REPORT OF WORKING PARTY 2 ON TARIFF NEGOTIATIONS

Memorandum on Tariff Negotiations - Method of Negotiation (continued discussion)

Section III

The CHAIRMAN introduced two alternative drafts which the Secretariat had prepared to replace the first part of the last paragraph on page 5 of the Report.

Mr. DJEBBARA (Syria) stated that insofar as no explicit provisions were made in either of them regarding restrictive measures for the protection of industries or branches of agriculture, neither of them was satisfactory. He would also like to see such words as "in a manner inconsistent with the Havana Charter" included in the paragraph.

Mr. USMANI (Pakistan) supported the views expressed by the representative of Syria and Czechoslovakia at the previous meeting that this paragraph constituted a new obligation not contained in Article 17 of the Charter.

It was agreed to adopt alternative B with certain modifications as follows:

"2. In order to ensure the success of the negotiations, it is recommended that the participating governments should refrain from increases in tariffs and other..."
protective measures inconsistent with the principles of the Havana Charter and designed to improve the bargaining position of those governments in preparation for the negotiations."

The representative of Pakistan asked as to how concessions could be judged as being adequate or not, or how the concession a government obtained in its own right or by direct obligation could be evaluated if the Contracting Parties were not in session.

The CHAIRMAN stated in reply that the negotiations at Geneva would be held under the auspices of the Contracting Parties; the machinery for negotiation would be set up on April 11 and the Contracting Parties would be in a position to pass judgment on concessions granted by the contracting parties.

At the suggestion of the representative of Czechoslovakia it was agreed to change to 18 September, 1948, the date for the notification of intention to participate by governments which are revising their customs tariff.

Section IV - Timetable for the Negotiations.

Mr. ADARKAR (India) explained the arrangement of the timetable and said that in fixing the dates, account had been taken of the length of time needed for communications and the transmittal of documents, and he suggested that the date on which the Secretariat was required to notify the list of governments which would participate in the negotiations should be changed to 18 September, 1948, along with the change proposed by the representative of Czechoslovakia, so that the Secretariat would be able to supply a complete list on that date.

It was agreed that the Secretariat should dispatch the list referred to on 18 September.
Mr. AUGENTHALER (Czechoslovakia) thought that the time allowed for the exchange of statistics should be extended.

Mr. SHACKLE (United Kingdom) thought that governments must be allowed ample time to study the tariffs and statistics.

At the suggestion of Mr. ADARKAR, it was agreed that 25 September should be the last day on which the statistics should be dispatched.

Mr. SPEEKENBRINK (Netherlands) stated that it might be difficult for his Government to supply pre-war statistics as many documents had been destroyed during the war.

Mr. USMANI proposed that the words "(other than Contracting Parties)" should be deleted from paragraph (iii) so that the Contracting Parties would have the same right as the acceding governments to notify their decision and to supply the documents at a later date if necessary. Pakistan would not be able to adhere to the timetable unless they were allowed to supply the documents later than September 25.

Mr. ADARKAR replied that since it had been assumed that all Contracting Parties would participate, it had not been contemplated that they might find difficulty in supplying documents in time. The provisions were made merely to meet the special circumstances of certain acceding countries.

M. LECUYER (France) supported the suggestion by the representative of Pakistan and indicated that so far as statistics relating to the territories of the French Union other than the metropolitan area were concerned, it might be difficult for the French Government to supply them before 25 September.

Mr. ADARKAR suggested adding at the end of the paragraph the following sentence to provide for the genuine difficulties that might arise: "The same applies to the Contracting Parties
so far as the supply of documents is concerned."

Mr. NICOL (New Zealand) thought that owing to the distance that lay between his country and other countries, it would be physically impossible to supply these documents by the fixed date.

Mr. RODRIGUES (Brazil) supported the amendment proposed by the representative of India.

A number of drafting changes were suggested by the representatives of Brazil, Ceylon, France, India, United Kingdom and the United States. The following final text for paragraph (iii) was agreed upon:-

"It is understood, however, that certain acceding governments may be unable, for reasons beyond their control, to notify their decisions in regard to participation by 18 September, 1948, and that similarly certain participating governments may be unable to supply the necessary documents by 25 September, 1948."

Mr. ADARKAR suggested that in paragraph (iv), the date for dispatching the final list should be changed to 15 January, 1949.

Mr. LEDDY (United States) seconded the proposal and it was agreed that 15 January, 1949, should be the last day on which a final list of the tariff and other concessions requested should be transmitted.

Section IV was approved with the amendments incorporated. Section V - Procedures at Geneva.

Mr. JØRGENSEN (observer for Denmark) wished to be assured that the appropriate instruments referred to in the last paragraph would not embody obligations more extensive than those embodied in the Protocol of Provisional Application.
The CHAIRMAN stated that it could be safely assumed that the acceding countries would not be obliged to accept obligations more burdensome than those already accepted by the Contracting Parties. The acceding countries would be expected to apply the General Agreement provisionally so long as it was applied provisionally by the Contracting Parties.

Section V was approved.

Mr. POLITIS (Observer for Greece) stated that his Government had instructed him to accept the timetable.

Mr. DI NOLA (Italy) informed the meeting that he would communicate the memorandum to his Government.

The meeting adjourned at 5 p.m. and resumed at 5.30 p.m.


Mr. TONKIN (Australia), speaking in the capacity of Acting Chairman of the Working Party, summarized the Report and drew attention to various salient points therein. He assured the meeting that all matters that had been referred to the Working Party within its terms of reference had been exhaustively studied. As regards the Protocols annexed to the Report, he pointed out that the acceptance referred to therein did not mean ratification of the amendments for the countries which applied the Agreement provisionally, the same procedure being followed as for the acceptance of the amendment to Article XXIV decided upon in Havana. The acceptance of the amendments would have the same legal effect as the signature of the Protocol of Provisional Application and would only oblige the governments to apply the text of
the Agreement as amended provisionally and subject to the same qualifications as were contained in the Protocol of Provisional Application. Formal acceptance by the legislature would not be needed when this had not been asked for in regard to the Protocol of Provisional Application.

The CHAIRMAN introduced the Report and invited general comments.

Mr. AUGENTHALER contended that these amendments, if adopted, would virtually constitute an entirely new agreement. Since this had never been contemplated by his Government, it would not be the fault of his Government if it should fail to accept them. The obligation of the Czechoslovak Government lay within the scope of the original General Agreement it had signed and therefore it had no responsibility in regard to any innovations.

Mr. NICOL stated that in the opinion of his Government, no action seemed to be necessary before it was known when the ITO would come into existence.

There being no more general comments, the Report was taken up paragraph by paragraph.

Mr. SHACKLE suggested that the words which indicated that the period between now and the Charter's entry into force would be "relatively short", should either be deleted or changed in such a way as to indicate that it would be merely hoped to be short.

Mr. DJEBBARA and Mr. SPEEKENBRINK thought that the original text should be retained.

It was agreed that no change should be made in this respect.
Mr. COMPOS (Brazil) stated that, in the opinion of his delegation, the text recommended for paragraph 11 of Article XVIII was not a faithful rendering of paragraph 1 (a) of Article 14 of the Charter. In the Committee, he had proposed either to retain the original exception at the end of that sub-paragraph in the Havana Charter or to insert the words "or such other date as the Contracting Parties may in the special circumstances decide" after the two dates in the paragraph. He contended that the terms of reference of the Working Party had provided for the consideration of replacement and that therefore Article 14, 1(a), if it were to supersede the corresponding provisions on the General Agreement, must be reproduced faithfully. Paragraph 7 of Article XVIII provided for measures to be taken by contracting parties for economic development or reconstruction which should be concurred in by the contracting parties and for which the necessary release for a specified period should be granted by the CONTRACTING PARTIES. The concurrence and the granting of the necessary release by the CONTRACTING PARTIES, which were matters of substance, would be, according to paragraph 4 of Article XXV, decided by the CONTRACTING PARTIES by a simple majority of the votes cast. The provisions of paragraph 11, when stripped of the exception that followed the corresponding paragraph in the Havana Charter, would be so inflexible that any changes in it would be regarded as the waiver of an obligation imposed on the contracting parties by this Agreement which, according to paragraph 5 of Article XXV, would have to be approved by a two-thirds majority of the votes cast. Since no one would deny that a change of the dates in that paragraph was merely a matter of procedure, the
adoption of the report of the Working Party in this respect would give rise to a legal oddity; a matter of substance would be decided by a simple majority of votes, whereas a two-thirds majority vote would be required for the decision on a matter of procedure. In short, it seemed that, according to the text proposed by the Working Party, new restrictive measures when introduced by a Contracting Party under paragraph 7 of Article XVIII would need a simple majority of votes for its approval, whereas the maintenance of an existing restrictive measure would require a two-thirds majority. The Brazilian delegation would therefore submit that this was illogical and would be willing to abide by the decision of the Contracting Parties.

Mr. LEDDY (United States) could not agree with the representative of Brazil on his contention that the exception was added in paragraph 1 of Article 14 of the Charter for the sake of providing flexibility for the Contracting Parties; since the drafters of the Havana Charter could not have foreseen the replacement of Article XVIII of the General Agreement by Article 14 of the Charter, there was no reason to think that their intention in providing this exception clause had been to make possible the revision of the limiting dates by a simple majority vote. The omission of the clause was, therefore, not a change of substance in the Article, since the procedural requirement had been laid down in the relevant paragraphs of Article XXV.

Mr. REISMAN (Canada) supported the representative of the United States and elucidated further the purpose of the clause in the Charter as it was drafted at Havana; Subcommittee C of the Second Committee of the Havana Conference had contemplated that an application could be made to the
CONTRACTING PARTIES to amend the General Agreement to meet the cases of those signatories of the Havana Final Act which, by force of circumstances, could not accede to the General Agreement for some time.

The amendment in view would enable the fixing of new dates for the purpose of notification, and the clause in question was merely added in the Charter to anticipate any decision the Contracting Parties might take under the provisions of such an amendment. The *raison d'être* of the clause was clearly recorded in the report of that Sub-Committee. It should also be noted that the Brazilian delegation had withdrawn its reservation on the point before the conclusion of the Conference. As for procedural provisions, the Contracting Parties has resolved on 18 March 1948 (GATT/1/39) that decisions on such questions should be made under the provisions of paragraph 5 of Article XXV.

Mr. CAMPOS thought that this proposal of the Working Party, if adopted, would create a situation in which countries would be induced to adopt new restrictive measures for economic development, rather than to maintain old measures in view of the difference in the number of votes required for their approval.

Mr. SHACKLE said that his recollection of the Havana events and arguments coincided with that of Mr. REISMAN. In his view, however, a true analogy should be founded on the basis of paragraph 1(b) rather than on paragraph 1(a) of Article 14.

He would regard paragraph 3 of Article 77 as the corresponding provision in the Charter to paragraph 5 of Article XXV of the Agreement. He gave support to the proposal contained in the report of the Working Party.
Mr. ADARKAR supported the Brazilian case and stated that the validity of specifying deadline dates without providing sufficient safeguard for flexibility had already been questioned at Havana, and the Brazilian proposal still seemed to be the logical solution to his mind.

Mr. USMANI also supported the Brazilian proposal, but for different reasons. In his opinion, the word "maintain" in Article 14 should be interpreted in its broader sense. A country could not only retain an old measure, but could also begin to maintain a new measure, provided the required notification was given according to the provisions of the Article. This being the case, the lack of elasticity regarding the dates must be regarded as onerous and detrimental to the essence of the Article.

Mr. REISMAN said he could not agree to, and was surprised by, the interpretation given by the representative of Pakistan which, he thought, would render the whole of Article 13 of the Havana Charter invalid, and would be tantamount to the deletion of nine-tenths of the provisions of that Article.

Discussion on this subject was adjourned and the meeting rose at 7.40 p.m.