestic policy measures taken in order to restore equilibrium on a sound and lasting basis; (b) a full description of the restrictions applied for balance-of-payments purposes, their legal basis and steps taken to reduce incidental protective effects; (c) measures taken since the last consultation to liberalize import restrictions, in the light of the conclusions of the Committee; (d) a plan for the elimination and progressive relaxation of remaining restrictions. References may be made, when relevant, to the information provided in other notifications or reports made to the WTO. Under simplified consultation procedures, the consulting Member shall submit a written statement containing essential information on the elements covered by the Basic Document.

12. The Secretariat shall, with a view to facilitating the consultations in the Committee, prepare a factual background paper dealing with the different aspects of the plan for consultations. In the case of developing country Members, the Secretariat document shall include relevant background and analytical material on the incidence of the external trading environment on the balance-of-payments situation and prospects of the consulting Member. The technical assistance services of the Secretariat shall, at the request of a developing country Member, assist in preparing the documentation for the consultations.

Conclusions of Balance-of-Payments Consultations

13. The Committee shall report on its consultations to the General Council. When full consultation procedures have been used, the report should indicate the Committee's conclusions on the different elements of the plan for consultations, as well as the facts and reasons on which they are based. The Committee shall endeavour to include in its conclusions proposals for recommendations aimed at promoting the implementation of Articles XII and XVIII:B, the 1979 Declaration and this Understanding. In those cases in which a time-schedule has been presented for the removal of restrictive measures taken for balance-of-payments purposes, the General Council may recommend that, in adhering to such a time-schedule, a Member shall be deemed to be in compliance with its GATT 1994 obligations. Whenever the General Council has made specific recommendations, the rights and obligations of Members shall be assessed in the light of such recommendations. In the absence of specific proposals for recommendations by the General Council, the Committee's conclusions should record the different views expressed in the Committee. When simplified consultation procedures have been used, the report shall include a summary of the main elements discussed in the Committee and a decision on whether full consultation procedures are required.

**UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members,

Having regard to the provisions of Article XXIV of GATT 1994;

Recognizing that customs unions and free trade areas have greatly increased in number and importance since the establishment of GATT 1947 and today cover a significant proportion of world trade;

Recognizing the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognizing also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members;

Convinced also of the need to reinforce the effectiveness of the role of the Council for Trade in Goods in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognizing the need for a common understanding of the obligations of Members under paragraph 12 of Article XXIV;

Hereby agree as follows:

1. Customs unions, free-trade areas, and interim agreements leading to the formation of a customs union or free-trade area, to be consistent with Article XXIV, must satisfy, inter alia, the provisions of paragraphs 5, 6, 7 and 8 of that Article.

Article XXIV:5

2. The evaluation under paragraph 5(a) of Article XXIV of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff-line basis and in values and quantities, broken down by WTO country of origin. The Secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round of Multilateral Trade Negotiations. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognized that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The “reasonable length of time” referred to in paragraph 5(c) of Article XXIV should exceed 10 years only in exceptional cases. In cases where Members parties to an interim agreement believe that 10 years would be insufficient they shall provide a full explanation to the Council for Trade in Goods of the need for a longer period.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a Member forming a customs union proposes to increase a bound rate of duty. In this regard Members reaffirm that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted on 10 November 1980 (BISD 27S/26–28) and in the Understanding on the Interpretation of Article XXVIII of GATT 1994, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by paragraph 6 of Article XXIV, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the Members having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII as elaborated by the Understanding on the Interpretation of Article XXVIII of GATT 1994 cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected Members shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. GATT 1994 imposes no obligation on Members benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its constituents.

Review of Customs Unions and Free-Trade Areas

7. All notifications made under paragraph 7(a) of Article XXIV shall be examined by a working party in the light of the relevant provisions of GATT 1994 and of paragraph 1 of this Understanding. The working party shall submit a report to the Council for Trade in Goods on its findings in this regard. The Council for Trade in Goods may make such recommendations to Members as it deems appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed time-frame and on measures required to complete the formation of the customs union or free-trade area. It may if necessary provide for further review of the agreement.

9. Members parties to an interim agreement shall notify substantial changes in the plan and schedule included in that agreement to the Council for Trade in Goods and, if so requested, the Council shall examine the changes.

10. Should an interim agreement notified under paragraph 7(a) of Article XXIV not include a plan and schedule, contrary to paragraph 5(c) of Article XXIV, the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and constituents of free-trade areas shall report periodically to the Council for Trade in Goods, as envisaged by the CONTRACTING PARTIES to GATT 1947 in their instruction to the GATT 1947 Council concerning reports on regional agreements (BISD 18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free-trade areas or interim agreements leading to the formation of a customs union or free-trade area.

Article XXIV:12

13. Each Member is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member. When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of GATT 1994 taken within the territory of the former.

**UNDERSTANDING IN RESPECT OF WAIVERS OF OBLIGATIONS
UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members hereby agree as follows:

1. A request for a waiver or for an extension of an existing waiver shall describe the measures which the Member proposes to take, the specific policy objectives which the Member seeks to pursue and the reasons which prevent the Member from achieving its policy objectives by measures consistent with its obligations under GATT 1994.

2. Any waiver in effect on the date of entry into force of the WTO Agreement shall terminate, unless extended in accordance with the procedures above and those of Article IX of the WTO Agreement, on the date of its expiry or two years from the date of entry into force of the WTO Agreement, whichever is earlier.

3. Any Member considering that a benefit accruing to it under GATT 1994 is being nullified or impaired as a result of:

(a) the failure of the Member to whom a waiver was granted to observe the terms or conditions of the waiver, or

(b) the application of a measure consistent with the terms and conditions of the waiver

may invoke the provisions of Article XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding.

**UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members hereby agree as follows:

1. For the purposes of modification or withdrawal of a concession, the Member which has the highest ratio of exports affected by the concession (i.e. exports of the product to the market of the Member modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in paragraph 1 of Article XXVIII. It is however agreed that this paragraph will be reviewed by the Council for Trade in Goods five years from the date of entry into force of the WTO Agreement with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting Members. If this is not the case, consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

2. Where a Member considers that it has a principal supplying interest in terms of paragraph 1, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980 (BISD 27S/26-28) shall apply in these cases.

3. In the determination of which Members have a principal supplying interest (whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII) or substantial interest, only trade in the affected product which has taken place on an MFN basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the negotiation for the modification or withdrawal of the concession, or will do so by the conclusion of that negotiation.

4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the Member possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall take into account, inter alia, production capacity and investment in the affected product in the exporting Member and estimates of export growth, as well as forecasts of demand for the product in the importing Member. For the purposes of this paragraph, "new product" is understood to include a tariff item created by means of a breakout from an existing tariff line.

5. Where a Member considers that it has a principal supplying or a substantial interest in terms of paragraph 4, it should communicate its claim in writing, with supporting evidence, to the Member proposing to modify or withdraw a concession, and at the same time inform the Secretariat. Paragraph 4 of the above-mentioned "Procedures for Negotiations under Article XXVIII" shall apply in these cases.

6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

- (a) the average annual trade in the most recent representative three-year period, increased by the average annual growth rate of imports in that same period, or by 10 per cent, whichever is the greater; or
- (b) trade in the most recent year increased by 10 per cent.

In no case shall a Member's liability for compensation exceed that which would be entailed by complete withdrawal of the concession.

7. Any Member having a principal supplying interest, whether as provided for in paragraph 1 above or in paragraph 1 of Article XXVIII, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the Members concerned.

**MARRAKESH PROTOCOL TO THE
GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members,

Having carried out negotiations within the framework of GATT 1947, pursuant to the Ministerial Declaration on the Uruguay Round,

Hereby agree as follows:

1. The schedule annexed to this Protocol relating to a Member shall become a Schedule to GATT 1994 relating to that Member on the day on which the WTO Agreement enters into force for that Member. Any schedule submitted in accordance with the Ministerial Decision on measures in favour of least-developed countries shall be deemed to be annexed to this Protocol.
2. The tariff reductions agreed upon by each Member shall be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the WTO Agreement, each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into force of the WTO Agreement, except as may be otherwise specified in that Member's Schedule. Unless otherwise specified in its Schedule, a Member that accepts the WTO Agreement after its entry into force shall, on the date that Agreement enters into force for it, make effective all rate reductions that have already taken place together with the reductions which it would under the preceding sentence have been obligated to make effective on 1 January of the year following, and shall make effective all remaining rate reductions on the schedule specified in the previous sentence. The reduced rate should in each stage be rounded off to the first decimal. For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules.
3. The implementation of the concessions and commitments contained in the schedules annexed to this Protocol shall, upon request, be subject to multilateral examination by the Members. This would be without prejudice to the rights and obligations of Members under Agreements in Annex 1A of the WTO Agreement.
4. After the schedule annexed to this Protocol relating to a Member has become a Schedule to GATT 1994 pursuant to the provisions of paragraph 1, such Member shall be free at any time to withhold or to withdraw in whole or in part the concession in such Schedule with respect to any product for which the principal supplier is any other Uruguay Round participant the schedule of which has not yet become a Schedule to GATT 1994. Such action can, however, only be taken after written notice of any such withholding or withdrawal of a concession has been given to the Council for Trade in Goods and after consultations have been held, upon request, with any Member, the relevant schedule relating to which has become a Schedule to GATT 1994 and which has a substantial interest in the product involved. Any concessions so withheld or withdrawn shall be applied on and after the day on which the schedule of the Member which has the principal supplying interest becomes a Schedule to GATT 1994.
5. (a) Without prejudice to the provisions of paragraph 2 of Article 4 of the Agreement on Agriculture, for the purpose of the reference in paragraphs 1:(b) and 1(c) of Article II of GATT 1994 to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

- (b) For the purpose of the reference in paragraph 6(a) of Article II of GATT 1994 to the date of that Agreement, the applicable date in respect of a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

6. In cases of modification or withdrawal of concessions relating to non-tariff measures as contained in Part III of the schedules, the provisions of Article XXVIII of GATT 1994 and the "Procedures for Negotiations under Article XXVIII" adopted on 10 November 1980 (BISD 27S/26-28) shall apply. This would be without prejudice to the rights and obligations of Members under GATT 1994.

7. In each case in which a schedule annexed to this Protocol results for any product in treatment less favourable than was provided for such product in the Schedules of GATT 1947 prior to the entry into force of the WTO Agreement, the Member to whom the schedule relates shall be deemed to have taken appropriate action as would have been otherwise necessary under the relevant provisions of Article XXVIII of GATT 1947 or 1994. The provisions of this paragraph shall apply only to Egypt, Peru, South Africa and Uruguay.

8. The Schedules annexed hereto are authentic in the English, French or Spanish language as specified in each Schedule.

9. The date of this Protocol is 15 April 1994.

[The agreed schedules of participants will be annexed to the Marrakesh Protocol in the treaty copy of the WTO Agreement.]

TEXT:
GENERAL AGREEMENT ON TARIFFS AND TRADE
1947

The Governments of the Commonwealth of Australia, the Kingdom of Belgium, the United States of Brazil, Burma, Canada, Ceylon, the Republic of Chile, the Republic of China, the Republic of Cuba, the Czechoslovak Republic, the French Republic, India, Lebanon, the Grand-Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, the United Kingdom of Great Britain and Northern Ireland, and the United States of America:

Recognizing 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,

Being desirous of contributing to these objectives 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,

Have through their Representatives agreed as follows:

PART I

Article I

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.
2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:
 - (a) Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;
 - (b) Preferences in force exclusively between two or more territories which on July 1, 1939, were connected by common sovereignty or relations of protection or suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;
 - (c) Preferences in force exclusively between the United States of America and the Republic of

NOTE: This section contains the complete text of the General Agreement together with all the amendments which became effective since its entry into force up to 1994. For the convenience of the reader, asterisks mark the portions of the text which should be read in conjunction with notes and supplementary provisions in Annex I of the Agreement.

Cuba;

- (d) Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman Empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5¹ of Article XXV, which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

4. The margin of preference* on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

- (a) in respect of duties or charges on any product described in such Schedule, the difference between the most-favoured-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, 1947, and, if no most-favoured-nation rate is provided for, the margin shall not exceed the difference between the most-favoured-nation and preferential rates existing on April 10, 1947;
- (b) in respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in subparagraph (a) and (b) of this paragraph shall be replaced by the respective dates set forth in that Annex.

Article II

Schedules of Concessions

1. (a) Each contracting party shall accord to the commerce of the other contracting parties treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(b) The products described in Part I of the Schedule relating to any contracting party, which are the products of territories of other contracting parties, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

(c) The products described in Part II of the Schedule relating to any contracting party which are the products of territories entitled under Article I to receive preferential treatment upon importation into the territory to which the Schedule relates shall, on their importation into such territory, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided for in Part II of that Schedule. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of

¹ The authentic text erroneously reads “sub-paragraph 5 (a)”.

those imposed on the date of this Agreement or those directly or mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date. Nothing in this Article shall prevent any contracting party from maintaining its requirements existing on the date of this Agreement as to the eligibility of goods for entry at preferential rates of duty.

2. Nothing in this Article shall prevent any contracting party from imposing at any time on the importation of any product:

- (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III* in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
- (b) any anti-dumping or countervailing duty applied consistently with the provisions of Article VI;*
- (c) fees or other charges commensurate with the cost of services rendered.

3. No contracting party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.

4. If any contracting party establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by contracting parties of any form of assistance to domestic producers permitted by other provisions of this Agreement.*

5. If any contracting party considers that a product is not receiving from another contracting party the treatment which the first contracting party believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other contracting party. If the latter agrees that the treatment contemplated was that claimed by the first contracting party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such contracting party so as to permit the treatment contemplated in this Agreement, the two contracting parties, together with any other contracting parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.

6. (a) The specific duties and charges included in the Schedules relating to contracting parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such contracting parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of this Agreement. Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; provided that the CONTRACTING PARTIES (i.e., the contracting parties acting jointly as provided for in Article XXV) concur that such adjustments will not impair the value of the concessions provided for in the appropriate Schedule or elsewhere in this Agreement, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.

(b) Similar provisions shall apply to any contracting party not a member of the Fund, as from the date on which such contracting party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV.

7. The Schedules annexed to this Agreement are hereby made an integral part of Part I of this Agreement.

PART II

Article III*

National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.*

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.*

3. With respect to any existing internal tax which is inconsistent with the provisions of paragraph 2, but which is specifically authorized under a trade agreement, in force on April 10, 1947, in which the import duty on the taxed product is bound against increase, the contracting party imposing the tax shall be free to postpone the application of the provisions of paragraph 2 to such tax until such time as it can obtain release from the obligations of such trade agreement in order to permit the increase of such duty to the extent necessary to compensate for the elimination of the protective element of the tax.

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.*

6. The provisions of paragraph 5 shall not apply to any internal quantitative regulation in force in the territory of any contracting party on July 1, 1939, April 10, 1947, or March 24, 1948, at the option of that contracting party; Provided that any such regulation which is contrary to the provisions of paragraph 5 shall not be modified to the detriment of imports and shall be treated as a customs duty for the purpose of negotiation.

7. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

8. (a) The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

(b) The provisions of this Article shall not prevent the payment of subsidies exclusively to domestic producers, including payments to domestic producers derived from the proceeds of internal taxes or charges applied consistently with the provisions of this Article and subsidies effected through governmental purchases of domestic products.

9. The contracting parties recognize that internal maximum price control measures, even though conforming to the other provisions of this Article, can have effects prejudicial to the interests of contracting parties supplying imported products. Accordingly, contracting parties applying such measures shall take account of the interests of exporting contracting parties with a view to avoiding to the fullest practicable extent such prejudicial effects.

10. The provisions of this Article shall not prevent any contracting party from establishing or maintaining internal quantitative regulations relating to exposed cinematograph films and meeting the requirements of Article IV.

Article IV

Special Provisions relating to Cinematograph Films

If any contracting party establishes or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of screen quotas which shall conform to the following requirements:

- (a) Screen quotas may require the exhibition of cinematograph films of national origin during a specified minimum proportion of the total screen time actually utilized, over a specified period of not less than one year, in the commercial exhibition of all films of whatever origin, and shall be computed on the basis of screen time per theatre per year or the equivalent thereof;
- (b) With the exception of screen time reserved for films of national origin under a screen quota, screen time including that released by administrative action from screen time reserved for films of national origin, shall not be allocated formally or in effect among sources of supply;
- (c) Notwithstanding the provisions of sub-paragraph (b) of this Article, any contracting party may maintain screen quotas conforming to the requirements of sub-paragraph (a) of this Article which reserve a minimum proportion of screen time for films of a specified origin other than that of the contracting party imposing such screen quotas; Provided that no such minimum proportion of screen time shall be increased above the level in effect on April 10, 1947;
- (d) Screen quotas shall be subject to negotiation for their limitation, liberalization or elimination.

Article V

Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a

complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.*

6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

Article VI

Anti-dumping and Countervailing Duties

1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another

- a. is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,
- b. in the absence of such domestic price, is less than either
 - i. the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

- ii. the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.*

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.*

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.*

4. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to anti-dumping or countervailing duty by reason of the exemption of such product from duties or taxes borne by the like product when destined for consumption in the country of origin or exportation, or by reason of the refund of such duties or taxes.

5. No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

6. (a) No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

(b) The CONTRACTING PARTIES may waive the requirement of sub-paragraph (a) of this paragraph so as to permit a contracting party to levy an anti-dumping or countervailing duty on the importation of any product for the purpose of offsetting dumping or subsidization which causes or threatens material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party. The CONTRACTING PARTIES shall waive the requirements of sub-paragraph (a) of this paragraph, so as to permit the levying of a countervailing duty, in cases in which they find that a subsidy is causing or threatening material injury to an industry in the territory of another contracting party exporting the product concerned to the territory of the importing contracting party.*

(c) In exceptional circumstances, however, where delay might cause damage which would be difficult to repair, a contracting party may levy a countervailing duty for the purpose referred to in sub-paragraph (b) of this paragraph without the prior approval of the CONTRACTING PARTIES; Provided that such action shall be reported immediately to the CONTRACTING PARTIES and that the countervailing duty shall be withdrawn promptly if the CONTRACTING PARTIES disapprove.

7. A system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity, independently of the movements of export prices, which results at times in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market, shall be presumed not to result in material injury within the meaning of

paragraph 6 if it is determined by consultation among the contracting parties substantially interested in the commodity concerned that:

- (a) the system has also resulted in the sale of the commodity for export at a price higher than the comparable price charged for the like commodity to buyers in the domestic market, and
- (b) the system is so operated, either because of the effective regulation of production, or otherwise, as not to stimulate exports unduly or otherwise seriously prejudice the interests of other contracting parties.

Article VII

Valuation for Customs Purposes

1. The contracting parties recognize the validity of the general principles of valuation set forth in the following paragraphs of this Article, and they undertake to give effect to such principles, in respect of all products subject to duties or other charges* or restrictions on importation and exportation based upon or regulated in any manner by value. Moreover, they shall, upon a request by another contracting party review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The CONTRACTING PARTIES may request from contracting parties reports on steps taken by them in pursuance of the provisions of this Article.

2. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.*

(b) "Actual value" should be the price at which, at a time and place determined by the legislation of the country of importation, such or like merchandise is sold or offered for sale in the ordinary course of trade under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favourable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.*

(c) When the actual value is not ascertainable in accordance with sub-paragraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.*

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

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

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

(c) The CONTRACTING PARTIES, in agreement with the International Monetary Fund, shall formulate rules governing the conversion by contracting parties of any foreign currency in respect of which

multiple rates of exchange are maintained consistently with the Articles of Agreement of the International Monetary Fund. Any contracting party may apply such rules in respect of such foreign currencies for the purposes of paragraph 2 of this Article as an alternative to the use of par values. Until such rules are adopted by the CONTRACTING PARTIES, any contracting party may employ, in respect of any such foreign currency, rules of conversion for the purposes of paragraph 2 of this Article which are designed to reflect effectively the value of such foreign currency in commercial transactions.

(d) Nothing in this paragraph shall be construed to require any contracting party to alter the method of converting currencies for customs purposes which is applicable in its territory on the date of this Agreement, if such alteration would have the effect of increasing generally the amounts of duty payable.

5. The bases and methods for determining the value of products subject to duties or other charges or restrictions based upon or regulated in any manner by value should be stable and should be given sufficient publicity to enable traders to estimate, with a reasonable degree of certainty, the value for customs purposes.

Article VIII

Fees and Formalities connected with Importation and Exportation*

1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

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

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

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- (a) consular transactions, such as consular invoices and certificates;
- (b) quantitative restrictions;
- (c) licensing;
- (d) exchange control;
- (e) statistical services;

- (f) documents, documentation and certification;
- (g) analysis and inspection; and
- (h) quarantine, sanitation and fumigation.

Article IX Marks of Origin

1. Each contracting party shall accord to the products of the territories of other contracting parties treatment with regard to marking requirements no less favourable than the treatment accorded to like products of any third country.
2. The contracting parties recognize that, in adopting and enforcing laws and regulations relating to marks of origin, the difficulties and inconveniences which such measures may cause to the commerce and industry of exporting countries should be reduced to a minimum, due regard being had to the necessity of protecting consumers against fraudulent or misleading indications.
3. Whenever it is administratively practicable to do so, contracting parties should permit required marks of origin to be affixed at the time of importation.
4. The laws and regulations of contracting parties relating to the marking of imported products shall be such as to permit compliance without seriously damaging the products, or materially reducing their value, or unreasonably increasing their cost.
5. As a general rule, no special duty or penalty should be imposed by any contracting party for failure to comply with marking requirements prior to importation unless corrective marking is unreasonably delayed or deceptive marks have been affixed or the required marking has been intentionally omitted.
6. The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party.

Article X Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

3. (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

Article XI*

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

2. The provisions of paragraph 1 of this Article shall not extend to the following:

- a. Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party;
- b. Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
- c. Import restrictions on any agricultural or fisheries product, imported in any form,* necessary to the enforcement of governmental measures which operate:
 - i. to restrict the quantities of the like domestic product permitted to be marketed or produced, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted; or
 - ii. to remove a temporary surplus of the like domestic product, or, if there is no substantial domestic production of the like product, of a domestic product for which the imported product can be directly substituted, by making the surplus

available to certain groups of domestic consumers free of charge or at prices below the current market level; or

- iii. to restrict the quantities permitted to be produced of any animal product the production of which is directly dependent, wholly or mainly, on the imported commodity, if the domestic production of that commodity is relatively negligible.

Any contracting party applying restrictions on the importation of any product pursuant to sub-paragraph (c) of this paragraph shall give public notice of the total quantity or value of the product permitted to be imported during a specified future period and of any change in such quantity or value. Moreover, any restrictions applied under (i) above shall not be such as will reduce the total of imports relative to the total of domestic production, as compared with the proportion which might reasonably be expected to rule between the two in the absence of restrictions. In determining this proportion, the contracting party shall pay due regard to the proportion prevailing during a previous representative period and to any special factors* which may have affected or may be affecting the trade in the product concerned.

Article XII*

Restrictions to Safeguard the Balance of Payments

1. Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the provisions of the following paragraphs of this Article.

2. (a) Import restrictions instituted, maintained or intensified by a contracting party under this Article shall not exceed those necessary:

- i. to forestall the imminent threat of, or to stop, a serious decline in its monetary reserves, or
- ii. in the case of a contracting party with very low monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of such contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

(b) Contracting parties applying restrictions under sub-paragraph (a) of this paragraph shall progressively relax them as such conditions improve, maintaining them only to the extent that the conditions specified in that sub-paragraph still justify their application. They shall eliminate the restrictions when conditions would no longer justify their institution or maintenance under that sub-paragraph.

3. (a) Contracting parties undertake, in carrying out their domestic policies, to pay due regard to the need for maintaining or restoring equilibrium in their balance of payments on a sound and lasting basis and to the desirability of avoiding an uneconomic employment of productive resources. They recognize that, in order to achieve these ends, it is desirable so far as possible to adopt measures which expand rather than contract international trade.

(b) Contracting parties applying restrictions under this Article may determine the incidence of the restrictions on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential.

(c) Contracting parties applying restrictions under this Article undertake:

- (i) to avoid unnecessary damage to the commercial or economic interests of any other contracting party;*
- (ii) not to apply restrictions so as to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and
- (iii) not to apply restrictions which would prevent the importations of commercial samples or prevent compliance with patent, trade mark, copyright, or similar procedures.

(d) The contracting parties recognize that, as a result of domestic policies directed towards the achievement and maintenance of full and productive employment or towards the development of economic resources, a contracting party may experience a high level of demand for imports involving a threat to its monetary reserves of the sort referred to in paragraph 2 (a) of this Article. Accordingly, a contracting party otherwise complying with the provisions of this Article shall not be required to withdraw or modify restrictions on the ground that a change in those policies would render unnecessary restrictions which it is applying under this Article.

4. (a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Article shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(b) On a date to be determined by them,* the CONTRACTING PARTIES shall review all restrictions still applied under this Article on that date. Beginning one year after that date, contracting parties applying import restrictions under this Article shall enter into consultations of the type provided for in sub-paragraph (a) of this paragraph with the CONTRACTING PARTIES annually.

(c) (i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) above, the CONTRACTING PARTIES find that the restrictions are not consistent with provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within the specified period of time. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(d) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Article to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Article or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If,

as a result of the consultations with the CONTRACTING PARTIES, no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(e) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to any special external factors adversely affecting the export trade of the contracting party applying the restrictions.*

(f) Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

5. If there is a persistent and widespread application of import restrictions under this Article, indicating the existence of a general disequilibrium which is restricting international trade, the CONTRACTING PARTIES shall initiate discussions to consider whether other measures might be taken, either by those contracting parties the balance of payments of which are under pressure or by those the balance of payments of which are tending to be exceptionally favourable, or by any appropriate intergovernmental organization, to remove the underlying causes of the disequilibrium. On the invitation of the CONTRACTING PARTIES, contracting parties shall participate in such discussions.

Article XIII*

Non-discriminatory Administration of Quantitative Restrictions

1. No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted.

2. In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions and to this end shall observe the following provisions:

- (a) Wherever practicable, quotas representing the total amount of permitted imports (whether allocated among supplying countries or not) shall be fixed, and notice given of their amount in accordance with paragraph 3 (b) of this Article;
- (b) In cases in which quotas are not practicable, the restrictions may be applied by means of import licences or permits without a quota;
- (c) Contracting parties shall not, except for purposes of operating quotas allocated in accordance with sub-paragraph (d) of this paragraph, require that import licences or permits be utilized for the importation of the product concerned from a particular country or source;
- (d) In cases in which a quota is allocated among supplying countries the contracting party applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other contracting parties having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the contracting

party concerned shall allot to contracting parties having a substantial interest in supplying the product shares based upon the proportions, supplied by such contracting parties during a previous representative period, of the total quantity or value of imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product. No conditions or formalities shall be imposed which would prevent any contracting party from utilizing fully the share of any such total quantity or value which has been allotted to it, subject to importation being made within any prescribed period to which the quota may relate.*

3. (a) In cases in which import licences are issued in connection with import restrictions, the contracting party applying the restrictions shall provide, upon the request of any contracting party having an interest in the trade in the product concerned, all relevant information concerning the administration of the restrictions, the import licences granted over a recent period and the distribution of such licences among supplying countries; Provided that there shall be no obligation to supply information as to the names of importing or supplying enterprises.

(b) In the case of import restrictions involving the fixing of quotas, the contracting party applying the restrictions shall give public notice of the total quantity or value of the product or products which will be permitted to be imported during a specified future period and of any change in such quantity or value. Any supplies of the product in question which were en route at the time at which public notice was given shall not be excluded from entry; Provided that they may be counted so far as practicable, against the quantity permitted to be imported in the period in question, and also, where necessary, against the quantities permitted to be imported in the next following period or periods; and Provided further that if any contracting party customarily exempts from such restrictions products entered for consumption or withdrawn from warehouse for consumption during a period of thirty days after the day of such public notice, such practice shall be considered full compliance with this sub-paragraph.

(c) In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.

4. With regard to restrictions applied in accordance with paragraph 2 (d) of this Article or under paragraph 2 (c) of Article XI, the selection of a representative period for any product and the appraisal of any special factors* affecting the trade in the product shall be made initially by the contracting party applying the restriction; Provided that such contracting party shall, upon the request of any other contracting party having a substantial interest in supplying that product or upon the request of the CONTRACTING PARTIES, consult promptly with the other contracting party or the CONTRACTING PARTIES regarding the need for an adjustment of the proportion determined or of the base period selected, or for the reappraisal of the special factors involved, or for the elimination of conditions, formalities or any other provisions established unilaterally relating to the allocation of an adequate quota or its unrestricted utilization.

5. The provisions of this Article shall apply to any tariff quota instituted or maintained by any contracting party, and, in so far as applicable, the principles of this Article shall also extend to export restrictions.

Article XIV*

Exceptions to the Rule of Non-discrimination

1. A contracting party which applies restrictions under Article XII or under Section B of Article XVIII may, in the application of such restrictions, deviate from the provisions of Article XIII in a manner

having equivalent effect to restrictions on payments and transfers for current international transactions which that contracting party may at that time apply under Article VIII or XIV of the Articles of Agreement of the International Monetary Fund, or under analogous provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV.*

2. A contracting party which is applying import restrictions under Article XII or under Section B of Article XVIII may, with the consent of the CONTRACTING PARTIES, temporarily deviate from the provisions of Article XIII in respect of a small part of its external trade where the benefits to the contracting party or contracting parties concerned substantially outweigh any injury which may result to the trade of other contracting parties.*

3. The provisions of Article XIII shall not preclude a group of territories having a common quota in the International Monetary Fund from applying against imports from other countries, but not among themselves, restrictions in accordance with the provisions of Article XII or of Section B of Article XVIII on condition that such restrictions are in all other respects consistent with the provisions of Article XIII.

4. A contracting party applying import restrictions under Article XII or under Section B of Article XVIII shall not be precluded by Articles XI to XV or Section B of Article XVIII of this Agreement from applying measures to direct its exports in such a manner as to increase its earnings of currencies which it can use without deviation from the provisions of Article XIII.

5. A contracting party shall not be precluded by Articles XI to XV, inclusive, or by Section B of Article XVIII, of this Agreement from applying quantitative restrictions:

- (a) having equivalent effect to exchange restrictions authorized under Section 3 (b) of Article VII of the Articles of Agreement of the International Monetary Fund, or
- (b) under the preferential arrangements provided for in Annex A of this Agreement, pending the outcome of the negotiations referred to therein.

Article XV

Exchange Arrangements

1. The CONTRACTING PARTIES shall seek co-operation with the International Monetary Fund to the end that the CONTRACTING PARTIES and the Fund may pursue a co-ordinated policy with regard to exchange questions within the jurisdiction of the Fund and questions of quantitative restrictions and other trade measures within the jurisdiction of the CONTRACTING PARTIES.

2. In all cases in which the CONTRACTING PARTIES are called upon to consider or deal with problems concerning monetary reserves, balances of payments or foreign exchange arrangements, they shall consult fully with the International Monetary Fund. In such consultations, the CONTRACTING PARTIES shall accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments, and shall accept the determination of the Fund as to whether action by a contracting party in exchange matters is in accordance with the Articles of Agreement of the International Monetary Fund, or with the terms of a special exchange agreement between that contracting party and the CONTRACTING PARTIES. The CONTRACTING PARTIES in reaching their final decision in cases involving the criteria set forth in paragraph 2 (a) of Article XII or in paragraph 9 of Article XVIII, shall accept the determination of the Fund as to what constitutes a serious decline in the contracting party's monetary reserves, a very low level of its monetary reserves or a reasonable rate of increase in its monetary reserves, and as to the financial aspects of other matters covered in consultation in such cases.

3. The CONTRACTING PARTIES shall seek agreement with the Fund regarding procedures for

consultation under paragraph 2 of this Article.

4. Contracting parties shall not, by exchange action, frustrate* the intent of the provisions of this Agreement, nor, by trade action, the intent of the provisions of the Articles of Agreement of the International Monetary Fund.

5. If the CONTRACTING PARTIES consider, at any time, that exchange restrictions on payments and transfers in connection with imports are being applied by a contracting party in a manner inconsistent with the exceptions provided for in this Agreement for quantitative restrictions, they shall report thereon to the Fund.

6. Any contracting party which is not a member of the Fund shall, within a time to be determined by the CONTRACTING PARTIES after consultation with the Fund, become a member of the Fund, or, failing that, enter into a special exchange agreement with the CONTRACTING PARTIES. A contracting party which ceases to be a member of the Fund shall forthwith enter into a special exchange agreement with the CONTRACTING PARTIES. Any special exchange agreement entered into by a contracting party under this paragraph shall thereupon become part of its obligations under this Agreement.

7. (a) A special exchange agreement between a contracting party and the CONTRACTING PARTIES under paragraph 6 of this Article shall provide to the satisfaction of the CONTRACTING PARTIES that the objectives of this Agreement will not be frustrated as a result of action in exchange matters by the contracting party in question.

(b) The terms of any such agreement shall not impose obligations on the contracting party in exchange matters generally more restrictive than those imposed by the Articles of Agreement of the International Monetary Fund on members of the Fund.

8. A contracting party which is not a member of the Fund shall furnish such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International Monetary Fund as the CONTRACTING PARTIES may require in order to carry out their functions under this Agreement.

9. Nothing in this Agreement shall preclude:

- (a) the use by a contracting party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund or with that contracting party's special exchange agreement with the Contracting Parties, or
- (b) the use by a contracting party of restrictions or controls in imports or exports, the sole effect of which, additional to the effects permitted under Articles XI, XII, XIII and XIV, is to make effective such exchange controls or exchange restrictions.

Article XVI*

Subsidies

Section A — Subsidies in General

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the

subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

Section B — Additional Provisions on Export Subsidies*

2. The contracting parties recognize that the granting by a contracting party of a subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

3. Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any special factors which may have affected or may be affecting such trade in the product.*

4. Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market. Until 31 December 1957 no contracting party shall extend the scope of any such subsidization beyond that existing on 1 January 1955 by the introduction of new, or the extension of existing, subsidies.*

5. The CONTRACTING PARTIES shall review the operation of the provisions of this Article from time to time with a view to examining its effectiveness, in the light of actual experience, in promoting the objectives of this Agreement and avoiding subsidization seriously prejudicial to the trade or interests of contracting parties.

Article XVII

State Trading Enterprises

1.* (a) Each contracting party undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges,* such enterprise shall, in its purchases or sales involving either imports or exports, act in a manner consistent with the general principles of non-discriminatory treatment prescribed in this Agreement for governmental measures affecting imports or exports by private traders.

(b) The provisions of sub-paragraph (a) of this paragraph shall be understood to require that such enterprises shall, having due regard to the other provisions of this Agreement, make any such purchases or sales solely in accordance with commercial considerations,* including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases or sales.

(c) No contracting party shall prevent any enterprise (whether or not an enterprise described in sub-paragraph (a) of this paragraph) under its jurisdiction from acting in accordance with the principles of sub-paragraphs (a) and (b) of this paragraph.

2. The provisions of paragraph 1 of this Article shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of

goods* for sale. With respect to such imports, each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment.

3. The contracting parties recognize that enterprises of the kind described in paragraph 1 (a) of this Article might be operated so as to create serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade.*

4. (a) Contracting parties shall notify the CONTRACTING PARTIES of the products which are imported into or exported from their territories by enterprises of the kind described in paragraph 1 (a) of this Article.

(b) A contracting party establishing, maintaining or authorizing an import monopoly of a product, which is not the subject of a concession under Article II, shall, on the request of another contracting party having a substantial trade in the product concerned, inform the CONTRACTING PARTIES of the import mark-up* on the product during a recent representative period, or, when it is not possible to do so, of the price charged on the resale of the product.

(c) The CONTRACTING PARTIES may, at the request of a contracting party which has reason to believe that its interest under this Agreement are being adversely affected by the operations of an enterprise of the kind described in paragraph 1 (a), request the contracting party establishing, maintaining or authorizing such enterprise to supply information about its operations related to the carrying out of the provisions of this Agreement.

(d) The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

Article XVIII*

Governmental Assistance to Economic Development

1. The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting parties the economies of which can only support low standards of living* and are in the early stages of development.*

2. The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them (a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of a particular industry* and (b) to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.

3. The contracting parties recognize finally that, with those additional facilities which are provided for in Sections A and B of this Article, the provisions of this Agreement would normally be sufficient to enable contracting parties to meet the requirements of their economic development. They agree, however, that there may be circumstances where no measure consistent with those provisions is practicable to permit a contracting party in the process of economic development to grant the governmental assistance required to promote the establishment of particular industries* with a view to raising the general standard of living of its people. Special procedures are laid down in Sections C and D of this Article to deal with those cases.

4. (a) Consequently, a contracting party, the economy of which can only support low standards of living* and is in the early stages of development,* shall be free to deviate temporarily from the provisions of the other Articles of this Agreement, as provided in Sections A, B and C of this Article.

(b) A contracting party, the economy of which is in the process of development, but which does not come within the scope of sub-paragraph (a) above, may submit applications to the CONTRACTING PARTIES under Section D of this Article.

5. The contracting parties recognize that the export earnings of contracting parties, the economies of which 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 the exports of primary commodities by such a contracting party are seriously affected by measures taken by another contracting party, it may have resort to the consultation provisions of Article XXII of this Agreement.

6. The CONTRACTING PARTIES shall review annually all measures applied pursuant to the provisions of Sections C and D of this Article.

Section A

7. (a) If a contracting party coming within the scope of paragraph 4 (a) of this Article considers it desirable, in order to promote the establishment of a particular industry* with a view to raising the general standard of living of its people, to modify or withdraw a concession included in the appropriate Schedule annexed to this Agreement, it shall notify the CONTRACTING PARTIES to this effect and enter into negotiations with any contracting party with which such concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. If agreement is reached between such contracting parties concerned, they shall be free to modify or withdraw concessions under the appropriate Schedules to this Agreement in order to give effect to such agreement, including any compensatory adjustments involved.

(b) If agreement is not reached within sixty days after the notification provided for in sub-paragraph (a) above, the contracting party which proposes to modify or withdraw the concession may refer the matter to the CONTRACTING PARTIES which shall promptly examine it. If they find that the contracting party which proposes to modify or withdraw the concession has made every effort to reach an agreement and that the compensatory adjustment offered by it is adequate, that contracting party shall be free to modify or withdraw the concession if, at the same time, it gives effect to the compensatory adjustment. If the CONTRACTING PARTIES do not find that the compensation offered by a contracting party proposing to modify or withdraw the concession is adequate, but find that it has made every reasonable effort to offer adequate compensation, that contracting party shall be free to proceed with such modification or withdrawal. If such action is taken, any other contracting party referred to in sub-paragraph (a) above shall be free to modify or withdraw substantially equivalent concessions initially negotiated with the contracting party which has taken the action.*

Section B

8. The contracting parties recognize that contracting parties coming within the scope of paragraph 4 (a) of this Article tend, when they are in rapid process of development, to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade.

9. In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4 (a) of this Article may, subject to the provisions of paragraphs 10 to 12, control the

general level of its imports by restricting the quantity or value of merchandise permitted to be imported; Provided that the import restrictions instituted, maintained or intensified shall not exceed those necessary:

- (a) to forestall the threat of, or to stop, a serious decline in its monetary reserves, or
- (b) in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of the contracting party or its need for reserves, including, where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

10. In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; Provided that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and Provided further that the restrictions are not so applied as to prevent the importation of commercial samples or to prevent compliance with patent, trade mark, copyright or similar procedures.

11. In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirability of assuring an economic employment of productive resources. It shall progressively relax any restrictions applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer justify such maintenance; Provided that no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.*

12. (a) Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section, shall immediately after instituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

(b) On a date to be determined by them* the CONTRACTING PARTIES shall review all restrictions still applied under this Section on that date. Beginning two years after that date, contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in sub-paragraph (a) above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES; Provided that no consultation under this sub-paragraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this paragraph.

(c) (i) If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) of this paragraph, the CONTRACTING PARTIES find that the restrictions are not consistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions be suitably modified.

(ii) If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV)

and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within a specified period. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(d) The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Section to enter into consultations with them at the request of any contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected thereby. However, no such invitation shall be issued unless the CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions. If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

(e) If a contracting party against which action has been taken in accordance with the last sentence of sub-paragraph (c) (ii) or (d) of this paragraph, finds that the release of obligations authorized by the CONTRACTING PARTIES adversely affects the operation of its programme and policy of economic development, it shall be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary² to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect on the sixtieth day following the day on which the notice is received by him.

(f) In proceeding under this paragraph, the CONTRACTING PARTIES shall have due regard to the factors referred to in paragraph 2 of this Article. Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

Section C

13. If a contracting party coming within the scope of paragraph 4 (a) of this Article finds that governmental assistance is required to promote the establishment of a particular industry* with a view to raising the general standard of living of its people, but that no measure consistent with the other provisions of this Agreement is practicable to achieve that objective, it may have recourse to the provisions and procedures set out in this Section.*

14. The contracting party concerned shall notify the CONTRACTING PARTIES of the special difficulties which it meets in the achievement of the objective outlined in paragraph 13 of this Article and shall indicate the specific measure affecting imports which it proposes to introduce in order to remedy these difficulties. It shall not introduce that measure before the expiration of the time-limit laid down in paragraph 15 or 17, as the case may be, or if the measure affects imports of a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, unless it has secured the concurrence of

² By the Decision of 23 March 1965, the CONTRACTING PARTIES changed the title of the head of the GATT secretariat from "Executive Secretary" to "Director-General".

the CONTRACTING PARTIES in accordance with provisions of paragraph 18; Provided that, if the industry receiving assistance has already started production, the contracting party may, after informing the CONTRACTING PARTIES, take such measures as may be necessary to prevent, during that period, imports of the product or products concerned from increasing substantially above a normal level.*

15. If, within thirty days of the notification of the measure, the CONTRACTING PARTIES do not request the contracting party concerned to consult with them,* that contracting party shall be free to deviate from the relevant provisions of the other Articles of this Agreement to the extent necessary to apply the proposed measure.

16. If it is requested by the CONTRACTING PARTIES to do so,* the contracting party concerned shall consult with them as to the purpose of the proposed measure, as to alternative measures which may be available under this Agreement, and as to the possible effect of the measure proposed on the commercial and economic interests of other contracting parties. If, as a result of such consultation, the CONTRACTING PARTIES agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective outlined in paragraph 13 of this Article, and concur* in the proposed measure, the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to apply that measure.

17. If, within ninety days after the date of the notification of the proposed measure under paragraph 14 of this Article, the CONTRACTING PARTIES have not concurred in such measure, the contracting party concerned may introduce the measure proposed after informing the CONTRACTING PARTIES.

18. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the contracting party concerned shall enter into consultations with any other contracting party with which the concession was initially negotiated, and with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest therein. The CONTRACTING PARTIES shall concur* in the measure if they agree that there is no measure consistent with the other provisions of this Agreement which is practicable in order to achieve the objective set forth in paragraph 13 of this Article, and if they are satisfied:

- (a) that agreement has been reached with such other contracting parties as a result of the consultations referred to above, or
- (b) if no such agreement has been reached within sixty days after the notification provided for in paragraph 14 has been received by the CONTRACTING PARTIES, that the contracting party having recourse to this Section has made all reasonable efforts to reach an agreement and that the interests of other contracting parties are adequately safeguarded.*

The contracting party having recourse to this Section shall thereupon be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure.

19. If a proposed measure of the type described in paragraph 13 of this Article concerns an industry the establishment of which has in the initial period been facilitated by incidental protection afforded by restrictions imposed by the contracting party concerned for balance of payments purposes under the relevant provisions of this Agreement, that contracting party may resort to the provisions and procedures of this Section; Provided that it shall not apply the proposed measure without the concurrence* of the CONTRACTING PARTIES.*

20. Nothing in the preceding paragraphs of this Section shall authorize any deviation from the provisions of Articles I, II and XIII of this Agreement. The provisos to paragraph 10 of this Article shall also be applicable to any restriction under this Section.

21. At any time while a measure is being applied under paragraph 17 of this Article any contracting party substantially affected by it may suspend the application to the trade of the contracting party having recourse to this Section of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove;* Provided that sixty days' notice of such suspension is given to the CONTRACTING PARTIES not later than six months after the measure has been introduced or changed substantially to the detriment of the contracting party affected. Any such contracting party shall afford adequate opportunity for consultation in accordance with the provisions of Article XXII of this Agreement.

Section D

22. A contracting party coming within the scope of sub-paragraph 4 (b) of this Article desiring, in the interest of the development of its economy, to introduce a measure of the type described in paragraph 13 of this Article in respect of the establishment of a particular industry* may apply to the CONTRACTING PARTIES for approval of such measure. The CONTRACTING PARTIES shall promptly consult with such contracting party and shall, in making their decision, be guided by the considerations set out in paragraph 16. If the CONTRACTING PARTIES concur* in the proposed measure the contracting party concerned shall be released from its obligations under the relevant provisions of the other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measure affects a product which is the subject of a concession included in the appropriate Schedule annexed to this Agreement, the provisions of paragraph 18 shall apply.*

23. Any measure applied under this Section shall comply with the provisions of paragraph 20 of this Article.

Article XIX

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately

after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (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 so disapproved;*
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan; Provided that such restrictions shall not operate to increase the exports of

or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination;

- (j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist. The CONTRACTING PARTIES shall review the need for this sub-paragraph not later than 30 June 1960.

Article XXI Security Exceptions

Nothing in this Agreement shall be construed

- a. to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- b. to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
 - i. relating to fissionable materials or the materials from which they are derived;
 - ii. relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
 - iii. taken in time of war or other emergency in international relations; or
- c. to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article XXII Consultation

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 Nullification or Impairment

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. The CONTRACTING PARTIES shall promptly investigate any matter so referred to them and shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter, as appropriate. The CONTRACTING PARTIES may consult with contracting parties, with the Economic and Social Council of the United Nations and with any appropriate inter-governmental organization in cases where they consider such consultation necessary. If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they 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 this Agreement as they determine to be appropriate in the circumstances. If the application to any contracting party of any concession or other obligation 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 Executive Secretary³ to the CONTRACTING PARTIES of its intention to withdraw from this Agreement and such withdrawal shall take effect upon the sixtieth day following the day on which such notice is received by him.

PART III

Article XXIV

Territorial Application — Frontier Traffic — Customs Unions and Free-trade Areas

1. The provisions of this Agreement shall apply to the metropolitan customs territories of the contracting parties and to any other customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application. Each such customs territory shall, exclusively for the purposes of the territorial application of this Agreement, be treated as though it were a contracting party; Provided that the provisions of this paragraph shall not be construed to create any rights or obligations as between two or more customs territories in respect of which this Agreement has been accepted under Article XXVI or is being applied under Article XXXIII or pursuant to the Protocol of Provisional Application by a single contracting party.

2. For the purposes of this Agreement a customs territory shall be understood to mean any territory with respect to which separate tariffs or other regulations of commerce are maintained for a substantial part

³ By the Decision of 23 March 1965, the CONTRACTING PARTIES changed the title of the head of the GATT secretariat from "Executive Secretary" to "Director-General".

of the trade of such territory with other territories.

3. The provisions of this Agreement shall not be construed to prevent:

- (a) Advantages accorded by any contracting party to adjacent countries in order to facilitate frontier traffic;
- (b) Advantages accorded to the trade with the Free Territory of Trieste by countries contiguous to that territory, provided that such advantages are not in conflict with the Treaties of Peace arising out of the Second World War.

4. The contracting parties recognize the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:

- (a) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
- (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each if the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and
- (c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

6. If, in fulfilling the requirements of sub-paragraph 5 (a), a contracting party proposes to increase any rate of duty inconsistently with the provisions of Article II, the procedure set forth in Article XXVIII shall apply. In providing for compensatory adjustment, due account shall be taken of the compensation already afforded by the reduction brought about in the corresponding duty of the other constituents of the union.

7. (a) Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or area as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate.

(b) If, after having studied the plan and schedule included in an interim agreement referred to in paragraph 5 in consultation with the parties to that agreement and taking due account of the information made available in accordance with the provisions of sub-paragraph (a), the CONTRACTING PARTIES find that such agreement is not likely to result in the formation of a customs union or of a free-trade area within the period contemplated by the parties to the agreement or that such period is not a reasonable one, the CONTRACTING PARTIES shall make recommendations to the parties to the agreement. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations.

(c) Any substantial change in the plan or schedule referred to in paragraph 5 (c) shall be communicated to the CONTRACTING PARTIES, which may request the contracting parties concerned to consult with them if the change seems likely to jeopardize or delay unduly the formation of the customs union or of the free-trade area.

8. For the purposes of this Agreement:

- a. A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
 - i. duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
 - ii. subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;
- b. A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

9. The preferences referred to in paragraph 2 of Article I shall not be affected by the formation of a customs union or of a free-trade area but may be eliminated or adjusted by means of negotiations with contracting parties affected.* This procedure of negotiations with affected contracting parties shall, in particular, apply to the elimination of preferences required to conform with the provisions of paragraph 8 (a)(i) and paragraph 8 (b).

10. The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article.

11. Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

12. Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities

within its territories.

Article XXV

Joint Action by the Contracting Parties

1. Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES.
2. The Secretary-General of the United Nations is requested to convene the first meeting of the CONTRACTING PARTIES, which shall take place not later than March 1, 1948.
3. Each contracting party shall be entitled to have one vote at all meetings of the CONTRACTING PARTIES.
4. Except as otherwise provided for in this Agreement, decisions of the CONTRACTING PARTIES shall be taken by a majority of the votes cast.
5. In exceptional circumstances not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; Provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote
 - (a) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and
 - (b) prescribe such criteria as may be necessary for the application of this paragraph.⁴

Article XXVI

Acceptance, Entry into Force and Registration

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. This Agreement, done in a single English original and a single French original, both texts authentic, shall be deposited with the Secretary-General of the United Nations, who shall furnish certified copies thereof to all interested governments.
4. Each government accepting this Agreement shall deposit an instrument of acceptance with the Executive Secretary_ to the CONTRACTING PARTIES, 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 6 of this Article.
5. (a) Each government accepting this Agreement does so in respect of its metropolitan territory

⁴ The authentic text erroneously reads "sub-paragraph".

and of the other territories for which it has international responsibility, except such separate customs territories as it shall notify to the Executive Secretary_ to the CONTRACTING PARTIES at the time of its own acceptance.

(b) Any government, which has so notified the Executive Secretary_ under the exceptions in sub-paragraph (a) of this paragraph, may at any time give notice to the Executive Secretary_ 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 Executive Secretary. ⁵

(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.

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 Executive Secretary⁶ 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 XXVII

Withholding or Withdrawal of Concessions

Any contracting party shall at any time be free to withhold or to withdraw in whole or in part any concession, provided for in the appropriate Schedule annexed to this Agreement, in respect of which such contracting party determines that it was initially negotiated with a government which has not become, or has ceased to be, a contracting party. A contracting party taking such action shall notify the CONTRACTING PARTIES and, upon request, consult with contracting parties which have a substantial interest in the product concerned.

Article XXVIII*

Modification of Schedules

1. On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period* that may be specified by the CONTRACTING PARTIES by two-thirds of the votes cast) a contracting party (hereafter in this Article referred to as the "applicant contracting party") may, by negotiation and agreement with any contracting party with which such concession was initially

⁵ By the Decision of 23 March 1965, the CONTRACTING PARTIES changed the title of the head of the GATT secretariat from "Executive Secretary" to "Director-General".

⁶ By the Decision of 23 March 1965, the CONTRACTING PARTIES changed the title of the head of the GATT secretariat from "Executive Secretary" to "Director-General".

negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest* (which two preceding categories of contracting parties, together with the applicant contracting party, are in this Article hereinafter referred to as the “contracting parties primarily concerned”), and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest* in such concession, modify or withdraw a concession* included in the appropriate schedule annexed to this Agreement.

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

3. (a) If agreement between the contracting parties primarily concerned cannot be reached before 1 January 1958 or before the expiration of a period envisaged in paragraph 1 of this Article, the contracting party which proposes to modify or withdraw the concession shall, nevertheless, be free to do so and if such action is taken any contracting party with which such concession was initially negotiated, any contracting party determined under paragraph 1 to have a principal supplying interest and any contracting party determined under paragraph 1 to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party.

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

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

- (a) Such negotiations* and any related consultations shall be conducted in accordance with the provisions of paragraph 1 and 2 of this Article.
- (b) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3 (b) of this Article shall apply.
- (c) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days* after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES.
- (d) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If a settlement is reached, the provisions of paragraph 3 (b) shall apply as if agreement between the contracting parties primarily concerned had been reached. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation.* If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined under

paragraph 4 (a) to have a principal supplying interest and any contracting party determined under paragraph 4 (a) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with applicant contracting party.

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

Article XXVIII bis Tariff Negotiations

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

2. (a) Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties.

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

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

- (a) the needs of individual contracting parties and individual industries;
- (b) the needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and
- (c) all other relevant circumstances, including the fiscal,* developmental, strategic and other needs of the contracting parties concerned.

Article XXIX

The Relation of this Agreement to the Havana Charter

1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapters I to VI inclusive and of Chapter IX of the Havana Charter pending their acceptance of it in accordance with their constitutional procedures.*
2. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force.
3. If by September 30, 1949, the Havana Charter has not entered into force, the contracting parties shall meet before December 31, 1949, to agree whether this Agreement shall be amended, supplemented or maintained.
4. If at any time the Havana Charter should cease to be in force, the CONTRACTING PARTIES shall meet as soon as practicable thereafter to agree whether this Agreement shall be supplemented, amended or maintained. Pending such agreement, Part II of this Agreement shall again enter into force; Provided that the provisions of Part II other than Article XXIII shall be replaced, *mutatis mutandis*, in the form in which they then appeared in the Havana Charter; and Provided further that no contracting party shall be bound by any provisions which did not bind it at the time when the Havana Charter ceased to be in force.
5. If any contracting party has not accepted the Havana Charter by the date upon which it enters into force, the CONTRACTING PARTIES shall confer to agree whether, and if so in what way, this Agreement in so far as it affects relations between such contracting party and other contracting parties, shall be supplemented or amended. Pending such agreement the provisions of Part II of this Agreement shall, notwithstanding the provisions of paragraph 2 of this Article, continue to apply as between such contracting party and other contracting parties.
6. Contracting parties which are Members of the International Trade Organization shall not invoke the provisions of this Agreement so as to prevent the operation of any provision of the Havana Charter. The application of the principle underlying this paragraph to any contracting party which is not a Member of the International Trade Organization shall be the subject of an agreement pursuant to paragraph 5 of this Article.

Article XXX

Amendments

1. Except where provision for modification is made elsewhere in this Agreement, amendments to the provisions of Part I of this Agreement or the provisions of Article XXIX or of this Article shall become effective upon acceptance by all the contracting parties, and other amendments to this Agreement shall become effective, in respect of those contracting parties which accept them, upon acceptance by two-thirds of the contracting parties and thereafter for each other contracting party upon acceptance by it.
2. Any contracting party accepting an amendment to this Agreement shall deposit an instrument of acceptance with the Secretary-General of the United Nations within such period as the CONTRACTING PARTIES may specify. The CONTRACTING PARTIES may decide that any amendment made effective under 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.

Article XXXI

Withdrawal

Without prejudice to the provisions of paragraph 12 of Article XVIII, of Article XXIII or of paragraph 2 of Article XXX, any contracting party may withdraw from this Agreement, or may separately withdraw on behalf of any of the separate customs territories for which it has international responsibility and which at the time possesses full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement. The withdrawal shall take effect upon the expiration of six months from the day on which written notice of withdrawal is received by the Secretary-General of the United Nations.

Article XXXII

Contracting Parties

1. The contracting parties to this Agreement shall be understood to mean those governments which are applying the provisions of this Agreement under Articles XXVI or XXXIII or pursuant to the Protocol of Provisional Application.
2. At any time after the entry into force of this Agreement pursuant to paragraph 6 of Article XXVI, those contracting parties which have accepted this Agreement pursuant to paragraph 4 of Article XXVI may decide that any contracting party which has not so accepted it shall cease to be a contracting party.

Article XXXIII

Accession

A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority.

Article XXXIV

Annexes

The annexes to this Agreement are hereby made an integral part of this Agreement.

Article XXXVNon-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.

PART IV*
TRADE AND DEVELOPMENT

Article XXXVI
Principles and Objectives

- 1.* The contracting parties,
- (a) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties;
 - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
 - (c) noting, that there is a wide gap between standards of living in less-developed countries and in other countries;
 - (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;
 - (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures _ and measures in conformity with such rules and procedures _ as are consistent with the objectives set forth in this Article;
 - (f) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

agree as follows.

2. There is need for a rapid and sustained expansion of the export earnings of the less-developed contracting parties.

3. There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.

4. Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products,* there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products, and wherever appropriate to devise measures designed to stabilize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.

5. The rapid expansion of the economies of the less-developed contracting parties will be facilitated by a diversification* of the structure of their economies and the avoidance of an excessive dependence on

the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.

6. Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.

7. There is need for appropriate collaboration between the CONTRACTING PARTIES, other intergovernmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.

8. The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.*

9. The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

Article XXXVII

Commitments

1. The developed contracting parties shall to the fullest extent possible _ that is, except when compelling reasons, which may include legal reasons, make it impossible _ give effect to the following provisions:

- a. accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;*
- b. refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products currently or potentially of particular export interest to less-developed contracting parties; and
- c. (i) refrain from imposing new fiscal measures, and
 - i. in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures,

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.

2. (a) Whenever it is considered that effect is not being given to any of the provisions of subparagraph (a), (b) or (c) of paragraph 1, the matter shall be reported to the CONTRACTING PARTIES either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.

- (b) (i) The CONTRACTING PARTIES shall, if requested so to do by any interested

contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 shall be examined.

(ii) As the implementation of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, such consultation might, where appropriate, be directed towards this end.

(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

3. The developed contracting parties shall:

- (a) make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels;
- (b) give active consideration to the adoption of other measures* designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;
- (c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.

4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.

5. In the implementation of the commitments set forth in paragraph 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

Article XXXVIII

Joint Action

1. The contracting parties shall collaborate jointly, with the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.

2. In particular, the CONTRACTING PARTIES shall:

- (a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures

designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;

- (b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference on Trade and Development;
- (c) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connection, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;
- (d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;
- (e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and
- (f) establish such institutional arrangements as may be necessary to further the objectives set forth in Article XXXVI and to give effect to the provision of this Part.

ANNEX A

LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (A) OF ARTICLE I

United Kingdom of Great Britain and Northern Ireland
Dependent territories of the United Kingdom of Great Britain and Northern Ireland
Canada
Commonwealth of Australia
Dependent territories of the Commonwealth of Australia
New Zealand
Dependent territories of New Zealand
Union of South Africa including South West Africa
Ireland
India (as on April 10, 1947)
Newfoundland
Southern Rhodesia
Burma
Ceylon

Certain of the territories listed above have two or more preferential rates in force for certain products. Any such territory may, by agreement with the other contracting parties which are principal suppliers of such products at the most-favoured-nation rate, substitute for such preferential rates a single preferential rate which shall not on the whole be less favourable to suppliers at the most-favoured-nation rate than the preferences in force prior to such substitution.

The imposition of an equivalent margin of tariff preference to replace a margin of preference in an internal tax existing on April 10, 1947 exclusively between two or more of the territories listed in this Annex or to replace the preferential quantitative arrangements described in the following paragraph, shall not be deemed to constitute an increase in a margin of tariff preference.

The preferential arrangements referred to in paragraph 5 (b) of Article XIV are those existing in the United Kingdom on 10 April 1947, under contractual agreements with the Governments of Canada, Australia and New Zealand, in respect of chilled and frozen beef and veal, frozen mutton and lamb, chilled and frozen pork and bacon. It is the intention, without prejudice to any action taken under sub-paragraph (h)⁷ of Article XX, that these arrangements shall be eliminated or replaced by tariff preferences, and that negotiations to this end shall take place as soon as practicable among the countries substantially concerned or involved.

The film hire tax in force in New Zealand on 10 April 1947, shall, for the purposes of this Agreement, be treated as a customs duty under Article I. The renters' film quota in force in New Zealand on April 10, 1947, shall, for the purposes of this Agreement, be treated as a screen quota under Article IV.

⁷ The authentic text erroneously reads "part I (h)".

The Dominions of India and Pakistan have not been mentioned separately in the above list since they had not come into existence as such on the base date of April 10, 1947.

ANNEX B
LIST OF TERRITORIES OF THE FRENCH UNION
REFERRED TO IN PARAGRAPH 2 (B) OF ARTICLE I

France
French Equatorial Africa (Treaty Basin of the Congo⁸ and other territories)
French West Africa
Cameroons under French Trusteeship⁸
French Somali Coast and Dependencies
French Establishments in Oceania
French Establishments in the Condominium of the New Hebrides⁸
Indo-China
Madagascar and Dependencies
Morocco (French zone)⁸
New Caledonia and Dependencies
Saint-Pierre and Miquelon
Togo under French Trusteeship⁸
Tunisia

ANNEX C
LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (B) OF ARTICLE I
AS RESPECTS THE CUSTOMS UNION OF BELGIUM, LUXEMBURG
AND THE NETHERLANDS

The Economic Union of Belgium and Luxemburg
Belgian Congo
Ruanda Urundi
Netherlands
New Guinea
Surinam
Netherlands Antilles
Republic of Indonesia

For imports into the territories constituting the Customs Union only.

⁸ For imports into Metropolitan France and Territories of the French Union

ANNEX D

LIST OF TERRITORIES REFERRED TO IN PARAGRAPH 2 (B)
OF ARTICLE I AS RESPECTS THE UNITED STATES OF AMERICA

United States of America (customs territory)
Dependent territories of the United States of America
Republic of the Philippines

The imposition of an equivalent margin of tariff preference to replace a margin of preference in an internal tax existing on 10 April, 1947, exclusively between two or more of the territories listed in this Annex shall not be deemed to constitute an increase in a margin of tariff preference.

ANNEX E

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS BETWEEN CHILE
AND NEIGHBOURING COUNTRIES REFERRED TO IN PARAGRAPH 2 (D) OF ARTICLE I

Preferences in force exclusively between Chile on the one hand, and

1. Argentina
2. Bolivia
3. Peru

on the other hand.

ANNEX F

LIST OF TERRITORIES COVERED BY PREFERENTIAL ARRANGEMENTS BETWEEN
LEBANON AND SYRIA AND NEIGHBOURING COUNTRIES REFERRED TO IN PARAGRAPH
2 (D) OF ARTICLE I

Preferences in force exclusively between the Lebano-Syrian Customs Union, on the one hand, and

1. Palestine
2. Transjordan

on the other hand.

ANNEX G

DATES ESTABLISHING MAXIMUM MARGINS OF PREFERENCE REFERRED TO IN
PARAGRAPH 4⁹ OF ARTICLE I

Australia October 15, 1946
Canada July 1, 1939

⁹ The authentic text erroneously reads "Paragraph 3".

France	January 1, 1939
Lebano-Syrian Customs Union	November 30, 1938
Union of South Africa	July 1, 1938
Southern Rhodesia	May 1, 1941

ANNEX H

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 6 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.

	Column I (Contracting parties on 1 March 1955)	Column II (Contracting parties on 1 March 1955 and Japan)
Australia	3.1	3.0
Austria	0.9	0.8
Belgium-Luxemburg	4.3	4.2
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
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
Netherlands, Kingdom of the	4.7	4.6
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
	100.0	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 I
NOTES AND SUPPLEMENTARY PROVISIONS

Ad Article I

Paragraph 1

The obligations incorporated in paragraph 1 of Article I by reference to paragraphs 2 and 4 of Article III and those incorporated in paragraph 2 (b) of Article II by reference to Article VI shall be considered as falling within Part II for the purposes of the Protocol of Provisional Application.

The cross-references, in the paragraph immediately above and in paragraph 1 of Article I, to paragraphs 2 and 4 of Article III shall only apply after Article III has been modified by the entry into force of the amendment provided for in the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, dated September 14, 1948.¹⁰

Paragraph 4

The term “margin of preference” means the absolute difference between the most-favoured-nation rate of duty and the preferential rate of duty for the like product, and not the proportionate relation between those rates. As examples:

- (1) If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were 24 per cent ad valorem, the margin of preference would be 12 per cent ad valorem, and not one-third of the most-favoured-nation rate;
- (2) If the most-favoured-nation rate were 36 per cent ad valorem and the preferential rate were expressed as two-thirds of the most-favoured-nation rate, the margin of preference would be 12 per cent ad valorem;
- (3) If the most-favoured-nation rate were 2 francs per kilogramme and the preferential rate were 1.50 francs per kilogramme, the margin of preference would be 0.50 franc per kilogramme.

The following kinds of customs action, taken in accordance with established uniform procedures, would not be contrary to a general binding of margins of preference:

- (i) The re-application to an imported product of a tariff classification or rate of duty, properly applicable to such product, in cases in which the application of such classification or rate to such product was temporarily suspended or inoperative on April 10, 1947; and
- (ii) The classification of a particular product under a tariff item other than that under which importations of that product were classified on April 10, 1947, in cases in which the tariff law clearly contemplates that such product may be classified under more than one tariff item.

¹⁰ This Protocol entered into force on 14 December 1948.

Ad Article II

Paragraph 2 (a)

The cross-reference, in paragraph 2 (a) of Article II, to paragraph 2 of Article III shall only apply after Article III has been modified by the entry into force of the amendment provided for in the Protocol Modifying Part II and Article XXVI of the General Agreement on Tariffs and Trade, dated September 14, 1948.¹¹

Paragraph 2 (b)

See the note relating to paragraph 1 of Article I.

Paragraph 4

Except where otherwise specifically agreed between the contracting parties which initially negotiated the concession, the provisions of this paragraph will be applied in the light of the provisions of Article 31 of the Havana Charter.

Ad Article III

Any internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of Article III.

Paragraph 1

The application of paragraph 1 to internal taxes imposed by local governments and authorities with the territory of a contracting party is subject to the provisions of the final paragraph of Article XXIV. The term "reasonable measures" in the last-mentioned paragraph would not require, for example, the repeal of existing national legislation authorizing local governments to impose internal taxes which, although technically inconsistent with the letter of Article III, are not in fact inconsistent with its spirit, if such repeal would result in a serious financial hardship for the local governments or authorities concerned. With regard to taxation by local governments or authorities which is inconsistent with both the letter and spirit of Article III, the term "reasonable measures" would permit a contracting party to eliminate the inconsistent taxation gradually over a transition period, if abrupt action would create serious administrative and financial difficulties.

Paragraph 2

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

¹¹ This Protocol entered into force on 14 December 1948.

Paragraph 5

Regulations consistent with the provisions of the first sentence of paragraph 5 shall not be considered to be contrary to the provisions of the second sentence in any case in which all of the products subject to the regulations are produced domestically in substantial quantities. A regulation cannot be justified as being consistent with the provisions of the second sentence on the ground that the proportion or amount allocated to each of the products which are the subject of the regulation constitutes an equitable relationship between imported and domestic products.

Ad Article V

Paragraph 5

With regard to transportation charges, the principle laid down in paragraph 5 refers to like products being transported on the same route under like conditions.

Ad Article VI

Paragraph 1

1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.
2. It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Paragraphs 2 and 3

1. As in many other cases in customs administration, a contracting party may require reasonable security (bond or cash deposit) for the payment of anti-dumping or countervailing duty pending final determination of the facts in any case of suspected dumping or subsidization.
2. Multiple currency practices can in certain circumstances constitute a subsidy to exports which may be met by countervailing duties under paragraph 3 or can constitute a form of dumping by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Paragraph 6 (b)

Waivers under the provisions of this sub-paragraph shall be granted only on application by the contracting party proposing to levy an anti-dumping or countervailing duty, as the case may be.

Ad Article VII

Paragraph 1

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

Paragraph 2

1. It would be in conformity with Article VII to presume that “actual value” may be represented by the invoice price, plus any non-included charges for legitimate costs which are proper elements of “actual value” and plus any abnormal discount or other reduction from the ordinary competitive price.
2. It would be in conformity with Article VII, paragraph 2 (b), for a contracting party to construe the phrase “in the ordinary course of trade ... under fully competitive conditions”, as excluding any transaction wherein the buyer and seller are not independent of each other and price is not the sole consideration.
3. The standard of “fully competitive conditions” permits a contracting party to exclude from consideration prices involving special discounts limited to exclusive agents.
4. The wording of sub-paragraphs (a) and (b) permits a contracting party to determine the value for customs purposes uniformly either (1) on the basis of a particular exporter's prices of the imported merchandise, or (2) on the basis of the general price level of like merchandise.

Ad Article VIII

1. While Article VIII does not cover the use of multiple rates of exchange as such, paragraphs 1 and 4 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a contracting party is using multiple currency exchange fees for balance of payments reasons with the approval of the International Monetary Fund, the provisions of paragraph 9 (a) of Article XV fully safeguard its position.
2. It would be consistent with paragraph 1 if, on the importation of products from the territory of a contracting party into the territory of another contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable.

Ad Articles XI, XII, XIII, XIV and XVIII

Throughout Articles XI, XII, XIII, XIV and XVIII, the terms “import restrictions” or “export restrictions” include restrictions made effective through state-trading operations.

Ad Article XI

Paragraph 2 (c)

The term “in any form” in this paragraph covers the same products when in an early stage of processing and still perishable, which compete directly with the fresh product and if freely imported would tend to make the restriction on the fresh product ineffective.

Paragraph 2, last sub-paragraph

The term “special factors” includes changes in relative productive efficiency as between domestic and foreign producers, or as between different foreign producers, but not changes artificially brought about by means not permitted under the Agreement.

Ad Article XII

The CONTRACTING PARTIES shall make provision for the utmost secrecy in the conduct of any consultation under the provisions of this Article.

Paragraph 3 (c)(i)

Contracting parties applying restrictions shall endeavour to avoid causing serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 4 (b)

It is agreed that the date shall be within ninety days after the entry into force of the amendments of this Article effected by the Protocol Amending the Preamble and Parts II and III of this Agreement. However, should the CONTRACTING PARTIES find that conditions were not suitable for the application of the provisions of this sub-paragraph at the time envisaged, they may determine a later date; Provided that such date is not more than thirty days after such time as the obligations of Article VIII, Sections 2, 3 and 4, of the Articles of Agreement of the International Monetary Fund become applicable to contracting parties, members of the Fund, the combined foreign trade of which constitutes at least fifty per centum of the aggregate foreign trade of all contracting parties.

Paragraph 4 (e)

It is agreed that paragraph 4 (e) does not add any new criteria for the imposition or maintenance of quantitative restrictions for balance of payments reasons. It is solely intended to ensure that all

external factors such as changes in the terms of trade, quantitative restrictions, excessive tariffs and subsidies, which may be contributing to the balance of payments difficulties of the contracting party applying restrictions, will be fully taken into account.

Ad Article XIII

Paragraph 2 (d)

No mention was made of “commercial considerations” as a rule for the allocation of quotas because it was considered that its application by governmental authorities might not always be practicable. Moreover, in cases where it is practicable, a contracting party could apply these considerations in the process of seeking agreement, consistently with the general rule laid down in the opening sentence of paragraph 2.

Paragraph 4

See note relating to “special factors” in connection with the last sub-paragraph of paragraph 2 of Article XI.

Ad Article XIV

Paragraph 1

The provisions of this paragraph shall not be so construed as to preclude full consideration by the CONTRACTING PARTIES, in the consultations provided for in paragraph 4 of Article XII and in paragraph 12 of Article XVIII, of the nature, effects and reasons for discrimination in the field of import restrictions.

Paragraph 2

One of the situations contemplated in paragraph 2 is that of a contracting party holding balances acquired as a result of current transactions which it finds itself unable to use without a measure of discrimination.

Ad Article XV

Paragraph 4

The word “frustrate” is intended to indicate, for example, that infringements of the letter of any Article of this Agreement by exchange action shall not be regarded as a violation of that Article if, in practice, there is no appreciable departure from the intent of the Article. Thus, a contracting party which, as part of its exchange control operated in accordance with the Articles of Agreement of the International Monetary Fund, requires payment to be received for its exports in its own currency or in the currency of one or more members of the International Monetary Fund will not thereby be deemed to contravene Article XI or Article XIII. Another example would be that of a contracting

party which specifies on an import licence the country from which the goods may be imported, for the purpose not of introducing any additional element of discrimination in its import licensing system but of enforcing permissible exchange controls.

Ad Article XVI

The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Section B

1. Nothing in Section B shall preclude the use by a contracting party of multiple rates of exchange in accordance with the Articles of Agreement of the International Monetary Fund.
2. For the purposes of Section B, a “primary product” is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

Paragraph 3

1. The fact that a contracting party has not exported the product in question during the previous representative period would not in itself preclude that contracting party from establishing its right to obtain a share of the trade in the product concerned.
2. A system for the stabilization of the domestic price or of the return to domestic producers of a

primary product independently of the movements of export prices, which results at times in the sale of the product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market, shall be considered not to involve a subsidy on exports within the meaning of paragraph 3 if the CONTRACTING PARTIES determine that:

- (a) the system has also resulted, or is so designed as to result, in the sale of the product for export at a price higher than the comparable price charged for the like product to buyers in the domestic market; and
- (b) the system is so operated, or is designed so to operate, either because of the effective regulation of production or otherwise, as not to stimulate exports unduly or otherwise seriously to prejudice the interests of other contracting parties.

Notwithstanding such determination by the CONTRACTING PARTIES, operations under such a system shall be subject to the provisions of paragraph 3 where they are wholly or partly financed out of government funds in addition to the funds collected from producers in respect of the product concerned.

Paragraph 4

The intention of paragraph 4 is that the contracting parties should seek before the end of 1957 to reach agreement to abolish all remaining subsidies as from 1 January 1958; or, failing this, to reach agreement to extend the application of the standstill until the earliest date thereafter by which they can expect to reach such agreement.

Ad Article XVII

Paragraph 1

The operations of Marketing Boards, which are established by contracting parties and are engaged in purchasing or selling, are subject to the provisions of sub-paragraphs (a) and (b).

The activities of Marketing Boards which are established by contracting parties and which do not purchase or sell but lay down regulations covering private trade are governed by the relevant Articles of this Agreement.

The charging by a state enterprise of different prices for its sales of a product in different markets is not precluded by the provisions of this Article, provided that such different prices are charged for commercial reasons, to meet conditions of supply and demand in export markets.

Paragraph 1 (a)

Governmental measures imposed to insure standards of quality and efficiency in the operation of external trade, or privileges granted for the exploitation of national natural resources but which do not empower the government to exercise control over the trading activities of the enterprise in question, do not constitute "exclusive or special privileges".

Paragraph 1 (b)

A country receiving a "tied loan" is free to take this loan into account as a "commercial consideration" when purchasing requirements abroad.

Paragraph 2

The term “goods” is limited to products as understood in commercial practice, and is not intended to include the purchase or sale of services.

Paragraph 3

Negotiations which contracting parties agree to conduct under this paragraph may be directed towards the reduction of duties and other charges on imports and exports or towards the conclusion of any other mutually satisfactory arrangement consistent with the provisions of this Agreement. (See paragraph 4 of Article II and the note to that paragraph.)

Paragraph 4 (b)

The term “import mark-up” in this paragraph shall represent the margin by which the price charged by the import monopoly for the imported product (exclusive of internal taxes within the purview of Article III, transportation, distribution, and other expenses incident to the purchase, sale or further processing, and a reasonable margin of profit) exceeds the landed cost.

Ad Article XVIII

The CONTRACTING PARTIES and the contracting parties concerned shall preserve the utmost secrecy in respect of matters arising under this Article.

Paragraphs 1 and 4

1. When they consider whether the economy of a contracting party “can only support low standards CONTRACTING PARTIES shall take into consideration the normal position of that economy and shall not base their determination on exceptional circumstances such as those which may result from the temporary existence of exceptionally favourable conditions for the staple export product or products of such contracting party.
2. The phrase “in the early stages of development” is not meant to apply only to contracting parties which have just started their economic development, but also to contracting parties the economies of which are undergoing a process of industrialization to correct an excessive dependence on primary production.

Paragraphs 2, 3, 7, 13 and 22

The reference to the establishment of particular industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an existing industry and to the substantial transformation of an existing industry, and to the substantial expansion of an existing industry supplying a relatively small proportion of the domestic demand. It shall also cover the reconstruction of an industry destroyed or substantially damaged as a result of hostilities or natural disasters.

Paragraph 7 (b)

A modification or withdrawal, pursuant to paragraph 7 (b), by a contracting party, other than the applicant contracting party, referred to in paragraph 7 (a), shall be made within six months of the day on which the action is taken by the applicant contracting party, and shall become effective on the thirtieth day following the day on which such modification or withdrawal has been notified to the CONTRACTING PARTIES.

Paragraph 11

The second sentence in paragraph 11 shall not be interpreted to mean that a contracting party is required to relax or remove restrictions if such relaxation or removal would thereupon produce conditions justifying the intensification or institution, respectively, of restrictions under paragraph 9 of Article XVIII.

Paragraph 12 (b)

The date referred to in paragraph 12 (b) shall be the date determined by the CONTRACTING PARTIES in accordance with the provisions of paragraph 4 (b) of Article XII of this Agreement.

Paragraphs 13 and 14

It is recognized that, before deciding on the introduction of a measure and notifying the CONTRACTING PARTIES in accordance with paragraph 14, a contracting party may need a reasonable period of time to assess the competitive position of the industry concerned.

Paragraphs 15 and 16

It is understood that the CONTRACTING PARTIES shall invite a contracting party proposing to apply a measure under Section C to consult with them pursuant to paragraph 16 if they are requested to do so by a contracting party the trade of which would be appreciably affected by the measure in question.

Paragraphs 16, 18, 19 and 22

1. It is understood that the CONTRACTING PARTIES may concur in a proposed measure subject to specific conditions or limitations. If the measure as applied does not conform to the terms of the concurrence it will to that extent be deemed a measure in which the CONTRACTING PARTIES have not concurred. In cases in which the CONTRACTING PARTIES have concurred in a measure for a specified period, the contracting party concerned, if it finds that the maintenance of the measure for a further period of time is required to achieve the objective for which the measure was originally taken, may apply to the CONTRACTING PARTIES for an extension of that period in accordance with the provisions and procedures of Section C or D, as the case may be.

2. It is expected that the CONTRACTING PARTIES will, as a rule, refrain from concurring in a measure which is likely to cause serious prejudice to exports of a commodity on which the economy of a contracting party is largely dependent.

Paragraph 18 and 22

The phrase "that the interests of other contracting parties are adequately safeguarded" is meant to provide latitude sufficient to permit consideration in each case of the most appropriate method of safeguarding those interests. The appropriate method may, for instance, take the form of an additional concession to be applied by the contracting party having recourse to Section C or D during such time as the deviation from the other Articles of the Agreement would remain in force or of the temporary suspension by any other contracting party referred to in paragraph 18 of a concession substantially equivalent to the impairment due to the introduction of the measure in question. Such contracting party would have the right to safeguard its interests through such a temporary suspension of a concession; Provided that this right will not be exercised when, in the case of a measure imposed by a contracting party coming within the scope of paragraph 4 (a), the CONTRACTING PARTIES have determined that the extent of the compensatory concession proposed was adequate.

Paragraph 19

The provisions of paragraph 19 are intended to cover the cases where an industry has been in existence beyond the “reasonable period of time” referred to in the note to paragraphs 13 and 14, and should not be so construed as to deprive a contracting party coming within the scope of paragraph 4 (a) of Article XVIII, of its right to resort to the other provisions of Section C, including paragraph 17, with regard to a newly established industry even though it has benefited from incidental protection afforded by balance of payments import restrictions.

Paragraph 21

Any measure taken pursuant to the provisions of paragraph 21 shall be withdrawn forthwith if the action taken in accordance with paragraph 17 is withdrawn or if the CONTRACTING PARTIES concur in the measure proposed after the expiration of the ninety-day time limit specified in paragraph 17.

Ad Article XX

Sub-paragraph (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 30 (IV) of 28 March 1947.

Ad Article XXIV

Paragraph 9

It is understood that the provisions of Article I would require that, when a product which has been imported into the territory of a member of a customs union or free-trade area at a preferential rate of duty is re-exported to the territory of another member of such union or area, the latter member should collect a duty equal to the difference between the duty already paid and any higher duty that would be payable if the product were being imported directly into its territory.

Paragraph 11

Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Agreement, but these measures would in general be consistent with the objectives of the Agreement.

Ad Article XXVIII

The CONTRACTING PARTIES and each contracting party concerned should arrange to conduct the negotiations and consultations with the greatest possible secrecy in order to avoid premature disclosure of details of prospective tariff changes. The CONTRACTING PARTIES shall be informed immediately of all changes in national tariffs resulting from recourse to this Article.

Paragraph 1

1. If the CONTRACTING PARTIES specify a period other than a three-year period, a contracting party may act pursuant to paragraph 1 or paragraph 3 of Article XXVIII on the first day following the expiration of such other period and, unless the CONTRACTING PARTIES have again specified another period,

subsequent periods will be three-year periods following the expiration of such specified period.

2. The provision that on 1 January 1958, and on other days determined pursuant to paragraph 1, a contracting party “may ... modify or withdraw a concession” means that on such day, and on the first day after the end of each period, the legal obligation of such contracting party under Article II is altered; it does not mean that the changes in its customs tariff should necessarily be made effective on that day. If a tariff change resulting from negotiations undertaken pursuant to this Article is delayed, the entry into force of any compensatory concessions may be similarly delayed.

3. Not earlier than six months, nor later than three months, prior to 1 January 1958, or to the termination date of any subsequent period, a contracting party wishing to modify or withdraw any concession embodied in the appropriate Schedule, should notify the CONTRACTING PARTIES to this effect. The CONTRACTING PARTIES shall then determine the contracting party or contracting parties with which the negotiations or consultations referred to in paragraph 1 shall take place. Any contracting party so determined shall participate in such negotiations or consultations with the applicant contracting party with the aim of reaching agreement before the end of the period. Any extension of the assured life of the Schedules shall relate to the Schedules as modified after such negotiations, in accordance with paragraphs 1, 2, and 3 of Article XXVIII. If the CONTRACTING PARTIES are arranging for multilateral tariff negotiations to take place within the period of six months before 1 January 1958, or before any other day determined pursuant to paragraph 1, they shall include in the arrangements for such negotiations suitable procedures for carrying out the negotiations referred to in this paragraph.

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

5. Notwithstanding the definition of a principal supplying interest in note 4 to paragraph 1, the CONTRACTING PARTIES may exceptionally determine that a contracting party has a principal supplying interest if the concession in question affects trade which constitutes a major part of the total exports of such contracting party.

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

7. The expression “substantial interest” is not capable of a precise definition and accordingly may

present difficulties for the CONTRACTING PARTIES. It is, however, intended to be construed to cover only those contracting parties which have, or in the absence of discriminatory quantitative restrictions affecting their exports could reasonably be expected to have, a significant share in the market of the contracting party seeking to modify or withdraw the concession.

Paragraph 4

1. Any request for authorization to enter into negotiations shall be accompanied by all relevant statistical and other data. A decision on such request shall be made within thirty days of its submission.

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

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

4. The determination referred to in paragraph 4 (d) shall be made by the CONTRACTING PARTIES within thirty days of the submission of the matter to them unless the applicant contracting party agrees to a longer period.

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

Ad Article XXVIII bis

Paragraph 3

It is understood that the reference to fiscal needs would include the revenues aspect of duties and particularly duties imposed primarily for revenue purpose, or duties imposed on products which can be substituted for products subject to revenue duties to prevent the avoidance of such duties.

Ad Article XXIX

Paragraph 1

Chapters VII and VIII of the Havana Charter have been excluded from paragraph 1 because they generally deal with the organization, functions and procedures of the International Trade Organization.

Ad Part IV

The words “developed contracting parties” and the words “less-developed contracting parties” as used in Part IV are to be understood to refer to developed and less-developed countries which are parties to the General Agreement on Tariffs and Trade.

Ad Article XXXVI

Paragraph 1

This Article is based upon the objectives set forth in Article I as it will be amended by Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX when that Protocol enters into force.

Paragraph 4

The term “primary products” includes agricultural products, vide paragraph 2 of the note ad Article XVI, Section B.

Paragraph 5

A diversification programme would generally include the intensification of activities for the processing of primary products and the development of manufacturing industries, taking into account the situation of the particular contracting party and the world outlook for production and consumption of different commodities.

Paragraph 8

It is understood that the phrase “do not expect reciprocity” means, in accordance with the objectives set forth in this Article, that the less-developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments.

This paragraph would apply in the event of action under Section A of Article XVIII, Article XXVIII, Article XXVIII bis (Article XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective), Article XXXIII, or any other procedure under this Agreement.

Ad Article XXXVII

Paragraph 1 (a)

This paragraph would apply in the event of negotiations for reduction or elimination of tariffs or other restrictive regulations of commerce under Articles XXVIII, XXVIII bis (XXIX after the amendment set forth in Section A of paragraph 1 of the Protocol Amending Part I and Articles XXIX and XXX shall have become effective¹²), and Article XXXIII, as well as in connection with other action to effect such reduction or elimination which contracting parties may be able to undertake.

¹² This Protocol was abandoned on 1 January 1968.

Paragraph 3 (b)

The other measures referred to in this paragraph might include steps to promote domestic structural changes, to encourage the consumption of particular products, or to introduce measures of trade promotion.