The following memorandum has been submitted by the United Kingdom delegation with a request that this subject be added to the Ninth Session Agenda:

The waiver from the provisions of Article I which the United Kingdom was granted at the Eighth Session, relates only to items on which the United Kingdom tariff was unbound at the time it was granted. The effect of this latter limitation is that the waiver would not apply in cases where, acting in accordance with the provisions of the Agreement, the United Kingdom might modify or withdraw a tariff binding.

In the memorandum (L/115 of 28 August 1953) in which the United Kingdom put forward their request for a waiver, it was explained that the United Kingdom were limiting their request to items which were at the time unbound on the basis (which events confirmed) that at the Eighth Session the CONTRACTING PARTIES would decide upon a further extension of the Article XXVIII time-bar. The United Kingdom made it clear, however, in the memorandum (and also in discussions during the Eighth Session) that they must reserve the right, at an appropriate later stage, to revert to the problems arising from the limitation of the waiver to items unbound at the time it was granted.

In preparation for the Ninth Session the United Kingdom Government considered whether to raise these problems then. They were, however, prepared to contemplate further deferral of the matter given (a) the aim (which they believed many other contracting parties were likely to share) of providing for a further extension of the time-bar subject to permission to renegotiate in cases of urgency or other special circumstances, and (b) the hope that their proposals for substituting arbitration for the unilateral withdrawal provisions of paragraph 2 of Article XXVIII would be accepted by the CONTRACTING PARTIES.

It now appears that while (a) may be secured (with rather more latitude for renegotiation in special circumstances than hitherto), (b) is not proving generally acceptable. It seems unlikely that it will be agreed that arbitration should replace the provisions of paragraph 2 of Article XXVIII when the time-bar is not applying. Furthermore, there is a distinct possibility that the procedure for renegotiations during the period of the time-bar may, in the last resort, permit contracting parties to act as if
the provisions of paragraph 2 of existing Article XXVIII were applying at all times. In connection with Article XXVIII, there are thus two sets of circumstances in which the United Kingdom might wish to make use of the waiver in respect of items which were not unbound at the time the waiver was granted. The need might arise in connection with changes which the United Kingdom might be seeking to make in the United Kingdom tariff if agreement could not be reached in negotiations and it became open to the United Kingdom, in accordance with the provisions of the Article, to modify or withdraw a concession unilaterally. It might also arise in connection with the right of compensatory withdrawal under the Article if other countries were seeking to increase their tariffs and agreement could not be reached for alternative compensation.

In order to meet situations in which the United Kingdom might be modifying or withdrawing tariff concessions in accordance with the provisions of the Agreement, the United Kingdom Government accordingly seek an amendment of the waiver so as to provide that it shall apply to items unbound at the time the waiver is invoked. The terms and conditions agreed at the Eighth Session provide other contracting parties with full safeguards as regards any likelihood of substantial diversion, and the extension would not affect the need for the United Kingdom to follow whatever procedures may be agreed in the Review for the renegotiation of bound items. Indeed, if the waiver had been put forward from the outset in the restrictive terms in which it was finally approved, the United Kingdom would submit that no objection based on the merits of the case could have been sustained to its applying from the outset to items unbound at the time it was invoked.