NEGOTIATION OF NON-TARIFF BARRIERS TO TRADE

(Note by the Australian Government)

1. On many agricultural items of trade it is not the tariff but non-tariff measures which are the important barriers to the expansion of trade.

2. The GATT already provides for the negotiation of some types of non-tariff devices. Thus Article III:6 authorizes negotiations for the reduction of existing internal quantitative regulations, Article IV(d) provides for negotiations on screen quotas, Article XVII:3 for negotiations on obstacles to trade in connexion with the operation of state-trading enterprises and a report of the ninth session notes that there is nothing to prevent negotiations on the level of domestic subsidies (Basic Instruments and Selected Documents, third supplement, page 225). A provision for requests relating to some of these matters was included in the rules and procedures for the 1956 tariff negotiations.

3. In some cases where countries had considered the tariff barriers to be of importance and had negotiated tariff concessions, these concessions have subsequently been frustrated by non-tariff obstacles to trade.

4. There are therefore two aspects of the question of the negotiation of non-tariff barriers which Australia believes should be considered by Committee I. These aspects are:

(a) The adequacy of the existing rules of negotiation insofar as they are relevant to the negotiations of certain non-tariff barriers which contracting parties are entitled to maintain under the existing rules of GATT.

(b) The need for firm assurances that concessions given on tariffs or on certain non-tariff devices are not frustrated by other barriers to trade or, if frustrated, that there will be provision for adequate compensation.

5. The non-tariff devices dealt with in this paper are those which are authorized by the provisions of the Agreement except those measures coming under Articles XII, XX and XXI. This paper does not concern itself with the question as to whether there is any need to amend the provisions of GATT in relation to those non-tariff barriers, including quantitative restrictions not covered by Article XI:2, which contracting parties are not entitled to maintain under the existing rules of GATT. It is considered that this question should not be taken
up by the CONTRACTING PARTIES until Committee II has reported under paragraph 2 of its terms of reference.

(a) ADEQUACY OF EXISTING RULES OF NEGOTIATION

Domestic Subsidies (including all forms of income or price support)

6. A report adopted by the CONTRACTING PARTIES at the ninth session says that there is nothing to prevent contracting parties, when they negotiate for the binding or reduction of tariffs, from negotiating on matters, such as subsidies, which might affect the practical effects of tariff concessions, from incorporating in the appropriate schedule annexed to the Agreement the results of such negotiations; provided that the results of such negotiations do not conflict with other provisions of the Agreement (IISD, third supplement, page 225).

7. No specific provision has been made in the rules for negotiations for the submission of requests on subsidies, possibly because the above decision only contemplates such negotiations in conjunction with negotiation for a tariff concession on the same item. However, there appears to be nothing to prevent a negotiation on the level of a subsidy independently of the negotiation of a tariff concession. It would be appropriate therefore to include in the rules for negotiations specific provisions for requests on the negotiation of levels of domestic subsidies.

8. If protection is afforded by a subsidy, price support, etc., the technical negotiation of the level of protection would not be very different from a tariff negotiation in that a country would request an upper limit to the level of the subsidy. Agreement to limit the level of protection would have the same effect as a tariff binding. Tariff negotiations do not by any means always result in the elimination of protection by the tariff. In some cases the rates of duty are bound against increases at the existing level whilst in others reductions are made where the government concerned considers it possible to do so. The position would not be dissimilar with non-tariff devices.

State Trading

9. Article XVII:3 provides for negotiations on state-trading activities; it is recognized that state-trading enterprises might be operated so as to create serious obstacles to trade and thus that negotiations on a reciprocal and mutually advantageous basis designed to limit or reduce such obstacles are of importance to the expansion of international trade. The interpretative note to this paragraph suggests that negotiations of this kind 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 General Agreement.

10. The first interpretative note to paragraph 4 of Article III (new text) states that the protection afforded through the operation of an import monopoly in respect of products described in the appropriate schedule shall be limited by means of:

   (i) a maximum import duty that may be applied in respect of the product concerned; or
(ii) any other mutually satisfactory arrangement consistent with the provisions of this Agreement; any contracting party entering into negotiations with a view to concluding such arrangements shall afford to other interested contracting parties an opportunity for consultation.

**NOTE:** Article III (new text) has not yet come into force. The interpretative note to paragraph 4 of the Article currently in force (Article II) provides as above by virtue of a cross-reference to Article 31 of the Havana Charter.

11. The rules for the 1956 tariff negotiations provide for the submission of requests in respect of matters provided for in Article II (i.e. Article III new text). It is suggested that the reference should be to Articles II and XVII.

**Revenue Duties**

12. Revenue duties within a tariff are already negotiable in the same way as tariffs. The Committee already has under consideration the recommendation of the Haberler Committee regarding the negotiability of internal fiscal taxes.

**Screen Quotas**

13. The rules for the 1956 tariff negotiations already provide for their negotiation and submission of requests.

**Quantitative Restrictions**

14. It is not proposed that quantitative restrictions which are necessary to safeguard balance of payments or those which are permitted under Articles XX and XXI should be subject to negotiation.

15. Article XI:2(c) provides for the imposition of quantitative restrictions on agricultural and fisheries products in certain circumstances. Article VII provides for consultations on the various factors which have been taken into account in determining the level of permitted imports. There appears to be no reason why there cannot be negotiations with a view to obtaining a concession in the form of an undertaking that a contracting party will reduce the level of restriction permitted under these provisions.

(b) **FRUSTRATION OF CONCESSIONS**

**Subsidies**

16. At the ninth session, the CONTRACTING PARTIES adopted a report agreeing that a contracting party which has negotiated a concession under Article II may be assumed, for the purpose of Article XXIII, to have a reasonable expectation, failing evidence to the contrary, that the value of the concession will not be nullified or impaired by the contracting party which granted the tariff concession by the subsequent introduction or increase of a domestic subsidy on the product concerned. It is considered that stricter rules are necessary in relation to the introduction or an increase in the level of an existing domestic subsidy on a product the subject of a tariff concession.
17. It is considered that the introduction of a subsidy or the increase in the level of an existing subsidy on a bound item should be regarded as requiring the country which granted the concession to invoke the procedures of Article XXVIII or, where the circumstances are appropriate, Article XIX. (Where, however, the products subject to the subsidy is not the precise product on which the concession has been given but a closely competitive product, the matter would need to be considered by the CONTRACTING PARTIES under Article XXIII.)

State Trading

18. There are several ways in which state trading can be operated to frustrate tariff concessions or concessions on mark-up. Paragraph 5 of Article 31 of the Havana Charter provides that wherever possible the monopoly shall import and offer for sale such quantities of the product as will be sufficient to satisfy the full demand for the imported product. This provision is not limited to products the subject of tariff concessions, but is particularly meaningful in relation to these. It is proposed that the CONTRACTING PARTIES should adopt a similar provision, at least in respect of products that have been the subject of a concession.

19. A state-trading organization may also frustrate tariff concessions by action which in effect provides a subsidy on the domestic product, e.g. by making a loss on its dealings in it. It is proposed that such action be treated as a subsidy and that the contracting party taking such action should be subject to the procedures suggested in paragraph 17.

20. A state-trading organization may also frustrate tariff concessions in other ways. One such method is by discriminatory purchasing. Article XVIII:1(b) commercial considerations. The way is therefore open for contracting parties to use the provisions of GATT against any contravening of this rule.

Revenue Duties

21. It has been suggested (W.14/15) that where a binding of tariff rates has been negotiated, its effect should not be nullified by an increase in the internal revenue charges. This appears to be desirable provided the rule is confined to products of which there is no substantial domestic production and provided that it does not relate to a general tax uniformly applicable to a considerable number of products. The rule adopted should call for the adoption of the same procedures as those for subsidies (paragraph 17).

Quantitative Restrictions

22. It is proposed that a contracting party maintaining quantitative restrictions under Article XI:2(c) or under the terms of a waiver granted by the CONTRACTING PARTIES on a bound item should be required to follow the procedures suggested in paragraph 17.
23. The foregoing paragraphs (numbers 16-22) propose that Article XXVIII, and, where appropriate Article XIX, procedures be applicable in cases where tariff and mark-up concessions are impaired by the use of non-tariff barriers to trade. A similar procedure should apply in cases where concessions given in respect of other barriers to trade are impaired by tariffs or non-tariff action.

24. It will be noted that the proposal in paragraph 22 does not extend to quantitative restrictions which are necessary to safeguard balance of payments or those which are permitted under Articles XX and XXI.

(c) GENERAL COMMENTS

25. It is suggested that the proposals made in this paper be given effect to by decisions or rulings of the CONTRACTING PARTIES.

26. It would no doubt frequently be the case that, on a particular product, it would be necessary to negotiate the rate of import duty and to negotiate also one or more non-tariff barriers affecting the trade in that product in order that a meaningful concession may be obtained on the product concerned. In many cases, the actual concession or concessions required in respect of any individual product would need to be worked out in the course of negotiation in the light of all the measures affecting that particular product. The only meaningful concession or concessions would be those which resulted in the reduction of the overall level of protection on the product concerned.

27. Full recognition of the negotiability of non-tariff measures in negotiations would be a step towards overcoming a very real obstruction to satisfactory participation in trade and tariff negotiations by primary exporting countries. However, the trade value of the concessions that those countries might be able to negotiate and the total effectiveness of the negotiations would depend on the willingness of other countries, particularly the more industrialized countries, to negotiate on a significant basis in respect of their agricultural trade.